OMB CIRCULAR A-133

COMPLIANCE SUPPLEMENT

MARCH 2011

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

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PART 1 – BACKGROUND, PURPOSE, AND APPLICABILITY

BACKGROUND

The Single Audit Act of 1984 established requirements for audits of States, local governments, and Indian tribal governments that administer Federal financial assistance programs. In 1985, the Office of Management and Budget (OMB) issued OMB Circular A-128, "Audits of State and Local Governments," to provide implementing guidance. In 1990, OMB administratively extended the single audit process to non-profit organizations by issuing OMB Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Organizations."

On July 5, 1996, the President signed the Single Audit Act Amendments of 1996 (31 USC Chapter 75). The 1996 Amendments extended the statutory audit requirement to non-profit organizations and substantially revised various provisions of the 1984 Act. On June 30, 1997, OMB issued revisions to Circular A-133 (62 FR 35278) to implement the 1996 Amendments, extend OMB Circular A-133's coverage to States, local governments, and Indian tribal governments, and rescind OMB Circular A-128. The 1996 Amendments required the Director, OMB, to periodically review the audit threshold. On June 27, 2003, OMB amended Circular A-133 (68 FR 38401) to increase the audit threshold to an aggregate expenditure of $500,000 in Federal funds and to make changes in the thresholds for cognizant and oversight agencies. Those changes took effect for fiscal years ending after December 31, 2003. OMB further amended Circular A-133 on June 26, 2007 (72 FR 35080) to: (1) update internal control terminology and related definitions in Circular A-133 and (2) simplify the auditee reporting package submission requirement.

This Compliance Supplement is based on the requirements of the 1996 Amendments and 1997 revisions to OMB Circular A-133, which provide for the issuance of a compliance supplement to assist auditors in performing the required audits. The Senate and House Reports supporting the 1996 Amendments cited studies of the single audit process performed by the Government Accountability Office, the President's Council on Integrity and Efficiency, and the National State Auditors Association (NSAA). All three studies supported the need for a current compliance supplement. The NSAA study stated, "The Compliance Supplement provides an invaluable tool to both Federal agencies and auditors in setting forth the important provisions of Federal assistance programs. This tool allows Federal agencies to effectively communicate items that they believe are important to the successful management of the program and legislative intent. Such a valuable tool requires constant review and update."

This document serves to identify existing important compliance requirements that the Federal Government expects to be considered as part of an audit required by the 1996 Amendments. Without this Supplement, auditors would need to research many laws and regulations for each program under audit to determine which compliance requirements are important to the Federal Government and could have a direct and material effect on a program. Providing this Supplement is a more efficient and cost-effective approach to performing this research. For the programs contained herein, this Supplement provides a source of information for auditors to understand the Federal program's objectives, procedures, and compliance requirements relevant

to the audit as well as audit objectives and suggested audit procedures for determining compliance with these requirements.

This Supplement also provides guidance to assist auditors in determining compliance requirements relevant to the audit, audit objectives, and suggested audit procedures for programs not included herein. For single audits, this Supplement replaces agency audit guides and other audit requirement documents for individual Federal programs.

OMB Circular A-133 provides that Federal agencies are responsible to annually inform OMB of any updates needed to this Supplement. This responsibility includes ensuring that program objectives, procedures, and compliance requirements, noncompliance with which could have a direct and material effect on these individual Federal programs, are provided to OMB for inclusion in this Supplement, and that agencies keep current these program objectives, procedures, and compliance requirements (including statutory and regulatory citations). To facilitate agency efforts to meet this responsibility, Parts 4 and 5 of this Supplement provide a stand-alone section for each program included in this Supplement, which contains program objectives, program procedures, and compliance requirements. For some programs a separate section (IV, "Other Information") also is included to communicate additional information concerning the program. For example, when a program allows funds to be transferred to another program, section IV will provide guidance on how those funds should be treated on the Schedule of Expenditures of Federal Awards and Type A program determinations. See Appendix IV for a list of programs that contain this section. These program-specific sections can be updated or replaced as Federal programs change. Also, sections will be included as part of the annual update for additional programs once the program objectives, program procedures, and compliance requirements relevant to the program are developed.

PURPOSE AND APPLICABILITY (Part 1)

Purpose

This Supplement is effective for audits of fiscal years beginning after June 30, 2010, and supersedes the OMB Circular A-133 Compliance Supplement dated June 2010.

OMB Circular A-133 describes the non-Federal entity's responsibilities for managing Federal assistance programs (§___.300) and the auditor's responsibility with respect to the scope of audit (§___.500). Auditors are required to follow the provisions of OMB Circular A-133 and this Supplement.

Applicability

General

Auditors shall consider this Supplement and the referenced laws, regulations, and OMB Circulars (whether codified by Federal agencies implementing the Circulars in agency regulations or implemented by other means) in determining the compliance requirements that could have a direct and material effect on the programs included herein. That is, use of this Supplement is mandatory. Accordingly, adherence to this Supplement satisfies the requirements of OMB Circular A-133. For program-specific audits performed in accordance with a Federal agency's program-specific audit guide, the auditor shall follow such program-specific audit guide. Finally, for major programs not included in this Supplement, the auditor shall follow the guidance in Part 7 and use the types of compliance requirements in Part 3 to identify the applicable compliance requirements which could have a direct and material effect on the program.

Update of Requirements

OMB Circular A-133 provides that Federal agencies are responsible for annually informing OMB of any updates needed to this Supplement. However, auditors should recognize that laws and regulations change periodically and that delays will occur between such changes and revisions to this Supplement. Moreover, auditors should recognize that there may be provisions of contract and grant agreements that are not specified in law or regulation and, therefore, the specifics of such are not included in this Supplement. For example, the grant agreement may specify a certain matching percentage or set a priority for how funds should be spent (e.g., a requirement to not fund certain size projects). Another example is a Federal agency imposing additional requirements on a recipient because it is designated high-risk, in accordance with the A-102 Common Rule or an agency's implementation of Circular A-110 (now included at 2 Code of Federal Regulations [CFR] part 215) or as part of resolution of prior audit findings.

Accordingly, the auditor should perform reasonable procedures to ensure that compliance requirements are current and to determine whether there are any additional provisions of contract and grant agreements that should be covered by an audit under the 1996 Amendments. Reasonable procedures would be inquiry of non-Federal entity management and review of the contract and grant agreements for programs selected for testing (i.e., major programs).

Safe Harbor Status

Because the suggested audit procedures were written to be able to apply to many different programs administered by many different entities, they are necessarily general in nature. Auditor judgment will be necessary to determine whether the suggested audit procedures are sufficient to achieve the stated audit objectives or whether alternative audit procedures are needed. Therefore, the auditor should **not** consider this Supplement to be a "safe harbor" for identifying the audit procedures to apply in a particular engagement.

However, the auditor can consider this Supplement a "safe harbor" for identification of compliance requirements to be tested for the programs included herein if, as discussed above, the auditor (1) performs reasonable procedures to ensure that the requirements in this Supplement are current and to determine whether there are any additional provisions of contract and grant agreements that should be covered by an audit under the 1996 Amendments, and (2) updates or augments the requirements contained in this Supplement, as appropriate.

Responsibility for Other Requirements

Although the focus of this Supplement is on compliance requirements that could have a direct and material effect on a major program, auditors also have responsibility under *Generally Accepted Government Auditing Standards* (GAGAS) for other requirements when specific information comes to the auditors' attention that provides evidence concerning the existence of possible noncompliance that could have a material indirect effect on a major program.

OVERVIEW OF THIS SUPPLEMENT

Matrix of Compliance Requirements (Part 2)

The Matrix of Compliance Requirements (Matrix) identifies the Federal programs and compliance requirements addressed in this Supplement, and associates the programs with the applicable compliance requirements. The Matrix also identifies the applicable Federal agency and *Catalog of Federal Domestic Assistance* (CFDA) number for each program included in this Supplement.

Compliance Requirements (Part 3)

Part 3 lists and describes the 14 types of compliance requirements and, except for Special Tests and Provisions (other than those related to cross-cutting aspects of the American Recovery and Reinvestment Act [ARRA] [Pub. L. No. 111-5]), the related audit objectives that the auditor shall consider in every audit conducted under OMB Circular A-133, with the exception of program-specific audits performed in accordance with a Federal agency's program-specific audit guide. The auditor is responsible for achieving the stated audit objectives for the applicable compliance requirements.

Suggested audit procedures are provided to assist the auditor in planning and performing tests of non-Federal entity compliance with the requirements of Federal programs. The suggested audit procedures are, as the name implies, only suggested. Auditor judgment will be necessary to determine whether the suggested audit procedures are sufficient to achieve the stated audit objectives and whether alternative audit procedures are needed. Determining the nature, timing, and extent of the audit procedures necessary to meet the audit objectives is the auditor's responsibility.

The compliance requirements for Special Tests and Provisions (other than those related to the cross-cutting aspects of ARRA) are unique to each Federal program; therefore, compliance requirements, audit objectives, and suggested audit procedures for those Special Tests and Provisions other than the audit objectives and suggested audit procedures for internal control are not included in Part 3.

Consistent with the requirements of OMB Circular A-133, this Part includes audit objectives and suggested audit procedures to test internal control. However, the auditor must determine the specific procedures to test internal control on a case-by-case basis considering factors such as the non-Federal entity's internal control, the compliance requirements, the audit objectives for compliance, the auditor's assessment of control risk, and the audit requirement to test internal control as prescribed in OMB Circular A-133.

Agency Program Requirements (Part 4)

For each Federal program included in this Supplement, Part 4 discusses program objectives, program procedures, and compliance requirements that are specific to the program. With the exception of section III.N, "Special Tests and Provisions," the auditor shall refer to Part 3 for the audit objectives and suggested audit procedures that pertain to the program-specific compliance requirements associated with the programs. Since, in general, Special Tests and Provisions are unique to the program, the specific audit objectives and suggested audit procedures for the program are included in Part 4 with the exception of audit objectives and suggested audit procedures for internal control and those related to the cross-cutting aspects of ARRA which are included in Part 3.

The description of program procedures is general in nature. Some programs may operate somewhat differently than described due to: (1) the complexity of governing Federal and State laws and regulations; (2) the administrative flexibility afforded non-Federal entities; and (3) the nature, size, and volume of transactions involved. Accordingly, the auditor should obtain an understanding of the applicable compliance requirements and program procedures in operation at the non-Federal entity to properly plan and perform the audit.

Clusters of Programs (Part 5)

A cluster of programs is a grouping of closely related programs that have similar compliance requirements. The types of clusters are: Research and Development (R&D), Student Financial Aid (SFA), and other clusters. "Other clusters" are as identified in this Supplement or designated in a State award document.

Although the programs within a cluster are administered as separate programs, a cluster of programs is treated as a single program for the purpose of meeting the audit requirements of OMB Circular A-133 (§__.105). Part 5 provides compliance requirements, audit objectives, and suggested audit procedures for R&D and SFA clusters and lists other clusters.

In planning and performing the audit, the auditor should determine whether programs administered by the non-Federal entity are part of a cluster by referring to the provisions of Part 5 of this Supplement and the State award documents.

Internal Control (Part 6)

As a condition of receiving Federal awards, non-Federal entities agree to comply with laws, regulations, and the provisions of contract and grant agreements, and to maintain internal control to provide reasonable assurance of compliance with these requirements. OMB Circular A-133 requires auditors to obtain an understanding of the non-Federal entity's internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk for major programs, 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, unless internal control is likely to be ineffective, perform testing of internal control as planned. Part 6 is intended to assist non-Federal entities and their auditors in

complying with these requirements by presenting characteristics of internal control which may be used to reasonably ensure compliance with the types of compliance requirements in Part 3. The characteristics of internal control presented in Part 6 are neither mandatory nor all-inclusive.

Guidance for Auditing Programs Not Included in this Compliance Supplement (Part 7)

Part 7 provides guidance to auditors in identifying the compliance requirements and designing tests of compliance with such requirements for programs not included in this Supplement.

Federal Programs Excluded from the A-102 Common Rule (Appendix I)

This Appendix lists block grants and other programs excluded from the requirements of the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (also known as the "A-102 Common Rule").

Federal Agency Codification of Certain Governmentwide Grants Requirements (Appendix II)

This Appendix provides regulatory citations for Federal agencies' codification of the A-102 Common Rule and OMB Circular A-110 (2 CFR part 215), "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," in agency regulations. Some agencies have not codified the November 1993 revision to OMB Circular A-110, but have provided such policies to grantees through other means such as grant agreements. This Appendix also includes regulatory citations for Federal agencies' codification of the OMB guidance on nonprocurement suspension and debarment in 2 CFR part 180, as well as the codification for those agencies still operating under the predecessor Common Rule on Debarment and Suspension (November 26, 2003).

Federal Agency Single Audit and Program Contacts for A-133 Audits (Appendix III)

This Appendix identifies Federal agency-level contacts from whom auditors can request information or materials about Federal programs or the audit requirements of OMB Circular A-133. It also includes for each program listed in Parts 4 and 5 of the Supplement the name of a specific individual who can be contacted concerning that programs, along with the individual's contact information.

Internal Reference Tables (Appendix IV)

This Appendix provides a listing of programs in Parts 4 and 5 that include section IV, "Other Information." This listing allows the auditor to quickly determine which programs have other information, such as guidance on Type A and Type B program determination or display on the Schedule of Expenditures of Federal Awards. This Appendix also indicates that the Medicaid Cluster is the only program currently identified as higher risk by OMB pursuant to Circular A-133, §___.525(c)(2).

List of Changes for the 2011 Compliance Supplement (Appendix V)

This Appendix provides a list of changes from the OMB Circular A-133 Compliance Supplement, dated June 2010, to the March 2011Supplement.

Disaster Waivers and Special Provisions Affecting Single Audits (Appendix VI)

This Appendix addresses waivers, special provisions, and program-specific information on the listed Federal programs in response to Hurricanes Katrina and Rita.

Other OMB Circular A-133 Advisories (Appendix VII)

This Appendix provides information on (1) the effect of ARRA on OMB Circular A-133 audits; (2) elimination of granting extensions; (3) clarification of low-risk auditee criteria; (4) safe harbor for treatment of a large loan and loan guarantee programs in Type A program determination; and (5) common audit deficiencies cited in the report entitled *Report on the National Single Audit Sampling Project,* prepared by the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE). Appendix VII also includes a list of ARRA programs not included in the Supplement but subject to an A-133 audit and a list of ARRA programs not subject to an A-133 audit.

Standards for Attestation Engagements (SSAE) No. 16 Examinations of EBT Service Organizations (Appendix VIII)

This Appendix provides guidance on audits of State electronic benefits transfer (EBT) service providers (service organizations) regarding the issuance, redemption, and settlement of benefits under the Supplemental Nutrition Assistance Program (CFDA 10.551) in accordance with the American Institute of Certified Public Accountants (AICPA) Statement on Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization.

Compliance Supplement Core Team (Appendix IX)

This Appendix provides a listing of the Compliance Supplement Core Team members who were responsible for the production of this Supplement.

TECHNICAL INFORMATION

Page Numbering Scheme

The following page numbering scheme is used in this Supplement to facilitate future revisions.

Each page included in Parts 1, 2, 3 (Introduction), 6 (Introduction), and 7 is identified by a label that represents the part number and sequential page number. A dash (-) separates the part number from the page number. For example, Part 1 is numbered as follows: 1-1, 1-2, 1-3, and so on.

Each page included in Parts 3 (excluding the Introduction), 4, 5, and 6 (excluding the Introduction) is identified by a label that represents the part number, section number identifier, and sequential page number. For example, Section A of Part 3 is numbered 3-A-1, 3-A-2, 3-A-3, and so on. The section number identifier for Part 4 represents the CFDA number of the applicable program. For example, the Department of Labor's Unemployment Insurance program, CFDA 17.225, is numbered 4-17.225-1, 4-17.225-2, 4-17.225-3, and so on.

Code of Federal Regulations

The CFR is a codification of the rules issued by Federal agencies. The CFR is divided into 50 titles, which comprise the broad areas subject to Federal regulation. Each title is further divided into parts and sections, with most references to the CFR being made at this level.

Portions of the CFR are revised daily and these changes are published in the *Federal Register*. However, a revised version of the CFR is published only once each calendar year, on a quarterly basis as follows: titles 1–16 on January 1, titles 17–27 on April 1, titles 28–41 on July 1, and titles 42–50 on October 1.

In the event that changes to a particular section of a title have changed since the last published update of that section, a notation is made in the List of CFR Sections Affected (LSA), which is published monthly. The LSA cites the *Federal Register* page number that contains the changes to the CFR section.

In order to obtain the most current regulations, the user should consult not only the latest version of the CFR, but also the LSA issued in the current month. The *Federal Register* home page (http://www.gpoaccess.gov/nara/index.html) offers links to both the *Federal Register* and the CFR. An electronic CFR (e-CFR) is available at http://www.gpoaccess.gov/ecfr/. The e-CFR is an unofficial editorial compilation of CFR material and *Federal Register* amendments. It is a current, daily updated version of the CFR; however, it is not an official legal edition of the CFR. Please note that on-line versions of the CFR may not be the most current available.

HOW TO OBTAIN ADDITIONAL GUIDANCE

Guidance to assist auditors in performing audits in accordance with OMB Circular A-133 can be obtained from the following sources.

Office of Management and Budget

The following information is located under the grants management heading on OMB's Internet home page (http://www.omb.gov).

– OMB publications, including OMB Circulars and this Supplement for audits under OMB Circular A-133.

– SF-SAC, *Data Collection Form for Reporting on Audits of States, Local Governments, and Non-Profit Organizations*.

– Codification of Certain Governmentwide Grants Requirements by Department (including the A-102 Common Rule and OMB Circular A-110 (2 CFR part 215)).

General Services Administration (GSA)

– *Catalog of Federal Domestic Assistance* (CFDA).

A searchable copy of the CFDA and a pdf version are available through the Internet on the GSA Home Page (http://www.gsa.gov/cfda). Note that, if the CFDA indicates under a program entry (Post Assistance Considerations – Audit) that audit is "Not Applicable" or not subject to A-133, the auditor should contact the Federal agency single audit office/official indicated in Appendix III of this Supplement.

Government Printing Office (GPO)

Superintendent of Documents
P.O. Box 371954
Pittsburgh, PA 15250-7954
Telephone: (202) 512-1800

– Government Auditing Standards (stock number 020-000-00-265-4).

– March 2011 Circular A-133 Compliance Supplement (stock number: 041-001-00687-7).

Inspectors General

IGnet Home Page on the Internet (http://www.ignet.gov) contains an Inspector General Directory and the Inspector General Act.

Federal Audit Clearinghouse

The Federal Audit Clearinghouse acts as an agent for OMB to: (1) establish and maintain a governmentwide database of single audit results and related Federal award information; (2) serve as the Federal repository of single audit reports; and (3) distribute single audit reports to Federal agencies.

The Clearinghouse maintains a site on the Internet at http://harvester.census.gov/fac/. For Data Collection Form (SF-SAC) and OMB Circular A-133 submission questions, contact the Federal Audit Clearinghouse by e-mail (govs.fac@census.gov), phone (301-763-1551 (voice) and 800-253-0696 (toll free)), or fax 301-457-1592. For questions regarding previous submissions, contact the Federal Audit Clearinghouse Processing Unit at 888-222-9907. The Form SF-SAC and A-133 submission should be mailed to Federal Audit Clearinghouse, 1201 E. 10th Street, Jeffersonville, IN 47132.

PART 2 – MATRIX OF COMPLIANCE REQUIREMENTS

INTRODUCTION

This Part identifies the compliance requirements that are applicable to the programs included in this Supplement. Because Part 4 (Agency Program Requirements) and Part 5 (Clusters of Programs) do not include guidance for all types of compliance requirements that pertain to the program (see introduction to Part 4 for additional information), the auditor should use this Part 2 to identify the types of compliance requirements that apply. The box for each type of compliance requirement will either contain a "Y" (for "Yes" if the type of compliance requirement may apply) or be shaded (if the program normally does not have activity subject to this type of compliance requirement). **In addition, those programs with ARRA funding are shown in bold and, even if no other Special Tests and Provisions are applicable, "Special Tests and Provisions" is marked as "Y" due to the coverage of ARRA in Part 3-N.**

Even though a "Y" indicates that the compliance requirement applies to the Federal program, it may not apply at a particular non-Federal entity, either because that entity does not have activity subject to that type of compliance requirement or the activity could not have a material effect on a major program. For example, even though Real Property Acquisition/Relocation Assistance may apply to a particular program, it would not apply to a non-Federal entity that did not acquire real property covered by the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Similarly, a "Y" may be included under Procurement; however, the audit would not be expected to address this type of compliance requirement if the non-Federal entity charges only small amounts of purchases to a major program. The auditor should exercise professional judgment when determining which compliance requirements marked "Y" need to be tested at a particular non-Federal entity.

When a "Y" is present on the matrix and the auditor determines that the requirement should be tested at a non-Federal entity, the auditor should use Part 3, Compliance Requirements, and Part 4 (or 5), if applicable, in planning and performing the tests of compliance. For example, if a program entry in the matrix includes a "Y" in the Program Income column, Part 3 provides a general description of the compliance requirement. Part 3 also provides the audit objective and the suggested audit procedures for testing program income. Part 4 (or 5) may also include specific information on program income requirements pertaining to the program, such as restrictions on how program income may be used. Part 6, Internal Control, may be useful in assessing control risk and designing tests of internal control with respect to each applicable compliance requirement.

When a compliance requirement is shaded in the matrix, it normally does not apply to the program. However, if specific information comes to the auditor's attention (e.g., during the normal review of the grant agreement or discussions with management) that provides evidence that a compliance requirement shaded in the matrix could have a material effect on a major program, the auditor would be expected to test the requirement. This circumstance should arise infrequently.

CFDA	Types of Compliance Requirements													
	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 Relocation Assistance	L. Reporting	M. Subrecipient Monitoring	N.** Special Tests and Provisions
10 – United States Department of Agriculture (USDA)														
10.001*	Y	Y	Y			Y		Y	Y	Y		Y		Y
10.500	Y	Y	Y			Y	Y	Y	Y	Y		Y	Y	
10.551 **10.561**	Y	Y	Y		See Part 4	Y	Y	Y	Y			Y	Y	Y
10.553 10.555 10.556 10.559	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y
10.557	Y	Y	Y		Y	Y		Y	Y	Y		Y	Y	Y
10.558	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	Y
10.566	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	Y
10.568 **10.569**	Y	Y	Y	Y	Y	Y	Y	Y	Y			Y	Y	Y
10.582	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	
10.665 10.666	Y	Y	Y				Y		Y					
10.760	Y	Y	Y	Y		Y	Y	Y	Y			Y		Y
10.766	Y	Y	Y	Y		Y		Y	Y			Y		Y
11 – Department of Commerce (DOC)														
11.010 **11.300** **11.307**	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
11.555	Y	Y	Y			Y	Y	Y	Y			Y	Y	
11.557	**Y**	**Y**	**Y**	**Y**		**Y**	**Y**	**Y**	**Y**	**Y**		**Y**	**Y**	**Y**
11.558	**Y**	**Y**	**Y**				**Y**	**Y**	**Y**			**Y**		**Y**

CFDA	Types of Compliance Requirements													
	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 Relocation Assistance	L. Reporting	M. Subrecipient Monitoring	N.** Special Tests and Provisions
12 – Department of Defense (DoD)														
12.400	Y	Y	Y	Y		Y	Y	Y	Y			Y		Y
12.401	Y	Y	Y	Y		Y	Y	Y	Y	Y		Y		Y
14 – Department of Housing and Urban Development (HUD)														
14.157	Y	Y	Y	Y	Y	Y			Y		Y	Y		Y
14.169	Y	Y					Y	Y	Y	Y		Y	Y	
14.181	Y	Y	Y	Y	Y	Y			Y		Y	Y		Y
14.182 14.195 14.249 14.856			Y		Y	Y						Y	Y	Y
14.218 **14.253** **14.254**	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
14.228 **14.255**	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
14.231	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y
14.235	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
14.238	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
14.239	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
14.241	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
14.256	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
14.257	Y	Y	Y				Y	Y		Y		Y	Y	Y
14.258	Y	Y	Y	Y		Y		Y	Y	Y	Y	Y	Y	Y
14.318		Y		Y				Y	Y					Y
14.850		Y	Y	Y	Y	Y		Y	Y			Y		Y

CFDA	Types of Compliance Requirements													
	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 Relocation Assistance*	*L. Reporting*	*M. Subrecipient Monitoring*	*N.** Special Tests and Provisions*
14.862 **14.886**	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y
14.866	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y		Y
14.867 **14.882** **14.887**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
14.871 14.880	Y	Y	Y		Y							Y	Y	Y
14.872 **14.884** **14.885**	Y	Y	Y	Y		Y		Y	Y		Y	Y		Y
14.873 **14.883**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y
14.881	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y
14.907 **14.908** **14.909** **14.910**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y
15 – Department of the Interior (DOI)														
15.021	Y	Y				Y		Y	Y	Y		Y		Y
15.022	Y	Y		Y		Y		Y	Y	Y		Y	Y	Y
15.030	Y	Y				Y		Y	Y	Y		Y		Y
15.042	Y	Y				Y		Y	Y	Y		Y		Y
15.047	Y	Y				Y	Y	Y	Y	Y		Y		Y
15.225	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
15.231	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
15.236	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y

CFDA	Types of Compliance Requirements													
	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 Relocation Assistance*	*L. Reporting*	*M. Subrecipient Monitoring*	*N.** Special Tests and Provisions*
15.426	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	
15.504	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
15.518		Y	Y	Y		Y	Y	Y	Y		Y	Y		Y
15.520	Y	Y	Y	Y		Y	Y		Y		Y	Y		
15.605 15.611	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y
15.614	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y
15.615	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	
15.623	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	
15.635	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	
16 – Department of Justice (DOJ)														
16.710	Y	Y	Y			Y	Y	Y	Y			Y		
16.738 **16.803** **16.804**	Y	Y	Y	Y		Y	Y	Y	Y			Y	Y	Y
17 – Department of Labor (DOL)														
17.207 17.801 17.804	Y	Y	Y			Y	Y	Y	Y	Y		Y		
17.225	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y		Y
17.235	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	
17.245	Y	Y	Y		Y	Y		Y	Y	Y		Y	Y	
17.258 **17.259** **17.260**	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y
17.264	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	

CFDA	Types of Compliance Requirements													
	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 Relocation Assistance*	*L. Reporting*	*M. Subrecipient Monitoring*	*N.** Special Tests and Provisions*
17.265	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	
20 – Department of Transportation (DOT)														
20.106	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
20.205 20.219 20.933 23.003	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
20.223	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y		
20.319	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
20.500 **20.507**	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
20.509	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
20.513 20.516 20.521	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
20.600 20.601 20.602 20.603 20.604 20.605 20.609 20.610 20.611 20.612 20.613	Y	Y	Y			Y	Y	Y	Y	Y		Y	Y	

CFDA	Types of Compliance Requirements													
	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 Relocation Assistance*	*L. Reporting*	*M. Subrecipient Monitoring*	*N.** Special Tests and Provisions*
21 – Department of the Treasury (TREAS)														
21.012 **21.020**	Y	Y	Y	Y	Y	Y	Y		Y			Y	Y	Y
45 – National Endowment for the Humanities (NEH)														
45.129	Y	Y	Y			Y	Y	Y	Y	Y		Y	Y	
66 – Environmental Protection Agency (EPA)														
66.458	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
66.468	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
81 – Department of Energy (DOE)														
81.041	Y	Y	Y	Y		Y	Y	Y	Y	Y		Y	Y	Y
81.042	Y	Y	Y	Y	Y	Y	Y		Y	Y		Y	Y	Y
81.128	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y
84 – Department of Education (ED)														
84.002	Y	Y	Y			Y	Y	Y	Y			Y	Y	Y
84.010 **84.389**	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	Y
84.011	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	Y
84.027 84.173 **84.391** **84.392**	Y	Y	Y	Y		Y	Y	Y	Y			Y	Y	Y
84.032-G	Y											Y		Y
84.032-L							Y		Y			Y		Y

CFDA	Types of Compliance Requirements													
	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 Relocation Assistance*	*L. Reporting*	*M. Subrecipient Monitoring*	*N.** Special Tests and Provisions*
84.041 **84.401** **84.404**	Y	Y		Y			Y					Y		Y
84.042 84.044 84.047 84.066 84.217	Y	Y	Y		Y	Y	Y	Y	Y			Y		
84.048	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y
84.126 **84.390**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y
84.181 **84.393**	Y	Y	Y			Y	Y	Y	Y			Y		Y
84.186	Y	Y	Y			Y	Y	Y	Y			Y	Y	Y
84.282	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	
84.287	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y
84.298	Y	Y	Y			Y	Y	Y	Y			Y	Y	Y
84.318 **84.386**	Y	Y	Y			Y	Y	Y	Y			Y	Y	Y
84.365	Y	Y	Y			Y	Y	Y	Y			Y	Y	Y
84.366	Y	Y	Y		Y		Y	Y	Y			Y	Y	Y
84.367	Y	Y	Y		Y		Y	Y	Y			Y	Y	Y
84.377 **84.388**	Y	Y	Y				Y	Y	Y			Y	Y	Y
84.394 **84.397**	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y

CFDA	Types of Compliance Requirements													
	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 Relocation Assistance*	*L. Reporting*	*M. Subrecipient Monitoring*	*N.** Special Tests and Provisions*
84.395	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
84.410	Y	Y	Y			Y	Y	Y	Y	Y		Y	Y	Y
93 – Department of Health and Human Services (HHS)														
93.044 93.045 93.053 **93.705** **93.707**	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y
93.153	Y	Y	Y			Y	Y	Y	Y	Y		Y		
93.210	Y	Y	Y		Y			Y		Y				
93.217	Y	Y	Y			Y	Y	Y	Y	Y		Y	Y	
93.224	Y	Y	Y		Y	Y		Y	Y	Y		Y		Y
93.268 **93.712**	Y	Y	Y					Y	Y	Y		Y		Y
93.508	Y	Y	Y		Y	Y		Y	Y	Y		Y	Y	
93.556	Y	Y	Y			Y	Y	Y	Y			Y	Y	
93.558 **93.714** **93.716**	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y
93.563	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y
93.566	Y	Y	Y		Y			Y	Y			Y		
93.568	Y	Y	Y		Y		Y	Y	Y			Y	Y	
93.569 **93.710**	Y	Y	Y		Y		Y	Y	Y			Y	Y	Y

CFDA	Types of Compliance Requirements													
	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 Relocation Assistance*	*L. Reporting*	*M. Subrecipient Monitoring*	*N.** Special Tests and Provisions*
93.575 93.596 **93.713**	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y
93.600 **93.708** **93.709**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y
93.645	Y	Y	Y				Y	Y	Y			Y		
93.658	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	
93.659	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	
93.667	Y	Y	Y				Y	Y	Y				Y	
93.718	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y		Y
93.719	Y	Y	Y			Y	Y	Y	Y	Y		Y	Y	Y
93.767	Y	Y	Y		Y		Y	Y	Y	Y		Y	Y	
93.720 93.775 93.776 93.777 93.778	Y	Y	Y		Y		Y	Y	Y	Y		Y	Y	Y
93.889	Y	Y	Y			Y	Y	Y	Y	Y		Y	Y	
93.914	Y	Y	Y		Y		Y	Y	Y	Y		Y	Y	
93.917	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	
93.918	Y	Y	Y			Y	Y	Y	Y	Y		Y		
93.958	Y	Y	Y			Y	Y	Y	Y			Y	Y	Y
93.959	Y	Y	Y			Y	Y	Y	Y			Y	Y	Y
93.991	Y	Y	Y			Y	Y	Y	Y	Y		Y	Y	
93.994	Y	Y	Y			Y	Y	Y	Y	Y		Y	Y	

CFDA	Types of Compliance Requirements													
	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 Relocation Assistance	L. Reporting	M. Subrecipient Monitoring	N.** Special Tests and Provisions
94 – Corporation for National and Community Service (CNCS)														
94.006	Y	Y	Y		Y		Y	Y	Y	Y		Y	Y	Y
94.011 94.016	Y	Y	Y		Y		Y	Y	Y	Y		Y		
96 – Social Security Administration (SSA)														
96.001 96.006	Y	Y	Y			Y		Y	Y			Y		
97 – Department of Homeland Security (DHS)														
97.036	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	Y
97.039	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	
97.004 97.067	Y	Y	Y			Y	Y	Y	Y			Y	Y	Y
97.024 **97.114**	Y	Y	Y	Y	Y	Y	Y	Y	Y			Y	Y	Y
97.109	Y	Y	Y		Y			Y				Y		Y
98 – United States Agency for International Development (USAID)														
98.007 98.008	Y	Y	Y			Y		Y	Y	Y		Y		Y
Clusters of Programs														
R&D	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
SFA	Y		Y		Y		Y	Y	Y	Y		Y		Y

Legend:

Y	Yes, this type of compliance requirement may apply to the Federal program.
Shaded box	Indicates the program normally does not have activity subject to this type of compliance requirement.
*	Program does not have a CFDA number, so the Part 4 page number is used.
**.	Applicability may be based on ARRA funding only and special tests and provisions specified in Part 3.

PART 3 – COMPLIANCE REQUIREMENTS

INTRODUCTION

The objectives of most compliance requirements for Federal programs administered by States, local governments, Indian tribal governments, and non-profit organizations are generic in nature. For example, most programs have eligibility requirements for individuals or organizations. While the criteria for determining eligibility vary by program, the objective of the compliance requirement that only eligible individuals or organizations participate is consistent across all programs.

Rather than repeat these compliance requirements, audit objectives, and suggested audit procedures for each of the programs contained in Part 4 – Agency Program Requirements and Part 5 – Clusters of Programs, they are provided once in this part. For each program in this Compliance Supplement (this Supplement), Part 4 or Part 5 contains additional information about the compliance requirements that arise from laws and regulations applicable to each program, including the requirements specific to each program that should be tested using the guidance in this part.

Administrative Requirements

The administrative requirements that apply to most programs arise from two sources: the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (also known as the "A-102 Common Rule") and 2 CFR part 215 (hereafter, OMB Circular A-110 and, as appropriate, specific citation to 2 CFR part 215), "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." The applicable guidance depends on the type of organization undergoing audit. Other administrative compliance requirements that are not of the type covered in the A-102 Common Rule or OMB Circular A-110 and are unique to a single program or a cluster of programs are provided in the Special Tests and Provisions sections of Parts 4 and 5.

State, Local, and Indian Tribal Governments

Governmentwide guidance for administering grants and cooperative agreements to States, local governments, and Indian tribal governments is contained in the A-102 Common Rule, which was codified by each Federal funding agency in its title of the *Code of Federal Regulations*. The A-102 Common Rule section numbers are referred to without the Federal agency's part number (e.g., §____.37 would refer to sections in all agency regulations). This allows auditors to refer to the same section numbers when discussing administrative issues with different Federal funding agencies.

These requirements, which incorporate the cost principles by reference, apply to all grants and subgrants to governments, except grants and subgrants to State or local (public) institutions of higher education and hospitals, and except where they are inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of the A-102 Common Rule. Block grants authorized by the Omnibus Budget Reconciliation Act of 1981 and several other specifically identified programs are exempted from the A-102 Common Rule. Appendix I to this Supplement specifies legislation and programs where exclusions exist.

In some cases the A-102 Common Rule permits States to follow their own laws and procedures, e.g., when addressing equipment management. These are noted in the sections that follow. The auditor will have to refer to an individual State's rules in those situations.

Non-Profit Organizations

The major source of requirements applicable to institutions of higher education, hospitals and other non-profit organizations is OMB Circular A-110, which incorporates the cost principles by reference. The provisions of OMB Circular A-110 are codified in agency regulations (or other form of implementation), generally using the same section numbers as in the circular. The OMB Circular A-110 section numbers in this part of the Supplement are shown as 2 CFR part 215 references. However, unlike the A-102 Common Rule, with OMB approval, agencies could modify certain provisions of A-110 to meet their special needs. OMB Circular A-110 states "Federal agencies responsible for awarding and administering grants . . . shall adopt the language in the circular unless different provisions are required by Federal statute or are approved by OMB." OMB Circular A-110 states in 2 CFR section 215.4 that "Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB." Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies.

Appendix II to this supplement contains a list of agencies that have codified OMB Circular A-110 and the CFR citations for these codifications. These remain unchanged by the reissuance of A-110 in Title 2 of the CFR. Auditors should reference A-110 provisions using 2 CFR part 215 and/or agency implementing citations, as appropriate.

Subrecipients

Governmental subrecipients are subject to the provisions of the A-102 Common Rule. However, the A-102 Common Rule permits States to impose their own requirements on their governmental subrecipients, e.g., equipment management or procurement. Thus, in some circumstances, the auditor may need to refer to State rules and regulations rather than Federal requirements.

All subrecipients who are institutions of higher education, hospitals, or other non-profits, regardless of the type of organization making the subaward, shall follow the provisions of OMB Circular A-110, as implemented by the agency, when awarding or administering subgrants except under block grants authorized by the Omnibus Budget Reconciliation Act of 1981 and the Job Training Partnership Act where State rules apply instead.

Compliance Requirements, Audit Objectives, and Suggested Audit Procedures

Auditors shall consider the compliance requirements and related audit objectives in Part 3 and Part 4 or 5 (for programs included in this Supplement) in every audit of non-Federal entities conducted under OMB Circular A-133, with the exception of program-specific audits performed in accordance with a Federal agency's program-specific audit guide. In making a determination not to test a compliance requirement, the auditor must conclude that the requirement either does not apply to the particular non-Federal entity or that noncompliance with the requirement could not have a material effect on a major program (e.g., the auditor would not be expected to test Procurement if the non-Federal entity charges only small amounts of purchases to a major program). The descriptions of the compliance requirements in Parts 3, 4, and 5 are generally a summary of the actual compliance requirements. The auditor should refer to the referenced citations (e.g., laws and regulations) for the complete statement of the compliance requirements.

The suggested audit procedures are provided to assist auditors in planning and performing tests of non-Federal entity compliance with the requirements of Federal programs. Auditor judgment will be necessary to determine whether the suggested audit procedures are sufficient to achieve the stated audit objective and whether alternative audit procedures are needed.

The suggested procedures are in lieu of specifying audit procedures for each of the programs included in this Supplement. This approach has several advantages. First, it provides guidelines to assist auditors in designing audit procedures that are appropriate in the circumstance. Second, it helps auditors develop audit procedures for programs that are not included in this Supplement. Finally, it simplifies future updates to this Supplement.

Internal Control

Consistent with the requirements of OMB Circular A-133, this Part includes generic audit objectives and suggested audit procedures to test internal control. However, the auditor must determine the specific procedures to test internal control on a case-by-case basis considering factors such as the non-Federal entity's internal control, the compliance requirements, the audit objectives for compliance, the auditor's assessment of control risk, and the audit requirement to test internal control as prescribed in OMB Circular A-133.

Improper Payments

Under OMB guidance, Public Law (Pub. L.) No. 107-300, the Improper Payments Information Act of 2002, as amended by Pub. L. No. 111-204, the Improper Payments Elimination and Recovery Act, Executive Order 13520 on reducing improper payments, and the June 18, 2010 Presidential memorandum to enhance payment accuracy, Federal agencies are required to take actions to prevent improper payments, review Federal awards for such payments, and, as applicable, reclaim improper payments. Improper payment means:

1. Any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements.

2. Incorrect amounts are overpayments or underpayments that are made to eligible recipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for the incorrect amount, and duplicate payments).

3. Any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments where authorized by law).

4. Any payment that an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation.

Auditors should be alert to improper payments, particularly when testing the following parts of section III. – A, "Activities Allowed or Unallowed;" B, "Allowable Costs/Cost Principles;" E, "Eligibility;" and, in some cases, N, "Special Tests and Provisions."

American Recovery and Reinvestment Act

The American Recovery and Reinvestment Act (Pub. L. No. 111-5) (ARRA) has significant implications for audits performed under OMB Circular A-133. Auditors should specifically ask auditees about, and be alert to, recipient and subrecipient expenditure of funds provided by ARRA. A more detailed discussion of the effect of ARRA on single audits is included in Appendix VII, which also contains references to where additional information can be obtained.

ARRA –related information is included in this part in several sections: D, "Davis-Bacon Act;" I, "Procurement and Suspension and Debarment," L, "Reporting;" M, "Subrecipient Monitoring;" and N, "Special Tests and Provisions." In addition, ARRA related information is highlighted in other parts of the Supplement as follows:

Part 2 – programs with ARRA funding are shown in **bold.**

Parts 4 and 5 – treatment of ARRA requirements for programs that are not exclusively ARRA-funded is shown in **bold;** under "Other Clusters," ARRA programs are shown in **bold**.

A. ACTIVITIES ALLOWED OR UNALLOWED

Compliance Requirements

The specific requirements for activities allowed or unallowed are unique to each Federal program and are found in the laws, regulations, and the provisions of contract or grant agreements pertaining to the program. For programs listed in this Supplement, the specific requirements of the governing statutes and regulations are included in Part 4 – Agency Program Requirements or Part 5 – Clusters of Programs, as applicable. This type of compliance requirement specifies the activities that can or cannot be funded under a specific program.

In addition, ARRA has established a cross-cutting unallowable activity for all ARRA-funded awards. Pursuant to Section 1604 of ARRA, none of the funds appropriated or otherwise made available in ARRA may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

Source of Governing Requirements

The requirements for activities allowed or unallowed are contained in program legislation **or, as applicable, ARRA**, Federal awarding agency regulations, and the terms and conditions of the award.

Audit Objectives

1. Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

2. Determine whether Federal awards were expended only for allowable activities.

Suggested Audit Procedures – Internal Control

1. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

2. Plan the testing of internal control to support a low assessed level of control risk for activities allowed or unallowed and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

3. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

Suggested Audit Procedures – Compliance

1. Identify the types of activities which are either specifically allowed or prohibited by the laws, regulations, and the provisions of contract or grant agreements pertaining to the program.

2. When allowability is determined based upon summary level data, perform procedures to verify that:

   a. Activities were allowable.

   b. Individual transactions were properly classified and accumulated into the activity total.

3. When allowability is determined based upon individual transactions, select a sample of transactions and perform procedures to verify that the transaction was for an allowable activity.

4. The auditor should be alert for large transfers of funds from program accounts which may have been used to fund unallowable activities.

B. ALLOWABLE COSTS/COST PRINCIPLES

Applicability of OMB Cost Principles Circulars

The following OMB cost principles circulars prescribe the cost accounting policies associated with the administration of Federal awards by: (1) States, local governments, and Indian tribal governments (State rules for expenditures of State funds apply for block grants authorized by the Omnibus Budget Reconciliation Act of 1981 and for other programs specified in Appendix I); (2) institutions of higher education; and (3) non-profit organizations. Federal awards administered by publicly owned hospitals and other providers of medical care are exempt from OMB's cost principles circulars, but are subject to requirements promulgated by the sponsoring Federal agencies (e.g., the Department of Heath and Human Services' 45 CFR part 74, Appendix E). The cost principles applicable to a non-Federal entity apply to all Federal awards received by the entity, regardless of whether the awards are received directly from the Federal Government or indirectly through a pass-through entity. The circulars describe selected cost items, allowable and unallowable costs, and standard methodologies for calculating indirect costs rates (e.g., methodologies used to recover facilities and administrative costs (F&A) at institutions of higher education). Federal awards include Federal programs and cost-type contracts and may be in the form of grants, contracts, and other agreements.

Source of Governing Requirements

The requirements for allowable costs/cost principles are contained in the A-102 Common Rule (§___.22), OMB Circular A-110 (2 CFR section 215.27), program legislation, Federal awarding agency regulations, and the terms and conditions of the award.

The three cost principles circulars are as follows:

- **OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments" (2 CFR part 225).**

- **OMB Circular A-21, "Cost Principles for Educational Institutions" (2 CFR part 220)** – All institutions of higher education are subject to the cost principles contained in OMB Circular A-21, which incorporates the four Cost Accounting Standards Board (CASB) Standards and the Disclosure Statement (DS-2) requirements, as described in OMB Circular A-21, sections C.10 through C.14 and Appendices A and B.

- **OMB Circular A-122, "Cost Principles for Non-Profit Organizations" (2 CFR part 230)** – Non-profit organizations are subject to OMB Circular A-122, except those non-profit organizations listed in OMB Circular A-122, Attachment C that are subject to the commercial cost principles contained in the Federal Acquisition Regulation (FAR) at 48 CFR part 31. Also, by contract terms and conditions, some non-profit organizations may be subject to the CASB's Standards and the Disclosure Statement (DS-1) requirements.

Although these cost principles circulars have been reissued in Title 2 of the CFR for ease of access, this Supplement refers to them by the circular title and numbering. Auditors should refer to them in the same manner.

The cost principles articulated in the three OMB cost principles circulars are in most cases substantially identical, but a few differences do exist. These differences are necessary because of the nature of the Federal/State/local/non-profit organizational structures, programs administered, and breadth of services offered by some grantees and not others. Exhibit 1 of this part of the Supplement, Selected Items of Cost, lists the treatment of the selected cost items in the different circulars.

LIST OF SELECTED ITEMS OF COST CONTAINED IN OMB COST PRINCIPLES CIRCULARS (Amended effective June 9, 2004)

The following exhibit provides an updated listing of selected items of cost contained in each of the OMB cost principles circulars based on the changes contained in the *Federal Register* notice dated May 10, 2004 (http://www.whitehouse.gov/omb/grants_docs/). The primary changes are deletion of items, changes in language for consistency, and extension of certain items previously only in one or more—but not all—sets of OMB cost principles to another set(s) of OMB cost principles. Although these changes minimized the number of non-substantive differences among the OMB cost principles, there remain several cost items that are unique to one type of entity (e.g., commencement and convocation costs are applicable only to universities).

The exhibit lists the selected items of cost along with a cursory description of their allowability. The numbers in parentheses refer to the cost item in the applicable circular, as revised. The reader is strongly cautioned not to rely exclusively on the summary but to place primary reliance on the referenced circular text.

Selected Items of Cost
Exhibit 1 (amended 6/04)

Selected Cost Item	*OMB Circular A-87, Attachment B State, Local, & Indian Tribal Gov'ts*	*OMB Circular A-21, Section J Educational Institutions*	*OMB Circular A-122, Attachment B Non-Profit Organizations*
Advertising and public relations costs	(1) Allowable with restrictions	(1) Allowable with restrictions	(1)-Allowable with restrictions
Advisory councils	(2)-Allowable with restrictions	(2) Allowable with restrictions	(2) Allowable with restrictions
Alcoholic beverages	(3)-Unallowable	(3)-Unallowable	(3)-Unallowable
Alumni/ae activities	Not specifically addressed	(4)-Unallowable	Not specifically addressed
Audit costs and related services	(4)-Allowable with restrictions **and** as addressed in OMB Circular A-133	(5)-Allowable with restrictions **and** as addressed in OMB Circular A-133	(4)-Allowable with restrictions **and** as addressed in OMB Circular A-133
Bad debts	(5)-Unallowable	(6)-Unallowable	(5)-Unallowable
Bonding costs	(6)-Allowable with restrictions	(7) Allowable with restrictions	(6)-Allowable with restrictions
Commencement and convocation costs	Not specifically addressed	(8)-Unallowable with exceptions	Not specifically addressed
Communication costs	(7)-Allowable	(9)-Allowable	(7)-Allowable

Selected Items of Cost **Exhibit 1** (amended 6/04)			
Selected Cost Item	*OMB Circular A-87, Attachment B State, Local, & Indian Tribal Gov'ts*	*OMB Circular A-21, Section J Educational Institutions*	*OMB Circular A-122, Attachment B Non-Profit Organizations*
Compensation for personal services	(8)-Unique criteria for support	(10)-Unique criteria for support	(8)-Unique criteria for support
Compensation for personal services – organization-furnished automobile	Not specifically addressed	(10.g)- Unallowable for that portion of costs attributed to personal use	(8.g)- Unallowable for that portion of costs attributed to personal use
Compensation for personal services – sabbatical leave costs	Not specifically addressed	(10.f(4))- Allowable with restrictions	Not specifically addressed
Compensation for personal services – severance pay	(8)-Allowable with restrictions	(10.h)-Allowable with restrictions	(8.k)-Allowable with restrictions
Contingency provisions	(9)-Unallowable with exceptions	(11)-Unallowable with exceptions	(9)-Unallowable with exceptions
Deans of faculty and graduate schools	Not addressed	(12)-Allowable	Not addressed
Defense and prosecution of criminal and civil proceedings and claims	(10)-Allowable with restrictions	(13)-Allowable with restrictions (Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement)	(10)-Allowable with restrictions (Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement)
Depreciation and use allowances	(11)-Allowable with qualifications	(14)-Allowable with qualifications	(11)-Allowable with qualifications
Donations and contributions	(12)-Unallowable (made by recipient); not reimbursable but value may be used as cost sharing or matching (made to recipient)	(15)-Unallowable (made by recipient); not reimbursable but value may be used as cost sharing or matching (made to recipient)	(12)-Unallowable (made by recipient); not reimbursable but value may be used as cost sharing or matching (made to recipient)
Employee morale, health, and welfare costs	(13)-Allowable with restrictions	(16)-Allowable with restrictions	(13)-Allowable with restrictions

Selected Items of Cost **Exhibit 1** (amended 6/04)			
Selected Cost Item	*OMB Circular A-87, Attachment B State, Local, & Indian Tribal Gov'ts*	*OMB Circular A-21, Section J Educational Institutions*	*OMB Circular A-122, Attachment B Non-Profit Organizations*
Entertainment costs	(14)-Unallowable	(17)-Unallowable	(14)-Unallowable
Equipment and other capital expenditures	(15)-Allowability based on specific requirements	(18)-Allowability based on specific requirements	(15)-Allowability based on specific requirements
Fines and penalties	(16)-Unallowable with exception	(19)-Unallowable with exception	(16)-Unallowable with exception
Fundraising and investment management costs	(17)-Unallowable with exceptions	(20)-Unallowable with exceptions (Fundraising)	(17)-Unallowable with exceptions
Gains and losses on depreciable assets	(18)-Allowable with restrictions (Gains and losses on disposition of depreciable property and other capital assets and substantial relocation of Federal programs)	(21)-Allowable with restrictions	(18)-Allowable with restrictions
General government expenses	(19)-Unallowable with exceptions	Not specifically addressed	Not specifically addressed
Goods or services for personal use	(20) Unallowable	(22)-Unallowable	(19)-Unallowable
Housing and personal living expenses	Not specifically addressed	(23)-Unallowable	(20)-Unallowable as overhead costs
Idle facilities and idle capacity	(21)-Idle facilities – unallowable with exceptions; idle capacity – allowable with restrictions	(24)-Idle facilities – unallowable with exceptions; idle capacity – allowable with restrictions	(21)-Idle facilities – unallowable with exceptions; idle – capacity allowable with restrictions
Insurance and indemnification	(22)-Allowable with restrictions	(25)-Allowable with restrictions	(22)-Allowable with restrictions
Interest	(23)-Allowable with restrictions	(26)-Allowable with restrictions	(23)-Allowable with restrictions
Interest – substantial relocation	Not specifically addressed	(26.b(6))-Possible adjustment in relocated within 20 years	(23.a(6)(d))-Possible adjustment in relocated within 20 years

Selected Items of Cost **Exhibit 1** (amended 6/04)			
Selected Cost Item	*OMB Circular A-87, Attachment B State, Local, & Indian Tribal Gov'ts*	*OMB Circular A-21, Section J Educational Institutions*	*OMB Circular A-122, Attachment B Non-Profit Organizations*
Labor relations costs	Not specifically addressed	(27)-Allowable	(24)-Allowable
Lobbying	(24)-Unallowable	(28)-Unallowable with exceptions	(25)-Unallowable with exceptions
Lobbying – executive lobbying costs	(24.b)-Unallowable	(28.h)-Unallowable	(25.d)-Unallowable
Losses on other sponsored agreements or contracts	Not specifically addressed	(29)-Unallowable	(26)-Unallowable (Losses on other awards or contracts)
Maintenance and repair costs	(25)-Allowable with restrictions (Maintenance, operations, and repairs)	(30)-Allowable with restrictions	(27)-Allowable with restrictions
Materials and supplies costs	(26)-Allowable with restrictions	(31)-Allowable with restrictions	(28)-Allowable with restrictions
Meetings and conferences	(27)- Allowable with restrictions	(32)- Allowable with restrictions	(29)-Allowable with restrictions
Memberships, subscriptions, and professional activity costs	(28)-Allowable as a direct cost for civic, community and social organizations with Federal approval; unallowable for lobbying organizations.	(33)-Unallowable for civic, community, or social organizations	(30)-Allowable for civic and community organizations with Federal approval; unallowable for social organizations.
Organization costs	Not specifically addressed	Not specifically addressed	(31)-Unallowable except Federal prior approval
Page charges in professional journals	(34.b)-Allowable with restrictions (addressed under "Publication and printing costs")	(39.b)-Allowable with restrictions (addressed under "Publication and printing costs")	(32)-Allowable with restrictions
Participant support costs	Not specifically addressed	Not specifically addressed	(33)-Allowable with prior approval of the Federal awarding agency
Patent costs	(29)-Allowable with restrictions	(34)-Allowable with restrictions	(34)-Allowable with restrictions

Selected Items of Cost **Exhibit 1** (amended 6/04)			
Selected Cost Item	*OMB Circular A-87, Attachment B State, Local, & Indian Tribal Gov'ts*	*OMB Circular A-21, Section J Educational Institutions*	*OMB Circular A-122, Attachment B Non-Profit Organizations*
Plant and homeland security costs	(30)-Allowable with restrictions	(35)-Allowable with restrictions	(35)-Allowable with restrictions
Pre-agreement costs	(31)-Allowable with restrictions (Pre-award costs)	(36)-Unallowable unless approved by the Federal sponsoring agency	(36)-Allowable with restrictions
Professional service costs	(32)-Allowable with restrictions	(37)-Allowable with restrictions	(37)-Allowable with restrictions
Proposal costs	(33)-Allowable with restrictions	(38)-Allowable with restrictions	Not specifically addressed
Publication and printing costs	(34)-Allowable with restrictions	(39)-Allowable with restrictions	(38)-Allowable with restrictions
Rearrangement and alteration costs	(35)-Allowable (ordinary and normal); allowable with Federal prior approval (special)	(40)-Allowable (ordinary and normal); allowable with Federal prior approval (special)	(39)-Allowable (ordinary and normal); allowable with Federal prior approval (special)
Reconversion costs	(36)-Allowable with restrictions	(41)-Allowable with restrictions	(40)-Allowable with restrictions
Recruiting costs	(1.c)-Allowable with restrictions (addresses costs of advertising only)	(42)-Allowable with restrictions	(1)-Allowable with restrictions
Relocation costs	Not specifically addressed	(42.d)-Allowable with restrictions	(42)-Allowable with restrictions
Rental cost of buildings and equipment	(37)-Allowable with restrictions	(43)-Allowable with restrictions	(43)-Allowable with restrictions
Royalties and other costs for use of patents	(38)-Allowable with restrictions	(44)-Allowable with restrictions	(44)-Allowable with restrictions
Scholarships and student aid costs	Not specifically addressed	(45)-Allowable with restrictions	Not specifically addressed
Selling and marketing costs	(39)-Unallowable with exceptions	(46)-Unallowable with exceptions	(45)-Unallowable with exceptions
Specialized service facilities	Not specifically addressed	(47)-Allowable with restrictions	(46)-Allowable with restrictions

Selected Items of Cost **Exhibit 1** (amended 6/04)			
Selected Cost Item	*OMB Circular A-87, Attachment B State, Local, & Indian Tribal Gov'ts*	*OMB Circular A-21, Section J Educational Institutions*	*OMB Circular A-122, Attachment B Non-Profit Organizations*
Student activity costs	Not specifically addressed	(48)-Unallowable unless specifically provided for in the sponsored agreement	Not specifically addressed
Taxes	(40)-Allowable with restrictions	(49)-Allowable with restrictions	(47)-Allowable with restrictions
Termination costs applicable to sponsored agreements	(41)-Allowable with restrictions	(50)-Allowable with restrictions	(48)-Allowable with restrictions
Training costs	(42)-Allowable for employee development	(51)-Allowable for employee development	(49)-Allowable with limitations
Transportation costs	Not specifically addressed	(52)-Allowable with restrictions	(50)-Allowable
Travel costs	(43)-Allowable with restrictions	(53)-Allowable with restrictions	(51)-Allowable with restrictions
Trustees	Not specifically addressed	(54)-Allowable with restrictions	(52)-Allowable with restrictions

OMB CIRCULAR A-87
COST PRINCIPLES FOR STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS

Introduction

OMB Circular A-87 (A-87) establishes principles and standards for determining allowable direct and indirect costs for Federal awards. This section is organized into the following areas of allowable costs: State/Local-Wide Central Service Costs; State/Local Department or Agency Costs (Direct and Indirect); and State Public Assistance Agency Costs.

Cognizant Agency

A-87, Attachment A, paragraph B.6. defines "cognizant agency" as the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under A-87 on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies (*Federal Register*, 51 FR 552, January 6, 1986). This listing is available on the Internet at: http://www.whitehouse.gov/sites/default/files/omb/assets/financial_pdf/fr-notice_cost_negotiation_010686.pdf. References to cognizant agency in this section should not be confused with the cognizant Federal agency for audit responsibilities, which is defined in OMB Circular A-133, Subpart D. §____.400(a).

Availability of Other Information

Additional information on cost allocation plans and indirect cost rates is found in the Department of Health and Human Services (HHS) publications: *A Guide for State, Local and Indian Tribal Governments* (ASMB C-10); *Review Guide for State and Local Governments State/Local-Wide Central Service Cost Allocation Plans and Indirect Cost Rates;* and the *DCA Best Practices Manual for Reviewing Public Assistance Cost Allocation Plans* which are available on the Internet at http://rates.psc.gov/fms/dca/asmb%20c-10.pdf and http://rates.psc.gov/fms/dca/PA%20BPM.pdf, respectively.

Allowable Costs – State/Local-Wide Central Service Costs

Most governmental entities provide services, such as accounting, purchasing, computer services, and fringe benefits, to operating agencies on a centralized basis. Since the Federal awards are performed within the individual operating agencies, there must be a process whereby these central service costs are identified and assigned to benefiting operating agency activities on a reasonable and consistent basis. The State/local-wide central service cost allocation plan (CAP) provides that process. (Refer to A-87, Attachment C, State/Local-Wide Central Service Cost Allocation Plans, for additional information and specific requirements.)

The allowable costs of central services that a governmental unit provides to its agencies may be allocated or billed to the user agencies. The State/local-wide central service CAP is the required documentation of the methods used by the governmental unit to identify and accumulate these costs, and to allocate them or develop billing rates based on them.

Allocated central service costs (referred to as Section I costs) are allocated to benefiting operating agencies on some reasonable basis. These costs are usually negotiated and approved for a future year on a "fixed-with-carry-forward" basis. Examples of such services might include general accounting, personnel administration, and purchasing. Section I costs assigned to an operating agency through the State/local-wide central service CAP are typically included in the agency's indirect cost pool.

Billed central service costs (referred to as Section II costs) are billed to benefiting agencies and/or programs on an individual fee-for-service or similar basis. The billed rates are usually based on the estimated costs for providing the services. An adjustment will be made at least annually for the difference between the revenue generated by each billed service and the actual allowable costs. Examples of such billed services include computer services, transportation services, self- insurance, and fringe benefits. Section II costs billed to an operating agency may be charged as direct costs to the agency's Federal awards or included in its indirect cost pool.

1. Compliance Requirements – State/Local-Wide Central Service Costs

a. *Basic Guidelines*

(1) The basic guidelines affecting allowability of costs (direct and indirect) are identified in A-87, Attachment A, paragraph C.

(2) To be allowable under Federal awards, costs must meet the following general criteria (A-87, Attachment A, paragraph C.1):

(a) Be necessary and reasonable for the performance and administration of Federal awards. (Refer to A-87, Attachment A, paragraph C.2 for additional information on reasonableness of costs.)

(b) Be allocable to Federal awards under the provisions of A-87. (Refer to A-87, Attachment A, paragraph C.3 for additional information on allocable costs.)

(c) Be authorized or not prohibited under State or local laws or regulations.

(d) Conform to any limitations or exclusions set forth in A-87, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.

(e) Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.

(f) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

(g) Be determined in accordance with generally accepted accounting principles, except as otherwise provided in A-87.

(h) Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award, except as specifically provided by Federal law or regulation.

(i) Be net of all applicable credits. (Refer to A-87, Attachment A, paragraph C.4 for additional information on applicable credits.)

(j) Be adequately documented.

b. *Selected Items of Cost*

(1) Sections 1 through 43 of A-87, Attachment B, provide the principles to be applied in establishing the allowability or unallowability of certain items of cost. (For a listing of costs, refer to Exhibit 1 of this part of the Supplement.) These principles apply whether a cost is treated as direct or indirect. Failure to mention a particular item of cost in this section of A-87 is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

(2) A cost is allowable for Federal reimbursement only to the extent of benefits received by Federal awards and its conformance with the general policies and principles stated in A-87, Attachment A.

c. *Submission Requirements*

(1) Submission requirements are identified in A-87, Attachment C, paragraph D.

(2) A State is required to submit a State-wide central service CAP to HHS for each year in which it claims central service costs under Federal awards.

(3) A local government that has been designated as a "major local government" by OMB is required to submit a central service CAP to its cognizant agency annually. This listing is posted on the OMB website at (http://www.whitehouse.gov/omb/management). All other local governments claiming central service costs must develop a CAP in accordance with the requirements described in A-87 and maintain the plan and related supporting documentation for audit. Local governments are

not required to submit the plan for Federal approval unless they are specifically requested to do so by the cognizant agency. If a local government receives funds as a subrecipient only, the primary recipient will be responsible for negotiating and/or monitoring the local government's plan.

(4) All central service CAPs will be prepared and, when required, submitted within the 6 months prior to the beginning of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency.

d. *Documentation Requirements*

(1) The central service CAP must include all central service costs that will be claimed (either as an allocated or a billed cost) under Federal awards. Costs of central services omitted from the CAP will not be reimbursed.

(2) The documentation requirements for all central service CAPs are contained in A-87, Attachment C, paragraph E. All plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the record retention requirements contained in the A-102 Common Rule.

e. *Required Certification* – No proposal to establish a central service CAP, whether submitted to a Federal cognizant agency or maintained on file by the governmental unit, shall be accepted and approved unless such costs have been certified by the governmental unit using the Certificate of Cost Allocation Plan as set forth in A-87, Attachment C.

f. *Allocated Central Service Costs (Section I Costs)* – A carry-forward adjustment is not permitted for a central service activity that was not included in the previously approved plan or for unallowable costs that must be reimbursed immediately (A-87, Attachment C, paragraph G.3).

g. *Billed Central Service Costs (Section II Costs)*

(1) Internal service funds for central service activities are allowed a working capital reserve of up to 60 days cash expenses for normal operating purposes (A- 87, Attachment C, paragraph G.2). A working capital reserve exceeding 60 days may be approved by the cognizant Federal agency in exceptional cases.

(2) Adjustments of billed central services are required when there is a difference between the revenue generated by each billed service and the actual allowable costs (A-87, Attachment C, paragraph G.4). The adjustments will be made through one of the following methods:

(a) A cash refund to the Federal Government for the Federal share of the adjustment, if revenue exceeds costs,

(b) Credits to the amounts charged to the individual programs,

(c) Adjustments to future billing rates, or

(d) Adjustments to allocated central service costs (Section I) if the total amount of the adjustment for a particular service does not exceed $500,000.

(3) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund), refunds shall be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer (A-87, Attachment B, paragraph 22).

2. Audit Objectives – State/Local-Wide Central Service Costs

a. Obtain an understanding of internal control over the compliance requirements for central service costs, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

b. Determine whether the governmental unit complied with the provisions of A-87 as follows:

(1) Direct charges to Federal awards were for allowable costs.

(2) Charges to cost pools allocated to Federal awards through the central service CAPs were for allowable costs.

(3) The methods of allocating the costs are in accordance with the applicable cost principles, and produce an equitable and consistent distribution of costs, which benefit from the central service costs being allocated (e.g., cost allocation bases include all activities, including all State departments and agencies and, if appropriate, non-State organizations which receive services).

(4) Cost allocations were in accordance with central service CAPs approved by the cognizant agency or, in cases where such plans are not subject to approval, in accordance with the plan on file.

3. Suggested Internal Control Audit Procedures – State/Local-Wide Central Service Costs

a. Using the guidance provided in Part 6 – Internal Control for allowable costs/cost principles, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

b. Plan the testing of internal control to support a low assessed level of control risk for allowable costs/cost principles and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

c. Consider the results of the testing of internal control in assessing the risk of non-compliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

4. Suggested Compliance Audit Procedures – State/Local-Wide Central Service Costs

a. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

(1) In reviewing the State/local-wide central service costs, the auditor may not need to test all central service costs (allocated or billed) every year; for example, the auditor in obtaining sufficient evidence for the opinion may consider testing each central service at least every 5 years, and perform additional testing for central services with operating budgets of $5 million or more.

(2) If the local governmental entity is not required to submit the central service CAP and related supporting documentation, the auditor should consider the risk of the reduced level of oversight in designing the nature, timing and extent of compliance testing.

b. *General Audit Procedures for State/Local-Wide Central Service CAPs* – The following procedures apply to direct charges to Federal awards as well as charges to cost pools that are allocated wholly or partially to Federal awards or used in formulating indirect cost rates used for recovering indirect costs under Federal awards.

(1) Test a sample of transactions for conformance with:

(a) The criteria contained in the "Basic Guidelines" section of A-87, Attachment A, paragraph C.

(b) The principles to establish allowability or unallowability of certain items of cost (A-87, Attachment B).

(2) If the auditor identifies unallowable costs, the auditor should be aware that directly associated costs might have been charged. Directly associated

costs are costs incurred solely as a result of incurring another cost, and would have not been incurred if the other cost had not been incurred. When an unallowable cost is incurred, directly associated costs are also unallowable. For example, occupancy costs related to unallowable general costs of government are also unallowable.

c. *Special Audit Procedures for State/Local-Wide Central Service CAPs*

(1) Verify that the central service CAP includes the required documentation in accordance with A-87, Attachment C, paragraph E.

(2) *Testing of the State/Local-Wide Central Service CAPs – Allocated Section I Costs*

(a) If new allocated central service costs were added, review the justification for including the item as Section I costs to ascertain if the costs are allowable (e.g., if costs benefit Federal awards).

(b) Identify the central service costs that incurred a significant increase in actual costs from the prior year's costs. Test a sample of transactions to verify the allowability of the costs.

(c) Determine whether the bases used to allocate costs are appropriate, i.e., costs are allocated in accordance with relative benefits received.

(d) Determine whether the proposed bases include all activities that benefit from the central service costs being allocated, including all users that receive the services. For example, the State-wide central service CAP should allocate costs to all benefiting State departments and agencies, and, where appropriate, non-State organizations, such as local government agencies.

(e) Perform an analysis of the allocation bases by selecting agencies with significant Federal awards to determine if the percentage of costs allocated to these agencies has increased from the prior year. For those selected agencies with significant allocation percentage increases, determine that the data included in the bases are current and accurate.

(f) Verify that carry-forward adjustments are properly computed in accordance with A-87, Attachment C, paragraph G.3.

(3) *Testing of the State/Local-Wide Central Service CAPs – Billed Section II Costs*

(a) For billed central service activities accounted for in separate funds (e.g., internal service funds), ascertain if:

(i) Retained earnings/fund balances (including reserves) are computed in accordance with the applicable cost principles;

(ii) Working capital reserves are not excessive in amount (generally not greater than 60 days for cash expenses for normal operations incurred for the period exclusive of depreciation, capital costs, and debt principal costs); and

(iii) Adjustments were made when there is a difference between the revenue generated by each billed service and the actual allowable costs.

Note: A 60-day working capital reserve is not automatic. Refer to the HHS publication, *A Guide for State, Local, and Indian Tribal Governments* (ASMB C-10) for guidelines.

(b) Test to ensure that all users of services are billed in a consistent manner. For example, examine selected billings to determine if all users (including users outside the governmental unit) are charged the same rate for the same service.

(c) Test that billing rates exclude unallowable costs, in accordance with applicable cost principles and Federal statutes.

(d) Test, where billed central service activities are funded through general revenue appropriations, that the billing rates (or charges) are developed based on actual costs and were adjusted to eliminate profits.

(e) For self-insurance and pension funds, ascertain if independent actuarial studies appropriate for such activities are performed at least biennially and that current period costs were allocated based on an appropriate study that is not over two years old.

(f) Determine if refunds were made to the Federal Government for its share of funds transferred from the self-insurance reserve to other accounts, including imputed or earned interest from the date of the transfer.

Allowable Costs – State/Local Department or Agency Costs – Direct and Indirect

The individual State/local departments or agencies (also known as operating agencies) are responsible for the performance or administration of Federal awards. In order to receive cost reimbursement under Federal awards, the department or agency usually submits claims asserting that allowable and eligible costs (direct and indirect) have been incurred in accordance with A-87.

While direct costs are those that can be identified specifically with a particular final cost objective, the indirect costs are those that have been incurred for common or joint purposes, and not readily assignable to the cost objectives specifically benefited without effort disproportionate to the results achieved. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate.

The indirect cost rate proposal (ICRP) provides the documentation prepared by a State/local department or agency, to substantiate its request for the establishment of an indirect cost rate. The indirect costs include: (1) costs originating in the department or agency carrying out Federal awards, and (2) costs of central governmental services distributed through the State/local-wide central service CAP that are not otherwise treated as direct costs. The ICRPs are based on the most current financial data and are used to either establish predetermined, fixed, or provisional indirect cost rates or to finalize provisional rates (for rate definitions refer to A-87, Attachment E, paragraph B).

1. Compliance Requirements – State/Local Department or Agency Costs – Direct and Indirect

a. *Basic Guidelines* – Refer to the previous section, "Allowable Costs – State/Local-Wide Central Service Costs, 1.a – Compliance Requirements-Basic Guidelines," for the guidelines affecting the allowability of costs (direct and indirect) under Federal awards.

b. *Selected Items of Cost* – Refer to the previous section, "Allowable Costs – State/Local-Wide Central Service Costs, 1.b – Compliance Requirements-Selected Items of Cost," for the principles to establish allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect.

c. *Allocation of Indirect Costs and Determination of Indirect Cost Rates*

(1) The specific methods for allocating indirect costs and computing indirect cost rates are as follows:

(a) *Simplified Method* – This method is applicable where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect cost to approximately the same degree. The allocation of indirect costs and the computation of an indirect cost rate may be

accomplished through simplified allocation procedures described in the circular (A-87, Attachment E, paragraph C.2).

(b) *Multiple Allocation Base Method* – This method is applicable where a governmental unit's department or agency has several major functions that benefit from its indirect costs in varying degrees. The allocation of indirect costs may require the accumulation of such costs into separate groupings which are then allocated individually to benefiting functions by means of a base which best measures the relative degree of benefit. (For detailed information, refer to A-87, Attachment E, paragraph C.3.)

(c) *Special Indirect Cost Rates* – In some instances, a single indirect cost rate for all activities of a department or agency may not be appropriate. Different factors may substantially affect the indirect costs applicable to a particular program or group of programs, e.g., the physical location of the work, the nature of the facilities, or level of administrative support required. (For the requirements for a separate indirect cost rate, refer to A-87, Attachment E, paragraph C.4.)

(d) *Cost Allocation Plans* – In certain cases, the cognizant agency may require a State or local governmental unit's department or agency to prepare a CAP instead of an ICRP. These are infrequently occurring cases in which the nature of the department or agency's Federal awards makes impracticable the use of a rate to recover indirect costs. A CAP required in such cases consists of narrative descriptions of the methods the department or agency uses to allocate indirect costs to programs, awards, or other cost objectives. Like an ICRP, the CAP must be either submitted to the cognizant agency for review, negotiation and approval, or retained on file for inspection during audits.

d. *Submission Requirements*

(1) Submission requirements are identified in A-87, Attachment E, paragraph D.1. All departments or agencies of a governmental unit claiming indirect costs under Federal awards must prepare an ICRP and related documentation to support those costs.

(2) A State/local department or agency for which a cognizant Federal agency has been assigned by OMB must submit its ICRP to its cognizant agency. Smaller local government departments or agencies which are not required to submit a proposal to the cognizant Federal agency must develop an ICRP in accordance with the requirements of A-87, and maintain the proposal and related supporting documentation for audit. Where a local

government receives funds as a subrecipient only, the primary recipient will be responsible for negotiating and/or monitoring the subrecipient's plan.

(3) Each Indian tribal government desiring reimbursement of indirect costs must submit its ICRP to its cognizant agency, which generally is the Department of the Interior.

(4) ICRPs must be developed (and, when required, submitted) within 6 months after the close of the governmental unit's fiscal year.

e. *Documentation and Certification Requirements*

The documentation and certification requirements for ICRPs are included in A-87, Attachment E, paragraphs D.2 and 3, respectively. The proposal and related documentation must be retained for audit in accordance with the record retention requirements contained in the A-102 Common Rule.

2. Audit Objectives – State/Local Department or Agency Costs – Direct and Indirect

a. Obtain an understanding of internal control over the compliance requirements for State/local department or agency costs, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

b. Determine whether the governmental unit complied with the provisions of A-87 as follows:

(1) Direct charges to Federal awards were for allowable costs.

(2) Charges to cost pools used in calculating indirect cost rates were for allowable costs.

(3) The methods for allocating the costs are in accordance with the applicable cost principles, and produce an equitable and consistent distribution of costs (e.g., all activities that benefit from the indirect cost, including unallowable activities, must receive an appropriate allocation of indirect costs).

(4) Indirect cost rates were applied in accordance with approved indirect cost rate agreements (ICRA), or special award provisions or limitations, if different from those stated in negotiated rate agreements.

(5) For local departments or agencies that do not have to submit an ICRP to the cognizant Federal agency, indirect cost rates were applied in accordance with the ICRP maintained on file.

3. Suggested Internal Control Audit Procedures – State/Local Department or Agency Costs- Direct and Indirect

Refer to the previous section, "Allowable Costs – State/Local-Wide Central Service Costs," items 3.a through 3.c, for suggested internal control audit procedures.

4. Suggested Compliance Audit Procedures – State/Local Department or Agency Costs – Direct and Indirect

a. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance. If the local department or agency is not required to submit an ICRP and related supporting documentation, the auditor should consider the risk of the reduced level of oversight in designing the nature, timing, and extent of compliance testing.

b. *General Audit Procedures (Direct and Indirect Costs)* – The following procedures apply to direct charges to Federal awards as well as charges to cost pools that are allocated wholly or partially to Federal awards or used in formulating indirect cost rates used for recovering indirect costs from Federal awards.

(1) Test a sample of transactions for conformance with:

(a) The criteria contained in the "Basic Guidelines" section of A-87, Attachment A, paragraph C.

(b) The principles to establish allowability or unallowability of certain items of cost (A-87, Attachment B).

(2) If the auditor identifies unallowable costs, the auditor should be aware that directly associated costs might have been charged. Directly associated costs are costs incurred solely as a result of incurring another cost, and would have not been incurred if the other cost had not been incurred. When an unallowable cost is incurred, directly associated costs are also unallowable. For example, occupancy costs related to unallowable general costs of government are also unallowable.

c. *Special Audit Procedures for State/Local Department or Agency ICRPs*

(1) Verify that the ICRP includes the required documentation in accordance with A-87, Attachment E, paragraph D.

(2) *Testing of the ICRP* – There may be a timing consideration when the audit is completed before the ICRP is completed. In this instance, the auditor should consider performing interim testing of the costs charged to the cost pools and the allocation bases (e.g., determine from management the cost

pools that management expects to include in the ICRP and test the costs for compliance with A-87). Should there be audit exceptions, corrective action may be taken earlier to minimize questioned costs. In the next year's audit, the auditor should complete testing and verify management's representations against the completed ICRP.

(a) When the ICRA is the basis for indirect cost charged to a major program, the auditor is required to obtain appropriate assurance that the costs collected in the cost pools and allocation methods are in compliance with the applicable cost principles. The following procedures are some acceptable options the auditor may use to obtain this assurance:

(i) *Indirect Cost Pool* – Test the indirect cost pool to ascertain if it includes only allowable costs in accordance with A-87.

(A) Test to ensure that unallowable costs are identified and eliminated from the indirect cost pool (e.g., capital expenditures, general costs of government).

(B) Identify significant changes in expense categories between the prior ICRP and the current ICRP. Test a sample of transactions to verify the allowability of the costs.

(C) Trace the central service costs that are included in the indirect cost pool to the approved State/local-wide central service CAP or to plans on file when submission is not required.

(ii) *Direct Cost Base* – Test the methods of allocating the costs to ascertain if they are in accordance with the applicable provisions of A-87 and produce an equitable distribution of costs.

(A) Determine that the proposed base(s) includes all activities that benefit from the indirect costs being allocated.

(B) If the direct cost base is not limited to direct salaries and wages, determine that distorting items are excluded from the base. Examples of distorting items include capital expenditures, flow-through funds (such as benefit payments), and subaward costs in excess of $25,000 per subaward.

(C) Determine the appropriateness of the allocation base (e.g., salaries and wages, modified total direct costs).

(iii) *Other Procedures*

(A) Examine the employee time report system results (where and if used) to ascertain if they are accurate, and are based on the actual effort devoted to the various functional and programmatic activities to which the salary and wage costs are charged. (Refer to A-87, Attachment B, paragraph 8.h for additional information on support of salaries and wages.)

(B) For an ICRP using the multiple allocation base method, test statistical data (e.g., square footage, audit hours, salaries and wages) to ascertain if the proposed allocation or rate bases are reasonable, updated as necessary, and do not contain any material omissions.

(3) *Testing of Charges Based Upon the ICRA* – Perform the following procedures to test the application of charges to Federal awards based upon an ICRA:

(a) Obtain and read the current ICRA and determine the terms in effect.

(b) Select a sample of claims for reimbursement and verify that the rates used are in accordance with the rate agreement, that rates were applied to the appropriate bases, and that the amounts claimed were the product of applying the rate to the applicable base. Verify that the costs included in the base(s) are consistent with the costs that were included in the base year (e.g., if the allocation base is total direct costs, verify that current-year direct costs do not include costs items that were treated as indirect costs in the base year).

(4) *Other Procedures* – No Negotiated ICRA

(a) If an indirect cost rate has not been negotiated by a cognizant Federal agency, as required, the auditor should determine whether documentation exists to support the costs. Where the auditee has documentation, the suggested general audit procedures (direct and indirect costs under paragraph 4.b of this section) should be

performed to determine the appropriateness of the indirect cost charges to awards.

(b) If an indirect cost rate has not been negotiated by a cognizant agency, as required, and documentation to support the indirect costs does not exist, the auditor should question the costs based on a lack of supporting documentation.

Allowable Costs – State Public Assistance Agency Costs

State public assistance agency costs are (1) defined as all costs allocated or incurred by the State agency except expenditures for financial assistance, medical vendor payments, and payments for services and goods provided directly to program recipients (e.g., day care services); and (2) normally charged to Federal awards by implementing the public assistance cost allocation plan (CAP). The public assistance CAP provides a narrative description of the procedures that are used in identifying, measuring and allocating all costs (direct and indirect) to each of the programs administered or supervised by State public assistance agencies.

Attachment D of A-87 states that since the federally financed programs administered by State public assistance agencies are funded predominantly by HHS, HHS is responsible for the requirements for the development, documentation, submission, negotiation and approval of public assistance CAPs. These requirements are published in Subpart E of 45 CFR part 95.

Major Federal programs typically administered by State public assistance agencies include: Temporary Assistance for Needy Families (CFDA 93.558), Medicaid (CFDA 93.778), Supplemental Nutrition Assistance Program (CFDA 10.561), Child Support Enforcement (CFDA 93.563), Foster Care (CFDA 93.658), Adoption Assistance (CFDA 93.659), and Social Services Block Grant (CFDA 93.667).

1. Compliance Requirements – State Public Assistance Agency Costs

a. *Basic Guidelines* – Refer to the previous section, "Allowable Costs – State/Local-Wide Central Service Costs, 1.a, Compliance Requirements-Basic Guidelines," for the guidelines affecting the allowability of costs (direct and indirect) under Federal awards.

b. *Selected Items of Cost* – Refer to the previous section, "Allowable Costs – State/Local-Wide Central Service Costs 1.b, Compliance Requirements-Selected Items of Cost," for the principles to establish allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect.

c. *Submission Requirements*

Unlike most State/local-wide central service CAPs and ICRPs, an annual submission of the public assistance CAP is not required. Once a public assistance CAP is approved, State public assistance agencies are required to promptly submit amendments to the plan if any of the following events occur (45 CFR section 95.509):

(1) The procedures shown in the existing cost allocation plan become outdated because of organizational changes, changes to the Federal law or regulations, or significant changes in the program levels, affecting the validity of the approved cost allocation procedures.

(2) A material defect is discovered in the cost allocation plan.

(3) The State plan for public assistance programs is amended so as to affect the allocation of costs.

(4) Other changes occur which make the allocation basis or procedures in the approved cost allocation plan invalid.

The amendments must be submitted to HHS for review and approval.

d. *Documentation Requirements* – A State must claim Federal financial participation for costs associated with a program only in accordance with its approved cost allocation plan. The public assistance CAP requirements are contained in 45 CFR section 95.507.

e. *Implementation of Approved Public Assistance CAPs* – Since public assistance CAPs are of a narrative nature, the Federal Government needs assurance that the cost allocation plan has been implemented as approved. This is accomplished by funding agencies' reviews, single audits, or audits conducted by the cognizant audit agency (A-87, Attachment D, paragraph E.1).

2. Audit Objectives – State Public Assistance Agency Costs

a. Obtain an understanding of internal control over the compliance requirements for State public assistance agency costs, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

b. Determine whether the governmental unit complied with the provisions of A-87 as follows:

(1) Direct charges to Federal awards were for allowable costs.

(2) Charges to cost pools allocated to Federal awards through the public assistance CAP were for allowable costs.

(3) The approved public assistance CAP correctly describes the actual procedures used to identify, measure, and allocate costs to each of the programs operated by the State public assistance agency. However, the actual procedures or methods of allocating costs must be in accordance with the applicable cost principles, and produce an equitable and consistent distribution of costs.

(4) Charges to Federal awards are in accordance with the approved public assistance CAP. This does not apply if the auditor first determines that the approved CAP is not in compliance with the applicable cost principles and/or produces an inequitable distribution of costs.

(5) The employee time reporting systems are implemented and operated in accordance with the methodologies described in the approved public assistance CAP.

3. Suggested Internal Control Audit Procedures – State Public Assistance Agency Costs

Refer to the previous section, "Allowable Costs – State/Local-Wide Central Service Costs" items 3.a through 3.c, for suggested internal control audit procedures.

4. Suggested Compliance Audit Procedures – State Public Assistance Agency Costs

a. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

b. Since a significant amount of the costs in the public assistance CAP are allocated based on employee time reporting systems (e.g., effort certification, personnel activity report and/or random moment sampling), it is suggested that the auditor consider the risk when designing the nature, timing, and extent of compliance testing.

c. *General Audit Procedures* – The following procedures apply to direct charges to Federal awards as well as charges to cost pools that are allocated wholly or partially to Federal awards.

(1) Test a sample of transactions for conformance with:

(a) The criteria contained in the "Basic Guidelines" section of A-87, Attachment A, paragraph C.

(b) The principles to establish allowability or unallowability of certain items of cost (A-87, Attachment B).

(2) If the auditor identifies unallowable costs, the auditor should be aware that directly associated costs might have been charged. Directly associated costs are costs incurred solely as a result of incurring another cost, and would have not been incurred if the other cost had not been incurred. When an unallowable cost is incurred, directly associated costs are also unallowable. For example, occupancy costs related to unallowable general costs of government are also unallowable.

d. *Special Audit Procedures for Public Assistance CAPs*

(1) Verify that the State public assistance agency is complying with the submission requirements, i.e., an amendment is promptly submitted when any of the events identified in 45 CFR section 95.509 occur.

(2) Verify that public assistance CAP includes the required documentation in accordance with 45 CFR section 95.507.

(3) *Testing of the Public Assistance CAP* – Test the methods of allocating the costs to ascertain if they are in accordance with the applicable provisions of the cost principles and produce an equitable distribution of costs. Appropriate detailed tests may include:

(a) Examine the results of the employee time reporting systems to ascertain if they are accurate, and are based on the actual effort devoted to the various functional and programmatic activities to which the salary and wage costs are charged.

(b) Since the most significant cost pools in terms of dollars are usually allocated based upon the distribution of income maintenance and social services workers efforts identified through random moment time studies, determine whether the time studies are implemented and operated in accordance with the methodologies described in the approved public assistance CAP. For example, verify the adequacy of the controls governing the conduct and evaluation of the study, determine that the sampled observations were properly selected and performed, the documentation of the observations was properly completed, and that the results of the study were correctly accumulated and applied. Testing may include observing or interviewing staff who participate in the time studies to determine if they are correctly recording their activities.

(c) Test statistical data (e.g., square footage, case counts, salaries and wages) to ascertain if the proposed allocation bases are reasonable, updated as necessary, and do not contain any material omissions.

(4) *Testing of Charges Based Upon the Public Assistance CAP* – If the approved public assistance CAP is determined to be in compliance with the applicable cost principles and produces an equitable distribution of costs, verify that the methods of charging costs to Federal awards are in accordance with the approved CAP and the provisions of the approval documents issued by HHS. Detailed compliance tests may include:

(a) Verify that the cost allocation schedules, supporting documentation and allocation data are accurate and that the costs are allocated in compliance with the approved CAP.

(b) Reconcile the allocation statistics of labor costs to completed employee time reporting documents (e.g., personnel activity reports or random moment sampling observation forms).

(c) Reconcile the allocation statistics of non-labor costs to allocation data, (e.g., square footage or case counts).

(d) Verify direct charges to supporting documents (e.g., purchase orders).

(e) Reconcile the costs to the Federal claims.

OMB CIRCULAR A-21
COST PRINCIPLES FOR EDUCATIONAL INSTITUTIONS

Introduction

OMB Circular A-21 (A-21) establishes principles for determining the costs applicable to research and development, training, and other sponsored work performed by educational institutions under grants, contracts, and other agreements with the Federal Government. These agreements are referred to as sponsored agreements. These principles shall be used in determining the allowable direct and indirect costs under those agreements. At educational institutions, indirect costs are accounted for through Facilities & Administrative (F&A) Cost Proposals. F&A costs, for the purpose of A-21, mean costs that are incurred for common or joint objectives and, therefore, cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. F&A costs are synonymous with "indirect" costs, as previously used in A-21 and as currently used in Appendices A and B of A-21. As described in A-21, section F.1, the F&A cost categories include: building and equipment depreciation or use allowance; operation and maintenance expenses; interest expenses; general administrative expenses; departmental administration expenses; sponsored project administration expenses; library expenses; and student administration expenses. F&A costs will be referred to as "indirect costs" in this section.

Cognizant Agency

A-21, section G.11.a, defines "cognizant agency" as the Federal agency responsible for negotiating and approving F&A rates for an educational institution on behalf of all Federal agencies. References to "cognizant agency" in this section should not be confused with the cognizant Federal agency for audit responsibilities, which is defined in OMB Circular A-133, Subpart D., §___.400(a). Section G.11 of A-21 assigns cost negotiation cognizance to the Department of Health and Human Services and the Department of Defense, Office of Naval Research.

Availability of Other Information

University Long-Form F&A Cost Proposals

Additional information on indirect cost rates is found in the HHS publication: *Best Practices Manual for Reviewing College and University Long-Form Facilities & Administrative Cost Rate Proposals*, which is available on the Internet at
http://rates.psc.gov/fms/dca/C&U%20Review%20Manual.pdf

Allowable Costs – General Criteria

1. Basic Considerations to Determine Costs

In addition to the general criteria applicable to both direct and indirect costs, the basic guidelines affecting the allowability of costs (direct and indirect) are identified in section C. of A-21. To be allowable under Federal awards, costs must meet the following general criteria:

a. Be reasonable and necessary for the performance and administration of Federal awards (A-21, section C.3).

b. Conform with the allocability provisions of A-21 (A-21, section C.4) or Cost Accounting Standards (CAS) Board for educational institutions, as applicable (see 48 CFR part 9905). See "Allowable Costs – Special Requirements – Cost Accounting Standards and Disclosure Statements" in this section for additional guidance on CAS.)

c. Be given consistent accounting treatment within and between accounting periods. Consistency in accounting requires that costs incurred for the same purpose, in like circumstances, be treated as either direct costs only or indirect costs only with respect to final cost objectives (A-21, sections C.10 and C.11).

d. Conform with the allowability of costs provisions of A-21, or limitations in the program agreement, program regulations, or program statute. When the maximum amount of allowable cost under a limitation is less than the total amount determined in accordance with A-21, the amount not recoverable under a sponsored agreement may not be charged to other sponsored agreements (A-21, section C.7).

e. Be net of all applicable credits, e.g., volume or cash discounts, insurance recoveries, refunds, rebates, trade-ins, adjustments for checks not cashed, and scrap sales (A-21, section C.5).

f. Be supported by appropriate documentation, such as approved purchase orders, receiving reports, vendor invoices, canceled checks, and time and attendance records, and correctly charged as to account, amount, and period. Documentation requirements for salaries and wages, and time and effort distribution are described in A-21. Documentation may be in an electronic form (A-21, section C.4).

g. Be applied uniformly to Federal and non-Federal activities.

h. With respect to fringe benefit allocations, charges, or rates, such allocations, charges, or rates are to be based on the benefits received by different classes of employees within the educational institution.

2. Selected Items of Cost

Section J. of Circular A-21 includes general provisions for selected items of costs. For a listing of these costs, see Exhibit 1 of this part of the Supplement. These principles apply irrespective of whether a particular item of cost is properly treated as a direct cost or an indirect cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost.

Allowable Costs – Direct Costs

1. Compliance Requirements – Direct Costs

a. Direct costs are those costs that can be identified specifically with a particular sponsored project, instructional activity, or any other institutional activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Identification with the sponsored work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of a sponsored agreement.

b. Costs incurred for the same purpose in like circumstances must be treated consistently. Where an educational institution treats a particular type of cost as a direct cost of sponsored agreements, all costs incurred for the same purpose in like circumstances shall be treated as a direct costs of all activities of the institution.

2. Audit Objectives – Direct Costs

a Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

b. Determine whether the educational institution complied with the provisions of A-21 and CAS as follows:

(1) Direct charges to Federal awards were for allowable costs.

(2) Cost accounting practice disclosures, described in the Disclosure Statement (DS-2), including amendments, represented actual practice consistently applied. This objective only applies to non-Federal entities that are required to submit the DS-2.

(3) Costs are not included as both a direct billing and as a component of indirect costs, e.g., excluded from cost pools, if charged directly to Federal awards.

3. Suggested Internal Control Audit Procedures – Direct Costs

a. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

b. Plan the testing of internal control to support a low assessed level of control risk for allowable costs/cost principles and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

c. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

4. Suggested Compliance Audit Procedures – Direct Costs

Test a sample of transactions for conformance with the following criteria contained in A-21 and CAS, as applicable:

a. If the auditor identifies unallowable direct costs, the auditor should be aware that "directly associated costs" might have been charged. Directly associated costs are costs incurred solely as a result of incurring another cost, and would not have been incurred if the other cost had not been incurred. For example, fringe benefits are "directly associated" with payroll costs. When an unallowable cost is incurred, directly associated costs are also unallowable.

b. Costs were approved by the Federal-awarding agency, if required (see Exhibit 1 in this part of the Supplement for selected items of cost that require agency approval when charged to an award as direct costs).

c. Costs were not included as a cost or used to meet cost-sharing requirements of other federally supported activities of the current or a prior period.

d. Costs represent charges for actual costs, not budgeted or projected amounts.

e. Costs were estimated, accumulated, and reported consistently (A-21, section C.10).

f. Costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to final cost objectives (A-21, section C.11).

g. Costs charged directly to institutional activities (i.e. research and development, instruction, other institutional activities) are accounted for consistent with their disclosed practices, as described in their DS-2, if applicable (A-21, section C.14).

h. Departmental costs charged direct to institutional activities (i.e. research and development, instruction, other institutional activities) are consistently charged directly, in like circumstances and are in accordance with the provisions of A-21 and CAS. Salaries of administrative and clerical staff should normally be treated as indirect. Direct charging of these costs may be appropriate where a major project or activity explicitly budgets for the administrative or clerical services and the individuals involved can be specifically identified with the project or activity. "Major project" is defined as a project that requires an extensive amount of administrative or clerical support, which is significantly greater than the routine level of such services provided by academic departments. Examples are found in A-21, Exhibit C.

i. Costs for general-purpose equipment charged direct to institution activities (i.e., research and development, instruction, other institutional activities) are consistently charged as direct, were approved by the awarding agency, and are in accordance with the provisions of A-21 and CAS.

j. Salaries and wages charged to Federal awards are allowable to the extent that total compensation to the individual employee conforms to established policies of the institution, are consistently applied, and provided that the charges for work performed directly on sponsored awards have been determined in accordance with and supported by the provisions of A-21, section J.10 as follows:

(1) Distribution of salaries and wages is based on payrolls documented in accordance with the generally accepted practices of the institution.

(2) Apportionment of employees' salaries and wages which are chargeable to more than one sponsored agreement or other cost objective is accomplished by methods which--

(a) Comply with A-21, sections A.2 and C,

(b) Produce an equitable distribution of charges for employees' activities, and

(c) Distinguish the employees' direct activities from their indirect activities.

(3) The payroll distribution is based on an after-the-fact confirmation or determination that costs distributed represent actual costs. Confirmation should be by a responsible person with suitable means of verification that the work was performed. Confirmation by the employee is not required if other responsible persons make appropriate confirmations.

Allowable Costs – Indirect Costs

1. Compliance Requirements – Indirect Costs

a. In order to recover indirect costs, educational institutions must prepare indirect cost rate proposals (ICRPs) in accordance with the guidelines provided in A-21. Educational institutions must submit ICRPs to the cognizant agency for approval (A-21, section G.11).

b. ICRPs prepared by educational institutions are based on the most current financial data supported by the educational institution's accounting system and audited financial statements. These ICRPs can be used to establish either predetermined rates, fixed rates with carry-forward provisions, or provisional rates (A-21, sections G.4, G.5, and G.6). The ICRP to be used to establish indirect cost rates must be certified by the educational institution in accordance with A-21, section K.2.

c. Indirect costs are those costs that are incurred for common or joint objectives and, therefore, cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity.

d. As described in A-21, section F.1, the indirect cost categories include: building and equipment depreciation or use allowance; operation and maintenance expenses; interest expenses; general administrative expenses; departmental administration expenses; sponsored project administration expense; library expenses; and student administration expenses. In general the cost groupings established within a category should constitute a pool of items of expense that are considered to be of like nature in terms of their relative contribution to the particular cost objectives to which distribution is appropriate (A-21, section E). Cost categories should be established considering the general guidelines in A-21, section E.2.c.

e. Indirect costs are defined into two broad categories in A-21, section F.

(1) "Facilities" is defined as depreciation and use allowance, interest in debt associated with certain buildings, equipment, and capital improvements, operation and maintenance expenses, and library expenses.

(2) "Administration" is defined as general administration and general expenses, departmental administration, sponsored project administration, student administration and services, and all other types of expenditures not listed specifically under one of the facility categories.

f. Each educational institution's indirect cost rate process must be appropriately designed to determine that Federal sponsors do not in any way subsidize the indirect costs of other sponsors, specifically activities sponsored by industry and foreign governments (A-21, section G.).

g. Administrative costs charged to sponsored agreements awarded or amended with effective dates beginning on or after the start of the educational institution's first fiscal year which begins on or after October 1, 1991, shall be limited to 26 percent of modified total direct costs, as defined in A-21, section G.2. Educational institutions should not change their accounting or cost allocation methods which were in effect on May 1, 1991, if the effect is to (1) change the charging of a particular type of cost from indirect to direct, or (2) reclassify or increase allocations from the administrative pools to the facilities pools or fringe benefits cost pools (but also see A-21, section G.8).

h. *Submission Requirement for Standard Format for Long-Form Proposals* – Educational institutions shall use the standard format shown in A-21, Appendix C to submit ICRP to the cognizant agency for indirect costs. The cognizant agency for indirect costs may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format. This requirement does not apply to educational institutions that use the simplified method for calculating indirect cost rates, as described in A-21, section H.

2. Audit Objectives – Indirect Costs

a. *For educational institutions that charge indirect costs to Federal awards based on federally approved rate(s):*

(1) Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

(2) Determine that the rate(s) used to charge indirect costs is consistent with the appropriate cognizant Federal agency rate agreement (A-21, section G.11).

(3) Determine that the federally approved rate in effect at the time of the initial award is applied throughout the life of the sponsored agreement. "Life" means each competitive segment of a project. A competitive segment is a period of years approved by the Federal-funding agency at the time of the award (A-21, section G.7).

(4) Determine that the federally approved rate(s) were applied to the appropriate distribution base (A-21, section G.2).

(5) Determine that indirect costs billed to sponsored agreements are the result of applying the approved rate(s) to the appropriate base amount(s).

b. *For educational institutions that charge indirect costs to Federal awards based on rate(s) which are not approved by the cognizant Federal agency:*

(1) Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

(2) Determine the educational institution's cognizant Federal agency for approving indirect cost rates in accordance with A-21, section G.11.

(3) Determine whether an ICRP was prepared, certified, and submitted by the educational institution to their cognizant Federal agency. (The Federal agency is responsible for negotiating and approving indirect cost rates). Verify that billings are based on the ICRP.

(4) Determine that the submitted rate(s) were applied to the appropriate distribution base (a-21, section G.2).

(5) Determine that indirect costs billed to sponsored agreements are the result of applying the submitted rate(s) to the appropriate base amount(s).

c. *For educational institutions that charge indirect costs to Federal awards based on award-specific rate(s) approved by an awarding agency:*

(1) Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

(2) Determine that the award-specific rate(s) are the result of special circumstances such as required by law or regulation, in accordance with A-21, section G.11.

(3) Determine whether indirect cost rates were applied in accordance with the approved special award provisions or limitations. Associated billings were the result of applying the approved rate to the proper base amount.

(4) When the maximum amount of allowable indirect costs under a limitation (i.e. an award-specific rate) is less than the total amount determined in accordance with the principles in A-21, the amount not recoverable under a sponsored agreement may not be charged to other sponsored agreements (A-21, section C.7).

3. Suggested Internal Control Audit Procedures – Indirect Costs

a. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

b. Plan the testing of internal control to support a low assessed level of control risk for allowable costs/cost principles and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

c. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

4. Suggested Compliance Audit Procedures – Indirect Costs

a. Test a sample of transactions for conformance with the following criteria contained in A-21 and CAS, as applicable.

b. *For educational institutions that charge indirect cost to Federal awards based on federally approved rate(s):*

(1) Ascertain if indirect costs or centralized or administrative services costs were allocated or charged to a major program. If not, the following suggested audit procedures do not apply.

(2) Obtain and read the current indirect cost rate agreement and determine the terms in effect.

(3) Select a sample of claims for reimbursement and verify that the rates used are in accordance with the rate agreement, that rates were applied to the appropriate bases, and that the amounts claimed were the product of applying the rate to the applicable base. Verify that the costs included in the base(s) are consistent with the costs that were included in the base year (e.g., if the allocation base is total direct costs, verify that current year direct costs do not include costs items that were treated as indirect costs in the base year).

(4) Ascertain if the educational institution's accounting practices for determining direct and indirect costs for the fiscal year being audited are consistent with the accounting practices used to establish the federally approved rate and its DS-2. If there accounting changes have occurred, determine if they were approved by the cognizant Federal agency. If accounting changes have not been approved and the accounting changes impact costs charged to federally funded awards, this should be considered a reportable finding. (A-21, section C.14 and CAS, as applicable).

c. *For educational institutions that charge indirect cost to Federal awards based on rate(s) which are not approved by the cognizant Federal agency:*

(1) If the ICRP has been certified and submitted to the cognizant Federal agency and is based on costs incurred in the year being audited, then the ICRP should be audited for compliance with the provisions of A-21 and CAS, as applicable.

(2) If the educational institution has a certified ICRP, which is based on costs incurred in the year being audited, but has not submitted it to their Federal cognizant agency. The ICRP should be audited using the procedures listed below.

(a) Test the indirect cost pool groupings for compliance with A-21, section F.

(b) Test the indirect cost pools to determine if costs are allowable.

(c) Test that indirect costs have been treated consistently when incurred for the same purpose, in like circumstances, as indirect costs only with respect to final cost objectives. No final cost objective shall have allocated to it as a cost any cost, if another cost incurred for the same purpose, in like circumstances, has been included as a direct cost of that or any other final cost objective (A-21, section C.11).

(d) Test that the indirect cost pools in the rate proposal were developed consistent with the educational institution's disclosed practices as described in its DS-2, if applicable (A-21, section C.14).

(e) Test the *depreciation and use allowance* cost pool to determine if:

(i) Computations of depreciation or use allowance are based on the acquisition cost of the assets. Acquisition costs exclude (A) the cost of land; (B) any portion of the cost of buildings and equipment borne by the Federal Government, irrespective of where title was originally vested or where it is presently located; and (C) any portion of the cost of buildings and equipment contributed by or for the educational institution where law or agreement prohibit recovery (A-21, section J.14).

(ii) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods reflects the pattern of consumption of the asset during its useful life (A-21, section J.14).

(iii) Charges for use allowances or depreciation are supported by adequate property records and physical inventories, which must be taken at least once every 2 years (A-21, section J.14).

(iv) The depreciation methods used to calculate the depreciation amounts for the ICRP are the same methods used by the educational institution for its financial statements (A-21, section J.12).

(v) The allocation method for the depreciation and use allowance cost pool complies with A-21, section F.2.

(vi) Gains and losses on the sale, retirement, or other disposition of depreciable property have been appropriately accounted for and complies with A-21, section J.21.

(vii) *Large research facilities* – Determine that large research facilities that are included in ICRPs negotiated after January 1, 2000, and on which the design and construction began after July 1, 1998, are compliant with the provisions for determining allowable costs in A-21, section F.2.c.

(f) Test the *interest* cost pool to determine if:

(i) Computations for interest comply with the provisions of A-21, section J.26.

(ii) The allocation method for the interest cost pool complies with A-21, section F.3.

(g) Test the *operations and maintenance* cost pool to determine if:

(i) Costs are appropriately classified in this cost pool (A-21, section F.4).

(ii) Rental costs comply with the provision of A-21, section J.43.

(iii) The educational institution's accounting practices for classifying (A) rearrangement and alteration costs and (B) reconversion costs, either as direct or indirect, result in consistent treatment in like circumstances.

(iv) The allocation method for the operations and maintenance cost pool complies with A-21, section F.4.

(h) Tests the *library* cost pool to determine if:

(i) Costs are appropriately classified in this cost pool (A-21, section F.8).

(ii) The allocation method for the library cost pool complies with A-21, section F.8.

(iii) If the allocation method is based on a cost analysis study in accordance with A-21, section E.2.d, determine that the study:

(A) Results in an equitable distribution of costs and represents the relative benefits derived,

(B) Is appropriately documented in sufficient detail for review by the cognizant Federal agency,

(C) Is statistically sound,

(D) Is performed specifically at the educational institution,

(E) Is reviewed every 2 years, and, if necessary, updated, and

(F) Assumptions are clearly stated and adequately explained.

(i) Test the *administrative* cost pools to determine if:

(i) Costs are appropriately classified in these cost pools and the distribution bases are compliant with A-21, sections F.5, F.6, and F.7.

(ii) The administrative cost components comply with the limitation on reimbursement of administrative cost in A-21, section G.8. If the proposal is based on the alternative method for administrative cost in A-21, section G.9, then the limitation does not apply. If the proposal is based on the alternative method for administrative cost, determine that the educational institution meets the criteria of section G.9 and that this is adequately documented in the proposal.

(iii) *Departmental administration expense pool* – test to determine that this cost pool complies with A-21, section F.6.

(iv) *Academic Deans' Offices* – test that salaries and operating expenses are limited to those attributable to administrative functions.

(v) *Academic Departments* – Salaries and fringes attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads), and other professional personnel conducting research and/or instruction, is allowed at a rate of 3.6 percent of modified total direct costs. This category should not include professional business or administrative officers. Determine that this allowance is added to the computation of the indirect cost rate for major functions. Test to determine that the expense covered by this allowance are excluded from the departmental cost pool (A-21, section F.6).

Test for consistent treatment, in like circumstances, of other administrative and supporting expenses incurred within academic departments. For example, items such as office supplies, postage, local telephone, and memberships shall normally be treated as indirect costs.

(3) If the ICRP has been certified and submitted to the cognizant Federal agency, but is based on costs incurred in a fiscal year prior to the fiscal year being audited, a review of the ICRP is not required.

(4) If an ICRP has not been prepared and, therefore, the indirect costs charged to Federal awards are not based on a certified ICRP, this may be required to be reported as an audit finding, in accordance with OMB Circular A-133, §__.510(a)(5).

(5) *Application of an indirect cost rate(s) not approved by the cognizant agency* – Even though the rate(s) has not been approved by the cognizant agency, an unapproved indirect cost rate(s) should be reviewed for consistent application of the submitted rates to direct cost bases to ensure that the indirect cost rate(s) is applied consistent with the educational institution's policies and procedures that apply uniformly to both federally funded and other activities of the institutions.

d. *For educational institutions that also have awards containing award-specific rates (approved by the Federal awarding agency) that take precedence over the negotiated rate for purposes of indirect cost recovery:*

(1) Ascertain that the award-specific rate is in accordance with special circumstances required by law or regulation.

(2) Obtain and review the award terms used to establish an award-specific indirect cost rate(s).

(3) Select a sample of claims for reimbursement and verify that the award-specific rate(s) used are in accordance with the terms of the award, that rate(s) were applied to the appropriate bases, and that the amounts claimed were the product of applying the rate to the applicable base. Verify that the costs included in the base(s) are consistent with the terms of the agreement.

Allowable Costs – Special Requirements –Cost Accounting Standards and Disclosure Statements

1. Compliance Requirement – CAS and Disclosure Statements

a. A-21, section C.14 requires educational institutions (institutions) that receive more than $25 million in Federal funding in a fiscal year to prepare and submit a Disclosure Statement (DS-2) that describes the institution's cost accounting practices. These institutions are required to submit a DS-2 within 6 months after the end of the institution's fiscal year that begins after May 8, 1996, unless the institution is required to submit a DS-2 earlier due to a receipt of a CAS-covered contract in accordance with 48 CFR section 9903.202-1.

b. These institutions are responsible for maintaining an accurate DS-2 and complying with disclosed cost accounting practices. They are also responsible for filing amendments to the DS-2 when disclosed practices are changed or modified. Amendments should be provided to the cognizant Federal agency for approval.

c. Federal Acquisition Regulation (FAR) Appendix, 48 CFR section 9903.201-2(c), Types of CAS Coverage, requires educational institutions to comply with all of the CAS specified in 48 CFR part 9905 that are in effect on the effective date of a covered contract. Negotiated contracts in excess of $500,000 are CAS-covered, except for CAS-covered contracts awarded to Federally Funded Research and Development Centers (FFRDCs) operated by an educational institution, which are subject to 48 CFR part 9904.

2. Audit Objectives – CAS and Disclosure Statements

a. Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

b. Determine whether the educational institution's DS-2 is current, accurate, and complete and that it has been approved by the cognizant Federal agency as adequate and compliant with A-21 and CAS (48 CFR part 9905).

c. Determined whether the educational institution's actual accounting practices are consistent with its disclosed accounting practices.

d. Determine whether amendments have been filed with and approved by the cognizant Federal agency.

e. Determine whether the educational institution's accounting practices for direct and indirect costs comply with CAS applicable to educational institutions (48 CFR part 9905).

3. Suggested Internal Control Audit Procedures – CAS and Disclosure Statements

a. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

b. Plan the testing of internal control to support a low assessed level of control risk for allowable costs/cost principles and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

c. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

4. Suggested Compliance Audit Procedures – CAS and Disclosure Statements

a. Obtain a copy of the educational institution's DS-2, amendments, and letters of approval from the cognizant Federal agency.

b. Read the DS-2 and its amendments and ascertain if the disclosure agrees with the policies prescribed in the educational institution's current policies and procedures documents.

c. Test that the disclosure agrees with actual practices for the period covered by audit, including whether the practices were consistent throughout the period.

d. Test direct and indirect charges to Federal awards to determine that the educational institution's practices used in estimating the costs in the proposal were consistent with the institution's cost accounting practices used in accumulating and reporting the costs (A-21, section C.10 and FAR Appendix, 48 CFR section 9905.501).

e. For those costs which are sometimes charged direct and sometimes charged indirect, test for consistent classification of these costs, when incurred for the same purpose and under like circumstances (A-21, section C.11 and FAR Appendix, 48 CFR section 9905.502). For example:

(1) Salaries of administrative and clerical staff are normally treated as indirect costs; however, they may be charged direct to a major project or activity under certain conditions. Sample these costs when they have been charged direct to Federal awards to determine consistent treatment for non-Federal awards, instructional activity, or other institutional activity (A-21, section F.6.).

(2) Office supplies, postage, local telephone costs and memberships are normally treated as indirect. Sample these costs when they have been charged direct to Federal awards to determine consistent treatment for non-Federal awards, instructional activity, or other institutional activity (A-21, section F.6.).

f. Capital expenditures for general and special-purpose equipment may be charged direct to awards with approval of the awarding agency. Sample these costs when they have been charged direct to Federal awards to determine consistent treatment for non-Federal awards, instructional activity, or other institutional activity (A-21, section J.18.).

g. Test costs direct charged to Federal awards and indirect costs accumulated in the educational institution's accounting system for adequate accounting of unallowable costs (A-21 section C.12 and FAR Appendix, 48 CFR section 9905.505).

h. Determine that the educational institution's cost accounting period for accumulating costs on Federal awards and indirect cost pools are consistent with the institution's fiscal year. If not, determine that the institution has met the criteria for an exception described in A-21, section C.13 and that it has been approved by the cognizant Federal agency (A-21, section C.13 and FAR Appendix, 48 CFR section 9905.506).

Allowable Costs – Special Requirements – Internal Service, Central Service, Pension, or Similar Activities or Funds

1. Compliance Requirement

Charges made from internal service, central service, pension, or similar activities or funds, must follow the applicable cost principles provided in A-21.

2. Audit Objectives

Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c). Determine whether charges made from internal service, central service, pension, or similar activities or funds are in accordance with A-21.

3. Suggested Internal Control Audit Procedures

a. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

b. Plan the testing of internal control to support a low assessed level of control risk for allowable costs/cost principles and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in OMB Circular §___.500(c)(3), including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

c. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

4. Suggested Compliance Audit Procedures

The auditor should consider procedures such as the following:

a. For activities accounted for in separate funds, ascertain if: (1) retained earnings/fund balances (including reserves) were computed in accordance with A-21; (2) working capital reserves were not excessive in amount (generally not greater than 60 days for cash expenses for normal operations incurred for the period exclusive of depreciation, capital costs and debt principal costs); and (3) refunds were made to the Federal Government for its share of any amounts transferred or borrowed from internal service, central service, pension, insurance, or other similar activities or funds for purposes other than to meet the operating liabilities, including interest on debt, of the fund.

b. Test that all users of services are billed in a consistent manner.

c. Test that billing rates exclude unallowable costs, in accordance with A-21.

d. Test, where activities are not accounted for in separate funds, that billing rates (or charges) are developed based on actual costs and were adjusted to eliminate profits.

e. For educational institutions that have self-insurance and certain types of fringe benefit programs (e.g., pension funds), ascertain if independent actuarial studies appropriate for such activities are performed at least biennially and that current period costs were allocated based on an appropriate study which is not over 2 years old.

OMB CIRCULAR A-122
COST PRINCIPLES FOR NON-PROFIT ORGANIZATIONS

Introduction

OMB Circular A-122 (A-122) establishes cost principles for determining costs of grants, contracts, and other agreements with non-profit organizations. The principles are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law. These principles are used by all Federal agencies in determining the costs of work performed by non-profit organizations under grants, cooperative agreements, and cost reimbursement contracts. 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. In addition to the cost principles established by A-122, the Cost Accounting Standards Board (CASB) has promulgated certain accounting standards that must be followed by non-profit organizations receiving procurement contracts that meet a defined dollar threshold. Generally, organizations are exempt from coverage under CAS unless a single CAS-covered contract or subcontract of at least $7.5 million has been received. After receipt of this trigger contract, CAS coverage is applied to all negotiated awards over $500,000 unless they meet certain exemptions. These exemptions and the requirements of CAS can be found in 48 CFR Chapter 99.

Cognizant Agency

A-122, Attachment A, paragraph E.1.a defines "cognizant agency" as the Federal agency responsible for negotiating and approving indirect cost rates for non-profit organizations on behalf of all Federal agencies. References to cognizant agency in this section should not be confused with the cognizant Federal agency for audit responsibilities, which is defined in OMB Circular A-133, Subpart D, §___.400(a).

Availability of Other Information

Additional information on indirect cost rate determination for non-profit organizations can be found at the following web sites:

- Department of Labor – http://www.dol.gov/oasam/programs/boc/costdeterminationguide/main.htm
- Department of Health and Human Services – http://rates.psc.gov/fms/dca/np_exall2.html
- Department of Education – http://www.ed.gov/about/offices/list/ocfo/fipao/abouticg.html – how-are_indirect_cost_rates_determined.

Allowable Costs – General Criteria

1. *Basic Considerations to Determine Cost*

The basic considerations used to determine costs (direct and indirect) are identified in A-122, Attachment A, paragraph A and include the following:

a. *Composition of cost* – The total cost of an award is the sum of the allowable direct and allocable indirect costs less any applicable credits. The term "applicable credits" refers to those receipts, or reduction of expenditures that operate to offset or reduce expense items that are allocable to awards as direct or indirect costs.

b. *Allowable costs* – A cost is allowable under an award if the cost meets the following general criteria:

(1) Be reasonable for the performance of the award and be allocable in accordance with A-122.

(a) 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 cost. Consideration should be given to:

(i) 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.

(ii) 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.

(iii) Whether the individuals concerned acted with prudence in the circumstances.

(iv) Significant deviations from the established practices of the organization that may unjustifiably increase the award costs.

(b) 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. Any cost allocable to a particular award or other cost objective under A-122 may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or terms of the award. 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:

(i) Is incurred specifically for the award.

(ii) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received.

(iii) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

(2) Conform to any limitations or exclusions set forth in A-122 or in the award.

(3) Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the organization.

(4) Be accorded consistent treatment.

(5) Be determined in accordance with generally accepted accounting principles (GAAP).

(6) 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.

(7) Be adequately documented.

(8) Be net of all applicable credits.

2. Selected Items of Cost

A-122, Attachment B, paragraphs 1 through 52, provide principles to be applied in establishing the allowability of certain items of cost. There 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.

Allowable Costs – Direct Costs

1. Compliance Requirements – Direct Costs

Direct costs are those that can be identified specifically with a particular final cost objective, i.e., award, project or other activity of the organization. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where accounting treatment for such cost is consistently applied to all final cost objectives.

Certain direct costs are unallowable for computing charges to Federal awards, nonetheless they must be treated as direct costs for determining indirect cost rates and be allocated their share of indirect costs if they represent activities that (a) include the salaries of personnel, (b) occupy space, and (c) benefit from the organization's indirect costs. The cost 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 a share of indirect costs. Examples can be found in A-122, Attachment A, subparagraph B.4.

If the auditor identifies unallowable direct costs, the auditor should be aware that directly associated costs might have been charged. Directly associated costs are costs incurred solely as a result of incurring another cost that would not have been incurred if the other cost had not been incurred. For example, fringe benefits are directly associated with payroll costs. When a payroll cost is determined to be unallowable than the directly associated fringe benefit would be determined unallowable as well.

2. Audit Objectives – Direct Costs

a. Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

b. Determine whether the organization complied with the provisions of A-122 and CAS (if applicable) as follows:

(1) Direct charges to Federal awards were for allowable costs.

(2) Unallowable costs, determined to be direct costs, should be included in the allocation base for the purpose of computing an indirect cost rate.

3. Suggested Internal Control Audit Procedures – Direct Costs

a. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

b. Plan the testing of internal control to support a low assessed level of control risk for allowable costs/cost principles and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

c. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

4. Suggested Compliance Audit Procedures – Direct Costs

Test direct costs charged to Federal awards with the following criteria:

a. Costs were approved by the Federal awarding agency, if required. (See Exhibit 1, Selected Items of Cost, in this part of the Supplement.)

b. Costs conform to the allowability of cost provisions of A-122, or limitations in the program agreement, program regulations, or program statute.

c. Costs represent charges for actual costs, not budgeted or projected amounts.

d. Costs are given consistent accounting treatment within and between accounting periods. Consistency in accounting requires that costs incurred for the same purpose, in like circumstances, be treated as either direct costs only or indirect costs only with respect to final cost objectives.

e. Costs are calculated in conformity with generally accepted accounting principles, or CAS when required.

f. Costs are not used to meet cost-sharing requirements of other federally supported activities.

g. Costs are net of all applicable credits, e.g., volume or cash discounts, insurance recoveries, refunds, rebates, trade-ins, adjustments for checks not cashed, and scrap sales.

h. Costs are not included as both a direct billing and as a component of indirect costs.

i. Costs are supported by appropriate documentation, such as approved purchase orders, receiving reports, vendor invoices, canceled checks, and time and attendance records, and correctly charged as to account, amount, and period.

Allowable Costs – Indirect Costs

1. Compliance Requirements – Indirect Costs

a. Indirect costs are those costs that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Stated differently, indirect costs are those costs remaining after direct costs have been determined and assigned directly. While it is not possible to specify the types of costs that will be indirect, there are three major categories of indirect costs for non-profit organizations (NPOs):

(1) *Depreciation and Use Allowance* – The expenses under this category are that portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment, which are computed in accordance with A-122, Attachment B, section 11. Interest on debt associated with certain buildings, equipment, and capital improvements are computed in accordance with A-122, Attachment B, paragraph 23.

(2) *Operation and Maintenance* – The expenses under this category are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant.

(3) *General and Administrative* – The expenses under this category are those that have been incurred for the overall general executive, and administration of the organization and other expenses of a general nature that do not relate solely to any major function of the organization.

b. Indirect cost rate proposals (ICRPs) prepared by NPOs are based on the most current financial data, supported by the organization's accounting system and audited financial statements. These ICRPs can be used to either establish predetermined rates, fixed rates with carry-forward provision, provisional, or final rates.

(1) *Predetermined rates* are established for the current or multiple future period(s) based on current costs (usually costs from the most recently ended fiscal year, known as the base period).

(2) *Fixed rates with carry-forward provisions* – rates based on current costs in the same manner as predetermined rates. However, the difference between the base period indirect costs and actual indirect cost recovery are carried forward as an adjustment to the rate computation for the subsequent period.

(3) *Provisional rates* – temporary rates used for funding and billing indirect costs, pending the establishment of a final rate after actual costs are determined for the period.

(3) *Final rates* – indirect cost rates applicable to a specified past period based on actual costs of that period. Final rates are not subject to adjustment.

c. Some Federal awards may contain cost limitations on recovery of indirect costs that differ from the federally negotiated indirect cost rates. Normally, this may be due to statutory requirements or limitations contained in program announcements. In these cases, the indirect cost rate approved for that award will be specified in the award letter or agreement. For these awards, the award-specific rate takes precedence over the negotiated rate for purposes of indirect cost recovery.

d. To recover indirect costs, NPOs prepare ICRPs. The ICRP is the rate calculation and supporting schedules used to arrive at the indirect cost pool amounts and the base amounts. NPOs can select one of three different methods to calculate the indirect cost rate.

(1) *Simplified Allocation Method*

(a) Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (i) separating the organization's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate, which is used to distribute indirect costs to individual awards. The rate should be expressed as the percentage that 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) 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 Circular A-122, Attachment A, paragraph C.3, is required. The rate in each case shall be stated as the percentage that the amount of the particular indirect cost category (i.e., Facilities or Administration) is of the distribution base identified with that category.

(c) A full discussion of the simplified allocation method can be found in A-122, Attachment A, subparagraphs D.2.a. through D.2.e.

(2) *Multiple Allocation Base Method*

(a) 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 A-122, Attachment A, subparagraph D.3.b. Each grouping shall then be allocated individually to benefiting functions by means of a base that best measures the relative benefits. The default allocation bases by cost pool are described in A-122, Attachment A, subparagraph D.3.c.

(b) 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 A-122, Attachment A, subparagraph C.3.

(c) Except where a special indirect cost rate(s) is required in accordance with A-122, Attachment A, subparagraph D.5, 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.

(d) Indirect costs shall be distributed to applicable sponsored awards and other benefiting activities within each major function on the basis of modified total direct costs (MTDC). MTDC consists of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants 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 agency determines that an exclusion is necessary to avoid a serious inequity in the distribution of indirect costs.

(e) A full discussion of the multiple allocation base method can be found in A-122, Attachment A, subparagraphs D.3.a. through D.3.g.

(3) *Direct Allocation Method*

(a) Some NPOs treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (i) General administration and general expenses, (ii) fundraising, and (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each 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.

(c) A full discussion of the direct allocation base method can be found in A-122, Attachment A, subparagraph D.4.a. through D.4.c.

2. Audit Objectives – Indirect Costs

a. *For NPOs that charge indirect costs to Federal awards based on federally approved rates:*

(1) Obtain an understanding of internal controls, assess risk, and test internal controls as required by OMB Circular A-133, §___.500(c).

(2) Determine whether the organization complied with the provisions of A-122 and CAS (if applicable) as follows:

(a) Indirect cost rates were applied in accordance with approved rate agreements and any special award provisions/limitations (if different from those stated in the negotiated rate agreement).

(b) Associated billings were the result of applying the approved rate to the proper base amount(s).

(3) For fixed rate agreements, predetermined rate agreements, and provisional rate agreements determine whether the base used to distribute the approved indirect cost rate is accurate and reflects the terms of the agreement.

(4) For fixed rate agreements, determine whether the organization has adequately determined the actual indirect costs for the fiscal year being audited and performed the necessary computations to accurately report the carry-forward adjustment to the rate computation for the subsequent period.

b. *For NPOs that charge indirect costs to Federal awards that are not based on federally approved rates:*

(1) Obtain an understanding of internal controls, assess risk, and test internal controls as required by OMB Circular A-133, §___.500(c).

(2) Determine whether costs that are directly allocated to an award using the Direct Allocation Method are prorated using a base that accurately measures the benefits provided to each award or activity.

(3) Determine whether an ICRP was prepared and submitted to the organization's cognizant agency (the Federal agency responsible for

negotiating and approving indirect cost rates) as required by A-122. Verify that billings are based on the ICRP.

(4) Determine whether the NPO's calculated indirect cost rate is (a) consistent with policies and procedures that apply uniformly to both federally funded and other activities of the organization, and (b) applied consistently to the proper allocation bases.

(5) Determine whether the organization complied with the provisions of A-122 and CAS as follows:

(a) Charges to indirect cost pools were for allowable costs.

(b) The base used to distribute indirect costs includes both allowable and unallowable costs.

(c) The cost allocation methodology provides equitable and consistent allocation of indirect costs to benefiting awards or activities.

c. *For NPOs that also have awards containing award-specific rates (approved by the Federal awarding agency) that take precedence over the negotiated rate for purposes of indirect cost recovery:*

(1) Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

(2) Determine if the award-specific rate(s) is the result of special circumstances, e.g., required by law or regulation.

(3) Determine whether indirect cost rates were applied in accordance with the approved special award provisions or limitations. Associated billings were the result of applying the approved rate to the proper base amount.

(4) When the maximum amount of allowable indirect costs under a limitation (i.e. an award-specific rate) is less than the total amount determined in accordance with the principles in A-122, the amount not recoverable under a sponsored agreement may not be charged to other sponsored agreements.

3. Suggested Internal Control Audit Procedures – Indirect Costs

a. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

b. Plan the testing of internal control to support a low assessed level of control risk for allowable costs/cost principles and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is

likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

c. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

4. Suggested Compliance Audit Procedures – Indirect Costs

a. *For NPOs that charge indirect costs to Federal awards based on federally approved rates:*

(1) Ascertain if indirect costs are material for the major programs being tested. If not, the following suggested audit procedures, b. through e., do not apply.

(2) Obtain and read the current indirect cost rate agreement, including the proposal used in the negotiation of the agreement, and determine the terms in effect.

(3) Ascertain whether the indirect cost rate agreement uses a pre-determined rate, fixed rate, provisional rate, or final rate. For definitions of these rates, see A-122, Attachment A, subparagraphs E (b) through (e).

(a) If a fixed rate agreement with carry-forward provisions has been negotiated with the cognizant agency, determine that the difference between the indirect costs recovered using the fixed rate and the actual indirect costs of the period has been calculated. This adjustment is to be carried forward to the rate computation of the subsequent period.

(b) If a provisional rate was used to bill for indirect costs, determine whether a final rate has been established and appropriate claim adjustments have been made based on the final approved rate.

(4) For NPOs required to file Disclosure Statements (48 CFR section 9903.202), ascertain if the cognizant agency for indirect cost negotiation has been appropriately notified of changes in the cost accounting practices that occurred during the year to which indirect cost rate agreements are being applied.

(1) Select a sample of claims for reimbursement:

(a) Verify that the rates used are in accordance with the rate agreement and the amounts claimed were the product of applying the rate to the applicable base.

(b) Verify that the base includes both allowable and unallowable costs.

(c) When the base is total direct costs or modified total direct costs, verify that the distribution base has been properly calculated and excludes capital expenditures and other distorting items such as major subcontracts or subgrants in excess of $25,000 as approved in the negotiated rate agreement or by the cognizant Federal agency.

b. *For NPOs that charge indirect costs to Federal awards that are not based on federally approved rates:*

(1) Determine if the indirect costs are based on a certified ICRP that has been submitted to (but not approved by) the NPO's Federal cognizant agency as required by A-122, Attachment A, subparagraph E. If the ICRP is based on costs incurred in the year being audited, then the ICRP should be audited for compliance with the provisions of A-122 (see procedures in paragraphs 4.b(1)(a) through (1)(c) below).

Note: If the NPO has a certified ICRP, which is based on costs incurred in the year being audited, but it has not been submitted to the Federal cognizant agency, the ICRP should still be audited using the procedures in paragraphs 4.b(1)(a) through (1)(c) below.

(a) The following procedures should be applied to costs in the indirect cost pool used for recovering indirect costs from Federal awarding agencies. These costs must:

(i) Be approved by the Federal awarding agency, if required.

(ii) Conform to the allowability of cost provisions of A-122, or limitations in the award agreement, program regulations, or program statute.

(iii) Conform to the allocability provisions of A-122 or CAS.

(iv) Represent charges for actual costs, not budgeted or projected amounts.

(v) With respect to fringe benefit allocations, charges, or rates, be based on the benefits received by different classes of employees within the organization.

(vi) Be applied uniformly to Federal and non-Federal activities.

(vii) Be calculated in conformity with CAS or generally accepted accounting principles, as required.

(viii) Not be used to meet cost-sharing requirements of other federally supported activities.

(ix) Be net of all applicable credits, e.g., volume or cash discounts, insurance recoveries, refunds, rebates, trade-ins, adjustments for checks not cashed, and scrap sales.

(x) Not be included as both a direct billing and as a component of indirect costs.

(xi) Be supported by appropriate documentation, such as approved purchase orders, receiving reports, vendor invoices, canceled checks, and time and attendance records, and correctly charged as to account, amount, and period.

(xii) Be given consistent accounting treatment within and between accounting periods. Consistency in accounting requires that costs incurred for the same purpose, in like circumstances, be treated as either direct costs only or indirect costs only with respect to final cost objectives.

(b) The following procedures should be applied to costs in the base(s) for recovering indirect costs from Federal awarding agencies. Determine whether:

(i) All direct costs, including unallowable costs, are identified and included in the base for indirect cost allocations.

(A) For fixed price agreements, all direct costs are recorded for the purpose of allocating indirect costs.

(B) For cost-reimbursement awards or contracts that include line item costs that exceed budget limits, all direct costs are recorded for the purpose of allocating indirect costs.

(ii) Costs have been recorded in accordance with CAS, generally accepted accounting principles, or other comprehensive basis of accounting, as appropriate.

(iii) Costs have been assigned to the correct cost objective or activity.

(iv) Costs have been given consistent accounting treatment within and between accounting periods.

(c) The following procedures should be applied to costs allocated using the Direct Allocation Method:

(i) Test statistical data (e.g., square footage, case counts, salaries and wages) to ascertain if the proposed allocation bases are reasonable, updated as necessary, and do not contain any material omissions.

(ii) Review time studies or time and effort reports (where and if used) to ascertain if they are accurate, are implemented as approved, and are based on the actual effort devoted to the various functional and programmatic activities to which the salary and wage costs are charged.

(iii) Review the allocation methodology for consistency and test the appropriateness of allocation methods used.

(2) Determine if the indirect costs are based on a certified ICRP that has been submitted to (but not approved by) the NPO's Federal cognizant agency as required by A-122, Attachment A subparagraph E. If the ICRP is not based on costs incurred in the year being audited (e.g., the year being audited is fiscal year 2008, but the ICRP is based on fiscal year 2007 costs), a review of the ICRP is not required.

(3) If the indirect costs are not based on a certified and submitted ICRP, in accordance with A-122, this may be required to be reported as an audit finding in accordance with OMB Circular A-133, §__.510(a)(5).

(4) *Application of indirect cost rates which are not approved by the cognizant agency* – Even though the rate(s) have not been approved by the cognizant agency, unapproved indirect cost rate(s) should be reviewed for consistent application of the submitted rates to direct cost bases to ensure that the indirect cost rate(s) are applied consistent with the NPO's policies and procedures that apply uniformly to both federally-funded and other activities of the NPO (A-122, Attachment A, paragraph A.(2)(c)).

c. For NPOs that also have awards containing award-specific rates (approved by the Federal awarding agency) that take precedence over the negotiated rate for purposes of indirect cost recovery:

(1) Ascertain that the award-specific rate is only being used for the approved award.

(2) Obtain and read the award terms used to establish an award-specific indirect cost rate(s).

(3) Select a sample of claims for reimbursement and verify that the award specific rate(s) is in accordance with the terms of the award, that the rate(s) was applied to the appropriate base(s), and that the amount claimed is the product of applying the rate to the applicable base. Verify that the cost included in the base(s) is consistent with the terms of the agreement.

Allowable Costs – Special Requirements – Unallowable Direct Costs

1. Compliance Requirements – Unallowable Direct Costs

a. The costs of certain activities are not allowable as charges to Federal awards (see, for example, fundraising costs in A-122, Attachment B, paragraph 17.a). 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 (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

b. Costs should be recorded in the organization's cost records as direct or indirect costs based on their relationship to the cost objectives or activities. 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.

2. Audit Objectives – Unallowable Direct Costs

a. Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

b. Determine whether all unallowable costs categorized as direct costs are included in the allocation base for the purpose of allocating indirect costs.

3 Suggested Internal Control Audit Procedures – Unallowable Direct Costs

a. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

b. Plan the testing of internal control to support a low assessed level of control risk for allowable costs/cost principles and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB

Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

c. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

4. Suggested Compliance Audit Procedures – Unallowable Direct Costs

a. Determine whether all unallowable costs categorized as direct costs are included in the allocation base for the purpose of allocating indirect costs.

b. Determine whether the following costs are charged as direct costs and allocated an equitable share of indirect costs.

(1) Maintenance of membership rolls, subscriptions, publications, or related functions.

(2) Providing services and information to members, legislative or administrative bodies, or the public.

(3) Meetings and conferences except those held to conduct the general administration of the organization.

(4) Maintenance, protection, and investment of special funds not used in operation of the organization.

(5) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirements plans, financial aid, etc.

Special Requirements – Disclosure Statements (DS-1) Required by Cost Accounting Standards

1. Compliance Requirements – CAS and Disclosure Statements

a. Pub. L. No. 100-679 (41 USC 422) requires certain contractors and subcontractors (which includes NPOs) to comply with CAS and to disclose in writing and follow consistently their cost accounting practices.

b. 48 CFR section 9903.201-1 (FAR Appendix) describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. Negotiated contracts not exempt in accordance with 48 CFR section 9903.201-1(b) are subject to CAS. A CAS-covered contract may be subject to either full or

modified coverage. The rules for determining whether full or modified coverage applies are in 48 CFR section 9903.201-2 (FAR Appendix).

(1) Full coverage requires that a business unit comply with all the CAS specified in 48 CFR part 9904 that are in effect on the date of the contract award and with any CAS that become applicable because of later award of a CAS-covered contract. Full coverage applies to contractor business units that (a) receive a single CAS-covered contract award of $50 million or more; or (b) receive $50 million or more in net CAS-covered awards during their preceding cost accounting period (48 CFR section 9903.201-2(a)).

(2) *Modified Coverage* (48 CFR section 9903.201-2(b))

(a) Modified CAS coverage requires only that the contractor comply with Standard 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; Standard 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; Standard 9904.405, Accounting for Unallowable Costs; and Standard 9904.406, Cost Accounting Standard—Cost Accounting Period. Modified, rather, than full, CAS coverage may be applied to a covered contract of less than $50 million awarded to a business unit that received less than $50 million in net CAS-covered awards in the immediately preceding cost accounting period.

(b) If any one contract is awarded with modified CAS coverage, all CAS-covered contracts awarded to that business unit during that cost accounting period must also have modified coverage with the following exception: if the business unit receives a single CAS-covered contract award of $50 million or more, that contract must be subject to full CAS coverage. Thereafter, any covered contract awarded in the same cost accounting period must also be subject to full CAS coverage.

(c) A contract awarded with modified CAS coverage shall remain subject to such coverage throughout its life regardless of changes in the business unit's CAS status during subsequent cost accounting periods.

b. 48 CFR section 9903.202 (FAR Appendix) describes the general Disclosure Statement requirements. A Disclosure Statement is a written description of a contractor's cost accounting practices and procedures. The submission of a new or revised Statement is not required for any non-CAS covered contract or from any small business concern. Completed Disclosure Statements are required under the following circumstances:

(1) Any business unit that is selected to receive a CAS-covered contract or subcontract of $50 million or more shall submit a Disclosure Statement before award.

(2) Any company which, together with its segments, receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling $50 million or more in its most recent cost accounting period, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the contractor is not required to file until the end of the 90 days.

c. 48 CFR section 9903.201-7 (FAR Appendix) describes the cognizant Federal agency responsibilities.

(1) The requirements of 48 CFR part 9903 shall, to the maximum extent practicable, be administered by the cognizant Federal agency responsible for a particular contractor organization or location, usually the Federal agency responsible for negotiating indirect cost rates on behalf of the Government.

(2) The cognizant Federal agency should take the lead role in administering the requirements of 48 CFR part 9903 and coordinating CAS administrative actions with all affected Federal agencies. When multiple CAS-covered contracts or more than one Federal agency are involved, agencies should discourage Contracting/Grants Officers from individually administering CAS on a contract-by-contract basis. Coordinated administrative actions will provide greater assurances that individual contractors follow their cost accounting practices consistently under all their CAS-covered contracts and that changes in cost accounting practices or CAS noncompliance issues are resolved, equitably, in a uniform overall manner.

2. Audit Objectives – CAS and Disclosure Statements

a. Determine whether the NPO's accounting practices, for direct and indirect costs, are compliant with CAS, based on its required CAS coverage (full or modified).

b. Determine whether the NPO's Disclosure Statement (including amendments) is current, accurate, complete, and properly filed with the cognizant Federal Administrative Officer in accordance with 48 CFR section 9903.202-5.

c. Determine whether the NPO's actual accounting practices are consistent with its disclosed practices.

3. Suggested Internal Control Audit Procedures – CAS and Disclosure Statements

a. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

b. Plan the testing of internal control to support a low assessed level of control risk for allowable costs/cost principles and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

c. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

4. Suggested Compliance Audit Procedures – CAS and Disclosure Statements

a. Determine whether the NPO has any CAS-covered contract or subcontracts. If so, determine which type of CAS coverage is applicable (full or modified) and if a Disclosure Statement is required to be submitted to the cognizant Federal agency.

b. Test the NPO's actual accounting practices for direct and indirect costs are compliant with applicable CAS.

c. If a Disclosure Statement is required, obtain a copy and any amendments. Review these to ensure the disclosures are current, accurate, compliant with CAS, and approved by the cognizant Federal agency.

d. Test whether the NPO's actual accounting practices are consistent with the disclosed practices.

Allowable Costs – Special Requirements – Internal Service, Central Service, Pension, or Similar Activities or Funds

1. Compliance Requirement

NPOs using internal service, central service, pension, or similar activities or funds must follow the applicable cost principles found in A-122.

2. Audit Objectives

Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c). Determine whether charges are made from internal service, central service, pension, or similar activities or funds, are in accordance with A-122.

3. Suggested Internal Control Audit Procedures

a. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

b. Plan the testing of internal control to support a low assessed level of control risk for allowable costs/cost principles and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

c. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

4. Suggested Compliance Audit Procedures

Perform the following procedures as applicable:

a. For activities accounted for in separate funds, ascertain that: (1) retained earnings/fund balances (including reserves) were computed in accordance with the applicable cost principles; (2) working capital reserves were not excessive in amount (generally not greater than 60 days for cash expenses for normal operations incurred for the period exclusive of depreciation, capital costs, and debt principal costs); and (3) refunds were made to the Federal Government for its share of any amounts transferred or borrowed from internal service, central service, pension, insurance, or other similar activities or funds for purposes other than to meet the operating liabilities, including interest on debt, of the fund.

b. Test that all users of services are billed in a consistent manner.

c. Test that billing rates exclude unallowable costs in accordance with A-122.

d. Test, where activities are not accounted for in separate funds, that billing rates (or charges) are developed based on actual costs and were adjusted to eliminate profits.

e. For organizations that have self-insurance and a certain type of fringe benefit programs (e.g., pension funds), ascertain if independent actuarial studies appropriate for such activities are performed at least biennially and that current period costs were allocated based on an appropriate study which is not over two years old.

C. CASH MANAGEMENT

Compliance Requirements

When entities are funded on a reimbursement basis, program costs must be paid for by entity funds before reimbursement is requested from the Federal Government. When funds are advanced, recipients must follow procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and disbursement.

When advance payment procedures are used, recipients must establish similar procedures for subrecipients. Pass-through entities must establish reasonable procedures to ensure receipt of reports on subrecipients' cash balances and cash disbursements in sufficient time to enable the pass-through entities to submit complete and accurate cash transactions reports to the Federal awarding agency or pass-through entity. Pass-through entities must monitor cash drawdowns by their subrecipients to ensure that subrecipients conform substantially to the same standards of timing and amount as apply to the pass-through entity.

U. S. Department of the Treasury (Treasury) regulations at 31 CFR part 205, which implement the Cash Management Improvement Act of 1990 (CMIA), as amended (Pub. L. No. 101-453; 31 USC 6501 *et seq.*), require State recipients to enter into agreements that prescribe specific methods of drawing down Federal funds (funding techniques) for selected large programs. The agreements also specify the terms and conditions in which an interest liability would be incurred. Programs not covered by a Treasury-State Agreement are subject to procedures prescribed by Treasury in Subpart B of 31 CFR part 205 (Subpart B).

Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 USC 6501 *et seq.*) and the Indian Self-Determination Act (23 USC 450), interest earned by local government and Indian tribal government grantees and subgrantees on advances is required to be submitted promptly, but at least quarterly, to the Federal agency. Up to $100 per year may be kept for administrative expenses. Interest earned by non-State non-profit entities on Federal fund balances in excess of $250 is required to be remitted to Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852.

Source of Governing Requirements

The requirements for cash management are contained in the A-102 Common Rule (§___.21), OMB Circular A-110 (2 CFR section 215.22), Treasury regulations at 31 CFR part 205, program legislation, Federal awarding agency regulations, and the terms and conditions of the award.

Availability of Other Information

Treasury's Financial Management Service maintains a Cash Management Improvement Act page on the Internet (http://www.fms.treas.gov/cmia/).

Audit Objectives

1. Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

2. Determine whether for advance payments the recipient/subrecipient followed procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury, or pass-through entity, and their disbursement.

3. Determine whether States have complied with the terms and conditions of the Treasury-State Agreement or Subpart B procedures prescribed by Treasury.

4. Determine whether the pass-through entity implemented procedures to ensure that advance payments to subrecipients conformed substantially to the same timing requirements that apply to the pass-through entity.

5. Determine whether interest earned on advances was reported/remitted as required.

6. Determine whether an entity has awards funded on a reimbursement payment basis, as well as awards funded through advance payments. For such entities, determine whether program costs are paid for with entity funds before reimbursement is requested from the Federal government.

Suggested Audit Procedures – Internal Control

1. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

2. Plan the testing of internal control to support a low assessed level of control risk for cash management and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

3. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

Suggested Audit Procedures – Compliance

Note: The following procedures are intended to be applied to each program determined to be major. However, due to the nature of cash management and the system of cash management in place in a particular entity, it may be appropriate and more efficient to perform these procedures for all programs collectively rather than separately for each program.

States

1. For programs tested as major, verify which of those programs are covered by the Treasury-State Agreement in accordance with the materiality thresholds in 31 CFR section 205.5, Table A).

2. For those programs identified in procedure 1, determine the funding techniques used for those programs. For those funding techniques that require clearance patterns to schedule the transfer of funds to the State, review documentation supporting the clearance pattern and verify that the clearance pattern conforms to the requirements for developing and maintaining clearance patterns as specified in the Treasury-State Agreement (31 CFR sections 205.12, 205.20, and 205.22.

3. Select a sample of Federal cash draws and verify that:

    a. The timing of the Federal cash draws was in compliance with the applicable funding techniques specified in the Treasury-State Agreement or Subpart B procedures, whichever is applicable (31 CFR sections 205.11 and 205.33).

    b. To the extent available, program income, rebates, refunds, and other income and receipts were disbursed before requesting additional Federal cash draws as required by the A-102 Common Rule (§___.21) and OMB Circular A-110 (2 CFR section 215.22).

4. Where applicable, select a sample of reimbursement requests and trace to supporting documentation showing that the costs for which reimbursement was requested were paid prior to the date of the reimbursement request (31 CFR section 205.12(b)(5)).

5. Review the calculation of the interest obligation owed to or by the Federal Government, reported on the annual report submitted by the State to ascertain that the calculation was in accordance with Treasury regulations and the terms of the Treasury-State Agreement. Trace amounts used in the calculation to supporting documentation.

6. For those programs where Federal cash draws are passed through to subrecipients:

    a. Select a representative sample of subrecipients and ascertain the procedures implemented to ensure that subrecipients minimize the time elapsing between the transfer of Federal funds from the recipient and the disbursement of funds for program purposes (A-102 Common Rule §___.37(a)(4)).

    b. Select a representative sample of Federal cash draws by subrecipients and ascertain that they conformed to the procedures.

Recipients Other than States and Subrecipients

1. For those programs that received advances of Federal funds, ascertain the procedures established with the Federal agency or pass-through entity to minimize the time between the transfer of Federal funds and the disbursement of funds for program purposes.

2. Select a sample of Federal cash draws and verify that:

   a. Established procedures to minimize the time elapsing between drawdown and disbursement were followed.

   b. To the extent available, program income, rebates, refunds, and other income and receipts were disbursed before requesting additional cash payments as required by the A-102 Common Rule (§___.21) and OMB Circular A-110 (2 CFR section 215.22).

3. When awards are funded on a reimbursement basis, select a sample of reimbursement requests and trace to supporting documentation showing that the costs for which reimbursement was requested were paid prior to the date of the reimbursement request.

4. Review records to determine if interest was earned on Federal cash draws. If so, review evidence to ascertain whether it was returned to the appropriate agency.

D. DAVIS-BACON ACT

Compliance Requirements

When required by the Davis-Bacon Act, the Department of Labor's (DOL) governmentwide implementation of the Davis-Bacon Act, **ARRA**, or by Federal program legislation, all laborers and mechanics employed by contractors or subcontractors to work on construction contracts in excess of $2000 financed by Federal assistance funds must be paid wages not less than those established for the locality of the project (prevailing wage rates) by the DOL (40 USC 3141-3144, 3146, and 3147 (formerly 40 USC 276a to 276a-7)).

Non-federal entities shall include in their construction contracts subject to the Davis-Bacon Act a requirement that the contractor or subcontractor comply with the requirements of the Davis-Bacon Act and the DOL regulations (29 CFR part 5, Labor Standards Provisions Applicable to Contacts Governing Federally Financed and Assisted Construction). This includes a requirement for the contractor or subcontractor to submit to the non-Federal entity weekly, for each week in which any contract work is performed, a copy of the payroll and a statement of compliance (certified payrolls) (29 CFR sections 5.5 and 5.6). This reporting is often done using Optional Form WH-347, which includes the required statement of compliance (*OMB No. 1215-0149*).

Source of Governing Requirements

ARRA-funded award that involve construction, alteration, maintenance or repair are subject to the requirements of the Davis-Bacon Act; however, the auditor should review the program supplement in Part 4 to determine if any qualifications or other conditions related to the Davis-Bacon Act have been imposed by other statutes. The requirements for Davis-Bacon are contained in 40 USC 3141-3144, 3146, and 3147; 29 CFR part 29; the A-102 Common Rule (§___.36(i)(5)); OMB Circular A-110 (2 CFR part 215, Appendix A, Contract Provisions); program legislation; **Section 1606 of ARRA and OMB guidance at 2 CFR part 176, Subpart C;** Federal awarding agency regulations; and the terms and conditions of the award **(including that imposed by ARRA** or other statutes**)**.

Availability of Other Information

The U.S. Department of Labor, Employment Standards Administration, maintains a Davis-Bacon and Related Acts Internet page (http://www.dol.gov/esa/programs/dbra/index.htm). Optional Form WH-347 and instructions are available on this Internet page.

Audit Objectives

1. Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

2. Determine whether the non-Federal entity notified contractors and subcontractors of the requirements to comply with the Davis-Bacon Act and obtained copies of certified payrolls.

Suggested Audit Procedures – Internal Control

1. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

2. Plan the testing of internal control to support a low assessed level of control risk for Davis-Bacon Act and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

3. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

Suggested Audit Procedures – Compliance

1. Select a sample of construction contracts and subcontracts greater than $2000 that are covered by the Davis-Bacon Act and perform the following procedures:

   a. Verify that the required prevailing wage rate clauses were included.

   b. Verify that the contractor or subcontractor submitted weekly the required certified payrolls.

   (Note: Auditors are not expected to determine whether prevailing wage rates were paid.)

E. ELIGIBILITY

Compliance Requirements

The specific requirements for eligibility are unique to each Federal program and are found in the laws, regulations, and the provisions of contract or grant agreements pertaining to the program. For programs listed in the Compliance Supplement, these specific requirements are in Part 4 – Agency Program Requirements or Part 5 – Clusters of Programs, as applicable. This compliance requirement specifies the criteria for determining the individuals, groups of individuals (including area of service delivery), or subrecipients that can participate in the program and the amounts for which they qualify.

Source of Governing Requirements

The requirements for eligibility are contained in program legislation, Federal awarding agency regulations, and the terms and conditions of the award.

Audit Objectives

1. Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

2. Determine whether required eligibility determinations were made, (including obtaining any required documentation/verifications), that individual program participants or groups of participants (including area of service delivery) were determined to be eligible, and that only eligible individuals or groups of individuals participated in the program.

3. Determine whether subawards were made only to eligible subrecipients.

4. Determine whether amounts provided to or on behalf of eligibles were calculated in accordance with program requirements.

Suggested Audit Procedures – Internal Control

1. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

2. Plan the testing of internal control to support a low assessed level of control risk for eligibility and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

3. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

Suggested Audit Procedures – Compliance

1. *Eligibility for Individuals*

   a. For some Federal programs with a large number of people receiving benefits, the non-Federal entity may use a computer system for processing individual eligibility determinations and delivery of benefits. Often these computer systems are complex and will be separate from the non-Federal entity's regular financial accounting system. Typical functions a computer system for eligibility may perform are:

      - Perform calculations to assist in determining who is eligible and the amount of benefits

      - Pay benefits (e.g., write checks)

      - Maintain eligibility records, including information about each individual and benefits paid to or on behalf of the individual (regular payments, refunds, and adjustments)

      - Track the period of time during which an individual is eligible to receive benefits, i.e., from the beginning date of eligibility through the date when those benefits stop, generally at the end of a predetermined period, unless there is a redetermination of eligibility

      - Perform matches with other computer data bases to verify eligibility (e.g., matches to verify earnings or identify individuals who are deceased)

      - Control who is authorized to approve benefits for eligibles (e.g., an employee may be approving benefits on-line and this process may be controlled by passwords or other access controls)

      - Produce exception reports indicating likely errors that need follow-up (e.g., when benefits exceed a certain amount, would not be appropriate for a particular classification of individuals, or are paid more frequently than normal)

      Because of the diversity of computer systems, both hardware and software, it is not practical for this Supplement to provide suggested audit procedures to address each system. However, generally accepted auditing standards provide guidance for the auditor when computer processing relates to accounting information that can materially effect the financial statements being audited. Similarly, when eligibility is material to a major program, and a computer system is integral to

eligibility compliance, the auditor should follow this guidance and consider the non-Federal entity's computer processing. The auditor should perform audit procedures relative to the computer system for eligibility as necessary to support the opinion on compliance for the major program. Due to the nature and controls of computer systems, the auditor may choose to perform these tests of the computer systems as part of testing the internal controls for eligibility.

b. *Split Eligibility Determination Functions*

(1) *Background* – Some non-Federal entities pay the Federal benefits to the eligible participants but arrange with another entity to perform part or all of the eligibility determination. For example, a State arranges with local government social services agencies to perform the "intake function" (e.g., the meeting with the social services client to determine income and categorical eligibility) while the State maintains the computer systems supporting the eligibility determination process and actually pays the benefits to the participants. In such cases, the State is fully responsible for Federal compliance for the eligibility determination, as the benefits are paid by the State. Moreover, the State shows the benefits paid as Federal awards expended on the State's Schedule of Expenditures of Federal Awards. Therefore, the auditor of the State is responsible for meeting the internal control and compliance audit objectives for eligibility. This may require the auditor of the State to perform, coordinate, or arrange for additional procedures to ensure compliant eligibility determinations when another entity performs part of the eligibility determination functions. The responsibility of the auditor of the State for auditing eligibility does not relieve the auditor of the other entity (e.g., local government) from responsibility for meeting those internal control and compliance audit objectives for eligibility that apply to the other entity's responsibilities. An exception occurs when the auditor of the other entity confirms with the auditor of the State that certain procedures are not necessary.

(2) Ensure that eligibility testing includes all benefit payments regardless of whether another entity, by arrangement, performs part of the eligibility determination functions.

c. Perform procedures to ascertain if the non-Federal entity's records/database includes all individuals receiving benefits during the audit period (e.g., that the population of individuals receiving benefits is complete).

d. Select a sample of individuals receiving benefits and perform tests to ascertain if

(1) The required eligibility determinations and redeterminations, (including obtaining any required documentation/verifications) were performed and the individual was determined to be eligible. Specific individuals were eligible in accordance with the compliance requirements of the program.

(Note that some programs have both initial and continuing eligibility requirements and the auditor should design and perform appropriate tests for both. Also, some programs require periodic redeterminations of eligibility, which should also be tested.)

(2) Benefits paid to or on behalf of the individuals were calculated correctly and in compliance with the requirements of the program.

(3) Benefits were discontinued when the period of eligibility expired.

e. In some programs, the non-Federal entity is required to use a quality control process to obtain assurances about eligibility. Review the quality control process and perform tests to ascertain if it is operating to effectively meet the objectives of the process and in compliance with applicable program requirements.

2. *Eligibility for Group of Individuals or Area of Service Delivery*

a. In some cases, the non-Federal entity may be required to perform procedures to determine whether a population or area of service delivery is eligible. Test information used in determining eligibility and ascertain if the population or area of service delivery was eligible.

b. Perform tests to ascertain if:

(1) The population or area served was eligible.

(2) The benefits paid to or on behalf of the individuals or area of service delivery were calculated correctly.

3. *Eligibility for Subrecipients*

a. If the determination of eligibility is based upon an approved application or plan, obtain a copy of this document and identify the applicable eligibility requirements.

b. Select a sample of the awards to subrecipients and perform procedures to verify that the subrecipients were eligible and amounts awarded were within funding limits.

F. EQUIPMENT AND REAL PROPERTY MANAGEMENT

Compliance Requirements

Equipment Management

Title to equipment acquired by a non-Federal entity with Federal awards vests with the non-Federal entity. Equipment means tangible nonexpendable 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 a non-Federal entity's policy, lower limits may be established.

A State shall use, manage, and dispose of equipment acquired under a Federal grant in accordance with State laws and procedures. Subrecipients of States who are local governments or Indian tribes shall use State laws and procedures for equipment acquired under a subgrant from a State.

Local governments and Indian tribes shall follow the A-102 Common Rule for equipment acquired under Federal awards received directly from a Federal awarding agency. Institutions of higher education, hospitals, and other non-profit organizations shall follow the provisions of OMB Circular A-110. Basically, the A-102 Common Rule and OMB Circular A-110 require that equipment be used in the program for which it was acquired or, when appropriate, other Federal programs. Equipment records shall be maintained, a physical inventory of equipment shall be taken at least once every two years and reconciled to the equipment records, an appropriate control system shall be used to safeguard equipment, and equipment shall be adequately maintained. When equipment with a current per unit fair market value of $5000 or more is no longer needed for a Federal program, it may be retained or sold with the Federal agency having a right to a proportionate (percent of Federal participation in the cost of the original project) amount of the current fair market value. Proper sales procedures shall be used that provide for competition to the extent practicable and result in the highest possible return.

Source of Governing Requirements – Equipment

The requirements for equipment are contained in the A-102 Common Rule (§___.32), OMB Circular A-110 (2 CFR section 215.34), program legislation, Federal awarding agency regulations, and the terms and conditions of the award.

Real Property Management

Title to real property acquired by non-Federal entities with Federal awards vests with the non-Federal entity. Real property shall be used for the originally authorized purpose as long as needed for that purpose. For non-Federal entities covered by OMB Circular A-110 and with written approval from the Federal awarding agency, the real property may be used in other federally sponsored projects or programs that have purposes consistent with those authorized for support by the Federal awarding agency. The non-Federal entity may not dispose of or encumber the title to real property without the prior consent of the awarding agency.

When real property is no longer needed for federally supported programs or projects, the non-Federal entity shall request disposition instructions. For purposes of this compliance requirement, the recipient makes the request to the Federal awarding agency. Subrecipients make requests through the recipient (pass-through entity) and do not make requests directly to the Federal awarding agency. The pass-through recipient is required to comply (ensure compliance) with the direction of the Federal awarding agency and the terms and conditions of its award. When real property is sold, sales procedures should provide for competition to the extent practicable and result in the highest possible return. If sold, non-Federal entities are normally required to remit to the awarding agency the Federal portion (based on the Federal participation in the project) of net sales proceeds. If the property is retained, the non-Federal entity shall normally compensate the awarding agency for the Federal portion of the current fair market value of the property. Disposition instructions may also provide for transfer of title in which case, the non-Federal entity is entitled to compensation for its percentage share of the current fair market value.

Source of Governing Requirements – Real Property

The requirements for real property are contained in the A-102 Common Rule (§___.31), OMB Circular A-110 (2 CFR section 215.32), program legislation, Federal awarding agency regulations, and the terms and conditions of the award.

Audit Objectives

1. Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

2. Determine whether the non-Federal entity maintains proper records for equipment and adequately safeguards and maintains equipment.

3. Determine whether disposition or encumbrance of any equipment or real property acquired under Federal awards is in accordance with Federal requirements and that the awarding agency was compensated for its share of any property sold or converted to non-Federal use.

Suggested Audit Procedures – Internal Control

1. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

2. Plan the testing of internal control to support a low assessed level of control risk for equipment and real property management and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

3. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

Suggested Audit Procedures – Compliance

(Procedure 1 only applies to subrecipients of States that are local governments or Indian tribal governments. Procedure 2 only applies to States and to subrecipients of States that are local governments or Indian tribal governments.)

1. Obtain entity's policies and procedures for equipment management and ascertain if they comply with the State's policies and procedures.

2. Select a sample of equipment transactions and test for compliance with the State's policies and procedures for management and disposition of equipment.

(Procedures 3-4 only apply to institutions of higher education, hospitals, and other non-profit organizations, and Federal awards received directly from a Federal awarding agency by a local government or an Indian tribal government.)

3. *Inventory Management of Equipment*

    a. Inquire if a required physical inventory of equipment acquired under Federal awards was taken within the last two years. Test whether any differences between the physical inventory and equipment records were resolved.

    b. Identify equipment acquired under Federal awards and trace selected purchases to the property records. Verify that the property records contain the following information about the equipment: description (including serial number or other identification number), source, who holds title, acquisition date and cost, percentage of Federal participation in the cost, location, condition, and any ultimate disposition data including, the date of disposal and sales price or method used to determine current fair market value.

    c. Select a sample from all equipment identified as acquired under Federal awards from the property records and physically inspect the equipment, including whether the equipment is appropriately safeguarded and maintained.

4. *Disposition of Equipment*

    a. Determine the amount of equipment dispositions for the audit period and perform procedures to verify that dispositions were properly classified between equipment acquired under Federal awards and equipment otherwise acquired.

    b. For dispositions of equipment acquired under Federal awards, perform procedures to verify that the dispositions were properly reflected in the property records.

c. For dispositions of equipment acquired under Federal awards with a current per-unit fair market value of $5000 or more, test whether the awarding agency was reimbursed for the appropriate Federal share.

(Procedure 5 applies to States, local governments, Indian tribal governments and non-profit organizations regardless of whether funding is received as a recipient or subrecipient.)

5. *Disposition of Real Property*

a. Determine real property dispositions for the audit period and ascertain such real property acquired with Federal awards.

b. For dispositions of real property acquired under Federal awards, perform procedures to verify that the non-Federal entity followed the instructions of the awarding agency, which will normally require reimbursement to the awarding agency for the Federal portion of net sales or fair market value at the time of disposition, as applicable.

G. MATCHING, LEVEL OF EFFORT, EARMARKING

Compliance Requirements

The specific requirements for matching, level of effort, and earmarking are unique to each Federal program and are found in the laws, regulations, and the provisions of contract or grant agreements pertaining to the program. For programs listed in this Supplement, these specific requirements are in Part 4 – Agency Program Requirements or Part 5 – Clusters of Programs, as applicable.

However, for matching, the A-102 Common Rule (§____.24) and OMB Circular A-110 (2 CFR section 215.23) provide detailed criteria for acceptable costs and contributions. The following is a list of the basic criteria for acceptable matching:

- Are verifiable from the non-Federal entity's records.
- Are not included as contributions for any other federally assisted project or program, unless specifically allowed by Federal program laws and regulations.
- Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.
- Are allowed under the applicable cost principles.
- Are not paid by the Federal Government under another award, except where authorized by Federal statute to be allowable for cost sharing or matching.
- Are provided for in the approved budget when required by the Federal awarding agency.
- Conform to other applicable provisions of the A-102 Common Rule and OMB Circular A-110 and the laws, regulations, and provisions of contract or grant agreements applicable to the program.

Matching, level of effort, and earmarking are defined as follows:

1. *Matching* or cost sharing includes requirements to provide contributions (usually non-Federal) of a specified amount or percentage to match Federal awards. Matching may be in the form of allowable costs incurred or in-kind contributions (including third-party in-kind contributions).

2. *Level of effort* includes requirements for (a) a specified level of service to be provided from period to period, (b) a specified level of expenditures from non-Federal or Federal sources for specified activities to be maintained from period to period, and (c) Federal funds to supplement and not supplant non-Federal funding of services.

3. *Earmarking* includes requirements that specify the minimum and/or maximum amount or percentage of the program's funding that must/may be used for specified activities, including funds provided to subrecipients. Earmarking may also be specified in relation to the types of participants covered.

Source of Governing Requirements

The requirements for matching are contained in the A-102 Common Rule (§____.24), OMB Circular A-110 (2 CFR section 215.23), program legislation, Federal awarding agency regulations, and the terms and conditions of the award. The requirements for level of effort and earmarking are contained in program legislation, Federal awarding agency regulations, and the terms and conditions of the award.

Audit Objectives

1. Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

2. *Matching* – Determine whether the minimum amount or percentage of contributions or matching funds was provided.

3. *Level of Effort* – Determine whether specified service or expenditure levels were maintained.

4. *Earmarking* – Determine whether minimum or maximum limits for specified purposes or types of participants were met.

Suggested Audit Procedures – Internal Control

1. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

2. Plan the testing of internal control to support a low assessed level of control risk for matching, level of effort, earmarking and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

3. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

Suggested Audit Procedures – Compliance

1. **Matching**

   a. Perform tests to verify that the required matching contributions were met.

   b. Ascertain the sources of matching contributions and perform tests to verify that they were from an allowable source.

   c. Test records to corroborate that the values placed on in-kind contributions (including third party in-kind contributions) are in accordance with the OMB cost principles circulars, the A-102 Common Rule, OMB Circular A-110, program regulations, and the terms of the award.

   d. Test transactions used to match for compliance with the allowable costs/cost principles requirement. This test may be performed in conjunction with the testing of the requirements related to allowable costs/cost principles.

2.1 **Level of Effort** – *Maintenance of Effort*

   a. Identify the required level of effort and perform tests to verify that the level of effort requirement was met.

   b. Perform test to verify that only allowable categories of expenditures or other effort indicators (e.g., hours, number of people served) were included in the computation and that the categories were consistent from year to year. For example, in some programs, capital expenditures may not be included in the computation.

   c. Perform procedures to verify that the amounts used in the computation were derived from the books and records from which the audited financial statements were prepared.

   d. Perform procedures to verify that non-monetary effort indicators were supported by official records.

2.2 **Level of Effort** – *Supplement Not Supplant*

   a. Ascertain if the entity used Federal funds to provide services which they were required to make available under Federal, State, or local law and were also made available by funds subject to a supplement not supplant requirement.

   b. Ascertain if the entity used Federal funds to provide services which were provided with non-Federal funds in the prior year.

      (1) Identify the federally funded services.

(2) Perform procedures to determine whether the Federal program funded services that were previously provided with non-Federal funds.

(3) Perform procedures to ascertain if the total level of services applicable to the requirement increased in proportion to the level of Federal contribution.

3. **Earmarking**

a. Identify the applicable percentage or dollar requirements for earmarking.

b. Perform procedures to verify that the amounts recorded in the financial records met the requirements (e.g., when a minimum amount is required to be spent for a specified type of service, perform procedures to verify that the financial records show that at least the minimum amount for this type of service was charged to the program; or, when the amount spent on a specified type of service may not exceed a maximum amount, perform procedures to verify that the financial records show no more than this maximum amount for the specified type of service was charged to the program).

c. When earmarking requirements specify a minimum percentage or amount, select a sample of transactions supporting the specified amount or percentage and perform tests to verify proper classification to meet the minimum percentage or amount.

d. When the earmarking requirements specify a maximum percentage or amount, review the financial records to identify transactions for the specified activity which were improperly classified in another account (e.g., if only 10 percent may be spent for administrative costs, review accounts for other than administrative costs to identify administrative costs which were improperly classified elsewhere and cause the maximum percentage or amount to be exceeded).

e. When earmarking requirements prescribe the minimum number or percentage of specified types of participants that can be served, select a sample of participants that are counted toward meeting the minimum requirement and perform tests to verify that they were properly classified.

f. When earmarking requirements prescribe the maximum number or percentage of specified types of participants that can be served, select a sample of other participants and perform tests to verify that they were not of the specified type.

H. PERIOD OF AVAILABILITY OF FEDERAL FUNDS

Compliance Requirements

Federal awards may specify a time period during which the non-Federal entity may use the Federal funds. Where a funding period is specified, a non-Federal entity may charge to the award only costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency. Also, if authorized by the Federal program, unobligated balances may be carried over and charged for obligations of a subsequent funding period. Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the non-Federal entity during the same or a future period (A-102 Common Rule, §___.23; OMB Circular A-110 (2 CFR section 215.28)).

Non-Federal entities shall liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation). The Federal agency may extend this deadline upon request (A-102 Common Rule, §___.23; OMB Circular A-110 (2 CFR section 215.71)).

An example used by a program to determine when an obligation occurs (is made) is found under Part 4, Department of Education, CFDA 84.000 (Cross-Cutting Section).

Source of Governing Requirements

The requirements for period of availability of Federal funds are contained in the A-102 Common Rule (§____.23), OMB Circular A-110 (2 CFR sections 215.28 and 215.71), program legislation **(including ARRA, as applicable)**, Federal awarding agency regulations, and the terms and conditions of the award.

Audit Objective

1. Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

2. Determine whether Federal funds were obligated within the period of availability and obligations were liquidated within the required time period.

Suggested Audit Procedures – Internal Control

1. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

2. Plan the testing of internal control to support a low assessed level of control risk for period of availability of Federal funds and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133,

including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

3. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

Suggested Audit Procedures – Compliance

1. Review the award documents and regulations pertaining to the program and determine any award-specific requirements related to the period of availability and document the availability period.

2. Test transactions charged to the Federal award after the end of the period of availability to verify that the—

   a. underlying obligations occurred within the period of availability, and

   b. liquidation (payment) was made within the allowed time period.

3. Test transactions that were recorded during the period of availability and verify that the underlying obligations occurred within the period of availability.

4. Test adjustments (i.e., manual journal entries) to the Federal funds and verify that these adjustments were for transactions that occurred during the period of availability.

As long as the auditor obtains sufficient, appropriate evidence to meet the period of availability audit objectives, the auditor may test period of availability using the same test items used to test other types of compliance requirements (e.g., activities allowed or unallowed or allowable costs/cost principles). However, if this approach is used, the auditor should exercise care in designing the sample to ensure that sample items are suitable for testing the stated objectives of compliance requirements covered by the sample.

I. PROCUREMENT AND SUSPENSION AND DEBARMENT

Compliance Requirements

Procurement

States, and governmental subrecipients of States, shall use the same State policies and procedures used for procurements from non-Federal funds. They also shall ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations.

Local governments and Indian tribal governments which are not subrecipients of States will use their own procurement procedures provided that they conform to applicable Federal law and regulations and standards identified in the A-102 Common Rule.

Institutions of higher education, hospitals, and other non-profit organizations shall use procurement procedures that conform to applicable Federal law and regulations and standards identified in OMB Circular A-110.

All non-Federal entities shall follow Federal laws and implementing regulations applicable to procurements, as noted in Federal agency implementation of the A-102 Common Rule and OMB Circular A-110.

In addition to those statutes listed in the A-102 Common Rule and OMB Circular A-110, Section 1605 of ARRA prohibits the use of ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. This results in making the Buy-American Act apply to these ARRA awards. ARRA provides for waiver of these requirements under specified circumstances. An award term is required in all ARRA-funded awards for construction, alteration, maintenance, or repair of a public building or public work (2 CFR section 176.140). Further information about this requirement, including applicable definitions, is found in 2 CFR part 176, Subpart B. 2 CFR part 176, including the award term, was amended effective March 25, 2010 [75 FR 14323] to reflect changes regarding international agreements. These changes include (1) beginning January 1, 2010, raising the threshold that applies to international agreements, , from $7,430,000 to $7,804,000 and (2) recognizing agreements or signatories to agreements subsequent to the original publication of 2 CFR part 176.

With respect to international agreements (see 2 CFR section 176.90(a)(2)), the Buy-American requirement set out in 2 CFR section 176.70 may not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement (see the Appendix to Subpart B of 2 CFR part 176-- U.S. States, Other Sub-Federal Entities, and Other Entities Subject to U.S. Obligations under International Agreements, for covered recipients (subrecipients), Parties, and exclusions). In these cases, under an international agreement described in the Appendix to Subpart B of 2 CFR part 176, a recipient (subrecipient) is required to treat the goods and services of the applicable

Party in the same manner as domestic goods and services. This obligation applies to projects with an estimated value in excess of the current threshold and projects that are not specifically excluded from the application of those agreements. If a recipient (subrecipient) is not covered by an international agreement, the only possible exceptions to the Buy-American requirements are those specified in 2 CFR section 176.80.

Source of Governing Requirements – Procurement

The requirements for procurement are contained in the A-102 Common Rule (§____.36); OMB Circular A-110 (2 CFR sections 215.40 through 215.48), program legislation; **Section 1605 of ARRA, 2 CFR part 176** Federal awarding agency regulations, and the terms and conditions of the award **(including those required by ARRA)**. The specific references for the A-102 Common Rule and OMB Circular A-110, respectively, are given for each suggested audit procedure indicated below. (The first number listed refers to the A-102 Common Rule and the second refers to A-110.)

Suspension and Debarment

Governmentwide requirements for nonprocurement suspension and debarment are contained in the OMB guidance in 2 CFR part 180, which implements Executive Orders 12549 and 12689, Debarment and Suspension. The OMB guidance, which superseded the suspension and debarment common rule published November 26, 2003, is substantially the same as that rule.

Non-Federal entities are prohibited from contracting with or making subawards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. "Covered transactions" include those procurement contracts for goods and services awarded under a nonprocurement transaction (e.g., grant or cooperative agreement) that are expected to equal or exceed $25,000 or meet certain other specified criteria. 2 CFR section 180.220 of the governmentwide nonprocurement debarment and suspension guidance contains those additional limited circumstances. All nonprocurement transactions (i.e., subawards to subrecipients), irrespective of award amount, are considered covered transactions.

When a non-federal entity enters into a covered transaction with an entity at a lower tier, the non-federal entity must verify that the entity is not suspended or debarred or otherwise excluded. This verification may be accomplished by checking the *Excluded Parties List System (EPLS)* maintained by the General Services Administration (GSA), collecting a certification from the entity, or adding a clause or condition to the covered transaction with that entity (2 CFR section 180.300). The information contained in the EPLS is available in printed and electronic formats. The printed version is published monthly. Copies may be obtained by purchasing a yearly subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783-3238. The electronic version can be accessed on the Internet (http://epls.arnet.gov).

Source of Governing Requirements – Suspension and Debarment

The requirements for suspension and debarment are contained OMB guidance in 2 CFR part 180, which implements Executive Orders 12549 and 12689, Debarment and Suspension; Federal agency regulations in 2 CFR implementing the OMB guidance; the A-102 Common Rule (§____.36); OMB Circular A-110 (2 CFR section 215.13); program legislation; Federal awarding agency regulations; and the terms and conditions of the award. Most of the Federal agencies have adopted this guidance and relocated their associated agency rules in Title 2 of the CFR as final rules. For any agency that has not completed its adoption of 2 CFR part 180, pending completion of that adoption, agency implementations of the common rule remain in effect. Appendix II includes the current CFR citations for all agencies. In either case, the applicable requirements are specified in the terms and conditions of award.

Audit Objectives

1. Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

2. Determine whether procurements were made in compliance with the provisions of the A-102 Common Rule, OMB Circular A-110, and other procurement requirements specific to an award.

3. **Determine whether an award that provides ARRA funding for construction, alteration, maintenance, or repair of a public building or public work includes a Buy-American award term and, if so, whether the recipient or subrecipient is covered by an international agreement and, if so, the scope of that agreement, or has requested and been granted any waivers.**

4. For covered transactions determine whether the non-Federal entity verified that entities are not suspended or debarred or otherwise excluded.

Suggested Audit Procedures – Internal Control

1. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

2. Plan the testing of internal control to support a low assessed level of control risk for procurement and suspension and debarment and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

3. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

Suggested Audit Procedures – Compliance

(Procedures 1 – 4 apply only to institutions of higher education, hospitals, and other non-profit organizations; and Federal awards received directly from a Federal awarding agency by a local government or an Indian tribal government.)

1. Obtain entity's procurement policies. Verify that the policies comply with applicable Federal requirements (§____.36(b)(1) and 2 CFR section 215.43, **and Section 1605 of ARRA**).

2. Ascertain if the entity has a policy to use statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals. If yes, verify that these limitations were not applied to federally funded procurements except where applicable Federal statutes expressly mandate or encourage geographic preference (§____.36(c)(2) and 2 CFR section 215.43).

3. Examine procurement policies and procedures and verify the following:

    a. Written selection procedures require that solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, identify all requirements that the offerors must fulfill, and include all other factors to be used in evaluating bids or proposals (§____.36(c)(3) and 2 CFR section 215.44(a)(3)).

    b. There is a written policy pertaining to ethical conduct (§____.36(b)(3) and 2 CFR section 215.42).

4. Select a sample of procurements and perform the following:

    a. Examine contract files and verify that they document the significant history of the procurement, including the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis of contract price (§____.36(b)(9) and 2 CFR section 215.46).

    b. Verify that procurements provide full and open competition (§____.36(c)(1) and 2 CFR section 215.43).

    c. Examine documentation in support of the rationale to limit competition in those cases where competition was limited and ascertain if the limitation was justified (§____.36(b)(1) and (d)(4); and 2 CFR sections 215.43 and 215.44(e)).

    d. Verify that contract files exist and ascertain if appropriate cost or price analysis was performed in connection with procurement actions, including contract modifications and that this analysis supported the procurement action (§____.36(f) and 2 CFR section 215.45).

e. Verify that the Federal awarding agency approved procurements exceeding $100,000 when such approval was required. Procurements (1) awarded by noncompetitive negotiation, (2) awarded when only a single bid or offer was received, (3) awarded to other than the apparent low bidder, or (4) specifying a "brand name" product (§____.36(g)(2) and 2 CFR 215.44(e)) may require prior Federal awarding agency approval.

f. Verify compliance with other procurement requirements specific to an award.

(Procedure 5 only applies to States and Federal awards subgranted by the State to a local government or Indian tribal government.)

5. Test a sample of procurements to ascertain if the State's laws and procedures were followed and that the policies and procedures used were the same as for non-Federal funds.

(Procedure 6 applies to all non-Federal entities)

6. Select a sample of procurements and subawards and—

   a. Test whether the non-Federal entities performed a verification check for covered transactions, by checking the EPLS, collecting a certification from the entity, or adding a clause or condition to the covered transaction with the entity; and

   b. Test the sample of procurements and subawards against the EPLS, and ascertain if covered transactions were awarded to suspended or debarred parties.

7. Select a sample of ARRA-funded procurements, if any, for activities subject to Section 1605 of ARRA and test whether the non-Federal entity has —

   a. documented that the iron, steel, and manufactured goods used in the project are produced in the United States, or

   b. requested and received any waivers of the Buy-American requirements.

J. PROGRAM INCOME

Compliance Requirements

Program income is gross income received that is directly generated by the federally funded project during the grant period. If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired with grant funds, the sale of commodities or items fabricated under a grant agreement, and payments of principal and interest on loans made with grant funds. Except as otherwise provided in the Federal awarding agency regulations or terms and conditions of the award, program income does not include interest on grant funds (covered under "Cash Management"), rebates, credits, discounts, refunds, etc. (covered under "Allowable Costs/Cost Principles"), or interest earned on any of them (covered under "Cash Management"). Program income does not include the proceeds from the sale of equipment or real property (covered under "Equipment and Real Property Management").

Program income may be used in one of three methods: deducted from outlays, added to the project budget, or used to meet matching requirements. Unless specified in the Federal awarding agency regulations or the terms and conditions of the award, program income shall be deducted from program outlays. However, for research and development activities by institutions of higher education, hospitals, and other non-profit organizations, the default method is to add program income to the project budget. Unless Federal awarding agency regulations or the terms and conditions of the award specify otherwise, non-Federal entities have no obligation to the Federal Government regarding program income earned after the end of the grant period.

Source of Governing Requirements

The requirements for program income are found in the A-102 Common Rule (§____.21 (payment) and §____.25 (program income)); OMB Circular A-110 (2 CFR section 215.2 (program income definition), 2 CFR section 215.22 (payment), and 2 CFR section 215.24 (program income)), program legislation, Federal awarding agency regulations, and the terms and conditions of the award.

Audit Objectives

1. Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

2. Determine whether program income is correctly determined, recorded, and used in accordance with the program requirements, A-102 Common Rule, and OMB Circular A-110, as applicable.

Suggested Audit Procedures – Internal Control

1. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

2. Plan the testing of internal control to support a low assessed level of control risk for program income and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

3. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

Suggested Audit Procedures – Compliance

1. *Identify Program Income*

    a. Review the laws, regulations, and the provisions of contract or grant agreements applicable to the program and ascertain if program income was anticipated. If so, ascertain the requirements for determining or assessing the amount of program income (e.g., a scale for determining user fees, prohibition of assessing fees against certain groups of individuals, etc.), and the requirements for recording and using program income.

    b. Inquire of management and review accounting records to ascertain if program income was received.

2. *Determining or Assessing Program Income* – Perform tests to verify that program income was properly determined or calculated in accordance with stated criteria, and that program income was only collected from allowable sources.

3. *Recording of Program Income* – Perform tests to verify that all program income was properly recorded in the accounting records.

4. *Use of Program Income* – Perform tests to ascertain if program income was used in accordance with the program requirements, the A-102 Common Rule, and OMB Circular A-110.

K. REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE

Compliance Requirements

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA) provides for uniform and equitable treatment of persons displaced by federally-assisted programs from their homes, businesses, or farms. Property acquired must be appraised by qualified independent appraisers. All appraisals must be examined by a review appraiser to ensure acceptability. After acceptance, the review appraiser certifies the recommended or approved value of the property for establishment of the offer of just compensation to the owner. Federal requirements govern the determination of payments for replacement housing assistance, rental assistance, and down payment assistance for individuals displaced by federally funded projects. The regulations also cover the payment of moving-related expenses and reestablishment expenses incurred by displaced businesses and farm operations.

Source of Governing Requirements

Governmentwide requirements for real property acquisition and relocation assistance are contained in Department of Transportation's single governmentwide rule at 49 CFR part 24, Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally-Assisted Programs.

Audit Objectives

1. Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

2. Determine whether the non-Federal entity complied with the real property acquisition, appraisal, negotiation, and relocation requirements.

Suggested Audit Procedures – Internal Control

1. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

2. Plan the testing of internal control to support a low assessed level of control risk for real property acquisition and relocation assistance and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

3. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

Suggested Audit Procedures – Compliance

1. Inquire of management and review the records of Federal programs to ascertain if the non-Federal entity administers Federally-assisted programs that involve the acquisition of real property or the displacement of households or businesses.

2. *Property Acquisitions*

   For a sample of acquisitions:

   a. *Appraisal* – Test records to ascertain if: (1) the just compensation amount offered the property owner was determined by an appraisal process; (2) the appraisal(s) was examined by a review appraiser; and, (3) the review appraiser prepared a signed statement which explains the basis for adjusting comparable sales to reach the review appraiser's determination of the fair market value.

   b. *Negotiations* – Test supporting documentation to ascertain if: (1) a written offer of the appraised value was made to the property owner; and (2) a written justification was prepared if the purchase price for the property exceeded the amount offered and that the documentation (e.g., recent court awards, estimated trial costs, valuation problems) supports such administrative settlement as being reasonable, prudent, and in the public interest.

   c. *Residential Relocations* – Test supporting documentation to ascertain if the non-Federal entity made available to the displaced persons one or more comparable replacement dwellings.

3. *Replacement Housing Payments* – For a sample, test the non-Federal entity's records to ascertain if there is documentation that supports the following:

   a. The owner occupied the displacement dwelling for at least 180 days immediately prior to initiation of negotiations.

   b. The non-Federal entity examined at least three comparable replacement dwellings available for sale and computed the payment on the basis of the price of the dwelling most representative of the displacement dwelling.

   c. The asking price for the comparable dwelling was adjusted, to the extent justified by local market data, to recognize local area selling price reductions.

   d. The allowance for increased mortgage cost "buy down" amount was computed based on the remaining principal balance, the interest rate, and the remaining term of the old mortgage on the displacement dwelling.

   e. The non-Federal entity prepared written justification on the need to employ last resort housing provisions, if the total replacement housing payment exceeded $22,500.

4. *Rental or Downpayment Assistance* – For a sample, test the non-Federal entity's records to ascertain if there is documentation that supports the following:

    a. The displacee occupied the displacement dwelling for at least 90 days immediately prior to initiation of negotiations.

    b. The displacee rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within one year.

    c. The non-Federal entity prepared written justification if the payment exceeded $5,250.

5. *Business Relocations* – For a sample of business relocations:

    a. *Moving Expenses* – Test that payments for moving and related expenses were for actual costs incurred or that fixed payments, in lieu of actual costs, were limited to a maximum of $20,000 and computed based on the average annual net earnings of the business, as evidenced by income tax returns, certified financial statements, or other reliable evidence.

    b. *Business Reestablishment Expense* – Verify that (1) the displacee was eligible as a farm operation, a non-profit organization, or a small business to receive reestablishment assistance, and (2) the payment was for actual costs incurred and did not exceed $10,000.

L. REPORTING

Compliance Requirements

For purposes of the Supplement, the designation "Not Applicable" in relation to "Financial Reporting," "Performance Reporting" and "Special Reporting" means that the auditor is not expected to audit anything in these categories rather than whether award terms and conditions may require such reporting. **However, for Section 1512 ARRA reporting, "Not Applicable" means the program is not subject to Section 1512 reporting; while "Applicable" means the program, in whole or in part, involves ARRA funding on which recipients awarded such funds must provide the required reports.** The same approach is used for subaward reporting under the Federal Funding Accountability and Transparency Act (Transparency Act).

Financial Reporting

Recipients should use the standard financial reporting forms or such other forms as may be authorized by OMB (approval is indicated by an OMB paperwork control number on the form). Each recipient must report program outlays and program income on a cash or accrual basis, as prescribed by the Federal awarding agency. If the Federal awarding agency requires reporting of accrual information and the recipient's accounting records are not normally maintained on the accrual basis, the recipient is not required to convert its accounting system to an accrual basis but may develop such accrual information through analysis of available documentation. The Federal awarding agency may accept identical information from the recipient in machine-readable format, computer printouts, or electronic outputs in lieu of the prescribed formats.

The financial reporting requirements for subrecipients are as specified by the pass-through entity. In many cases, these will be the same as or similar to the following requirements for recipients.

The standard financial reporting forms are as follows:

1. *Financial Status Report (FSR) (SF-269 (OMB No. 0348-0039) or SF-269A (OMB No. 0348-0038))*. In general, these forms, which have been used by recipients of (1) non-construction awards to report expenditures, unobligated balances, and other information on the status of funds and (2) construction awards when the FSR was required in lieu of the SF-271, have been replaced by the SF-425, *Federal Financial Report* (*OMB No. 0348-0061)*. The FSR still is being shown as a standard report and, as appropriate, "Applicable," given that (1) some entities may have submitted reports during this audit period using this form or (2) some agencies or programs may be converting to use of the new form later than October 1, 2009. See below for information concerning the transition to the Federal Financial Report (*SF-425/425A*), which superseded the SF-269.

2. *Request for Advance or Reimbursement (SF-270 (OMB No. 0348-0004))*. Recipients are required to use the SF-270 to request reimbursement payments under non-construction programs, and may be required to use it to request advance payments.

3. *Outlay Report and Request for Reimbursement for Construction Programs (SF-271 (OMB No. 0348-0002)).* Recipients use the SF-271 to request funds for construction projects unless advances or the SF-270 are used.

4. *Federal Financial Report (FFR) (SF-425/SF-425A (OMB No. 0348-0061)).* Recipients use the FFR as a standardized format to report expenditures under Federal awards, as well as, when applicable, cash status (Lines 10.a, 10.b, and 10c). References to this report include its applicability as both an expenditure and a cash status report. As indicated above, the Supplement will continue to show the SF-269 as an expenditure report in the list of standard financial reports, in addition to the SF-425, until the transition is complete for all Federal agencies.

   For those agencies that have not fully transitioned to the use of the SF-425 as of the date of issuance of the 2011 Supplement, the award terms and conditions will specify if use of the SF-425 as an expenditure report is required. Electronic versions of the existing and new standard forms are located on OMB's Internet home page (http://www.whitehouse.gov/omb/grants_forms).

Performance Reporting

Recipients may be required to submit performance reports at least annually but not more frequently than quarterly. Performance reports generally contain, for each award, brief information of the following types:

1. A comparison of actual accomplishments with the goals and objectives established for the period.

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.

Note: The Federal agencies are moving toward the use of standard performance/progress reporting formats; however, there currently is no specified date for completion of the transition. Currently some agencies/programs are using the Performance Progress Report or the Research Performance Progress Report.

Special Reporting

Non-Federal entities may be required to submit other reporting which may be used by the Federal agency for such purposes as allocating program funding.

Compliance testing of performance and special reporting are only required for data that are quantifiable and meet the following criteria:

1. Have a direct and material effect on the program.

2. Are capable of evaluation against objective criteria stated in the laws, regulations, contract or grant agreements pertaining to the program.

Performance and special reporting data specified in Part 4, Compliance Requirements, meet the above criteria.

American Recovery and Reinvestment Act Reporting

Section 1512 of ARRA includes reporting requirements applicable to recipients of awards under ARRA Division A. This section (III.L, Reporting) is relevant only for awards received as a prime recipient (as defined below). This section is not applicable to awards received by a 1st tier-subrecipient (as defined in Appendix VII) or by a lower-level subrecipient. An entity could have received awards as both a recipient and a subrecipient within a major program.

OMB has issued many documents that provide guidance on the reporting requirements under ARRA (located at (http://www.whitehouse.gov/omb/recovery_default/). Among them, M-09-21, *Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009 (*June 22, 2009), provides relevant information for the audit procedures. The M-09-21 guidance covers the reporting requirements of Section 1512 of ARRA and includes two supplements: (1) a list of programs subject to the ARRA reporting requirements, and (2) a Recipient Reporting Data Model. M-09-21 provides extensive guidance for recipients and Federal agencies. While not a replacement for reading the entire document, the following excerpts highlight essential information.

> ***Section 2.1 What recipient reporting is required in Section 1512 of the Recovery Act?***
>
> **Section 1512 of the Recovery Act requires reporting on the use of Recovery Act funding by recipients no later that the 10th day after the end of each calendar quarter (beginning the quarter ending September 30, 2009). Aimed at providing transparency into the use of these funds, the recipient reports are required to include the following detailed information:**
>
> - **Total amount of funds received; and of that the amount spent on projects and activities;**
> - **A list of those projects and activities funded by name to include:**
>   - **Description**
>   - **Completion status**
>   - **Estimates on jobs created or retained;**
> - **Details on sub-awards and other payments.**

Section 2.2 Who is required to report under Recovery Act?

The prime recipients of all programs identified in the list of Federal programs subject to Section 1512 of the Recovery Act in the supplemental materials to this Guidance are responsible for reporting the information required by Section 1512 of the Act and as provided in this Guidance. Prime recipients may choose to delegate certain reporting requirements to sub-recipients, as described in Section 2.3.

The prime recipients are non-Federal entities that receive Recovery Act funding as Federal awards in the form of grants, loans or cooperative agreements directly from the Federal government.

Section 2.3 What are the respective responsibilities of prime recipients and sub-recipients in meeting Section 1512 reporting responsibilities?

The prime recipient is ultimately responsible for the reporting of all data required by Section 1512 of the Recovery Act and this Guidance, including the Federal Funding Accountability and Transparency Act (FFATA) data elements for the sub-recipients of the prime recipient required under 1512(c)(4). Prime recipients may delegate certain reporting requirements to sub-recipients, as described below. If the reporting is delegated to a sub-recipient, the delegation must be made in time for the sub-recipient to prepare for the reporting, including registering in the system.

The specific data elements to be reported by prime recipients and sub-recipients are included in the data dictionary contained in the *Recipient Reporting Data Model*.

Section 2.5 How will recipient reporting be submitted?

The information reported by all prime recipients (and those sub-recipients to which the prime recipient has delegated reporting responsibility) will be submitted through www.FederalReporting.gov, the online Web portal that will collect all Recovery Act recipient reports.

Section 2.11 How will these reports be made available to the public?

All reports submitted pursuant to Section 1512 of the Recovery Act will be made available on www.Recovery.gov and on individual Federal agency recovery websites.

OMB also issued

M-10-14, *Updated Guidance on the American Recovery and Reinvestment Act (*March 22, 2010), which provides information on the continuous corrections period instituted by the Recovery Accountability and Transparency Board (RATB) in January 2010 under which recipients can correct reported data for the immediately preceding reporting quarter after that reporting quarter has ended and after the data is published on FederalReporting.gov. The ending date for the continuous

corrections period may vary, and auditors should inquire of the entity to determine the ending date for the quarter subject to auditing procedures.

M-10-34, *Updated Guidance on the American Recovery and Reinvestment Act* (September 24, 2010), which provides (1) guidance on applicability of ARRA reporting requirements to the Education Jobs Fund in Pub. L. No. 111-226, (2) updated guidance on reporting procedures, (3) changes for Federal contractors, and (4) guidance on improving transparency of narrative descriptions in recipient reporting.

Compliance testing of the ARRA reporting requirements shall include only the following key data elements of the 1512 reporting:

Recipient Data Elements	*Definition from M-09-21 Recipient Data Reporting Model v3.0 (June 22, 2009 as updated for the quarter ending 12/31/09)*
Award Number	**The identifying number assigned by the awarding Federal Agency, such as the federal grant number, federal contract number or the federal loan number.**
Award Amount	**For Grants:** **The total amount of Federal dollars on the award.** **For Loans:** **The total amount the loan obligated by the Federal Agency. This is the face value of the loan.** **For Federally Awarded Contracts:** **The total amount obligated by the Federal Agency.**
Total Federal Amount ARRA Funds Received/Invoiced[1]	**For Grants and Loans:** **The amount of Recovery Acts funds received through draw-down, reimbursement or invoice.** **For Federally Awarded Contracts:** **The amount of Recovery Act funds invoiced by the federal contractor (cumulative).**

1 The Federal awarding agency is permitted to post and distribute its own guidance for recipient reporting of this data element provided that the program-specific guidance does not conflict (in whole or in part) with OMB guidance. The agency's guidance should be available on Recovery.gov at: http://www.recovery.gov/FAQ/QuickLinks/Pages/AgencyRecoverySites.aspx

Recipient Data Elements	*Definition from M-09-21 Recipient Data Reporting Model v3.0 (June 22, 2009 as updated for the quarter ending 12/31/09)*
Total Federal Amount of ARRA Expenditures[2]	**This is for grants and loans only. Amount of Recovery Act funds received that were expended for projects or activities ("Federal Share of Expenditures"). The cumulative total for the amount of federally funded expenditures. For reports prepared on a cash basis, expenditures are the sum of cash disbursements for direct charges for property and services; the amount of indirect expense charged; the value of third-party in-kind contributions applied; and the amount of cash advance payments and payments made to subcontractors and subawardees. For reports prepared on an accrual basis, expenditures are the sum of cash disbursements for direct charges for property 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 (1) goods and other property received; (2) services performed by employees, contractors, subcontractors, subawardees, and other payees; and (3) programs for which no current services or performance are required. Do not include program income expended. See also Note 2 below.**

Note 1: While the "number of jobs" is a required data element on the Section 1512 reports, the auditor is not required to test the "number of jobs" as part of the compliance work performed on Section 1512 ARRA reporting.

Note 2: With regard to 1512 reporting, recipients are required to report expenditures as of the last day of the quarter for the full quarter. However, due to the accounting closing process, some recipients do not have the actual expenditures amount within the 10 days allowed for the 1512 reporting period. "Best available data" can be used in these instances. "Best available data" should represent the full quarter and can include estimates. For example, if the recipient has two months of finalized data and the third month can only be estimated due to the timing of closing the monthly financial data, this approach is acceptable. However, if estimates are used for quarterly reporting, the recipient should have a process in place to review the submitted reports, (after the reports have been submitted) and determine if there are any material differences that would require the report to be corrected during the FederalReporting.gov continuous correction

2 See footnote 1.

period (described above). If there are no material differences, there is no need for the recipient to correct a submitted report. Note that it is not appropriate for recipients to utilize a "best available data" approach that uses a "lag" methodology (e.g., using finalized data for two months of a quarter and then not including the final month of the quarter).

Federal Funding Accountability and Transparency Act

Aspects of the Federal Funding Accountability and Transparency Act (Pub. L. No. 109-282) (Transparency Act), as amended by Section 6202(a) of the Government Funding Transparency Act of 2008 (Pub. L. No. 111-252), that relate to subaward reporting (1) under grants and cooperative agreements were implemented as interim final guidance by OMB in 2 CFR part 170, effective October 1, 2010 (75 FR 55663 *et seq*., September 14, 2010) and (2) under contracts, by the regulatory agencies responsible for the Federal Acquisition Regulation (FAR) in an interim rule, effective July 8, 2010 (75 FR 39414 *et seq*., July 8, 2010). The interim final guidance and the interim rule have the same effect as final guidance or a final rule and will remain in effect until superseded by final issuances. If the final issuances include any changes to the interim requirements, they will have new effective dates. The requirements pertain to recipients (i.e., direct recipients) of grants or cooperative agreements who make first-tier subawards and contractors (i.e., prime contractors) that award first-tier subcontracts. There are limited exceptions as specified in 2 CFR part 170 and the FAR. The guidance at 2 CFR part 170 does currently applies only to Federal financial assistance awards in the form of grants and cooperative agreements, e.g., it does not apply to loans made by a Federal agency to a recipient; however, subaward reporting requirement apply to all types of first-tier subawards under a grant or cooperative agreement.

As provided in the 2 CFR part 170 and FAR Subpart 4.14, respectively, Federal agencies are required to include the award term specified in Appendix A to 2 CFR part 170 or the contract clause in FAR 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards, as applicable, in awards subject to the Transparency Act.

In general, the Transparency Act reporting requirements do not apply to ARRA-funded awards, i.e., separate subaward reporting under the Transparency Act as described in this section is not required. Subawards under awards funded by ARRA will continue to be reported through FederalReporting.gov. However, if a subaward is made using both ARRA and non-ARRA funding sources, the Section 1512 ARRA requirement would apply to the ARRA-funded part of the subaward, while the Transparency Act reporting requirement applies to the non-ARRA funds. For example, if a subaward is made with $40,000 in ARRA funding and $30,000 in non-ARRA funding, activities related to the $40,000 must be reported in FederalReporting.gov; while the $30,000 non-ARRA subaward amount must be reported in the Funding Accountability and Transparency Subaward Reporting System (FSRS) (see below).

OMB has issued several documents that provide guidance on the reporting requirements under the Transparency Act (located at (http://www.whitehouse.gov/omb/open)). Among them are *Open Government Directive – Federal Spending Transparency (*April 6, 2010) and *Open Government Directive – Federal Spending Transparency and Subaward and Compensation Data Reporting* (August 27, 2010).

Consistent with the OMB guidance,

- 2 CFR part 170 defines "subaward" as a legal instrument to provide support for the performance of any portion of the substantive project or program for which a recipient received a grant or cooperative agreement award and that is awarded to an eligible subrecipient. The term does not include procurement of property and services needed to carry out the project or program. A subaward may be provided through any legal agreement, including an agreement that the recipient considers a contract.

- FAR 52.204-10(a) defines "first-tier subcontract" to mean a subcontract awarded directly by a contractor to furnish supplies or services (including construction) for performance of a prime contract, but excludes supplier agreements with vendors, such as long-term arrangements for materials or supplies that would normally be applied to a contractor's general and administrative expenses or indirect cost. For ease of reference, this section of the Supplement also refers to these as "subawards."

While 2 CFR part 170 and the FAR implement several distinct Transparency Act reporting requirements, including reporting of executive compensation, the Supplement addresses only the following requirements: recipient reporting of each first-tier subaward obligating action of $25,000 or more in Federal funds and contractor reporting of each first-tier subcontract award of $25,000 or more in Federal funds. The two requirements vary somewhat as shown in the example in the following table.

If the value of a first-tier subaward	**and the subaward is**	**then**
under a grant or cooperative agreement is $65,000 in Federal funds (e.g., State funds may also be included)	funded in three actions for $25,000, 15, 000, and $25,000, respectively	the first and third actions must be reported pursuant to 2 CFR part 170 because they are $25,000, but the second action is not required to be reported
under a contract is $65,000 in Federal funds	funded in full at award or funded in multiple actions up to the $65,000 value	the subaward must be reported at the time of the initial award pursuant to FAR 52.204-10
under a contract is increased from $65,000 to $75,000	---	the changed value must be reported

Apart from this difference, the reporting requirements are comparable; therefore, the remainder of this section refers to first-tier subawards and subcontracts as "subawards."

Effective Date of Reporting Requirements

The respective coverage in 2 CFR part 170 or the FAR specifies the effective date of Transparency Act subaward reporting.

Grants and Cooperative Agreements

For grants and cooperative agreements, the effective date is October 1, 2010 for all discretionary and mandatory awards equal to or exceeding $25,000 made with a new Federal Assistance Identification Number (FAIN) on or after that date. The FAIN is the unique award number assigned to a particular grant or cooperative agreement by the Federal awarding agency (as opposed to the CFDA number, which pertains to a program generally). In some programs, a new award number is used each year and that new award number is considered a new FAIN. In some programs, where awards are made for a multi-year project, but may be funded in increments, even though a suffix may be added, e.g., -02 or -03 designating the subsequent years of an approved project, this is not considered a new FAIN. Therefore, if the FAIN for an award made in November 2009 was AB-12345 and for an award under the same program made in November 2010 was AB-56789, the latter would be considered a new FAIN. However, if the FAIN for an award made in November 2009 was AB-12345-02 and for an award under the same program made in November 2010 was AB-12345-03, the latter would **not** be considered a new FAIN

Because of the multiple business processes of different Federal programs, while Part 4 of this Supplement indicates whether Transparency Act reporting applies to a program (see III.L.5 in each program supplement), that information must be used in conjunction with an understanding of the effective date for a particular award.

Once the requirement applies, the recipient must report, for any subaward under that award with a value of $25,000 or more, each obligating action of $25,000 or more in Federal funds. Recipients are not required to report on subawards made on or after October 1, 2010 that use funds awarded prior to that date.

Contracts

For contracts, implementation was phased in for contracts based on their total dollar value Based on the FAR interim final rule, Transparency Act reporting is required for:

- Until September 30, 2010, any newly awarded subcontract of $25,000 or more must be reported if the value of the Federal prime contract award under which that subcontract was awarded was $20,000,000 or more.

- From October 1, 2010, until February 28. 2011, any newly awarded subcontract of $25,000 or more must be reported if the value of the Federal prime contract award under which that subcontract was awarded was $550,000 or more.

- Starting March 1, 2011, any newly awarded subcontract of $25,000 or more must be reported if the value of the Federal prime contract award under which that subcontract was awarded was $25,000 or more.

Reporting Site

Grant and cooperative agreement recipients and contractors are required to register in the Federal Funding Accountability and Transparency Subaward Reporting System (FSRS) and report subaward data through FSRS. To do so, they will first be required to register in Central Contractor Registration (CCR) (if they have not done so previously for another purpose, e.g., submission of applications through Grants.gov) and actively maintain that registration. Prime contractors have previously been required to register in CCR. Information input to FSRS is available at USASpending.gov as the publicly available website for viewing this information (http://www.usaspending.gov/subaward-advanced-search).

Timing of required reporting

Grant and cooperative agreement recipients and contractors must report information related to a subaward by the end of the month following the month in which the subaward or obligation of $25,000 or greater was made and, for contracts, the month in which a modification was issued that changed previously reported information.

Example 1:

Recipient or contractor awards first-tier subaward on November 1, 2010
Recipient or contractor must report first-tier subaward information by December 31, 2010

Example 2:

Recipient or contactor awards first-tier subaward on January 31, 2011
Recipient or contractor must report first-tier subaward information by February 28, 2011

Example 3:

Pursuant to 2 CFR part 170, Under a first-tier subaward with a value of $60,000 in Federal funds and an initial obligation of $25,000 reported at the time of the subaward, the recipient makes a second obligation of $35,000 in Federal funds on April 4, 2011

Recipient must report obligation by May 31, 2011

Example 4:

Pursuant to the FAR, under a first-tier subaward with a value of $60,000 in Federal funds, a contractor modifies the subaward on April 15, 2011 to add $15,000 in Federal funds (increasing the overall value to $75,000)

Contractor must report modification by May 31, 2011

Key data elements

Compliance testing of the Transparency Act reporting requirements shall include the following key data elements about the first-tier subrecipient or subcontractor (subawardee) and subawards.

Subaward data element	**Definition from *Open Government Directive – Federal Spending Transparency and Subaward and Compensation Data Reporting* (August 27, 2010) Appendix C**
Subaward Date	Represents the time period (by month and year) for subawards made against that Federal Award Identification Number (FAIN)
Subawardee DUNS #	The subawardee organization's 9 digit Data Universal Numbering System (DUNS) number
Amount of Subaward	The net dollar amount of Federal funds awarded to the subawardee including modifications.
Subaward Obligation/Action Date	Date the subaward agreement was signed
Date of Report Submission	Date the recipient or contractor entered the action/obligation into FSRS
Subaward Number	Subaward number or other identifying number assigned by the prime awardee organization to facilitate the tracking of its subawards

Source of Governing Requirements

Reporting requirements are contained in the following documents:

a. A-102 Common Rule – Financial reporting, §____.41; Performance reporting, §___.40(b).

b. OMB Circular A-110 – Financial reporting, 2 CFR section 215.52 (this section has not been updated to reference the new form); Performance reporting, 2 CFR section 215.51.

c. Program legislation.

d. **ARRA (and the previously listed OMB documents and future additional OMB guidance documents that may be issued).**

e, Transparency Act, implementing requirements in 2 CFR part 170 and the FAR, and previously listed OMB guidance documents.

f. Federal awarding agency regulations.

g. The terms and conditions of the award.

Audit Objectives

1. Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

2. Determine whether required reports for Federal awards include all activity of the reporting period, are supported by applicable accounting or performance records, and are fairly presented in accordance with governing requirements.

Suggested Audit Procedures – Internal Control

1. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

2. Plan the testing of internal control to support a low assessed level of control risk for reporting and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

3. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

Suggested Audit Procedures – Compliance

Financial, performance, and special reports

Note: For recipients using PMS to draw Federal funds, the auditor should consider the following steps numbered 1 through 5 as they pertain to the cash reporting portion of the SF-425A, regardless of the source of the data included in the PMS reports. Although certain data is supplied by the Federal awarding agency (i.e., award authorization amounts) and certain amounts are provided by DPM, the auditor should ensure that such amounts are in agreement with the recipient's records and are otherwise accurate.

1. Review applicable laws, regulations, and the provisions of contract or grant agreements pertaining to the program for reporting requirements. Determine the types and frequency of required reports. Obtain and review Federal awarding agency or pass-through entity, in the case of a subrecipient, instructions for completing the reports.

    a. For financial reports, ascertain the accounting basis used in reporting the data (e.g., cash or accrual).

b. For performance and special reports, determine the criteria and methodology used in compiling and reporting the data.

2. Perform appropriate analytical procedures and ascertain the reason for any unexpected differences. Examples of analytical procedures include:

   a. Comparing current period reports to prior period reports.

   b. Comparing anticipated results to the data included in the reports.

   c. Comparing information obtained during the audit of the financial statements to the reports.

   Note: The results of the analytical procedures should be considered in determining the nature, timing, and extent of the other audit procedures for reporting.

3. Select a sample of each of the following report types:

   a. Financial reports

      (1) Ascertain if the financial reports are complete and accurate, were prepared in accordance with the required accounting basis, and were submitted timely to the pass-through entity or the Federal agency, as applicable.

      (2) Trace the amounts reported to accounting records that support the audited financial statements and the Schedule of Expenditures of Federal Awards and verify agreement or perform alternative procedures to verify the accuracy and completeness of the reports and that they agree with the accounting records. If reports require information on an accrual basis and the entity does not prepare its accounting records on an accrual basis, determine whether the reported information is supported by available documentation.

      (3) For any discrepancies noted in SF-425 reports for awards paid through the Payment Management System (PMS), review subsequent SF-425 reports to ascertain if the discrepancies were appropriately resolved with HHS' DPM.

   b. Performance and special reports

      (1) Trace the reported data to records that accumulate and summarize data.

      (2) Perform tests of the underlying data to verify that the data were accumulated and summarized in accordance with the required or stated criteria and methodology, including the accuracy and completeness of the reports.

c. When intervening computations or calculations are required between the records and the reports, trace reported data elements to supporting worksheets or other documentation that link reports to the data.

d. Test mathematical accuracy of reports and supporting worksheets.

4. Test the selected reports for accuracy and completeness.

a. For financial reports, review accounting records and ascertain if all applicable accounts were included in the sampled reports (e.g., program income, expenditure credits, loans, interest earned on Federal funds, and reserve funds).

b. For performance and special reports, review the supporting records and ascertain if all applicable data elements were included in the sampled reports.

c. For each type of report—

(1) When intervening computations or calculations are required between the records and the reports, trace reported data elements to supporting worksheets or other documentation that link reports to the data.

(2) Test mathematical accuracy of reports and supporting worksheets.

5. Obtain written representation from management that the reports provided to the auditor are true copies of the reports submitted or electronically transmitted to the Federal awarding agency, HHS' DPM for recipients using the PMS, or pass-through entity in the case of a subrecipient.

ARRA Section 1512 Reports

6. Review M-09-021 and other relevant guidance issued by OMB since May 2010 for reporting requirements. Determine the methodology used in compiling and reporting the key data elements and ascertain whether the entity passed-through funding to any subrecipients.

7. For awards received as a recipient, select the ARRA Section 1512 report for the calendar quarter preceding the entity's year-end, or for a major program with multiple awards (i.e. R&D), select a sample of ARRA Section 1512 reports for the calendar quarter preceding the entity's year-end. For example, the calendar quarter preceding an April 30, May 30, or June 30 entity fiscal year-end would be the quarter ending March 31.

8. For each selected report inquire of the entity as to whether it considers the report available on Recovery.gov to be its final submission. (The auditor should only test final submissions.) Find the award on Recovery.gov using the following link[3]: http://www.recovery.gov/Pages/TextViewProjSummary.aspx?data=recipientAwardsList&RenderData=ALL&State=ALL&Agency=ALL&Amount=ALL&AwardType=CGL and search by award number.

9. For awards received as a recipient:

a. Trace the key data elements to records that accumulate and summarize data to verify that the data elements were presented in accordance with ARRA Section 1512 reporting requirements[4].

b. Perform tests of the underlying data to verify that the data were presented in accordance with the required or stated criteria and methodology, including the accuracy and completeness of the reports.

(1) When intervening computations or calculations are required between the records and the data elements, trace reported data elements to supporting worksheets or other documentation that link reports to the data.

(2) Test mathematical accuracy of supporting worksheets.

c. If entity passed-through funding under the award to any subrecipients, ascertain if the pass-through entity had a process to monitor the accuracy of subrecipient reporting, whether or not the reporting has been delegated to the subrecipient.

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3 The following steps provide guidance to assist the auditor in locating the award. (Note that the website may have been modified since May 2010).

- Select "Where Is Money Going" tab
- Select "Recipient Reported Data" from the drop-down menu
- Scroll down to the center of the page; find the Recipient Reported Data Search section
- Click on "Go" (do not enter the name of the Agency, State/Territory or the amount) to be taken to the "Advanced Recipient Reported Data Search"

4 The reporting of expenditures into FederalReporting.gov of anything less than a full quarter (e.g., use of the "lag" methodology described in section above titled, "American Recovery and Reinvestment Act Reporting") would be considered as non-compliant with 1512 reporting requirements and would be an audit finding that should be reported in the auditor's Single Audit reporting. However, this type of finding should not be reported with any associated questioned cost as there is no potential monetary recovery. Additionally, this type of audit finding would not generally result in the reporting of a "material weakness in internal control over compliance" or a qualified opinion on compliance for the program.

First-tier subaward reporting (referred to as "subcontracts" if subject to the FAR) under the Transparency Act (Not ARRA funded)

10. Gain an understanding of the recipient's methodology used to identify which, if any, awards were subject to the Transparency Act based on inclusion of the award term, the assignment by the Federal awarding agency of a new FAIN, the effective date of the reporting requirement, and whether the entity passed funds through to first-tier subrecipients.

11. Select a sample of recipient payments for first-tier subawards (e.g., non-payroll expenditures) from direct non-ARRA funded awards or funded with both ARRA and non-ARRA funding. Obtain related subaward agreements and determine if the subaward was subject to reporting under the Transparency Act based on the timeframe, size of the subaward, and value of the action.

    If the subaward was subject to reporting under the Transparency Act:

    a. Using the prime award number, find the award on USASpending.gov; and

    b. Review the subaward documents maintained by the recipient or contractor and the key data elements listed above for compliance testing of the Transparency Act reporting requirements to the reported data compare to assess if—

        (1) Applicable subaward awards/actions have been reported,

        (2) The key data elements (see above) were accurately reported and are supported by the source documentation, and

        (3) The action was reported in FSRS no later than the last day of the month *following* the month in which the award or the modification was signed.

Comparison of ARRA and Transparency Act Requirements

The following table is intended to assist the auditor in distinguishing, for purposes of the A-133 audit, the requirements that apply to reporting by recipients under ARRA and those that apply to reporting under the Transparency Act. Because some of the requirements related to this reporting apply directly to subrecipients, this table also may be used for purposes of determining applicable requirements under M, Subrecipient Monitoring, as explained in the next section of this Part 3.

Comparison of ARRA and Transparency Act Reporting for Federal Awards			
	ARRA Funded **(Reported under Section 1512 of ARRA)**	**Not ARRA Funded (Reported Under the Transparency Act)**	
		Federal awards not subject to the FAR	*Federal awards (contracts) subject to the FAR*
DUNS Number	Required of recipients (referred to as contractors under the FAR) and first-tier subrecipients (referred to as subcontractors under the FAR)	Required of recipients and first-tier subrecipients	Required of recipients (referred to as contractors under the FAR) and first-tier subcontractors (may also be subrecipients for purposes of OMB Circular A-133 audits)
CCR Registration	Required of recipients and first-tier subrecipients however not required for first-tier subcontractors under the FAR	Required of recipients; not required for first-tier subrecipients	Required of recipients; not required for first-tier subcontractors
What is reported	As required by Section 1512 of ARRA	Each first-tier subaward or action of $25,000 or more in Federal funds **IF** the Federal award that is the source of the funding was made on or after 10/1/2010 with a new FAIN; does not include vendor payments by recipients or subawards to individuals	Each first-tier subcontract with a value of $25,000 or more in Federal funds and any modification to that amount made on or after 10/1/2010
Who reports it	Recipient **or** may delegate reporting responsibility to first-tier subrecipients	Recipient	
Where is it reported	FederalSpending.gov	Recipient information at CCR; first-tier subrecipient information at FSRS	Recipient information at CCR; first-tier subcontract information at FSRS
When must it be reported	By the 10th day after the end of the calendar quarter in which the Federal award was made and on a similar timeframe thereafter	By the end of the month following the month in which the funding occurred	By the end of the month following the month in which the funding or modification occurred

Comparison of ARRA and Transparency Act Reporting for Federal Awards			
	ARRA Funded **(Reported under Section 1512 of ARRA)**	**Not ARRA Funded (Reported Under the Transparency Act)**	
		Federal awards <u>not</u> subject to the FAR	*Federal awards (contracts) subject to the FAR*
Quick reference to requirement	OMB M-09-21 Questions 2.1 – 2.11	2 CFR part 170 75 FR 55663 *et seq*.	75 FR 39414 *et seq*.

M. SUBRECIPIENT MONITORING

NOTE: Transfers of Federal awards to another component of the same auditee under OMB Circular A-133 do not constitute a subrecipient or vendor relationship.

Compliance Requirements

A pass-through entity is responsible for:

- *Determining Subrecipient Eligibility* – In addition to any programmatic eligibility criteria under E, "Eligibility for Subrecipients," for subawards made on or after October 1, 2010, determining whether an applicant for a non-ARRA subaward has provided a Dun and Bradstreet Data Universal Numbering System (DUNS) number as part of its subaward application or, if not, before award (2 CFR section 25.110 and Appendix A to 2 CFR part 25).

- *Central Contractor Registration (CCR)* – **For ARRA subawards**, **identifying to first-tier subrecipients the requirement to register in the Central Contractor Registration, including obtaining a DUNS number, and maintaining the currency of that information (Section 1512(h) of ARRA, and 2 CFR section 176.50(c)). This requirement pertains to the ability to report pursuant to Section 1512 of ARRA and is not a pre-award eligibility requirement.** Note that subrecipients of non-ARRA funds are not required to register in CCR prior to or after award.

- *Award Identification* – At the time of the subaward, identifying to the subrecipient the Federal award information (i.e., CFDA title and number; award name and number; if the award is research and development; and name of Federal awarding agency) and applicable compliance requirements. **For ARRA subawards, identifying to the subrecipient the amount of ARRA funds provided by the subaward and advising the subrecipient of the requirement to identify ARRA funds in the Schedule of Expenditures of Federal Awards (SEFA) and the SF-SAC (see also N, Special Tests and Provisions in this Part).-**

- *During-the-Award Monitoring* – Monitoring the subrecipient's use of Federal awards through reporting, site visits, regular contact, or other means to provide reasonable assurance that the subrecipient administers Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

- *Subrecipient Audits* – (1) Ensuring that subrecipients expending $500,000 or more in Federal awards during the subrecipient's fiscal year for fiscal years ending after December 31, 2003 as provided in OMB Circular A-133 have met the audit requirements of OMB Circular A-133 (the circular is available on the Internet at http://www.whitehouse.gov/omb/circulars/a133/a133.html) and that the required audits are completed within 9 months of the end of the subrecipient's audit period; (2) issuing a management decision on audit findings within 6 months after receipt of the subrecipient's

audit report; and (3) ensuring that the subrecipient takes timely and appropriate corrective action on all audit findings. In cases of continued inability or unwillingness of a subrecipient to have the required audits, the pass-through entity shall take appropriate action using sanctions.

Ensuring Accountability of For-Profit Subrecipients – Awards also may be passed through to for-profit entities. For-profit subrecipients are accountable to the pass-through entity for the use of Federal funds provided. Because for-profit subrecepients are not subject to the audit requirements of OMB Circular A-133, pass-through entities are responsible for establishing requirements, as needed, to ensure for-profit subrecipient accountability for the use of funds.

- *Pass-Through Entity Impact* – Evaluating the impact of subrecipient activities on the pass-through entity's ability to comply with applicable Federal regulations.

During-the-Award Monitoring

Following are examples of factors that may affect the nature, timing, and extent of during-the-award monitoring:

- *Program complexity* – Programs with complex compliance requirements have a higher risk of non-compliance.

- *Percentage passed through* – The larger the percentage of program awards passed through the greater the need for subrecipient monitoring.

- *Amount of awards* – Larger dollar awards are of greater risk.

- *Subrecipient risk* – Subrecipients may be evaluated as higher risk or lower risk to determine the need for closer monitoring. Generally, new subrecipients would require closer monitoring. For existing subrecipients, based on results of during-the-award monitoring and subrecipient audits, a subrecipient may warrant closer monitoring (e.g., the subrecipient has (1) a history of non-compliance as either a recipient or subrecipient, (2) new personnel, or (3) new or substantially changed systems).

Monitoring activities normally occur throughout the year and may take various forms, such as:

- *Reporting* – Reviewing financial and performance reports submitted by the subrecipient.

- *Site Visits* – Performing site visits at the subrecipient to review financial and programmatic records and observe operations.

- *Regular Contact* – Regular contacts with subrecipients and appropriate inquiries concerning program activities.

Agreed-upon procedures engagements

A pass-through entity may arrange for agreed-upon procedures engagements for certain aspects of subrecipient activities, such as eligibility determinations. Since the pass-through entity determines the procedures to be used and compliance areas to be tested, these agreed-upon procedures engagements enable the pass-through entity to target the coverage to areas of greatest risk. The costs of agreed-upon procedures engagements is an allowable cost to the pass-through entity if the agreed-upon procedures are performed for subrecipients below the A-133 threshold for audit (currently at $500,000 for fiscal years ending after December 31, 2003) for the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and reporting (OMB Circular A-133 (§___.230(b)(2)).

Source of Governing Requirements

The requirements for subrecipient monitoring are contained in 31 USC 7502(f)(2)(B) (Single Audit Act Amendments of 1996 (Pub. L. No. 104-156)), OMB Circular A-133 (§___.225, §___.310(d)(5), §___.400(d)), A-102 Common Rule (§___.37 and §___.40(a)), and OMB Circular A-110 (2 CFR section 215.51(a)), program legislation, **Section 1512(h) of ARRA, 2 CFR section 176.50(c),** 2 CFR parts 25 and 170, and 48 CFR parts 4, 42, and 52 Federal awarding agency regulations, and the terms and conditions of the award

Audit Objectives

1. Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

2. For non-ARRA first-tier subawards made on or after October 1, 2010, determine whether the pass-through entity had the subrecipient provide a valid DUNS number before issuing the subaward.

3. Determine whether the pass-through entity properly identified Federal award information and compliance requirements to the subrecipient, **including requirements related to ARRA first-tier subawards, e.g., CCR registration (see N, Special Tests and Provisions in this Part),** and approved only allowable activities in the subaward documents.

4. **For ARRA first-tier subawards, determine whether the pass-through entity assessed subrecipient compliance with the CCR registration requirement. [Note: Although subrecipients are not required to register at FederalReporting.gov unless the pass-through entity has delegated to them the responsibility for Section 1512 ARRA reporting, all subrecipients receiving ARRA funds are required to register in CCR as specified in 2 CFR 176.50(c)].**

5. Determine whether the pass-through entity monitored subrecipient activities to provide reasonable assurance that the subrecipient administers Federal awards in compliance with Federal requirements.

6. Determine whether the pass-through entity ensured required audits are performed, issued a management decision on audit findings within 6 months after receipt of the subrecipient's audit report, and ensures that the subrecipient takes timely and appropriate corrective action on all audit findings.

7. Determine whether in cases of continued inability or unwillingness of a subrecipient to have the required audits, the pass-through entity took appropriate action using sanctions.

8. Determine whether the pass-through entity evaluates the impact of subrecipient activities on the pass-through entity.

9. Determine whether the pass-through entity identified in the SEFA the total amount provided to subrecipients from each Federal program**, including separate identification of ARRA funds.**

10. If for-profit subawards are material, determine the adequacy of the pass-through entity's monitoring procedures for those subawards.

Suggested Audit Procedures – Internal Control

1. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

2. Plan the testing of internal control to support a low assessed level of control risk for subrecipient monitoring and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.

3. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

Suggested Audit Procedures – Compliance

(Note: The auditor may consider coordinating the tests related to subrecipients performed as part of Cash Management (tests of cash reporting submitted by subrecipients), Eligibility (tests that subawards were made only to eligible subrecipients), and Procurement (tests of ensuring that a subrecipient is not suspended or debarred) with the testing of Subrecipient Monitoring.)

1. Gain an understanding of the pass-through entity's subrecipient procedures through a review of the pass-through entity's subrecipient monitoring policies and procedures (e.g., annual monitoring plan) and discussions with staff. This should include an understanding of the scope, frequency, and timeliness of monitoring activities and the number, size, and complexity of awards to subrecipients, including, as applicable, subawards to for-profit entities.

2. Test the pass-through entity's subaward review and approval documents for first-tier subawards to ascertain if the pass-through entity obtained DUNS numbers from non-ARRA subrecipients prior to issuance of the subaward.

3. Test subaward documents and agreements to ascertain if: (a) at the time of subaward the pass-through entity made subrecipients aware of the award information (i.e., CFDA title and number; award name and number; if the award is research and development; and name of Federal awarding agency) and requirements imposed by laws, regulations, and the provisions of contract or grant agreements; (b) **included for first-tier subrecipients the requirements for CCR registration and SEFA and SF-SAC presentation for ARRA-funded awards**, and (c) the activities approved in the subaward documents were allowable. **(See R3 under N, Special Tests and Provisions, for additional discussion of requirements for subawards with expenditures of ARRA awards.)**

4. Review the pass-through entity's documentation of during-the-subaward monitoring to ascertain if the pass-through entity's monitoring provided reasonable assurance that subrecipients used Federal awards for authorized purposes, complied with laws, regulations, and the provisions of contracts and grant agreements, and achieved performance goals.

5. Review the pass-through entity's follow-up to ensure corrective action on deficiencies noted in during-the-subaward monitoring.

6. Verify that the pass-through entity:

    a. Ensured that the required subrecipient audits were completed. For subrecipients that are not required to submit a copy of the reporting package to a pass-through entity because there were "no audit findings" (i.e., because the schedule of findings and questioned costs did not disclose audit findings relating to the Federal awards that the pass-through entity provided and the summary schedule of prior audit findings did not report the status of audit findings relating to Federal awards that the pass-through entity provided, as prescribed in OMB Circular A-133 §___320(e)), the pass-through entity may use the information in the Federal Audit Clearinghouse (FAC) database (available on the Internet at http://harvester.census.gov/sac) as evidence to verify that the subrecipient had "no audit findings" and that the required audit was performed. This FAC verification would be in lieu of reviewing submissions by the subrecipient to the pass-through entity when there are no audit findings.

b. Issued management decisions on audit findings within 6 months after receipt of the subrecipient's audit report.

c. Ensured that subrecipients took appropriate and timely corrective action on all audit findings.

7. Verify that in cases of continued inability or unwillingness of a subrecipient to have the required audits, the pass-through entity took appropriate action using sanctions.

8. Verify that the effects of subrecipient noncompliance are properly reflected in the pass-through entity's records.

9. Verify that the pass-through entity monitored the activities of subrecipients not subject to OMB Circular A-133, including for-profit entities, using techniques such as those discussed in the "Compliance Requirements" provisions of this section with the exception that these subrecipients are not required to have audits under OMB Circular A-133.

10. Determine if the pass-through entity has procedures that allow it to identify the total amount provided to subrecipients from each Federal program.

N. SPECIAL TESTS AND PROVISIONS

Compliance Requirements

The specific requirements for Special Tests and Provisions are unique to each Federal program and are found in the laws, regulations, and the provisions of contract or grant agreements pertaining to the program. For programs listed in this Supplement, the compliance requirements, audit objectives, and suggested audit procedures for Special Tests and Provisions are in Part 4 – Agency Program Requirements or Part 5 – Clusters of Programs. For programs not listed in this Supplement, the auditor shall review the program's contract and grant agreements and referenced laws and regulations to identify the compliance requirements and develop the audit objectives and audit procedures for Special Tests and Provisions which could have a direct and material effect on a major program. The auditor should also inquire of the non-Federal entity to help identify and understand any Special Tests and Provisions.

Additionally, for both programs included and not included in this Supplement, the auditor shall identify any additional compliance requirements which are not based in law or regulation (e.g., were agreed to as part of audit resolution of prior audit findings) which could be material to a major program. Reasonable procedures to identify such compliance requirements would be inquiry of non-Federal entity management and review of the contract and grant agreements pertaining to the program. Any such requirements which may have a direct and material on a major program shall be included in the audit.

Internal Control

The following audit objective and suggested audit procedures should be considered in tests of special tests and provisions in addition to those provided in Part 4 – Agency Program Requirements; Part 5 – Clusters of Programs; and in accordance with Part 7 – Guidance for Auditing Programs Not Included in This Compliance Supplement:

Audit Objective

Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).

Suggested Audit Procedures

1. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.

2. Plan the testing of internal control to support a low assessed level of control risk for special tests and provisions and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___.500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether

additional compliance tests and reporting are required because of ineffective internal control.

3. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

Special Tests and Provisions for Awards with ARRA Funding

The following three special tests and provisions, which ordinarily would be added in Part 4 guidance (or Part 7 for any programs not included in this Supplement), apply to all programs with expenditures of ARRA funds in addition to any special tests and provisions listed in Part 4. In addition to addressing the following audit objectives, the auditor should obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c) and should consider the suggested audit procedures in this Section N.

R1 – Separate Accountability for ARRA Funding

Compliance Requirements – Depending on the type of organization undergoing audit, the administrative requirements that apply to most programs arise from two sources:

- **A-102 Common Rule; and**
- **OMB Circular A-110.**

There are also some other administrative compliance requirements contained in regulations that are not of the type covered in the A-102 Common Rule or OMB Circular A-110, that are unique to specific programs (Federal programs excluded from the A-102 Common Rule are listed in Appendix I of the Supplement). Those requirements may be found in applicable legislation, Federal awarding agency regulations, and award terms and conditions.

The financial management system must permit the preparation of required reports and tracing of funds adequate to establish that funds were used for authorized purposes and allowable costs.

As provided in 2 CFR section 176.210, Federal agencies must require recipients to (1) agree to maintain records that identify adequately the source and application of ARRA awards; (2) separately identify to each subrecipient, and document at the time of the subaward and disbursement of funds, the Federal award number, CFDA number, and the amount of ARRA funds; and (3) provide identification of ARRA awards in their Schedule of Expenditures of Federal Awards (SEFA) and Data Collection Form (SF-SAC) and require their subrecipients to provide similar identification in their SEFA and SF-SAC. Additional information, including presentation requirements for the SEFA and SF-SAC, is provided in Appendix VII.

Audit Objective – Determine whether accounting records for ARRA funds provide for the separate identification and accounting required for ARRA awards/activity.

Suggested Audit Procedure – Ascertain if expenditures of ARRA funds are accounted for separately from expenditures of non-ARRA funds.

R2 – Presentation on the Schedule of Expenditures of Federal Awards and Data Collection Form

Compliance Requirement – Federal agencies must require recipients to agree to provide identification of ARRA awards in their SEFA and SF-SAC. Additional information, including presentation requirements for the SEFA and SF-SAC, is provided in Appendix VII (2 CFR section 176.210).

Audit Objective – Determine whether the entity met the requirements for reporting expenditures of ARRA awards on the SEFA and that reported amounts are supported by the accounting records and fairly presented in accordance with ARRA and program requirements.

Suggested Audit Procedure – Perform tests to verify that the SEFA properly identifies and reports expenditures of ARRA awards and reported expenditures are supported by accounting records.

R3 – Subrecipient Monitoring

Compliance Requirement – Federal agencies must require recipients to agree to: (1) separately identify to each subrecipient, and document at the time of the subaward and disbursement of funds, the Federal award number, CFDA number, and the amount of ARRA funds; and (2) require their subrecipients to provide similar identification (as noted in R2 above) in their SEFA and SF-SAC. Additional information, including presentation requirements for the SEFA and SF-SAC, is provided in Appendix VII (2 CFR section 176.210).

Audit Objective – If subawards of ARRA funds were made, determine whether the entity met the requirements for separately identifying to each subrecipient, and documenting at the time of the subaward and disbursement of funds, the Federal award number, CFDA number, and the amount of ARRA funds; and required their subrecipients to provide appropriate identification in their SEFA and SF-SAC.

Suggested Audit Procedure – Test a sample of subawards and verify that the entity separately identified to each subrecipient, and documented at the time of the subaward and disbursement of funds, the Federal award number, CFDA number, and the amount of ARRA funds; and required their subrecipients to provide appropriate identification in their SEFA and SF-SAC.

PART 4 – AGENCY PROGRAM REQUIREMENTS

INTRODUCTION

For each Federal program (except R&D and SFA) included in this Supplement, Part 4 provides I, "Program Objectives," and II, "Program Procedures." Also, Part 4 provides information about compliance requirements specific to a program in III, "Compliance Requirements." Finally, Part 4 also provides IV, "Other Information," when there is other useful information pertaining to the program that does not fit in sections I – III. For example, when a program allows funds to be transferred to another program, section IV will provide guidance on how those funds should be treated on the Schedule of Expenditures of Federal Awards and in Type A program determinations.

When any of five types of compliance requirements (A, "Activities Allowed or Unallowed," E, "Eligibility," G, "Matching, Level of Effort, Earmarking," L, "Reporting," and N, "Special Tests and Provisions") are applicable to a program included in this Supplement, Part 4 will always provide information specific to the program (unless the Special Tests and Provisions pertain only to the cross-cutting aspects of the American Recovery and Reinvestment Act [ARRA]). The auditor should look to Part 3 for a general description of the compliance requirements, audit objectives, and suggested audit procedures and to Part 4 for information about the specific requirements for a program. An exception is that for N, "Special Tests and Provisions;" Part 3 only includes audit objectives and suggested audit procedures for internal control and the cross-cutting provisions of ARRA; all other information is included in Part 4.

The other nine types of compliance requirements generally are not specific to a program and, therefore, are usually not listed in Part 4. However, when one of these other nine types of compliance requirements have information specific to a program, this specific information will be provided with the program in Part 4.

When a requirement is marked as "Not Applicable," it means either that there are no compliance requirements or the auditor is not required to test compliance.

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements. The descriptions of the compliance requirements in Parts 3 and 4 are generally a summary of the actual compliance requirements. The auditor should refer to the referenced citations (e.g., laws and regulations) for the complete compliance requirements.

For R&D and SFA programs, Part 5 is the equivalent of Part 4; therefore the auditor will need to consider Parts 2, 3, and 5 in developing the audit program for these programs (program clusters).

UNITED STATES DEPARTMENT OF AGRICULTURE

None FOOD FOR PROGRESS PROGRAM
None SECTION 416(b) PROGRAM

I. PROGRAM OBJECTIVES

The U.S. Department of Agriculture (USDA) donates agricultural commodities for use in carrying out assistance programs in developing countries and friendly countries. Such countries are often emerging democracies that have made a commitment to introduce or expand private enterprise elements into the agricultural sectors of their economies.

II. PROGRAM PROCEDURES

General Overview

The Food for Progress Program and the Section 416(b) Program (Foreign Food Aid Donation Programs) are Commodity Credit Corporation (CCC) programs. CCC implements these programs through personnel of the Foreign Agricultural Service (FAS) and Farm Service Agency (FSA). The CCC, a wholly-owned government corporation within the USDA, may acquire agricultural commodities under various surplus removal and agricultural price support programs and make them available for various domestic and foreign food assistance programs. Under the Food for Progress Act of 1985, CCC may purchase commodities from the market for donation overseas.

Recipients under the Foreign Food Aid Donation Programs are known collectively as Cooperating Sponsors. The CCC makes commodities available to the Cooperating Sponsors for use in the operation of charitable and economic development activities in eligible foreign countries. Cooperating Sponsors may be foreign governments or private entities including non-profit organizations located in the United States but operating programs overseas which are registered with the United States Agency for International Development (7 CFR section 1499.3).

The two programs have different criteria for determining what qualifies as an eligible foreign country.

> *Food for Progress Program* – Commodities made available under this program, regardless of funding source, must be donated for use in developing countries and emerging democracies that have made commitments to introduce or expand free enterprise elements in their agricultural economies. Within these constraints, USDA gives priority consideration to proposals for countries that:
>
> - Have economic and social indicators that demonstrate the need for assistance, including indicators related to income, undernourishment, movement toward freedom, and food imports; or

- Are in transition, either politically or economically, including countries that show potential toward strong private sector growth and development or that are recovering from conflict.

Section 416(b) Program – Section 416(b) of the Agricultural Act of 1949 authorizes the donation of CCC-owned commodities in excess of domestic program requirements to carry out food assistance programs in developing and friendly countries.

Program Operation

General

A Cooperating Sponsor must file a Plan of Operation with the CCC under the Section 416(b) Program. The CCC is also authorized to require such a plan under the Food for Progress Program (7 CFR section 1499.5). This Plan of Operation becomes part of an agreement between the CCC and the Cooperating Sponsor. The plan or agreement stipulates, among other things, the nature of the project the sponsor proposes to operate, the country in which such operations will take place, the types and quantities of commodities needed, the purpose for which the commodities will be used, and the use of either direct distribution or monetization of commodities. The Cooperating Sponsor is responsible for fulfilling the reporting requirements concerning logistics, monetization, and quarterly financial reports.

Direct Distribution

A direct distribution by the Cooperating Sponsor involves the distribution of donated commodities directly to individuals or charitable institutions in the host country referred to as Recipient Agencies (e.g., hospitals, schools, kindergartens, orphanages, homes for the elderly). These Recipient Agencies then use the commodities in serving their clientele.

Recipient Agencies

A Cooperating Sponsor must enter into an agreement with a Recipient Agency prior to the transfer of any commodities, sales proceeds, or program income to the Recipient Agency. The agreement must require the Recipient Agency to compensate the Cooperating Sponsor for any agricultural commodities or other assets generated by the program that are not used for purposes expressly provided for in the agreement, or that are lost, damaged, or misused as the result of the Recipient Agency's failure to exercise reasonable care.

Monetization

A monetization agreement authorizes the Cooperating Sponsor to sell the commodities in the applicable foreign country and use the sales proceeds to support its programmatic activities in accordance with the signed agreement. To the maximum extent possible, the Cooperating Sponsor is expected to conduct the sale of commodities through the private sector of the host country's economy. A Cooperating Sponsor's agreement with the CCC may also provide for bartering commodities in exchange for goods and services to support program operations.

In addition to commodities, the CCC's agreement with the Cooperating Sponsor may provide the Cooperating Sponsor cash assistance to fund program administrative and operational expenses. Program regulations also authorize cash advances for this purpose. Such cash awards may be made only after approval of a program operating budget submitted by the Cooperating Sponsor.

Source of Governing Requirements

Commodity donations are authorized by the Food for Progress Act of 1985 (7 USC 1736o) (Food for Progress Program) and Section 416(b) of the Agricultural Act of 1949 (7 USC 1431(b)) (Section 416(b) Program). Implementing regulations are found at 7 CFR part 1499.

Availability of Other Program Information

For more information, contact the Director, Food Assistance Division, FAS, USDA at 1250 Maryland Avenue, S.W., Suite 400, Washington, D.C. 20024. Contacts may also be made through: (202) 720-4221 (voice); (202) 690-0251 (fax); or info@fas.usda.gov (E-mail).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Use of Funds*

   The Plan of Operation and agreement set forth the description of the activities for which commodities, monetized proceeds, or program income shall be used.

   Except as approved in advance by CCC, the Cooperating Sponsor shall ordinarily bear all costs incurred subsequent to CCC's delivery of commodities at U.S. ports or intermodal points (7 CFR section 1499.7(d)).

   With prior written approval from CCC, the Cooperating Sponsor may use CCC funds for administrative expenses under the Food for Progress Program. Administrative expenses include expenses incurred for the purchase of goods and services directly related to program administration and monitoring of distribution and monetization operations (7 CFR section 1499.7(b)(3)).

2. *Use of Commodities and Monetization Proceeds*

   A Cooperating Sponsor must use USDA commodities furnished under the Foreign Food Aid Donation Programs, and proceeds from the sale of such commodities if applicable, for purposes expressly provided for in its agreement with the CCC (7 CFR sections 1499.10(a) and 1499.12(d)).

Agreements with Cooperating Sponsors implementing Section 416(b) projects may provide for the use of proceeds from monetization operations to fund administrative expenses (7 USC 1431(b)(7)(F)).

C. Cash Management

1. *Cash Advances From the CCC*

A Cooperating Sponsor may request an advance of up to 85 percent of the amount of an approved program operating budget. Cash advances furnished by the CCC must be deposited in interest bearing accounts. Any interest earned on such advances must be used for the same purposes as the cash advances themselves (7 CFR sections 1499.7(f) and (g)).

2. *Commodity Monetization Proceeds*

A Cooperating Sponsor must deposit all proceeds from the sale of USDA-donated commodities under monetization agreements into interest bearing accounts. Exceptions are permitted where this practice is prohibited by local law or custom of the importing country, or the CCC determines that enforcing the requirement would impose an undue burden on the sponsor (7 CFR section 1499.12(c)).

F. Equipment and Real Property Management

To the extent required by the program agreement, a Cooperating Sponsor must furnish the CCC and FAS with inventory lists of equipment and real property acquired with proceeds from the sale of donated commodities, interest, and other program income (OMB No. 0551-0035). When such assets are no longer needed for program purposes, the sponsor must dispose of them in accordance with 7 CFR section 1499.12(g).

H. Period of Availability of Federal Funds

Any portion of a cash advance not obligated by the Cooperating Sponsor within 180 days of receipt, and any related interest, must be refunded to the CCC within 30 days after the Cooperating Sponsor's obligational authority over the funds has expired (7 CFR section 1499.7(h)).

CCC will not pay any cost incurred by the Cooperating Sponsor prior to the date of the program agreement (7 CFR section 1499.7(c)).

I. Procurement and Suspension and Debarment

A Cooperating Sponsor must follow commercially reasonable practices in procuring goods and services and when engaging in construction activity in accordance with its agreement with the CCC (7 CFR section 1499.12(f)).

J. Program Income

Program income includes interest on sale proceeds and money received by the Cooperating Sponsor, other than monetization proceeds, as a result of carrying out approved activities (7 CFR section 1499.1). A Cooperating Sponsor must use program income for program purposes identified in its agreement with the CCC (7 CFR section 1499.5).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271 – *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272 – *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. *Financial Statement (OMB No. 0551-0035)* – Any Cooperating Sponsor that receives an advance of CCC funds must file quarterly financial statements with the CCC.

Key Line Items:

(1) Cash on hand at beginning of the quarter.

(2) CCC advances received during the quarter.

(3) Interest earned during the quarter.

(4) Expenditures for administrative and Internal Transportation, Storage, and Handling (ITSH) costs during the quarter. Both categories of cost must be subdivided into sub-categories identified in instructions issued by the FAS.

(5) Cash on hand at the end of the quarter.

2. Performance Reporting

a. CCC Form 620, *Logistics Report (OMB No. 0551-0035)* – A Cooperating Sponsor must submit this report to the FAS semiannually for each agreement. If commodities are distributed directly, the sponsor must continue submitting reports until all commodities made available under the

agreement have been distributed. In the following detail, quantities of commodities are reported in terms of net metric tons (NMT) unless otherwise specified (7 CFR section 1499.16(c)(1)).

Key Line Items – The following line items contain critical information:

(1) *Commodity Delivery Table* – The following data relating to **shipping** of each commodity provided for in the agreement:

(a) *Amount received at port*.

(b) *Ocean losses/damages*.

(c) *Amount received at warehouse*.

(d) *Inland loses/damages*.

(2) *Freight Charges* – The dollar amount of claims for a reduction or recovery of freight charges in both local currency and U.S. dollar equivalents. Claims generated by the ocean and inland portions of the shipment should be separately identified.

(3) *Warehouse Losses* – The following data relating to **storage** of each commodity provided for in the agreement:

(a) *Warehouse losses/damages*.

(b) *Balance available for distribution*.

(4) *Direct Distribution* – The following data relating to **direct distribution** of each commodity provided for in the agreement:

(a) *Amount distributed*.

(b) *Distribution losses/damages*.

(c) *Type of institution reached and number of institutions reached*.

(d) *Number of benefiting individuals*.

(5) *Warehouse Inventory Status* – The warehouse inventory status of each commodity provided for in the agreement: beginning inventory, total received in warehouse, total dispatched from warehouse, warehouse losses, and ending inventory.

b. CCC Form 621, *Monetization Report (OMB No. 0551-0035)* – A Cooperating Sponsor must submit this report to the FAS semiannually for each agreement that provides for monetization of the commodities. Reports are required until all the commodities have been sold and the proceeds disbursed for authorized purposes. If a monetization project involves a revolving loan program, current FAS policy requires the Cooperating Sponsor to submit reports only through repayment of the first loan cycle.

Methods a Cooperating Sponsor may use to determine prevailing local market prices for monetization purposes include, but are not limited to, soliciting sealed bids, using public auctions, involving commodity exchanges, or obtaining written statements from the agricultural attache or minister for foreign agricultural affairs in the host country. The FAS home page on the Internet provides agricultural attache contact information. (http://www.fas.usda.gov/scriptsw/fasfield/ovs_directory_search.asp.asp)

Key Line Items – The following line items contain critical information:

Part I – *Sales*:

For each commodity provided for in the agreement: the amount sold, the price per MT (metric ton), exchange rate, proceeds generated in LC (local currency), and proceeds generated in USD (U.S. dollar equivalent).

Part II – *Barter*:

For each commodity used in barter exchanges: the type and amount bartered, the commodity/service received, and the domestic price on transaction date for commodity bartered and commodity/service received.

Part III – *Deposits to Special Funds Account*:

The following classes of funds deposited, both in local currency and in the equivalent number of U.S. dollars: sales of commodities, interest, other program income.

Part IV – *Disbursements from Special Funds Account*:

The amount of each disbursement, in both local currency and U.S. dollars, and a brief statement of the use of funds.

Part V – *Balance of Special Funds Accounts*:

Beginning and ending balances of special fund accounts, both in local currency and in U.S. dollars.

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

1. Recipient Agencies

Compliance Requirement – The Plan of Operation is required to describe the Recipient Agencies that will be involved in the program and a description of each Recipient Agency's capability to perform its responsibilities (7 CFR section 1499.5(a)(3)). A Recipient Agency is defined as an entity located in the foreign country that receives commodities or commodity sale proceeds from a Cooperating Sponsor for the purpose of implementing activities (7 CFR section 1499.1).

The Cooperating Sponsor must enter into a written agreement with a Recipient Agency before transferring USDA commodities, monetization proceeds, or other program income to that entity. Such an agreement must require the Recipient Agency to pay to the Cooperating Sponsor the value of any commodities provided by USDA, sales proceeds, or other program income not used for purposes expressly permitted under the Cooperating Sponsor's own agreement with the CCC; or that are lost, damaged, or misused as the result of the Recipient Agency's failure to exercise reasonable care (7 CFR section 1499.11(a)).

The Cooperating Sponsor must ensure that the activities of any Recipient Agency that receives $25,000 or more in commodities or commodity sales proceeds are subjected to on-site inspection. The Cooperating Sponsor may meet this requirement by relying upon independent audits of the Recipient Agencies or by conducting its own on-site reviews (7 CFR section 1499.17).

Audit Objective – Determine whether (1) the Cooperating Sponsor entered into written agreements with the Recipient Agencies, (2) the use of the Recipient Agencies was consistent with the Plan of Operation, and (3) the Cooperating Sponsor monitored the activities of Recipient Agencies to ensure proper performance of assigned activities and use of commodities, monetized proceeds, and program income.

Suggested Audit Procedures

Select a sample of Recipient Agencies and ascertain if:

a. The Cooperating Sponsor entered into a written agreement with the Recipient Agency.

b. The Cooperating Sponsor's use of the Recipient Agency was consistent with the Plan of Operation.

c. The Cooperating Sponsor appropriately monitored the activities of the Recipient Agency to ensure proper performance of assigned activities and use of commodities, monetized proceeds, and program income.

UNITED STATES DEPARTMENT OF AGRICULTURE

CFDA 10.500 COOPERATIVE EXTENSION SERVICE

I. PROGRAM OBJECTIVES

The National Institute of Food and Agriculture (NIFA) provides formula grant funds to the 1862 land-grant institutions and the 1890 land-grant institutions for cooperative agricultural extension work which consists of the development of practical applications of research knowledge and practical demonstrations of existing or improved practices or technologies in agriculture, uses of solar energy with respect to agriculture, home economics, and rural energy, and related subjects to persons not attending or resident in colleges.

II. PROGRAM PROCEDURES

The Cooperative State Research, Education, and Extension Service (CSREES) became the NIFA on October 1, 2009, per section 7511(a)(4) of the Food, Conservation, and Energy Act (FCEA) of 2008 (Pub. L. No. 110-246). All authorities of CSREES were transferred to NIFA.

The First Morrill Act of 1862 provided for the establishment of the 1862 land-grant institutions which are located in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the insular areas of American Samoa, Guam, Micronesia, Northern Marianas, and the Virgin Islands. The Second Morrill Act of 1890 provided for the support of the 1890 land-grant institutions, including Tuskegee University and West Virginia State University, which are located in 16 States.

The 1862 land-grant institutions receive formula grant funds for cooperative extension work under sections 3(b) and (c) of the Smith-Lever Act (7 USC 343(b) and (c)) and the 1890 land-grant institutions, including Tuskegee University and West Virginia State University, receive formula grant funds for cooperative extension work under section 1444 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA). The only exception is the District of Columbia, which receives extension funds under the District of Columbia Public Postsecondary Education Reorganization Act, Pub. L. No. 93-471, as opposed to sections 3(b) and (c) of the Smith-Lever Act.

Funds are allocated to the land-grant institutions based on specified formulas, and these funds are made available to the land-grant institutions at the beginning of each quarter. During Fiscal Year 2010, NIFA transitioned to the U.S. Department of the Treasury's Automated Standard Application for Payments (ASAP) for all of its Federal assistance awards. Most FY 2009 and prior-year formula grant awards will continue to be disbursed via the Department of Health and Human Services' Payment Management System (DHHS-PMS) until the transition is complete. These formulas are based on the farm and rural populations of each state and include an equal portion distributed to all eligible institutions. These funds support the activities commonly referred to as "base programs."

Formula funds are also provided to the 1862 and 1890 land-grant institutions under section 3(d) of the Smith-Lever Act for the Expanded Food and Nutrition Education Program (EFNEP), which is authorized under section 1425 of NARETPA. These funds are made available to the 1862 and 1890 land-grant institutions in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the insular areas of American Samoa, Guam, Micronesia, Northern Marianas, and the Virgin Islands. To enable low-income individuals and families to engage in nutritionally sound food purchasing and preparation practices, the expanded food and nutrition education program provides for employment and training of professional and paraprofessional aides to engage in direct nutrition education of low-income families and in other appropriate nutrition education programs. To the maximum extent practicable, program aides are hired from the indigenous target population. Section 7403 of the FCEA amended section 3(d) of the Smith-Lever Act to provide 1890 institutions and the 1862 institution in the District of Columbia full eligibility to receive funds authorized under section 3(d) of the Smith-Lever Act (7 USC 343(d)), including EFNEP funds.

The 1862 and the 1890 land-grant institutions were required to submit a 5-Year Plan of Work which describes the extension programs that they intend to administer (7 USC 344 and 3221). Final Revised Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds (Guidelines) were published in the *Federal Register* on January 25, 2006, 71 FR 4101-4112.

Source of Governing Requirements

The laws governing this program are codified at 7 USC 301-349, 3221, 3222, 3222d, and 3319.

Availability of Other Program Information

Additional program information is available from the NIFA website on the Internet at http://www.nifa.usda.gov.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Formula grant funds may be spent only for the furtherance of cooperative extension work and according to the 5-Year Plan of Work approved by NIFA (7 USC 344 and 3221(d)). This 5-Year Plan of Work may be integrated with the research component of the land-grant institution which is funded under the Hatch Act, and/or the 5-Year Plan of Work may be a joint plan between an 1862 land-grant institution and an 1890 land-grant institution if they are both located in the same State (See Section II.A.1, of the Guidelines, 71 FR 4108).

2. No portion of Smith-Lever Act funds and section 1444 funds of NARETPA may be applied directly or indirectly "to the purchase, erection, preservation or repair of any building or buildings, or the purchase or rental of land" (7 USC 345 and 3221(e)).

3. No portion of Smith-Lever Act funds and section 1444 funds under NARETPA may be applied directly or indirectly in college course teaching or lectures in college (7 USC 345 and 3221(e)).

B. Allowable Costs/Cost Principles

1. *Indirect Costs* – No indirect costs or tuition remission may be charged against the formula grant funds authorized under the Smith-Lever Act or under section 1444 of NARETPA (7 USC 3319).

2. *Retirement Contributions* – Retirement and pension contributions paid from grant funds for individuals whose salaries are paid in whole or in part with grant funds are capped at 5 percent. The deposits and contributions of Federal origin must be at least equaled by the grantee (7 USC 331).

G. Matching, Level of Effort, Earmarking

1. Matching

a. *1862 Land-Grant Institutions in the 50 States* – All formula funds provided to the 1862 land-grant institutions in the 50 States under sections 3(b) and (c) of the Smith-Lever Act must be 100 percent matched. In-kind contributions are not allowed as match for formula funds authorized under sections 3(b) and (c) of the Smith-Lever Act (7 USC 343(e)). Funds provided under section 3(d) of the Smith-Lever Act (7 USC 343(d)) for the expanded food and nutrition education program (EFNEP) do not require any matching contributions (7 USC 3175).

b. *1862 Land-Grant Institution in the District of Columbia* – There is no matching requirement for funds awarded to the 1862 land-grant institution in the District of Columbia. The District of Columbia Public Postsecondary Education Reorganization Act, Pub. L. No. 93-471, was amended by Section 7417 of FCEA to eliminate this matching requirement effective October 1, 2008 (Section 208 of Pub. L. No. 93-471, as amended). Funds provided under section 3(d) of the Smith-Lever Act (7 USC 343(d)) for EFNEP do not require any matching contributions (7 USC 3175).

c. *1862 Land-Grant Institutions in the Commonwealth of Puerto Rico and the insular areas of American Samoa, Guam, Micronesia, Northern Marianas, and the Virgin Islands* – The Commonwealth of Puerto Rico and the insular areas must meet a 50 percent matching requirement of the

Federal formula funds beginning in FY 2003 (7 USC 343(e)(4) and 7 USC 301 (note)). The Secretary of Agriculture may waive the matching funds requirement for any fiscal year if the Secretary determines that the government of the insular area will be unlikely to meet the matching requirement for the fiscal year (7 USC 343(e)(4)). "Matching funds" means cash contributions and excludes in-kind matching contributions. Matching funds must be used to support research and extension activities as identified in the approved 5-Year Plan of Work (7 USC 343(e); 7 CFR part 3419).

d. *1890 Land-Grant Institutions, including Tuskegee University* and West Virginia State University – In FY 2003, the matching requirement is 60 percent; in FY 2004, 70 percent; in FY 2005, 80 percent; in FY 2006, 90 percent; and in FY 2007 and thereafter, 100 percent. These land-grant institutions may apply for a waiver of the matching funds requirement in excess of 50 percent for any fiscal year. "Matching funds" means cash contributions and excludes in-kind matching contributions. Matching funds must be used to support research and extension activities as identified in the approved 5-Year Plan of Work or for approved qualifying educational activities. Matching funds must be available in the same Federal fiscal year as the Federal funds. 1890 Land-Grant Institutions, including Tuskegee University and West Virginia State University, may carryover matching funds from one fiscal year to the following fiscal year (7 USC 3222d and 7 CFR part 3419). Funds provided under section 3(d) of the Smith-Lever Act (7 USC 343(d)) for EFNEP do not require any matching contributions (7 USC 3175).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

Smith-Lever Act formula funds distributed to the 1862 land-grant institutions may be carried forward five years from the year allocated. For Section 1444 of NARETPA funds allocated to the 1890 land-grant institutions, including Tuskegee University and West Virginia State University, no more than 20 percent of the funds received in any fiscal year may be carried forward to the succeeding fiscal year (7 USC 3221(a)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

UNITED STATES DEPARTMENT OF AGRICULTURE

CFDA 10.551 SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)
CFDA 10.561 STATE ADMINISTRATIVE MATCHING GRANTS FOR THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

I. PROGRAM OBJECTIVES

The objective of SNAP is to help low-income households buy the food they need for good health.

II. PROGRAM PROCEDURES

Administration

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) administers SNAP in cooperation with State and local governments.

State human services agencies (or county human services agencies under the oversight of the State government) certify eligibility and provide benefits to households. They also provide nutrition education. FNS provides funding for State administration and benefits, and oversees the operation of State agencies to ensure compliance with Federal laws and regulations. In addition, FNS is solely responsible for authorizing and monitoring retail stores that accept SNAP benefits in exchange for food.

Federal Funding of Benefits and State Administrative Costs

The Federal Government pays 100 percent of the value of SNAP benefits and generally reimburses States for 50 percent of their costs to administer the program, except for those functions listed in III G.1., Matching. SNAP's authorizing statute places no cap on the amount of funds available to reimburse States at the 50 percent rate for allowable administrative expenses. No reimbursement is allowed for State expenditures for activities undertaken as a condition of settlement of quality control claims against the State for low payment accuracy.

Certification

Eligibility for SNAP is based primarily on income and resources. Although there are a number of available State design options that can affect benefits for recipients, a key feature of the program is its status as an entitlement program with standardized eligibility and benefits.

Assessing Need

Households generally cannot exceed a gross income eligibility standard set at 130 percent of the Federal poverty standard. Households also cannot exceed a net income standard, which is set at 100 percent of the Federal poverty standard. The net income standard allows specified deductions from gross income, e.g., a standard deduction and deductions for medical expenses (elderly and disabled only), excess shelter costs, and work expenses. Non-financial eligibility criteria include: age, school status, citizenship/legal immigration status, residency, household

composition, work requirements, and disability status. Some non-citizens are ineligible to participate in the program. Able-bodied adults without dependents are subject to a time limit for receiving benefits if certain requirements are not met.

As of October 1, 2010, a total of 40 States have adopted the policy known as broad based categorical eligibility (BBCE). This policy allows a State to base SNAP eligibility determinations on households' receipts of Temporary Assistance for Needy Families (TANF)-funded non-cash benefits or services (CFDA 93.558). Depending on the eligibility criteria of the TANF program used to confer SNAP categorical eligibility, the BBCE may enable a State: to use a higher threshold (200 percent of the poverty level) when applying the gross income test; to eliminate the asset test altogether; or to eliminate all non-financial eligibility criteria except citizenship/legal immigration status.

Application Process for SNAP Benefits

The application process for SNAP benefits includes the completion and filing of an application form, an interview, and the verification of certain information. In addition to using information supplied by the applicants, State or county agencies use data from other agencies, such as the Social Security Administration, the Internal Revenue Service, and the State employment security agency, to verify the household's identity, income, resources, and other eligibility criteria.

Benefits

Benefit amounts vary with household size and income. As required by law, allotments for various household sizes are revised October 1 of each year to reflect the cost of the Thrifty Food Plan, a model plan for a low-cost nutritious diet that is developed and costed by USDA. **The American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5, provided increased SNAP benefits, which households began receiving April 1, 2009.**

The benefits each household receives are used to purchase food at authorized retail stores. States issue benefits in the form of debit cards, which recipients can use to purchase food. This is known as electronic benefits transfer (EBT). Welfare reform legislation required all States to use EBT by 2002, and all States have achieved full compliance.

Benefit Redemption

Generally, households must use program benefits to purchase foods for preparation and consumption at home. There are, however, a very few exceptions to this general policy. For example, there are provisions for homeless persons to use program benefits in authorized restaurants and for residents of some small institutional settings to participate in the program.

The State's EBT contractor is responsible for settlement, or payment, to retailers that have accepted EBT cards for food purchases. The contractor's "concentrator bank" makes the payment through the National Automated Clearing House (ACH) system. The concentrator bank is reimbursed for the payments by a draw made on the State's EBT benefit account with the U.S. Treasury. States usually authorize their EBT contractors to make these draws, although some States draw the cash and pay the concentrator banks themselves. The State is responsible for

reconciling the payments made to retailers by its EBT contractor with the amounts drawn from its EBT account with the U.S. Treasury.

States must obtain an examination by an independent auditor of the State EBT service provider (service organization) regarding the issuance, redemption, and settlement of benefits under SNAP in accordance with the American Institute of Certified Public Accountants (AICPA) Statement on Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization. Appendix VIII to this Supplement provides additional guidance on these examinations.

In performing audits under OMB Circular A-133 of SNAP, an auditor may use these SSAE No. 16 reports to gain an understanding of internal controls and obtain evidence about the operating effectiveness of controls.

State Responsibilities

A State administering SNAP must sign a Federal/State Agreement that commits it to observe applicable laws and regulations in carrying out the program. Although legislation provides a measure of administrative flexibility, the authorizing legislation remains highly prescriptive. Both the law and regulations prescribe detailed requirements for: (1) meeting program goals, such as providing timely service and rights to appeal; and (2) ensuring program integrity, such as verifying eligibility, establishing and collecting claims for benefit overpayments, and prosecuting fraud.

To ensure that States operate in compliance with the law, program regulations and their own Plans of Operation, each State is required to have a system for monitoring and improving its administration of SNAP, particularly the accuracy of eligibility and benefit determinations. This performance monitoring system includes management evaluation reviews, quality control reviews, and reporting to FNS on program performance. State agencies shall conduct management evaluation reviews once every year for large project areas, once every two years for medium project areas, and once every three years for small project areas, unless an alternative schedule is approved by FNS. Projects are classified as large, medium, or small based on State determinations. The State must also ensure corrective action in response to the detection of program deficiencies.

Federal Oversight and Compliance Mechanisms

FNS oversees State operations through an organization consisting of headquarters and seven regional offices. In addition, about 60 field offices are often involved in State agency oversight.

FNS program oversight includes budget review and approval, reviews of financial and program reports and State management review reports, and on-site FNS reviews. Each year FNS headquarters conveys to its regions the concerns that were elevated to the national level through audits or other mechanisms. Regions combine this with their knowledge of individual States to inform the States of possible vulnerabilities to include in their internal management reviews and corrective action plans.

Although FNS uses technical assistance extensively to promote improvements in State operation of the program, reward and enforcement mechanisms are also available. FNS awards performance bonuses related to payment accuracy, benefit denial decisions, program access, and timely processing of applications. FNS also assesses penalties related to payment accuracy. FNS has other mechanisms to recover losses and the cost of negligence. For other forms of noncompliance, FNS has the authority to give notice and, if improvements do not occur, withhold administrative funds from States for failure to implement program requirements.

USDA's Office of Inspector General (OIG) has primary responsibility for investigating authorized retailers, but the OIG has delegated most such authority to FNS. Consequently, FNS makes most of the investigations of retailers. The Retailer Investigations Branch of the FNS SNAP Benefit Redemption Division conducts undercover investigations. FNS also uses EBT transaction data to identify retailers who engage in trafficking. SNAP legislation and regulations provide for sanctions against such retailers, which may be temporary or permanent depending on the severity of the violations. In certain circumstances, monetary penalties may be imposed.

Certification Quality Control System

SNAP maintains an extensive quality control system required by law and regulation. The system provides State and national measures of the accuracy of eligibility and benefit amount determination (often referred to as payment accuracy), both underpayment and overpayment, and of the correctness of decisions to deny, terminate, or (beginning in fiscal year 2001) suspend benefits.

Measurement

States are required to: select a statistically valid sample of cases, both active (currently receiving benefits) and negative (benefits denied); review the active cases for eligibility and benefit amount; and review the negative cases for the correctness of the decision to deny benefits. Review methods in this sample are generally more intensive than those used in determining eligibility. States submit findings of all sampled cases, including incomplete and not-subject-to-review cases, to an automated database maintained by the Federal Government. State quality control data allow a State to be aware on an ongoing basis of its level of accuracy, and allow for the identification of trends and appropriate corrective action.

The applicable FNS regional office reviews each State's sampling plan annually and re-reviews a statistically valid subsample of the State quality control reviews. The FNS re-review process provides feedback to each State on its quality control system. FNS uses the State's sample and the FNS subsample in a regression formula (described in regulation) to determine payment error rates and negative case error rates. By law, the payment error rate is the combined value of overpayments and under payments to participating households. The FNS national office also reviews its regional operations and provides technical assistance to assure consistency in the national quality control system.

Corrective Action and Penalties

There is a specific legislative requirement for corrective action by any State with a payment error rate above 6 percent. Program regulations require corrective action for any negative case error rate that exceeds one percent. FNS maintains an extensive system of technical assistance for States as they develop and implement corrective action. FNS also monitors the implementation of corrective action plans. States with persistently high error rates are assessed fiscal liabilities based on the amount of benefits issued in error.

Implications of Quality Control for the Compliance Supplement

The SNAP Quality Control system uses an intensive State review of a sample of active cases across the United States to measure the accuracy of SNAP eligibility determinations and benefit amounts. An FNS re-review of a subset of those cases follows. These samples are statistically valid at the State and national level. Information from Federal program oversight indicates that this sampling system is operating adequately to provide assurances that FNS is measuring the accuracy of eligibility decisions and that these data provide a basis for corrective action to improve the accuracy of eligibility decisions. Therefore, the Quality Control System sufficiently tests individual eligibility in SNAP.

However, in those situations where computer systems are integral to the operation of the program, e.g., automated eligibility determination, the auditor should perform tests as deemed necessary to obtain assurance of the integrity of these systems. In those instances where multiple programs share the same systems, e.g., automated intake systems for Temporary Assistance for Needy Families (TANF), SNAP, Medicaid, etc., testing may be done as part of the work on multiple programs.

Source of Governing Requirements

SNAP is authorized by the Food and Nutrition Act of 2008 (7 USC 2011 *et seq.*), which replaced the Food Stamp Act of 1977, as amended. This description of SNAP procedures incorporates provisions of the following amendments to the Act: the Food, Conservation, and Energy Act of 2008 (Pub. L. No. 110-246, 122 Stat. 923, enacted June 18, 2008); **and ARRA, 123 Stat. 120).** SNAP regulations are found in 7 CFR parts 271 through 285.

Availability of Other Program Information

Additional program information is available from FNS's SNAP site on the Internet at http://www.fns.usda.gov/snap.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Note: Generally, E, "Eligibility," G.1, "Matching," I, "Procurement and Suspension and Debarment" (with respect to procurement), and N, "Special Tests and Provisions" apply only to State governments. However, when States have delegated to the local governments functions normally performed by the State as administering agency, e.g., eligibility determination, issuance of SNAP, etc., the related compliance requirements will apply to the local government.

A. Activities Allowed or Unallowed

Funds made available for administrative costs must be used to screen and certify applicants for program benefits, issue benefits to eligible households, conduct fraud investigations and prosecutions, provide fair hearings to households for which benefits have been denied or terminated, conduct nutrition education activities, prepare financial and special reports, operate automated data processing (ADP) systems, monitor subrecipients (where applicable), and otherwise administer the program. Portions of the award made available for specific purposes, such as ADP systems development or Employment and Training activities, must be used for such purposes (7 CFR part 277).

E. Eligibility

1. Eligibility for Individuals

The auditor is not required to test eligibility because detail testing of the individual case files is performed by the quality control unit and reviewed by FNS and the automated system supporting eligibility determinations and processing and tracking food stamp issuances is tested under III.N.1, "Special Tests and Provisions – ADP System for SNAP."

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching

The State is required to pay 50 percent of the costs of administering the program. Exceptions to this 50 percent reimbursement rate include 100 percent grants to:

a. Administer the Employment and Training component of the program (7 CFR section 277.4(b)); and

b. Provide nutrition education and obesity prevention services, beginning October 1, 2010 (7 USC 2036a, Section 241 of Pub. L. No. 111-296, 124 Stat. 3183, December 13, 2010).

There is no matching requirement for ARRA funding of a State's SNAP administrative costs (Section 101(c) of ARRA, 123 Stat. 120).

The Federal reimbursement will decrease and the State share of administrative costs will increase by an amount equal to certain common certification costs grandfathered into the States' TANF grant levels but attributable to SNAP (7 USC 2025(k)). The amount of each State's downward adjustment was determined by the Department of Health and Human Services, and the States were notified by letter.

Costs of payment error rate reduction activities conducted under reinvestment agreements with FNS are not eligible for any level of Federal reimbursement. Private in-kind contributions are not allowable to count toward the State's share of the program's administrative cost (7 CFR sections 277.4(c) and 275.23(e)(10)).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

ARRA funds are available for obligation by State agencies until September 30, 2010 (Section 1603 of ARRA).

I. Procurement and Suspension and Debarment

1. *ADP Systems Development* – For competitive acquisitions of ADP equipment and services costing $5 million or more (combined Federal and State shares), the State must submit an Advanced Planning Document (APD) for the costs to be approved and allowable as charges to FNS. This threshold is for the total project cost. In addition, noncompetitive acquisitions of $1 million or more require an APD. Contracts resulting from noncompetitive procurements of more than $1 million and contracts for EBT systems, regardless of cost, also must be provided to FNS for review (7 CFR section 277.18).

2. *Procurement* – Regardless of whether the State elects to follow State or Federal rules in accordance with the A-102 Common Rule, the following requirements must be followed for procurements initiated on or after October 1, 2000:

   a. A State or local government shall not award a contract to a firm it used to orchestrate the procurement leading to that contract. Examples of services that would disqualify a firm from receiving the contract include preparing the specifications, drafting the solicitation, formulating contract terms and conditions, etc. (7 CFR section 3016.60(b)).

b. A State or local government shall not apply in-State or local geographical preference, whether statutorily or administratively prescribed, in awarding contracts (7 CFR section 3016.60(c)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

The ARRA and implementing guidance issued by OMB (2 CFR section 176.210(b)) require States to distinguish ARRA funds from regular funds appropriated for the same programs, and to maintain this distinction throughout the grant cycle. To accomplish this, FNS has instructed States to submit separate, parallel Financial Status Reports on SNAP administrative costs supported by regular and ARRA funds.

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting

Note: The requirement for State agencies to automate their SNAPs includes automation of reporting requirements (7 CFR section 272.10(b)(2)(vi)). The testing to ensure accuracy and completeness of the following reports should be coordinated with the testing of the ADP System for SNAP (see III.N.1 – "Special Tests and Provisions – ADP Systems for SNAP").

a. FNS-46 – *SNAP Issuance Reconciliation Report (OMB No. 0584-0080).* This monthly report is used to account for benefits issued during a report month for each issuance reconciliation point. The FNS-46 reports the reconciliation of SNAP benefits actually issued with the State's (or county's in county-run operations) Master Issuance File. The Master Issuance File contains records on all households eligible to receive benefits (such as a listing of the households and the benefits each is authorized to receive). Actual issuances may be recorded in the Record for Issuance (RFI) or alternative filing system. The RFI is created from the Master Issuance File and shows the amount of benefits the household is

eligible to receive and the actual amount issued. Generally, one FNS-46 covers the entire State. However, if a State concurrently operates more than one type of issuance system (e.g., over-the-counter issuance, mail issuance, etc.), its FNS-46 report(s) must separately identify the amount of benefits issued under each system.

Key Line Items – The following line items contain critical information:

(1) Line 6 – *Total Issuance this month*

(2) Line 7 – *Returns during current month*

(3) Line 9 – *Value of authorized replacements(s) transacted*

b. FNS-209 – *Status of Claims Against Households (OMB No. 0584-0069).* If a household receives more SNAP benefits than it is entitled to receive, the State must establish a claim against that household and demand repayment (7 CFR section 273.18 (a)). The State is required to create and maintain a system of records for monitoring these claims against households. These State systems generate the data entered on the FNS-209 report. The minimum requirements for such systems are listed at 7 CFR section 273.18(m). The State is permitted to retain a portion of the collected repayments: 35 percent of the recovered funds from claims involving fraud or other intentional program violations; 35 percent of the funds recovered from claims generated by inadvertent household errors, collected by reducing a person's unemployment compensation benefits; and 20 percent of the recovered funds from inadvertent household error claims collected by other means. No portion of funds recovered from agency-error overpayments may be retained (7 CFR section 273.18(k)).

Key Line Items – The following line items contain critical information:

(1) Line 3a *Beginning Balance* and line 13 *Ending Balance* – represent the beginning and ending balances, respectively, of the claims. Columns A, B, and C represent the number and amount of claims by claim type (i.e., intentional program violation, inadvertent household error, and State agency administrative error). The aggregate value of claims activity from the subunits should equal the State totals. The beginning and ending balances should represent the total of individual claims that comprise these balances.

(2) Line 14 *Cash, Check, and M.O.* – represents total claims payments made in the form of cash, checks, or money orders.

(3) Line 15 *SNAP* – represents all payments in the form of EBT benefit returns.

(4) Line 16 *Recoupment* – represents the value of collections made through allotment reductions.

(5) Line 17 *Offset* – represents the total value of collections made by offsetting restored benefits against outstanding claim balances.

(6) Line 18b *Cash Adj*.(+ or -) – represents amendments or corrections to the collection summary of a previous report.

(7) Line 18c *Non-Cash Adj*. (+ or -) – represents amendments or corrections to the collection summary of a previous report relative to the return of SNAP, recoupment, or offsetting transactions.

(8) Line 19 *Transfers* (+ or -) – represents the claims that were contained in the collection summary of a previous report and which are being transferred from one claim category to another claim category.

(9) Line 20a *Cash Refunds* – represents the value of cash refunds provided to households that overpaid claims.

(10) Line 20b *Non-Cash Refunds* – represents the value of non-cash refunds provided to households that overpaid claims.

(11) Lines 21 *Total*, and 28 *Total Letter of Credit Adjustments* – represent the Total Collection Summary and the Total Letter of Credit Adjustments. The aggregate value of claims collection activity from the subunits should equal the State totals.

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds in States in which the SNAP is State-supervised but county-administered. County agencies in such States receive subgrants for their SNAP administrative costs.

N. Special Tests and Provisions

1. ADP System for SNAP

Note: See III.E.1, "Eligibility – Eligibility for Individuals," for the reason why the testing of the ADP system for SNAP is under this special test and provision instead of under Eligibility.

Compliance Requirement – State agencies are required to automate their SNAP operations and computerize their systems for obtaining, maintaining, utilizing, and transmitting information concerning SNAP (7 CFR sections 272.10 and 277.18). This

includes: (1) processing and storing all case file information necessary for eligibility determination and benefit calculation, identifying specific elements that affect eligibility, and notifying the certification unit of cases requiring notices of case disposition, adverse action and mass change, and expiration; (2) providing an automatic cutoff of participation for households which have not been recertified at the end of their certification period by reapplying and being determined eligible for a new period (7 CFR sections 272.10(b)(1)(iii) and 273.10(f) and (g)); and (3) generating data necessary to meet Federal issuance and reconciliation reporting requirements.

Audit Objective – Determine whether the State administering agency's ADP system for SNAP is meeting the requirements to: (1) accurately and completely process and store all case file information for eligibility determination and benefit calculation; (2) automatically cut off households at the end of their certification period unless recertified; and, (3) provide data necessary to meet Federal issuance and reconciliation reporting requirements.

Suggested Audit Procedures

Because of the diversity of ADP hardware and software systems, it is not practical for the Compliance Supplement to provide suggested audit procedures to address each system. See Part 3, E.1.a (suggested audit procedures for eligibility for individuals relating to automated systems) in this Supplement for other guidance concerning testing ADP systems. The auditor should test the ADP system to ascertain if the system:

a. Accurately and completely processes and stores all case file information for eligibility determination and benefit calculation.

b. Automatically cuts off households from SNAP at the end of their certification period unless the household is recertified.

c. Provides data necessary to meet Federal issuance and reconciliation reporting requirements. Note: This testing should be coordinated with the testing of III.L.3, "Reporting – Special Reporting."

2. EBT Reconciliation

Compliance Requirement – States that use EBT must have systems in place to reconcile all of the funds entering into, exiting from, and remaining in the system each day with the State's benefit account with Treasury and EBT contractor records. This includes a reconciliation of the State's issuance files of postings to recipient accounts with the EBT contractor. States (generally through the EBT contractor that operates the EBT system) must also have systems in place to reconcile retailer credit activity as reported into the banking system to client transactions maintained by the processor and to the funds drawn down from the EBT benefit account with Treasury. States' EBT system processors should maintain audit trails that document the cycle of client transactions from posting to point-of-sale transactions at retailers through settlement of retailer credits. The financial

and management data that comes from the EBT processor is reconciled by the State to the SNAP issuance files and settlement data to ensure that benefits are authorized by the State and funds have been properly drawn down. States may only draw Federal funds for authorized transactions, i.e., on-line purchases supported by entry of a valid personal identification number (PIN) or purchases using manual vouchers with telephone verification supported by a client signature and an EBT contractor authorization number (7 CFR sections 274.12(a), 274.12(g)(1) and 274.12(j)(1)).

Audit Objective – Determine whether the State reconciles retailer activity to client transactions, to its issuance files of postings to recipient accounts with the EBT contractor, and to postings to and drawdown activity from the State's benefit account with Treasury.

Suggested Audit Procedures

a. Verify that the State has a system in place to reconcile total funds entering into, exiting from, and remaining in the system each day.

b. Select and test a sample of reconciliation(s) to verify that discrepancies are followed up and resolved. This is generally a contractor duty.

c. Verify that the State or its contractor has a system in place to reconcile retailer credits against the information entered into the Automated Clearinghouse network and to the amount of funds drawn down by the State or the State's fiscal agent (the EBT contractor).

d. Ascertain if the State or its contractor has recorded any non-Federal liabilities in the daily EBT reconciliation, i.e., transactions which cannot be charged to the program. If so, verify that the non-Federal liabilities were funded by non-Federal sources (i.e., the State or the contractor).

3. EBT Card Security

Compliance Requirement – The State is required to maintain adequate security over, and documentation/records for, EBT cards (7 CFR section 274.12(h)(3)), to prevent their: theft, embezzlement, loss, damage, destruction, unauthorized transfer, negotiation, or use (7 CFR sections 274.7(b) and 274.11(c)).

Audit Objective – Determine whether the State maintains security over EBT cards.

Suggested Audit Procedures

a. Observe the physical security over EBT cards, and/or other negotiable instruments used in the issuance process.

b. Verify that EBT cards returned from the Postal Service are returned to inventory or destroyed.

4. Quality Control Unit

Compliance Requirement – The State or local government must establish a quality control unit that is independent of program operations (7 CFR section 275.2(b)).

Audit Objective – Determine whether the quality control unit is organizationally independent of program operations.

Suggested Audit Procedures

Ascertain that the quality control unit is organizationally independent of program operations.

IV. OTHER INFORMATION

ARRA made additional funds available for both SNAP benefits and SNAP administrative costs. The ARRA award term at 2 CFR 176.210(b) requires a recipient to separately identify the expenditures for Federal awards under the Recovery Act. Under SNAP, this would require a State to distinguish expenditures of regular SNAP funds from expenditures of ARRA SNAP funds in its Schedule of Expenditures of Federal Awards (SEFA) and in its Single Audit Data Collection Form (SF-SAC). Memoranda issued by FNS on October 23, 2009 and July 23, 2010 have provided the following guidance on how States and counties are to comply with this award term.

Guidance for States

1. Reporting SNAP Benefits (CFDA 10.551)

a. SEFA and SF-SAC

USDA is requiring a State to report its <u>total</u> expenditures for SNAP benefits in the body of the SEFA and in Part III, Item 9 (Federal Awards Expended During the Fiscal Year) of the SF-SAC. This is because the conditions outlined in the Note disclosure, below, preclude a State from disaggregating its total SNAP benefits expenditures into their regular and ARRA components.

b. Note to the SEFA

In addition to the SEFA and SF-SAC entries, USDA is requiring States to include the following statement as a Note to their SEFAs:

> "The reported expenditures for benefits under the Supplemental Nutrition Assistance Program (SNAP) (CFDA No. 10.551) are supported by both regularly appropriated funds and incremental funding made available under section 101 of the American Recovery and Reinvestment Act of 2009. The portion of total expenditures for SNAP benefits that is supported by Recovery Act funds varies according to fluctuations in the cost of the Thrifty Food Plan,

and to changes in participating households' income, deductions, and assets. This condition prevents USDA from obtaining the regular and Recovery Act components of SNAP benefits expenditures through normal program reporting processes. As an alternative, USDA has computed a weighted average percentage to be applied to the national aggregate SNAP benefits provided to households in order to allocate an appropriate portion thereof to Recovery Act funds. This methodology generates valid results at the national aggregate level but not at the individual State level. Therefore, we cannot validly disaggregate the regular and Recovery Act components of our reported expenditures for SNAP benefits. At the national aggregate level, however, Recovery Act funds account for approximately 16.38 percent of USDA's total expenditures for SNAP benefits in the Federal fiscal year ended September 30, 2010."

2. Reporting SNAP Administrative Funds (CFDA 10.561)

A State's SEFA and SF-SAC must separately present the regular and ARRA components of its expenditures for SNAP administrative costs, as follows:

10.561 Supplemental Nutrition Assistance Program (Administrative Costs)

10.561 ARRA – Supplemental Nutrition Assistance Program (Administrative Costs)

Guidance for Counties

1. Reporting SNAP Benefits Generally

A county should not be reporting expenditures for SNAP benefits in its SEFA or in its SF-SAC. This is because SNAP benefits are provided exclusively by EBT. In an EBT environment, there is no pass-through of Federal funds for SNAP benefits. Rather, benefits are processed and expenditures determined by State-level EBT systems. With respect to counties, therefore, SNAP benefits do not meet the definitions of "Federal award" and "Federal financial assistance" set out in OMB Circular A-133, section __.105.

2. Reporting SNAP Administrative Funds Generally and in Relation to ARRA

a. A county in a State where the SNAP is *State-administered* should NOT be reporting expenditures for SNAP administrative costs in its SEFA or SF-SAC. This is because program offices in such States are staffed with State employees, who perform all program functions. No SNAP administrative funds are passed through to counties.

b. A county in a State where the SNAP is *State-supervised but county-administered* is required to report its expenditures for SNAP administrative costs in the same manner as the State, i.e., the county's SEFA and SF-SAC must separately present the regular and ARRA components of its expenditures for SNAP administrative

costs. In these cases, States pass Federal SNAP administrative funds through to the counties for program functions performed by county agencies. This creates Federal assistance relationships in which the counties operate as SNAP subrecipients.

These reporting instructions are available on the FNS SNAP Recovery Act Web Site at http://www.fns.usda.gov/fns/recovery/recovery-snap.htm.

UNITED STATES DEPARTMENT OF AGRICULTURE

CFDA 10.553 SCHOOL BREAKFAST PROGRAM (SBP)
CFDA 10.555 NATIONAL SCHOOL LUNCH PROGRAM (NSLP)
CFDA 10.556 SPECIAL MILK PROGRAM FOR CHILDREN (SMP)
CFDA 10.559 SUMMER FOOD SERVICE PROGRAM FOR CHILDREN (SFSPC)

I. PROGRAM OBJECTIVES

The objectives of the child nutrition cluster programs are to: (1) assist States in administering food services that provide healthful, nutritious meals to eligible children in public and non-profit private schools, residential child care institutions, and summer recreation programs; and (2) encourage the domestic consumption of nutritious agricultural commodities.

II. PROGRAM PROCEDURES

General Overview

At the Federal level, these programs are administered by the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA). FNS generally administers these programs through grants to State agencies. Each State agency, in turn, enters into agreements with subrecipient organizations for local level program operation and the delivery of program benefits and services to eligible children. The types of organizations that receive subgrants under each program are described below under "Program Descriptions." In cases where a State agency is not permitted or is not available to administer the program(s), they are administered directly by FNS regional offices. The regional offices then perform the administrative functions for local program operators that are normally performed by a State agency (7 CFR sections 210.3, 215.3, 220.3, and 225.3). For purposes of this discussion, State agencies and FNS regional offices are referred to collectively as "administering agencies."

Under 7 CFR part 250 (General Regulations and Policies – Food Distribution), USDA makes donated agricultural commodities available for use in the operation of all child nutrition programs except the SMP. FNS enters into agreements with State distributing agencies for the distribution of USDA donated foods. The State distributing agencies, in turn, enter into agreements with local program operators, which are defined collectively as "recipient agencies." A State may designate a recipient agency to perform its storage and distribution duties. A State distributing agency may engage a commercial food processor to use USDA-donated foods in the manufacture of food products, and then deliver such manufactured products to recipient agencies.

Program Descriptions

Common Characteristics

The programs in the Child Nutrition Cluster are all variants of a basic program design having the following characteristics:

a. Local program operators provide prepared meals to children in structured settings. Four types of meal service may be authorized: breakfast, lunch, snacks, and supper. Milk service may be authorized only under the SMP. The types a particular program operator may offer are determined first by the respective program's authorizing statute and regulations, and second by the program operator's agreement with its administering agency.

b. While all children in attendance are entitled to receive these program benefits, children whose households meet stated income eligibility criteria generally receive their meals (or milk, where applicable) free or at a reduced price. With certain exceptions, children not eligible for free or reduced price meals or free milk must pay the full prices set by the program operator for these items. A program meal must be priced as a unit.

   There are two systems of charging for program meals: "pricing" and "nonpricing" programs. In a pricing program, children who do not qualify for free meals pay a separate fee for their meals. The fee may be collected at the point of service; through a separate daily, weekly, or monthly meal charge or meal ticket payment; by earmarking a portion of the child's tuition payment expressly for food service; or through an identifiable reduction from the standard tuition rate for meals provided by parents. In a nonpricing program, no separate identifiable charges are made for meals served to enrolled children. Examples of organizations that often operate nonpricing programs include juvenile detention centers, boarding schools, other residential child-care institutions, and some private schools.

c. Federal assistance to local program operators takes the form of cash reimbursement. In addition, USDA donates food under 7 CFR part 250 for use in preparing meals to be served under the NSLP, SBP, and SFSPC.

d. To obtain cash and donated food assistance, a local program operator must submit monthly claims for reimbursement to its administering agency. All meals (and half-pints of milk under SMP) claimed for reimbursement must meet Federal requirements and be served to eligible children.

e. The program operator's entitlement to reimbursement payments is generally computed by multiplying the number of meals (and/or half-pints of milk under the SMP) served by a prescribed per-unit payment rate (called a "reimbursement rate"). Different reimbursement rates are prescribed for different categories and types of service. "Type" refers to the kind of service (breakfast, lunch, milk, etc.),

while "category" refers to the beneficiary's eligibility (free, reduced price, or paid). Under this formula, a local program operator's entitlement to funding from its administering agency is generally a function of the categories and types of service provided. Therefore, the child nutrition cluster programs are said to be "performance funded."

Characteristics of Individual Programs

The program-specific variants of this basic program model are outlined below.

a. *School Nutrition Programs* (NSLP and SBP) – These programs target children enrolled in schools. For program purposes, a "school" is a public or non-profit private school of high school grade or under, or a public or licensed non-profit private residential child-care institution. At the local level, a school food authority (SFA) is the entity with which the administering agency makes an agreement for the operation of the programs. A SFA is the governing body (such as a school board) legally responsible for the operation of the NSLP and/or SBP in one or more schools. A school operated by a SFA may be approved to serve breakfast and lunch. A school participating in the NSLP that also has an afterschool care program with an educational or enrichment component may also be approved to serve afterschool snacks. See also the description of the SMP below.

b. *SFSPC* – The SFSPC is directed toward children in low-income areas when school is not in session. It is locally operated by approved sponsors, which may include public or private non-profit SFAs, public or private non-profit residential summer camps, or units of local, municipal, county or State governments or other private non-profit organizations that develop a special summer or other school vacation program providing food service similar to that available to children during the school year under the NSLP and SBP.

   A meal service feeding site under a sponsor's oversight may be approved to serve breakfast, lunch, snacks, and/or supper. Residential camps and migrant sites may receive reimbursement for up to three meals, or two meals and one snack, per child per day. All other sites may receive reimbursement for any combination of two meals (except lunch and supper) or one meal and one snack per child per day. All participating children receive their meals free. Participating summer camps must identify children eligible for free or reduced price meals and may receive SFSPC meal reimbursement only for meals served to such children.

   Although USDA-donated foods are made available under the SFSPC, they are restricted to sponsors that prepare the meals to be served at their sites and those that have entered into an agreement with a SFA for the preparation of meals.

c. SMP – The SMP provides milk to children in schools and child-care institutions that do not participate in other Federal meal service programs. However, schools operating the NSLP and/or SBP may also participate in the SMP to provide milk to children in half-day pre-kindergarten and kindergarten programs where children do not have access to the NSLP and SBP. A SFA or institution operating the SMP as a pricing program may elect to serve free milk but there is no Federal requirement that it do so. The SMP has no reduced price benefits.

Program Funding

FNS furnishes funds to State agencies by letter of credit. The State agencies use the meal reimbursement funds to support program operations by SFAs, institutions, and sponsors under their oversight, and the administrative funds to fund their own administrative costs. Funding for FNS regional office-administered programs is handled through FNS's Integrated Program Accounting System.

Funding Program Benefits

FNS provides cash reimbursement to each State agency for each meal served under the NSLP, SBP, and SFSPC and for each half pint of milk served under the SMP. The State agency's entitlement to cash assistance for NSLP and SBP meals, NSLP snacks, and SMP milk not reimbursed at the "free" rate is determined by multiplying the number of units served within the State by a "national average payment rate" set by FNS. Cash reimbursement to a State agency under the SFSPC is the product obtained by multiplying the number of meals served by maximum rates of reimbursement established by FNS.

FNS sets the national average payment rate or maximum rate of reimbursement for each type of meal service (breakfast, lunch, snack, supper) within each program. A national average payment rate is also set for each eligibility category within the NSLP and SBP. Basic levels of cash assistance are provided for all lunches and breakfasts, respectively. This basic rate is increased by two cents for each lunch served in SFAs in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price. Additional assistance is provided for lunches and breakfasts served to children eligible for free or reduced price meals. A higher rate of reimbursement is paid for each breakfast served free or at reduced price in schools determined to be in "severe need." A "severe need" school is one in which at least 40 percent of the school lunches served in the second preceding school year had been served free or at reduced price. Milk served free under the SMP is funded at the average cost of milk. Since all meals are served free under the SFSPC, all meals of the same type are funded at the same rate.

State agencies earn donated food assistance based on the number of program meals served in schools participating in the NSLP and for certain sponsors participating in the SFSPC. The State agency's level of donated food assistance is the product of the number of meals served in the preceding year multiplied by the national average payment for donated foods.

FNS adjusts the national average payment rates and maximum rates for reimbursement annually for NSLP, SBP, and SFSPC to reflect changes in the Consumer Price Index and for the SMP to reflect changes in the Producer Price Index. FNS adjusts donated food assistance rates annually to reflect changes in the Price Index for Food Used in Schools and Institutions. The current announcements of all these assistance rates can be found on the Internet at http://www.fns.usda.gov/cnd (7 CFR sections 210.4(b), 220.4(b), 215.1, and 225.9(d)(9)).

A State agency uses the cash assistance obtained through performance funding to reimburse participating SFAs and sponsors for eligible meals served to eligible persons. Like "national average payments" to States, reimbursement payments are also made on a per-meal (performance funding) basis. SFAs and SFSPC sponsors receive donated foods to the extent they can use them for program purposes; however, certain types of products are limited by an entitlement.

Funding State-Level Administrative Costs

In addition to funding for reimbursement payments to SFAs and sponsors, State agencies receive funding from several sources for costs they incur to administer these programs.

a. *State Administrative Expense (SAE) Funds* – These funds are granted under CFDA 10.560, which is not included in the Child Nutrition Cluster.

b. *SFSPC State Administrative (SAF) Funds* – In addition to regular SAE grants, administrative funds are made available to State agencies under CFDA 10.559 to assist with administrative costs of the SFSPC (7 CFR section 225.5). The State agency must describe its intended use of the funds in a Program Management and Administrative Plan submitted to FNS for approval (7 CFR section 225.4).

Source of Governing Requirements

The programs included in this cluster are authorized by the Richard B. Russell National School Lunch Act (NSLA) (42 USC 1751 *et seq*.) and the Child Nutrition Act of 1966 (CNA) (42 USC 1771 *et seq*.). The implementing regulations for each program are codified in parts of 7 CFR as indicated: National School Lunch Program (NSLP), part 210; School Breakfast Program (SBP), part 220; Special Milk Program for Children (SMP), part 215; and, Summer Food Service Program for Children (SFSPC), part 225. Regulations at 7 CFR part 245 address eligibility determinations for free and reduced price meals and free milk in schools and institutions. Regulations at 7 CFR part 250 give general rules for the receipt, custody, and use of USDA donated foods provided for use in the Child Nutrition Cluster of programs.

Availability of Other Program Information

Additional program information is available from the FNS's Child Nutrition site on the Internet at http://www.fns.usda.gov/cnd. Information on the distribution of USDA donated foods for the Child Nutrition Cluster programs is available from the FNS Food Distribution web site at http://www.fns.usda.gov/fdd/programs/schcnp/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Effective January 1, 2008, sponsors are no longer required to separately report operating and administrative costs, although they must maintain records of them. Sponsor reimbursement is no longer related to operating and administrative cost comparisons; it is now determined solely by applying the applicable meals times rates formula. Separate rates are used to compute reimbursement for operating and administrative costs, but a sponsor can use its entire reimbursement payment for any combination of operating and administrative costs (Title VII, Section 738 of Pub. L. No. 110-161, December 26, 2007).

E. Eligibility

1. Eligibility for Individuals

Any child enrolled in a participating school or summer camp, or attending a SFSPC meal service site, who meets the applicable program's definition of "child," may receive meals under the applicable program. In the case of the NSLP and SBP, children belonging to households meeting nationwide income eligibility requirements may receive meals at no charge or at reduced price. Children who have been determined ineligible for free or reduced price school meals pay the full price, set by the SFA, for their meals. Children attending SFSPC meal service sites receive their meals at no charge (7 CFR sections 225.15(f), 245.1(a), and 245.3(c); definition of "subsidized lunch (paid lunch)" at 7 CFR section 210.2; and definitions of "camp," "closed enrolled site," "open site," and "restricted open site" at 7 CFR section 225.2).

a. *General Eligibility*

The specific groups of children eligible to receive meals under each program are identified in the respective program's regulations.

(1) *School Nutrition Programs (NSLP and SBP)* – A "child" is defined as: (a) a student of high school grade or under (as determined by the State educational agency) enrolled in an educational unit of high school grade or under, including students who are mentally or physically handicapped (as determined by the State) and who are participating in a school program established for the mentally or physically handicapped; (b) a person who has not reached his/her twenty-first birthday and is enrolled in a public or non-profit private residential child care institution; or (c) for snacks served in

afterschool care programs operated by an eligible school, a person who is 18 years of age or under, except that children who turn 19 during the school year remain eligible for the duration of the school year (42 USC 1766a(b); definition of "child" at 7 CFR sections 210.2 and 220.2).

(2) *SFSPC* – A "child" is defined as: (a) any person 18 years of age and under; and (b) a person over 18 years of age, who has been determined by the State educational agency or a local public educational agency to be mentally or physically handicapped, and who participates in a public or non-profit private school program established for the mentally or physically handicapped (Definition of "children" at 7 CFR section 225.2).

(3) *SMP* – Schools operating this program use the same definition of "child" that is used in the NSLP and SBP, except for provision (3) under the definition of "child" at 7 CFR section 210.2 regarding snacks served in afterschool care programs. Where the program operates in child-care institutions, as defined in 7 CFR section 215.2, a "child" is any enrolled person who has not reached his/her nineteenth birthday (7 CFR section 215.2).

b. *Eligibility for Free or Reduced Price Meals or Free Milk*

(1) *General Rule: Annual Certification* – A child's eligibility for free or reduced price meals under a Child Nutrition Cluster program may be established by the submission of an annual application or statement which furnishes such information as family income and family size. Local educational agencies (LEAs), institutions, and sponsors determine eligibility by comparing the data reported by the child's household to published income eligibility guidelines. In addition to publishing income eligibility information in the *Federal Register*, FNS makes it available on the FNS web site (http://www.fns.usda.gov/cnd/) under "Income Eligibility Guidelines."

(a) *School Nutrition Programs* – Children from households with incomes at or below 130 percent of the Federal poverty level are eligible to receive meals or milk free under the School Nutrition Programs. Children from households with incomes above 130 percent but at or below 185 percent of the Federal poverty level are eligible to receive reduced price meals. Persons from households with incomes exceeding 185 percent of the poverty level pay the full price (7 CFR sections 245.2, 245.3, and 245.6; section

9(b)(1) of the NSLA (42 USC 1758 (b)(1)); sections 3(a)(6) and 4(e) of the CNA (42 USC 1772(a)(6) and 1773(e))).

(b) *SFSPC* – While all SFSPC meals are served at no charge, the sponsors of certain types of meal service sites must make individual determinations of eligibility for free or reduced price meals in accordance with 7 CFR section 225.15(f). See III.E.3. "Eligibility – Eligibility for Subrecipients" for more information.

(c) *SMP* – Eligibility for free milk in SFAs electing to serve free milk is limited to children of households meeting the income eligibility criteria for free meals under the School Nutrition Programs. The SMP has no provision for reduced price benefits (Definition of "free milk" at 7 CFR section 215.2, and 7 CFR sections 215.7(b), 245.3, and 245.6).

Annual eligibility determinations may also be based on the child's household receiving benefits under the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program), Food Distribution Program on Indian Reservations (FDPIR), the Head Start Program (CFDA 93.600) (42 USC 1758(b)(6)(A)), or, under most circumstances, the Temporary Assistance for Needy Families (TANF) program (CFDA 93.558) (42 USC 1758(b)). A household may furnish documentation of its participation in one of these programs; or the school, institution, or sponsor may obtain the information directly from the State or local agency that administers these programs. Certain runaway, homeless, and migrant children are categorically eligible for free school lunches and breakfasts (42 USC 1758(b)(5)(A); 7 CFR section 245.6(b)).

(2) *Exceptions* – The following are exceptions to the requirement for annual determinations of eligibility for free or reduced price meals and free milk under the Child Nutrition Cluster programs.

(a) *Puerto Rico and the Virgin Islands* – These two State agencies have the option to provide free meals and milk to all children participating in the School Nutrition Programs, regardless of each child's economic circumstances. Instead of counting meals and milk by type, they may determine the percentage that each type comprises of the total count using statistical surveys. The survey design must be approved by FNS (7 CFR section 245.4).

(b) *Special Assistance Certification and Reimbursement Alternatives* – Special Assistance Certification and Reimbursement Alternatives, Provisions 1, 2 and 3, are authorized by Section 11(a)(1) of the NSLA (42 USC 1759a(a)(1)). Provision 1 may be used in schools where at least 80 percent of the children enrolled are eligible for free or reduced price meals. Under Provision 1, eligibility determinations for children eligible for free meals under the School Nutrition Programs must be made once every two consecutive school years. Children who qualify for reduced price meals are certified annually (42 USC 1759a(a)(1)(B); 7 CFR section 245.9(a)).

For Provisions 2 and 3, extended cycles are allowed for eligibility determinations. Since the schools also use alternative meal counting and claiming procedures, descriptions of Provisions 2 and 3 are presented below in III.L.3, "Reporting – Special Reporting."

(c) *SFSPC Open Sites and Restricted Open Sites* – Determinations of individual household eligibility are not required for meals served free at SFSPC "open sites," or at Arestricted open sites. See III.G.3, "Eligibility – Eligibility for Subrecipients," for more information.

c. *Reduced Price Charges for Program Meals*

The SFA sets meal prices. However, the price for a reduced price lunch or breakfast may not exceed $0.40 and $0.30, respectively (see definition of "reduced price meal" in 7 CFR section 245.2).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

Administering agencies may disburse program funds only to those organizations that meet eligibility requirements. Under the NSLP, SBP and SMP, this means the definition of "school food authority" (SFA) as described at 7 CFR sections 210.2, 215.2, and 220.2, respectively. Eligible SFSPC organizations are described at 7 CFR section 225.2 under the definition of "sponsor." Additional organizational eligibility requirements apply to the SFSPC, NSLP Afterschool Snacks, and the SBP at the school or site level (see detail below).

a. *SFSPC* – Federal regulations at 7 CFR section 225.2 define sites in four ways:

(1) *Open Sites* – At an open site, meals are made available to all children in the area where the site is located. This area must be one in which poor economic conditions exist (one in which at least 50 percent of the children are from households that would be eligible for free or reduced price school meals under the NSLP and the SBP). Data to support a site's eligibility may include: (a) free and reduced price eligibility data maintained by schools that serve the same area; (b) census data; or (c) other statistical data, such as information provided by departments of welfare and zoning commissions.

(2) *Restricted Open Sites* – A restricted open site is one that was initially open to broad community participation, but at which the sponsor has restricted attendance for reasons of safety, security, or control. A restricted open site must serve an area in which poor economic conditions exist, and its eligibility may be documented with the same kinds of data listed above for open sites.

(3) *Closed Enrolled Sites* – A closed enrolled site makes meals available only to enrolled children, as opposed to the community at large. Its eligibility is based not on serving an area where poor economic conditions exist, but on the eligibility of enrolled children for free or reduced price school meals. At least 50 percent of enrolled children must be eligible for free or reduced price school meals. The sponsor must determine their eligibility through the application process described at 7 CFR section 225.15(f).

(4) *Camps* – Eligible camps include residential summer camps and nonresidential day camps that offer regularly scheduled food service as part of organized programs for enrolled children. A camp need not serve an area where poor economic conditions exist. Instead, the camp's sponsor must determine each enrolled child's eligibility for free SFSPC meals through the application requirements at 7 CFR sections 225.15(e) and (f). Unlike other sponsors, the sponsor of a camp receives reimbursement only for meals served to children eligible for free or reduced price school meals (7 CFR section 225.14(d)(1)).

b. *SBP – Severe Need Schools* – In addition to the national average payment, FNS makes additional payments for breakfasts served to children qualifying for free or reduced price meals at schools that are in severe need. The administering agency must determine whether a school is eligible for severe need reimbursement based on the following eligibility

criteria: (1) the school is participating in or desiring to initiate a breakfast program and (2) 40 percent or more of the lunches served to students at the school in the second preceding school year under the NSLP were served free or at a reduced price. Administering agencies must maintain on file, and have available for reviews and audits, the source of the data to be used in making individual severe need determinations (42 USC 1773(d); 7 CFR section 220.9(d)).

c. *NSLP – Afterschool Snacks* – Reimbursement for afterschool snacks is made available to those school districts which (1) operate the NSLP in one or more of their schools and (2) sponsor or operate afterschool care programs with an educational or enrichment purpose. In the case of snacks served at an eligible site located in the attendance area of a school in which at least 50 percent of the enrolled children are certified eligible for free and reduced price school meals, all snacks are served free and are reimbursed at the free rate regardless of individual eligibility. Schools and sites not located in such an area may also participate, but they must count and claim snacks as free, reduced price and paid, depending on the eligibility status of the children served, and they must maintain documentation of eligibility for children receiving free or reduced price snacks (42 USC 1766a).

G. Matching, Level of Effort, Earmarking

1. Matching

NSLP – State Revenue Matching Requirement

The State is required to contribute State-appropriated funds amounting to at least 30 percent of the funds it received under Section 4 of the NSLA in the school year beginning July 1, 1980, unless otherwise exempted by 7 CFR section 210.17. In the fall of each year, FNS furnishes each State with a report giving data for the State's use in determining its matching requirements. However, the State revenues derived from the operation of the NSLP and State revenues expended for salaries and administrative expenses of the NSLP at the State level are not considered in this computation. In States with per capita income lower than the national average, the 30 percent match is proportionately reduced (sections 7(a)(1) and (2) of the NSLA, and 7 CFR section 210.17(a)).

a. *Private School Exemption* – States that are prohibited by law from disbursing State appropriated funds to non-public schools are not required to match "General Cash Assistance" (Section 4) funds expended for meals in such schools, or to disburse to such schools any of the State revenue required to meet the matching requirements. Also, the matching requirements do not apply to schools in which the program is administered by a FNS regional office (7 CFR section 210.17(b)).

b. *Applicable State Revenues* – State revenues, appropriated or used specifically for program purposes, are eligible for meeting the matching requirement. States use a number of methods to apply funds toward the matching requirement. For example, they may: (1) disburse such funds directly to SFAs, generally on a per-meal basis; (2) pay bills that SFAs would otherwise have had to pay themselves (such as FICA payments for school food service workers); and (3) track State-appropriated funds that SFAs have indirectly applied to the program through transfers from their general funds to their school food service funds (7 CFR section 210.17(d)).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

I. Procurement and Suspension and Debarment

1. *Procurement*

a. General Procurement – Regardless of whether the State elects to follow State or Federal rules in accordance with the A-102 Common Rule, the following requirements must be followed for procurements initiated by State agencies and SFSPC institutions on or after October 1, 2000. The effective date of these requirements for SFAs is set by their administering agencies, but cannot be later than July 1, 2001.

(1) *Contractor Selection* – A State agency, SFA, institution, or sponsor shall not award a contract to a firm it used to orchestrate the procurement leading to that contract. Examples of services that would disqualify a firm from receiving the contract include preparing the specifications, drafting the solicitation, formulating contract terms and conditions, etc. (7 CFR sections 3016.60(b) and 3019.43).

(2) *Geographical Preference* – A State or local government shall not apply in-State or local geographical preference, whether statutorily or administratively prescribed, in awarding contracts (7 CFR section 3016.60(c)). However, a SFA, institution, or sponsor operating one or more Child Nutrition Cluster programs may use a geographical preference for the procurement of unprocessed agricultural products, both locally grown and locally raised (Section 4302 of Pub. L. No. 110-246, 122 Stat. 1887, June 18, 2008).

b. *Contracts With Food Service Management Companies* – Before awarding a contract to a food service management company, or amending such a contract, an SFA operating the NSLP and SBP must: (1) obtain its administering agency's review and approval of the contract terms; (2) incorporate all changes required by the administering agency; (3) obtain written administering agency approval of any changes made by the SFA or its food service management company to a pre-approved prototype contract; and (4) when requested, submit procurement documents for administering agency inspection (7 CFR sections 210.16(a)(10) and 220.7(d)(1)(ix)). (This requirement is effective for new contracts with solicitations issued on or after November 30, 2007. For amendments/renewals of contracts existing on November 30, 2007 or for other new contracts, see Final Rule, Procurement Requirements for the National School Lunch, School Breakfast, and Special Milk Programs, III. Implementation, see 72 FR 61479, October 31, 2007.)

c. *Cost-Reimbursable Contracts* –

(1) Cost-reimbursable contracts awarded by SFAs operating the NSLP, SMP, and SBP, including contracts with cost-reimbursable provisions and solicitation documents prepared to obtain offers of such contracts, must include the following provisions:

(a) Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority.

(b) Billing documents submitted by the contractor will either separately identify allowable and unallowable portions of each cost, or include only allowable costs and a certification that payment is sought only for such costs.

(c) The contractor must identify the amount of each discount, rebate, and other applicable credit on bills and invoices presented to the SFA for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually (7 CFR section 210.21(f)).

(2) No cost resulting from a cost-reimbursable contract may be paid from the SFA's nonprofit school food service account if: (a) the underlying contract does not include the provision in paragraph (1)(a) above; or (b) such disbursement would result in the contractor receiving payments in excess of the contractor's actual, net allowable costs (7 CFR sections 210.21(f), 215.14a(d), and 220.16(e)). (This requirement is effective for new contracts with solicitations issued on or after November 30, 2007. For amendments/renewals of contracts existing on November 30, 2007 or for other new contracts, see Final Rule, Procurement Requirements for the National School Lunch, School Breakfast, and Special Milk Programs, III. Implementation, see 72 FR 61479, October 31, 2007.)

2. *Suspension and Debarment* – Mandatory awards by pass-through entities to subrecipients are excluded from the suspension and debarment rules (7 CFR section 3017.215(h)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. FNS-13, *Annual Report of State Revenue Matching (OMB No. 0584 – 0075)* – This report is due 120 days after the end of each school year and identifies the State revenues to be counted toward meeting the State revenue matching requirement (7 CFR section 210.17(g)).

Key Line Item – The following line item contains critical information:

Line 5 – *State revenues to be counted toward the State Revenue Matching Requirement*

g. *FNS-777, Financial Status Report (OMB No. 0584-0067)* – This report replaces the SF-269 and captures the same information: the State agency's cumulative outlays (expenditures) and unliquidated obligations of Federal funds for the programs and program components that comprise the Child

Nutrition Cluster. FNS uses the data captured by this report to monitor State agencies' program costs and cash draws (7 CFR sections 210.20(a)(2), 215.11(c)(2), 220.13(b)(2), and 225.8(b)). Two different versions of this form are made available for use by State agencies: one for reporting on Child Nutrition Program funds, and the other for reporting the status of the State agency's SAE grant. This enables the State agency to separately report on its SAE grant which, unlike the program funds, is a 2-year grant.

Key Line Items – The following line items contain critical information:

Line 10.g. – *Total Federal share of outlays*

Line 10.j. – *Total Federal share of unliquidated obligations*

Line 10.n. – *Advances only*

Note: Columns 1 through 5 of the FNS-777 pertain to the Child and Adult Care Food Program (CACFP) (CFDA 10.558), which is not part of the Child Nutrition Cluster. The CACFP is described elsewhere in this Compliance Supplement, beginning on page 4-10.558-1.

2. Performance Reporting – Not Applicable

3. Special Reporting

a. *State Agency Special Reporting*

To receive funds for the Child Nutrition Cluster programs, a State agency administering one or more of these programs compiles the data gathered on its subrecipients' claims for reimbursement into monthly reports to its FNS regional office. Such reports present the number of meals, by category and type, served by SFAs or sponsors under the State agency's oversight during the report period.

An initial monthly report, which may contain estimated participation figures, is due 30 days after the close of the report month. A final report containing only actual participation data is due 90 days after the close of the report month. A final closeout report is also required in accordance with the FNS closeout-schedule. Revisions to the data presented in a 90-day report must be submitted by the last day of the quarter in which they are identified. However, the State agency must immediately submit an amended report if, at any time following the submission of the 90-day report, identified changes to the data cause the State agency's level of funding to change by more than (plus or minus) 0.5 percent. The specific reports for each program are described below.

(1) FNS-10, *Report of School Program Operations (OMB No. 0584-0002)* – This report captures meals served under the NSLP and SBP, and half-pints of milk served under the SMP (7 CFR sections 210.5(d), 210.8, 215.10, 215.11, 220.11, and 220.13).

Key Line Items – The following line items contain critical information:

(a) Item 5 – *National School Lunch Program*:

- Line 5a – *Total lunches served in the NSLP*
- Line 5b – *Lunches served in school food authorities that qualify the State for additional payment*
- Line 5c – *Total afterschool snacks served in all approved schools and sites*
- Line 5d – *Total afterschool snacks served in area eligible schools and sites*

(b) Line 6 – *School Breakfast Program (Include schools with severe need)*

(c) Line 7 – *School Breakfast Program (Severe need only)*

(d) Line 8 – *Commodity Schools (Lunches only)*

(e) Item 9 – *Special Milk Program*:

- Line 9a – *Schools (Include Residential Child Care Institutions)*
- Line 9b – *Nonresidential Child Care Institutions*
- Line 9c – *Summer Camps*

(f) Item 10 – *No. of Meals Served in Private Schools Only*:

- Line 10a – *National School Lunch Program*
- Line 10b – *Afterschool snacks*
- Line 10c – *Afterschool snacks served in area eligible schools and sites*
- Line 10d – *School Breakfast Program (Include Severe Need)*

- Line 10e – *Severe Need School Breakfast Program*

(g) Item 11 – *No. of Meals Served in Residential Child Care Institutions (RCCIs) Only*:

- Line 11a – *National School Lunch Program*
- Line 11b – *NSLP – Snacks*
- Line 11c – *School Breakfast Program (Include Severe Need)*
- Line 11d – *Severe Need School Breakfast Program*

(2) FNS-418, *Report of the Summer Food Service Program for Children (OMB No. 0584-0280)* – This report documents the number of meals served under the SFSPC by sponsors under the State agency's oversight. Unlike the FNS-10, which is submitted year round, the FNS-418 is filed only for the months when the program is in operation (7 CFR sections 225.8(b) and 225.9(d)(5)).

Key Line Items – The following line items contain critical information:

Part A – Meals Served

(a) Lines 5 through 7 – *Breakfasts*

(b) Lines 8 through 10 – *Lunches*

(c) Lines 11 through 13 – *Suppers*

(d) Lines 14 through 16 – *Snacks*

(e) Lines 17 through 19 – *Total*

b. *Subrecipient Special Reporting*

To receive reimbursement payments for meals (and milk served under the SMP), a SFA, institution, or sponsor must submit claims for reimbursement to its administering agency (7 CFR sections 210.8(b), 225.9(d), and 225.15(c)(2)). The claiming process is as follows:

(1) *Claiming – General Process*

At a minimum, a claim must include the number of reimbursable meals/milk served by category and type during the period (generally a month) covered by the claim. All meals claimed for

reimbursement must (a) be of types authorized by the SFAs, institution's, or sponsor's administering agency; (b) be served to eligible children; and (c) be supported by accurate meal counts and records indicating the number of meals served by category and type (7 CFR sections 210.7(c), 210.8(c), and 225.9(d)).

(a) *School Nutrition Programs* – The following types of service may be authorized for schools participating in these programs: breakfast, lunch, afterschool snack (if the school operates an afterschool care program), and milk (under the SMP). A school may be approved for the SMP only if it: (i) does not operate any other Federal Child Nutrition meal service programs; or (ii) operates the NSLP and/or SBP, but makes milk available to children in half-day pre-kindergarten or kindergarten programs who do not have access to the NSLP and SBP. All claims must be supported by accurate meal counts by category and type taken at the point of service or developed through an approved alternative procedure (7 CFR sections 210.7, 210.8, 215.8, 215.10, 220.9, and 220.11).

(b) *SFSPC* – The meals that may be claimed under the program are: breakfast, lunch, supper, and snack. Food service sites other than camps and sites which primarily serve migrant children may claim either: one meal each day (a breakfast, a lunch, a supper, or a snack), or two meals each day if one is a lunch or supper and the other is a breakfast or a snack. Camps or sites which serve meals primarily to migrant children may serve three meals or two meals and one snack (7 CFR sections 225.9(d), 225.15(c), and 225.16).

(2) *Claiming – Exceptions*

As noted above in III.E.1.b, "Eligibility for Individuals – Eligibility for Free or Reduced Price Meals or Free Milk," schools operating the School Nutrition Programs under Special Assistance Certification and Reimbursement Alternative Provisions 2 and 3 may use alternative counting and claiming procedures. Under either provision, the schools must serve meals at no charge to all children regardless of income eligibility for program benefits; and the SFA pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under the NSLA and CNA (42 USC 1759a(a)(1)).

(a) *Provision 2* – Provision 2 has a four-year cycle for annual notification and certification for free and reduced price meals. In the first year, schools must take daily counts of the number of meals served by meal category (paid, free, reduced price) and establish the percentage of meals served by category each month. In the second, third and fourth school years, schools must count only the total number of reimbursable meals served each month; the monthly percentages established in the first year are then applied to the counts taken in the corresponding months of the current year. At the end of four years, the cycle may be extended for another four years if the State determines that the economic condition of the school's enrollment has not improved. Additional four-year extensions may be approved on the same basis (42 USC 1759a(a)(1)(C) and (D); 7 CFR section 245.9(b)).

(b) *Provision 3* – Provision 3 has a four-year cycle. Cash reimbursement and donated food assistance are provided at the same level as the school received in the last year free and reduced price applications were taken and daily meal counts by category and type were made, adjusted for inflation, the number of operating days, and enrollment. Schools opting for this alternative are not required to make annual free and reduced price eligibility determinations. Free and reduced price eligibility determinations and daily meal counts by income category are only required during a base year which is not included as part of the four year cycle. Provisions exist for authorizing subsequent four-year extensions if the economic condition of the school's enrollment has not improved (42 USC 1759a(a)(1)(E); 7 CFR section 245.9(d)).

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

M. Subrecipient Monitoring

State agencies administering the programs included in the Child Nutrition Cluster are required to perform specific monitoring procedures in accordance with 7 CFR sections 210.18 and 210.19(a)(4) (SBP and NSLP), 7 CFR section 215.11 (SMP), and 7 CFR section 225.7 (SFSPC).

N. Special Tests and Provisions

1. Verification of Free and Reduced Price Applications (NSLP)

Compliance Requirement – By November 15th of each school year, the local education agency (LEA) (or State in certain cases) must verify the current free and reduced price eligibility of households selected from a sample of applications that it has approved for free and reduced price meals, unless the LEA is otherwise exempt from the verification requirement. The verification sample size is based on the total number of approved applications on file on October 1st.

A State agency may, with FNS approval, assume from LEAs under its jurisdiction the responsibility for performing the verifications. If the LEA performs the verification function it must be in accordance with instructions provided by the State agency. The LEA must follow-up on children whose eligibility status has changed as the result of verification activities to put them in the correct category.

LEAs (or State agencies) must select the sample by one of the following methods:

a. Standard Sample Size. The lesser of 3 percent or 3000 of the approved applications on file as of October 1, selected from error-prone applications. For this purpose, error prone applications are those showing household incomes within $100 monthly or $1,200 annually of the income eligibility guidelines for free and reduced price meals.

b. Alternative Sample Sizes.

(1) The lesser of 3 percent or 3,000 applications selected at random from approved applications on file as of October 1 of the school year, or

(2) The sum of: (a) the lesser of 1 percent of all applications identified as error-prone or 1,000 error-prone applications, and (b) the lesser of 1/2 of 1 percent of, or 500, approved applications in which the household provided, in lieu of income information, a case number showing participation in the SNAP, TANF, or FDPIR.

(3) The use of alternative sample sizes is available only as follows:

(a) Any LEA may qualify if its non-response rate for the preceding school year's verification was less than 20 percent; or

(b) An LEA with more than 20,000 children approved by application for free and reduced price meals may qualify if its non-response rate for the preceding year had improved over the rate for the second preceding year by at least 10 percent.

"Non-response rate" is defined as the percentage of approved household applications selected for verification for which the LEA has not obtained verification information (7 CFR section 245.6a(a)).

Sources of information for verification include written evidence, collateral contacts, and systems of records, as described in 7 CFR section 245.6a(b) (42 USC 1758(b)(3)(D) and (H)).

Audit Objective – Determine whether the LEA (or State) selected and verified the required sample of approved free and reduced price applications and made the appropriate changes to eligibility status.

Suggested Audit Procedures

a. Obtain the current family size and income guidelines published by FNS.

b. Through examination of documentation, ascertain that:

(1) The sampling and verification of free and reduced price applications were performed, as required.

(2) Changes were made to eligibility status based on documentation and other information obtained through the verification process.

2. Accountability for USDA-Donated Foods

The following compliance requirements do not apply to recipient agencies (as defined at 7 CFR section 250.3), including SFAs and SFSPC institutions. Auditors making audits of recipient agencies are not required to test compliance with these requirements.

Compliance Requirement

a. *Maintenance of Records*

Distributing and subdistributing agencies (as defined at 7 CFR section 250.3) must maintain accurate and complete records with respect to the receipt, distribution, and inventory of USDA-donated foods including end products processed from donated foods. Failure to maintain records required by 7 CFR section 250.16 shall be considered *prima facie* evidence of improper distribution or loss of donated foods, and the agency, processor, or entity may be required to pay USDA the value of the food or replace it in kind (7 CFR sections 250.16(a)(6) and 250.15(c)).

b. *Physical Inventory*

Distributing and subdistributing agencies shall take a physical inventory of all storage facilities. Such inventory shall be reconciled annually with the storage facility's inventory records and maintained on file by the agency that contracted with or maintained the storage facility. Corrective action shall be taken immediately on all deficiencies and inventory discrepancies and the results of the corrective action forwarded to the distributing agency (7 CFR section 250.14(e)).

Audit Objective – Determine whether an appropriate accounting was maintained for USDA-donated foods, that an annual physical inventory was taken, and the physical inventory was reconciled with inventory records.

Suggested Audit Procedures

a. Determine storage facility, processing, and end use locations of all donated foods, including end products processed from donated foods. Determine the donated food records maintained by the entity and obtain a copy of procedures for conducting the required annual physical inventory. Obtain a copy of the annual physical inventory results.

b. Perform analytical procedures and obtain explanation and documentation for unusual or unexpected results. Consider the following:

(1) Compare receipts, distribution, losses and ending inventory of donated foods for the audit period to the previous period.

(2) Compare distribution by entity for the audit period to the previous period.

c. Ascertain the validity of the required annual physical inventory. Consider performing the following steps, as appropriate:

(1) Observe the annual inventory process at selected locations and recount a sample of donated food items.

(2) If the annual inventory process is not observed, select a sample of significant donated foods on hand as of the physical inventory date and, using the donated food records, "roll forward" the balance on hand to the current balance observed.

(3) On a test basis, recompute physical inventory sheets and related summarizations.

(4) Ascertain that the annual physical inventory was reconciled to donated food records. Investigate any large adjustments between the physical inventory and the donated food records.

d. On a sample basis, test the mathematical accuracy of the donated food records and related summarizations. From the donated food records, vouch a sample of receipts, distributions, and losses to supporting documentation. Ascertain that activity is properly recorded, including correct quantity, proper period and, if applicable, correct recipient agency.

3. School Food Accounts

Compliance Requirement – A SFA is required to account for all revenues and expenditures of its non-profit school food service in accordance with State requirements. A SFA must operate its food services on a non-profit basis; all revenue generated by the school food service must be used to operate and improve its food services (7 CFR sections 210.14(a), 210.14(c), 210.19(a)(2), 215.7(d)(1), 220.2, and 220.7(e)(1)(i)).

Audit Objective – Determine whether a separate accounting is made of the school food service, Federal reimbursement payments are promptly credited to the school food service account, and transfers out of the school food service account are for the benefit of the school food service.

Suggested Audit Procedures

a. Review the school food service accounting records and ascertain if a separate accounting is made for the school food service.

b. Test Federal reimbursement payments received monthly from the administering agency to ascertain if promptly credited to the food service account.

c. Test transfers out of the school food service account and ascertain if the transfers were for the benefit of the school food service.

IV. OTHER INFORMATION

FNS no longer requires recipient agencies to inventory USDA-donated food separately from purchased food. However, the value of donated foods used during a State or recipient agency's fiscal year is considered Federal awards expended in accordance with the OMB Circular A-133 §___.105 definition of Federal financial assistance and should be valued in accordance with §___.205(g). Therefore, recipient agencies must determine the value of donated foods used. FNS recommends that recipient agencies use the value of donated foods delivered to them during the audit period for this purpose.

UNITED STATES DEPARTMENT OF AGRICULTURE

CFDA 10.557 SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

I. PROGRAM OBJECTIVES

The objective of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is to provide supplemental nutritious foods, nutrition education, and referrals to health care for low-income persons during critical periods of growth and development. Such persons include pregnant women, breast-feeding women up to one year postpartum, non-breast-feeding women up to six months postpartum, infants (persons under one year of age), and children under age five determined to be at nutritional risk. Intervention during the prenatal period improves fetal development and reduces the incidence of low birth weight, short gestation, and anemia.

II. PROGRAM PROCEDURES

Administration

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) administers the WIC Program through grants awarded to State health departments or comparable State agencies, Indian tribal governments, bands or intertribal councils, or groups recognized by the Bureau of Indian Affairs, U.S. Department of the Interior, or the Indian Health Service (IHS) of the U.S. Department of Health and Human Services (HHS). A State agency administering the WIC Program must sign a Federal/State Agreement that commits it to observe applicable laws and regulations in carrying out the program. The State agencies, in turn, award subgrants to local agencies to certify applicants' eligibility for WIC Program benefits and deliver such benefits to eligible persons.

Program Funding

The WIC Program is a grant program that is 100 percent federally funded. No State matching requirement exists. Funds are awarded by FNS on the basis of funding formulas prescribed in the WIC Program regulations.

FNS allocates federally appropriated funds to WIC State agencies as grants which are divided into two parts: a component for food costs and a component for Nutrition Services and Administration (NSA) costs. Resources made available to a State agency under these two components of its initial Federal WIC formula grant may be modified by the cumulative effect of the following requirements:

Reallocations and Recoveries

The WIC Program's authorizing statute and regulations require FNS to recover unspent funds and reallocate them to State agencies.

Conversion Authority

A State agency that submits a plan to increase WIC participation under a cost containment strategy, as outlined under the "Cost Containment Requirements" section below, in excess of the increases projected by FNS in the NSA funds allocation formula, may shift a portion of its food grant component to its NSA component. This "conversion authority" is a function of the "excess" participation increase and is determined by FNS (See III.A.2, "Activities Allowed or Unallowed – Exceptions").

Spending Options

Federal legislation and regulations authorize a State agency to shift a portion of its Federal WIC formula grant between grant periods (Federal fiscal years) (See III.H, "Period of Availability of Federal Funds").

Rebates

A State agency may contract with a food manufacturer to receive a rebate on each unit of the manufacturer's product purchased with Food Instruments (FIs) redeemed by program participants. Such rebates are credits against prior expenditures made during the month in which the rebate was earned for WIC food costs (See III.B, "Allowable Costs/Cost Principles").

Vendor, Participant, and Local Agency Collections

A State agency is authorized to retain Federal program funds recovered through claims action against vendors, participants, and local agencies, and to use such recoveries for program purposes. (See III.B, "Allowable Costs/Cost Principles").

Program Income

Certain miscellaneous receipts a State agency collects as the result of WIC program operations are classified as program income (See III.J, "Program Income").

State Funding

Although the Federal Financial Participation (FFP) for WIC is 100 percent, some States voluntarily appropriate funds from their own revenues to extend WIC services beyond the level that could be supported by Federal funding alone.

Recovery Act Funding

Division A, Title I of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5, 123 Stat. 119) made $400 million available to "be placed in reserve to be allocated as the Secretary deems necessary,…to support [WIC] participation should cost or participation exceed budget estimates..." These ARRA funds comprise a contingency reserve available to fund State agencies' shortfalls. During FY 2010, regular WIC funding was sufficient without allocating ARRA WIC contingency reserve funds to State agencies.

Certification

Applicants for WIC Program benefits are screened at WIC clinic sites to determine whether they meet the eligibility criteria in the following categories: categorical, residency, income, and nutritional risk (See III.E.1, "Eligibility – Eligibility for Individuals").

Benefits

The WIC Program provides participants with specific nutritious supplemental foods, nutrition education, and health services referrals at no cost. The authorized supplemental foods are prescribed from standard food packages according to the category and nutritional need of the participant. The seven food packages available are described in detail in WIC Program regulations.

About 75 percent of the WIC Program's annual appropriation is used to provide WIC participants with monthly food package benefits. The remainder is used to provide additional services to participants and to manage the program. Additional services provided to WIC participants include nutrition education, breast-feeding promotion and support activities, and client services, such as diet and health assessments, referral services for other health care and social services, and coordination activities.

Food Benefit Delivery

Supplemental foods are provided to participants in any one of three ways, which are defined in program regulations at 7 CFR section 246.12(b) as follows:

Direct Distribution Food Delivery Systems (used in Mississippi, the San Felipe Indian Tribal Organization in New Mexico, and in parts of Illinois, Idaho, West Virginia, and the Acoma-Canoncito-Laguna Hospital Board of New Mexico)

The State agency and/or its agent purchases supplemental foods in bulk and issues them to participants at designated distribution facilities.

Home Food Delivery Systems (used in Vermont and in parts of Alaska, North Dakota, Texas, and Utah)

Arrangements with home food delivery contractors provide for the delivery of supplemental foods directly to participants' homes.

Retail Food Delivery System (used by most State agencies)

Negotiable FIs are issued directly to individual participants, who exchange them for authorized supplemental foods at retail stores approved as vendors by the State agency. Three types of systems are used to redeem the FIs: voucher systems, check systems, and electronic benefits transfer (EBT) systems. In a voucher system, the vendor submits the FIs directly to the State agency for payment; in a check system, vendors deposit FIs to their bank accounts and the State reimburses them through their banks; and in an EBT system, payment is transmitted to the

vendor's financial institution via an Automated Clearing House process. Generally, a participant must use an FI within 30 days of the first date of use printed on the FI; and the vendor must submit the FI for payment within 60 days of that date.

Negotiable cash-value vouchers (CVV) are issued directly to participants, who exchange them for authorized fruits and vegetables at WIC-authorized retail stores and with farmers authorized by the State agency (if the State agency elects to authorize farmers). FIs and CVVs share several features. Both may be used in either a voucher or a check system. Both are negotiable for stated periods of time; a participant must generally use a FI or CVV within 30 days of the first date of use printed on the instrument, and a vendor must submit a CVV for payment within 60 days of that date. Unlike FIs, however, CVVs are issued with face values in standard denominations. The issuance and use of CVVs for fruits and vegetables, and the authorization of farmers as well as vendors to transact them, were introduced by the revisions in the WIC Food Packages Interim Rule, 7 CFR part 246 (72 FR 68966, December 6, 2007). The revisions were effective February 4, 2008, and State agencies must implement this rule by October 1, 2009 (73 FR 14153, March 17, 2008).

Each FI or CVV issued to a participant must have a unique serial number. A State agency is required to determine the ultimate disposition of all FIs and CVVs by serial number within 120 days of the first valid date for participant use. The State agency must adjust previously reported obligations for WIC food costs in order to account for actual FI or CVV redemptions and other changes in the status of FIs or CVVs.

Cost Containment Requirements

In an effort to use their food funding more efficiently, all WIC State agencies in the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Marianas Islands, and most Indian Tribal State agencies have implemented cost containment measures. Reducing the average food cost per person enables WIC to reach more participants with a given amount of funds. The most successful strategy has been the negotiation of competitive rebate contracts between State agencies and infant formula companies. Such contracts provide for the State agency to receive rebates on infant formula used in the program. Other cost containment measures used by State agencies include competitive bidding for juice, infant cereal, and infant juice; selection of retail vendors based on competitive prices; setting maximum redemption amounts for FIs; authorizing the use of store or generic brands of supplemental foods; and using a home delivery or direct distribution food delivery system.

Vendor Cost Containment

Regulations in 7 CFR part 246, published November 29, 2005, expanded requirements for selecting and paying vendors on the basis of competitive prices. These requirements do not apply to farmers or to CVVs transacted by retail vendors. Unless FNS has granted a State agency an exemption, the State agency is now required to:

1. Implement or modify a vendor peer group system, whereby authorized vendors are classified into groups on the basis of common characteristics or criteria that affect food prices. At least one such criterion must be a measure of geography, such as metropolitan or other statistical areas that form distinct labor and products markets.

2. Select and authorize vendors by applying competitive price criteria.

3. Set limits on payments to vendors within each peer group.

4. Identify vendors (called "above-50-percent vendors") that derive more than 50 percent of their annual food sales revenue from WIC FIs.

5. Comply with requirements designed to ensure that the use of above-50-percent vendors is cost neutral to the program (that is, that it does not result in higher WIC food costs than would have been the case if WIC participants had transacted their WIC FIs only at regular vendors). (See III.N.4, "Special Tests and Provisions – Authorization of Above-50-Percent Vendors.")

Federal Oversight and Compliance Mechanisms

FNS oversees State operations through an organization consisting of headquarters and seven regional offices. Federal program oversight encompasses review of the nine functional areas of the program: Organization and Management; Funding and Participation; Vendor Management; Information Systems; Certification, Eligibility, and Coordination; Nutrition Services; Civil Rights; Monitoring and Audits; and Food Delivery. Each year FNS regional offices evaluate as many of these areas as possible within available resource constraints, focusing on those areas they consider most need of review.

Although FNS uses technical assistance extensively to promote improvements in State operation of the WIC Program, enforcement mechanisms are also present. The misuse of funds through State or local agency negligence or fraud may result in the assessment of a claim. Claims may be established for funds lost due to FI or CVV theft or embezzlements or for unreconciled FIs or CVVs. FNS has other mechanisms to recover other losses and the cost of negligence. For other forms of noncompliance, FNS has the authority to give notice and, if improvements do not occur, withhold administrative funds for failure to implement program requirements.

FNS has identified the following circumstances that may indicate noncompliance with WIC program requirements: (1) redeemed FIs or CVVs which the issuing local agencies had reported as voided or unclaimed; (2) a large number of consecutively numbered, unreconciled FIs or CVVs issued by the same local agency; (3) redeemed FIs or CVVs that appear to have been validly issued but fail to match issuance records; and (4) participants that transacted all of their FIs on the same day as they were issued.

Source of Governing Requirements

The WIC Program is authorized by section 17 of the Child Nutrition Act of 1966 (42 USC 1786) **and ARRA**. Program regulations are found at 7 CFR part 246.

Availability of Other Program Information

For additional information, contact the applicable FNS regional office. Regional office telephone and datafax numbers, and the States each regional office serves may be found on FNS's web site (http://www.fns.usda.gov/wic). The WIC Program regulations can be found at that web site as well.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *General Rule*

   a. Funds allocated to a State agency for food must be expended to purchase supplemental foods for participants or to redeem FIs or CVVs issued for that purpose. When supplemental foods are provided to participants via direct distribution, the related warehouse facilities costs shall be allowable food costs. Food funds can also be used to purchase breast pumps for participants (7 CFR section 246.14(a) and (b)). Effective March 27, 2007, Federal program funds may not be used to pay for retroactive benefits to participants (7 CFR section 246.14(a)(2)).

   b. Funds allocated for NSA must be used for the costs incurred by the State or local agency to provide participants with nutrition education, breast-feeding promotion and support, and referrals to other social and medical service providers; and to conduct participant certification, caseload management, food benefit delivery, vendor management, voter registration, and program management (42 USC 1786(h)(1)(C)(ii); 7 CFR sections 246.14(c) and (d)).

   c. **During FY 2009, ARRA WIC contingency reserve funds were allocated for food and, therefore, must be used for food costs (ARRA, 123 Stat. 119). No ARRA WIC contingency reserve funds were allocated to State agencies for FY 2010 costs.**

2. *Exceptions*

   a. Funds allocated for food costs may be converted (be applied to NSA costs): (1) as a result of a State's plan to exceed participation levels projected by the Federal funding formula; or (2) after recovery as vendor or participant collections. Conversion due to planned participation

increases is allowed only if such increases are expected to result from an approved cost containment plan (7 CFR sections 246.14(e) and 246.16(f)).

b. Funds allocated for NSA costs but not needed for such costs may be applied to food costs (7 CFR section 246.14(a)(2)).

3. *Distinguishing WIC from Non-WIC Services*

Under no circumstances may the WIC NSA grant component be charged for costs that are demonstrably outside the scope of the WIC Program. WIC services may include: (a) some screening (excluding laboratory tests other than the blood work [hematological test] described below, which is required for determining WIC eligibility); (b) referrals for other medical/social services, such as immunizations, prenatal (before birth) care, perinatal care (near the time of birth from the 28th week of pregnancy through 28 days following birth), and well child care and/or family planning; and (c) follow-up on participants referred for such services. However, the cost of the services performed by other health care or social service providers to which the participant has been referred shall not be charged to the WIC grant. For example, the cost to screen, refer, and follow-up on immunizations for WIC participants may be charged to the WIC grant, but, the cost to administer the shot, or to purchase the vaccine or vaccine-related equipment, may not be charged to the WIC grant.

A hematological test for anemia, such as a hemoglobin, hematocrit, or free erythrocyte protoporphyrin test, is the only laboratory test required to determine a person's eligibility for WIC (7 CFR section 246.7(e)(1)). Accordingly, the cost of hematological tests for anemia is the only laboratory cost that may be charged to a WIC grant.

B. Allowable Costs/Cost Principles

1. *Applicable Credits*

The following items are credits against current vendor billings or prior expenditures:

a. *Rebates* – Rebates are credits against prior expenditures for food costs, made during the month in which the rebate was earned.

b. *Vendor Collections* – Post-payment vendor collections are funds collected through claims assessed against food vendors for errors and overcharges. Pre-payment vendor collections are improper payments prevented as a result of reviews of FIs or CVVs prior to payment; they are credits against vendor billings.

c. *Participant Collections* – These are recoveries of improperly issued food benefits as the result of a participant, guardian or caretaker intentionally making a false or misleading statement or withholding information.

d. *Local Agency Collections* – These are funds collected as a result of claims assessed against local agencies for program funds that were misused or otherwise diverted from program purposes due to local agency negligence or fraud.

A State agency must recognize, use, and account for these items in accordance with program regulations. At its discretion, the State agency may credit vendor, participant, and local agency collections against expenditures for food and/or NSA costs. The State agency may apply vendor, participant, and local agency collections to food and/or NSA expenditures of: (1) the fiscal year in which the initial obligation was made; (2) the fiscal year in which the claim arose; (3) the fiscal year in which the collection is received; or (4) the fiscal year following the fiscal year in which the collection is received (42 USC 1786(f)(21); 7 CFR section 246.14(e)).

2. *Capital Expenditures*

a. FNS has authorized WIC State and local agencies to charge the full acquisition cost of non-computer equipment costing less than $25,000 per unit without obtaining prior FNS approval, and to allow local agencies under their oversight to do likewise. FNS regional offices retain the discretion to apply a lower dollar threshold to an individual State agency and to the local agencies under its oversight, provided certain requirements apply and the State agency receives written notice.

b. *Automated Data Processing (ADP) Projects*

FNS requires WIC State agencies to obtain prior approval to incur costs for certain ADP projects and to provide notification and/or documentation for others (7 CFR section 246.14(d)). Approval procedures are in FNS Handbook 901, *Advance Planning Document Handbook*, 2007 edition, section 4.0.1 (available at http://www.fns.usda.gov/apd/Handbook_901/HB901_2007.htm.

Approval levels are as follows:

(1) A State agency must notify the applicable FNS regional office within 60 days of the initial expenditure or contract award for an ADP project costing in excess of $4,999 but less than $100,000; and

(2) A State agency must receive prior approval for (a) an ADP project that has a cost greater than $99,999 or (b) any ADP project associated with planning, developing, or deploying a new automation system.

c. *Other Capital Assets* – Purchases of other capital assets, such as buildings, land and improvements to buildings or land that materially increase their value or useful life, costing more than $5000 continue to require prior approval from FNS (7 CFR section 3016.22).

C. Cash Management

The WIC program is subject to the provisions of the Cash Management Improvement Act (CMIA). However, rebates held in State accounts are exempt from the interest provisions of the CMIA (42 USC 1786(h)(8)(J); 7 CFR section 246.15(a)).

E. Eligibility

1. Eligibility for Individuals

Applicants for WIC Program benefits are screened at WIC clinic sites to determine their WIC eligibility. To be certified eligible, they must meet the following eligibility criteria (7 CFR sections 246.7(c), (d), (e), (g), and (l)):

a. *Categorical* – Eligibility is restricted to pregnant, postpartum, and breast-feeding women, infants, and children up to their fifth birthday (7 CFR sections 246.2 (definition of each category) and 246.7(c)).

b. *Identity and Residency* – Except in limited circumstances, WIC applicants must be physically present for eligibility screenings and must provide proof of identity. An applicant must also meet the State agency's residency requirement. Except in the case of Indian State agencies, the applicant must reside in the jurisdiction of the State. Indian State agencies may require applicants to reside within their jurisdiction. All State agencies may designate service areas for any local agency, and may require that applicants reside within the service area. A State agency must establish procedures, in accordance with guidance from FNS, to prevent the same individual from receiving duplicate benefits through participation at more than one local agency. Except under limited circumstances, WIC applicants must present proof of identity and residency at certification. Documentation of these determinations may consist of descriptions of documents evidencing the applicants' identities and residency (e.g., notations in the participant's file identifying specific documents that local agency staff have viewed and found acceptable), copies of the documents themselves, and/or the applicants' written statements of identity and residency when no other documentation exists. Certification

procedures prescribed by the State agency set conditions for relying on these different forms of documentation (42 USC 1786(f)(23); 7 CFR sections 246.7(c)(1) and (c)(2)(i), 246.7(i)(3) and (4)).

c. *Income* – An applicant must meet an income standard established by the State agency or be determined to be automatically (adjunctively) income-eligible based on documentation of his/her eligibility, or certain family members' eligibility, for the following Federal programs: (1) Temporary Assistance for Needy Families; (2) Medicaid; or (3) Supplemental Nutrition Assistance Program (formerly the Food Stamp Program). State agencies may also determine an individual automatically income-eligible, based on documentation of his/her eligibility for certain State-administered programs. Documentation of income eligibility determinations may consist of descriptions of documents evidencing the sources and gross amounts of all income such as wages, disability or Social Security/SSI payments, child support, alimony, etc. received by applicants and/or any members of their households (e.g., notations in the participant's file identifying specific documents that local agency staff have viewed and found acceptable), copies of the documents themselves, and/or the applicant's signed affidavit that his/her household income does not exceed the current WIC income eligibility guidelines when no other documentation exists. With limited exceptions, applicants who are not adjunctively or automatically income eligible for WIC must provide documentation of family income at their initial or subsequent certification (42 USC 1786(d)(3)(D); 7 CFR sections 246.2 (definition of "family"), 246.7(c), and 246.7(d)).

Income Guidelines – The income standard established by the State agency may be up to 185 percent of the poverty income guidelines issued annually by HHS or State or local income guidelines used for free and reduced-price health care. However, in using health care guidelines, the income guidelines for WIC must be between 100 and 185 percent of the poverty income guidelines. Local agency income guidelines may vary as long as they are based on the guidelines used for free and reduced-price health care (7 CFR section 246.7(d)(1)). Effective March 27, 2007, income determinations based on State or local health care guidelines are subject to the definition of "family" in 7 CFR section 246.2, the definition of "income" in 7 CFR section 246.7(d)(2)(ii), and the exclusions from income in 7 CFR section 246.7(d)(2)(iv) (7 CFR sections 246.2 and 246.7(d)(2)). The WIC income eligibility guidelines are issued each year in the *Federal Register* and are available on FNS's WIC web site (http://www.fns.usda.gov/wic).

Income Eligibility Determination – Except for applicants determined to be automatically income-eligible, income is based on gross income and other cash readily available to the family or economic unit. Certain Federal payments and benefits, listed at 7 CFR section 246.7(d)(2)(iv)), are excluded from the computation of income. The following payments to members of the Armed Forces and their families are also excluded: Family Subsistence Supplemental Allowance (7 CFR section 246.7(d)(2)(iv)(D)(33)); combat pay, sometimes called incentive/special pay such as (Hostile Fire Pay (HFP) and Imminent Danger Pay (IDP)); Hardship Duty Pay (HDP); and Pay and Allowance Continuation Pay (PAC) and others included under Chapter V of Title 37 (42 USC 1758(b)), as amended by Section 734(b) of Pub. L. No. 111-80. Payments to Filipino veterans under the Filipino Veterans Equity Compensation Fund (section 1002 of ARRA, 123 Stat. 200) are also excluded. In addition, the State agency may exclude:

(1) Housing allowances received by military services personnel residing off military installations or in privatized housing, whether on or off-base (7 CFR section 246.7(d)(2)(iv)(A)(1)); and

(2) Any cost-of-living allowance provided to military personnel who are on duty outside the contiguous States of the United States (7 CFR section 246.7(d)(2)(iv)(A)(2)).

At a minimum, in-stream (away from home base) migrant farm workers and their families with expired Verification of Certification cards shall meet the State agency's income standard provided that the income of the family is determined at least once every 12 months (7 CFR section 246.7(d)(2)(ix)).

An Indian State agency, or a State agency acting on behalf of an Indian local agency, may submit reliable data that proves to FNS that the majority of Indian households in a local agency service area have incomes at or below the State agency's income guidelines. In such cases, FNS may authorize the State agency to permit the use of an abbreviated income screening process whereby an applicant affirms, in writing, that his/her family income is within the State agency's prescribed guidelines (7 CFR section 246.7(d)(2)(viii)).

State agencies may instruct local agencies to consider family income over the preceding 12 months or the family's current rate of income, whichever indicator more accurately reflects the family's income status. However, applicants in which an adult member is unemployed shall have income determined based on the period of unemployment. A State or local agency may require verification of information which it determines necessary to confirm income eligibility (7CFR sections 246.7(d)(2)(i) and (v)).

d. *Nutritional Risk* – A competent professional authority (e.g., physician, nutritionist, registered nurse, or other health professional) must determine that the applicant is at nutritional risk. While the broad guidelines for determining nutritional risk are set forth in WIC legislation and regulations, the specific allowable nutritional risk criteria are defined in WIC policy guidance, which is updated periodically. Each State agency may choose which allowable nutritional risk criteria will be used to determine eligibility. At a minimum, the certifying agency must perform and/or document measurements of each applicant's height or length and weight. In addition, a hematological test for anemia must be performed or documented at certification if the applicant has no nutritional risk factor prescribed by the State agency other than anemia. Certified applicants with qualifying nutritional risk factors other than anemia must also be tested for anemia within 90 days of the date of certification. Program regulations set several exceptions to these general rules. The determination of nutritional risk may be based on current referral data provided by a competent professional authority who is not on the WIC staff (7 CFR sections 246.2 (definitions of "competent professional authority" and "nutritional risk") and 246.7(e)).

When an applicant meets all eligibility criteria, he/she is determined by WIC clinic staff to be eligible for program benefits. Certification periods are assigned to each participant based on categorical status for women, infants, and children (7 CFR section 246.7(g)).

A WIC local agency assigns each eligible person a priority classification according to the classification system described in 7 CFR section 246.7(e)(4). A person's priority assignment reflects the severity of his/her nutritional risk. If the local agency cannot immediately place the person on the program for lack of an available caseload slot, the person is placed on a waiting list. Caseload vacancies are filled from the waiting list in priority classification order. State agencies are expected to target program outreach and caseload management efforts toward persons at greatest nutritional risk (i.e., those in the highest priority classifications).

Pregnant women are certified for the duration of their pregnancy and for up to six weeks postpartum. Breast-feeding women may be certified approximately every 6 months, or up to one year postpartum or until the woman ceases breastfeeding, whichever occurs first (42 USC 1786(d)(3)). Infants are certified at intervals of approximately six months, except that infants under six months of age may be certified for a period extending up to the child's first birthday, provided the quality and accessibility of health care services are not diminished. Children are certified for 6-month intervals ending with the end of the month in which the child reaches the fifth birthday. Non-breast-feeding women are certified for up to 6 months postpartum. Effective November 27, 2006, all categories of participants

may be certified up to the last day of the last month of the certification period (7 CFR section 246.7(g)(1)).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

A State agency may award WIC subgrants only to organizations meeting the regulatory definition of "local agency." Such organizations include public or private non-profit health agencies, human service agencies that provide health services, IHS health units, and Indian tribal groups described in the WIC program regulations (See definition of "local agency" in 7 CFR section 246.2.).

H. Period of Availability of Federal Funds

1. *Spend-Forward Option* – A State agency may spend NSA funds up to an amount equal to three percent of its total WIC formula grant for NSA costs of the following Federal fiscal year. With prior approval from its FNS regional office, the State agency may also spend NSA funds in an amount that does not exceed one-half of one percent of its total WIC formula grant, for management information systems development costs during the following Federal fiscal year. Food funds may not be "spent forward" (42 USC 1786(i)(3)(A)(ii)(I); 7 CFR section 246.16(b)(3)(ii)).

2. *Backspend Option* – A State agency may:

   a. Spend up to one percent of the food component of its grant for food costs of the Federal fiscal year preceding the fiscal year for which the grant was awarded. This backspend authority may be raised as high as three percent with prior approval from FNS.

   b. Spend up to one percent of its NSA grant component for food and/or NSA costs of the Federal fiscal year preceding the fiscal year for which the grant was awarded (7 CFR section 246.16(b)(3)(i)).

J. Program Income

The State agency may use current year program income for costs incurred in the current fiscal year and, with the approval of FNS, for costs incurred in previous or subsequent fiscal years. Currently, the following are the only funds FNS is aware of that WIC State agencies receive that are classified as program income: (1) royalties from printed publications; (2) nominal fees, not to exceed costs, for reproducing or mailing publications, videotapes, posters, etc.; (3) interest earned on rebate funds for infant formula and other foods; (4) general grants not tied directly to foods purchased, but made for inclusion of food items in a State's food package (such as certain grants from the private sector); (5) money received by the State agency as a result of civil money

penalties or fines assessed against a vendor, and any interest charged in the collection of these penalties and fines and (6) breastfeeding performance bonuses. A State agency may use program income for any combination of food and NSA costs or other costs that further the broad objectives of the program (7 CFR section 246.15(b)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program*s – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable **(ARRA only)**

ARRA and implementing guidance issued by OMB (2 CFR section 176.220(b)) require State agencies to distinguish ARRA funds from regular funds appropriated for the same programs, and to maintain this distinction throughout the grant cycle. To accomplish this while capturing needed data on each State agency's total WIC food costs, on May 7. 2009, FNS instructed State agencies that received ARRA WIC contingency reserve funds to:

(1) Report the status of their ARRA WIC contingency reserve awards in quarterly SF-425 reports, starting with the third quarter of FY 2009;

(2) Include expenditures of ARRA WIC contingency reserve funds in their total expenditures for WIC food costs in line 4 of the FNS-798 report (see below); and

(3) Report the portion of line 4 that consists of expenditures of ARRA WIC contingency reserve funds in the Remarks section of the FNS-798 report (see below).

f. FNS-798, *WIC Financial Management and Participation Report (OMB No. 0584-0045)* – A State agency is required to submit monthly financial and program performance (participation) data (7 CFR section 246.25(b)).

Each WIC State agency uses the FNS-798 to report projected and actual Federal food expenditures and participation for each month of the fiscal year. Participation for any given month equals the sum of: (1) the number of individuals who received supplemental foods or FIs during that month; (2) the number of infants who received no supplemental foods or FIs, but whose breastfeeding mothers received supplemental foods or FIs during that month; and (3) the number of breastfeeding mothers who did not receive supplemental foods or FIs, but whose infant received supplemental foods or FIs. The regulatory definition of "participation" does not refer to CVVs; however, a participant receiving CVVs would also be receiving FIs (7 CFR section 246.2).

WIC State agencies also use the FNS-798 to provide the data FNS needs to conduct the annual grant reconciliation and closeout required by 7 CFR part 3016. The FNS-798 presents the status of the report year grant and costs adjusted by the spending options (described under III.H, "Period of Availability of Federal Funds"), which allow State agencies to shift a small portion of the WIC grant funds between Federal fiscal years. The FNS-798 closeout report is the State's official declaration of the final status of its grant and costs for the report year.

Key Line Items – The following line items contain critical information:

(1) Line 1 *Adjusted Gross Obligations* – reflects the amount of money, net of all credits used to fund food outlays except rebates, that a State agency estimates it will spend for each month's food orders or FI and CVV issuances.

(2) Line 2 *Estimated Rebates* – reflects the amount of money that a State agency estimates it will receive for rebates.

(3) Line 7 *Rebates Billed* – reflects the dollar value of bills or invoices submitted by the State to food manufacturers, such as infant formula companies, for rebate payments.

(4) Line 12 *Net Federal Outlays and Unliquidated Obligations* – reflects the amount of payments, net of rebates billed, program income, post-payment vendor collections, participant collections, local agency collections, and other credits. The State's WIC program food cost ledger account should support this amount.

(5) Line 18 *Total Participation* – reflects the actual number of federally supported participants for elapsed months. The participation counts should be supported by FI issuance records and participant files.

(6) Line 26 *Net Federal Outlays and Unliquidated Obligations for NSA Costs* – reflects gross outlays and unliquidated obligations minus program income, post-payment vendor collections, participant collections, local agency collections, and other credits.

g. FNS-798A, *Addendum to WIC Financial Management and Participation Report – NSA Expenditures (OMB No. 0584-0045)* – State agencies prepare the FNS-798A annually to report: (1) NSA expenditures by function for the fiscal year being closed out; (2) the method by which NSA expenditures were charged as indirect costs; and (3) the method by which the indirect cost amount was determined. FNS uses the amounts reported in nutrition education and breast-feeding promotion and support, two of the four functional categories on the FNS-798A, to determine whether the State agencies met the statutory minimum spending level for those functions.

Key Line Items:

(1) The following line items and columns contain critical information for *State-level* activities:

(a) Line 5a *Federal Outlays* – Column (03) – *State-Level Nutrition Education* – represents total outlays and unliquidated obligations made for State-level nutrition education costs supported by Federal grant funds and program income.

(b) Line 5a *Federal Outlays* – Column (04) – *State-Level Breast-feeding Promotion and Support* – represents total outlays and unliquidated obligations made for State-level breast-feeding promotion and support costs supported by Federal grant funds and program income.

(c) Line 5b *State Outlays* – Column (03) – *State-Level Nutrition Education* – represents total outlays and unliquidated obligations made for State-level nutrition education costs supported by State-appropriated funds plus the dollar value of any in-kind contributions received from any Federal, State or local funding source.

(d) Line 5b *State Outlays* – Column (04) – *State-Level Breast-feeding Promotion and Support* – represents total outlays and unliquidated obligations made for State-level breast-feeding promotion and support costs supported by State-appropriated funds plus the dollar value of any in-kind

contributions received from any Federal, State or local funding source.

(2) The following line items and columns contain critical information for *local-level* activities (Outlays and unliquidated obligations made by local agencies or made by the State agency for local clinics or other units in local communities that directly provide benefits to participants).

(a) Line 5a *Federal Outlays* – Column (07) – *Local-Level Nutrition Education* – represents total outlays and unliquidated obligations made for local-level nutrition education costs supported by Federal grant funds and program income.

(b) Line 5a *Federal Outlays* – Column (08) – *Local-Level Breast-feeding Promotion and Support* – represents total outlays and unliquidated obligations made for local-level breast-feeding promotion and support costs supported by Federal grant funds and program income.

(c) Line 5b *State Outlays* – Column (07) – *Local-Level Nutrition Education* -represents total outlays and unliquidated obligations made for local-level nutrition education costs supported by State-appropriated funds plus the dollar value of any in-kind contributions received from any Federal, State or local funding source.

(d) Line 5b *State Outlays* – Column (08) – *Local-Level Breast-feeding Promotion and Support* – represents total outlays and unliquidated obligations made for local-level breast-feeding promotion and support costs supported by State-appropriated funds plus the dollar value of any in-kind contributions received from any Federal, State or local funding source.

(Refer to 7 CFR section 246.14(c))

h. *Subrecipient Reporting* – A State agency may require local agencies under its oversight to report financial information the State agency needs to prepare reports identified above. These reports should be tested during audits of subrecipients.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. **Section 1512 ARRA Reporting** – Not Applicable

5. **Subaward Reporting under the Transparency Act** – Applicable

M. Subrecipient Monitoring

State agencies must establish an ongoing management evaluation system which includes at least the monitoring of local agency operations, the review of local agency financial and participation reports, the development of corrective action plans, the monitoring of the implementation of corrective action plans, and on-site reviews. The on-site reviews of local agencies shall include evaluation of management, certification, nutrition education, civil rights compliance, accountability, financial management systems, and food delivery systems. These reviews must be conducted on each local agency at least once every 2 years, including on-site reviews of a minimum of 20 percent of the clinics in each local agency or one clinic, whichever is greater (7 CFR section 246.19(b)).

N. Special Tests and Provisions

1. Food Instrument and Cash-Value Voucher Disposition

Compliance Requirement – A State agency must account for all FIs issued on or after March 27, 2007, within 120 days of the FI's first valid date for participant use. This requirement also applies to CVVs. The State agency must identify all FIs and CVVs as either issued or voided; and identify issued FIs and CVVs as either redeemed or unredeemed. Redeemed FIs and CVVs must be identified as one of the following: (1) validly issued, (2) lost or stolen, (3) expired, (4) duplicate, or (5) not matching valid enrollment and issuance records. State agencies generally do this by analyzing computer reports that provide detailed issuance and redemption information on each FI and CVV (7 CFR section 246.12(q)).

Audit Objective – Determine whether the State agency's FI and CVV disposition process complies with the foregoing requirement.

Suggested Audit Procedures

a. Obtain an understanding of the State agency's process for tracking FIs and CVVs. At a minimum, this includes ascertaining how the State agency:

   (1) Identifies the ultimate disposition of every FI and CVV; and

   (2) Follows up on redeemed FIs and CVVs that cannot be matched with valid issuances (State agencies do this by contacting the issuing local agencies and by other means).

b. Ascertain whether the State agency provides written guidance to local agencies on how to follow up on issued FIs and CVVs (redeemed and unredeemed).

c. Inspect disposition reports to ascertain that the State agency:

(1) Reconciled its records to issued FIs and CVVs on a one-to-one basis within the time frame set by regulation (120 days from the FI's or CVV's first valid date for participant use);

(2) Followed-up on redeemed FIs and CVVs that were not validly issued and validly used, in order to determine their ultimate disposition;

(3) Obtained explanations for identified discrepancies; and

(4) Adjusted its accounting records and external reports in order to reflect the results of the disposition process.

d. Using State agency disposition reports for one or more months of the audit period, verify the State agency's non-reconciliation rate for redeemed FIs and CVVs. The State agency should use the following steps in performing the non-reconciliation rate calculation:

(1) Determine total FIs and CVVs redeemed

(2) Determine total redeemed FIs and CVVs initially identified as unreconciled (listed as redeemed with no record of issuance on exception report)

(3) Determine total redeemed FIs and CVVs finally identified as unreconciled (after follow-up with local agencies/clinics)

(4) Calculate the unreconciled rate (#3 divided by #1)

(5) Calculate total value of FIs and CVVs redeemed

(6) Calculate total value of FIs and CVVs finally identified as unreconciled

2. Review of Food Instruments and Cash-Value Vouchers to Enforce Price Limitations and Detect Errors

Compliance Requirement – A State agency operating a retail food delivery system must take the following actions to ensure that payments of WIC food funds to vendors conform to program regulations and the State agency's vendor and farmer agreements:

a. *FI and CVVs Review Process* – The State agency must have in place a process for reviewing all, or a representative sample of, FIs and CVVs submitted by vendors for redemption. The review is done on an aggregate basis rather than on a vendor or farmer basis. Because of the wide disparity in the number of FIs and CVVs processed by State agencies, there are no criteria for determining what constitutes a representative sample, other than that it must be a representative sample of FIs

and CVVs submitted (7 CFR section 246.12(k)(1)). At a minimum, this process must be able to detect:

(1) Redeemed monetary amounts that exceed the maximum monetary purchase amounts established by the State agency for each type of FI and CVV. For FIs, this includes checking for amounts exceeding maximum amounts based on peer groups, above-50-percent status, not-to-exceed amounts printed on the FIs, and thresholds used to indicate possible overcharging (a sanctionable violation that involves charging WIC customers more than non-WIC customers for the same food items). For CVVs, this includes checking for amounts exceeding not-to-exceed amounts printed on the CVVs and thresholds used to indicate possible overcharging.

(2) Other errors, including purchase price missing; participant, parent/caretaker, or proxy signature missing; vendor identification missing; FIs and CVVs transacted or redeemed after the specified time period; and altered purchase price.

(3) Questionable FIs and CVVs which, while they may not clearly contain errors, nevertheless require follow-up to determine if an error has occurred.

b. *Follow-up on Erroneous or Questionable FIs and CVVs* – The State agency must follow up on FIs containing errors and other questionable FIs and CVVs detected through this process within 120 days following detection. Regulations at 7 CFR sections 246.12(k)(2) through (k)(5) describe appropriate follow-up actions (7 CFR section 246.12(k)).

Audit Objective – Determine whether the State agency's system for reviewing FIs and CVVs detects and follows up on erroneous or questionable FIs and CVVs.

Suggested Audit Procedures

a. Obtain an understanding of the State agency's process for detecting erroneous or questionable FIs and CVVs.

b. Review the State agency's reports or other documentation of the review process, showing the results for individual FIs and CVVs during the audit period. Select a sample of FIs and CVVs redeemed that are covered by this documentation and analyze it to identify any FIs containing errors. If the State agency does not review all FIs and CVVs, then draw the sample from only those FIs and CVVs the State agency did review. Compare the FIs and CVVs containing errors per the State agency's documentation against the results of analyzing the sample in order to determine whether the State agency's review process detected all erroneous or questionable FIs and CVVs.

c. Determine that the State agency followed up on all FIs and CVVs for which its review process detected errors or questionable items within the required 120-day timeframe.

3. Compliance Investigations of High-Risk Vendors

Compliance Requirement – A State agency operating a retail food delivery system must conduct compliance investigations, which consist of inventory audits and/or compliance buys, on a minimum of 5 percent of the vendors authorized as of October 1 of each year. Farmers are not included in this requirement. A State agency must conduct compliance investigations on its high-risk vendors up to the 5 percent minimum. High-risk vendors are identified at least once annually using criteria developed by FNS, and/or other statistically based criteria developed by the State agency and approved by FNS. If the number of high-risk vendors exceeds 5 percent of the total, then the State agency must prioritize vendors for investigative purposes based on their potential for noncompliance and/or loss. If the number of high-risk vendors falls short of 5 percent of the total, the State agency must randomly select enough additional vendors to meet the 5 percent requirement. When a compliance investigation discloses vendor violations, the State agency must take appropriate action against the vendor. Such action includes delaying payment or establishing a claim if a violation affects payment to the vendor; imposing sanctions mandated by program regulations for certain stated violations; and imposing other, less severe sanctions prescribed by the State agency's sanction schedule for lesser violations (7 CFR sections 246.2 (definitions of "compliance buy," "high-risk vendor" and "inventory audit"), 246.12(j)(4)(i) through (iii), 246.12(k)(2) through (4), and 246.12(l)(1) and (2)).

Audit Objective – Determine whether the State agency made required compliance investigations and took appropriate actions against vendors.

Suggested Audit Procedures

a. Inspect the State agency's vendor files or database to identify the vendors designated as high risk, and to determine the total number of vendors for which compliance investigations were required during the audit period.

b. Inspect records to determine whether the State agency made the required compliance investigations and established claims against vendors or took other appropriate action based on the findings.

4. Authorization of Above-50-Percent Vendors

Compliance Requirement – Vendors that derive more than 50 percent of their annual food sales revenue from WIC FIs, and new vendor applicants expected to meet that criterion, are referred to as "above-50-percent vendors" (7 CFR section 246.2). Program regulations set restrictions on a State agency's authorization of such vendors to accept WIC FIs, and on the State agency's authority to disburse Federal WIC funds to them. The

purpose of these restrictions is to ensure that the average price per FI type that above-50-percent vendors charge WIC participants does not exceed the price charged by regular vendors, either within their peer groups or statewide. FI types are the unique grouping of food items and quantities. The outcome should be that the State agency's use of above-50-percent vendors does not result in higher total food costs if WIC participants transact their FIs at such vendors rather than at regular vendors. As previously noted, this requirement does not apply to farmers or to CVVs transacted by retail vendors (see II, "Program Procedures, Vendor Cost Containment").

A State agency using above-50-percent vendors must:

a. Obtain FNS certification of its vendor cost containment system according to one of the following timeframes:

   (1) By September 30, 2006, if the State had authorized any above-50-percent vendors, and at least every 3 years thereafter if the State continues to authorize above-50-percent vendors; or

   (2) Prior to the initial authorization of above-50-percent vendors after September 30, 2006 and at least every 3 years thereafter if the State continues to authorize above-50-percent vendors (7 CFR sections 246.12(g)(4)(i) and (vi)).

b. Ensure that the prices of above-50-percent vendors are not included with the prices of regular vendors for purposes of determining the competitive price selection criteria and maximum allowable reimbursement amounts for all vendors. (7 CFR section 246.12(g)(4)(i)(D)); and

c. At least quarterly, conduct statewide cost neutrality assessments by calculating and comparing the average redemption amounts for FIs (by type) redeemed by regular vendors against those of above-50-percent vendors (7 CFR section 246.12(g)(4)(i)(D)).

Audit Objective – Determine whether the State agency obtained the required FNS certification on the use of above-50-percent vendors and observed regulatory restrictions on the use of such vendors.

Suggested Audit Procedures

a. Determine if the State agency currently has agreements with any above-50-percent vendors.

b. If so, inspect records to verify that the State agency had identified and authorized those vendors.

c. Verify that FNS certification of the State vendor cost containment system was within the required time frames.

d. Inspect State agency records to determine that the State agency conducted the required quarterly cost neutrality assessments.

e. Obtain an understanding of how the State agency ensures that the prices charged by above-50-percent vendors are not included with the prices of regular vendors for purposes of determining the competitive price selection criteria and maximum allowable reimbursement amounts for all vendors. Inspect records of the State agency's competitive price selection criteria and maximum allowable reimbursement levels to determine that the State agency did not include the prices of above-50-percent vendors in these calculations.

UNITED STATES DEPARTMENT OF AGRICULTURE

CFDA 10.558 CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

I. PROGRAM OBJECTIVES

The CACFP assists States, through grants-in-aid and donated foods, to initiate and maintain non-profit food service programs for eligible children and adults in nonresidential day care settings.

II. PROGRAM PROCEDURES

General Overview

The U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS) administers the CACFP through grants-in-aid to States. The program is administered within most States by the State educational agency. In a few States, it is administered by an alternate agency, such as the State department of health or social services. At the discretion of the Governor, different agencies within a State may administer the program's child care and adult day care components.

CACFP benefits consist of nutritious meals and snacks served to eligible children and adults who are enrolled for care at participating child care centers, adult day care centers, outside-school-hours care centers, at-risk afterschool programs, family and group day care homes, and emergency shelters. These entities are discussed in more detail below. Child and adult day care centers and outside-school-hours care centers (often referred to collectively in this discussion as "centers"), as well as at-risk afterschool programs and emergency shelters, may operate independently under agreements with their State agencies, or they may participate under the auspices of sponsoring organizations. Day care homes may participate only through sponsoring organizations. An entity with which a State agency enters into an agreement for the operation of the CACFP, be it an independent center or a sponsoring organization, is known as an "institution."

A sponsoring organization usually does not provide child care services itself. Rather, it assumes administrative and financial responsibility for CACFP operations in centers and day care homes under its sponsorship. In that capacity, sponsoring organizations generally pass Federal funds received from their State agencies through to their homes and centers; in some cases, however, sponsoring organizations provide meals to their centers in lieu of cash reimbursement.

Child Care Centers

Eligible child care centers include public, private non-profit, and certain for-profit child care centers, Head Start programs, and other entities which are licensed or approved to provide day care services.

Adult Day Care Centers

Public, private non-profit, and certain for-profit adult day care facilities which provide structured, comprehensive services to nonresidential adults who are functionally impaired, or aged 60 and older, may participate in CACFP. Eligible adult day care centers must provide day care services for these adults for the main purpose of providing respite to their caregivers.

Outside-School-Hours Care Centers

Outside-school-hours care centers include public, private non-profit and certain for-profit organizations, licensed or approved to provide nonresidential child care services to enrolled children outside of school hours.

At-Risk Afterschool Programs

At-risk afterschool programs are structured, supervised programs that are organized primarily to provide care to at-risk children through age 18 after school hours and on weekends and holidays during the school year; provide educational or enrichment activities, and are located in low-income areas. Examples of organizations that typically offer such programs include the Boys & Girls Clubs, and the YMCA. In areas where Federal, State or local licensing or approval is not required, operators of these afterschool programs are required to comply with State or local health and safety requirements.

Emergency Shelters

Public and private non-profit emergency shelters which provide temporary shelter and food services to homeless children are eligible to participate in CACFP. Eligible shelters may receive reimbursement for serving up to three meals each day to residents age 18 and younger.

Day Care Homes

A family or group day care home is a private home licensed or approved to provide day care services. As noted above, the provider of such services must sign an agreement with a sponsoring organization to participate in CACFP; a day care home cannot enter into an agreement directly with the State agency. The sponsor provides training, monitoring, and technical assistance to homes under its sponsorship.

Program Funding

Federal assistance to institutions takes the form of cash reimbursement for meals served, and USDA-donated foods or cash in lieu of donated foods. An institution's entitlement to cash reimbursement is generally computed by multiplying the number of meals served, by category and type, by prescribed per-unit payment rates called "reimbursement rates." "Type" refers to the kind of meal service for which the institution seeks reimbursement (breakfast, lunch, snack, supper). For meals served in centers, "category" refers to the economic need of the child or adult to whom a meal is served; such meals are categorized as "paid," "reduced price," or "free." Meals served in day care homes are categorized by the tiering structure (tier I or II) described in

III.E.1, "Eligibility – Eligibility for Individuals" below. Under this formula, an institution's entitlement to funding from its State agency is a function of the categories and types of services provided. An institution establishes its entitlement to reimbursement payments by submitting claims for reimbursement to its State agency.

Independent centers, sponsors of centers, and sponsors of day care homes may be approved to claim reimbursement for up to two reimbursable meals (breakfast, lunch or supper) and one snack, or two snacks and one meal, per enrolled participant per day. As a general rule, operators of at-risk afterschool programs may claim reimbursement for one snack per child per day. However, operators of programs in Delaware, Illinois, Michigan, Missouri, New York, Oregon, Pennsylvania,West Virginia, Vermont, Maryland, Connecticut, Wisconsin, Nevada, and the District of Columbia may also claim reimbursement for one meal (normally supper) per child per day. Emergency shelters may claim up to three meals served to each resident child each day. The specific types of meals for which an institution may claim reimbursement payments are stated in its agreement with its State agency.

In addition to cash assistance, USDA makes donated foods, or cash-in-lieu of donated foods, available for use by institutions in operating the CACFP. FNS enters into agreements with State distributing agencies for the distribution of USDA-donated foods to CACFP institutions; the distributing agencies, in turn, enter into agreements with the institutions. The distributing agency may be the State CACFP State agency or a separate State agency.

Documentation Requirements

An institution operating the CACFP must have procedures in place to collect and maintain the documentation required at 7 CFR section 226.15(e). Examples of such documentation include: (1) the institution's application and supporting documents submitted to its State agency; (2) records of enrollment of each CACFP participant; (3) records supporting the free and reduced price eligibility determinations for children and adults enrolled in centers and for providers' children in day care homes; (4) daily records indicating the number of children and adults in attendance and the number of meals served by type and category; (5) copies of receipts, invoices and other records of CACFP costs and income required by the State agency; (6) copies of claims for reimbursement submitted to the State agency; and (7) documentation of non-profit operation of food service.

Pricing of Program Meals

Child care, adult day care, and outside-school-hours care centers may charge a single fee to cover tuition, meals, and all other day care services; such arrangements are called nonpricing programs. Alternatively, they may operate pricing programs, in which separate fees are charged for meals. An institution must describe its pricing policy in a free and reduced price policy statement submitted to its State agency. The vast majority of these centers operate nonpricing programs. Nevertheless, institutions must determine the eligibility of children and adults enrolled at these centers for free or reduced price meals because such determinations affect the reimbursement rates for meals served to the participants. Family day care homes are prohibited from charging

separately for meals. At-risk afterschool programs and emergency shelters are prohibited from charging for meals altogether.

Federal Assistance to States

Program funds are provided to States through letters of credit issued under the FNS Integrated Program Accounting System. The States, in turn, use the funds to reimburse institutions for costs of CACFP operations, as described above, and to support State administrative expenses.

Program Benefits

FNS provides a cash payment (called a "national average payment") to each State agency for each meal served under the CACFP. A State's entitlement to national average payments is mainly determined by the same performance-based (meals-times-rates) formula used by State agencies to compute reimbursement payments to institutions. From the State's standpoint, all funds received via this formula are pass-through funds that the State must use for reimbursement payments to institutions under its oversight.

FNS adjusts the national average payment rates on July 1 of each year. National average payments for meals served in centers are adjusted to reflect changes in the *Food Away From Home* series of the Consumer Price Index. Adjustments in national average payments for meals served in day care homes are based on changes in the *Food at Home* series of the Consumer Price Index.

The State's level of USDA-donated food assistance or cash in lieu of donated foods is based on the numbers of lunches and suppers served in centers in the preceding year, multiplied by the national average payment for donated foods. Donated food assistance rates are also adjusted every July 1 to reflect changes in the *Food Used in Schools and Institutions* series of the Consumer Price Index.

Sponsor Administrative Costs

Sponsoring organizations of family day care homes receive administrative funds related to the documented costs they incur in planning, organizing, and managing CACFP. They are the only CACFP institutions that may receive such assistance.

Sponsoring organizations of centers do not receive separate administrative cost reimbursement parallel to that received by sponsors of family day care homes. Instead, program regulations allow them to retain for their administrative costs a portion of the meal reimbursement payments generated by their centers.

State-Level Administrative Costs

FNS makes State Administrative Expense (SAE) funds available to State agencies for administrative expenses incurred in supervising and giving technical assistance to institutions participating in CACFP. SAE requirements are prescribed at 7 CFR part 235.

Additional funds are also available to States to help State agencies and institutions comply with Federal audit requirements, and to fund costs associated with performing administrative reviews of institutions after the audit requirements have been met. A State receives such assistance in an amount equal to one and one-half percent of the payments FNS made to the State for CACFP program reimbursement to institutions during the second fiscal year preceding the year for which the funds are to be made available.

Source of Governing Requirements

The CACFP is authorized at section 17 of the Richard B. Russell National School Lunch Act (NSLA) (42 USC 1766), as amended. The program regulations are codified at 7 CFR part 226. Regulations at 7 CFR part 250 provide general rules for the receipt, custody, and use of USDA-donated foods provided for use in the CACFP.

Availability of Other Program Information

Additional program information is available from the FNS web site at http://www.fns.usda.gov/cnd/. Information on the distribution of USDA-donated foods for the CACFP is available from the FNS Food Distribution web site at http://www.fns.usda.gov/fdd/programs/schcnp/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Reimbursement for Operating Costs of Child and Adult Care Centers* – The administering agency determines whether centers and sponsors of centers under its oversight shall be reimbursed solely according to the meals-times-rates formula outlined in II Program Procedures, or at the lesser of meals-times-rates or actual, documented costs. Costs claimed by the institution as operating costs must be related to preparing and serving meals to children and/or adults under the CACFP (7 CFR section 226.11(c) and definition of "operating costs" in 7 CFR section 226.2).

2. *Reimbursement for Sponsoring Organizations' Administrative Costs* – Administrative costs are those related to planning, organizing, and managing a food service under the CACFP (7 CFR section 226.2).

    a. *Sponsoring Organizations of Centers* – There is no provision for sponsoring organizations of centers to receive reimbursement for administrative costs. However, a sponsor may retain a portion of a center's meal reimbursement, not to exceed 15 percent, for its own

administrative expenses (42 USC 1766(f)(2)(C)(i); 7 CFR section 226.16(b)(1)). The method to determine the portion a sponsoring organization may retain is described in III.G.3, "Matching, Level of Effort, Earmarking – Earmarking."

b. *Sponsoring Organizations of Family Day Care Homes* – In addition to their meal reimbursement payments, sponsoring organizations of family day care homes may receive reimbursement for their administrative costs (7 CFR section 226.12). The formula a State agency must use to determine a sponsoring organization's entitlement to administrative payments is also described in III.G.3, "Matching, Level of Effort, Earmarking – Earmarking."

3. *Use of Reimbursements* – Reimbursement payments shall be used solely for the conduct of the food service operation or to improve such food service operations, principally for the benefit of the enrolled participants (7 CFR section 226.15(e)(13)).

C. Cash Management

A sponsoring organization must disburse advance and meal reimbursement payments to centers and day care homes under its sponsorship within five working days of receiving them from its State agency (7 CFR sections 226.16(g) and (h)).

E. Eligibility

1. Eligibility for Individuals

a. *General Eligibility*

Any individual may receive meals under the CACFP if he/she:

(1) Meets the definition of "children" or "adult participant" at 7 CFR section 226.2. These definitions are:

(a) "Children" means (i) persons 12 years of age and under; (ii) children of migrant workers 15 years of age and under; (iii) persons of any age who have one or more disabilities and who are enrolled in an institution or child-care facility serving a majority of persons who are age 18 and under; (iv) for emergency shelters, persons age 18 and under; and (v) for at-risk afterschool care centers, persons age 18 and under at the start of the school year (see definitions of "children," "enrolled child," and "persons with disabilities" at 7 CFR section 226.2).

(b) "Adult participant" means "a person enrolled in an adult day care center who is functionally impaired ... or 60 years of age or older" (Definitions of "adult participant" and "enrolled participant" are available at 7 CFR section 226.2).

(2) Receives care at a participating institution. The individual must:

(a) Be enrolled in a child or adult care center or other nonresidential institution that provides day care;

(b) Reside in an emergency shelter; or

(c) Attend an at-risk afterschool program or outside-school-hours care center (7 CFR section 226.15(e)(2), definitions of "enrolled child" and "enrolled participant" are available at 7 CFR section 226.2).

b. *Eligibility for Free or Reduced Price Meals*

(1) *Children and Adults Enrolled in Centers* – While an independent center or sponsoring organization of centers receives Federal cash reimbursement for all meals served in centers, it receives higher levels of reimbursement for meals served to children and adults who meet Income Eligibility Criteria published by FNS for meals served free or at reduced price. Participants from households with incomes at or below 130 percent of poverty are eligible for free meals; and participants with household incomes between 130 percent and 185 percent of poverty are eligible for reduced price meals. The Income Eligibility Guidelines and Reimbursement Rates are published in the *Federal Register* and on the FNS web site at http://www.fns.usda.gov/cnd. Institutions must determine each enrolled participant's eligibility for free and reduced price meals in order to claim reimbursement for the meals served to that individual at the correct rate (7 CFR sections 226.15(e)(2), 226.17(b)(8), 226.19(b)(7)(i), and 226.19a(b)(8)).

A participant's eligibility may be established by the following methods:

(a) *General Rule: Household Application* – The participant's household may submit an income eligibility statement that provides information about household size and income. The information submitted by each household is compared with USDA's published Income Eligibility Guidelines. A household is not required to furnish documentation to support the information given in its income eligibility

statement; however, that information is subject to verification under 7 CFR section 226.23(h) (7 CFR sections 226.23(e)(1)(ii) and (iii), and 226.23(e)(4)).

(b) *Exception: Categorical Eligibility* – Children and adults may be determined categorically eligible for free and reduced price meals by virtue of their participation in certain other programs. For children, such programs include the Supplemental Nutrition Assistance Program (SNAP), Food Distribution Program on Indian Reservations (FDPIR), or State programs funded through Temporary Assistance for Needy Families (TANF). Categorically eligible adults include those who receive SNAP, FDPIR, Supplemental Security Income (SSI), or Medicaid benefits. Categorically eligible participants must indicate on the income eligibility statement the other program for which they are eligible. No income eligibility statement is required for children participating in the Head Start Program or for pre-kindergarten children participating in the Even Start Program, nor is any eligibility determination required beyond documenting their participation in Head Start or Even Start (7 CFR sections 226.23 (e)(1)(iv) and (v); 42 USC 1766(c)(6)).

(2) *Children Enrolled in Family Day Care Homes* – A tiering structure prescribed by program statute and regulations forms the basis for meal reimbursement payments to sponsoring organizations of day care homes. A home is classified as tier I or tier II, depending on the home's location or the provider's income eligibility.

Tier I day care homes are those operated by providers whose own household meets the income standards for free or reduced price meals, as outlined above, or those located in low-income areas. A low-income area is one where at least 50 percent of the children are eligible for free or reduced price school meals. Sponsoring organizations may use elementary school enrollment data or census data to determine if a home is located in a low-income areas (7 CFR sections 226.2 (definitions of "low-income area" and "tier I day care home") and 226.15 (e)(3) and (f)).

Tier II homes are those day care homes which do not meet the location or provider income criteria for a tier I home. Per-meal reimbursement rates for meals served in tier II homes are lower than corresponding rates for tier I homes. The provider in a tier II home may nevertheless elect to have the sponsoring organization determine the income-eligibility of enrolled children, so that meals

served to those children who qualify for free and reduced price meals would be reimbursed at the higher tier I rate (7 CFR section 226.23(e)(1)(i)).

Meals served to a day care home provider's own children are not reimbursable unless all of the following conditions are met: (a) such children are enrolled and participating in the CACFP during the time of the meal service; (b) enrolled, nonresidential children are present and participating in the CACFP; and (c) the provider's own children are eligible for free or reduced price meals (7 CFR section 226.18(e)).

(3) *Children Attending At-Risk Afterschool Programs* – Eligible afterschool programs must be located in geographical areas where 50 percent or more of the children are eligible for free or reduced price meals under the School Nutrition Programs (CFDA 10.553 and 10.555), as demonstrated by the free and reduced price eligibility data maintained by the school serving the area. Individual eligibility determinations for children attending these programs are not required (42 USC 1766(r)).

(4) *Children Residing in Emergency Shelters* – Children residing in emergency shelters are categorically eligible to receive meals at no charge (42 USC 1766(t)(5)(C)).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

a. State agencies may disburse CACFP funds only to those organizations that meet the eligibility requirements stated in the following program requirements: (1) generic requirements for all institutions at 7 CFR section 226.15 and 42 USC 1766(a)(6) and (d)(1); (2) additional requirements for sponsoring organizations at 7 CFR section 226.16; (3) additional requirements for child care centers (whether independent or sponsored) at 7 CFR section 226.17; (4) additional requirements for day care homes (which must be sponsored) at 7 CFR section 226.18; (5) additional requirements for outside-school-hours centers at 7 CFR section 226.19; (6) additional requirements for adult day care centers (whether independent or sponsored) at 7 CFR section 226.19a; (7) additional requirements for at-risk afterschool programs at 7 CFR section 226.17a; and (8) additional requirements for emergency shelters at 42 USC 1766(t).

b. For-profit child care and outside-school-hours care centers may participate in the CACFP if they meet either of the following two criteria: (1) at least

25 percent of the enrolled children or 25 percent of the licensed capacity, whichever is less, are funded under Title XX of the Social Security Act; or (2) at least 25 percent of the children in their care are eligible for free or reduced price meals. Children who participate only in the at-risk afterschool component of the program must not be considered in determining whether the institution met this 25 percent threshold (42 USC 1766(a)(2)(B); 7 CFR section 226.11(c)(4)).

c. For-profit adult day care centers may be eligible for CACFP if at least 25 percent of their participants receive benefits under Title XIX or Title XX of the Social Security Act (7 CFR section 226.2 (definition of "for-profit center")).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2. Level of Effort – Not Applicable

3. Earmarking

a. *Sponsoring Organizations of Day Care Homes* – Administrative cost reimbursement to sponsoring organizations of day care homes is limited to the lesser of the following factors on a cumulative year-to-date basis: (1) the sponsoring organization's approved administrative budget; (2) actual administrative costs less income to the program; or (3) the appropriate monthly rates per home, multiplied by the number of operating homes in each month. In addition, during any fiscal year, administrative payments to a sponsoring organization may not exceed 30 percent of the total amount of administrative payments and program (meal reimbursement) payments for day care home operations (7 CFR section 226.12(a))

b. *Sponsoring Organizations of Centers* - There is no provision for sponsoring organizations of centers to receive a separate reimbursement for administrative costs. However, sponsors may retain up to 15 percent from a center's reimbursement for its administrative expenses. State agencies may waive this limit if certain regulatory criteria are met (7 CFR sections 226.6(f)(1)(vi) and 226.16(b)(1)).

I. Procurement and Suspension and Debarment

1. *Procurement* – Regardless of whether the State elects to follow State or Federal rules in accordance with the A-102 Common Rule, the following requirements must be followed for procurements initiated on or after October 1, 2000:

a. A State agency or institution shall not award a contract to a firm it used to orchestrate the procurement leading to that contract. Examples of services

that would disqualify a firm from receiving the contract include preparing the specifications, drafting the solicitation, formulating contract terms and conditions, etc. (7 CFR sections 3016.60(b) and 3019.43).

b. A State or local government shall not apply in-State or local geographical preference, whether statutorily or administratively prescribed, in awarding contracts (7 CFR section 3016.60(c)). However, an institution operating the CACFP may use a geographical preference for the procurement of unprocessed agricultural products, both locally grown and locally raised (Section 4302 of Pub. L. No. 110-246, 122 Stat. 1887, June 18, 2008).

2. *Suspension and Debarment* – Mandatory awards by pass-through entities to subrecipients are excluded from the suspension and debarment rules (7 CFR section 3017.215(h)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. *FNS-777, Financial Status Report (OMB No. 0584-0067)* – This report replaces the SF-269 and captures substantially the same information: the State agency's cumulative outlays (expenditures) and unliquidated obligations of Federal funds for the CACFP. FNS uses the data captured by this report to monitor State agencies' program costs and cash draws (7 CFR section 226.7(d)). Two different versions of this form are made available for use by State agencies: one for reporting on program funds, and the other for reporting the status of the State agency's SE grant. This enables the State agency to separately report on its SAE grant which, unlike the program funds, is a 2-year grant.

Key Line Items – The following line items contain critical information:

Line 10.g. – *Total Federal share of outlays*

Line 10.j. – *Total Federal share of unliquidated obligations*

Line 10.n. – *Advances only*

Note: Columns 1 through 5 of the FNS-777 pertain to the CACFP. The remaining columns capture financial data on other Child Nutrition Programs, which are described under the title "Child Nutrition Cluster" (beginning on page 10.553-1 of this Compliance Supplement).

2. Performance Reporting – Not Applicable

3. Special Reporting

a. *State Agency Special Reporting*

FNS-44, *Report of the Child and Adult Care Food Program (OMB No. 0584-0078)* – To receive CACFP funds, a State agency administering the program compiles the data gathered on its subrecipients' claims for reimbursement into monthly reports to its FNS regional office. Such reports present the number of meals served, by category and type, in institutions under the State agency's oversight during the report month.

An initial monthly report, which may contain estimated participation figures, is due 30 days after the close of the report month. A final report containing only actual participation data is due 90 days after the close of the report month. A final closeout report is also required, in accordance with the FNS closeout schedule. Revisions to the data presented in a 90-day report must be submitted by the last day of the quarter in which they are identified. However, the State agency must immediately submit an amended report if, at any time following the submission of the 90 day report, identified changes to the data cause the State agency's level of funding to change by more than (plus or minus) 0.5 percent.

Key Line Items – The following line items contain critical information:

(1) *Part A – No. Homes*

(a) Line 6 – *No. of sponsoring organizations of day care homes administering between (ranges for numbers of homes given in columns)*

(b) Line 7 – *No. of homes for which sponsors are eligible to receive reimbursement based on rate for (ranges for numbers of homes given in columns)*

(2) *Part E*

(a) Lines 22 through 30 – *Breakfasts*

(b) Lines 31 through 39 – *Lunches*

(c) Lines 40 through 48 – *Suppers*

(d) Lines 49 through 57 – *Snacks*

(e) Lines 58 through 60 – *Total Free, Reduced Price, and Paid Meals Served (Respectively)*

b. *Subrecipient Special Reporting*

To receive reimbursement payments for meals served, an institution must submit claims for reimbursement to its State agency. A claim must include the number of meals served by category and type during the period (generally a month) covered by the claim. All meals claimed for reimbursement must be of types authorized by the institution's State agency; must be served to eligible children or adults; and must be supported by accurate meal counts and records indicating the number of meals served by category and type. Reimbursement is not allowed for meals served to a participant who is not enrolled for care, meals served in excess of an institution's licensed or authorized capacity, meal types that are not approved in the institution's agreement with its State agency, or meals served in excess of the maximum number of approved meal services (7 CFR sections 226.10(c), 226.15(h), 226.17(b)(4), 226.17a(p), 226.19(b)(5), and 226.19a(b)(6)).

(1) *Meals Served in Child and Adult Care Centers* – Several variants are available for reporting participation under the meals-times-rates reimbursement formula. They include: (a) reporting actual meal counts by category and type; (b) applying "blended per-meal rates" to actual counts of meals served by type; and (c) applying the center's "claiming percentage" for each category to its actual count of each type of meal served. The claiming percentage for each category is the ratio of enrolled persons eligible for meals in that category to all enrolled persons. The institution's agreement with its State agency identifies the variant to be used (7 CFR sections 226.9(b) and 226.11(b)).

(2) *Meals Served in Day Care Homes* – Like a sponsor of centers, a day care home sponsor must claim reimbursement for meals by category and type. With respect to day care homes, however, "category" refers to the tiering structure (tier I or tier II) rather than to an individual's income eligibility, as described under III.E.1, "Eligibility – Eligibility for Individuals," (7 CFR section 226.13(b)).

To develop the information needed to prepare a claim, the sponsoring organization requires each day care home under its sponsorship to report the number of reimbursable meals served during each claim month. The sponsoring organization collects the number of meals served, by type, from tier I homes and from tier II homes that elect not to request the sponsoring organization to make individual income eligibility determinations for enrolled children (7 CFR sections 226.13(d)(1) and (2)). If a tier II day care home provider has elected to have its sponsoring organization make individual income eligibility determinations, program regulations provide several options for reporting the number of meals eligible for reimbursement at the tier I and II rates, respectively (7 CFR section 226.13(d)(3)).

The reimbursement rates for lunches and suppers served in day care homes whose sponsoring organizations have elected to receive USDA-donated foods are reduced by the value of the foods (7 CFR section 226.13(c)).

(3) *Meals Served in At-Risk Afterschool Programs* – Reimbursement payments for snacks served to children in at-risk afterschool programs are limited to one snack per child per day. However, program operators in the following States may claim one additional meal per child per day: Connecticut, Delaware, the District of Columbia, Illinois, Maryland, Michigan, Missouri, Nevada, New York, Oregon, Pennsylvania, Vermont, West Virginia, and Wisconsin. Snacks and additional meals served in at-risk afterschool programs are provided at no charge and reimbursed at the "free" rate (42 USC 1766(r)(4) and (5)); Section 730 of Pub. L. No. 111-80, 123 Stat. 2125 (October 21, 2009); 7 CFR sections 226.17a(j), (k), and (n)).

(4) *Meals Served in Emergency Shelters* – A shelter or its sponsoring organization may claim reimbursement only for three meals, or two meals and one supplement, per child per day. All such meals are provided at no charge and reimbursed at the free rate (42 USC 1766(t)(5)(B) and (C)).

An institution must report such information, in addition to meal counts, as its State agency determines necessary to support the reimbursement claimed. For centers and sponsors of centers in States that elect to reimburse at the lesser of meals-times-rates or documented costs, such information includes their operating (meal production) costs. For sponsors of day care homes, such information includes their administrative costs (7 CFR sections 226.7(m), 226.9(c) and (d), 226.10(c), 226.11(d), and

226.12(a)). This aspect of the claiming process is discussed in III.A, "Activities Allowed or Unallowed."

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

M. Subrecipient Monitoring

The State agency is responsible for monitoring the institution's non-profit status to ensure that all reimbursements shall be used solely for the conduct of the food service operation or to improve such food service operations, principally for the benefit of the enrolled participants (7 CFR section 226.7(b)) and 42 USC 1766 (d)(1)(B)).

The State agency is required to assess institutional compliance by performing on-site reviews of independent centers, sponsoring organizations of centers, and sponsoring organizations of day care homes, including reviews of new organizations, in accordance with a schedule prescribed in 7 CFR section 226.6(m) and 42 USC 1766 (d)(2)(A).

N. Special Tests and Provisions

1. Accountability for USDA-Donated Foods

Compliance Requirement

The following compliance requirements do not apply to recipient agencies (as defined at 7 CFR section 250.3), including CACFP institutions. Auditors making audits of recipient agencies are not required to test compliance with these requirements.

a. *Maintenance of Records*

Distributing and subdistributing agencies (as defined at 7 CFR section 250.3) must maintain accurate and complete records with respect to the receipt, distribution, and inventory of USDA-donated foods including end products processed from donated foods. Failure to maintain records required by 7 CFR section 250.16 shall be considered prima facie evidence of improper distribution or loss of donated foods, and the agency, processor, or entity may be required to pay USDA the value of the food or replace it in kind (7 CFR sections 250.16(a)(6) and 250.15(c)).

b. *Physical Inventory*

Distributing and subdistributing agencies and institutions shall take a physical inventory of all storage facilities. Such inventory shall be reconciled annually with the storage facility's inventory records and maintained on file by the agency which contracted with or maintained the storage facility. Corrective action shall be taken immediately on all deficiencies and inventory discrepancies and the

results of the corrective action forwarded to the distributing agency (7 CFR section 250.14(e)).

Audit Objective – Determine whether an appropriate accounting was maintained for USDA-donated foods, that an annual physical inventory was taken, and that the physical inventory was reconciled with inventory records.

Suggested Audit Procedures

a. Determine storage facility, processing, and end use locations of all donated foods, including end products processed from donated foods. Ascertain the donated food records maintained by the entity and obtain a copy of procedures for conducting the required annual physical inventory. Obtain a copy of the annual physical inventory results.

b. Perform analytical procedures, and obtain explanation and documentation for unusual or unexpected results. Consider the following:

   (1) Compare receipts, distributions, losses and ending inventory of donated foods for the audit period to the previous period.

   (2) Compare distribution by entity for the audit period to the previous period.

c. Ascertain the validity of the required annual physical inventory. Consider performing the following steps, as appropriate:

   (1) Observe the annual inventory process at selected locations and recount a sample of donated food items.

   (2) If the annual inventory process is not observed, select a sample of significant donated foods on hand as of the physical inventory date and, using the donated food records, "roll forward" the balance on hand to the current balance observed.

   (3) On a test basis, recompute physical inventory sheets and related summarizations.

   (4) Ascertain that the annual physical inventory was reconciled to donated food records. Investigate any large adjustments between the physical inventory and the donated food records.

d. On a sample basis, test the mathematical accuracy of the donated food records and related summarizations. From the donated food records, vouch a sample of receipts, distributions, and losses to supporting documentation. Ascertain that activity is properly recorded, including correct quantity, proper period and, if applicable, correct recipient agency.

IV. OTHER INFORMATION

FNS no longer requires recipient agencies to inventory USDA-donated foods separately from purchased food. However, the value of donated foods used during a State or recipient agency's fiscal year is considered Federal awards expended in accordance with the OMB Circular A-133 §___.105, definition of Federal financial assistance and should be valued in accordance with §___.205(g). Therefore, recipient agencies must determine the value of donated foods used. FNS recommends that recipient agencies use the value of donated food delivered to them during the audit period for this purpose.

UNITED STATES DEPARTMENT OF AGRICULTURE

CFDA 10.566 NUTRITION ASSISTANCE FOR PUERTO RICO

I. PROGRAM OBJECTIVES

The objective of the Puerto Rico Nutrition Assistance Program (NAP) is to help needy residents of the Commonwealth of Puerto Rico (PR) meet their nutritional needs.

II. PROGRAM PROCEDURES

Administration

Funds for the NAP are appropriated annually. The Food and Nutrition Service (FNS) of the USDA provides an annual block grant to the PR Department of the Family to cover the full cost of program benefits and 50 percent of the costs of administering the program. As a condition of receiving the grant, PR must submit an annual plan of operation for review and approval by FNS. FNS provides monthly increments to PR's NAP letter-of-credit authorization on the basis of budget estimates contained in the approved plan. FNS also monitors program operations to assure program integrity. These monitoring activities include reviewing financial reports and making on-site management reviews of selected program operations (7 CFR sections 285.2(a) and 285.3).

Benefits

Under the NAP, participating households receive nutritional benefits to supplement their incomes. They must use these program benefits to purchase foods for preparation and consumption at home. The amount of a household's monthly benefit payment depends on the household's characteristics, financial circumstances, and the funds available for distribution. PR establishes the eligibility and benefit levels for the program. The benefits are revised October 1 of each year to consider the nutritional needs of PR's needy population and to provide for the distribution of available block grant funds.

A household receives its monthly benefit payment electronically. PR issues each client household a debit card with which to access the benefits. Since September 2001, 75 percent of each household's monthly benefit has been designated for use in making food purchases at retailers authorized by PR. The remaining 25 percent is a cash benefit. Clients may use their debit cards to obtain cash at ATMs, or to combine their cash and non-cash benefits in food purchases from authorized retailers. PR monitors retailer and household compliance.

Benefit Redemption

NAP benefits are administered through an electronic benefit transfer (EBT) system. PR establishes a benefit account to control the issuance and use of each household's benefits. Benefit issuance takes the form of posting monthly increments to the client's account: 75 percent to the non-cash account and 25 percent to the cash account. ATM transactions generate charges against the client's cash account. Purchases at authorized retailers generate on-line charges

against the client's non-cash account; these are resolved by crediting the retailers for the amount of client purchases. PR must reconcile the funds exiting the EBT system and paid to retailers with amounts drawn from its EBT benefit account with the Government Development Bank (GDB). Cash drawn from PR's letter-of-credit is used to settle accounts with the GDB. A service provider is used to process NAP EBT transactions.

PR obtains an examination by an independent auditor of the EBT service provider (service organization) regarding the issuance, redemption, and settlement of benefits in accordance with the American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards (SAS) No. 70, Service Organizations.

American Recovery and Reinvestment Act of 2009 (ARRA)

On April 1, 2009, PR received ARRA funding for use in the remaining 6 months of Fiscal Year (FY) 2009. For FY 2009, all ARRA funds were used as benefits and were issued as a supplemental benefit near the end of each month with a set amount per NAP recipient. For FY 2010 and forward, all ARRA funds will be used for benefits, but will be included in the regular issuance to households.

Source of Governing Requirements

The NAP is authorized by section 19 of the Food Stamp Act of 1977 (7 USC 2028), amended by the Farm Security and Rural Investment Act of 2002 (Pub. L. No. 107-171, 116 Stat. 134 *et seq.*, May 13, 2002). **ARRA funds are authorized by Section 101(a)(1) of ARRA, Pub. L. No. 111-5, 123 Stat. 120.** USDA regulations pertaining to NAP are found in 7 CFR part 285. Many program requirements are established through PR's approved annual plan of operation.

III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look at Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

The annual plan of operation submitted by the PR Department of the Family must include a description of PR's program for providing nutrition assistance to needy persons. The nutrition assistance PR actually provides must conform to the approved plan (7 CFR section 285.3(b)(3); PR Annual Plan of Operation).

E. Eligibility

1. Eligibility for Individuals

The PR Department of the Family is required to identify in its annual plan the population eligible for NAP benefits. In testing the propriety of eligibility determinations and disbursements for NAP benefits, the auditor shall apply the eligibility criteria established by the PR Department of the Family and identified in the annual plan (7 CFR section 285.3(b)(2)).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching

The NAP grant provided by FNS is intended to cover 100 percent of PR's expenditures for NAP benefits and 50 percent of the related administrative expenses. PR must provide funds for its 50 percent share of the administrative expenses (7 CFR section 285.2(a)).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

Payments received by PR for a fiscal year may not exceed the amount authorized for the grant or the total NAP cost eligible for funding, whichever is less, for that fiscal year. Funds for payments for any prior fiscal year expenditures must be claimed against the funding for that fiscal year; however, funds collected from claims are credited to the fiscal year in which the collection occurred (7 USC 2027(e); 7 CFR section 285.2(b)).

For fiscal year 2002 and each fiscal year thereafter, PR may carry forward not more than two percent of its grant for use in the following fiscal year (7 USC 2028(a)(2)(D); Section 4124 of Pub. L. No. 107-171, 116 Stat. 325-326, May 13, 2002).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

1. EBT Reconciliation

Compliance Requirement – PR must perform all the following:

a. Record and compare payments to the Daily Activity File and the Daily Payments Summary File prepared by the EBT Services provider for the Department of the Family (PR Annual Plan of Operation, H., Program Administration, 2.a., Reconciliation System (EBT)).

b. Perform the following reconciliations (PR Annual Plan of Operation, H., Program Administration, 2.a., Reconciliation System (EBT)):

(1) Benefits authorized equal benefits posted.

(2) Benefits accessed by recipients (net EBT account debits/credits) equal benefit amount transactions approved by the EBT services provider.

(3) Net EBT account debits/credits equal amount paid to merchants and financial institutions (plus/minus authorized adjustments).

(4) Amount paid to merchants and financial institutions equal funds requested by the EBT services provider (plus/minus authorized adjustments).

PR's EBT service provider maintains transaction trails that document the cycle of household transactions from the posting of point-of-sale transactions at retailers through the settlement of retailer credits (PR Annual Plan of Operation, G., Criteria for Distribution of Funds, 7, Electronic Benefit Transfer – EBT Family Card, and H., Program Administration, 2.a., Reconciliation System (EBT)).

Audit Objective – Determine whether PR performs the required comparisons and reconciliations.

Suggested Audit Procedures

a. Ascertain if PR has a process in place to perform the required comparisons and reconciliations.

b. Test a sample of comparisons and reconciliations to ascertain if they are properly performed and that there is proper follow-up and resolution of discrepancies.

UNITED STATES DEPARTMENT OF AGRICULTURE

CFDA 10.568 EMERGENCY FOOD ASSISTANCE PROGRAM (ADMINISTRATIVE COSTS)
CFDA 10.569 EMERGENCY FOOD ASSISTANCE PROGRAM (FOOD COMMODITIES)

I. PROGRAM OBJECTIVES

The objective of the Emergency Food Assistance Program (TEFAP) Cluster is to provide U.S. Department of Agriculture (USDA)-donated commodities to low-income households for home consumption, and to provide hot meals prepared from USDA donated commodities to needy persons in congregate settings.

II. PROGRAM PROCEDURES

The Food and Nutrition Service (FNS) of the USDA administers TEFAP. FNS enters into agreements with State distributing agencies for the distribution of USDA donated commodities, and provides funding for the administrative costs these organizations incur in performing this function. The State distributing agencies with which FNS makes agreements for the operation of TEFAP are generally the same State agencies that administer other USDA commodity programs, such as State departments of agriculture, education, etc.

At the local (subrecipient) level, the program is operated by Eligible Recipient Agencies (ERAs). ERAs include Emergency Feeding Organizations (EFOs), charitable institutions (such as hospitals and retirement homes), summer camps for children, and child nutrition programs that provide food service, nutrition programs under the Older Americans Act of 1965 (Pub .L. No. 89-73), and disaster relief programs. EFOs include public and private non-profit organizations that provide nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, such as food banks, food pantries, soup kitchens, etc.

An ERA may receive a TEFAP subgrant directly from the State agency, or from another ERA. In designating ERAs, a State agency may give priority to existing food bank networks and other organizations whose primary function is to facilitate the distribution of food to low-income households, including food from sources other than USDA. However, a State agency must provide commodities to all EFOs within its distribution network before providing commodities to other types of ERAs. A State may delegate its storage and distribution functions to one or more food banks or other ERAs.

USDA provides commodities to State agencies, and the State agencies arrange for their delivery to ERAs. State agencies are prohibited from charging ERAs any type of fee for providing this service (7 CFR section 251.9(d); 7 USC 7511). FNS also awards each State agency a cash grant for the administrative cost of carrying out its TEFAP food delivery and oversight functions. The State agency, in turn, awards subgrants to its ERAs and/or incurs administrative costs on their behalf. The amounts of TEFAP commodities and administrative funds a State agency may receive are determined through an allocation formula described at 7 CFR section 251.3(h).

USDA may provide bonus commodities in addition to the formula-generated entitlement commodities.

To gain access to its commodities and administrative funds, a State agency must have a distribution plan and a Federal-State Agreement on file with the applicable FNS regional office. The distribution plan gives the State agency's criteria for awarding subgrants to ERAs and for certifying households eligible for TEFAP benefits. Both the Federal-State Agreement and the State agency's agreements with its ERAs may be amended at any time due to program changes or at the request of either party.

Determinations of households' eligibility for TEFAP benefits are generally made by ERAs in accordance with the criteria and procedures established by the State agency in its distribution plan. ERAs may issue commodities to members of eligible households in quantities suitable for meal preparation at home or they may use the commodities in the operation of feeding sites that serve prepared meals.

The ERAs that conduct these issuance and congregate feeding activities are known as "distribution sites." In some cases, distribution sites are operated by separate organizations as sub-subrecipients of other ERAs. Some distribution sites use mostly paid employees to carry out their missions, while others rely heavily on the services of volunteers.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 incorporated into TEFAP a previously separate program entitled Commodities for Soup Kitchens and Food Banks (CFDA 10.571). Activities formerly conducted under that program are now deemed TEFAP activities, and residual stocks of commodities originally made available for that program are now deemed TEFAP commodities. Accordingly, CFDA 10.571 should not appear in a State's or subrecipient's Schedule of Expenditures of Federal Awards.

Division A, Title I of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5, 123 Stat. 119) made additional commodities and administrative funds available for TEFAP. State agencies must generally use regular and ARRA TEFAP commodities and administrative funds according to the same terms and conditions.

Source of Governing Requirements

TEFAP is authorized by the Emergency Food Assistance Act of 1983 (Pub. L. No. 98-8) (7 USC 7501-16), as amended by the Hunger Prevention Act of 1988 (Pub. L. No. 100-435), the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193), the Food, Conservation, and Energy Act of 2008 (Pub. L. No. 110-246), **and ARRA**. Program regulations are found at 7 CFR parts 250 and 251.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. A State agency or ERA must use its administrative cost grant or subgrant for activities intrinsic to the processing, transportation, and distribution of TEFAP commodities within its State or service area. Such activities are listed at 7 CFR section 251.8(e)(1)(i) through (v). Under certain circumstances, a State agency may also use these funds for transporting TEFAP commodities to other States and transporting non-USDA foods in from other States (7 USC 7505(d)).

2. An ERA that receives USDA non-program commodities and TEFAP commodities may use its administrative cost subgrant for the distribution of both classes of commodities. In addition, a State agency or ERA may use its administrative funds for certain activities associated with the distribution of non-USDA foods donated by private individuals and organizations (7 CFR section 251.8(e)(1)).

B. Allowable Costs/Cost Principles

While regulations issued under previous legislation had required State agencies and ERAs to use TEFAP administrative funds solely for direct costs, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 expressly identified State level indirect costs as allowable costs (Personal Responsibility and Work Opportunity Reconciliation Act of 1996, section 202A(c)(1)).

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act apply to construction work funded with ARRA funds (Section 1606 of ARRA).

E. Eligibility

1. Eligibility for Individuals

a. *Receipt of Commodities for Household Use* – An ERA certifies households eligible to receive TEFAP commodities for household consumption by applying income eligibility criteria established by the State agency (7 CFR section 251.5(b)). These criteria are approved in advance by FNS as part of the State agency's distribution plan (7 CFR section 251.6(a)).

b. *Receipt of Prepared Meals* – There is no means test for eligibility of persons receiving prepared meals. Their eligibility is derived from the ERA's eligibility to receive and use TEFAP commodities.

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable.

3. Eligibility for Subrecipients

To receive commodities and TEFAP administrative funds, an organization must enter into an agreement with the State agency, or with another ERA, binding it to perform the duties of an ERA. The State agency's distribution plan identifies the classes of organizations with which it will enter into such agreements.

G. Matching, Level of Effort, Earmarking

1. Matching

a. A State agency must match each Federal dollar, **including ARRA funds**, expended for State-level TEFAP administrative costs with a dollar from non-Federal sources (7 CFR section 251.9(a)).

(1) *Exceptions* – The following States are exempted from the matching requirement in any fiscal year in which their respective required matching contributions would have fallen below $200,000: American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Marianas (7 CFR section 251.9(b)).

(2) *Acceptable Matching Contributions* – Acceptable matching contributions include:

(a) Cash expenditures by the State agency for allowable State- or local-level TEFAP administrative costs (7 CFR section 251.9(c)(1)); and

(b) Certain non-cash contributions. These may include: (i) the value of goods and services specifically identifiable with allowable State administrative costs; (ii) the value of goods and services contributed by the State agency to an ERA, which are specifically identifiable with allowable local-level administrative costs; and (iii) the value of third-party in-kind contributions, provided such contributions support functions meeting criteria stated in the program regulations (7 CFR section 251.9(c)(2)).

2. Level of Effort – Not Applicable

3. Earmarking

A State agency must use at least 40 percent of its TEFAP administrative cost grant for costs that benefit ERAs that are EFOs. The State agency may do this by awarding subgrants directly to EFOs and/or by incurring costs the EFOs would otherwise have had to pay themselves (7 CFR section 251.8(e)(4)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. FCS-667, *Report of the Emergency Food Assistance Program (TEFAP) Administrative Costs (TEFAP) (OMB No. 0584-0293)* – This report captures the status of a State's TEFAP administrative cost grant in a manner that identifies the portions applied to State level costs, costs paid by the State on behalf of ERAs, and costs paid by the ERAs themselves. It thus facilitates the monitoring of a State's compliance with the State matching and 40 percent pass-through requirements (7 CFR section 251.10(d)).

ARRA implementing guidance issued by OMB (2 CFR section 176.220(b)) requires a State agency to maintain, throughout the grant cycle, the distinction between expenditures of ARRA funds and expenditures of regularly appropriated funds made available for the same program. To accomplish this, FNS has instructed State agencies to submit separate FNS-667 reports on the use of regular and ARRA TEFAP administrative funds.

Key line items – The following line items contain critical information:

(1) Line c. – *Net Outlays to Date*

(2) Line f. – *Total State Agency's Share of Net Outlays*

(3) Line k. – *Total Federal Share*

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to the administrative cost component (CFDA 10.568)

M. Subrecipient Monitoring

A State agency must make on-site reviews of ERAs under its oversight and of distribution sites operated by such ERAs, in accordance with its distribution plan. At a minimum, the State agency's annual review coverage must include 25 percent of the ERAs that operate TEFAP as a subrecipient of the State agency and one-tenth or 20 (whichever is less) of the ERAs that operate TEFAP as subrecipients of other ERAs in the State. To the maximum extent practicable, review scheduling should enable State agency staff to observe TEFAP commodity issuance and prepared meal service operations (7 CFR section 251.10(e)(2)).

N. Special Tests and Provisions

1. Accountability for Commodities

Compliance Requirement – Accurate and complete records shall be maintained with respect to the receipt, distribution/use, and inventory of donated foods, including end products processed from donated foods. Failure to maintain records required by 7 CFR section 250.16 shall be considered prima facie evidence of improper distribution or loss of donated foods, and the agency, processor, or entity is liable for the value of the food or replacement of the food in kind (7 CFR sections 250.16(a)(6) and 250.15(c)).

Distributing and recipient agencies shall take a physical inventory of all storage facilities. Such inventory shall be reconciled annually with the storage facility's inventory records and maintained on file by the agency which contracted with or maintained the storage facility. Corrective action shall be taken immediately on all deficiencies and inventory discrepancies and the results of the corrective action forwarded to the distributing agency (7 CFR section 250.14(e)).

Audit Objective – Determine whether an appropriate accounting was maintained for donated food commodities, that an annual physical inventory was taken, and the physical inventory was reconciled with inventory records.

Suggested Audit Procedures

a. Determine storage facility, processing, and end use locations of all donated food commodities, including end products processed from donated foods. Determine the commodity records maintained by the entity and obtain a copy of procedures for conducting the required annual physical inventory. Obtain a copy of the annual physical inventory results.

b. Perform analytical procedures, obtain explanation and documentation for unusual or unexpected results. Consider the following:

   (1) Compare receipts, usage/distribution, losses and ending inventory of donated foods for the audit period to the previous period.

(2) If auditing at the State distributing agency level, compare distribution by entity for the audit period to the previous period.

(3) If auditing at the ERA level, compare relationship of usage of donated foods to production, meals served, or similar activity reports for the audit period to the same relationship for the previous period.

c. Ascertain the validity of the required annual physical inventory. Consider performing the following steps, as appropriate:

(1) Observe the annual inventory process at selected locations and recount a sample of commodity items.

(2) If the annual inventory process is not observed, select a sample of significant commodities on hand as of the physical inventory date and, using the commodity records, "roll forward" the balance on hand to the current balance observed.

(3) On a test basis, recompute physical inventory sheets and related summarizations.

(4) Ascertain that the annual physical inventory was reconciled to commodity records. Investigate any large adjustments between the physical inventory and the commodity records.

d. On a sample basis, test the mathematical accuracy of the commodity records and related summarizations. From the commodity records, vouch a sample of receipts, usage/distributions, and losses to supporting documentation. Ascertain that activity is properly recorded, including correct quantity, proper period and, if applicable, correct ERA.

UNITED STATES DEPARTMENT OF AGRICULTURE

CFDA 10.582 FRESH FRUIT AND VEGETABLE PROGRAM

I. PROGRAM OBJECTIVES

The Fresh Fruit and Vegetable Program (FFVP) was created to foster healthy eating habits in children over the long term by providing fresh fruits and fresh vegetables to children attending elementary schools.

II. PROGRAM PROCEDURES

The FFVP is administered at the Federal level by the Food and Nutrition Service (FNS), an agency of the U.S. Department of Agriculture (USDA). FNS makes grants to States for the FFVP, and the States select eligible schools to receive subgrants.

This program began as a pilot project operated in 16 selected States. However, the Consolidated Appropriations Act, 2008 (Pub. L. No. 110-161) and the Food, Conservation, and Energy Act of 2008 (Pub. L. No. 110-246) established the FFVP on a permanent basis, effective July 1, 2008, by authorizing it in a new Section 19 in the Richard B. Russell National School Lunch Act (NSLA) (42 USC 1769a). This legislation also authorized the program's expansion to all States. FNS awarded the first FFVP grants under Section 19 in July and October 2008.

A State's FFVP grant is determined through an allocation formula. FNS awards each State an amount equal to one percent of the FFVP appropriation; sets aside up to $500,000 from the balance of the appropriation for FNS administrative costs; and finally allocates the remaining funds on the basis of population. Territories do not participate in the initial one-percent allocation. Adjustments are made to ensure that this formula does not diminish the FFVP funding levels that the original 16 participating States received.

Each State is required to have an application process leading to the selection of eligible elementary schools for participation in the FFVP. States must also conduct outreach to schools with the highest proportion of enrolled children eligible for free or reduced price meals under the National School Lunch Program (NSLP) (CFDA 10.555) and School Breakfast Program (SBP) (CFDA 10.553), and give priority consideration to these schools. After a State notifies a school of its priority consideration, the school must apply for FFVP participation according to procedures established by the State. Eligibility is determined by applying criteria set by section 19 of the NSLA (42 USC 1769a).

A school that receives a FFVP subgrant must provide fresh fruits and fresh vegetables to enrolled children during the school day. The school must use its subgrant funds for costs of purchasing, preparing, and serving the fresh fruits and fresh vegetables. FNS has issued extensive guidance on nutritional requirements for the FFVP and allowable and unallowable costs.

Sources of Governing Requirements

The FFVP is authorized by section 19 of the Richard B. Russell National School Lunch Act (42 USC 1769a). No program regulations have yet been issued.

Availability of Other Program Information

Additional program information is available on the FNS public web at www.fns.usda.gov/cnd/FFVP/FFVPResources.htm. Resources available at this site include a FFVP Handbook, Questions and Answers, technical assistance and implementation memoranda, prototype agreement forms, and a prototype FFVP claim for reimbursement.

III. COMPLIANCE REQUIREMENTS

A. Activities Allowed or Unallowed

The school must make fresh fruits and fresh vegetables available at no charge to enrolled children during the school day, in one or more areas designated by the school. The school may not offer fresh fruits and fresh vegetables before school, during afterschool programs, or during regularly scheduled meals otherwise provided at school under the NSLP and SBP (42 USC 1769a(b) and (g)).

E. Eligibility

1. Eligibility for Individuals

All children enrolled in a participating school are eligible for FFVP benefits (42 USC 1769a(b)).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

States select schools for participation in the FFVP. To be eligible for selection, a school must meet the following criteria:

a. It is an elementary school as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 USC 7801) (42 USC 1769a(d)(1)(C)).

b. It operates the NSLP (42 USC 1769a(d)(1)(A)(i));

c. At least 50 percent of its enrolled children are eligible for free or reduced price meals under the NSLP (42 USC 1769a(d)(1)(A)(i)).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable.

2. Level of Effort – Not Applicable

3. Earmarking

A State may reserve a portion of its FFVP grant allocation for costs of administering the program. This reserved amount may not exceed the lesser of: (a) the amount set by FNS (five percent of the State's total FFVP grant allocation) or (b) the amount required to pay the costs of one full-time coordinator for the program in the State. No State is required to employ a full-time FFVP coordinator; rather, this provision sets a cap on the amount of funds available for State administrative costs based on the salary scales of individual States (42 USC 1796a(i)(6)(B)).

L. Reporting

1. Financial Reporting

a. SF-269A, *Financial Status Report (Short Form)* – Not Applicable.

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. **Section 1512 ARRA Reporting** – Not Applicable

5. **Subaward Reporting under the Transparency Act** – Applicable

DEPARTMENT OF AGRICULTURE

CFDA 10.665 SECURE PAYMENTS FOR STATES AND COUNTIES CONTAINING FEDERAL LANDS
CFDA 10.666 SCHOOLS AND ROADS – GRANTS TO COUNTIES

I. PROGRAM OBJECTIVES

The objective of this program is to share receipts from the national forests with the States in which the national forests are situated. Generally, these funds are to be used for the benefit of public schools and public roads of the county or counties in which the national forest is situated.

II. PROGRAM PROCEDURES

General

Since the early 1900s, the Congress has enacted laws directing that a State or county be compensated for the presence of Federal lands in the State. The compensation may be based on Federal acreage or a county's population, but in most instances, the payments relate to a percentage of the receipts generated on Federal land. Federal laws requiring payments to States, based on national forest receipts, provide the basis and methodology of the compensation payments to the States but allow States to prescribe how the funds are spent for schools and roads in the county or counties in which the national forest is situated. All disbursement transactions are processed through the U.S. Treasury.

Program Operation

25-Percent Payment – 25 percent of gross receipts generated on Forest Service lands during the fiscal year is distributed to the States. Payments are to be used to benefit public schools and public roads of the county or counties in which the national forest is situated. Two payments are made to the States: an interim payment is made in October on the basis of estimated third-quarter operating results, and a final payment is made in December, providing the balance of the actual receipts due to the counties. The Forest Service calculates both payments and sends letters to the States advising them of the amount and of each county's historic percentage of the payment based on the county's acreage in the national forest. The Forest Service notifies the U.S. Treasury of the amounts to be paid, and the funds are electronically transmitted to the States. The States verify the amount of each deposit with information received from the Forest Service, then distribute the funds to the counties in which the national forests are situated.

Full Payment Amount (Secure Rural Schools and Community Self-Determination Payment) – This payment is made in relation to the State's 25-Percent Payment. Each eligible county elects to receive either its share of the 25-Percent Payment, as described above, or its share of the State's "Full Payment Amount." Such payments are authorized for Federal Fiscal Years (FY) 2001 through 2007. For purposes of making the FY01 payment, the full payment amount for each eligible State, and the share thereof for each eligible county that elects to receive it, is stated in the Forest Service document entitled "Pub. L. No. 106-393, Secure Rural Schools and Community Self-Determination Act," dated July 31, 2001. For purposes of making the payments

required in Federal FYs 2002 through 2007, the Forest Service shall annually adjust the amounts stated in that document in accordance with section 751(b) of Pub. L. No. 107-76 (115 Stat. 739, November 28, 2001) and section 5401 of Pub. L. No. 110-28 (121 Stat. 165, May 25, 2007).

Quinault Special Payment – 45 percent of the gross receipts generated by the Quinault Special Management Area is distributed to the State of Washington for the benefit of public roads and public schools. This amount is combined with the 25-Percent Payment to Washington State to make one payment. Washington State distributes Quinault payments to the counties as part of its 25-Percent Payment.

Arkansas Smoky Quartz Payment – 50 percent of the receipts from the sale of quartz mined on the Ouachita National Forest in Arkansas is distributed to Arkansas for the benefit of public roads and public schools of the counties in which the forest is situated. The Forest Service calculates these payments by subtracting the quartz receipts from the forest receipts and applying the 50 percent rate to these quartz receipts. The quartz payment is added to the State's 25-Percent Payment and distributed in one lump sum.

Payments to Minnesota – Three-quarters of 1 percent of the fair appraised value of specified national forest lands in Cook, Lake, and St. Louis Counties is paid to the State. The Forest Service adds this amount to the 25 Percent Payment for the remainder of Minnesota and makes one payment to the State. The State distributes funds to Cook, Lake, and St. Louis counties according to the fair appraised value of the specified national forest lands in each county.

National Grasslands Payment – 25 percent of net revenues from national grasslands and land utilization projects (LUPs) administered under Title III of the Bankhead-Jones Farm Tenant Act (grazing receipts collected by the Forest Service and mineral receipts collected by the Minerals Management Service and transmitted to the Forest Service for distribution) is distributed to the 80 counties containing Forest Service national grasslands. Payments are made directly to the counties where the national grasslands and LUPs are located.

Source of Governing Requirements

25 Percent Fund – 16 USC 500

Secure Rural Schools and Community Self-Determination Act Payments – 16 USC 500 note; Section 751 of Pub. L. No. 107-76 (115 Stat. 739, November 28, 2001)

Secure Rural Schools and Community Self-Determination Program – 16 USC 500 note; Section 601 of Pub. L. No. 110-343 (October 3, 2008)

U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 – Section 5401 of Pub. L. No. 110-28 (May 25, 2007)

Quinault Special Payment – Pub. L. No. 100-638, section 4(b)(2)

Arkansas Smoky Quartz Payment – Pub. L. No. 100-446, section 323

Payments to Minnesota – 16 USC 577g and 577g-1

National Grasslands Payment – 7 USC 1012

Availability of Other Program Information

Program information may be found on the Internet at http://www.fs.fed.us.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *25-Percent Payment* funds must be used for public roads and public schools of the county or counties in which the national forest is situated (16 USC 500 note section 102).

2. *Full Payment Amount* funds must be used for public roads and public schools of the county in which the national forest is situated (Title I), special projects on Federal lands (Title II), or county projects (Title III) (16 USC 500 note sections 102, 202, and 302).

3. *Quinault Special Payment* funds must be used for public schools and roads of the county or counties in which the national forest is situated (Pub. L. No. 100-638, section 4(b)(2)).

4. *Arkansas Smoky Quartz Payment* funds must be used for public roads and public schools in the counties in which the Ouachita National Forest is located (Pub. L. No. 100-446, section 323).

5. *Payments to Minnesota* funds have no restrictions on use (16 USC 577g and g-1).

6. *National Grasslands Payment* funds must be used for roads or schools in the county in which the land is located (7 USC 1012).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2. Level of Effort – Not Applicable

3. Earmarking

A county that elects to receive its share of the *Full Payment Amount* and that share is $100,000 or more must:

a. Use at least 80 percent, but not more than 85 percent of the funds, for public roads and public schools (16 USC 500 note section 102(d)).

b. Use the balance of the funds for any combination of the following:

(1) Reserve for special projects on Federal lands in which case the funds are deposited in a special account in the U.S. Treasury (16 USC 500 note sections 102(d), 202).

(2) Search, rescue, and emergency services; community service work camps; easement purchases; forest related educational opportunities; fire prevention and county planning; and community forestry (16 USC 500 note sections 102(d) and 302).

(3) Return to the U.S. Treasury (16 USC 500 note sections 102(d) and 402).

UNITED STATES DEPARTMENT OF AGRICULTURE

CFDA 10.760 WATER AND WASTE DISPOSAL SYSTEMS FOR RURAL COMMUNITIES

I. PROGRAM OBJECTIVES

The Water and Waste Program is designed to assist rural communities in obtaining safe drinking water and adequate waste facilities, which are prerequisites for economic growth. In recent years, water and waste systems have been subject to increasingly stringent regulation under the Safe Drinking Water Act and the Clean Water Act. This program is instrumental in providing the financing to build or upgrade rural water and waste facilities.

II. PROGRAM PROCEDURES

Under this program, the United States Department of Agriculture's (USDA) Rural Utilities Service (RUS) awards direct loans, loan guarantees, and project grants for new and improved water and waste systems serving rural areas where financing is not available from commercial sources at reasonable rates and terms. The Water and Waste Program is authorized to provide loan and grant assistance to eligible applicants for water and waste disposal facilities in rural areas and towns of up to 10,000 people.

Eligible applicants include: (1) a public body, such as a municipality, district, county, authority, Indian tribe, or other political subdivision of a State, territory or commonwealth (7 CFR sections 1780.7(a)(1) and (a)(3)); or (2) an organization operated on a not-for-profit basis, such as a cooperative, association, or private corporation (7 CFR section 1780.7(a)(2)).

Direct Loans for Water and Waste Disposal Systems

To establish its eligibility for a loan, an applicant must demonstrate to RUS that it cannot finance the proposed project from its own resources or obtain sufficient credit to do so at reasonable terms or rates. In addition, the applicant must have the legal authority to construct, operate, and maintain the proposed facility, and to give security for and repay the proposed loan. (7 CFR section 1780.7) A loan is repayable in not more than 40 years or the useful life of the facility, whichever is less. Interest is charged at a poverty rate, intermediate rate, or market rate depending on the circumstances (7 CFR section 1780.13).

Project Grants for Water and Waste Disposal Systems

RUS makes grants in conjunction with direct loans for water and waste disposal projects servicing the most financially needy communities in order to reduce user costs to a reasonable level. Grant amounts are based on a graduated scale that provides higher amounts for projects in communities that have lower income levels; however, a grant amount may never exceed 75 percent of a project's eligible development costs. To establish grant eligibility, an applicant must demonstrate to RUS that it serves a rural area whose median household income (MHI) falls below the statewide nonmetropolitan median household income (NMHI) (7 CFR section 1780.10).

Guaranteed Loans for Water and Waste Disposal Systems

RUS generally guarantees 80 percent of the loan amount but may, in extraordinary circumstances, guarantee a higher level not to exceed 90 percent. The interest rate for guaranteed loans is negotiated between the recipient and the lender (7 CFR sections 1980.819 and 1980.823).

Source of Governing Requirements

The program is authorized by under Section 306 of the Consolidated Farm and Rural Development Act (7 USC 1926). **Additional funding is provided by Title I of the American Recovery and Reinvestment Act of 2009 (ARRA), (Pub. L. No. 111-5, 123 Stat. 118)**. Implementing regulations are at 7 CFR part 1780.

Availability of Other Program Information

RUS maintains a home page on the Internet (http://www.usda.gov/rus/water/), which provides general information about this program.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Loan and grant funds may be expended on eligible project costs, as approved by RUS. These expenditures include items such as land acquisition, water rights, legal fees, engineering fees, construction costs, and the purchase of equipment (7 CFR section 1780.9).

2. Loan and grant funds may not be used for the following (7 CFR section 1780.10):

   a. Facilities which are not modest in size, design, and cost.

   b. Loan or grant finder's fees.

   c. The construction of any new combined storm and sanitary sewer facilities.

   d. Any portion of the cost of a facility which does not serve a rural area.

   e. That portion of project costs normally provided by a business or industrial user, such as wastewater pretreatment, etc.

   f. Rental for the use of equipment or machinery owned by the applicant.

g. For other purposes not directly related to operating and maintaining the facility being installed or improved.

D. Davis-Bacon Act

For ARRA-funded awards, contractors and subcontractors are required to pay prevailing wages to laborers and mechanics in compliance with the Davis-Bacon Act (Section 1606 of ARRA).

G. Matching, Level of Effort, Earmarking

1. Matching

Borrowers may be required to provide funds from their own or other sources as required in the grant agreement and the letter of conditions issued by RUS (7 CFR sections 1780.44(d) and (f)).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting Requirements

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. Form RD 442-2, *Statement of Budget, Income and Equity (OMB No. 0575-0015)* – This report covers financial operations relating to the borrower's water or waste disposal project. A borrower may submit this financial data on other forms, provided the forms are in a similar format. Also, an annual audit may be submitted in lieu of this form (7 CFR section 1780.47).

g. Form RD 442-3, *Balance Sheet (OMB No. 0575-0015)* – This report presents the financial status of the borrower's water or waste disposal project. A borrower may submit this financial data on other forms, provided the forms are in a similar format. Also, an annual audit may be submitted in lieu of this form (7 CFR section 1780.47).

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

IV. OTHER INFORMATION

Interim Financing

After RUS has made a commitment on a loan, the borrower may obtain interim financing from commercial sources (e.g., a bank loan) for the construction period (7 CFR section 1780.30(d)). Expenditures from these commercial sources that will be repaid from the proceeds of the RUS loan should be considered Federal awards expended, included in determining Type A programs, and reported in the Schedule of Expenditures of Federal Awards.

Status of Outstanding Loan Balance After Project Completion

In years after the program funds are expended and construction is completed, and the only ongoing financial activity of the program is the payment of principal and interest on outstanding loan balances, the prior loan balances are not considered to have continuing compliance requirements under OMB Circular A-133 § ___.205(d). Prior loans that do not have continuing compliance requirements other than to repay the loans are not considered Federal awards expended and, therefore, are not required to be audited under OMB Circular A-133.

However, this does not relieve the borrower of the requirement to file financial reports on these loans (which are not required to be audited) or otherwise comply with program requirements (e.g., maintaining insurance, depositing funds in federally insured banks, obtaining prior approval for sales of plant).

UNITED STATES DEPARTMENT OF AGRICULTURE

CFDA 10.766 COMMUNITY FACILITIES LOANS AND GRANTS

I. PROGRAM OBJECTIVES

The objective of the Community Facilities (CF) direct loan, guaranteed loan, and grant programs is to provide loan or grant funds for the development of essential community facilities for public use in rural communities. Funds may be used to construct, enlarge, extend, or otherwise improve essential community facilities providing essential services primarily to rural residents and rural businesses. Funds are made available to public bodies, non-profit organizations, and federally recognized Indian tribes that are providing essential services to rural communities when financing is not available from their own resources or from commercial credit at reasonable rates and terms.

II. PROGRAM PROCEDURES

These programs are administered at the headquarters level by the United States Department of Agriculture (USDA) Rural Housing and Community Facilities Programs and in the field by USDA Rural Development field offices. Funds are made available directly to local governments, non-profit organizations, and Indian Tribes in the form of direct loans, guaranteed loans, and grants. Funds are used for the development of essential community facilities in rural areas and towns of up to 20,000 population.

An essential community facility is one that: (a) supports a function customarily provided by a local unit of government; (b) is a public improvement needed for orderly development of a rural community; (c) does not include private affairs, commercial, or business undertakings (except for limited authority for industrial parks); (d) is operated on a non-profit basis; and (e) is within the area of jurisdiction or operation for the public bodies eligible to receive assistance or a similar local rural service area of a not-for-profit organization owning and operating an essential community facility. A community may be a small city or town, county, or multi-county area depending on the type of essential community facility.

Guaranteed Loans

The purpose of the CF guaranteed loan program is to improve, develop, or finance essential community facilities in rural areas. This purpose is achieved through bolstering the existing private credit structure through the guarantee of quality loans that will provide lasting community benefits. Guaranteed loans are loans made and serviced by a lender and guaranteed by Rural Development. The processing of the loan and ensuring that the requirements placed on the borrower are met are the lender's responsibility.

CF Grants

Grant funds may be used to assist in the development of essential community facilities for health care, public safety, and community and public services in rural areas. Grants are targeted to the neediest communities that meet population criteria for loans and have a median household income below the higher of the poverty line or the eligible percentage (60, 70, 80, or 90 percent) of the State non-metropolitan median household income. The amount of CF grant funds provided for a facility may not exceed 75 percent of the cost of developing the facility.

Administration

RHS authorizes, monitors, and provides funding for administration of CF loans and grants. The USDA Rural Development State, local, district, and area offices monitor and evaluate the progress of the CF programs.

Certification

Eligibility for CF direct and guaranteed loan and grant assistance is based on: (a) the type of organization applying for the loan (public body, non-profit organization, or federally recognized Indian tribe); (b) whether the applicant can demonstrate that it is unable to finance the proposed project from its own resources or from commercial credit at reasonable rates and terms; (c) whether the applicant has authority to develop, own, and operate the proposed facility; and (d) whether the applicant can legally borrow money and make payments on debts obligated. In the case of CF grants, there are additional requirements based on the median household income of the community.

Assessing Need

Applicants must have the legal authority to borrow and repay loans, pledge security for loans, and construct, operate, and maintain the facility. They must also be financially sound and able to organize and manage the facility effectively. Repayment of the loan must be based on tax assessments, revenues, fees, or other sources of money sufficient for operation and maintenance of reserves and debt retirement. The amount of CF grant assistance must be the minimum amount sufficient for feasibility purposes, which will provide for facility operation and maintenance, reasonable reserves, and debt repayment. The applicant's excess funds must be used to supplement eligible project costs.

Source of Governing Requirements

The program is authorized under the Consolidated Farm and Rural Development Act of 1972 (7 USC 1926). **Additional funding is provided by Title I of the American Recovery and Reinvestment Act of 2009 (ARRA), (Pub. L. No. 111-5, 123 Stat. 118)**.

Implementing regulations are:

CF Direct Loans	7 CFR part 1942, subpart A
CF Fire and Rescue Loans	7 CFR part 1942, subpart C
CF Guaranteed Loans	7 CFR part 3575, subpart A
CF Grant Programs	7 CFR part 3570, subpart B.

Availability of Other Program Information

Program regulations, Administrative Notices, and other program literature can be found on the USDA web site at http://www.rurdev.usda.gov/regs.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed* – Funds may be used to construct, enlarge, extend, or otherwise improve essential community facilities providing essential services primarily to rural residents and rural businesses. Examples of essential community facilities are fire, rescue, and public safety facilities; health services facilities; facilities providing community, social, or cultural services; transportation facilities such as streets, roads, and bridges; hydroelectric generating facilities; and recreation facilities (guaranteed loans only). Funds are used to pay reasonable fees and costs associated with the loan, interest on loans for up to two years, and the costs of acquiring interest in land and rights. Under certain circumstances, funds may also be used to purchase or lease equipment, pay initial operating expenses, refinance debts, and pay obligations for construction incurred before issuance of conditional commitment. The projects (including costs) are described in a project summary prepared by USDA Rural Development (7 CFR sections 1942.17(d), 3575.24, and 3570.61(b)).

2. *Activities Unallowed* – Loan funds may not be used to finance: (a) on-site utility systems or businesses; (b) industrial buildings in connection with industrial parks; (c) community antenna television services; (d) electric generation except for hydroelectric or transmission facilities and telephone systems; (e) facilities which are not modest in size, design, or cost; and (f) loan or grant finder's fee (7 CFR sections 1942.17(d)(2) and 3575.25).

D. Davis-Bacon Act

For ARRA-funded awards, contractors and subcontractors are required to pay prevailing wages to laborers and mechanics in compliance with the Davis-Bacon Act (Section 1606 of ARRA).

L. Reporting Requirements

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. RD 442-2, *Statement of Budget, Income, and Equity (OMB No. 0575-0015)* – This report covers financial operations relating to the borrower's CF project.

g. RD 442-3, *Balance Sheet (OMB No. 0575-0015)* – This report presents the financial status of the borrower's CF project.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

IV. OTHER INFORMATION

Interim Financing

After USDA has made a commitment on the loan, the borrower may obtain interim financing from commercial sources (e.g., a bank loan) during the construction period (7 CFR section 1942.17(n)(3)). Expenditures from these commercial loans which will be repaid from a CF loan should be considered Federal awards expended, included in determining Type A programs, and reported in the Schedule of Expenditures of Federal Awards.

Years after Project Completion

In years after the program funds are expended and construction is completed, and the only ongoing financial activity of the program is the payment of principal and interest on outstanding balances, the prior loan (including loan guarantees) balances are not considered to have continuing compliance requirements under OMB Circular A-133 §___.205(d). Prior loans that do not have continuing compliance requirements other than to repay the loans are not considered Federal awards expended and, therefore, are not required to be audited under OMB Circular A-133.

However, this does not relieve the non-Federal entity of its obligation to file financial reports (which are not required to be audited) or otherwise comply with program requirements (e.g., maintaining insurance, depositing funds in federally insured banks, obtaining prior approval for sales of the facility).

DEPARTMENT OF COMMERCE

CFDA 11.300 INVESTMENTS FOR PUBLIC WORKS AND ECONOMIC DEVELOPMENT FACILITIES
CFDA 11.307 ECONOMIC ADJUSTMENT ASSISTANCE
CFDA 11.010 COMMUNITY TRADE ADJUSTMENT ASSISTANCE

I. PROGRAM OBJECTIVES

The Economic Development Administration (EDA) awards grants through its Public Works and Economic Development (Public Works) program to assist the Nation's most distressed communities: (1) revitalize and expand their physical and economic infrastructure and (2) provide support for the creation or retention of jobs for area residents by helping eligible recipients with their efforts to promote the economic development of their local economies. The primary goal of these awards is the creation of new, or the retention of existing, long-term private sector job opportunities in communities experiencing significant economic distress as evidenced by high unemployment, underemployment, low per capita income, outmigration, or a special need arising from actual or threatened severe unemployment or severe changes in local economic conditions. Public Works grants may include construction and related activities, such as acquisition, design and engineering, and related machinery and equipment.

The objective of EDA's Economic Adjustment Assistance program is to address the needs of communities experiencing adverse economic changes that may occur suddenly or over time, including, but not limited to, those caused by military base closures or realignments, depletion of natural resources, Presidentially-declared disasters or emergencies, or international trade. Economic Adjustment Assistance awards may be used to develop a Comprehensive Economic Development Strategy (CEDS) or other strategy to alleviate long-term economic deterioration or a sudden and severe economic dislocation, or to fund a project implementing that CEDS or other strategy, including grants for construction and grants for Revolving Loan Funds (RLFs). EDA grants to capitalize or recapitalize RLFs are most commonly used for business lending, but may also fund public infrastructure or other authorized lending purposes if specifically allowed for in the terms and conditions of the recipient's award.

The Community Trade Adjustment Assistance (Community TAA) program aims to help create and retain jobs by providing assistance to communities, including cities, counties, or other political subdivisions of a State or a consortium of political subdivisions of a State, including District Organizations of Economic Development Districts, that have experienced, or are threatened by, job loss resulting from international trade impacts to create and retain jobs. Grants under the Community TAA program may be used to support a wide range of technical, planning, and infrastructure projects to help communities adapt to pressing trade impact issues and diversify their economies.

II. PROGRAM PROCEDURES

In nearly all cases, a recipient of a Public Works, Economic Adjustment Assistance, or Community TAA grant is required to provide a matching share. The required matching share varies on a grant-by-grant basis and is set forth in the grant award. Prior to EDA approving the matching share, the recipient must demonstrate to EDA's satisfaction that the matching share is committed to the project, available as needed, and not conditioned or encumbered in any way that would preclude its use consistent with the requirements of the grant award. EDA has greater discretion to award grants under supplemental appropriations for natural disasters at investment rates up to and including one hundred (100) percent.

Section 302 (42 USC 3162) of the Public Works and Economic Development Act of 1965, as amended (PWEDA, 42 USC 3121 *et seq*.), sets forth a CEDS requirement for Public Works and Economic Adjustment Assistance grants, except for planning projects (i.e., strategy grants) under the Economic Adjustment Assistance program. Pursuant to section 214 of PWEDA (42 USC 3154), EDA may waive the CEDS requirements for Economic Adjustment projects located in regions designated as "Special Impact Areas." If a project is located in a designated "Special Impact Area," such designation will be specified in the grant award documents.

RLF recipients must manage RLFs in accordance with an RLF Plan approved by EDA. The RLF Plan must be approved by the RLF recipient's governing board prior to the initial disbursement of EDA funds. RLF recipients are responsible for ensuring that borrowers are aware of and comply with applicable Federal statutory and regulatory requirements.

Source of Governing Requirements

The Public Works and Economic Adjustment Assistance programs are authorized by PWEDA The Community TAA program was established under the Trade and Globalization Adjustment Assistance Act of 2009 **(**Subtitle I, Part III, of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5). The Community TAA program was funded under the Supplemental Appropriations Act for Fiscal Year 2009 (Pub. L. No. 111-32).

All regulatory section citations contained herein refer to EDA's regulations as codified at 13 CFR Chapter III, including program regulations for CFDA 11.300 at 13 CFR part 305, CFDA 11.307 at 13 CFR part 307, and CFDA 11.010 at 13 CFR part 313.

Some grants awarded under CFDA 11.300 or CFDA 11.307 may have been funded, in whole or in part, by funds appropriated by ARRA. CFDA 11.010 is not considered an ARRA program because funding was not provided by ARRA.

EDA published a final rule on January 27, 2010, in the *Federal Register* (75 FR 4529) to amend some of its regulations, namely the Trade Adjustment Assistance for Firms (TAA) regulations and the Revolving Loan Fund (RLF) regulations. The technical revisions to a few of the TAA definitions were made to help better align EDA's responsibilities in implementing the TAA program under the Trade Act. EDA also made a number of changes to the RLF regulations to

implement the Department of Commerce's Office of Inspector General's audit recommendations and to improve the administration and effectiveness of the RLF program.

Availability of Other Program Information

Other program information is available on the Internet at http://www.eda.gov.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

The grant budget and grant agreement will specify the purpose or use of funds, which include the following:

a. Activities that can be funded under the Community TAA program include the development of a strategic plan to assist the community in adjusting to trade impact, or a construction or non-construction project to implement a previously developed strategic plan approved by EDA. Such implementation assistance may include: (1) infrastructure improvements, such as site acquisition, site preparation, construction, rehabilitation, and equipping of facilities; (2) market or industry research and analysis; (3) technical assistance, including organizational development such as business networking, restructuring or improving the delivery of business services, or feasibility studies; (4) public services; (5) training; and (6) other activities justified by the EDA-approved strategic plan (13 CFR section 313.7).

b. Construction grants made under CFDA 11.300 or CFDA 11.307 can be made for the acquisition or development of land and improvements for use for a public works, public service, or development facility. Construction grants can also be made for the acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such a facility, including related machinery and equipment (42 USC 3141; 42 USC 3149; and 13 CFR sections 305.2(a) and 307.3).

c. RLF grants (CFDA 11.307) may be made for the establishment or recapitalization of an RLF, usually for business lending, but RLF grants may also fund public infrastructure or other authorized purposes involving lending if specifically allowed for in the terms and conditions of the recipient's award (42 USC 3149; and 13 CFR section 307.7).

d. Other activities that can be funded under the Economic Adjustment Assistance program (in addition to grants for construction and RLFs) are grants for CEDS (or other strategy) development and grants for CEDS (or other strategy) implementation, which include market or industry research and analysis, technical assistance, public services, training, and other activities as justified by the strategy which meet applicable statutory and regulatory requirements (42 USC 3149; and 13 CFR section 307.3).

e. A recipient of an Economic Adjustment Assistance grant may directly expend the grant funds or, with prior EDA approval, may redistribute such grant assistance in the form of (i) a subgrant to another eligible recipient that qualifies for an Economic Adjustment Assistance award or (ii) a loan or other appropriate assistance to non-profit and private for-profit entities (42 USC 3154c; 13 CFR section 309.2).

f. A recipient of a Public Works grant may directly expend the grant funds or, with prior EDA approval, may redistribute such grant assistance in the form of a subgrant to another eligible recipient to fund required components of the scope of work approved for the project (42 USC 3154c; 13 CFR section 309.1).

2. *Activities Unallowed*

RLF capital (as defined in 13 CFR section 307.8) may not be used to:

a. Acquire an equity position in a private business (13 CFR section 307.17(b)(1)).

b. Subsidize interest payments on an existing RLF loan (13 CFR section 307.17(b)(2)).

c. Provide the equity contribution required of borrowers under other Federal loan programs (13 CFR section 307.17(b)(3)).

d. Enable an RLF borrower to acquire an interest in a business unless there is a sufficient justification and documentation showing the need for RLF financing (13 CFR section 307.17(b)(4)).

e. Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts or other investments not related to the RLF (13 CFR section 307.17(b)(5)).

f. Refinance existing debt unless (i) the RLF recipient sufficiently demonstrates in the loan documentation a "sound economic justification" for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities); for this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of

financing to a borrower shall not, without other indicia, constitute a "sound economic justification"; or (ii) RLF capital will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan (13 CFR section 307.17(b)(6)).

C. Cash Management

1. Unless otherwise specified in a special award condition, the method of payment for an award for an infrastructure construction project is generally through reimbursement (using SF-271, *Outlay Report and Request for Reimbursement for Construction Programs*) for costs incurred. Prior to disbursing grant funds for an infrastructure construction project, EDA also must receive an invoice from the recipient. EDA may approve the disbursement of funds prior to the tender of all construction contracts if the recipient can demonstrate that a severe hardship will result without such approval (13 CFR sections 305.9(b) and 307.6(b)).

2. The method of repayment for revolving loan funds is on a reimbursement basis i.e., when an obligation is incurred by the RLF recipient at the time of loan approval and loan announcement. An RLF recipient must request a disbursement only to close a loan or disburse RLF funds to a borrower. The RLF recipient must disburse the grant funds to a borrower within thirty (30) days of receipt of the funds. Any grant funds not disbursed within the thirty (30) day period must be returned to EDA. An RLF recipient is required to submit a written request for continued use of grant funds beyond a missed disbursement deadline. The amount of disbursed grant funds cannot exceed the difference, if any, between the RLF capital and the amount of a new loan, less the amount, if any, of the matching share required to be disbursed concurrent with the grant funds. However, RLF income held to cover eligible administrative expenses need not be disbursed in order to draw additional grant funds (13 CFR section 307.11).

D. Davis-Bacon Act

All laborers and mechanics employed by contractors or subcontractors on construction projects receiving EDA grant assistance under Public Works and Economic Adjustment Assistance grants shall be paid at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (42 USC 3212; 13 CFR section 302.13; **Section 1606 of ARRA**).

F. Equipment and Real Property Management

Except as otherwise authorized by EDA, property acquired or improved with EDA grant assistance cannot be used to secure a mortgage or deed of trust or in any way collateralized or otherwise encumbered. An encumbrance includes but is not limited to

easements, rights-of-way or other restrictions on the use of any property (13 CFR sections 314.6(a) and 313.11).

G. Matching, Level of Effort, Earmarking

1. Matching

The required matching share varies on a grant-by-grant basis and is set forth in the grant award (42 USC 3144-3146; 13 CFR sections 300.3 and 301.5; 19 USC 2371e; 13 CFR section 313.6(d); 19 USC 2371d; and 13 CFR section 313.7(d)).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting

The following reporting requirements pertain to RLF recipients only.

a. Form ED-209, *Semi-Annual Report for EDA-Funded RLF Grants (OMB No. 0610-0095)*—For the period ending March 31, 2010, and all subsequent reporting periods ending September 30 and March 31, all EDA RLF recipients must submit an electronic Form ED-209 through EDA's Revolving Loan Fund Management System (RLFMS) (13 CFR section 307.14(a)).

Key Line Items – The following line items contain critical information on the ED-209:

ED-209

(1) *Total Active Loans (Section I.A)*

(2) *Current RLF Capital Base (Section III.C)*

(3) *Current Balance Available as a Percentage of RLF Capital Base (Section III.D)*

(4) *Amount of RLF Income Earned during this Reporting Period (Section V.C)*

(5) *Percentage of RLF Income used for Administrative Expenses during this Reporting Period (Section V.C)*

b. Form ED-209I, *RLF Income and Expense Statement (OMB No. 0610-0095)* – For the period ending March 31, 2010, and all subsequent semi-annual reporting periods ending September 30 and March 31, those RLF recipients electing to use either 50 percent or more (or more than $100,000) of RLF income to cover all or part of an RLF's administrative expenses in that same semi-annual period must submit an electronic Form ED-209I through EDA's Revolving Loan Fund Management System (13 CFR sections 307.14 (a) and (c)).

Key Line Items – The following line items contain critical information:

(1) *RLF Income*

(2) *Expenses Charged to RLF Income (2.a through 2.l)*

(3) *Total Expenses (sum of 2.a through 2.l)*

(4) *Net RLF Income (1 minus 3)*

(5) *Cumulative Net RLF Income*

(6) *Expenses as % of RLF Income (3/1)*

(7) *For the current reporting period, provide an estimate of projected RLF Income and the percentage expected to be used for RLF administrative expenses*.

4. Section 1512 ARRA Reporting – Applicable (for projects funded by ARRA)

5. Subaward Reporting under the Transparency Act – Applicable for projects under CFDA 11.300 and CFDA 11.307 that are not funded by ARRA. (NOTE: Because RLFs represent longstanding agreements and, therefore, are not new

awards within the meaning of OMB's guidance, subawards under RLFs will not be not subject to this reporting.)

N. Special Tests and Provisions

1. Increases to RLF Capital Base and Capital Utilization

Compliance Requirements – RLF income includes all interest earned on outstanding loan principal, interest earned on accounts holding idle RLF funds, loan fees and other loan-related earnings. RLF income does not include repayment of RLF loan principal and any interest remitted to the U.S. Treasury pursuant to a sequestration of excess funds. When an RLF recipient receives proceeds on a defaulted RLF loan, such proceeds shall be applied in the following order of priority: (1) first, towards any costs of collection; (2) second, towards outstanding penalties and fees; (3) third, towards any accrued interest to the extent due and payable; and (4) fourth, towards any outstanding principal balance (13 CFR sections 307.8 and 307.12(c)).

RLF income may fund administrative expenses, provided the following conditions are met: (1) the RLF income and the administrative expense are earned in the same 6-month reporting period; (2) RLF income that is not used for administrative expenses during the 6-month reporting period must be made available for lending activities; (3) RLF income cannot be withdrawn from the RLF capital base in a subsequent reporting period for any use other than lending without the prior written consent of EDA; and (4) the recipient completes an *RLF Income and Expense Statement* if required by EDA's regulations (13 CFR sections 307.12(a) and 307.14(c)).

The RLF capital base is defined as the value of RLF assets administered by the recipient. It is equal to the amount of grant funds used to capitalize (and, if applicable, re-capitalize) the fund, plus the matching funds committed to the RLF at the time of award (and any subsequent additions, but not withdrawals), plus RLF income added to the fund less loan losses. The RLF capital must be used for the purpose of making RLF loans that are consistent with the recipient's RLF Plan (13 CFR section 307.17(a)).

The portion of the RLF capital base that is not loaned out must be made available for lending. Generally, EDA requires recipients to have at least 75 percent of the RLF's capital base loaned or committed at any given time. The following exceptions apply:

a. An RLF recipient that anticipates making large loans relative to the size of its RLF capital base may propose an RLF Plan that provides for maintaining a capital utilization percentage greater than 25 percent; and

b. EDA may require an RLF recipient with an RLF capital base in excess of $4 million to adopt an RLF Plan that maintains a proportionately higher percentage of its funds loaned (13 CFR section 307.16(c)).

EDA requires the recipient to sequester "excess funds" if RLF capital loaned or committed falls below 75 percent of the total RLF capital, or alternatively, below the

capital utilization standard specified in the RLF Plan (if applicable), in two consecutive reporting periods (13 CFR section 307.16(c)). "Excess funds" can be calculated by taking the difference between the actual value of cash and investments on hand (e.g., that portion of the capital base that is not loaned out or committed) and the allowable value of cash and investments on hand. The allowable value of cash and investments is equal to: ((100% – (minus) capital utilization standard) **X** (multiplied by) RLF capital base).

For example, an RLF with a capital base of $1,000,000, a capital utilization standard of 75 percent, and $500,000 in capital loaned or committed would calculate its excess cash as follows:

$1,000,000 RLF capital base – $500,000 loaned/committed = $500,000 cash/investments

Allowable cash/investments = (100% – 75%) **X** $1,000,000 capital base = $250,000

Excess cash = $500,000 actual cash/investments – $250,000 allowable = $250,000

EDA also requires the recipient to remit the Federal share of the interest earned on sequestered funds to the U.S. Treasury on a quarterly basis (13 CFR section 307.16(c)). For example, if the recipient is required to sequester $250,000 in an interest-bearing account, the quarterly interest accruing on this account is $2,500, and the Federal share of the RLF award is 50 percent, the recipient would be required to remit $1,250 to the U.S. Treasury for that quarter.

Audit Objective – Determine whether (1) all the conditions for RLF income to be used to fund administrative expenses were satisfied; (2) RLF income not used for administrative expenses was added to the RLF capital base and made available for lending; (3) repayments of principal on RLF loans were made available for re-lending; and (4) the recipient is meeting its capital utilization standard and, if not, whether it is fulfilling EDA's requirements related to sequestration of excess funds and remittance of the Federal share of the interest to the U.S. Treasury.

Suggested Audit Procedures

a. Verify that the amounts recorded in the financial records include RLF income and repayments of principal on RLF loans.

b. Ascertain that if RLF income was not used for administrative expenses, it was added to the RLF capital base.

c. Ascertain if all funds arising from repayments of principal on RLF loans were made available for re-lending.

d. Verify that any "excess funds" have been sequestered, as required, and that the recipient is properly accounting for the Federal share of the interest accruing on these funds and remitting this amount to the U.S. Treasury on a quarterly basis.

2. Loan Requirements

Compliance Requirements – The following requirements apply to RLF loans:

a. The standard loan documentation must include, at a minimum, the (1) loan application, (2) loan agreement, (3) board of directors' meeting minutes approving the RLF loan, (4) promissory note, (5) security agreement(s), (6) deed of trust or mortgage (if applicable), (7) agreement of prior lien holder (if applicable), and (8) signed bank turn-down letter demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. EDA will permit the RLF recipient to accept alternate documentation only if such documentation is allowed in the recipient's EDA-approved RLF Plan (13 CFR section 307.15(b)(2)).

b. An RLF recipient must make loans to implement and assist economic activity only within its EDA-approved lending area, as defined in the special terms and conditions of the grant award and the EDA-approved RLF Plan (13 CFR section 307.18).

Audit Objective – Determine whether (1) the required standard loan documents are complete for the RLF loans; (2) the RLF recipient's financed activity is located in an EDA-approved lending area; and (3) there is loan documentation to support that credit was not otherwise available to the borrower.

Suggested Audit Procedures

Test a sample of RLF loan files to ascertain if:

a. All required standard loan documents are complete and in the file.

b. The financed activity is located in an EDA-approved lending area.

c. The RLF recipient documents in the RLF loan file that credit was not otherwise available to the borrower.

3. Addition of Lending Areas; Merger of RLFs

a. An RLF recipient may add an additional lending area to its existing lending area to create a new lending area only with EDA's prior written approval (42 USC 3149 and 13 CFR section 307.18(a)).

b. EDA may provide written approval for an RLF recipient with more than one EDA RLF grant to merge its RLFs into a single RLF. If EDA approves this merger, EDA will determine a new grant rate for the resulting RLF (42 USC 3149 and 13 CFR section 307.18(b)(1)).

c. EDA may provide written approval for multiple RLF recipients to merge their EDA RLFs into a single RLF. If EDA approves this merger, EDA will determine a new grant rate for the resulting RLF, all applicable RLF grant assets of the discharging RLF recipient(s) will transfer to the surviving RLF recipient as of the merger's effective date, and the surviving RLF recipient will become fully responsible for administration of the RLF grant assets transferred and fulfill all surviving RLF grant requirements and any other conditions reasonably requested by EDA (42 USC 3149 and 13 CFR section 307.18(b)(2)).

Audit Objectives – Determine, if applicable, whether (1) EDA has provided prior written approval to an RLF recipient, permitting it to (1) create a new lending area or (2) merge two or more of its EDA-funded RLFs into one surviving RLF; or (2) EDA has provided prior written approval to two or more RLF recipients to consolidate their EDA-funded RLFs into one surviving RLF.

Suggested Audit Procedures

Verify that the RLF recipient has evidence of EDA's prior written approval for the creation of a new lending area or the merger of RLFs.

4. RLF Loan Portfolio Sales and Securitizations

With prior approval from EDA, an RLF recipient may enter into a sale or a securitization of all or a portion of its RLF loan portfolio, provided it: (1) uses all the proceeds of any sale or a securitization to make additional RLF loans; and (2) requests EDA to subordinate its interest in all or a portion of any RLF loan portfolio sold or securitized (42 USC 3149; and 13 CFR section 307.19).

Audit Objectives – In the event an RLF recipient has sold or securitized RLF loans, verify whether it (1) received EDA's prior approval; and (2) used all the proceeds from the sale or securitization to make additional RLF loans.

Suggested Audit Procedures

a. Verify that the RLF recipient has a written record demonstrating EDA's approval to sell or securitize all or a portion of its RLF loan portfolio.

b. Ascertain that all the proceeds from the sale or securitization (net of reasonable transactions costs) were used to make additional RLF loans.

IV. OTHER INFORMATION

For purposes of completing the Schedule of Expenditures of Federal Awards (SEFA), each EDA RLF grant (CFDA 11.307) should be shown as a separate line item calculated as follows:

1. Balance of RLF loans outstanding at the end of the recipient's fiscal year, *plus*

2. Cash and investment balance in the RLF at the end of the recipient's fiscal year, *plus*

3. Administrative expenses paid out of RLF income during the recipient's fiscal year; *plus*

4. The unpaid principal of all loans written off during the recipient's fiscal year; *and then multiply this sum (1+ 2 +3+4)* by

5. The Federal share of the RLF. The Federal share is defined as the Federal participation rate (or the Federal grant rate), as specified in the grant award. Note that some RLFs have received EDA's permission to co-mingle funds from one or more EDA RLF grants. If this is the case, the Federal share will be the weighted average of the Federal grant rates of the EDA RLF grants used to capitalize the fund. The Federal grant rates for each EDA RLF can be found in the respective grant awards.

As an example, if a recipient received two EDA RLF grants that were subsequently co-mingled—one for $500,000 with a $500,000 match, and the second for $500,000 with a $250,000 match, with the outstanding balance of RLF loans equaling $2,000,000, a cash and investment balance of $225,000, allowable administrative expenses paid out of RLF income of $50,000, and no write-offs for the year—the Federal Awards Expended calculation would be as follows:

($2,000,000 + $225,000 + $50,000) X [($500,000 + $500,000) ÷ ($1,000,000 + $750,000)] = $1,300,000

For the purposes of calculating federal expenditures, RLF recipients are not permitted to factor in an allowance for bad debt.

A note showing the figures used in this calculation should be included in the SEFA.

DEPARTMENT OF COMMERCE

CFDA 11.555 PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS GRANT PROGRAM

I. PROGRAM OBJECTIVES

The Public Safety Interoperable Communications (PSIC) Grant Program is a one-time formula-based, 5-year matching grant program intended to enhance interoperable communications for voice, data, and/or video signals. This program provides public safety agencies with the opportunity to achieve meaningful and measurable improvements to the state of public safety communications interoperability through the full and efficient use of all telecommunications resources.

II. PROGRAM PROCEDURES

Section 3006 of the Deficit Reduction Act of 2005 (Pub. L. No. 109-171), as amended by Section 2201 of Pub. L. No. 110-53 and Section 4 of the Call Home Act of 2006,
Pub. L. No. 109-459, directed the National Telecommunications and Information Administration (NTIA), in consultation with the Department of Homeland Security (DHS), to establish and implement a grant program to assist public safety agencies in the planning and coordination associated with, the acquisition of, deployment of, or training for the use of interoperable communications systems that:

- utilize reallocated public safety spectrum for radio communications;
- enable interoperability with communications systems that can utilize reallocated public safety spectrum for radio communication; or
- otherwise improve or advance the interoperability of public safety communications systems that utilize other public safety spectrum bands.

States and Territories are required to submit an Investment Justification (IJ) for each proposed PSIC Investment (project). Up to 10 Investment Justifications will be accepted per State or Territory. A portfolio review of each State's or Territory's Investment Justifications will include a statewide Investment summary, which will include the following:

- Summary of PSIC Investments;
- Summary of how the Investments collectively relate to the statewide strategy/plan—the Statewide Communications Interoperability Plan (SCIP);
- Description of the process used to identify, prioritize, and select Investments included in the Investment Justification; and
- Description of the stakeholders involved in the evaluation and selection of proposals.

These Investments should strongly align with the goals and gaps set forth in the SCIP and the PSIC criteria. The statewide Investment summary of a State's or Territory's IJs must cumulatively account for the total amount of PSIC funding allocated to the State or Territory, not including any funds (up to 5 percent) already dedicated to statewide planning efforts. Each IJ must be a separate and unique project from any efforts currently under way. For example, a State may use its funding to support an existing statewide communications system; however, this funding must be a unique component of this system that does not receive funding from another federal grant program.

The Department of Commerce, through the NTIA, is authorized to make grants only through the end of fiscal year 2012. The PSIC grant has been awarded to the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands. The Governor of each State and Territory has designated a State Administrative Agency (SAA), which applied for and administers the funds under the PSIC Grant Program. A recipient must be a public safety agency that is a State, local, or tribal government entity or nongovernmental organization authorized by such entity, whose sole or principal purpose is to protect safety of life, health, or property (Pub. L. No. 109-171, Section 3006(d)(1), 120 Stat. at 24).

The PSIC Grant Program period of performance began on October 1, 2007 and continues until September 30, 2011, unless specifically granted an additional 1-year extension until September 30, 2012 by the Assistant Secretary of Commerce for Communications and Information.

A special condition has been placed on each grant award indicating that the applicant cannot drawdown, obligate, or expend Federal funds until approval of the SCIP and IJs. From the period between October 1, 2007 and the approval in early 2008, applicants can (at their own risk) incur matching costs associated with the acquisition, deployment, and management and administration (M&A) of the interoperability project. As of early 2009, all PSIC grantees have received approval for their SCIPs and IJs.

The PSIC Grant Program encourages the development and implementation of voluntary consensus standards for interoperable communications to the greatest extent possible. Public safety agencies may also use PSIC funds for interim- or long term Internet Protocol-based interoperable solutions.

Source of Governing Requirements

The PSIC Grant Program is authorized by Section 3006 of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, as amended by Section 2201 of Pub. L. No. 110-53; Section 4 of the Call Home Act of 2006, Pub. L. No. 109-459; and Pub. L. No. 111-96, 123 Stat. 3005 (2009).

Availability of Other Program Information

Other program information is available on the Internet at http://www.ntia.doc.gov/psic.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Funds may be used for the following activities:

1. Planning and coordination associated with the use of interoperable communications equipment, software and systems.

2. Acquisition of interoperable communications equipment, software and systems. Acquisition activities may also include technical and financial planning, as well as procurement and system design activities.

3. Deployment costs of interoperable communications equipment, software and systems. Deployment activities may also include the development of deployment procedures for use and the establishment of service level agreements for its use.

4. Training for the use of interoperable communications equipment, software, and systems, both technical and operational (Pub. L. No. 109-171, Section 3006(a)(1), as amended by Section 2201 of Pub. L. No. 110-53, 121 Stat. 537).

G. Matching, Level of Effort, Earmarking

1. Matching

SAAs must provide, from non-federal sources, not less than 20 percent of the costs of acquiring and deploying the interoperable communications systems funded under the grant program (Pub. L. No. 109-171, Section 3006(c), 120 Stat. at 24). The SAA is required to track and report the 20 percent matching requirement for acquisition, deployment, and management and administrative costs.

a. A match is not required for each Investment, as long as the aggregated State-level costs associated with the overall acquisition, deployment, and management and administrative cost categories have met the minimum 20 percent matching requirement.

b. Costs for planning and coordination and training activities do not require a match.

c. As provided in 48 USC 1469a, the requirement for local matching funds under $200,000 (including in-kind contributions) is waived for the

Territorial governments in Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

All PSIC grant funds that are not expended by September 30, 2011 must be returned to the U.S. Treasury (Section 3006 of the Deficit Reduction Act of 2005, Public Law No. 109-171, Section 3006(a)(2), 120 Stat. at 24 (2006)) unless specifically granted an additional 1-year extension until September 30, 2012 by the Assistant Secretary of Commerce for Communications and Information (Pub. L. No. 111-96, 123 Stat. 3005 (2009)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4 Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

IV. OTHER INFORMATION

The PSIC Grant Program is closely related to the DHS Homeland Security Grant Program (CFDA 97.067). The auditor should be certain that the allowable expenditures under the awards for each of these grant programs are properly allocated and that the specific requirements of each program are followed.

DEPARTMENT OF COMMERCE

CFDA 11.557 BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM

I. PROGRAM OBJECTIVES

The Broadband Technology Opportunities Program (BTOP) is intended to facilitate the deployment of broadband infrastructure in the United States, enhance broadband capacity at public computer centers, and promote sustainable broadband adoption projects. The expansion of broadband deployment, availability, and adoption funded by BTOP projects is designed to provide communities an opportunity to develop and expand job-creating businesses and institutions, spur technological and infrastructural development, and stimulate long-term economic growth and opportunity.

II. PROGRAM PROCEDURES

Section 6001 of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5, 123 Stat. 115, February 17, 2009) directed the National Telecommunications and Information Administration (NTIA) within the Department of Commerce (DOC), to establish a grant program to assist eligible entities to implement broadband initiatives that spur job creation, stimulate long-term economic growth and opportunity, narrow gaps in broadband deployment and adoption, and support public safety agencies.

BTOP funds are available through three categories of eligible projects: (1) Infrastructure; (2) Public Computer Centers; and (3) Sustainable Broadband Adoption. NTIA funded BTOP awards through two rounds of funding: (1) Round 1 Notice of Funds Availability (Round 1 NOFA), which opened on July 14, 2009 and closed August 14, 2009; (2) Round 2 Notice of Funds Availability (Round 2 NOFA), which opened February 16, 2010 and closed March 15, 2010. The Round 2 NOFA was extended, under a limited reopening from June 1, 2010 to July 1, 2010, to accept applications from public safety entities that received waivers from the Federal Communications Commission (FCC) to operate public safety broadband networks over the 700 MHz spectrum (700 MHz Reopening NOFA). NTIA awarded all three categories of projects during both funding rounds. Eligible entities for BTOP funds include: States, local governments, or any agency, subdivision, instrumentality, or political subdivision thereof; the District of Columbia; U.S territories and possessions; Indian tribes (as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 USC 450(b)); native Hawaiian organizations; non-profit organizations; for-profit organizations; limited liability companies; and cooperative or mutual organizations.

The Infrastructure category includes two types of grants: (1) Broadband Infrastructure (BI), established under the Round 1 Notice of Funds Availability (Round 1 NOFA); and (2) Comprehensive Community Infrastructure (CCI) category, established under the Round 2 NOFA. The Infrastructure category funds projects that deploy new or improved broadband Internet facilities (e.g., laying new fiber-optic cables or upgrading wireless towers) and connect "community anchor institutions," such as schools, libraries, hospitals, and public safety facilities. These networks help ensure sustainable community growth and provide the foundation for

enhanced household and business broadband Internet services. In addition, the Infrastructure 700 MHz Reopening NOFA funds projects that deploy 700 MHz interoperable public safety broadband networks and expand broadband capacity for 700 MHz public safety broadband networks.

The Public Computer Centers (PCC) category funds projects from both the Round 1 NOFA and the Round 2 NOFA that provide broadband access to the general public or a specific vulnerable population, such as low-income, unemployed, aged, children, minorities, and people with disabilities. PCC projects create, upgrade, or expand public computer centers, including those at community colleges that meet a specific public need for broadband service, including, but not limited to, education, employment, economic development, and enhanced service for health-care delivery, children, and vulnerable populations.

The Sustainable Broadband Adoption (SBA) category funds innovative projects that promote broadband demand, including projects focused on providing broadband education, awareness, training, access, equipment, or support, particularly among vulnerable population groups where broadband technology has traditionally been underutilized.

Recipients may be subject to different rules depending upon whether they received Round 1 or Round 2 awards.

Source of Governing Requirements

This program is authorized by Section 6001 of ARRA. The program and its compliance requirements are described in the Round 1 NOFA, 74 FR 33104 (July 9, 2009); the Round 2 NOFA, 75 FR 3792 (January 22, 2010); and the 700 MHz Reopening NOFA, 75 FR 27984 (May 19, 2010).

Availability of Other Program Information

NTIA has published a program-specific audit guide to assist auditors with for-profit audits of the BTOP program. The BTOP Program-Specific Audit Guide is available at http://www2.ntia.doc.gov/compliance.

The Round 1 NOFA is available on the Internet at http://www.ntia.doc.gov/frnotices/2009/FR_BBNOFA_090709.pdf.

The Round 2 NOFA is available on the Internet at http://www.ntia.doc.gov/frnotices/2010/FR_BTOPNOFA_100115.pdf.

The 700 MHz Reopening NOFA is available on the Internet at http://www.ntia.doc.gov/frnotices/2010/FR_BTOPApplicationReopening_05132010.pdf

DOC Pre-Award Notification Requirements for Grants and Cooperative Agreements, 66 FR 49917 (Feb. 11, 2008) (DOC Pre-Award Notification) are available at http://oam.eas.commerce.gov/docs/Grants/Preaward_FRN2008.pdf

Recipient Guidance, including fact sheets with specific guidance (e.g., Davis-Bacon, Federal interest) is available at: http://www2.ntia.doc.gov/files/BTOP_Recipient_Handbook.pdf.

DOC Financial Assistance Standard Terms & Conditions (DOC Standard Terms)
http://oam.eas.commerce.gov/docs/GRANTS/DOC%20STCsMAR08Rev.pdf

DOC ARRA Award Terms
http://oam.eas.commerce.gov/docs/ARRA%20DOC%20Award%20Terms%20Final%205-20-09PDF.doc.pdf

Other program information is available on the Internet at http://www2.ntia.doc.gov/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed – Infrastructure Projects*

   a. Constructing or improving facilities required to provide broadband services; and either:

      (1) For Round 1 Recipients:

         (a) Leasing facilities required to provide broadband services, if such lease qualifies as a capital lease, under generally accepted accounting principles (GAAP), for no more than the first 5 years after the date of the first advance of project funds (ARRA, Section 6001(g); Round 1 NOFA, Section V.D.2.a); and

         (b) Indirect costs associated with the construction, deployment or installation of facilities and equipment used to provide broadband service provided they are included as a line item in the recipient's budget (ARRA, Section 6001(g); Round 1 NOFA, Section V.D.2.a); or

      (2) For Round 2 Recipients:

         (a) Long-term leasing (for terms greater than one year) of facilities required to provide broadband services, including indefeasible right-of-use (IRU) agreements; and

(b) Indirect costs associated with the construction, deployment, or installation of facilities and equipment used to provide broadband service (ARRA, Section 6001(g); Round 2 NOFA, Section V.E.2.a).

b. For 700 MHz Recipients, in addition to the Round 2 activities cited in Paragraph A.1.a.2 the following activities are allowed:

(1) Acquiring broadband radio access network components, such as antennas, base station nodes, transceivers, amplifiers, and remote radio heads;

(2) Hardening of existing cell sites, such as installing backup power and enhancing security measures; and

(3) Leasing wireline or wireless network infrastructure to facilitate broadband connectivity for a 700 MHz public safety broadband network, including backhaul from cell sites and any associated installation charges paid to a vendor (ARRA, Section 6001(g); 700 MHz Reopening NOFA, Section I.C).

2. *Activities Allowed – PCC Projects*

a. Acquiring broadband-related equipment, instrumentation, networking capability, hardware and software, and digital network technology for broadband services, including the purchasing of word processing software, computer peripherals such as mice and printers, and computer maintenance services and virus-protection software;

b. Developing and providing training, education, support, and awareness programs or web-based resources, including compensation for qualified instructors, technicians, managers, and other employees essential for these types of programs;

c. Facilitating access to broadband services, including, but not limited to, making public computer centers accessible to the disabled;

d. Installing or upgrading broadband facilities on a one-time, capital improvement basis in order to increase broadband capacity;

e. Constructing, acquiring, or leasing a new facility, provided that the recipient explains why it is necessary to construct, acquire, or lease a new facility to facilitate public access to broadband services or expand computer center capacity; and

f. Indirect costs associated with eligible project activities (ARRA, Section 6001(g); Round 1 NOFA, Section V.D.3.b; Round 2 NOFA, Section V.E.3.a).

3. *Activities Allowed – SBA Projects*

   a. Acquiring broadband-related equipment, instrumentation, networking capability, hardware and software, and digital network technology for broadband services;

   b. Developing and providing training, education, support, and awareness programs, as well as web-based content that is incidental to the program's purposes, including reasonable compensation for qualified instructors for these types of programs;

   c. Conducting broadband-related public education, outreach, support, and awareness campaigns;

   d. Implementing programs to facilitate greater access to broadband service, devices, and equipment; and

   e. Indirect costs associated with eligible project activities (ARRA, Section 6001(g); Round 1 NOFA, Section V.D.3.c; Round 2 NOFA, Section V.E.4.a)

4. *Activities Allowed – All BTOP Projects*

   In addition to the activities cited in paragraphs A.1, A.2, and A.3, the following activities are allowed for all Round 1 and Round 2 recipients:

   a. Undertaking such other projects and activities the Assistant Secretary finds to be consistent with the purposes for which BTOP is established; and

   b. Pre-application expenses, which include expenses related to preparing an application, in an amount not to exceed five percent of the award, if the expenses are incurred after the publication date of the NOFA, which was July 9, 2009 for Round 1 recipients, January 22, 2010 for Round 2 recipients, and May 13, 2010 for Round 2 700 MHz recipients; and for Round 1 recipients prior to the date on which the application was submitted or for Round 2 recipients prior to the date of issuance of the grant award from NTIA. Lobbying costs and contingency fees are not reimbursable (ARRA, Section 6001(g); Round 1 NOFA, Section V.D.2.a; Round 2 NOFA, Sections V.E.2.a, V.E.3.a, and V.E.4.a).

5. *Activities Unallowed – Infrastructure Projects*

   a. For Round 1 Recipients, broadband facilities leased under the terms of an operating lease.

b. For Round 1 and Round 2 Recipients:

(1) Operating expenses of the project, including fixed and recurring costs;

(2) Costs incurred prior to the date on which the application was submitted with the exception of eligible pre-application expenses (See 4.b. above, which limits eligible pre-applications expenses for Round 1 to those eligible expenses before the application is submitted, but for Round 2 includes the period up to the date of award issuance);

(3) Acquisition of an affiliate, including the acquisition of the stock of an affiliate;

(4) Purchasing or leasing any vehicle other than those used primarily in construction or system improvements;

(5) Merger or consolidation of entities; or

(6) Acquiring spectrum as part of an FCC auction or in a secondary market acquisition (Round 1 NOFA, Section V.D.2.b; Round 2 NOFA, Section V.E.2.b).

6. *Activities Unallowed – SBA Projects*

For Round 1 and Round 2 Recipients, constructing or leasing broadband facilities and infrastructure (Round 1 NOFA, Section V.D.3.d; Round 2 NOFA, Section V.E.4.b).

D. Davis-Bacon Act

Contractors and subcontractors are required to pay prevailing wages at rates not less than those prevailing on projects of a similar character in the locality as determined by the Secretary of Labor to laborers and mechanics in compliance with the Davis-Bacon Act. Recipients must review the weekly certified payroll documentation they receive from their subrecipients, contractors, and subcontractors on an ongoing basis. Recipients must maintain, in their files, the original Davis-Bacon Act payroll records they prepare for themselves, as well as those prepared by subrecipients, contractors, and subcontractors. (40 USC 3141 *et seq*.; **ARRA Section 1606**; Round 1 NOFA, Section X.G; Round 2 NOFA, Section X.G; 29 CFR sections 3.3 and 3.4).

F. Equipment and Real Property Management

Under the terms and conditions that govern BTOP grant awards, recipients and subrecipients of awards for construction, including Round 1 and Round 2 Infrastructure awards and PCC awards involving construction, must execute and record appropriate

documentation of NTIA's undivided equitable reversionary interest (the "Federal Interest") in all real or personal property, whether tangible or intangible, that it acquires or improves, in whole or in part, with Federal funds ("BTOP Property"). Recipients of SBA and PCC awards without construction are not required to do so, although the Federal Interest nevertheless applies to the BTOP Property under these programs.

The recipient shall execute a security interest or other statement of NTIA's interest in real property including broadband facilities and equipment acquired or improved with Federal funds acceptable to NTIA, which must be perfected and placed on record in accordance with local law. Documentation of the Federal Interest is to be perfected and recorded/filed in accordance with state and/or local law concurrent with or as soon as possible following any purchase, lease or other acquisition of BTOP Property and, unless otherwise approved in writing by the Grants Officer, not later than the date on which the BTOP financial assistance award is officially closed-out

During the pendency of the Federal Interest, the recipient or subrecipient shall not: (1) sell, lease, transfer, assign, convey, hypothecate, mortgage, or otherwise convey any interest in the BTOP Property without the prior written approval of the Grants Officer; or (2) use the BTOP Property for purposes other than the purposes for which the award was made without the prior written approval of the Grants Officer.

Although, recipients may not sell or lease any portion of the award-funded broadband facilities or equipment during their useful life, except as otherwise approved by NTIA (*e.g.*, fiber, tower, antennae, switches), NTIA may grant a waiver of this requirement. However, Round 1 recipients may not receive a waiver on any sale or lease until after the tenth year from the date of issuance of the grant unless NTIA were to waive this 10-year prohibition. NTIA's useful life schedule is available at http://www2.ntia.doc.gov/files/fact_sheet_useful_life_schedule_082510_v1.pdf. Nothing in this section is meant to limit Infrastructure recipients from leasing facilities to another service provider for the provision of broadband services, nor is this restriction meant to restrict a transfer of control of the recipient (Round 1 NOFA, Sections V.E. and IX.C.2; Round 2 NOFA, Sections V.F.d and IX.C.2).

G. Matching, Level of Effort, Earmarking

1. Matching

Recipients must provide, from non-Federal sources, not less than 20 percent of the total allowable project cost, unless the Assistant Secretary grants a waiver allowing a lesser percentage. Recipients' award documents and approved budget contain the specific percentage of non-Federal matching funds that they must provide to the project. The non-Federal share, whether cash or in-kind, is expected to be paid out at the same general rate as the Federal share, unless an exception is provided in the award document (ARRA, Section 6001(f); Round 1 NOFA, Section V.C.4.b; Round 2 NOFA, Section V.C.1; Round 2 NOFA, Section V.C.1).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

Recipients must substantially complete their projects no later than 2 years, and projects must be fully completed no later than 3 years, following the date of the issuance of the award(Round 1 NOFA, Sections IV.B.6 and V.C1.b; Round 2, NOFA, Section IV.F.).

J. Program Income

Recipients' projects that generate program income during the grant period shall spend such income as follows:

For Round 1, recipients must add program income to the award to further eligible project objectives, including reinvestment in project facilities.

For Round 2, recipients must spend their program income in one of the following ways: (1) add program income to the total project to conduct additional activities that will further eligible project objectives, including (a) reinvestment in project facilities, (b) funding BTOP compliance costs, and (c) paying operating expenses of the PCC or SBA project; or (2) use program income to finance the non-Federal share of the project (Round 1 NOFA, Section V.E; Round 2 NOFA, Section V.F).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable (if required by special award condition)

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Applicable (if specified by DOC)

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report)* – Applicable

2. Performance Reporting

a. Infrastructure Projects must report on the following:

(1) *Infrastructure Quarterly Performance Report (OMB No. 0660-0037)* – All Infrastructure recipients are required to complete a quarterly performance report for each quarter after the first quarter

after award issuance. These reports are due 30 days after the end of the calendar quarter and include project indicators and budget execution details.

Key Line Items – The following line items contain critical information:

4. Network Build Process:

i. Indicator – *New Network Miles Deployed*

ii. Indicator – *New Network Miles Leased*

iii. Indicator – *Existing Network Miles Upgraded*

iv. Indicator – *Existing Network Miles Leased*

v. Indicator – *Number of New Towers*

6. Subscriber Data:

i. Subscriber Type – *Community Anchor Institution*

(a) Total Subscribers Served (Middle Mile Projects)

ii. Subscriber Type – *Residential/Household*

(a) Total Subscribers Served (Last mile)

iii. Subscriber Type – *Business*

(a) Total Subscribers Served (Last Mile)

(2) *Infrastructure Annual Performance Report (OMB No. 0660-0037)* All Infrastructure recipients are required to complete an annual performance report within 30 days of the end of every calendar year.

Key Line Items – The following line items contain critical information:

1. Average Cost:

i. Cost Indicator – *Average Cost Per New Mile*

b. PCC Projects must report on the following:

(1) P*CC Quarterly Performance Report (OMB No. 0660-0037)* – All Public Computer Center recipients are required to complete a quarterly performance report. These reports are due 30 days after

the end of the calendar quarter and include project indicators and budget execution details.

Key Line Items – The following line items contain critical information:

4. Key Indicators

i. Indicator – *New workstations installed and available to the public*

*(*2) *PCC Annual Performance Report (OMB No. 0660-0037)* – All Public Computer Center recipients are required to complete an annual performance report within 30 days of the end of every calendar year.

Key Line Items – The following line items contain critical information:

3. Project Indicators:

i. Indicator – *Number of PCCs Established*

ii. Indicator – *Number of PCCs Improved*

c. SBA Projects must report on the following:

(1) *SBA Quarterly Performance Report (OMB No. 0660-0037)* – All SBA recipients are required to complete a quarterly performance report. These reports are due 30 days after the end of the calendar quarter and include project indicators and budget execution details.

Key Line Items – The following line items contain critical information:

4. Project Indicator:

i. Indicator – *New Subscribers: Households, Businesses and Community Anchor Institutions*

(2) *SBA Annual Performance Report (OMB No. 0660-0037)* – All SBA recipients are required to complete an annual performance report within 30 days of the end of every calendar year.

Key Line Items – The following line items contain critical information:

3. Training Provided:

i. Indicator – *Total Number of Participants Completing Training*

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

1. Nondiscrimination and Interconnection Obligations

Compliance Requirements – Recipients of Infrastructure projects must commit to nondiscrimination and interconnection obligations that include: (1) adherence to principles contained in the FCC's Internet Policy Statement (FCC 05-151, adopted August 5, 2005), which can be found at http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-05-151A1.pdf, or any subsequent ruling or statement; (2) not favoring any lawful Internet application or content over others; (3) displaying any network management policies in a prominent location on the service provider's web page and providing notice to customers of changes to these policies; (4) connecting to the public Internet directly or indirectly, such that the project is not an entirely private, closed network; and (5) offering interconnection, where technically feasible, without exceeding current or reasonably anticipated capacity limitations, at reasonable rates and terms to be negotiated with requesting parties.

These conditions apply for the useful life of the recipient's facilities used in the project and not to any existing network arrangements at the time of the award. The useful life schedule is available at http://www2.ntia.doc.gov/files/fact_sheet_useful_life_schedule_082510_v1.pdf. For Round 1 recipients, the conditions apply to any contractors or subcontractors of recipients and subrecipients that operate the network facilities for the infrastructure project. (Round 1 NOFA, Section V.C.2.c; Round 2 NOFA, Section V.D.3.b).

Audit Objective – Determine whether the recipient is adhering to nondiscrimination and interconnection obligations.

Suggested Audit Procedure

a. Verify that the recipient has, in effect, written interconnection, nondiscrimination, and network management policies (submitted to NTIA at the time of application).

b. Verify that the recipient displays its network management policies in a prominent location on its primary website and has provided notice to customers of changes to these policies. For this purpose, prominent means that a link to these policies and notices must be available within one-click from the main page.

c. For Round 1 recipients, determine whether the recipient has included nondiscrimination and interconnection requirements in any of its subaward or

service contracts to deploy or operate the network facilities under the BTOP award.

d. Verify that the recipient has a written outreach policy that advertises availability and ensures provision of a public Internet connection, rather than just a connection to its own services, using media of general distribution. This policy must contain reasonable advertisement and monitoring of, as well as timely response to, enforcement actions associated with complaints received by recipient regarding its rates. To the extent that a recipient's interconnection rates are incorporated into its BTOP award, it should not charge rates higher than those rates.

e. Verify that the recipient maintains a publicly available list of all Points of Interconnection associated with its BTOP network, including latitude/longitude, nearest street address, and elevation (if relevant).

f. Verify that the recipient maintains a standardized method for parties to make inquiries and request service. Verify that the recipient responds to all such requests in a reasonable period of time (typically not more than 10 business days).

2. Duplicate Federal Funding for Broadband Projects

Compliance Requirements – A BTOP recipient must not duplicate activities that would result in unjust enrichment as a result of support for non-recurring costs through another Federal program for service in the area or duplicate funds that the recipient received under Federal Universal Service support programs administered by the Universal Service Administration Company ("FCC USF Programs"), grant or loan programs administered by RUS, or any other federal program (ARRA Section 6001(h)(2)(D); Round 2 NOFA Section IX.C.5.e).

Audit Objective – Determine whether the recipient is receiving support from FCC USF Programs that duplicate BTOP award funds expended for recipient's BTOP funded project.

Suggested Audit Procedures

a. Verify that an SBA or PCC recipient does not receive BTOP funds to pay for any discounted portion of telecommunications services or internet connections for which it receives support from FCC USF Programs.

b. Verify that an Infrastructure or a PCC recipient does not contribute, as part of its match, internal connections or other equipment-related non-recurring costs that were funded by FCC USF Programs.

DEPARTMENT OF COMMERCE

CFDA 11.558 STATE BROADBAND DATA AND DEVELOPMENT GRANT PROGRAM

I. PROGRAM OBJECTIVES

The State Broadband Data and Development Grant (SBDD) Program is intended to collect, verify, display and update State-level broadband availability information, and to fund Initiatives that coalesce and support increased availability and adoption activities at tribal, State, regional, and local levels.

II. PROGRAM PROCEDURES

Section 6001(l) of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5, 123 Stat. 115, February 17, 2009) authorizes the National Telecommunications and Information Administration (NTIA), within the Department of Commerce, to expend up to $350 million pursuant to the Broadband Data Services Improvement Act (BDIA)
(47 USC 1301 *et seq.*) to (1) develop and maintain a comprehensive, interactive, and searchable nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available throughout each State and (2) fund State-led initiatives for planning and other activities that support the increased availability and adoption of broadband services. Section 106 of the BDIA directed the Secretary of Commerce to establish the SBDD Program and to award grants to eligible entities to develop and implement initiatives to collect broadband availability information and to implement programs to improve broadband services and adoption within the State.

Under the SBDD program, which implements both the BDIA and ARRA provisions, each of the 50 States, the District of Columbia, and the U.S. Territories of Guam, Puerto Rico, Virgin Islands, American Samoa, and the Northern Mariana Islands (States) may designate one eligible entity from that State to apply for funding. The designated entity may be (1) an agency or instrumentality the State, a municipality or other subdivision (or agency or instrumentality of a municipality or other subdivision) of a State; (2) a nonprofit organization (pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986); or (3) an independent agency or commission in which an office of a State is a member on behalf of the State.

In addition to collecting and verifying data, as required by NTIA, recipients must agree to make the data publicly accessible, clearly presented, and easily understood by the public, governmental entities, and the research community. Recipients also agree to cooperate with NTIA and the Federal Communications Commission's (FCC) national broadband mapping efforts and to submit all of their collected data to NTIA for use by NTIA in developing and maintaining the national broadband map.

Applications that meet the broadband mapping purposes will also be considered for funding to assist with projects that relate to broadband planning and other uses enumerated in BDIA, such as identifying barriers to the adoption of broadband, the creation of local technology planning teams, and the establishment of computer ownership and Internet access programs.

Source of Governing Requirements

This program is authorized by ARRA and the BDIA. The program and its compliance requirements are described in the Notice of Funding Availability (NOFA) (74 FR 24545, July 8, 2009).

Availability of Other Program Information

The NOFA is available on the Internet at http://www.ntia.doc.gov/frnotices/2009/FR_BroadbandMappingNOFA_090708.pdf. Other program information is available on the Internet at http://www.ntia.doc.gov/sbdd

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed – Data Activities*

    a. Collecting and verifying broadband-related data within the State, including, but not limited to, data at the address-level or higher on broadband availability, technology, speed, price, infrastructure, Average Revenue Per User (ARPU), and, in the case of wireless broadband, the spectrum used, across the State; and adoption data related to community anchor institutions;

    b. Developing, maintaining, and updating a State-wide broadband map or other display mechanism; and

    c. Presenting and updating collected broadband-related data to NTIA for national broadband map (NOFA, Section II. B.).

2. *Activities Allowed – Broadband Planning and Other Activities*

    a. Assessing and tracking broadband service deployment in the State;

    b. Collaborating with State-level agencies, local authorities and other constituencies to identify and address broadband challenges in the State;

c. Creating and facilitating a local technology planning team in each county or designated region in a State;

d. Developing a tactical business plan for achieving stated project goals, with specific recommendations for online application development and demand creation;

e. Collaborating with broadband service providers and information technology companies to encourage deployment and use, through the use of local demand aggregation, mapping analysis, and the creation of market intelligence to improve the business case for providers;

f. Establishing programs to improve computer ownership and Internet access for unserved areas and areas in which broadband penetration is significantly below the national average;

g. Collecting and analyzing detailed market data concerning the use and demand for broadband service and related information technology services; and

h. Facilitating information exchange regarding the use and demand for broadband services between public and private sectors (47 USC 1304(e); NOFA, Section II. B).

3. *Activities Unallowed*

Award funds may not be used for any construction purposes (NOFA, Section V.E.1).

G. Matching, Level of Effort, Earmarking

1. Matching

Awardees must provide a non-federal contribution of at least 20 percent toward the total allowable project cost. Cash and in-kind contributions may both count toward satisfying the non-federal matching requirement. In-kind contributions may include the ascertainable fair market value of data previously collected and related to the BDIA-eligible uses under this program. Applicants must provide a basis for estimating fair market value of the previously collected data. In addition, certain pre-award costs, as specified in the notice of award, may be credited towards the matching requirement (47 USC 1304(c)(2); NOFA, Section V.A).

The requirement for local matching funds under $200,000 is waived for the Territorial governments in Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands (48 USC 1469a).

2. Level of Effort – Not Applicable

3. **Earmarking** – Not Applicable

H. Period of Availability of Federal Funds

The period of availability for funds allocated to broadband mapping purposes will be five years from the date of award. The period for broadband planning and other purposes also will be up to 5 years from the date of award.

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Repor*t – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

DEPARTMENT OF DEFENSE

CFDA 12.400 NATIONAL GUARD MILITARY CONSTRUCTION PROJECTS

I. PROGRAM OBJECTIVES

The National Guard Bureau (NGB) enters into Military Construction Cooperative Agreements (MCCA) with the 50 States, District of Columbia, Commonwealth of Puerto Rico, the Virgin Islands and Guam (Grantees) to provide support to the Army National Guard (ARNG) and Air National Guard (ANG) for the construction of military facilities, real property improvements, design services and other projects authorized and directed by Congress or the Department of Defense (DOD) to be performed by the Grantees and the National Guard Bureau (NGB).

II. PROGRAM PROCEDURES

The Adjutant General (TAG) and the United States Property & Fiscal Officer (USPFO) for each Grantee are responsible for the execution of the MCCA and other allowed projects to support the training and operations of their respective National Guard units. Policy and administrative procedures to be followed in the execution and funding of an MCCA are contained in National Guard Regulation 5-1, Chapters 1 and 3.

An MCCA consists of four parts: the Articles of Agreement and three technical appendices. Articles I-XIII include the standard terms and conditions applicable to the MCCA. The technical appendices provide specific information such as project description, scope, statement of work and finance and budget plans.

ARNG MCCA technical appendices are titled differently from ANG MCCA technical appendices. ARNG budget and funding information is contained in Appendix SC. ANG finance and budget information is contained in the Project Design appendix.

The total amount of Federal funding for MCCA ARRA projects is shown in the applicable Technical Appendix. Reimbursements to a Grantee for an MCCA project or projects may not exceed the amount(s) approved by NGB, which includes any authorized/executed modifications to the original project amount.

In FY 2009, NGB also awarded funds under the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) for the construction and modernization of National Guard facilities. Projects funded with military construction ARRA funds were issued under a separate MCCA titled "Special Military Project Cooperative Agreement Under the American Recovery and Reinvestment Act- Military Construction." ARRA MCCA agreements are numbered as 9000 series projects to distinguish them from other NGB MCCA agreements. (NGB-PARC-A Guidance Letter, Subject: NG Recovery Act-Funded Cooperative Agreements and Special Military Project Cooperative Agreements).

Source of Governing Requirements

The NGB is authorized to enter into MCCAs under : (1) 32 USC National Guard, Chapter 1, Organization; (2) 32 USC Section 101 (19); and (3) 32 USC Section 106/107, which authorizes the NGB to contribute funds for the support of the operations/training of the ARNG/ANG and (4) NGR 5-1, National Guard Grants and Cooperative Agreements.

Availability of Other Program Information

The National Guard Internal Review Office in each State and Territory (which reports to the USPFO) can provide information about risk assessments and audits performed by their office which may be helpful in planning the audit. Contact Mr. Derrick Miller, National Guard Bureau Internal Review Office, at (703) 607-0755, DSN 327-0755 or email derrick.miller@us.army.mil for information on the Internal Review Office for a particular State.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

B. Allowable Costs/Cost Principles

1. Allowable costs under MCCAs are stated in NGR 5-1, Chapter 5, Paragraph 5-3.

2. Indirect costs are unallowable except as stated in NGR 5-1, Chapter 5, Paragraph 5-3b.

D. Davis-Bacon Act

1. For non-ARRA MCCAs, the Davis-Bacon Act applies only to agreements requiring environmental remediation construction subject to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended. (MCCA Article VIII)

2. **ARRA-funded projects are subject to the Davis-Bacon Act (see Part 3 of the Supplement). In those instances where projects are funded with both ARRA and non-ARRA funds, the auditor should ensure that the Grantee is in compliance with the requirements of the Davis Bacon Act for that portion of the project that was executed using ARRA funds (ARRA, Section 1606).**

G. Matching, Level of Effort, Earmarking

1. Matching

a. Grantee match is specified in the Project Design Finance Plan section of the ANG MCCA technical appendix and in the Project Construction Budget section of the ARNG MCCA technical appendix.

b. Whenever the USPFO provides "in-kind" assistance the Grantee still is required to provide its required match based on the combined value of the NGB funding and the value of the in-kind assistance (NGR 5-1, Chapter 9, Paragraph 9-1)

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

1. Federal non-ARRA MCCA design and construction funds are available for a period of up to 5 years and must be obligated within 5 years from the execution date of the MCCA or within the period of funds availability specified in the agreement.

2. **ARRA MCCA funds are available for obligation by Grantees through September 30, 2013** (NGR 5-1, Chapter 3, Paragraphs 3-7 and 3-8).

3. Within 90 days of final completion of the project (execution date of the NGB Form 593-R, Project Inspection Report, by the State and the USPFO), or upon termination of the MCCA, whichever comes earlier, the Grantee shall promptly deliver to NGB a full and final accounting liquidating all payments or reimbursements under the MCCA. Costs incurred for performance of the project which are not disclosed by the Grantee within 90 days of the final completion of the project shall not be eligible for reimbursement. This excludes costs reserved for unliquidated claims or undisbursed obligations arising from the Grantee's performance of the MCCA; however, the Grantee shall provide a good faith estimate of the total amount of unliquidated claims and undisbursed obligations. At its sole discretion, NGB may extend the 90-day limit for good cause (NGR 5-1, Chapter 11).

4. An MCCA shall be executed by the USPFO and the TAG prior to any request for reimbursement or advance payment. However, pre-award costs may be authorized as provided in the MCCA (MCCA Article III, Section 305d).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Repor*t – Not Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

DEPARTMENT OF DEFENSE

CFDA 12.401 NATIONAL GUARD MILITARY OPERATIONS AND MAINTENANCE (O&M) PROJECTS

I. PROGRAM OBJECTIVES

The National Guard Bureau (NGB) enters into cooperative agreements (CA) with the 50 States, District of Columbia, Commonwealth of Puerto Rico, the Virgin Islands, and Guam (recipients) to provide support to the Army and Air National Guard in minor construction, maintenance, repair or operation of facilities, and mission operational support to be performed by recipients as authorized by NGB through Operations and Maintenance (O&M) appropriated funding.

II. PROGRAM PROCEDURES

NGB uses a CA as the means of providing financial assistance and other support to recipients for the operation of the NGB program in the recipient's jurisdiction, except for financial assistance and support provided under separate authority (e.g., military and technician pay and the military supply system). Recipients enter into a Master Cooperative Agreement (MCA) with the NGB. Generally, an MCA consists of two parts: (1) the agreement and (2) the Appendices. The agreement includes the standard terms and conditions applicable to all Appendices. The Appendices contain the terms and conditions, policy, administrative procedures, scope of work, authorized and unauthorized activities/charges, budget information, funding limitations, and agreement particulars applicable to that functional area (e.g. Real Property Operations and Maintenance, Security Guard activities, etc.). Funding for the CA is identified in each of the Appendices to the MCA. The total sum of Federal reimbursements to the recipient for an MCA Appendix may not exceed the approved funding limits identified in the Funding Limitation section of the Appendix. .

The Adjutant General (TAG) for each recipient and the United States Property & Fiscal Officer (USPFO) are responsible for the execution of the MCA and Appendices.

In FY 2009, NGB also awarded O&M funds under the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) for the sustainment, restoration, and modernization of National Guard facilities. Projects funded with O&M ARRA funds were issued under a separate CA titled "ARRA of 2009 Sustainment, Restoration, and Modernization Projects, Special Military Cooperative Agreement." ARRA CAs are numbered as 9000 series projects to distinguish them from all other NGB CAs.

The total amount of Federal funding authorized for recipient expenditure for ARRA projects is shown in Section 8, Funding Limitation, of the ARRA of 2009 Sustainment, Restoration, and Modernization Projects, Special Military Cooperative Agreement.

Source of Governing Requirements

The NGB and recipients are authorized to enter into CAs under: (1) 31 USC, Subtitle V, General Assistance Administration, Chapter 63, Using Procurement Contracts and Grant and Cooperative Agreements; (2) 31 USC Subtitle V, General Assistance Administration, Chapter 61, Program Information, and Chapter 65, Intergovernmental Cooperation; (3) 32 USC National Guard, Chapter 1, Organization; (4) 32 USC Section 101 (19); (5) 32 USC Section 106/107, which authorizes the NGB to contribute funds for the support of the operation/training of the ARNG/ANG; **and (6) ARRA**. Policies and procedures to be followed for CAs with recipients are contained in the National Guard Grants and Cooperative Agreements Regulation, NGR 5-1, and, for facilities and engineering projects, in NG Pamphlet 420-10, Facilities and Construction Management Office Procedures (July 18, 2003), which is available at http://www.ngbpdc.ngb.army.mil/publications.htm.

Availability of Other Program Information

The NGB Internal Review Office in each State and Territory (which reports to the USPFO) can provide information about risk assessments and audits performed by their office which may be helpful in planning the audit. Contact Derrick Miller, National Guard Bureau Headquarters Internal Review Office, at (703) 607-0755, DSN 327-0755, or email to Derrick.E.Miller@us.army.mil for information on the Internal Review Offices for a particular State.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. For other than ARRA-funded projects, allowable activities are those designated as authorized in each separate Appendix to the MCA or, for facilities for which support is authorized, listed in the Facilities Inventory and Support Plan (FISP) (National Guard Pamphlet 420-10, Chapter 2, and Article IV of the MCA). Unallowable activities are those listed in the Unauthorized Activities/Charges section of each individual Appendix.

2. **Authorized and unauthorized activities for ARRA projects are listed in Sections 4 and 5 of the ARRA of 2009 Sustainment, Restoration, and Modernization Projects, Special Military Cooperative Agreement.**

B. Allowable Costs/Cost Principles

1. Indirect costs, except fringe benefits, are unallowable (NGR 5-1, Chapter 5).

2. Individual employee compensation comprises a significant portion of total costs charged to CA appendices. The auditor should give particular attention to the allocability of these costs. The distribution of individual employee compensation to projects must follow applicable Federal cost principles, NGR 5-1, and the terms and conditions in agreement appendices. Therefore, the auditor's testing should include tests of the time and effort reporting system to support the distribution of compensation costs (NGR 5-1, Chapter 5).

3. Fringe benefits for which the State does not bill the State Military Department directly, such as workmen's compensation, unemployment compensation, State sponsored life and health insurance, and retirement benefits are allowable if they are part of the State's Central Service Cost Allocation Plan (CSCAP) approved by the Department of Health and Human Services (HHS). However, for these costs to be reimbursable, all of the requirements of NGR 5-1, Chapter 5 have to be met (NGR 5-1, Chapter 5):

   a. The individual cost items have to be reimbursable under the terms of individual appendices.

   b. Fringe benefit costs for which the State does not bill the State Military Department directly shall be reimbursable by applying a fringe benefit rate to the costs of actual salaries paid to employees.

   c. Fringe benefits which are neither direct costs nor included in the billed central services section of the State's CSCAP approved by HHS are not reimbursable.

D. Davis-Bacon Act

1. Other than for ARRA projects, the Davis-Bacon Act applies only to NGB O&M agreements requiring environmental remediation construction subject to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. Environmental remediation construction is that portion of the remedial work which calls for excavation, substantial earth moving, removal of contaminated soil, followed by restoration of the landscape, regardless of whether such activities are performed with any other construction activities done any other buildings or other structures at the cleanup site (MCA Appendix 22, ANG Environmental Program Management, Section 2208).

2. **ARRA funded projects are subject to the Davis-Bacon Act (see Part 3 of the Supplement). In those instances where projects are funded with both non-ARRA and ARRA funds, the auditor should ensure that the recipient is in compliance with the requirements of the Davis-Bacon Act for the portion of the project that was executed using ARRA funds (ARRA of 2009 Sustainment, Restoration, and Modernization Projects, Special Military Cooperative Agreement, Article VIII, Section 815).**

G. Matching, Level of Effort, Earmarking

1. Matching

a. The recipient's required matching percentage varies by Appendix and is listed in the Funding Limitation section of each MCA Appendix. The NGB share of all authorized charges, unless expressly stated elsewhere in the Appendix, is based on the FISP support code for the facility generating the expenditure. For example, the NGB share of employee, repair, supply, equipment, utility, and other costs directly and exclusively associated with a facility that is authorized 75 percent Federal support is 75 percent. NGB participation in costs that are generated for facilities that are authorized at several different support levels will be at a rate that reflects the actual level of effort but not to exceed 25 percent of such costs (NG Pamphlet 420-10, Chapter 2).

b. Whenever the USPFO provides "in-kind" assistance, the CA provides the value for that assistance, which is added to NGB funds received to determine the total amount on which the recipient's share is calculated.

c. Program income may not be used to meet a matching requirement (NGR 5-1, Chapter 5).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

1. NGB non-ARRA O&M CAs are funded with one-year appropriations and, as such, recipient obligations may not be incurred against Federal funds for a specified year before or after the Federal fiscal year in which the funds were appropriated. Recipient obligation means any action under State law or procedure requiring payment by the recipient (NGR 5-1, Chapters 3 and 11).

2. **ARRA funds are available for recipient obligation through September 30, 2010**.

3. A CA shall be executed by the USPFO and the TAG prior to any request for reimbursement or advance payment. The recipient shall also have an approved Appendix covering each functional area for which the reimbursement or an advance is requested. The recipient shall not request reimbursement for any expenditures it made before the date that all required parties execute the MCA unless the USPFO expressly authorizes expenditures made during the funding period, but prior to the date of final signature (NGR 5-1, Chapter 11).

4. Work or task performance must serve a bona fide need that exists in the fiscal year in which the work or tasking is issued; otherwise, a valid obligation is not accomplished. It is not intended that the rule of bona fide need of the fiscal year be construed to preclude lead time. Thus, for example, where materials cannot be obtained in the same fiscal year in which they are needed, a provision for delivery in the subsequent fiscal year does not violate the bona fide need rule so long as the time intervening between placing of the order and delivery is not excessive and the work order is not for standard commercial items readily available from other sources (NGR 5-1, Chapter 11).

5. Within 90 days after the end of the Federal fiscal year or upon termination of the CA, whichever is earlier, the recipient shall promptly deliver to the USPFO a final accounting of all funding and disbursements under the agreement for the fiscal year (NGR 5-1, Chapter 11).

6. If unliquidated claims and undisbursed obligations arising from the recipient's performance of the CA will remain 90 days after the close of the Federal fiscal year, the recipient shall provide a detailed listing of uncleared obligations and a projected timetable for their liquidation and disbursement no later than 31 December. The USPFO shall then set an appropriate new timetable for the recipient to submit its final accounting (NGR 5-1, Chapter 11).

7. Costs incurred in a Federal fiscal year which are not disclosed by the recipient within 90 days of the end of the Federal fiscal year, except costs associated with unliquidated claims and undisbursed obligations arising from the recipient's performance of the CA which the recipient has reported, shall not be eligible for reimbursement by NGB. The USPFO may extend the 90 day limit for good cause shown (NGR 5-1, Chapter 11).

J. Program Income

CA program income is the gross income, received by a recipient from fees for services performed and from the use, rental, or sale of real or personal property, the operation and maintenance of which is supported under the CA except as indicated in paragraph 2 below (NGR 5-1, Chapter 6)

1. Any amount paid directly to a recipient by a Federal agency, a State agency, or any other user pursuant to a direct relationship between the Federal or State agency or other user and the recipient for the use of recipient-owned, -leased, or -licensed real property (exclusive of readiness centers) or equipment acquired or supported under a CA is considered program income.

2. Income received by the recipient from the use or rental of recipient-owned, federally supported readiness centers is not considered program income. However, the recipient must fulfill its obligations under 10 USC 18236(c) on the use of these funds. 10 USC 18236(c) permits recipients to rent out readiness

centers if the recipient uses the rental income to maintain the readiness center. In addition, as a condition for continued Federal support, the recipient must increase its contribution to the CA by at least the amount of all Identifiable Incremental Costs (IIC), as defined in NGR 5-1, Chapter 6, for which it receives Federal support (e.g., utilities).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Repor*t – Not Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.157 SUPPORTIVE HOUSING FOR THE ELDERLY (SECTION 202)

I. PROGRAM OBJECTIVES

The objective of Supportive Housing for the Elderly is to provide Federal capital advances and project rental assistance under Section 202 of the National Housing Act of 1959 for development of housing projects serving very low-income elderly persons.

II. PROGRAM PROCEDURES

Section 202 funds are awarded to private nonprofit groups (owners). Capital advances (direct payments) are provided to finance the construction, rehabilitation, or acquisition (with or without rehabilitation) of structures that will serve as supportive housing for very low-income elderly persons, including the frail elderly. Operating subsidies are provided for the projects to help make them affordable.

The capital advance is not required to be repaid as long as the project is available to very low income elderly for 40 years. Capital advance funds will be advanced on a monthly basis during construction for work in progress; however, projects that utilize tax credits may release the capital advance upon completion of the project. Projects are expected to start construction within 18 months of the date of the fund reservation, with limited provision for extensions.

Project-based rental assistance is provided under a Project Rental Assistance Contract (PRAC) and is calculated based on operating cost standards established by HUD. PRAC payments may not exceed 3 years. However, contracts are renewable for up to a 1-year term based on availability of funds.

This program is exempt from OMB Circular A-110 (2 CFR part 215) (24 CFR section 84.2, definition of "Award.")

Financial Reporting

In accordance with HUD's Uniform Financial Reporting Standards rule, annually, an owner is required to submit a financial statement, prepared in accordance with generally accepted accounting principles (GAAP), in the electronic format specified by HUD. The unaudited financial statement is due 2 months after the owner's fiscal year end and the audited financial statement is due 9 months after its fiscal year end (24 CFR section 5.801). The financial statement must include the financial activities of this program.

Cost Certifications

Owners are required to submit one or two detailed cost certifications at the end of each project. These reports provide information on actual development cost breakdown and operating costs. The reports are HUD-92330, Mortgagor's Certificate of Actual Costs (OMB No. 2502-0112) and HUD-92330-A, Contractor's Certificate of Actual Costs (OMB No. 2502-0044). The HUD-

92330-A is only required when there is an identity of interest between the mortgagor and the general contractor and when a cost-plus contract is required in nonprofit contracts.

Source of Governing Requirements

This program is authorized under Section 202 of the Housing Act of 1959, as amended, (12 USC 1701q). Program regulations are in 24 CFR part 891.

Availability of Other Program Information

Additional information about the Section 202 program, can be found in: Supportive Housing for the Elderly (HUD Handbook 4571.3), Supportive Housing for the Elderly--Conditional Commitment--Final (HUD Handbook 4571.5), and HUD Notice H96-102. These are available on the Internet at HUDclips (http://www.hud.gov/offices/adm/hudclips/index.cfm) or from the HUD Multifamily Clearinghouse at 1-800-685-8470.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a federal program, the auditor should first look to Part 2, Matrix of Compliance requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. The project shall provide the necessary services for the occupants, which may include, but not limited to, health, education, welfare, informational, recreational, homemaking, meals, counseling, and referral services (12 USC 1701q; 24 CFR sections 891.225 and 891.500).

2. PRAC project funds may be used only for expenses that are reasonable and necessary to the operation of the project as provided for in the Regulatory Agreement between HUD and the project owner.

3. Project facilities may not include infirmaries, nursing stations, or spaces for overnight care (24 CFR section 891.220).

4. Project must be modest in design. In supportive housing for the elderly, amenities not eligible for HUD funding in individual units include balconies and decks, atriums, bowling alleys, swimming pools, saunas, jacuzzis, trash compactors, washers and dryers. Sponsors may include certain excess amenities but must pay for them from sources other than Section 202 capital advance funds. They must also pay for the continuing operating costs associated with any excess amenities from sources other than the Section 202 project rental assistance contract (24 CFR section 891.120).

D. Davis-Bacon Act

All laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) employed by contractors and subcontractors in the construction (including rehabilitation) of housing with 12 or more units assisted under this program shall be paid wages at rates not less than those prevailing in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. A group home for persons with disabilities is not covered by these labor standards (24 CFR section 891.155(d)).

E. Eligibility

1. Eligibility for Individuals

Section 202 (CFDA 14.157) of the Housing Act of 1959 provides housing for the elderly. To qualify as elderly, one or more members of the household must be 62 years of age or more at the time of initial occupancy. Residents must also qualify as very low-income households to be eligible (24 CFR section 891.205).

The owner is responsible for annually reexamining incomes of households occupying assisted units and making appropriate adjustments to the tenant payment and the project rental assistance payment (24 CFR section 891.410). Assistance applicants shall submit signed consent forms upon initial application and at reexamination (24 CFR section 5.230).

2. Eligibility of Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program*s – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

f. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting

HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons* (*OMB No. 2529-0043*) – For each grant over $200,000 that involves housing rehabilitation, housing construction, or other public construction, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a) and 135.90).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 2. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

1. Use of Project Funds

Compliance Requirement – Owners are required to establish and maintain a separate project account in federally insured depository. All rents, charges, income, and revenues arising from the project operation shall be deposited into this account. Project funds must be used for the operation of the project (including required insurance coverage), to make required principal and interest payments on the Section 202 loan, and to make required deposits to replacement reserve and the residual receipts accounts (24 CFR sections 891.400(e) and 891.600(e)).

Audit Objectives – Determine whether the project fund was properly established, required deposits were made into this fund, and disbursements were only for allowed purposes.

Suggested Audit Procedures

a. Ascertain if the project funds receipts account has been established in a federally insured depository.

b. Perform tests to ascertain if all rents, charges, income, and revenues arising from the project operation were deposited into the fund.

c. Test a sample of disbursements from the fund ascertain if they were used only for the operation of the project or to make required deposits to the replacement reserve or the residual receipts account.

2. Replacement Reserve

Compliance Requirement – Owners shall establish and maintain a replacement reserve to aid in funding extraordinary maintenance and repair and replacement of capital items. The replacement reserve funds must be deposited in a federally insured depository in an interest-bearing account**.** All earnings including interest on the reserve must be added to the reserve. An amount as required by HUD will be deposited monthly in the reserve fund (Regulatory Agreement, item 5 A). All disbursements from the reserve must be approved by HUD (24 CFR sections 891.405 and 891.605).

Audit Objectives – Determine whether the replacement reserve was properly established, required monthly deposits were made, and disbursements were only for HUD approved purposes.

Suggested Audit Procedures

a. Ascertain if a replacement reserve account has been established in a federally insured depository in an interest bearing account.

b. Ascertain if the required monthly deposits have been made to the replacement reserve account.

c. Ascertain if interest earnings from the reserve were retained in the replacement reserve account.

d. Test a sample of disbursements from the replacement reserve account and ascertain if they were approved by HUD and were made for the approved purpose.

3. Residual Receipts Account

Compliance Requirement – Any funds in the project funds account (including earned interest) at the end of the fiscal year shall be deposited in a federally insured account within 60 days following the end of the fiscal year. Withdrawals from this account may be made only for project purposes and with the approval of HUD (24 CFR sections 891.400(e) and 891.600(e)).

Audit Objectives – Determine whether the residual receipts account was properly established, the required deposit was made within 60 days following year-end, and disbursements were only for project purposes and the approval of HUD.

Suggested Audit Procedures

a. Ascertain if residual receipts account has been established in a federally insured depository.

b. Ascertain if the required annual deposit was made within 60 days following year-end.

c. Test a sample of disbursements from the residual receipts account and ascertain if they were used for project purposes and approved by HUD.

IV. OTHER INFORMATION

To protect its interest in a capital advance, HUD requires a note and mortgage for a 40-year term. The owner is not required to repay the principal or pay interest and the note is forgiven at maturity, as long as the owner provides housing for the designated class of people in accordance with applicable HUD requirements. However, the full outstanding balance on the note should be considered Federal awards expended, included in determining Type A programs, and reported as loans on the Schedule of Expenditures of Federal Awards or accompanying notes in accordance with OMB Circular A-133.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.169 HOUSING COUNSELING ASSISTANCE PROGRAM

I. PROGRAM OBJECTIVES

The Housing Counseling Assistance Program supports the delivery of a wide variety of housing counseling services to homebuyers, homeowners, low- to moderate-income renters, and the homeless. The primary objectives of the program are to expand homeownership opportunities and improve access to affordable housing. Counselors provide guidance and advice to help families and individuals improve their housing conditions and meet the responsibilities of tenancy and home ownership. Counselors also help borrowers avoid inflated appraisals, unreasonably high interest rates, unaffordable repayment terms, and other conditions that can result in a loss of equity, increased debt, default, and eventually foreclosure. Applicants funded through this program may also provide Home Equity Conversion Mortgage (HECM) counseling to elderly homeowners who want to convert equity in their homes into income that can be used to pay for home improvements, medical costs, living expenses, or other expenses.

II. PROGRAM PROCEDURES

This program has two distinct components: (1) HUD-approval and (2) housing counseling grants. To participate in the program, organizations must first be approved by HUD as housing counseling agencies. Approval entails meeting various requirements relating to experience and capacity. Currently there is a total of 2,771 active agencies participating in the program. Approximately 1009 approved local housing counseling agencies (LHCAs), which has 481 branch offices. Additionally, there are 27 HUD-approved national and regional intermediaries with approximately 688 subgrantees and affiliates and 422 branches. There are 21 State housing finance agencies (SHFAs), and 8 Multi-State Organizations (MSOs) which have 115 branches. Approved agencies use HUD's approval to receive referrals and market their services. Approved agencies are provided training (depending on available resources), and are eligible to apply for a housing counseling grant. The application and approval process is provided on HUD's website at http://www.hud.gov/offices/hsg/sfh/hcc/hccprof13.cfm.

Additionally, HUD issues a yearly Notice of Funding Availability (NOFA) in the *Federal Register*, under which there is a competition for housing counseling grants. The Housing Counseling Assistance Program provides funds to HUD-approved LHCAs; HUD-approved national and regional intermediaries; and State Housing Finance Agencies (SHFAs). LHCAs are funded directly by HUD to provide services within their communities. Intermediaries and SHFAs manage the use of HUD housing counseling funds by subgrantees, including local affiliates and branches.

Source of Governing Requirements

HUD's Housing Counseling Assistance Program is authorized by Section 106 of the Housing and Urban Development Act of 1968 (12 USC 1701x). Program regulations are in 24 CFR part 214.

Availability of Other Program Information

Pertinent information regarding the Housing Counseling Program is available on HUD's website, at http://www.hud.gov/offices/hsg/sfh/hcc/hcc_home.cfm.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a federal program, the auditor should first look to Part 2, Matrix of Compliance requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

The FY 2010 Housing Counseling NOFA published on HUD's website (http://www.hud.gov/offices/adm/grants/nofa10/grphcp.cfm) in June 2010 contains detailed information regarding the activities for which grantees and sub-grantees can be reimbursed.

Section 106 of the Housing and Urban Development Act of 1968 (12 USC 1701x) also addresses allowable and unallowable activities. Only the following activities generally are allowed under the statute:

1. Individual counseling or group education or classes regarding:
    a. Pre-purchase/home buying;
    b. Resolving or preventing mortgage delinquency or default;
    c. Non-delinquency post-purchase;
    d. Locating, securing, or maintaining residence in rental housing; and
    e. Shelter or services for the homeless.
2. Home equity conversion mortgage counseling.
3. Marketing and outreach initiatives.
4. Training.
5. Computer equipment/systems.
6. Administrative costs.
7. Mortgage modification scam identification and reporting

J. Program Income

The auditor should be alert to the fact that, in the performance of the award, the recipient may be being reimbursed directly or indirectly from other sources for services provided. This reimbursement generally should be treated as program income using the deduction method. Recipients may include in their vouchers only that portion of its services for which it does not receive reimbursement from any other funding source.

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program*s –Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.181 SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES (SECTION 811)

I. PROGRAM OBJECTIVES

The objective of Supportive Housing for Persons with Disabilities is to expand the supply of supportive housing for very low-income persons with disabilities through: (1) providing Federal capital advances under Section 811 of the Cranston-Gonzalez National Affordable Housing Act(Act) for development of housing projects serving persons with disabilities; and (2) providing rental assistance to very low-income (within 50 percent of the median income for the area) persons with disabilities residing in projects financed by the Act.

II. PROGRAM PROCEDURES

Capital advances (direct payments) may be used to construct, rehabilitate, or acquire structures to be used as supportive housing for persons with disabilities. HUD holds a non-amortizing mortgage on the property under the terms of the capital advance. No repayment is required, as long as the owner complies with the Regulatory Agreement with HUD to make available rental housing to very low-income persons with disabilities for at least 40 years (24 CFR section 891.170). Failure to comply with the terms of the capital advance and HUD's statutory and regulatory requirements may result in foreclosure under the mortgage.

Project rental assistance is used to cover the difference between the HUD-approved operating costs of the project and the tenants' contributions toward rent (24 CFR section 891.410). Project rental assistance is provided under a Project Rental Assistance Contract (PRAC) and is calculated based on operating cost standards established by HUD (24 CFR section 891.150). The owner submits monthly vouchers to HUD for payment of rental assistance. The total amount of assistance equals total HUD-approved operating expenses for the project minus the tenant payments received for all units (PRAC paragraph 2.4(f)(1)). Tenants generally are required to pay rent in accordance with a Housing Assistance Payment Contract. The owner receives assistance from HUD on vacant rental assistance units at a rate of 50 percent of Operating Expense for a unit under PRAC (PRAC paragraph 2.4b) for the first 60 days of vacancy, given certain conditions are met (24 CFR section 891.445).

This program is exempt from OMB Circular A-110 (24 CFR 84.2, definition of "Award").

Financial Reporting

In accordance with HUD's Uniform Financial Reporting Standards rule, annually, an owner is required to submit a financial statement, prepared in accordance with generally accepted accounting principles (GAAP), in the electronic format specified by HUD. The unaudited financial statement is due 2 months after the owner's fiscal year end and an audited financial statement is due 9 months after its fiscal year end (24 CFR section 5.801). The financial statement must include the financial activities of this program.

Cost Certifications

Owners are required to submit one or two detailed cost certifications at the end of each project. These reports provide information on actual development cost breakdown and operating costs. The reports are HUD-92330, Mortgagor's Certificate of Actual Costs (*OMB No. 2502-0112*) and HUD-92330-A, Contractor's Certificate of Actual Costs (*OMB No. 2502-0044*). The HUD-92330-A is only required when there is an identity of interest between the mortgagor and the general contractor and when a cost-plus-contract is required in nonprofit contracts.

Source of Governing Requirements

This program is authorized under Section 811 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 USC 8013). Implementing regulations for this program are 24 CFR part 5, subpart H, and part 891, subparts A, C, and D.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a federal program, the auditor should first look to Part 2, Matrix of Compliance requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. PRAC project funds must be used only for expenses that are reasonable and necessary to the operation of the project as provided for in the Regulatory Agreement between HUD and the project owner (24 CFR section 891.400(e)).

2. Project facilities may not include infirmaries, nursing stations, spaces dedicated to the delivery of medical treatment or physical therapy, padded rooms, or space for respite care or sheltered workshops, even if paid for from sources other than the HUD capital advance. Except for office space used by the owner exclusively for the administration of the project, project facilities may not include office space (24 CFR section 891.315).

3. Project must be modest in design. In independent living facilities for persons with disabilities, amenities not eligible for HUD funding in individual units include balconies and decks, atriums, bowling alleys, swimming pools, saunas, jacuzzis, trash compactors, washers and dryers. However, HUD funding is eligible to pay for washers and dryers in group homes for persons with disabilities. Sponsors may include excess amenities, but must pay for them from sources other than Section 811 capital advance funds. They must also pay for the continuing operating costs associated with any excess amenities from sources other than the Section 811 project rental assistance contract (24 CFR section 891.120).

D. Davis-Bacon Act

All laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) employed by contractors and subcontractors in the construction (including rehabilitation) of housing with 12 or more units assisted under this program shall be paid wages at rates not less than those prevailing in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. A group home for persons with disabilities is not covered by these labor standards (24 CFR section 891.155(d)).

E. Eligibility

1. Eligibility for Individuals

Section 811 of the National Affordable Housing Act provides funding for housing for persons with disabilities. To qualify as disabled, the household must consist of at least one person who is an adult (18 years or older) with a disability, two or more persons with disabilities living together, or a surviving household member under certain circumstances (42 USC 1437a(b)(3); 24 CFR section 891.505). Residents must also qualify as very low-income households to be eligible (42 USC 8013).

The owner is responsible for annually reexamining incomes of households occupying assisted units and make appropriate adjustments to the tenant payment and the project rental assistance payment (24 CFR section 891.410). Assistance applicants shall submit signed consent forms upon initial application and at reexamination (24 CFR section 5.230).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program*s – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

f. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting

HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons* (*OMB No. 2529-0043*) – For each grant over $200,000 that involves housing rehabilitation, housing construction, or other public construction, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a) and 135.90).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 2. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

1. Use of Project Funds

Compliance Requirement – Owners are required to establish and maintain a separate project account in federally insured depository. All rents, charges, income, and revenues arising from the project operation shall be deposited into this account. Project funds must be used for the operation of the project (including required insurance coverage), and to make required deposits to replacement reserve and the residual receipts accounts (24 CFR section 891.400(e)).

Audit Objectives – Determine whether the project fund was properly established, required deposits were made into this fund, and disbursements were only for allowed purposes.

Suggested Audit Procedures

a. Ascertain if the project funds receipts account has been established in a federally insured depository.

b. Perform tests to ascertain if rents, charges, income, and revenues arising from the project operation were deposited into the fund.

c. Test a sample of disbursements from the fund to ascertain if they were used only for the operation of the project or to make required deposits to the replacement reserve or the residual receipts account.

2. Replacement Reserve

Compliance Requirement – Owners shall establish and maintain a replacement reserve to aid in funding extraordinary maintenance and repair and replacement of capital items. The replacement reserve funds must be deposited in a federally insured depository in an interest-bearing account**.** All earnings including interest on the reserve must be added to the reserve. An amount as required by HUD will be deposited monthly in the reserve fund (Regulatory Agreement, item 5 (a)). All disbursements from the reserve must be approved by HUD (24 CFR section 891.405).

Audit Objectives – Determine whether the replacement reserve was properly established, required monthly deposits were made, and disbursements were only for HUD-approved purposes.

Suggested Audit Procedures

a. Ascertain if a replacement reserve account has been established in a federally insured depository in an interest bearing account.

b. Ascertain if the required monthly deposits have been made to the replacement reserve account.

c. Ascertain if interest earnings from the reserve were retained in the replacement reserve account.

d. Test a sample of disbursements from the replacement reserve account and ascertain if they were approved by HUD and were made for the approved purpose.

3. Residual Receipts Account

Compliance Requirement – Any funds in the project funds account (including earned interest) at the end of the fiscal year shall be deposited in a federally insured account within 90 days following the end of the fiscal year. Withdrawals from this account may be made only for project purposes and with the approval of HUD (24 CFR section 891.400(e)).

Audit Objectives – Determine whether the residual receipts account was properly established, the required deposit was made within 90 days following year-end, and disbursements were only for project purposes and the approval of HUD.

Suggested Audit Procedures

a. Ascertain if residual receipts account has been established in a federally insured depository.

b. Ascertain if the required annual deposit was made within 90 days following year-end.

c. Test a sample of disbursements from the residual receipts account and ascertain if they were used for project purposes and approved by HUD.

IV. OTHER INFORMATION

To protect its interest in a capital advance, HUD requires a note and mortgage, for a 40-year term. The owner is not required to repay the principal or pay interest and the note is forgiven at maturity, as long as the owner provides housing for the designated class of people in accordance with applicable HUD requirements. However, the full outstanding balance on the note should be considered Federal awards expended, included in determining Type A programs and reported as loans on the Schedule of Expenditures of Federal Awards or accompanying notes in accordance with OMB Circular A-133.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.182 SECTION 8 NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
CFDA 14.195 SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM--SPECIAL ALLOCATIONS
CFDA 14.249 SECTION 8 MODERATE REHABILITATION SINGLE ROOM OCCUPANCY
CFDA 14.856 LOWER INCOME HOUSING ASSISTANCE PROGRAM--SECTION 8 MODERATE REHABILITATION

I. PROGRAM OBJECTIVES

The objective of the Section 8 project-based rental assistance programs is to aid low- and very low-income families in obtaining decent, safe, and sanitary rental housing through the provision of housing assistance payments to participating owners on behalf of eligible tenants.

II. PROGRAM PROCEDURES

Housing assistance payments are used to make up the difference between the approved rent due to the owner for the dwelling unit and the occupant family's required contribution toward rent. Assisted families must pay the highest of: (a) 30 percent of their monthly adjusted family income, (b) 10 percent of gross family income, or (c) the portion of welfare assistance designated for housing toward rent. This program is no longer funding new applications and awards.

Under these project-based programs, the rental subsidy is tied to a specific unit; when a family moves from the unit, it has no right to continued assistance (unless the owner opts out of the Section 8 contract, in which case the individual is entitled to enhanced vouchers). The project-based Section 8 Housing Assistance Payments (HAP) contracts are administered by the Department of Housing and Urban Development (HUD) or State, local, or other governmental entities or instrumentalities thereof qualifying as Public Housing Agencies (PHAs). Where a PHA is the contract administrator, HUD enters into annual contributions contracts with PHAs which enter into HAP contracts with private owners.

Contract Administrators are required to maintain a HAP contract register or similar record in which to record the PHA's obligation for monthly housing assistance payments. This record shall provide information as to: the name and address of the family; the name and address of the owner; dwelling unit size; the effective and expiration dates of the lease; the monthly contract rent payable to the owner; monthly rent payable by the family; and the monthly housing assistance payment. The record shall also provide data as to the date the family vacates and the number of days the unit is vacant, if any. This requirement is applicable to PHAs that are administering Housing Assistance Payments Program Projects pursuant to the provisions of Annual Contributions Contracts. It is not applicable to Section 8 projects on which HUD has executed a HAP contract directly with an owner or PHA.

The Moderate Rehabilitation (Mod Rehab) program (including the Single Room Occupancy (SRO) program for homeless individuals) assists low income families in affording decent, safe and sanitary housing by encouraging property owners to rehabilitate substandard housing and lease the units with rental subsidies to low income families. The PHA and the owner execute an Agreement to Enter into Housing Assistance Payments Contract under which the owner agrees to rehabilitate the unit to be subsidized and the PHA agrees to subsidize the units upon satisfactory completion of rehabilitation. Upon completion of the rehabilitation, the PHA and the owner execute a HAP contract. The PHA refers interested eligible families on its Section 8 waiting list to the owner to fill vacancies in moderate rehabilitation units.

Mod Rehab program assistance is considered a project-based subsidy because the assistance is tied to specific units under an assistance contract with the owner for a specified term. A family that moves from a unit with project-based assistance does not have any right to continued assistance, except in the case of certain "housing conversion actions," such as when the owner chooses to opt out of the Section 8 program. In such cases, tenants are entitled to enhanced vouchers.

Under the Mod Rehab SRO program, eligible applicants are PHAs or non-profit organizations, which must contract with a PHA to administer the rental assistance. Eligible individuals must be homeless according to HUD's definition and may be located through owner outreach as well as from the PHA waiting list (24 CFR section 882.808). No single project may contain more than 100 assisted units. The SRO program is administered under an initial 10-year HAP term, with the possibility of subsequent one-year renewals. The program is administered at HUD Headquarters by the Office of Community Planning and Development (CPD).

In accordance with HUD's Uniform Financial Reporting Standards rule, annually, a PHA is required to submit its financial statement, prepared in accordance with generally accepted accounting principles (GAAP), in the electronic format specified by HUD. The unaudited financial statement is due 2 months after the PHA's fiscal year end and the audited financial statement is due 9 months after its fiscal year end (24 CFR section 5.801). The financial statement must include the financial activities of the programs in this cluster.

The US Housing Act of 1937 requires that assistance contracts signed by owners participating in the Section 8 housing assistance payments programs provide for annual adjustment in the monthly rentals for units covered by the original Section 8 HAP contract. Each year there are revised Annual Adjustment Factors (AAF) for adjustment of contract rents on assistance contract anniversaries, which are applied for those calendar months commencing after the effective date of the annual notice of the change in monthly rental. The AAF are based on a formula using data on residential rent and utilities cost changes from the most current annual Bureau of Labor Statistics Consumer Price Index survey. For projects for which the original Section 8 HAP contract has been renewed under the Multifamily Assisted Housing Reform and Affordability Act of 1997, Pub. L. No. 105-65, 111 Stat. 1384 (MAHRA), rent adjustments are governed by MAHRA rather than by the AAF.

Technical details and requirements related to AAF are described in HUD notices H 2002-10 (Section 8 Project-Based Rent Adjustments Using the Annual Adjustment Factor (AAF)), PIH 97-57 (Operating Cost Adjustment Factors (OCAF)), and the Section 8 Renewal Guide.

Source of Governing Requirements

These programs (other than the Mod Rehab SRO program) are authorized by the US Housing Act of 1937, as amended (42 USC 1437a, c, and f; 42 USC 3535(d); 42 USC 12701; and 42 USC 13611 through 13619). Implementing regulations for post-1980 Section 8 contracts are 24 CFR parts 880 through 883, for Section 515 Rural Rental Housing Section 8 contracts are 24 CFR part 884, and for Loan Management Set-Aside contracts are 24 CFR part 886. The Moderate Rehabilitation SRO program is authorized under section 441 of the McKinney-Vento Homeless Assistance Act, 42 USC 11401, and is subject to program regulations at 24 CFR part 882, subpart H.

Availability of Other Program Information

HUD maintains a page on its website at http://www.hud.gov/offices/hsg/mfh/mfhsec8.cfm that provides general information about these programs. HUD notices are available at http://www.hud.gov/offices/adm/hudclips/index.cfm.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

E. Eligibility

1. Eligibility for Individuals

a. The PHA or owner, as applicable, must:

(1) Verify the eligibility of applicants by: (a) obtaining signed applications that contain the information needed to determine eligibility (including designation as elderly, disabled, or homeless, if applicable), income, rent, and order of selection; (b) conducting verifications of family income and other pertinent information (such as assets, full time student and immigration status, and unusual medical expenses) through third parties; (c) documenting inspections and tenant certifications, as appropriate; and, (d) determining that tenant income did not exceed the maximum limit set by HUD for the PHA's jurisdiction, as shown in HUD's published notice transmitting the Limits for Low-Income and Very Low-Income Families Under the Housing Act of 1937. For the Mod Rehab SRO program, eligible individuals must be homeless

upon entry into the program. (24 CFR sections 880.603, 881.601, 882.514, 882.808, 833.701, 884.214, 886.119, and 886.318)

(2) Determine the total tenant rent payment in accordance with 24 CFR section 5.613.

(3) Select participants from the waiting list in accordance with the admission policies in its administrative plan and maintain documentation which shows that, at the time of admission, the family actually met the preference criteria that determined the family's place on the waiting list. For the Mod Rehab SRO program, eligible individuals may be referred to the PHA for eligibility determination as a result of the owner's/sponsor's outreach or through the PHA waiting list. (24 CFR sections 880.603, 881.601, 882.514, 882.808(b)(2), 883.701, 884.214, and 886 subparts A and C)

(4) Reexamine family income and composition at least once every 12 months and adjust the total rent payment and housing assistance payment, as necessary (24 CFR sections 5.617, 880.603, 881.601, 882.515, 884.218, 886.124, and 886.324).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. In lieu of the standard reports, the following reports are required on Section 8 project-based programs involving PHA/private-owners and HUD/PHA owners.

(1) HUD-52663, *Requisition for Partial Payment of Annual Contributions (OMB No. 2577-0169)* – submitted quarterly.

(2) HUD-52681, *Voucher for Payment of Annual Contributions and Operating Statement (OMB No. 2577-0169)* – submitted annually.

2. Performance Reporting – Not Applicable

3. Special Reporting

a. HUD-50058, *Family Report (OMB No.2577-0083)* – The PHA is required to submit this form electronically to HUD each time the PHA completes an admission, annual reexamination, interim reexamination, portability move-in, or other change of unit for a family. The PHA must also submit the Family Report when a family ends participation in the program or moves out of the PHA's jurisdiction under portability.

Key Line Items – The following line items contain critical information:

(1) Line 2a – *Type of Action*

(2) Line 2b – *Effective Date of Action*

(3) Line 3b, 3c – *Names*

(4) Line 3e – *Date of Birth*

(5) Line 3n – *Social Security Numbers*

(6) Line 5a – *Unit Address*

(7) Line 5h, 5i – *Unit Inspection Dates*

(8) Line 7i – *Total Annual Income*

(9) Line 13h – *Contract Rent to Owner*

(10) Line 13k or 13x – *Tenant rent*

b. HUD-50059, *Owner's Certification of Compliance With HUD's Tenant Eligibility and Rent Procedures (OMB No. 2502-0204)* – This report is submitted electronically to HUD.

c. For Moderate Rehabilitation SRO only: *HUD-40118, Annual Progress Report (OMB No. 2506-0145)* – This report is due from each non-Federal recipient of assistance within 90 days after the end of its operating year (24 CFR section 882.808(p)).

Key Line Items:

(1) Line 4 – *Non-homeless persons*

(2) Line 6b – *Chronically homeless persons*

(3) Line 10 – *Prior Living Situation*

(4) Line 11 – *Amount and Source of Monthly Income at Entry and at Exit*

(5) Line 12a,b – *Length of Stay in Program*

(6) Line 14 – *Destination*

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

1. Contract Rent Adjustments

Compliance Requirement – The PHA or owner applies or ensures annual adjustments to contract rents are applied. The HAP contract specifies the method to be used to determine rent adjustments. Adjustments must not result in material differences between rents charged for assisted units and comparable unassisted units except as those differences existed at contract execution. Special adjustments to contract rents, within the original contract term, may also be made to the extent deemed necessary by the PHA or HUD (24 CFR sections 880.609, 881.601, 882.410, 882.808(e), 883.701, 884.109, 886.112, and 886.312).

Audit Objective – Determine whether contract rents are being adjusted properly.

Suggested Audit Procedures

a. Review the procedures for applying annual adjustment factors and handling special adjustment requests.

b. Select a sample of contracts and the related files with annual and special rent adjustments and test the supporting data and certifications that were submitted to support the adjustments.

c. Review the selected HAP contract files or tenant files to verify that annual and special adjustments were applied correctly and that rent adjustments did not result in material differences between the rents charged for assisted and comparable unassisted units.

2. Tenant Utility Allowances

Compliance Requirement – The PHA or owner must (a) establish or ensure tenant utility allowances based on utility consumption and rate data for various sized units, structure types, and fuel types, (b) make an annual review of tenant utility allowances to determine their reasonableness, and (c) adjust the allowances, when appropriate (24 CFR sections 5.603, 880.610, 881.601, 882.510, 882.808(k), 883.701, 884.220, 886.126, and 886.326).

Audit Objective – Determine whether tenant utility allowances are properly established.

Suggested Audit Procedures

a. Examine the procedures used to establish and annually review utility allowances, handle adjustment requests, and notify tenants of utility allowance adjustments.

b. Select a sample of units with tenant utility allowances and their related tenant files for review.

c. Test owner requests, PHA determinations, and supporting documentation for utility determinations.

d. Verify that the allowances were applied to tenants correctly.

3. Housing Quality Standards

Compliance Requirement – The PHA or owner must provide housing that is decent, safe, and sanitary. To achieve this end, the PHA must perform housing quality inspections at the time of initial occupancy and at least annually thereafter to assure that the units are decent, safe, and sanitary (24 CFR sections 880.612, 881.601, 882.516, 882.808(n), 883.701, 884.217, 886.123, and 886.323).

Audit Objective – Determine whether the PHA or owner performs the required inspections to assure that units meet housing quality standards.

Suggested Audit Procedures

a. Examine the procedures used by the PHA or owner to identify those units on which housing quality inspections are due.

b. Select a sample of units on which HAP contracts were executed and examine inspection reports.

c. Examine records and ascertain that the PHA or owner assures that the inspections and any needed repairs are completed timely.

d. Verify that the PHA reviewed the evidence of completion submitted by the owner on newly constructed or rehabilitated units accepted for occupancy.

4. Vacant Units

Compliance Requirement – The PHA or owner must reduce claims for assistance on vacant units under certain circumstances. However, there are instances where special claims are allowed for vacancy losses, unpaid rent, and tenant damages on eligible units (24 CFR sections 880.611, 881.601, 882.411, 882.808(f), 883.701, 884.106, 886.109, and 886.309).

Audit Objective – Determine whether payments to owners are reduced for vacant units and whether payments for special claims are proper.

Suggested Audit Procedures

a. Examine the procedures used by the PHA or owner to provide the current occupancy status of the units receiving Section 8 assistance.

b. Select a sample of units that were vacated during the audit period and verify that payments to owners were reduced, as prescribed.

c. Select a sample of payments for special claims and verify that documentation exists to support the payments.

5. Replacement Reserve

Compliance Requirement – The owner shall establish and maintain a replacement reserve to aid in funding extraordinary maintenance and repair and replacement of capital items. The replacement reserve funds must be deposited in an interest-bearing account**.** All earnings including interest on the reserve must be added to the reserve. All disbursements from the reserve must be as approved or directed by HUD or the State Agency for 24 CFR part 883 projects, as applicable. An amount as required by HUD or the State Agency for 24 CFR part 883 projects, as applicable, shall be deposited monthly in the reserve fund in accordance with the Regulatory Agreement or HAP contract (24 CFR sections 880.601, 880.602, 881.601 and 883.701).

Audit Objectives – Determine whether the replacement reserve was properly established, required monthly deposits were made, and disbursements were only for approved purposes.

Suggested Audit Procedures

a. Ascertain if reserve has been established in an interest bearing account.

b. Ascertain if the required monthly deposits have been made to the reserve.

c. Ascertain if interest earnings from the reserve were retained in the reserve.

d. Test a sample of disbursements from the reserve and ascertain if they were made for an approved purpose.

6. Residual Receipts Account

Compliance Requirement – Any project funds in the project funds account (including earned interest) at the end of the fiscal year shall be deposited with the mortgagee or other HUD-approved depository in an interest bearing account. For projects under 24 CFR part 883, the funds must be deposited with the State Agency or other Agency-approved depository in an interest bearing account. Withdrawals from this account may be made only for project purposes and with the approval of HUD or the State Agency for 24 CFR part 883 projects, as applicable (24 CFR sections 880.601, 881.601, and 883.701).

Audit Objectives – Determine whether the residual receipts account was properly established, the required deposit was made within 60 days following year-end, and disbursements were only for approved project purposes.

Suggested Audit Procedures

a. Ascertain if residual receipts account has been established in an interest-bearing depository.

b. Ascertain if the required annual deposit was made within 60 days following year-end.

c. Test a sample of disbursements from the residual receipts account and ascertain if they were used for an approved project purpose.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.218 COMMUNITY DEVELOPMENT BLOCK GRANTS/ENTITLEMENT GRANTS
CFDA 14.253 COMMUNITY DEVELOPMENT BLOCK GRANT ARRA ENTITLEMENT GRANTS (CDBG-R) (RECOVERY ACT FUNDED)
CFDA 14.254 COMMUNITY DEVELOPMENT BLOCK GRANTS/SPECIAL PURPOSE GRANTS/INSULAR AREAS – (RECOVERY ACT FUNDED)

I. PROGRAM OBJECTIVES

The primary objective of the Community Development Block Grants (CDBG)/Entitlement Grants program (large cities and urban counties) (24 CFR part 570 subpart D) is to develop viable urban communities by providing decent housing, a suitable living environment, and expanded economic opportunities, principally for persons of low and moderate income. This objective is to be achieved in two ways. First, a grantee can only use funds to assist eligible activities that meet one of three national objectives of the program: benefit low- and moderate-income persons, aid in the prevention or elimination of slums and blight, or meet community development needs having a particular urgency. Second, the grantee must spend at least 70 percent of its funds, over a period of up to three years as specified by the grantee in its certification, for activities that address the national objective of benefiting low- and moderate-income persons (24 CFR section 570.200).

The Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. No. 110-289, July 30, 2008) provided funds for emergency assistance for redevelopment of abandoned and foreclosed homes and residential properties, and provides under a rule of construction that, unless HERA provides otherwise, the grants are to be considered CDBG funds. The grant program under Title III is referred to as the Neighborhood Stabilization Program (NSP). **The NSP funding covered in this cluster is the funding provided under HERA and is not the NSP funding provided under ARRA. These HERA funds are also referred to as NSP1 in the Neighborhood Stabilization Program (see CFDA 14.256, Section II, "Program Procedures").**

Title XII of the Recovery and Reinvestment Act of 2009 (ARRA)(Pub. L. No. 111-5) provided additional funding under the CDBG program. The focus of this funding (referred to as CDBG-R) is on infrastructure improvements that stimulate the economy through measures that modernize the nation's infrastructure and improve energy efficiency.

The CDBG Special Purpose Grants/Insular Areas (Insular CDBG-R) program is authorized under Section 106(a)(2) of the Housing and Community Development Act and funding is provided in Title XII of ARRA with the same objectives as the CDBG-R.

II. PROGRAM PROCEDURES

The CDBG Entitlement Grants Program provides grants to metropolitan cities and urban counties which must submit certain certifications and a one-year action plan as to how they propose to use the funds for community development activities. The grant amount is determined by the higher of two formulas that consider a community's population, poverty level, extent of overcrowded housing, age of housing, and growth lag (42 USC 5306(b)).

The NSP grant is a special CDBG allocation to address the problem of abandoned and foreclosed homes. HERA established the need, targets the geographic areas, and limits the eligible uses of NSP funds.

Except for the following differences, non-entitlement counties in Hawaii (see CFDA 14.228, II, "Program Procedures") must follow the requirements of CDBG Entitlement Grants (CFDA 14.218): (1) their funding comes from Section 106(d) of the Housing and Community Development Act of 1974, as amended (42 USC 5306(d)); (2) funds are distributed using the formula contained in 24 CFR section 570.429(c); reallocations due to grant reductions, or funds not applied for, go to the other non-entitlement counties in Hawaii on a *pro rata* basis (24 CFR section 570.429(d)); (3) non-entitlement counties are not eligible to use the exception criteria in 24 CFR section 570.208(a)(1)(ii); and (4) 24 CFR section 570.307 (Urban Counties) and 24 CFR section 570.308 (Joint Requests) would not apply to non-entitlement counties in Hawaii.

The CDBG-R program provides grants to metropolitan cities and urban counties which must submit specified certifications and a substantial amendment to their 2008 1-year action plans as to how they propose to use the CDBG-R funds to meet the purposes of the ARRA. Eligible recipients of the CDBG-R funds are grantees that received CDBG funding in 2008. The grant amount is determined by the higher of two formulas that consider a community's population, poverty level, extent of overcrowded housing, age of housing, and growth lag (42 USC 5306(b)). The Notice of Program Requirements for Community Development Block Grant Program Funding Under the American Recovery and Reinvestment Act of 2009 (FR-5309-N-01) (CBDG-R Notice) describes the common application process, and advises the public of waivers granted to recipients, alternative requirements applied, and statutory program requirements. The CDBG-R Notice provides that, except as described therein, statutory and regulatory provisions governing the CDBG program, including those under Title I of the Housing and Community Development Act of 1974, as amended (HCDA), at 24 CFR part 570, subparts A, C, D, J, K and O, for CDBG entitlement communities shall apply to the use of the CDBG-R funds. The CDBG-R Notice is available on the HUD website at: http://www.hud.gov/recovery/cdblock.cfm.

The procedures and requirements that apply to the CDBG-R program apply to the Insular CDBG-R as well.

Source of Governing Requirements

These programs are authorized by Title I of the Housing and Community Development Act of 1974, as amended (Pub. L. No. 93-383) (42 USC 5301) **and ARRA**. Implementing regulations are located at 24 CFR part 570.

The NSP is authorized by Title III of Division B of HERA. HUD published a "Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees Under the Housing and Economic Recovery Act, 2008," (NSP Notice) that advises the public of the allocation formula, allocation amounts, the list of grantees, alternative requirements, and the waivers of regulations provided to grantees (October 6, 2008, *Federal Register*, 73 FR 58330-58349).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. All activities undertaken must meet one of three national objectives of the CDBG Entitlement Grants program, i.e., benefit low- and moderate-income persons, prevent or eliminate slums or blight, or meet community development needs having a particular urgency (24 CFR sections 570.200 and 570.208).

   The CDBG-R Notice provides an alternative requirement for the CDBG program urgent need national objective criteria. In the regular CDBG program, in order to meet the urgent need national objective pursuant to 24 CFR section 570.208(c), the recipient must certify that: (1) the activity is designed to alleviate existing conditions which (a) pose a serious and immediate threat to the health and welfare of the community, and (b) are of recent origin or recently became urgent; (2) the recipient is unable to finance the activity on its own; and (3) other sources of funds are not available. For CDBG-R, HUD is eliminating the recordkeeping requirement that grantees document the nature, degree, and timing of the seriousness of the condition to be addressed by the activity if the urgent need is based on current economic conditions. HUD has determined that current economic conditions are of recent origin and pose a serious and immediate threat to the economic welfare of communities; therefore, HUD will accept a grantee's certification that current economic conditions are of recent origin and constitute a serious and immediate threat to the welfare of the community. However, the grantee must demonstrate that it is unable to finance the activity on its own, and that other sources of funding are not available. The CDBG-R Notice waives 24

CFR sections 570.506(b)(12)(i) and (iii) and 570.208(c) to the extent necessary to allow grantees to certify that an activity is designed to address current economic conditions which pose a threat to the economic welfare of communities (CDBG-R Notice, Section II.E).

2. Grants funds are to be used for the following activities: (a) the acquisition of real property; (b) the acquisition, construction, reconstruction, rehabilitation or installation of public works, facilities and sites, or other improvements, including removal of architectural barriers that restrict accessibility of elderly or severely disabled persons; (c) clearance, demolition, and removal of buildings and improvements; (d) payments to housing owners for losses of rental income incurred in temporarily holding housing for the relocated; (e) disposition of real property acquired under this program; (f) provision of public services (subject to limitations contained in the CDBG regulations); (g) payment of the non-Federal share for another grant program for activities that are otherwise eligible; (h) interim assistance where immediate action is needed prior to permanent improvements or to alleviate emergency conditions threatening public health and safety; (i) payment to complete a Title 1 Federal Urban Renewal project; (j) relocation assistance; (k) planning activities; (l) administrative costs; (m) acquisition, construction, reconstruction, rehabilitation, or installation of commercial or industrial buildings; (n) assistance to community-based development organizations; (o) activities related to privately-owned utilities; (p) assistance to private, for-profit businesses, when appropriate to carry out an economic development project; (q) construction of housing assisted under Section 17 of the United States Housing Act of 1937; (r) reconstruction of properties; (s) direct homeownership assistance to low and moderate income households to facilitate and expand homeownership; (t) technical assistance to public or private entities for capacity building (exempt from the planning/administration cap); (u) housing services related to HOME-funded activities; (v) assistance to institutions of higher education to carry out eligible activities; (w) assistance to public and private entities (including for-profits) to assist micro-enterprises; (x) payment for repairs and operating expenses for acquired "in Rem" properties; (y) residential rehabilitation, including code enforcement in deteriorated or deteriorating areas, lead-based paint hazard evaluation, and removal; and (z) construction or improvement of tornado-safe shelters for residents of manufactured housing and provision of assistance to non-profit and for-profit entities for such construction or improvement (42 USC 5305(a); 24 CFR sections 570.200 through 570.207).

3. **The CDBG program provides for float-funded activities and guarantees, a short-term financing mechanism which allows a grantee to use undisbursed funds in its line of credit and CDBG program account that are budgeted in action plans for one or more other activities that do not need the funds immediately. Each activity carried out using the float must meet all CDBG requirements and must be expected to produce program income in an amount at least equal to the amount of float so used. Because program**

income generated from CDBG-R activities will not be treated as program income to the CDBG-R program, grantees may not use CDBG-R funds to assist any float-funded activity or guarantee. To implement this, HUD has waived the provision at 24 CFR section 570.301(b), thereby making float-funded activities not allowable with CDBG-R funds (CDBG-R Notice, Section II.D; 24 CFR section 570.301).

4. Entitlement grantees (14.218) may have loans guaranteed by HUD under Section 108 of the Housing and Community Development Act of 1974, (42 USC 5308). The guaranteed loan funds are to be used only for the following activities: (a) acquisition of real property; (b) housing rehabilitation; (c) rehabilitation of publicly owned real property; (d) eligible CDBG economic development activities; (e) relocation payments, (f) clearance, demolition, and removal; (g) payment of interest on Section 108 guaranteed obligations; (h) payment of issuance and other costs associated with private sector financing under this subpart; (i) site preparation related to redevelopment or use of real property acquired or rehabilitated pursuant to this subpart or for economic development purposes; (j) construction of housing by non-profit organizations for home ownership under Section 17(d) of the U.S. Housing Act of 1937 (12 USC 1715(l)) or Title VI of the Housing and Community Development Act of 1987; (k) debt service reserve; (l) acquisition, construction, reconstruction, rehabilitation or installation of public works and site or other improvements which serve "colonias" (as defined in Section 916 of the Housing Act of 1990 and amended by Section 810 of the Housing and Community Development Act of 1992); and (m) acquisition, construction, rehabilitation, or installation of public facilities (except for buildings for the general conduct of government), public streets, sidewalks, and other site improvements, and public utilities (24 CFR sections 570.700 through 570.710).

5. The CDBG-R Notice provides an alternative requirement concerning the Section 108 Loan Guarantee program. The Section 108 program is intended to provide longer-term project financing and requires a pledge of future CDBG funds over the life of the loan guarantee, whereas the CDBG-R program is a one-time appropriation of limited duration. CDBG-R funds may not be used: (a) as a pledge of security for repayment of Section 108 loans; (b) to securitize borrowing under the Section 108 program; or (c) as repayment for funds borrowed under the Section 108 program, and they may not be counted toward a grantee's maximum Section 108 borrowing authority. Therefore, HUD has waived the applicability of 42 USC 5308 and Subpart M of 24 CFR part 570 for the use of CDBG-R funds (CDBG-R Notice, Section II.E.; 24 CFR sections 570.700 through 570.710).

6. All the activities that a grantee undertakes during its CDBG program year must be identified in an action plan or an amended action plan (24 CFR sections 91.220 and 570.301). Plan amendment is only required to reflect significant changes in activities or funding decisions for these years (24 CFR section 91.235).

All of the activities that a grantee undertakes using CDBG-R funds must be identified in a substantial amendment to its action plan. The required elements in the CDBG-R substantial amendment to the action plan for entitlement communities include a description of the activities the jurisdiction will undertake with CDBG-R funds to address priority needs and objectives. The regulation at 24 CFR section 91.220(l)(ii) has been waived; instead the grantee is required to identify any other ARRA funding to be used in conjunction with each CDBG-R-assisted activity it intends to fund with the CDBG-R allocation (CDBG-R Notice, Section II.A.; 24 CFR sections 91.220 and 570.301).

7. CDBG funding can only be used for special economic development projects that meet the criteria in 24 CFR section 570.203. Grantees must have data to support that assistance provided to carry out special economic development projects is appropriate by meeting the public benefit standards for job creation and provision of goods and services described in 24 CFR section 570.209.

   The CDBG-R Notice provides an alternative requirement for public benefit standards to expedite the timely use of CDBG-R funds by grantees. In the regular CDBG program, the public benefit standards at 24 CFR sections 570.209(b), (c), and (d) for entitlement grantees apply to economic development projects under the authority of 24 CFR section 570.203 and 42 USC 5305(a)(2), (14), (15), or (17). The CDBG-R Notice waives 42 USC 5305(e)(3), and 24 CFR sections 570.209 and 570.506(c) to the extent necessary to permit grantees to carry out economic development projects without meeting the public benefit standards, except that the regulations pertaining to prohibited activities listed at 24 CFR sections 270.209(b)(3)(ii)(A) though (E) are not waived (CDBG-R Notice, Section II.E.).

8. When CDBG funds are used to finance rehabilitation, the rehabilitation is to be limited to privately owned buildings and improvements for residential purposes, low income public housing and other publicly owned residential buildings and improvements, publicly or privately owned commercial or industrial buildings, structures, or other real property, equipment, and improvements under certain circumstances, as well as manufactured housing when it constitutes part of the community's permanent housing stock (24 CFR sections 570.202 and 570.203).

9. For NSP funds, HERA requirements supersede some CBDG requirements to allow for the eligible uses in section 2301(c)(3) of HERA. The NSP categories and CDBG entitlement grant regulations are listed in Section II.H.3.a of NSP Notice, 73 FR 58338. The NSP eligible uses are to:

   - Establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties.

- Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon for later sale, rent or redevelopment.
- Establish land banks for homes that have been foreclosed upon.
- Demolish blighted structures
- Redevelop demolished or vacant properties.

10. For NSP funds, NSP requirements supersede existing CDBG requirements (see III.A.1, above) to permit the use of only the low- and moderate-income national objective for NSP-assisted activities. A NSP activity may not qualify using the "prevent or eliminate slums and blight" or "address urgent community development needs" national objectives. The HERA redefines and supersedes the definition of "low- and moderate-income," effectively allowing households whose incomes exceed 80 percent of area median income but do not exceed 120 percent of median income to qualify as if their incomes did not exceed the published low- and moderate-income levels of the regular CDBG program (Section III.E. of NSP Notice, 73 FR 58335-58336). HUD will refer to this new income group as "middle income" and maintain the regular CDBG definitions of "low-income" and "moderate-income" currently in use (Section 2301(f)(3)(A) of HERA).

11. For purposes of NSP only, an activity may meet the HERA established low- and moderate-income national objective if the assisted activity: (a) Provides or improves permanent residential structures that will be occupied by a household whose income is at or below 120 percent of area median income; (b) Serves an area in which at least 51 percent of the residents have incomes at or below 120 percent of area median income; or (c) Serves a limited clientele whose incomes are at or below 120 percent of area median income (Section 2301(f)(3)(A) of HERA; Section II.E. of NSP Notice, 73 FR 58335-58336).

12. Eligible uses of NSP funds authorized by HERA are: (a) establishing financing mechanisms for purchase and redevelopment of foreclosed homes and residential properties; (b) purchasing and rehabilitating homes and residential properties abandoned or foreclosed; (c) establishing land banks for foreclosed homes; (d) demolishing blighted structures; and (5) redeveloping demolished or vacant properties. The NSP Notice lists the CDBG-eligible activities HUD has determined best correlate to these specific NSP-eligible uses. Grantees must receive written HUD approval to undertake activities other than those listed in Section II.H., Eligibility and Allowable Costs, of NSP Notice (Section 2301(c)(3) of HERA; Section II.H. of NSP Notice, 73 FR 58337-58338).

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act apply to the rehabilitation of residential property only if such property contains 8 or more units. However, the requirements do not apply to volunteer work where the volunteer does not receive compensation, or is paid expenses, reasonable benefits or a nominal fee for such services, and is not otherwise employed at any time in construction work (42 USC 5310; Section 1606 of ARRA; Section 1205 of Pub. L. No. 111-32; 24 CFR section 570.603).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2. Level of Effort – Not Applicable

3. Earmarking

a. Not less than 70 percent of the funds must be used over a period of up to three years, as specified by the grantee in its certification, for activities that benefit low- and moderate-income persons. In determining low- and moderate-income benefits, the criteria set forth in 24 CFR sections 570.200(a)(3) and 570.208(a) are used.

This requirement does not apply to NSP funds as HERA provides for supersession of the overall 70 percent requirement and establishes an alternative requirement for NSP funds where 100 percent of NSP funds must be used to benefit individuals and households whose income does not exceed 120 percent of the area median income. For NSP such households are referred to as low-income, moderate-income and middle-income (Section 2301(c)(2) of HERA; Section II.E. of NSP Notice, 73 FR 58336).

The CDBG-R Notice provides an alternative requirement for overall low- and moderate-income CDBG program benefit. The requirement that 70 percent of funds must be used for activities that benefit low- and moderate-income persons (42 USC 5301(c), 42 USC 5304(b)(3)(A), and 24 CFR section 570.200(a)(3)) applies to the use of CDBG-R funds. A grantee must ensure that 70 percent of its CDBG-R grant will be expended for activities that benefit low- and moderate-income persons. Compliance with the overall benefit requirement must be demonstrated separately for the CDBG-R grant and not in combination with regular CDBG funding or commitments under the Section 108 Loan Guarantee program; thus, no option exists for selecting the timeframe for compliance. Consequently, 42 USC 5304(b)(3)(A), and 24 CFR section 570.200(a)(3) are waived to the extent necessary to require that CDBG-R funds are required to

principally benefit persons of low- and moderate-income in a manner that ensures that not less than 70 percent of such funds are used for activities that benefit such persons, exclusive of any other funds received by the grantee under 42 USC 5306 or as a result of a guarantee or a grant under 42 USC 5308. A grantee must meet this requirement over the life of its CDBG-R grant (CDBG-R Notice, Section II.E.).

b. Not more than 20 percent of the total CDBG grant, plus 20 percent of program income received during a program year, may be obligated during that year for activities that qualify as planning and administration pursuant to 24 CFR sections 570.205 and 570.206 (24 CFR section 570.200(g)).

HERA provides for supersession of the 20 percent of any grant amount plus program income limitation to be used for general administration and planning costs. The alternative requirements are that up to 10 percent of the amount of a NSP grant and up to 10 percent of program income earned may be used for general administration and planning activities, as those are defined in 24 CFR sections 570.205 and 570.206 (Section 2301(f)(1) of HERA; Section II.H. of NSP Notice, 73 FR 58337).

The CDBG-R Notice provides an alternative requirement to limitations on planning and general administrative activities because there will be no program income attributed to CDBG-R and CDBG-R is to be treated as a separate appropriation of funds. Compliance with the planning and administration costs cap must be demonstrated separately based on each grantee's total CDBG-R grant allocation and not in combination with its regular CDBG funding or program income. The CDBG-R Notice waives 42 USC 5306(d)(3), (5) and (6) and 24 CFR section 570.200(g) to the extent necessary to establish the following requirement: no more than 10 percent of CDBG-R funds shall be expended for eligible planning and general administrative activities as defined in 42 USC 5305(a)(12) and (a)(13), 5306(d)(3), and in 24 CFR sections 570.205 and 570.206, exclusive of any other funds received by the grantee under 42 USC 5306 (CDBG-R Notice, Section II.E.).

c. The amount of CDBG funds obligated during the program year for public services must not exceed 15 percent of the grant amount received for that year plus 15 percent of the program income it received during the preceding program year, except that a non-Federal entity that obligated more CDBG funds for public services than 15 percent of its grant funded from Federal Fiscal Years 1982 or 1983 appropriations (excluding program income and any assistance received pursuant to Pub. L. No. 98-8) may obligate more CDBG funds than 15 percent as long as the amount obligated in any program year does not exceed 15 percent of the program

income it received during the preceding program year plus the percentage or amount obligated in Federal Fiscal Year 1982 or 1983, whichever method of calculation yields the higher amount (24 CFR section 570.201(e)).

The CDBG-R Notice provides an alternative requirement to limitations on public service activities. HUD is providing an alternative requirement because there will be no program income attributed to CDBG-R and CDBG-R is to be treated as a separate appropriation of funds. Thus, 42 USC 5305(a)(8) and 24 CFR sections 570.201(e)(1) and (e)(2) are waived to the extent necessary to require that no more than 15 percent of CDBG-R funds shall be expended for eligible public service activities, exclusive of any other funds received by the grantee under 42 USC 5306. Compliance with the public service cap must be demonstrated separately based on each grantee's total CDBG-R grant allocation and not in combination with its regular CDBG funding or program income. HUD is waiving 42 USC 5305(a)(8) to exclude program income from the amount of funds on which the cap is based. Other provisions of that section remain in place. Compliance will be demonstrated based on expenditures of CDBG-R funds, not on obligations as in the regular CDBG program. A grantee must meet this requirement over the life of the CDBG-R grant (CDBG-R Notice, Section II.E.; 24 CFR section 570.201(e)).

d. At least 25 percent of NSP funds shall be used for the purchase and redevelopment of abandoned or foreclosed upon homes or residential properties that will be used to house individuals or families whose incomes do not exceed 50 percent of the area median income (Section 2301(f)(3)(A)(ii) of HERA).

H. Period of Availability of Federal Funds

For entitlements for CDBG-R funds, HUD has waived the CDBG program's timely expenditure regulatory requirements of 24 CFR section 570.902 to the extent that CDBG-R funds must be expended by September 30, 2012. These funds will not be included in determining compliance with the timely expenditure compliance requirements of 24 CFR section 570.902. However, income generated from CDBG-R activities will be treated as program income to grantees' regular CDBG programs, and thus will be included in timely expenditure compliance determinations (see III.J.4 below) (CDBG-R Notice, Section II.F.).

I. Procurement and Suspension and Debarment

For CDBG-R recipients, the applicability of the ARRA Buy American requirement in Section 1605 of ARRA is still under review by HUD.

J. Program Income

1. The grantee must accurately account for any program income generated from the use of CDBG funds **or ARRA funds**, and must treat such income as additional CDBG funds which are subject to all program rules. Program income does not include income received in a single program year by the grantee and all of its subrecipients if the total amount of such income does not exceed $25,000 (24 CFR sections 570.500, 570.504, and 570.506).

2. Making loans and collecting the payments on those loans can be a significant source of program income for grantees. The use of income derived from loan payments is subject to program requirements. This carries with it the responsibility for grantees to have a loan origination and servicing system in effect which assures that loans are properly authorized, receivables are properly established, earned income is properly recorded and used, and write-offs of uncollectible amounts are properly authorized (24 CFR sections 570.500, 570.501, 570.504, 570.506, and 570.513).

3. NSP revenue received by a unit of general local government or subrecipient that is directly generated from the use of CDBG funds (which includes NSP grant funds) constitutes CDBG program income. The CDBG definition of program income shall be applied to amounts received by units of local government and subrecipients (24 CFR section 570.500; Section II.N. of NSP Notice, 73 FR 58340-58341). However, HERA imposes limitations and requirements that necessitate an alternative requirement to govern the use of program income generated by NSP activities. The limitations and requirements are based on the NSP activity that generated the program income and on the date the income is received (Section 2301(d)(4) of HERA).

    a. Any revenue from the sale, rental, redevelopment, rehabilitation or any other eligible use of NSP funds is to be provided to and used by the unit of local general government. This provision includes revenue received by a private individual or other entity that is not a subrecipient (Section 2301(d)(4) of HERA; Section II.N. of NSP Notice, 73 FR 58340-58341).

    b. Program income which is generated by NSP activities carried out pursuant to Sections 2301(c)(3) of HERA may be retained by the unit of local government if it is treated as additional CDBG funds and used in accordance with the requirements of Section 2301 (Sections 2301(c)(3) of HERA; Section II.N. of NSP Notice 73 FR 58340-58341).

4. **The CDBG-R Notice provides an alternative requirement pertaining to program income earned from CDBG-R assisted activities. All program income generated from the use of CDBG-R funds will be treated as program income to the regular CDBG program, not as program income to the CDBG-R program. The regulations at 24 CFR sections 85.21 and 570.504 require**

grantees and subrecipients to disburse program income before requesting additional cash withdrawals of regular CDBG funds from the U.S. Treasury; these requirements will not apply to the drawdown of CDBG-R funds (CDBG-R Notice, Section II.D.).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable (cash status only)

f. *Integrated Disbursement and Information System (IDIS) (OMB No. 2506-0077)* – Grantees may include reports generated by IDIS as part of their annual performance and evaluation report that must be submitted for the CDBG Entitlement Program 90 days after the end of a grantee's program year. Auditors are only expected to test information extracted from IDIS in the following system-generated reports:

(1) C04PR03 – Activity Summary Report

(2) C04PR26 – CDBG Financial Summary

2. Performance Reporting

HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons,* (*OMB No. 2529-0043*) – For each grant over $200,000 that involves housing rehabilitation, housing construction, or other public construction, the prime recipient must submit Form HUD 60002. (24 CFR sections 135.3(a), 135.90, and 570.607).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 2. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds only

M. Subrecipient Monitoring

Before disbursing any CDBG **or CDBG-R** funds to a subrecipient, the recipient shall sign a written agreement with the subrecipient. The agreement shall include provisions concerning: the statement of work, records and reports, program income and uniform administrative requirements (24 CFR section 570.503).

N. Special Tests and Provisions

1. Citizen Participation

Compliance Requirement – Prior to the submission to HUD for its annual grant, the grantee must certify to HUD that it has met the citizen participation requirements in 24 CFR sections 91.105 and 570.302, as applicable.

HERA provided for supersession of the citizen participation requirement to expedite the distribution of NSP grant funds and to provide for expedited citizen participation. The provisions of 24 CFR sections 570.302 and 91.105 with respect to following the citizen participation plan are waived to allow the jurisdiction to provide no fewer than 15

calendar days for citizen comment, rather than 30 days, for its initial NSP submission (Section II.B.4 of NSP Notice, 73 FR 58334).

CDBG-R – The CDBG-R Notice provides an alternative requirement to provide for expedited citizen participation for the CDBG-R substantial amendment. The following citizen participation plan requirements are waived: (1) 24 CFR section 91.105 is being waived to specify that the grantee will provide no fewer than 7 calendar days for citizen comment (rather than 30 days) for its CDBG-R substantial amendment and (2) the requirement at 24 CFR section 91.505(c)(1) that states a grantee may submit a copy of an amendment to its action plan to HUD as it occurs or at the end of the program year has been waived to require each grantee to submit the substantial amendment to its action plan for CDBG-R funds no later than June 5, 2009 (CDBG-R Notice, Section II.A.).

Audit Objective (CDBG) – Determine whether the grantee has developed and implemented a citizen participation plan.

Suggested Audit Procedure – (CDBG)

a. Verify that the grantee has a citizen participation plan.

b. Review the plan to verify that it provides for public hearings, publication, public comment, access to records, and consideration of comments.

c. Examine the grantee's records for evidence that the elements of the citizen's participation plan were followed as the grantee certified.

Audit Objective (CDBG-R) – Determine whether the grantee adhered to the applicable provisions of the CDBG-R Notice as it pertains to the citizen participation plan.

Suggested Audit Procedures (CDBG-R)

a. Verify that the grantee has a citizen participation plan.

b. Review the plan to determine how the grantee effected modifications to its citizen participation plan process to comply with the CDBG-R Notice provisions.

c. Examine the grantee's records for evidence that the elements of the citizen's participation plan, as modified by the CDBG-R Notice, were followed as the grantee certified.

2. Required Certifications and HUD Approvals

Compliance Requirement – CDBG funds (and local funds to be repaid with CDBG funds **or CDGB-R funds)** cannot be obligated or expended before receipt of HUD's

approval of a Request for Release of Funds (RROF) and environmental certification, except for exempt activities under 24 CFR section 58.34 and categorically excluded activities under section 58.35(b) (24 CFR section 58.22).

Audit Objective – Determine whether the grantee is obligating and expending program funds only after HUD's approval of the RROF.

Suggested Audit Procedures

a. Examine HUD's approval of the RROF and environmental certification and note dates.

b. Review the expenditure and related records to ascertain when CDBG funds **or CDGB-R funds,** and local funds which were repaid with CDBG **funds or CDGB-R funds**, were first obligated or expended and ascertain if any funds were obligated or expended prior to HUD's approval of the RROF.

3. Environmental Reviews

Compliance Requirement – Projects must have an environmental review unless they meet criteria specified in the regulations that would exempt or exclude them from RROF and environmental certification requirements (24 CFR sections 58.1, 58.22, 58.34, 58.35, and 570.604).

Audit Objective – Determine whether environmental reviews are being conducted, when required.

Suggested Audit Procedures

a. Verify through a review of environmental review certifications that the environmental reviews were made.

b. Select a sample of projects where an environmental review was not performed and ascertain if a written determination was made that the review was not required.

c. Test whether documentation exists that any determination not to make an environmental review was made consistent with the criteria contained in 24 CFR sections 58.34 and 58.35(b).

4. Rehabilitation

Compliance Requirement – When CDBG funds **or CDGB-R funds** are used for rehabilitation, the grantee must ensure that the work is properly completed (24 CFR section 570.506).

Any NSP-assisted rehabilitation of a foreclosed-upon home or residential property shall be completed to the extent necessary to comply with applicable laws, codes and other

requirements relating to housing safety, quality, or habitability, in order to sell, rent or redevelop such homes and properties. To comply with this provision, a grantee must describe or reference in its NSP action plan amendment what rehabilitation standards it will apply for NSP-assisted rehabilitation (Section 2301(d)(2) of HERA; Section II.I. of NSP Notice, 73 FR 58338).

Audit Objective – Determine whether the grantee assures rehabilitation work is properly completed.

Suggested Audit Procedures

a. Verify that pre-rehabilitation inspections are conducted describing the deficiencies to be corrected.

b. Ascertain that the deficiencies to be corrected are incorporated into the rehabilitation contract.

c. For NSP projects, review rehabilitation standards.

d. Verify through a review of documentation that the grantee inspects the rehabilitation work upon completion to assure that it is carried out in accordance with contract specifications, and that NSP projects were carried out in accordance with rehabilitations standards.

IV. OTHER INFORMATION

See Appendix VI for program waivers related to Hurricanes Katrina and Rita.

ARRA gave HUD the authority to waive or specify alternative requirements for some of the IHBG statutory and regulatory provisions to facilitate the use of CDBG-R funds. Most of the waivers are contained in the CDBG-R Notice.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.228 COMMUNITY DEVELOPMENT BLOCK GRANTS/STATE'S PROGRAM AND NON-ENTITLEMENT GRANTS IN HAWAII

CFDA 14.255 COMMUNITY DEVELOPMENT BLOCK GRANTS/STATE'S PROGRAM AND NON-ENTITLEMENT GRANTS IN HAWAII – (RECOVERY ACT FUNDED)

I. PROGRAM OBJECTIVES

The primary objective of the Community Development Block Grants (CDBG)/State's Program and Non-Entitlement Grants in Hawaii (State CDBG Program) is the development of viable communities by providing decent housing, a suitable living environment, and expanded economic opportunities, principally for persons of low- and moderate-income. This objective can be achieved in two ways. First, funds can only be used to assist eligible activities that fulfill one or more of three national objectives. Second, the grantee must spend at least 70 percent of its funds over a period of up to three years, as specified by the grantee in its certification, for activities that address the national objective of benefiting low- and moderate-income persons (42 USC 5301(c) and 5304(b)(3)).

The Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. No. 110-289, July 30, 2008) provided funds for emergency assistance for redevelopment of abandoned and foreclosed homes and residential properties, and provides under a rule of construction that, unless HERA provides otherwise, the grants are to be considered CDBG funds. The grant program under Title III is referred to as the Neighborhood Stabilization Program (NSP). **The NSP funding referred to above is the funding provided under HERA and is not NSP funding provided under ARRA. These HERA funds are also referred to as NSP1 in the Neighborhood Stabilization Program (see CFDA 14.256, Section II, "Program Procedures").**

The primary objective of the Community Development Block Grants /State's Program and Non-Entitlement Grants in Hawaii (State CDBG Program) – (Recovery Act Funded) (CDBG-R) is to stimulate the economy through measures that modernize the Nation's infrastructure that provide basic services to residents, principally for persons of low- and moderate- income, or activities that promote energy efficiency and conservation through rehabilitation or retrofitting of existing buildings.

II. PROGRAM PROCEDURES

CDBG funds are provided, according to a statutory formula, to those States that elect to administer their CDBG non-entitlement funds. The States, in turn, distribute the funds to units of general local government that do not qualify for grants under the CDBG Entitlement Program. The non-entitlement counties in Hawaii are handled differently than Entitlement grantees in the following ways: (1) their funding comes from Section 106(d) of the Housing and Community Development Act of 1974, as amended (42 USC 5306(d)); (2) funds are distributed using the formula contained in 24 CFR section 570.429(c); reallocations due to grant reductions, or funds not applied for, go to the other non-entitlement counties in Hawaii on a pro rata basis (24 CFR

section 570.429(d)); (3) non-entitlement counties are not eligible to use the exception criteria in 24 CFR section 570.208(a)(1)(ii); and (4) 24 CFR section 570.307 (Urban Counties) and 24 CFR section 570.308 (Joint Requests) would not apply to non-entitlement counties in Hawaii. Except for these differences, non-entitlement counties in Hawaii should follow the requirements of CDBG Entitlement Grants (CFDA 14.218).

The CDBG-R program provides formula grants to States and non-entitlement counties in Hawaii, which must submit certain certifications and a substantial amendment to their 2008 1-year action plans as to how they propose to use the CDBG-R funds to meet the purposes of the Recovery Act. Eligible recipients of the CDBG-R funds are grantees that received CDBG funding in 2008. The grant amount is determined by the higher of two formulas that consider a community's population, poverty level, extent of overcrowded housing, age of housing, and growth lag (42 USC 5306(b)). States (other than Hawaii) must distribute CDBG-R funds to units of general local government (counties, towns, etc.) in nonentitlement areas. Units of general local government then carry out community development activities funded by the State. Program procedures and waivers are contained in HUD's Notice of Program Requirements for Community Development Block Grant Program Funding Under the American Recovery and Reinvestment Act of 2009 (FR-5309-N-01) (CDBG-R Notice).

Units of general local government receiving CDBG-R funds from a State may select subgrantees to carry out approved projects. For the CDBG and CDBG-R programs, in addition to Federal statutory requirements, each State has the authority to issue rules consistent with Federal statutes and regulations. The State rules should be reviewed before beginning the audit (24 CFR sections 570.480 and 570.481).

The NSP grant is a special CDBG allocation to address the problem of abandoned and foreclosed homes. The HERA established the need, targets the geographic areas, and limits the eligible uses of NSP funds. A State choosing to carry out an activity directly must apply the requirements of 24 CFR section 570.483(b) to determine whether the activity has met the low-, moderate-, and middle-income national objective. It is noted that Section 2301 (f)(3)(A) of HERA defines eligible individuals and families as those that do not exceed 120 percent of area median income.

Source of Governing Requirements

The CDBG program is authorized under Title I of the Housing and Community Development Act of 1974, as amended (42 USC 5301**) and CDBG-R is authorized under Title XII of the American Recovery and Reinvestment Act of 2009 (ARRA), (Pub. L. No. 111-5).** Implementing regulations may be found at 24 CFR part 570, subpart I.

The NSP is authorized by Title III of Division B of HERA. HUD published a "Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees Under the Housing and Economic Recovery Act, 2008," (NSP Notice) that advises the public of the allocation formula, allocation amounts, the list of grantees, alternative requirements, and the waivers of regulations provided to grantees (see October 6, 2008, *Federal*

Register, 73 FR 58330-58349). The requirements of HERA have been updated by: (1) a notice in the *Federal Register*, Docket No. FR-5255-N-02 (NSP1 Bridge Notice) on June 19, 2009 (74 FR 29223-29229), which provided revisions and technical corrections to the NSP Notice and changes to NSP made by ARRA; (2) a notice in the *Federal Register*, Docket No. 5321-N-03 (NSP Notice) on April 9, 2010 (75 FR 18228-18231) to note a change in definitions and modification to the NSP; (3) the Dodd-Frank Wall Street Reform and Consumer Protection Act of July 21, 2010 (Pub. L. No. 111-203); and (4) a notice in the *Federal Register*, Docket No. FR-5447-N-01 (NPS3) on October 19, 2010 (75 FR 64322-64348) to incorporate the bridge notice, the changes made by ARRA, and additional changes and clarification.

Availability of Other Program Information

Additional information about the NSP is available at the HUD NSP website at. http://hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/. Other documents available at HUD websites are:

CDBG-R Notice Program Requirements for CDBG Funding under ARRA at http://portal.hud.gov/portal/page/portal/HUD/recovery/programs/community.

NSP Notice (Docket No. FR-5255-N-01) at **http://hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nspnotice.pdf.**

NSP1 Bridge Notice (Docket No. FR-5255-N-02) at http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/pdf/nsp1_bridgenotice.pdf.

NSP "Definition and Modification" Notice (Docket No. 5321-N-03)at http://federalregister.gov/a/2010-8131.

NSP3 Notice (Docket No. FR-5447-N-01) at http://federalregister.gov/a/2010-26292.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Section 105(a) of the Housing and Community Development Act of 1974 lists the activities eligible under the CDBG State's Program **and the CDBG-R program**, which include: (a) the acquisition of real property; (b) the acquisition, construction, reconstruction, or installation of public works, facilities and site, or other improvements, including those that promote energy efficiency; (c) code enforcement in deteriorated or deteriorating areas; (d) clearance, demolition,

reconstruction, rehabilitation, and removal of buildings and improvements; (e) removal of architectural barriers that restrict accessibility of elderly or severely disabled persons; (f) payments to housing owners for losses of rental income incurred in temporarily holding housing for the relocated; (g) disposition of real property acquired under this program; (h) provision of public services (subject to limitations contained in the CDBG regulations); (i) payment of the non-Federal share for another grant program that is part of the assisted activities; (j) payment to complete a Title 1 Federal Urban Renewal project; (k) relocation assistance; (l) planning activities; (m) administrative costs; (n) acquisition, construction, reconstruction, rehabilitation, or installation of commercial or industrial buildings; (o) assistance to neighborhood-based nonprofit organizations, local development corporations, nonprofit organizations serving the development needs of communities in non-entitlement areas to carry out a neighborhood revitalization or community economic development or energy conservation project; (p) activities related to development of energy use strategies; (q) assistance to private, for-profit businesses, when appropriate to carry out an economic development project; (r) rehabilitation or development of housing assisted under Section 17 of the United States Housing Act of 1937; (s) technical assistance to public or private entities for capacity building (exempt from the planning/administration cap); (t) housing services related to HOME-funded activities; (u) assistance to institutions of higher education to carry out eligible activities; (v) assistance to public and private entities (including for-profits) to assist micro-enterprises; (w) payment for repairs and operating expenses for acquired "in Rem" properties; (x) direct home ownership assistance to facilitate and expand home ownership among persons of low-and moderate-income;
(y) lead-based paint hazard evaluation, and removal; and (z) construction or improvement of tornado-safe shelters for residents of manufactured housing and provision of assistance to nonprofit and for-profit entities for such construction or improvement (42 USC 5305; 24 CFR section 570.482(a)).

2. Under the national objective criteria, each activity that the State funds must either benefit low- and moderate-income families; aid in the prevention or elimination of slums or blight; or meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available. The State must retain documentation justifying its certifications (24 CFR sections 570.483 and 570.490).

The CDBG-R Notice provides an alternative requirement for the CDBG program urgent need national objective criteria. In the regular CDBG program, in order to meet the urgent need national objective pursuant to 24 CFR section 570.483(d), the recipient must certify that: (1) the activity is designed to alleviate existing conditions which (a) pose a serious and immediate threat to the health and welfare of the community and (b) are of recent origin or recently became urgent; (2) the recipient is unable to finance the activity on its own; and (3) other sources of funds are not available. For

CDBG-R, HUD is eliminating the recordkeeping requirement that grantees document the nature, degree, and timing of the seriousness of the condition to be addressed by the activity if the urgent need is based on current economic conditions. HUD has determined that current economic conditions are of recent origin and pose a serious and immediate threat to the economic welfare of communities; therefore, HUD will accept a State's certification on behalf of the unit of general local government that current economic conditions are of recent origin and constitute a serious and immediate threat to the welfare of the community. However, the State must still demonstrate that it is unable to finance the activity on its own, and that other sources of funding are not available. The CDBG-R Notice waives 24 CFR sections 570.483(d) and 570.490(a) and (b) to the extent necessary to allow grantees to certify that an activity is designed to address current economic conditions which pose a threat to the economic welfare of communities (CDBG-R Notice, Section II.E).

3. States and non-entitlement local government grant recipients may have loans guaranteed by HUD under Section 108 of the Housing and Community Development Act of 1974. Guaranteed loan funds may be used only for the following activities: (a) acquisition of real property; (b) housing rehabilitation; (c) rehabilitation of publicly owned real property; (d) eligible CDBG economic development activity; (e) relocation payments, (f) clearance, demolition, and removal; (g) payment of interest on Section 108 guaranteed obligations; (h) payment of issuance and other costs associated with private-sector financing under this subpart; (i) site preparation related to redevelopment or use of real property acquired or rehabilitated pursuant to this subpart or for economic development purposes; (j) construction of housing by nonprofit organizations for homeownership under Section 17(d) of the U.S. Housing Act of 1937 (12 USC 1715(l)) or Title VI of the Housing and Community Development Act of 1987; (k) debt service reserve; (l) acquisition, construction, reconstruction, rehabilitation or installation of public works and site or other improvements that serve "colonias" (as defined in Section 916 of the Housing Act of 1990 and amended by Section 810 of the Housing and Community Development Act of 1992); and (m) acquisition, construction, reconstruction, rehabilitation, or installation of public facilities (except for buildings for the general conduct of government), public streets, sidewalks, and other site improvements and public utilities (24 CFR sections 570.700 through 570.710).

4. For NSP funds, HERA requirements have superseded some CDBG requirements to allow for eligible uses in Section 2301(c)(3) of HERA. The NSP categories and CDBG entitlement regulations are listed in Section II.H.3.a of NSP Notice, 73 FR 58338. Section II.A. of Docket No. 5321-N-03 (NSP Notice) provided definitional changes to "Abandoned" and "Foreclosed" properties, which expanded the inventory of available properties under NSP. In addition, the date for a "Notice of Foreclosure" was specified in Section 1497(b)(2) of Pub. L. No. 111-203. The NSP eligible uses are to:

- Establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties.
- Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon for later sale, rent or redevelopment.
- Establish and operate land banks for homes that have been foreclosed upon (Section A of NSP Bridge Notice clarified that NSP funds can be used to establish and operate land banks.
- Demolish blighted structures.
- Redevelop demolished or vacant properties.

The NSP Notice lists the CDBG-eligible activities that HUD has determined best correlate to these specific NSP-eligible uses. Grantees must receive written HUD approval to undertake activities other than those listed in Section II.H, Eligibility and Allowable Costs, of the NSP Notice (Section 2301(c)(3) of HERA; Section II.H. of NSP Notice, Section II.A. of Docket No. 5321-N-03 (NSP Notice), and Section II.H. of NSP3 Notice).

5. For NSP funds, NSP requirements supersede existing CDBG requirements (See III.A.1, above) to permit the use of only the low- and moderate-income national objective for NSP-assisted activities. A NSP activity may not qualify using the "prevent or eliminate slums and blight" or "address urgent community development needs" national objectives. The HERA redefines and supersedes the definition of "low- and moderate-income," effectively allowing households whose incomes exceed 80 percent of area median income but do not exceed 120 percent of median income to qualify as if their incomes did not exceed the published low- and moderate-income levels of the regular CDBG program (Section III.E. of NSP Notice, 73 FR 58335-58336). HUD will refer to this new income group as "middle income" and maintain the regular CDBG definitions of "low-income" and "moderate-income" currently in use (Section 2301(f)(3)(A) of HERA).

6. For purposes of NSP only, an activity may meet the HERA established low- and moderate-income national objective if the assisted activity: (1) provides or improves permanent residential structures that will be occupied by a household whose income is at or below 120 percent of area median income; (2) serves an area in which at least 51 percent of the residents have incomes at or below 120 percent of area median income; or (3) serves a limited clientele whose incomes are at or below 120 percent of area median income (Section 2301(f)(3)(A) of HERA; Section II.E. of NSP Notice, 73 FR 58335-58336).

7. The CDBG public benefit standards prohibit funding the following activities: (a) general promotion of the community as a whole; (b) assistance to professional sports teams; (c) assistance to privately-owned recreational facilities that serve a

predominately higher-income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to low- and moderate-income persons; (d) acquisition of land for which the specific proposed use has not yet been identified; and (e) assistance to a for-profit business while that business or any other business owned by the same person(s)/entity(ies) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided by the recipient (24 CFR section 570.482(f)(4)(ii)).

8. CDBG-R funds cannot be used as a pledge of security for the repayment of Section 108 loans, to securitize borrowing under the Section 108 program, or be counted toward a grantee's maximum Section 108 borrowing authority (Section II.E. of CDBG-R Notice).

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act apply to the rehabilitation of residential property only if such property contains eight or more units. However, the requirements do not apply to volunteer work where the volunteer does not receive compensation, or is paid expenses, reasonable benefits, or a nominal fee for such services, and is not otherwise employed at any time in construction work (42 USC 5310**; Section 1606 of ARRA; Section 1205 of Pub. L. No. 111-32).**

G. Matching, Level of Effort, Earmarking

1. Matching

1. States are required to match the funds used for State administrative costs beyond the first $100,000 on a one-to-one basis, as further described under III.G.3.b, "Matching Level of Effort, Earmarking – Earmarking" (24 CFR section 570.489(a)(1)). This requirement does not apply to NSP funds **(Section 2301(e)(2) of HERA; see Section II.N. of NSP Notice, 73 FR 58337).**

2. For CDBG-R funds, HUD has waived the requirement for matching State administrative funds **(Section II.E. of CDBG-R Notice, FR-5309-N-01).**

2. Level of Effort – Not Applicable

3. Earmarking

a. The Housing and Community Development Act of 1974 requires the State to certify that the aggregate use of the CDBG funds it receives, over a period specified by the State not to exceed three years, shall principally benefit low- and moderate-income persons. This requirement means that not less than 70 percent of the funds must be used in this manner (24 CFR section 570.484 and 42 USC 5304(b)(3**)). This requirement applies to the CDBG-R program as well, and must be demonstrated separately**

for the CDBG-R grant and not in combination with the CDBG grant (CDBG-R Notice FR-5309-N-01, Section II.E)

This requirement does not apply to NSP funds as HERA provides for supersession of the overall 70 percent requirement and establishes an alternative requirement for NSP funds where 100 percent of NSP funds must be used to benefit individuals and households whose income does not exceed 120 percent of the area median income. For NSP, such households are referred to as low-income, moderate-income and middle-income (Section 2301(c)(2) of HERA; Section II.E. of NSP Notice, 73 FR 58336).

b. The State may use up to $100,000 of its grant funds for administrative purposes. In addition to this amount, up to three percent of the grant may be expended at the State level for administrative costs and technical assistance. However, administrative costs must be matched from State resources on a one-to-one basis. Further, States may use up to three percent of program income collected and up to three percent of funds reallocated by HUD to the State, regardless of whether at the State or local government level, for administrative costs. All administrative funds, including the State matching funds, which may be in-kind contributions, must be used to carry out the State's responsibilities. The State may use up to three percent of its grant funds to provide technical assistance to local governments and nonprofit program recipients. The State may use no more than the aggregate of three percent of its grant funds for administrative purposes or technical assistance (42 USC 5306(d)).

c. For planning and administrative costs *under the CDBG program*, the combined expenditures of the State and units of general local governments may not exceed 20 percent of the State's total allocation plus 20 percent of any program income, plus 20 percent of funds reallocated from HUD to the State for any given year. Within this Statewide limit, a State may fund grants to local governments consisting entirely of planning activities (24 CFR section 570.489(a)(3)).

HERA provides for supersession of the 20 percent of any grant amount plus program income limitation to be used for general administration and planning costs. The alternative requirements are that up to 10 percent of the amount of a NSP grant provided to a grantee and up to 10 percent of program income earned may be used for general administration and planning activities, as those are defined in 24 CFR sections 570.205 and 570.206. For States, the 10 percent includes expenditures by the State, as well as any unit of general local government that the State funds (Section 2301(f)(1) of HERA; Section II.H. of NSP Notice, 73 FR 58337).

For CDBG-R, the combined expenditures of the State and units of general local governments for planning and administrative expenses may not exceed 10 percent of the State CDBG-R's total. States should note that the 10 percent limitation includes any funds the State expends for technical assistance to units of general local government and nonprofit organizations pursuant to 42 USC 5306(d)(5) (CDBG-R Notice FR-5309-N-01, Section II.E).

d. *For the CDBG program,* the amount of CDBG funds used for public services must not exceed 15 percent of the grant amount received for that year plus 15 percent of the program income attributed to the year. The 15 percent public-services cap applies to each year's allocation of nonentitlement funds for the State. Individual grants to units of general local government are not subject to the public-services cap. Within this Statewide cap, a State may fund grants to local governments consisting entirely of public service activities (42 USC 5305(a)(8)).

For the CDBG-R program, no more than 15 percent of CDBG-R funds can be expended for eligible public service activities. Compliance with the public service cap must be demonstrated separately based on each grantee's total allocation and not in combination with its regular CDBG funding or program income (CDBG-R Notice, Section II.E.).

e. Under Section 916 of the National Affordable Housing Act of 1990 (NAHA) (Pub L. No. 101-625; 42 USC 5306 note), the States of Arizona, California, New Mexico, and Texas are required to set aside a portion of their State CDBG funds for use in colonias. The Secretary of HUD annually determines the percentage of each state's allocation (up to 10 percent) required to be set aside for this purpose. Entitlement communities in metropolitan areas of less than one million in population are eligible to receive CDBG funding from the colonias set aside in these States (42 USC 5306 note).

f. At least 25 percent of NSP funds shall be used to house individuals or families whose incomes do not exceed 50 percent of the area median income (Section 2301(f)(3)(A)(ii) of HERA, as amended by Section 1497(b)(1)(A) of Pub. L. No. 111-203 (42 USC 5301(f)(3)(A)(ii)).

H. Period of Availability of Federal Funds

1. CDBG-R grantees are required to expend their entire CDBG-R allocation by September 30, 2012 (CDBG-R Notice, Section II.F.). Therefore, the timely distribution requirement under the CDBG program that all funds be distributed within 15 months of allocation was waived (42 USC 5304 (e); 24 CFR section 570.494).

2. NSP1 grantees are required to expend an amount equal to or greater than the initial allocation of NSP1 funds within 4 years of receipt of those funds (Section II.M. of NSP3 Notice).

I. Procurement and Suspension and Debarment

For the CDBG-R program recipients are required to comply with the Buy-American provisions in Section 1605 of ARRA unless they are exempt as outlined in HUD Notice, Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009 (Docket No. 5357-N-01), issued in the October 21, 2009, *Federal Register* (74 FR 54377 to 54381). The exemptions outlined in the notice include:

- **Subgrants to units of general local governments of less than $100,000;**
- **Recipient and subrecipient contracts of less than $100,000;**
- **Assistance for publicly owned housing of less than 8 units; and**
- **Projects that are substantially under contract or construction prior to the receipt of CDBG-R funds.**

J. Program Income

1. For the CDBG program**,** program income does not include income received in a single program year by a unit of general local government and its subrecipients if the total amount of such income does not exceed $25,000 (24 CFR section 570.489(e)(2)(i)).

2. NSP revenue received by a State, unit of general local government or subrecipient that is directly generated from the use of CDBG funds (which includes NSP grant funds) constitutes CDBG program income. The CDBG definition of program income shall be applied to amounts received by States, units of general local government and subrecipients (24 CFR section 570.500; Section II.N. of NSP3 Notice, 75 FR 64322-64348).

    a. Any revenue from the sale, rental, redevelopment, rehabilitation or any other eligible use of NSP funds is to be provided to and used by the State or unit of general local government. Revenue received by a private individual or other entity that is not a subrecipient is not required to be returned to the State or unit of general local government (Section B of NSP Bridge Notice).

    b. Program income generated by NSP activities carried out pursuant to Sections 2301(c)(3) of HERA may be retained by the State or unit of general local government (Section 2301(c)(3) of HERA; Section B of NSP Bridge Notice).

3. For the CDBG-R program, any program income generated from the use of CDBG-R funds will be treated as program income to the regular CDBG program, not as program income to the CDBG-R program. HUD has waived the regulatory provisions at 31 CFR part 205 (for States) and 24 CFR section 570.489(e)(3) to implement this requirement, and to ensure that the use of CDBG-R funds is expedited. The waived regulations require grantees and subrecipients to disburse program income before requesting additional cash withdrawals of regular CDBG funds from the U.S. Treasury. Those requirements will not apply to the drawdown of CDBG-R funds since the CDBG-R program will not have any program income (CDBG-R Notice, Section II.F.).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. *Performance and Evaluation Report (OMB No. 2506-0085)* – This report is due from each State CDBG grantee within 90 days after the close of its program year in a format suggested by HUD. HUD encourages the submission of the report in both paper and computerized formats. Among other factors, the report is to include a description of the use of funds during the program year and an assessment of the grantee's use for the priorities and objectives identified in its plan. The auditor is only expected to test the financial data in this report (24 CFR sections 91.520 (a) and (c)).

2. Performance Reporting

HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons,* (*OMB No. 2529-0043*) – For each grant over $200,000 that involves housing rehabilitation, housing construction, or other public construction, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a), 135.90, and 570.487(d)).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 2. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds only

N. Special Tests and Provisions

1. Environmental Oversight

Compliance Requirement – The State must assume the environmental oversight responsibilities and functions of HUD under Section 104(g), Housing and Community Development (HCD) Act, (42 USC 5304(g)). The State must: (a) require each of its general local governments (subrecipients) to perform as a responsible Federal official in carrying out all HUD environmental review requirements under 24 CFR part 58, National Environmental Policy Act (NEPA), and other applicable authorities; (b) review and approve each subrecipient's Request for Release of Funds (RROF) in accordance with the

procedures provided under 24 CFR part 58 subpart H; (c) ensure that each subrecipient observes the statutory requirement that funds cannot be expended or obligated before the State approves its RROF and environmental certification, except as otherwise provided specifically in regulation or authorized by law; and (d) monitor and provide technical assistance to its subrecipients to ensure compliance with the environmental authorities (24 CFR part 58) and the adequacy of environmental reviews.

Audit Objective – Determine whether the State carries out its environmental oversight responsibilities and functions.

Suggested Audit Procedures

a. Examine the State's program for monitoring and enforcing compliance with the environmental authorities.

b. Examine the State's approval of the RROF and environmental certification, and note dates.

c. Verify that the State obtained certifications and that the State's records provide evidence that the funds were obligated and expended after the State's approval of the RROF and environmental certification.

2. Environmental Reviews

Compliance Requirement – Projects must have an environmental review unless they meet criteria specified in the regulations that would exclude them from RROF and environmental certification requirements. States that directly implement NSP activities are considered recipients and must assume environmental review responsibilities for the State's activities and those of any non-governmental entity that participates in the project. States that directly implement activities must submit the Request for Release of Funds (RROF) and the certifications to HUD for approval (24 CFR sections 58.4(b)(1), 58.34 and 58.35).

Audit Objective – Determine whether the required environmental reviews were conducted and required HUD approvals were obtained.

Suggested Audit Procedures

a. Verify that the State obtained environmental review certifications from the subrecipient and that the State records provide evidence that the environmental reviews were made.

b. For any project where an environmental review was not performed, ascertain that a written determination was made that the review was not required.

c. Ascertain that documentation exists that any determination not to make an environmental review was made consistent with the criteria contained in 24 CFR sections 58.34 and 58.35.

d. Verify that States obtained HUD approvals of RROFs and environmental certifications for State activities.

e. Verify that, for State activities, funds were obligated and expended after HUD approval of State RROFs and environmental certifications.

3. Citizen Participation

Compliance Requirement

CDBG – Prior to the submission to HUD for its annual grant, the grantee must certify to HUD that it has met the citizen participation requirements in 24 CFR sections 91.115 and 570.486, as applicable.

HERA provided for supersession of the citizen participation requirement to expedite the distribution of NSP grant funds and to provide for expedited citizen participation. The provisions of 24 CFR sections 570.485 and 570.486 with respect to following the citizen participation plan are waived to allow the jurisdiction to provide no fewer than 15 calendar days for citizen comment, rather than 30 days, for its initial NSP submission (Section II.B.4 of NSP Notice, 73 FR 58334).

CDBG-R – **The CDBG-R Notice provides an alternative requirement to provide for expedited citizen participation for the CDBG-R substantial amendment. The following the citizen participation plan requirements are waived: (1) 24 CFR sections 91.105 and 91.115 have been waived to specify that the grantee will provide no fewer than 7 calendar days for citizen comment (rather than 30 days) for its CDBG-R substantial amendment; and (2) 24 CFR section 91.505(c)(1) that states a grantee may submit a copy of an amendment to its action plan with a description of eligible activities to HUD as it occurs or at the end of the program year was waived to require each grantee to submit the substantial amendment to its action plan for CDBG-R funds no later than the June 29, 2009. In addition, 24 CFR section 91.110 was waived to the extent necessary to eliminate the requirement that a State must consult with units of local government in determining the expected use of CDBG-R funds. HUD also waived 24 CFR sections 91.320(d) and 91.320(k)(1)(i) to the extent necessary to require States to provide a list of activities they intend to fund with the CDBG-R allocation (CDBG-R Notice, Section II.A.).**

Audit Objective – **CDBG –** Determine whether the **CDBG** grantee has developed and implemented a citizen participation plan.

Suggested Audit Procedures – *CDBG*

a. Verify that the grantee has a citizen participation plan.

b. Review the plan to verify that it provides for public hearings, publication, public comment, access to records, and consideration of comments.

c. Examine the grantee's records for evidence that the elements of the citizen's participation plan were followed as the grantee certified.

Audit Objective – CDBG-R – Determine whether the grantee adhered to the applicable provisions of the CDBG-R Notice as it pertains to the citizen participation plan.

Suggested Audit Procedures – CDBG-R

a. Verify that the grantee has a citizen participation plan.

b. Review the plan to determine how the grantee effected modifications to its citizen participation plan process to comply with the CDBG-R Notice provisions.

c. Examine the grantee's records for evidence that the elements of the citizen's participation plan, as modified by the CDBG-R Notice, were followed as the grantee certified.

4. Rehabilitation Using NSP Funds

Compliance Requirement – Any NSP-assisted rehabilitation of a foreclosed-upon home or residential property shall be completed to the extent necessary to comply with applicable laws, codes and other requirements relating to housing safety, quality, or habitability, in order to sell, rent or redevelopment such homes and properties. To comply with this provision, a grantee must describe or reference in its NSP action plan amendment what rehabilitation standards it will apply for NSP-assisted rehabilitation (Section 2301(d)(2) of HERA; Section II.I. of NSP Notice, 73 FR 58338).

Audit Objective – To determine whether the grantee assures NSP rehabilitation work is properly completed.

Suggested Audit Procedures

a. Review rehabilitation standards established for NSP work.

b. Verify through a review of documentation that the rehabilitation work is inspected upon completion to ensure that it is carried out in accordance with applicable rehabilitation standards.

IV. OTHER INFORMATION

See Appendix VI for program waivers and special provisions related to Hurricanes Katrina and Rita.

ARRA gave HUD the authority to waive or specify alternative requirements for some of the CDBG statutory and regulatory provisions to facilitate the use of CDBG-R funds. The waivers are contained in the CDBG-R Notice.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.231 EMERGENCY SHELTER GRANTS PROGRAM

I. PROGRAM OBJECTIVES

The Emergency Shelter Grants (ESG) Program is designed to help improve the quality of existing emergency shelters for homeless individuals and families, make available additional emergency shelters, and meet the costs of operating emergency shelters and of providing essential social services to homeless individuals and families. The goal is for homeless persons to have access not only to safe and sanitary shelters for the homeless but also to the supportive services and other kinds of assistance they need to increase their self-sufficiency. The program is also intended to restrict the increase of homelessness through the funding of preventive programs and activities (24 CFR section 576.1).

II. PROGRAM PROCEDURES

The ESG Program provides grants to States, metropolitan cities, urban counties, and the territories according to a formula used in the Community Development Block Grant Program. Metropolitan cities, urban counties and territorial grantees may directly carry out activities or fund non-profit agencies to carry out activities. Except for administrative funds, which must be shared, all of a State's formula allocation must be made available to "State recipients." These are: (1) local governments in the State, which includes formula cities and counties, whether or not such cities and counties receive grant amounts directly from HUD; or (2) private non-profit organizations, if the local government in which the proposed activities are to be located certifies that it approves each project. States and units of general local government, including cities and counties, may distribute all or a part of their grant amounts to non-profit recipients (subrecipients) to be used for ESG activities (24 CFR section 576.25).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

ESG amounts may be used for one or more of the activities provided for in 24 CFR section 576.21, including: (1) renovation, major rehabilitation, or conversion of buildings for use as emergency shelters for homeless persons; (2) provision of essential services to homeless persons; (3) payment of costs associated with shelter maintenance and operation; (4) development and implementation of homeless prevention activities; and (5) administrative costs. This section also provides certain limitations on the use of those funds. 24 CFR section 576.23 provides certain limitations on the use of ESG funds by primarily religious organizations (24 CFR sections 576.21 and 576.23).

G. Matching, Level of Effort, Earmarking

1. Matching

Each grantee must match the funding provided by HUD under its ESG Program with an equal amount from sources other than those provided under the ESG Program. These funds must be provided after the date of the grant award. A grantee may comply with this requirement by providing the supplemental funds itself, or through supplemental funds or voluntary efforts provided by any State recipient or non-profit recipient (subrecipient), as appropriate. The exception is that a State grantee is not required to match the first $100,000 of assistance provided to it, but the benefit of the unmatched amount must be shared with local governments and other subrecipients (24 CFR section 576.51).

2.1 Level of Effort – *Maintenance of Effort* – Not Applicable

2.2 Level of Effort – *Supplement Not Supplant*

Grant amounts may be used to provide essential services to homeless persons only if the service is a new service, or is a quantifiable increase in the level of service above that which the unit of general local government provided with local funds during the 12 calendar months immediately before it received initial grant amounts (24 CFR section 576.21(b)).

3. Earmarking

a. Not more than 30 percent of the total of each grant amount provided to a unit of local government or a State can be used for essential services for homeless persons if the service is a new service, unless a waiver is granted (42 USC 11374; 24 CFR section 576.21(b)).

b. Not more than 30 percent of the total of each grant amount provided to a unit of local government or State can be used for homeless prevention activities (42 USC 11374; 24 CFR section 576.21(c)).

c. All of a State's formula allocation, except for administrative costs, must be made available to local governments in a State or to private non-profit organization (24 CFR section 576.25(b)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable (cash status only)

f. *Integrated Disbursement and Information System (IDIS) (OMB No. 2506-0077*) – The following reports generated by IDIS are used by grantees and HUD for financial reporting on the ESG Program:

(1) C04PR02 – List of Activities by Program Year and Project (ESG Projects Only).

(2) C04PR19 – ESG Statistics for Projects as of Grant Year

Key Line Item: Dollars funded from ESG Grants

2. Performance Reporting

HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons* (*OMB No. 2529-0043*) – For each grant over $200,000 that involves housing rehabilitation, housing construction, or other public construction, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a) and 135.90).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 2. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

1. Maintenance as Homeless Shelters

Compliance Requirement – Any building for which ESG amounts are used for renovation, or rehabilitation for use as emergency shelters for homeless persons as described in 24 CFR section 576.21(a)(1), must be maintained as a shelter for homeless persons for not less than a 3-year period or, if the grant amounts are used for major rehabilitation or conversion of the building, for not less than a 10-year period (24 CFR section 576.53).

Audit Objective – Determine whether buildings improved (i.e., renovated, rehabilitated, or converted for use as an emergency shelter) with ESG funds during the audit period are currently being used as emergency shelters.

Suggested Audit Procedures

a. Ascertain if any buildings were improved with ESG funds during the audit period.

b. Verify the existence of the buildings improved with ESG funds and their current use as a homeless shelter.

c. Inquire of management whether any buildings improved with ESG funds in prior years are no longer being used as shelters, and if so, whether the prescribed 3- or 10-year period had expired.

2. Funding

Compliance Requirement – Within 65 days of the date of the grant award by HUD, each State must make available to its State recipients all ESG amounts that were allocated under 24 CFR section 576.5. State recipients, as well as cities, counties, and territories that receive formula money, must have their grant amounts obligated and expended within specified periods, as provided for in 24 CFR section 576.35.

Audit Objective – Determine whether funding was allocated, obligated, and expended within HUD-prescribed limits.

Suggested Audit Procedures

a. Determine the time periods for which funds must be allocated, obligated and expended for the selected entities.

b. Review records to determine the dates that funds were allocated, obligated, and expended, as applicable.

IV. OTHER INFORMATION

See Appendix VI for program waivers related to Hurricanes Katrina and Rita.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.235 SUPPORTIVE HOUSING PROGRAM

I. PROGRAM OBJECTIVES

The Supportive Housing Program is designed to promote the development of supportive housing and supportive services, including innovative approaches to assist homeless persons in the transition from homelessness, and to promote the provision of supportive housing to homeless persons so they can live as independently as possible (24 CFR section 583.1).

II. PROGRAM PROCEDURES

Grants are provided to States, local governments, other governmental entities, private non-profit organizations, and community mental health associations that are public non-profit organizations (24 CFR section 583.5). Funds may be used for: (1) transitional housing to facilitate the movement of homeless individuals and families to permanent housing; (2) permanent housing that provides long-term housing for homeless persons with disabilities; (3) housing that is, or is part of, a particularly innovative project for, or alternative methods of, meeting the immediate and long-term needs of homeless persons; or (4) supportive services for homeless persons not provided in conjunction with supportive housing (24 CFR section 583.1(b)).

Source of Governing Requirements

The Supportive Housing Program is authorized under Title IV, Subtitle C of the McKinney-Vento Homeless Assistance Act (42 USC 11301). The implementing regulations are at 24 CFR part 583.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Grants may be used for acquiring structures, rehabilitating structures, acquiring and rehabilitating structures, new construction, leasing, operating costs for supportive housing, and supportive services as described in 24 CFR sections 583.105 through 583.125. Projects may have more than one type of assistance (24 CFR section 583.100).

E. Eligibility

1. Eligibility for Individuals

a. To be eligible to receive assistance under this program an individual must be homeless, as defined in 24 CFR section 583.5. The eligibility of those tenants who were admitted to the program should be determined by obtaining: (1) signed applications that contained all of the information needed to determine eligibility, income, rent and order of selection; and, (2) when appropriate, third party verifications or documentation of expected income, assets, unusual medical expenses, and any other pertinent information.

b. Each resident in supportive housing may be required to pay as rent an amount which may not exceed the highest of: (1) 30 percent of the family's monthly adjusted income; (2) 10 percent of the family's monthly income; or (3) if the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of payments that is designated. In addition to resident rent, non-Federal entities may charge residents reasonable fees for services not paid with grant funds (24 CFR sections 583.315(a) and (c)).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching

a. The non-Federal entity must match the grant funds provided by HUD for acquisition, rehabilitation, and new construction with an equal amount of funds from other sources. The matching funds must be cash resources provided to the project by one or more of the following: the non-Federal entity, the Federal Government, State and local governments, and private sources (24 CFR section 583.145).

b. HUD may provide grants to pay for a portion of the actual operating costs of supportive housing. Assistance for operating costs is available for up to 75 percent of the total cost in each year of the grant. The non-Federal entity must pay with its own funds the percentage of the actual operating costs not funded by HUD. At the end of each operating year, the non-Federal entity must demonstrate that it has met its share of the costs for that year (24 CFR section 583.125).

c. Beginning with 1999 grants, all funding for supportive services must be matched by 25 percent funding from non-Federal entity (Pub. L. No. 105-276).

2.1 Level of Effort – *Maintenance of Effort* – Not Applicable

2.2 Level of Effort – *Supplement Not Supplant*

a. No assistance provided under this program, or any State or local government funds used to supplement this assistance, may be used to replace State or local funds previously used, or designated for use, to assist homeless persons (24 CFR section 583.150(a)).

b. State or local government funds used in the matching contribution may be used to replace State or local funds previously used, or designated for use, to assist homeless persons (24 CFR section 583.145(c)).

3. Earmarking

No more than five percent of any grant awarded may be used for paying the costs of administering the assistance. Administrative costs include the costs associated with accounting for the use of grant funds, preparing reports for submission to HUD, obtaining program audits, and similar costs related to administering the grant after award. The administrative costs do not include the cost of carrying out eligible activities under 24 CFR sections 583.105 through 583.125 (24 CFR section 583.135).

J. Program Income

Income from resident rent payments may be used in the operation of the project or may be reserved, in whole or in part, to assist residents of transitional housing in moving to permanent housing (24 CFR section 583.315(b)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. HUD-40118, *Annual Progress Report (OMB No. 2506-0145)* – This report is due from each grantee 90 days after the end of each operating year. Separate reports are required for each grant received (24 CFR section 583.300 (g)).

The auditor is expected to test the financial data in:

(1) Part II – 18. Supportive Services

(2) Part II – 19. Supportive Housing Program: Leasing, Supportive Services, Operating Costs, HMIS Activities and Administration

(3) Part II – 20. Supportive Housing Program: Acquisition, Rehabilitation, and New Construction

2. Performance Reporting

HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons* (*OMB No. 2529-0043*) – For each grant over $200,000 that involves housing rehabilitation, housing construction, or other public construction, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a) and 135.90).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 2. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

1. Reasonable Rental Rates

Compliance Requirement – Where grants are used to pay for rent for all or a part of a structure, the rent paid must be reasonable in relation to rents being charged in the area for comparable space. In addition, the rent may not exceed rents currently being charged by the same owner for comparable space (24 CFR section 583.115(b)(1)).

Where grants are used to pay rent for individual housing units, the rent paid must be reasonable in relation to rents being charged for comparable units taking into account relevant features. In addition, the rents may not exceed rents currently being charged by the same owner for comparable unassisted units, and the portion of rents paid with grant funds may not exceed HUD-determined fair market rents. Non-Federal entities may use grant funds in an amount up to one month's rent to pay the non-recipient landlord for any damages to leased units by homeless participants (24 CFR section 583.115(b)(2)).

Audit Objective – Determine reasonableness of the rents being paid by the non-Federal entities.

Suggested Audit Procedures

a. Determine the acceptability of the manner in which the non-Federal entity establishes rent reasonableness and the rents charged by the owner for comparable unassisted units. Ascertain through an examination of documentation that telephone surveys, site visits after telephoning, more extensive market surveys of available rental units, or similar tools, were used to assess the reasonableness of rents being charged.

b. Verify by a review of the rental records that the contract rents being paid are comparable with those paid for unassisted units, no more than one month's rent is paid for tenant damages, and that the portion of rents paid with grant funds do not exceed fair market rents.

2. Use of Property

Compliance Requirement – All non-Federal entities receiving assistance for acquisition, rehabilitation, or new construction must agree to operate the supportive housing or provide supportive services for a term of at least 20 years from the date of initial occupancy or the date of initial service provision. If HUD determines that a project is no longer needed for use as supportive housing or to provide supportive services and approves the use of the project for the direct benefit of low-income persons pursuant to a request for such use by the non-Federal entity operating the project, HUD may authorize the non-Federal entity to convert the project to such use (24 CFR section 583.305).

Audit Objective – Determine whether there are valid agreements for the provision of supportive housing or supportive services when assistance is provided for acquisition, rehabilitation, or new construction.

Suggested Audit Procedures

Verify that a binding agreement exists between the non-Federal entity and owner of the structure, if other than the non-Federal entity, covering the provision of supportive housing or supportive services for 20 years if the grant assistance involves acquisition, rehabilitation, or new construction.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.238 SHELTER PLUS CARE

I. PROGRAM OBJECTIVES

The Shelter Plus Care program is designed to link rental assistance to supportive services for hard-to-serve homeless persons with disabilities (primarily those who have a serious mental illness; have chronic problems with alcohol, drugs, or both; or have acquired immunodeficiency syndrome (AIDS) and related diseases) and their families if they are also homeless (24 CFR section 582.1).

II. PROGRAM PROCEDURES

The program provides grants to States, units of general local government, or public housing agencies (PHAs). The grants are to be used to provide rental assistance so homeless persons with disabilities can obtain permanent housing. Rental assistance grants must be matched in the aggregate by supportive services that are equal in value to the amount of rental assistance and appropriate to the needs of the population to be served. Recipients are chosen on a competitive basis nationwide (24 CFR section 582.1).

Rental assistance is provided through the four components described in 24 CFR section 582.100: (1) tenant-based rental assistance (TRA); (2) project-based rental assistance (PRA); (3) sponsor-based rental assistance (SRA); and (4) moderate rehabilitation for single room occupancy (SRO) dwellings. Applicants may apply for assistance under any one of the four components. The Compliance Supplement's section relating to CFDA 14.856 (4-14.182) should be used in auditing the moderate rehabilitation program for SRO dwellings.

The grant amount is based on the number and size of units to be assisted by the applicant over the grant period. It is calculated by multiplying the number of units to be assisted by their fair market rents for the term of the grant in months. The amount determined will be reserved for rental assistance over the grant period (24 CFR sections 582.105(b) and (c)).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Shelter Plus Care grants may be used to provide rental assistance for housing occupied by eligible persons and to pay for the costs of administering the housing assistance, except that the housing may not be receiving Federal funds for rental assistance or operating costs under any other HUD program. Non-Federal entities may design a housing program that includes a range of housing types and different

levels of supportive services. Rental assistance may include security deposits on units amounting to one month's rent (24 CFR section 582.105(a)).

2. The eight percent administrative allowance for housing assistance (see III.G.3, "Matching, Level of Effort, Earmarking – Earmarking") does not include the cost of administering the supportive services or the grant (e.g., costs of preparing the application, reports or audits required by HUD), which are not eligible activities under a Shelter Plus Care grant. Non-Federal entities may contract with another entity approved by HUD to administer the housing assistance. Eligible administrative activities include processing rental payments to landlords, examining participant income and family composition, providing housing information, inspecting housing units for compliance with housing quality standards, and receiving new participants into the program (24 CFR section 582.105(e)).

D. Davis-Bacon Act

Except for the use of volunteers under the conditions of 24 CFR part 70, agreements under the SRO component covering nine or more assisted units are required to comply with the requirements of the Davis-Bacon Act (24 CFR section 882.804(b)).

E. Eligibility

1. Eligibility for Individuals

a. To be eligible for assistance under this program, a person must be homeless, of very low-income, and have disabilities, as defined in 24 CFR section 582.5. The eligibility of tenants admitted to the program should be determined by: (1) obtaining signed applications that contained the information needed to determine eligibility, income, and rent; and, when appropriate, (2) obtaining third party verifications or documentation of expected income, assets, unusual medical expenses, and any other pertinent information. Tenant income should not exceed the maximum limit set by HUD for the PHA's jurisdiction, as provided in the notice transmitting Income Limits for Low and Very Low-Income Families Under the Housing Act of 1937.

b. Each person must pay rent which is the highest of: (1) 30 percent of the family's monthly adjusted income; (2) 10 percent of the family's monthly income; or (3) if the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of payments that is so designated (24 CFR section 582.310(a)).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Sponsor-based rental assistance (SRA) provides grants for rental assistance through contracts between the grant recipient and sponsor organizations. A sponsor must be a private, non-profit organization or a community mental health agency established as a public non-profit organization (24 CFR section 582.100(c)).

G. Matching, Level of Effort, Earmarking

1. Matching

A grantee must provide or ensure the provision of supportive services that are at least equal in value to the aggregate amount of rental assistance funded by HUD. This includes funding the services itself if the planned resources do not become available for any reason, appropriate to the needs of the population being served. The supportive services may be newly created for the program or existing, and may be provided or funded by other Federal, State, local, or private programs. Only services that are provided after the execution of the grant agreement may count toward the match. The manner in which the value of supportive services is calculated is contained in 24 CFR section 582.110(c).

2.1 Level of Effort – *Maintenance of Effort* – Not Applicable

2.2 Level of Effort – *Supplement Not Supplant*

No assistance received under this program (or any State or local government funds used to supplement this assistance) may be used to replace funds provided under any State or local government assistance programs previously used, or designated for use, to assist homeless persons with disabilities (24 CFR section 582.115(d)).

3. Earmarking

Up to eight percent of the grant amount may be used to pay the costs of administering housing assistance, subject to the limits noted in III.A.2 above (24 CFR section 582.105(e)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. HUD-40118, *Annual Progress Report (OMB No. 2506-0145)* – This report is due from each grantee (and separately for each component funded) within 90 days after the end of its operating year (24 CFR section 582.300 (d)).

Key Line Items – Financial data in Part I -15. Supportive Services

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

1. Rent Reasonableness

Compliance Requirement – HUD will only provide assistance for a unit for which the rent is reasonable. For TRA, PRA, and SRA, it is the responsibility of the non-Federal entity to determine whether the rent charged for the unit receiving assistance is reasonable in relation to rents being charged for comparable unassisted units. For SRO units, rents are calculated in accordance with 24 CFR section 882.805(d) (24 CFR section 582.305(b)).

Audit Objective – Determine reasonableness of the rents being paid by the grantee.

Suggested Audit Procedures

a. Identify the manner in which the non-Federal entity establishes rent reasonableness, and if such tools as telephone surveys, site visits after telephoning, or more extensive market surveys of available rental units were conducted in order to assess the reasonableness of rents being charged. Examine the non-Federal entity's documentation showing rents charged for comparable unassisted units.

b. Verify that the contract rents being paid are comparable with those paid for unassisted units. If unassisted units are in the building, compare rents paid for those units with the rents paid for the assisted units.

2. Housing Quality Standards

Compliance Requirement – Housing assisted under the Shelter Plus Care Program must meet applicable housing quality standards under 24 CFR section 582.305 (a) and, for the SRO component, under 24 CFR section 882.803(b). Before any assistance is provided on behalf of a participant, the non-Federal entity, or another entity acting on behalf of the non-Federal entity (other than the owner of the housing), must physically inspect each unit to assure that the unit meets housing quality standards. Non-Federal entities must also inspect all units annually during the grant period to ensure that units continue to meet housing quality standards (24 CFR section 582.305(a)).

Audit Objective – Determine whether the grantee performs the required inspections to assure that units meet housing quality standards.

Suggested Audit Procedures

a. Verify through a review of documentation that the non-Federal entity identifies those units on which housing quality inspections are due.

b. Verify through a review of documentation that the non-Federal entity performed inspections of units and that any needed repairs were completed timely.

3. Project-Based Rental Assistance

Compliance Requirement – Project-based rental assistance provides grants for rental assistance to the owner of an existing structure, where the owner agrees to lease the subsidized units to participants. Participants do not retain rental assistance if they move. Rental subsidies are provided to the owner for a period of either five or ten years. To qualify for ten years of rental subsidies, the owner must complete at least $3000 of eligible rehabilitation work for each unit (including the prorated share of work to be accomplished on common areas or systems), to make the structure decent, safe, and sanitary. The rehabilitation work must be completed within 12 months of the grant award (24 CFR section 582.100(b)).

Audit Objective – Determine whether project-based assistance is being paid in accordance with agreements.

Suggested Audit Procedures

a. Examine the existing agreement between the owner and the non-Federal entity to determine whether the agreement is for either five or ten years.

b. If the agreement is for ten years, verify through a review of documentation that the required rehabilitation of at least $3000 was performed within 12 months of the grant award.

c. Examine the billings from the owner, and verify that the assistance payments are for units occupied or ready for occupancy.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.239 HOME INVESTMENT PARTNERSHIPS PROGRAM

I. PROGRAM OBJECTIVES

The objectives of the HOME Investment Partnerships (HOME) Program include: (1) expanding the supply of decent and affordable housing, particularly housing for low- and very low-income Americans; (2) strengthening the abilities of State and local governments to design and implement strategies for achieving adequate supplies of decent, affordable housing; (3) providing financial and technical assistance to participating jurisdictions, including the development of model programs for affordable low-income housing; and (4) extending and strengthening partnerships among all levels of government and the private sector, including for-profit and non-profit organizations, in the production and operation of affordable housing (24 CFR section 92.1).

II. PROGRAM PROCEDURES

The program is conducted by jurisdictions (States, cities, urban counties, and consortia) that receive an allocation of funds. Participating jurisdictions must submit a description of how they propose to use the funds for housing activities, together with certifications (24 CFR part 91). The funding amount is based on a formula of six factors established to reflect a jurisdiction's need for an increased supply of affordable housing for low- and very low-income families (24 CFR section 92.50).

A State may carry out its own HOME program without active participation of units of general local government or may distribute HOME funds to units of general local government to carry out HOME programs in which both the State and all or some of the units of general local government perform specified functions. A unit of general local government designated by a State to receive HOME funds from a State is a "State recipient." Before disbursing funds to an entity, each participating jurisdiction is required to enter into written agreements with the entity. The contents of the agreement may vary depending on the role which the entity is asked to assume or the type of project undertaken. However, there must be certain minimum provisions depending on whether the entity is a State recipient, subrecipient, for-profit or non-profit housing owner, or contractor as well as a home buyer, homeowner, or tenant receiving tenant-based rental or security deposit assistance (24 CFR section 92.504).

Source of Governing Requirements

The HOME Investment Partnerships Program was established by the Title II of the Cranston-Gonzalez National Affordable Housing Act (42 USC 12701-12839 and 3535(d)). Implementing regulations are codified at 24 CFR part 92.

Availability of Other Program Information

Pertinent information that will assist the auditor in understanding the HOME program is available on the agency web site. Relevant web sites include the following:

Affordable Housing:

http://www.hud.gov/offices/cpd/affordablehousing/index.cfm

HOME Program:

http://www.hud.gov/offices/cpd/affordablehousing/programs/home/index.cfm

HOME Statute:

http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/laws/home/index.cfm

HOME Rule:

http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/

HOME Publications:

http://www.hud.gov/offices/cpd/affordablehousing/library/index.cfm

Community Connections:

Toll-free number 1-800-998-9999 or http://www.comcon.org/

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. HOME funds (including program income generated by activities carried out with HOME funds) may be used by participating jurisdictions to provide for: (a) incentives to develop and support affordable rental housing and homeownership affordability through the acquisition, new construction, reconstruction, or rehabilitation of non-luxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; (b) to provide tenant-based rental assistance, including security deposits; (c) the payment of reasonable administrative and planning costs; and (d) the payment of operating expenses of Community Housing Development Organizations (CHDOs). The housing must be permanent or transitional. The acquisition of vacant land or demolition can only be undertaken with respect to a particular housing project intended to provide affordable housing. Conversion of an existing structure to affordable housing is rehabilitation unless certain circumstances exist. Manufactured housing may be

purchased or rehabilitated and the land upon which it is built may be purchased with HOME funds. HOME funds may be used to pay for development construction costs, refinancing costs, acquisition costs, related soft costs, CHDO costs, relocation costs, and costs related to the repayment of loans (24 CFR sections 92.205(a) and 92.206).

2. A participating jurisdiction may use or "invest" HOME funds as equity investments, interest-bearing loans or advances, non-interest-bearing loans or advances, interest subsidies, deferred payment loans, grants, or other forms of assistance approved by HUD. A participating jurisdiction may invest HOME funds to guarantee loans made by lenders and, if required, the participating jurisdiction may establish a loan guarantee account with HOME funds. The amount of the loan guarantee account must be based on a reasonable estimate of the default rate on the guaranteed loans but under no circumstances, may the amount on deposit exceed 20 percent of the total outstanding principal amount guaranteed, except that the account may include a reasonable minimum balance. While loan funds guaranteed with HOME funds are subject to all HOME requirements, funds which are used to repay the guaranteed loans are not (24 CFR section 92.205(b)).

3. Generally, HOME funds may not be used for: project reserve accounts, tenant-based rental assistance for the special purpose of the Section 8 program, non-Federal matching contributions under any other non-Federal program, annual contributions for the operation of public housing, public housing modernization, assistance to prepay low income housing mortgages, assistance to a project previously assisted with HOME funds during the period of affordability (i.e., the period for which the non-Federal entity must maintain subsidized housing), and the acquisition of property by the participating jurisdiction. Participating jurisdictions may not charge monitoring, servicing, and origination fees in HOME-assisted projects (24 CFR section 92.214).

D. Davis-Bacon Act

Contracts for the construction of affordable housing with 12 or more HOME-assisted units are required to comply with the requirements of the Davis-Bacon Act (42 USC 12836).

E. Eligibility

1. Eligibility for Individuals

a. The HOME Program has income targeting requirements. Only low-income or very low-income persons, as defined in 24 CFR section 92.2, can receive housing assistance (24 CFR section 92.1). Therefore, the participating jurisdiction must determine if each family is income eligible by determining the family's annual income, as provided for in 24 CFR

section 92.203. Participating jurisdictions must maintain records for each family assisted (24 CFR section 92.508).

b. HOME-assisted units in a rental housing project must, pursuant to 24 CFR 92.216(a), be occupied only by households that are eligible as low-income families and must meet certain limits on the rents that can be charged. The requirements also apply to the HOME-assisted non-owner-occupied single-family housing purchased with HOME funds. The maximum HOME rents are the lesser of: the fair market rent for comparable units in the area, as established by HUD under 24 CFR section 888.111, or a rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area as determined by HUD with adjustments for the number of bedroom units. In rental projects with five or more units there are additional rent limitations. Twenty percent of the HOME-assisted units must be occupied by very low-income families and meet one of the following rent requirements: (1) the rent does not exceed 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for larger or smaller families; or (2) the rent does not exceed 30 percent of the families adjusted income (24 CFR section 92.252).

c. A participating jurisdiction may use HOME funds for tenant-based rental assistance, as provided for in 24 CFR section 92.209(b). The participating jurisdiction must select families in accordance with policies and criteria consistent with those provided in 24 CFR section 92.209(c).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching

Each participating jurisdiction must provide eligible matching contributions of 25 percent of HOME funds drawn down during the fiscal year. The match must be provided by the end of the fiscal year. Some participating jurisdictions are eligible for a reduction in the required match based upon meeting standards of distress. The jurisdictions which are eligible for the reduction are identified by a notice published in the *Federal Register*, or a notice issued by HUD. Jurisdictions may also receive reductions if they are in Presidentially declared disaster areas. Participating jurisdictions are required to maintain records, including individual project records and a running log, demonstrating compliance with the matching requirements, including the type and amount of contributions by project.

Matching information is provided on the *HOME Match Report* (HUD-40107-A) (24 CFR sections 92.218 through 92.220, 92.222, and 92.508).

2. Level of Effort – Not Applicable

3. Earmarking

a. Each participating jurisdiction must invest HOME funds made available during a fiscal year so that, with respect to tenant-based rental assistance and rental units not less than 90 percent of (1) the families receiving assistance are families whose annual income do not exceed 60 percent of the median family income for the area, as determined and made available by HUD, with adjustments for smaller and larger families at the time of occupancy or at the time funds are invested, whichever is later, or (2) the dwelling units assisted with such funds are occupied by families having such incomes (24 CFR section 92.216).

b. Each participating jurisdiction must invest HOME funds made available during a fiscal year so that with respect to homeownership assistance, 100 percent of these funds are invested in dwelling units that are occupied by households that qualify as low-income families at the time of occupancy or at the time funds are invested, whichever is later (24 CFR section 92.217).

c. Each participating jurisdiction must invest at least 15 percent of each year's HOME allocation in projects which are owned, developed, or sponsored by special non-profit organizations called CHDOs. If, during the first 24 months of its participation in the HOME Program, a participating jurisdiction cannot identify a sufficient number of capable CHDOs, then up to 20 percent of the minimum set-aside (but not more than $150,000 during the 24-month period) may be made available to develop the capacity of CHDOs in the jurisdiction (24 CFR section 92.300).

d. A participating jurisdiction may expend for its HOME administrative and planning costs an amount of HOME funds that is not more than ten percent of the fiscal year HOME basic formula allocation plus any funds received in accordance with 24 CFR section 92.102(b) to meet or exceed threshold requirements that fiscal year. A participating jurisdiction may also use up to ten percent of any return of the HOME investment, as defined in 24 CFR section 92.503, calculated at the time of deposit in its HOME account, for administrative and planning costs (24 CFR section 92.207).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting

HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons* (*OMB No. 2529-0043*) – For each grant over $200,000 that involves housing rehabilitation, housing construction, or other public construction, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a) and 135.90).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 2. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

M. Subrecipient Monitoring

Each participating State is responsible for distributing HOME funds throughout the State according to the State's assessment of the geographical distribution of housing need within the State. A State may carry out its HOME Program without active participation of units of general local government or may distribute HOME funds to units of general local government to carry out HOME Programs in which both the State and all or some of the units of general local government perform specified program functions. A State that uses State recipients to perform program functions shall ensure that the State recipients use HOME funds in accordance with applicable laws and requirements. A State shall include in its written agreements with its State recipients such additional provisions as may be appropriate to ensure compliance and to enable the State to carry out its responsibilities under the HOME Program. The State is to conduct such reviews and audits of its State recipients as may be necessary or appropriate to determine whether the State recipient has committed and expended the HOME funds, as required by 24 CFR section 92.500, and has met HOME Program requirements particularly as they relate to eligible activities, income targeting, affordability, and matching contribution requirement (24 CFR section 92.201(b)).

Before disbursing funds to a subrecipient, each participating jurisdiction is required to enter into written agreements with the entity which includes provisions dealing with the use of HOME funds, program income, uniform administrative requirements, other program requirements, affirmative marketing, requests for disbursement of funds, reversion of assets, records and reports, and enforcement of the agreement. Further, if the subrecipient provides HOME funds to for-profit owners or developers, non-profit organizations, subrecipients, homeowners, homebuyers, tenants receiving tenant-based rental assistance, or contractors, the subrecipient must have a written agreement that contains the provisions in 24 CFR section 92.504.

N. Special Tests and Provisions

1. Maximum Per Unit Subsidy

Compliance Requirement – The per unit investment of HOME funds may not exceed the Federal Housing Administration (FHA) mortgage limits in Subsection 221(d)(3) of

the National Housing Act, including any area-wide high cost exceptions approved by HUD. This information should be available from the grantee or the local HUD field office. In mixed-income or mixed-use projects, the average per unit investment in HOME-assisted units may not exceed the applicable Subsection 221(d)(3) limit. Participating jurisdictions are required to evaluate each housing project in accordance with guidelines that it adopts to ensure that the combination of Federal assistance to the project is not any more than is necessary to provide affordable housing (24 CFR section 92.250).

Audit Objective – Determine whether the HOME subsidies being provided are not more than necessary to provide affordable housing and are properly supported.

Suggested Audit Procedures

a. Review a sample of projects to verify that the HOME subsidy amounts are supported by the participating jurisdiction's records.

b. Review participating jurisdiction records to verify that each housing project was evaluated in accordance with its guidelines to ensure that the combination of Federal assistance to the project is not any more than is the FHA mortgage limits in Subsection 221(d)(3) of the National Housing Act necessary to provide affordable housing.

2. Drawdowns of HOME Funds

Compliance Requirement – The Integrated Disbursement and Information System is used both to collect information on compliance with program requirements and to disburse HOME funds. Participating jurisdictions (or their authorized representatives) are required to have different staffs setting up projects and drawing down funds. Participating jurisdictions must maintain payment certifications each time a drawdown of funds is made (24 CFR section 92.502).

Audit Objective – Determine whether the required separation of duties is maintained over the drawdown of HOME funds.

Suggested Audit Procedures

a. Verify that the persons setting up projects are not the same as the person drawing down funds.

b. Verify that HOME payment certification amounts match the amount of disbursements.

3. Housing Quality Standards

Compliance Requirement – During the period of affordability (i.e., the period for which the non-Federal entity must maintain subsidized housing) for HOME assisted rental

housing, the participating jurisdiction must perform on-site inspections to determine compliance with property standards and verify the information submitted by the owners no less than: (a) every three years for projects containing 1 to 4 units, (b) every two years for projects containing 5 to 25 units, and (c) every year for projects containing 26 or more units. The participating jurisdiction must perform on-site inspections of rental housing occupied by tenants receiving HOME-assisted tenant-based rental assistance to determine compliance with housing quality standards (24 CFR sections 92.251, 92.252, and 92.504(b)).

Audit Objective – Determine whether the grantee performs the required inspections to assure that property standards are met.

Suggested Audit Procedures

a. Verify through a review of documentation that the non-Federal entity identifies those units on which housing quality inspections are due.

b. Verify through a review of documentation that the non-Federal entity performs inspections of units and that any needed repairs are completed timely.

IV. OTHER INFORMATION

Improper Payments

A participating jurisdiction (PJ) that uses any HOME funds for an activity that does not meet HOME affordability requirements outlined in 24 CFR section 92.252 or 24 CFR section 92.254, or for costs that are not eligible costs identified in 24 CFR sections 92.206 through 92.209 must repay the those funds to its Federal HOME Investment Trust Account pursuant to 24 CFR section 92.503(b).

Hurricanes Katrina and Rita

See Appendix VI for program waivers related to Hurricanes Katrina and Rita.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.241 HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

I. PROGRAM OBJECTIVES

The Housing Opportunities for Persons with AIDS (HOPWA) program is designed to provide States and localities with resources and incentives to devise long-term strategies for meeting the housing needs of persons with acquired immunodeficiency syndrome (AIDS) or related diseases and their families (24 CFR section 574.3).

II. PROGRAM PROCEDURES

The Department of Housing and Urban Development (HUD) awards funds appropriated for the program in any fiscal year through both a formula allocation and competitive grant process. Ninety percent of the funds are awarded through formula grants and ten percent through competitive grants. HUD allocates formula funds based on the number of cases of AIDS reported to and confirmed by the Centers for Disease Control and Prevention and on population data furnished by the U.S. Bureau of the Census (24 CFR section 574.130).

Competitively awarded funds are available for special projects of national significance and other projects submitted by States and localities that do not qualify for formula grants. All States, units of general local government, and non-profit organizations may apply for grants for projects of national significance. Only those States and units of general local government that do not qualify for formula awards may apply for grants for other projects. Except for grants involving projects of national significance, non-profit organizations are not eligible to apply directly to HUD for a grant, but may receive funding as a project sponsor (subrecipient) under a contract with a grantee (24 CFR section 574.210).

Source of Governing Requirements

The HOPWA program is authorized by the AIDS Housing Opportunity Act, as amended (42 USC 12901, *et seq*.). Implementing regulations are in 24 CFR parts 91 and 574.

Availability of Other Program Information

For additional information that may be helpful to auditors in understanding the HOPWA program, refer to the HOPWA program website on the Internet at http://www.hud.gov/offices/cpd/aidshousing/index.cfm.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. HOPWA funds may be used to assist all forms of housing designed to prevent homelessness, including emergency housing, shared housing arrangements, apartments, single room occupancy (SRO) dwellings, and community residences. Appropriate supportive services must be provided as part of any HOPWA-assisted housing, but HOPWA funds may also be used to provide services independently of any housing activity. The following activities may be carried out with HOPWA funds: housing information services; resource identification to establish, coordinate, and develop housing assistance resources for eligible persons; acquisition, rehabilitation, conversion, lease, and repair of facilities to provide housing and services; new construction for SRO and community residences only; project- or tenant-based rental assistance, including assistance for shared housing arrangements; short-term rent, mortgage, and utility payments to prevent the homelessness of the tenant or the mortgagor of a dwelling; supportive services; operating costs for housing; technical assistance in establishing and operating a community residence; administrative expenses; and, for competitive grants only, any other activity proposed by the applicant and approved by HUD (24 CFR section 574.300).

2. Grantees must assure that grant funds will not be used to make payments for health services for any item or service to the extent that payment was made, or can reasonably be expected to be made, with respect to any item or service: (a) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or (b) by an entity that provides health services on a prepaid basis, as provided for in 24 CFR section 574.310(a)(2). Supportive services include such items as alcohol abuse treatment and counseling, day care, and nutritional services (24 CFR section 574.300(b)(7)).

E. Eligibility

1. Eligibility for Individuals

a. A person eligible for assistance under this program means one with HIV or AIDS who is a low-income individual, as defined in 24 CFR section 574.3, and the person's family. The eligibility of those tenants who were admitted to the program should be determined by: (1) obtaining signed applications that contained all the information needed to determine eligibility, income, rent and order of selection; and (2) obtaining third-party verifications or documentation of expected income, assets, unusual medical expenses, and any other pertinent information.

b. Except for persons in short-term supportive housing, each person receiving rental assistance under the HOPWA Program must pay as rent the higher of: (1) 30 percent of the family's monthly adjusted gross income; (2) 10 percent of the family's monthly gross income; or (3) the portion of the

payments that is designated if the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs (24 CFR section 574.310).

c. If grant funds are used to provide rental assistance, the amount of grant funds used to pay monthly assistance for an eligible person may not exceed the difference between the lower of the rent standard or reasonable rent for the unit and the resident's rent payment calculated in accordance with 24 CFR section 574.310 (24 CFR section 574.320). Allowable assistance can be determined by telephone surveys, site visits after telephoning, or more extensive market surveys of available rental units to assess the reasonableness of rents being charged.

d. A short-term supported housing facility may not provide residence to any individual for more than 60 days during any six-month period. Rent, mortgage, and utility payments to prevent the homelessness of the tenant or the mortgagor of a dwelling may not be provided to such an individual for costs accruing over a period of more than 21 weeks in any 52-week period. Further a short-term supported facility may not provide shelter or housing at any single time for more than 50 families or individuals (24 CFR section 574.330).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort* – Not Applicable

2.2 Level of Effort – *Supplement Not Supplant*

The amounts received from grants under this program may not be used to replace other amounts made available or designated by State or local governments through appropriations to be used to carry out the purposes of this program (24 CFR section 574.400).

3. Earmarking

Each grantee may use not more than three percent of the grant amount for its own administrative costs relating to administering grant amounts and allocating such amounts to project sponsors (subrecipients). Each project sponsor receiving amounts from grants

made under this program may not use more than seven percent of the amounts for administrative costs (24 CFR section 574.300(b)(10)(i)-(ii)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. HUD-40110-C, *Annual Progress Report*, and HUD-40110-D, *Consolidated Annual Performance and Evaluation Report (CAPER)* (*OMB No. 2506-0133)* – Both reports are due from each grantee within 90 days after the close of its program year. Separate reports are required for formula and competitive grants. Reports contain three basic parts. The auditor is only expected to test the financial data which is found in Part 3, Summary Overview of Grant Activities, of the Annual Progress Report and in Part 3, Accomplishment Data, of CAPER (24 CFR section 574.520 and 24 CFR part 91).

2. Performance Reporting

HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons* (*OMB No. 2529-0043*) – For each grant over $200,000 that involves housing rehabilitation, housing construction, or other public construction, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a) and 135.90).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 2. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

1. Maintenance of Structures

Compliance Requirement – Project-based rental assistance provides grants for rental assistance to the owners of existing structures, where the owner agrees to lease the subsidized units to participants. Participants do not retain rental assistance if they move. Unless waived by HUD, any building or structure assisted with funds under HOPWA must be maintained as a facility to provide housing or assistance for individuals with HIV or AIDS: (a) for a period of not less than ten years, in the case of assistance provided under an activity eligible under 24 CFR sections 574.300(b)(3) – (4) involving new construction, substantial rehabilitation, or acquisition of a building or structure; or (b) for a period of not less than three years in cases involving nonsubstantial rehabilitation or repair of a building or structure (24 CFR sections 574.310(c)(1) - (2)).

Audit Objective – Determine whether the project sponsor is receiving the proper amount of assistance and is maintaining the assisted buildings and structures for participants for the stipulated periods.

Suggested Audit Procedures

a. Identify the buildings or structures assisted with HOPWA funds and verify their use.

b. Examine related agreements to verify that the structures are to provide housing or assistance for the stipulated number of years when new construction, substantial rehabilitation, acquisition, or nonsubstantial rehabilitation was involved.

c. Verify from documentation or by observation that the required rehabilitation was performed if the project was accepted for occupancy during the audit period.

2. Housing Quality Standards

Compliance Requirement – All housing that involves acquisition, rehabilitation, conversion, lease, repair of facilities, new construction, project- or tenant-based rental assistance (including assistance for shared housing arrangements), and operating costs must meet various housing quality standards listed in 24 CFR sections 574.310(b)(1)-(2).

Audit Objective – Determine whether the grantee performs the required inspections to assure that units meet housing quality standards.

Suggested Audit Procedures

a. Verify by a review of documentation that the grantee's system identifies those units on which housing quality inspections are due.

b. Verify by a review of documentation that the grantee performs inspections of these units and that any needed repairs were completed timely.

3. Community Residences

Compliance Requirement – A community residence is a multi-unit residence designed for eligible persons to provide a lower cost residential alternative to institutional care, to prevent or delay the need for such care, to provide a permanent or transitional residential setting with appropriate services to enhance the quality of life for those who are unable to live independently, and to enable those persons to participate as fully as possible in community life. If grant funds are used to provide a community residence (except for planning and other preliminary expense), the grantee must, prior to the expenditure of such funds, obtain and keep on file certifications relating to the services to be provided, the adequacy of funding and the capabilities of the grantee, project sponsor, or service provider (24 CFR section 574.340).

Audit Objective – Determine whether the required certifications are being maintained and supported.

Suggested Audit Procedures

a. Review the grantees files to verify that the required certifications are maintained.

b. Verify that there is evidence on file to support the certifications that were made.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.256 NEIGHBORHOOD STABILIZATION PROGRAM (RECOVERY ACT FUNDED)

I. PROGRAM OBJECTIVES

The objectives of the Neighborhood Stabilization Program (NSP) are to: (1) stabilize property values; (2) arrest neighborhood decline; (3) assist in preventing neighborhood blight; and (4) stabilize communities across America hardest hit by residential foreclosures and abandonment. These objectives will be achieved through the purchase and redevelopment of foreclosed and abandoned homes and residential properties that will allow those properties to turn into useful, safe and sanitary housing.

II. PROGRAM PROCEDURES

NSP is separated into three categories.

NSP1 is authorized under Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008 (Pub. L. No. 110-289). NSP1 is not part of CFDA 14.256 and this program supplement does not cover NSP1. Those NSP1 awards are made under CDFA 14.218 and CFDA 14.228 and are covered under those respective clusters.

NSP2 is authorized under the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5). NSP2 provides grants based on competitive factors of need, organizational capacity, soundness of approach, leveraging of other funds, energy efficiency and sustainable development, neighborhood transformation, and economic opportunity to States, local governments, nonprofits, and consortia of nonprofit entities.

NSP-TA (technical assistance) also is authorized by ARRA. NSP-TA provides grants for technical assistance based on competitive factors of recent experience, organizational capacity, soundness of approach, leveraging resources, and achieving results and program evaluation, to national and local technical assistance providers to support NSP1 and NSP2 grantees to increase their capacity to carry out neighborhood stabilization programs.

On May 7, 2009, HUD issued Notices of Funding Availability (NOFAs) for NSP2 (FR-5321-N-02) and NSP-TA (FR-5313-N-01) in the *Federal Register* (74 FR 21377). These NOFAs provide information on funds availability, alternative requirements, and waivers issued by HUD.

Source of Governing Requirements

NSP2 and NSP-TA are authorized by ARRA. Like NSP1, NSP2 is a component of the Community Development Block Grant program (CDBG) (CFDA 14.218 and CFDA 14.228). Unless different requirements are provided in the NSP2 NOFA or the NSP-TA NOFA, the statutory and regulatory provisions governing the CDBG program, including those at 24 CFR part 570 subparts A, C,D, J, K, and O, as appropriate, apply to the use of NSP2 and NSP-TA funding. In addition, NSP1 activities authorized under HERA apply to NSP2 as well.

Availability of Other Program Information

Additional information about the NSP, including the NSP2 and NSP-TA NOFAs, is available on the Internet at the HUD ARRA website on the Internet at http://www.hud.gov/recovery or the NSP website at: http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/. HUD has published detailed additional guidance on program income on the Internet at: http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/docs/nsp_faq_program_income.doc.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. For NSP2 funds, HERA requirements supersede some CDBG requirements to allow for the eligible uses in Section 2301(c)(3) of HERA. The NSP2-eligible uses and CDBG entitlement grant regulations are listed in Appendix I.H of the NSP2 NOFA. The NSP2 eligible uses are to:

    a. Establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties.

    b. Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon for later sale, rent, or redevelopment.

    c. Establish land banks for homes that have been foreclosed upon.

    d. Demolish blighted structures.

    e. Redevelop demolished or vacant properties (Appendix I, H, Eligibility and Allowable Costs, of NSP2 NOFA).

2. Grantees must receive written HUD approval to undertake activities other than those listed in III.A.1 above (Appendix I.H, Eligibility and Allowable Costs, of NSP2 NOFA.

3. NSP-TA funds can be used for:

    a. National TA activities are limited to activities that address, at a national level, one or more of NSP-TA program activities or priorities. National TA activities may include the (1) development of written products, (2) development of web-based materials, (3) development of training

courses, (4) delivery of training courses previously approved by HUD, (5) organization and delivery of workshops and conferences, and (6) delivery of direct TA.

b. Local TA activities are limited to the (1) development of needs assessments, (2) direct TA to HUD Community development program recipients, (3) organization and delivery of workshops and conferences, and (4) customization and delivery of previously HUD-approved training courses or materials (Section III.C.2, Eligible National TA and Local TA Activities, of NSP-TA NOFA).

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act apply to the rehabilitation of residential property only if such property contains 8 or more units. However, the requirements do not apply to volunteer work where the volunteer does not receive compensation, or is paid expenses, reasonable benefits or a nominal fee for such services, and is not otherwise employed at any time in construction work (42 USC 5310; Section 1606 of ARRA; Section 1205 of Pub. L. No.111-32; 24 CFR section 570.603).

G. Matching, Level of Effort, Earmarking

1. Matching

a. For NSP2, the regulatory and statutory requirements for State match for program administration at 24 CFR section 570.489(a)(i) are superseded by the statutory direction at Section 2301(e)(2) of HERA so that no matching funds can be required in order for a State or unit of general local government to receive an NSP2 grant (Section 2301(e)(2) of HERA; Appendix I, H, Eligibility and Allowable Costs, of NSP2 NOFA).

b. There is no matching requirement for NSP-TA (Section III.B, Cost Sharing or Matching, of NSP-TA NOFA).

2. Level of Effort – Not Applicable

3. Earmarking

a. At least 25 percent of NSP2 grant funds must be used for the purchase and redevelopment of abandoned or foreclosed homes or residential properties that will be used to house individuals or families whose incomes do not exceed 50 percent of area median income (Appendix I.E, Income Eligibility Requirements Changes, of NSP2 NOFA).

b. No more than 10 percent of an NSP2 grant, and no more than 10 percent of program income earned, may be used for general administration and planning activities as those are defined at 24 CFR sections 570.205 and

507.206. The 10 percent limitation applies to the grant as a whole and does not apply to individual payment requests (Appendix I.H, Eligibility and Allowable Costs of NSP2 NOFA).

H. Period of Availability of Federal Funds

NSP2 grantees are required to expend 50 percent of NSP2 funds in two years after HUD signs the grant agreement and expend 100 percent of NSP2 funds within three years after HUD signs the grant agreement (ARRA, 123 Stat. 217).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting

HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons*, (*OMB No. 2529-0043*) – For each grant over $200,000 that involves housing rehabilitation, housing construction, or other public construction, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a), 135.90, and 570.487(d)).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 2. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

1. Citizen Participation

To expedite the distribution of NSP2 funds and ensure citizen participation on the specific use of funds, HUD has established a minimum time for citizen comments of 10 days on the proposed use of funds and the targeted geographic area. The grantee must publicize its NSP2 application material on its website and in the general media (Appendix I.B, Pre-Grant Process of NSP2 NOFA).

Audit Objective – Determine whether the grantee adhered to the citizen participation requirements.

Suggested Audit Procedures

a. Verify that the proposed use of funds and targeted geographic area were posted on the grantee's official website and published in a local newspaper.

b. Verify that the citizen comment period was no less than 10 days.

2. Required Certifications and HUD Approvals

Compliance Requirement – NSP2 funds (and local funds to be repaid with NSP2 funds) cannot be obligated or expended before receipt of HUD's approval of a Request for Release of Funds (RROF) and environmental certification, except for exempt activities under 24 CFR section 58.34 and categorically excluded activities under 24 CFR section 58.35(b) (24 CFR section 58.22).

Audit Objective – Determine whether the grantee is obligating and expending program funds only after HUD's approval of the RROF.

Suggested Audit Procedures

a. Examine HUD's approval of the RROF and environmental certification and note dates.

b. Review the expenditure and related records to ascertain when NSP2 funds, and local funds which were repaid with NSP2 funds, were first obligated or expended and ascertain if any funds were obligated or expended prior to HUD's approval of the RROF.

3. Environmental Reviews

Compliance Requirement – NSP2 assistance is subject to the National Environmental Policy Act of 1969 and related HUD environmental regulations at 24 CFR part 58. Nonprofits recipients and other recipients that are not designated responsible entities under
24 CFR part 58 may not assume environmental review responsibilities and must receive HUD-approved environmental review under 24 CFR part 50 unless they apply in consortia with States, local governments, or Indian tribes with jurisdiction over proposed projects. In the case of NSP2 consortium applicants, States, local governments, or Indian tribes may perform the environmental reviews on behalf of consortium for projects with their jurisdiction as described under 24 CFR part 58. NSP2 grantees cannot obligate or expend Federal, or non-Federal, funds if the project or activity would limit reasonable choices or could produce an adverse environmental impact until: (1) all required environmental reviews and notifications have been completed by HUD or by a State, local government, or Indian tribe; (2) HUD notifies the grantee that the review under 24 CFR part 50 is completed; or (3) HUD or the State, local government, or Indian tribe approves a grantee's request for release of funds under the provisions contained in 24 CFR part 58.

Projects must have an environmental review unless they meet criteria specified in the regulations that would exempt or exclude them from RROF and environmental certification requirements (24 CFR sections 58.1, 58.22, 58.34, 58.35, and 570.604).

Recipients undergoing an environmental review under 24 CFR part 50 are required to: (1) supply HUD with all available, relevant information necessary for HUD to perform, for each property, any environmental review required by 24 CFR part 50 and (2) carry out mitigating measures required by HUD or select alternate eligible property. Recipient may not: (1) acquire, rehabilitate, demolish, convert, lease, repair, or construct property or (2) commit or expend HUD or other non–Federal funds for the program activities with respect to any eligible property until HUD completes the review and notifies the grantee of approval to proceed.

States, local governments, and Indian tribes that directly implement NSP2 activities are considered recipients and must assume environmental review responsibilities for the environmental activities and those of any non-governmental entity that participates in the project. These entities that directly implement activities must submit the Request for Release of Funds (RROF) and the certifications to HUD for approval (24 CFR sections 58.4(b)(1), 58.34, and 58.35).

Additional information regarding NSP environmental review requirements may be on the Internet at:
http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/docs/nsp_faq_environment.

Audit Objective – Determine whether the environmental oversight responsibilities and functions had been carried out and required approvals were obtained prior to any obligations of funds.

Suggested Audit Procedures

a. Verify through a review of environmental review certifications that the required environmental reviews were made.

b. Select a sample of projects where an environmental review was not performed and ascertain if a written determination was made that the review was not required.

c. Test whether documentation exists that any determination not to make an environmental review was made consistent with the criteria contained in 24 CFR sections 58.34 and 58.35(b)).

d. Verify that the State, local government, or Indian tribe obtained environmental review certifications from the subrecipient and that the records provide evidence that the environmental reviews were made.

e. Verify that funds were obligated and expended after HUD approval of RROFs and environmental certifications.

f. Verify that, for nonprofits and consortia grantees without State, local government, or Indian tribe members with jurisdiction over assisted projects, the environmental review under 24 CFR part 50 was completed.

4. Rehabilitation

Compliance Requirement – When NSP2 funds are used for rehabilitation, the grantee must ensure that the work is properly completed (24 CFR section 570.506).

Any NSP2-assisted rehabilitation of a foreclosed-upon home or residential property shall be completed to the extent necessary to comply with applicable laws, codes, and other requirements relating to housing safety, quality, or habitability, in order to sell, rent or

redevelop such homes and properties. To comply with this provision, a grantee must describe or reference in its NSP2 application what rehabilitation standards it will apply for NSP2-assisted rehabilitation (Section 2301(d)(2) of HERA; Appendix I.I, Rehabilitation Standards of NSP2 NOFA).

Audit Objective – Determine whether the grantee assures NSP2 rehabilitation work is properly completed

Suggested Audit Procedures

a. Review rehabilitation standards established for NSP2 work.

b. Verify through a review of documentation that the grantee inspects the rehabilitation work upon completion to assure that it is carried out in accordance with contract specifications, and that projects were carried out in accordance with rehabilitations standards.

IV. OTHER INFORMATION

ARRA gave HUD the authority to waive or specify alternative requirements for some of the CDBG statutory and regulatory provisions to facilitate the use of NSP2 funds. Most of the waivers are contained in the NSP2 NOFA.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.257 HOMELESSNESS PREVENTION AND RAPID RE-HOUSING PROGRAM (HPRP) (RECOVERY ACT FUNDED)

I. PROGRAM OBJECTIVES

The objectives of the Homelessness Prevention and Rapid Re-Housing Program (HPRP), as authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5), are 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 USC 11302).

II. PROGRAM PROCEDURES

HPRP provides grants to States, metropolitan cities, urban counties, and four territories according to a formula used in the Emergency Shelter Grants Program (CFDA 14.231), with a minimum grant allocation set by the Department of Housing and Urban Development (HUD) at $500,000. A State grantee must make available all of its formula allocation, except for an appropriate share of funds for administrative costs, to the following subgrantees to carry out all eligible activities: (1) local governments in the State, which includes formula cities and counties, whether or not such cities and counties receive grant amounts directly from HUD; or (2) private non-profit organizations, if the local government in which the proposed activities are to be located certifies that it approves of each project. Metropolitan cities, 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. In addition, any local government grantee may enter into a subgrant with another local government to carry out the program.

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 assistance to prevent them from becoming homeless or assistance to move to another unit (homelessness 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). HPRP grantees must coordinate with the local Continuum of Care and with other ARRA funding streams, so that eligible activities under other ARRA programs are aligned with HPRP funds to create a comprehensive package of housing and service options available to eligible program participants.

Source of Governing Requirements

HPRP was authorized by Title XII of ARRA.

Availability of Other Program Information

Additional information about the HPRP is available on the Internet at the HUD Recovery Act website on the Internet at http://www.hud.gov/recovery, at the HUD Homelessness Resource Exchange website at http://www.hudhre.info/hprp, or in 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 (HPRP Notice), which is available on the Internet at: http://portal.hud.gov/pls/portal/docs/PAGE/RECOVERY/PROGRAMS/HOMELESSNESS_RESOURCES/HRP-NOTICE.PDF.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Allowed Activities* – 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.

    a. Financial assistance is limited to the following activities: short-term and medium-term tenant-based rental assistance up to 18 months, security deposits, utility deposits, utility payments, moving cost assistance, and motel and hotel vouchers for up to 30 days if housing has been identified. 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.

    b. 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. All rents paid must be in compliance with HUD's standards of "rent reasonableness." (Section IV, A. Eligible Activities, in HPRP Notice)

2. *Unallowed Activities* – HPRP is not a mortgage assistance program; therefore, HPRP funds are not eligible to pay for any mortgage costs or legal or other fees associated with retaining homeowners' housing. Specifically, HPRP funds may not be used to pay for any of the following items:

    a. Construction or rehabilitation;

b. Credit card bills or other consumer debt;

c. Car repair or other transportation costs;

d. Travel costs;

e. Food;

f. Medical or dental care and medicines;

g. Clothing and grooming;

h. Home furnishings;

i. Pet care;

j. Entertainment activities;

k. Work or education related materials;

l. Cash assistance to program participants;

m. Development of discharge planning programs in mainstream institutions such as hospitals, jails, or prisons;

n. Certifications, licenses, and general training classes (Note, training for case managers and program administrators is an eligible administrative cost as long as it is directly related to HPRP program operations); and

o. State operating costs, except for administrative costs (Section IV, B. Ineligible and Prohibited Activities, in HPRP Notice).

C. Cash Management

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 (Section IV, B. Ineligible and Prohibited Activities, in HPRP Notice).

G. Matching, Level of Effort, Earmarking

1. Matching – There is no match required in this program.

2. L**evel of Effort** – Not Applicable

3. Earmarking – Not more than 5 percent of the total grant may be used for administrative costs (ARRA, 123 Stat.221).

H. Period of Availability of Federal Funds

Recipients must expend at least 60 percent of such funds within 2 years of the date on which funds became available for obligation; and expend 100 percent of such funds within 3 years of such date (ARRA, 123 Stat. 221).

J. Program Income

Recipients may not charge fees to HPRP program participants (Section IV, B. Ineligible and Prohibited Activities, in HPRP Notice).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. *Integrated Disbursement and Information System (IDIS) (OMB No. 2506-0077*) – Grantees and, as applicable, subgrantees will use the Integrated Disbursement and Information System (IDIS) to draw down HPRP funding and report grant expenditures.

Key Line Items:

(1) C04PR02 – List of Activities by Program Year and Project (HPRP Projects Only).

(2) C04PR19 – HPRP Statistics for Projects as of Grant Year

(3) PR60 – HPRP Financial Summary Report

(4) PR61 – HPRP Draw Report

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

IV. OTHER INFORMATION

ARRA gave HUD the authority to waive statutory and regulatory requirements to facilitate the use of HPRP funds.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.258 TAX CREDIT ASSISTANCE PROGRAM (TCAP) (RECOVERY ACT FUNDED)

I. PROGRAM OBJECTIVES

(a) Title XII of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) appropriated $2.250 billion under the HOME Investment Partnerships (HOME) Program for the authorized Tax Credit Assistance Program (TCAP)(Recovery Act Funded). TCAP provides grant funds to State housing credit agencies for capital investments in rental projects that received or will receive an award of Low-Income Housing Tax Credits (LIHTC) during the period from October 1, 2006 to September 30, 2009, and require additional funding to be completed and placed into service in accordance with the LIHTC requirements of Section 42 of the Internal Revenue Code (IRC).

II. PROGRAM PROCEDURES

The housing credit agency of each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico are the only eligible grantees for the TCAP program. These agencies are referred to collectively as either "State housing credit agencies" or "grantees."

The TCAP program is administered by those State housing credit agencies that receive an allocation of TCAP funds. A State may subgrant or loan all or some of its TCAP funds to a local housing credit agency.

Grantees must distribute their TCAP funds competitively in accordance with: (1) the grantee's LIHTC "qualified allocation plan" as defined in Section 42(m) of the IRC and (2) the grantee's written TCAP selection criteria. Grantees are required to give priority to eligible projects that are expected to be completed within 3 years from the date of enactment ARRA. Grantees can decide whether to provide TCAP funds to eligible projects through subgrants or loans.

Grantees must provide TCAP assistance to a project in the same manner and subject to the same limitations (including rent, income, use restrictions and compliance monitoring) as required by the State housing credit agency with respect to an "award of LIHTC" to the project (i.e., as required under Section 42 of the IRC and its implementing regulations).

Grantees can only provide TCAP funds to rental projects that received or will receive an "award of LIHTCs" during the period from October 1, 2006, to September 30, 2009. The State housing credit agency must define an "award of LIHTCs," which can be as early as the date of public notice of the funding decision for a particular LIHTC project but no earlier than October 1, 2006. The same definition of "award of LIHTCs" must be uniformly applied to all LIHTC projects in that State for the purpose of determining project eligibility for TCAP funding.

Source of Governing Requirements

TCAP was established by Title XII of ARRA. Although TCAP funds were appropriated under the HOME Investment Partnerships Program heading of ARRA, the HOME program requirements found in 24 CFR part 92 and the Consolidated Planning requirements found in 24 CFR part 91 do not apply to TCAP funds. HUD has not issued TCAP regulations. TCAP is governed by the applicable provisions of ARRA, the implementing guidance provided by HUD, and the grant agreement executed by HUD and the grantee.

The Internal Revenue Service (IRS) is responsible for issuing regulations and guidance that apply to the LIHTC program (Section 42 of the IRC). HUD is not issuing separate guidance concerning TCAP compliance with LIHTC requirements.

Availability of Other Program Information

On May 4, 2009, HUD issued Notice CPD-09-03 that sets forth the TCAP submission requirements, eligible uses of funds, and program requirements. HUD has also issued "TCAP Questions and Answers." HUD will issue supplemental or interpretive guidance on program requirements, including the process for disbursing funds, recordkeeping, reporting, and applicable Federal grant requirements, as this guidance becomes available. Information on the TCAP program and TCAP requirements and guidance, including HUD Notice CPD-09-03 and "TCAP Questions and Answers," is posted on the Internet under Programs at: http://www.hud.gov/recovery/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. TCAP funds must be used funds for capital investment in eligible LIHTC projects. "Capital investment" means costs that are included in the "eligible basis" of a project under Section 42 of the IRC (ARRA 123 Stat. 220).

2. TCAP funds cannot be used for administrative costs, including costs incurred for operating the program or compliance monitoring (ARRA 123 Stat. 220).

3. Projects eligible to receive TCAP assistance are rental housing projects that:

    a. Received or will receive an "award of LIHTCs" under Section 42(h) of the IRC during the period from October 1, 2006 to September 30, 2009; and

b. Require additional funding to be completed and placed into service in accordance with the requirements of Section 42 of the IRC (ARRA 123 Stat. 220).

4. Projects awarded LIHTCs that will also receive bond financing are eligible to receive TCAP funds. However, if the project's only source of credits is the Gulf Opportunity Zone or Midwestern Disaster Area Housing Credits, the project is not an eligible TCAP project since its credits were not awarded under Section 42(h) of the IRC. (See TCAP "General Questions and Answers" for more guidance.)

D. Davis-Bacon Act

Contractors and subcontractors are required to pay prevailing wages to laborers and mechanics in compliance with the Davis-Bacon Act (Section 1606 of ARRA).

H. Period of Availability of Federal Funds

A grantee must commit not less than 75 percent of its TCAP grant within 1 year of the enactment of ARRA and demonstrate that all project owners have expended 75 percent of the TCAP funds within 2 years of the enactment of ARRA (i.e., by February 16, 2011). Grantees must expend 100 percent of their funds within 3 years of the enactment of ARRA (i.e., by February 16, 2012). A TCAP Funding Commitment is recorded on the date of execution of the Written Agreement between the grantee and project owner that provides TCAP assistance to a project (ARRA, 123 Stat. 220).

L. Reporting

1. Financial Reporting – Not Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

1. Drawdowns of TCAP Funds

Compliance Requirement – The Integrated Disbursement and Information System (*OMB No. 2506-0181*) is used both to collect information on compliance with program requirements and to disburse TCAP funds. Grantees are required to have different staffs setting up projects and drawing down funds. Grantees must maintain payment certifications each time a drawdown of funds is made (HUD Notice CPD-09-03).

Audit Objective – Determine whether the required separation of duties is maintained over the drawdown of TCAP funds.

Suggested Audit Procedures

a. Verify that the persons setting up projects are not the same as the person drawing down funds.

b. Verify that TCAP payment certification amounts match the amount of disbursements.

2. Asset Management

Compliance Requirement – Grantees must perform asset management functions, or contract for performance of these services at the owner's expense, to ensure compliance with Section 42 of the IRC and with the long term viability of projects funded by TCAP (ARRA, 123 Stat. 221).

Audit Objective – Determine whether the grantee is performing asset management reviews and taking actions to ensure the long term viability of TCAP projects.

Suggested Audit Procedures

a. Review the grantee's asset management system that ensures the long term viability of TCAP projects.

b. For a sample of projects, review records to verify that the grantee is complying with the asset review requirements.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.318 ASSISTED HOUSING STABILITY AND ENERGY AND GREEN RETROFIT INVESTMENTS PROGRAM (RECOVERY ACT FUNDED)

I. PROGRAM OBJECTIVES

The objective of the Assisted Housing Stability and Energy and Green Retrofit Investments Program is to make loans, make grants, and take a variety of other actions to facilitate utility-saving and other green building retrofits, in certain existing HUD-assisted multifamily housing, subject to agreement between HUD and the Owner. The program is also called the Green Retrofit Program for Multifamily Housing (GRP).

II. PROGRAM PROCEDURES

HUD will implement the GRP through the Office of Affordable Housing Preservation (OAHP) using, where appropriate, policy and program approaches developed for the Mark-to-Market Green Initiative, including using existing infrastructure for program management, due diligence, underwriting, closing, and rehabilitation escrow administration. Certain Mark-to-Market participating administrative entities (PAEs) will carry out due diligence, underwriting and negotiation activities, and closing for the GRP pursuant to each PAE's existing portfolio restructuring agreement, as amended.

Upon assignment of an eligible project to a PAE, the PAE will first verify eligibility and confirm that HUD's requirements for GRP participation are met or exceeded. The PAE will then commission, among other appropriate due diligence, a GRP Physical Condition Assessment (GRPCA) that will evaluate the opportunities for green retrofits and green operation. The PAE will also conduct a tenant meeting at the project to gain input from the tenants on energy and water conservation measures, indoor air quality, and other items that benefit the environment generally (all items that may be eligible for funding as Green Retrofits).

Upon completion of due diligence and underwriting, the PAE will discuss its recommended green retrofit plan with the owner. If the Owner accepts the plan, the PAE will present it to HUD for approval. If the plan is approved, the PAE will prepare a Green Retrofit Plan Commitment that it offers to the owner. Green Retrofit Plan Commitments will be executed by HUD subject to availability of funding. Closing must occur within 30 days after HUD executes the Green Retrofit Plan Commitment. Funding will be obligated at the closing of the grant or loan. Funding will go into an escrow account, overseen by HUD, to pay for the agreed upon retrofits.

Source of Governing Requirements

This program is authorized by Section XII of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) and implemented by HUD Notice H-09-02, published on May 13, 2009, with public notice in the *Federal Register* on May 18, 2009 (74 FR 23200).

Availability of Other Program Information

General information about HUD programs is available on the Internet at http://www.hud.gov/funds/index.cfm. Information on this program, including the HUD Notice H-09-02, is available on HUD's ARRA website on the Internet at (http://www.hud.gov/recovery).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

D. Davis-Bacon Act

All construction activities, including those conducted by an owner's employees performing construction work, are subject to the Davis-Bacon Act (Section 1606 of ARRA) (See paragraph IV.I.4 of HUD Notice H-09-02).

H. Period of Availability of Federal Funds

Owners must expend 100 percent of GRP funds within 2 years of the date on which funds became available to them (ARRA, 123 Stat. 223).

I. Procurement and Suspension and Debarment

The ARRA requirement for recipients must use only iron, steel, and manufactured goods produced in the United States in their projects does not apply to this program because it does not fund public works projects (Section 1605 of ARRA).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting – Not Applicable

3. **Special Reporting** – Not Applicable

4. **Section 1512 ARRA Reporting** – Applicable

5. **Subaward Reporting under the Transparency Act –** Not Applicable

IV. OTHER INFORMATION

ARRA gave HUD the authority to waive or specify alternative requirements for some of the statutory and regulatory provisions to facilitate the use of ARRA funds.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.850 PUBLIC AND INDIAN HOUSING

I. PROGRAM OBJECTIVES

The overall objective of the Public and Indian Housing program is to provide and operate cost-effective, decent, safe and affordable dwellings for lower income families through an authorized local Public Housing Agency (PHA).

II. PROGRAM PROCEDURES

Public Housing

Annual contributions are made to PHAs for debt service payments for commitments approved on or prior to September 30, 1986, or direct funding of capital costs (grants) is provided to PHAs for commitments approved after September 30, 1986. In addition, operating subsidy funds are available to achieve and maintain adequate operating and maintenance service and reserve funds. Funds may also be used for the major reconstruction of obsolete existing public housing projects.

PHAs established in accordance with State law are eligible to administer the public housing program. The proposed program must be approved by the local governing body. There are three core occupancy procedures which are described in program regulations and other guidance: (1) determination of eligibility; (2) determination of income and rent; and (3) leasing and continuing occupancy. Eligibility beneficiaries are lower income families, which include citizens or eligible immigrants. "Families" include but are not limited to: (1) a family with or without children; (2) an elderly family (head, spouse, or sole member 62 years or older); (3) near-elderly family (head, spouse, or sole member 50 years old but less than 62 years old); (4) a disabled family; (5) a displaced family; (6) the remaining member of a tenant family; or (7) a single person who is not elderly, near-elderly, displaced, or a person with disabilities.

Operating Fund

Operating Fund requirements are contained in 24 CFR part 990, The Public Housing Operating Fund Program, as revised on September 19, 2005 and October 24, 2005. Guidance on financial management and reporting requirements for public housing authorities under 24 CFR part 990 was published in Notice PIH 2007-9 (April 10, 2007), which included guidance in a Supplement to the Financial Management Handbook, Department of Housing and Urban Development (HUD) Handbook 7475.1, Changes in Financial Management and Reporting for Public Housing Agencies Under the New Operating Fund Rule. For fiscal years beginning July 1, 2007 and later, PHAs are required to manage properties according to an Asset Management Model, consistent with the management norms in the broader multi-family management industry. PHAs also must implement project-based management, budgeting, and accounting, which are essential components of asset management. Under asset management rules, PHAs are required to provide project-specific data through the Financial Data Schedule (FDS).

PHAs that own and operate 250 or more dwelling rental units must establish a central office cost center (COCC) to account for non-project specific costs. The COCC must charge each project using a fee-for-service approach. Each project shall be charged for the actual services received and only to the extent that such amounts are reasonable. Fee reasonableness will be monitored as a compliance requirement after the first year of asset management. The asset management fee and transfers of funds between projects (project fungibility) will be limited to the restrictions made on excess cash. Excess cash will also be monitored as a compliance requirement after the first year of asset management.

The assistance is made available from the Operating Fund through the annual contributions contract (ACC). The ACC is a contract prescribed by HUD for loans and contributions, which may be in the form of operating subsidy, whereby HUD agrees to provide financial assistance and the PHA agrees to comply with HUD requirements for the development and operation of its public housing projects (24 CFR section 990.115). Funding is determined by a formula used to calculate the amount of operating subsidy for each PHA. The operating subsidy is equal to the project's Project Expense Level (PEL) plus the Utilities Expense Level (UEL), multiplied by Eligible Unit Months (EUM), plus other formula expenses (add-ons), minus formula income. The methodology and procedures for this calculation are found in 24 CFR part 990.

The operating subsidy calculation is prepared in conjunction with the project's annual operating subsidy worksheet in HUD Form 52723, *Operating Fund Calculation of Operating Subsidy (OMB No. 2577-0029.)* The form is submitted before the beginning of the calendar year (CY) in accordance with the schedule established by HUD.

Essentially, the PEL, which is the non-utility costs for each project, is based on what it would cost a well-managed project of comparable location and characteristics to operate based on such variables as: size of project (number of units); age of property (date of full availability); bedroom mix; building type; occupancy type; location (an indicator of the type of community in which a property is located [location types include rural, city central metropolitan, and non-city central metropolitan (suburban) areas]; neighborhood poverty rate; percentage of households assisted; ownership type (profit, non-profit, or limited dividend); and geographic location.

The resulting PELs are arrived at by application of the formula utilizing these variables. These costs are updated annually based on inflation and changes in the PHA characteristics included in the equation. The UEL is a figure that reflects payment to the PHA for PHA-paid utility costs for each project. The UEL is formula-determined, reflective of actual consumption during the previous four years, recent utility rates, and a factor for inflation.

Performance Reporting

HUD assesses the performance of housing agencies to evaluate their actions in all major areas of management operations and to designate as "troubled" any agency that fails on a widespread basis to provide acceptable housing conditions.

Financial Reporting

In accordance with HUD's Uniform Financial Reporting Standards rule, annually, a PHA is required to submit its financial statement, prepared in accordance with generally accepted accounting principles (GAAP), in the electronic format specified by HUD. The unaudited financial statement is due 2 months after the PHA's fiscal year end and the audited financial statement is due 9 months after its fiscal year end (24 CFR section 5.801). The financial statement must include the financial activities of this program.

Source of Governing Requirements

This program is authorized by the US Housing Act of 1937, as amended (42 USC 1437d(j), 42 USC 1437g, and 42 USC 3535(d)). Implementing regulations are 24 CFR parts 5, 902, 960, 966, and 990.

Availability of Other Program Information

HUD maintains web pages on the Internet (http://www.hud.gov/offices/pih/programs/ph/and http://www.hud.gov/offices/reac/index.cfm) that provide general information about this program.

HUD's Real Estate Assessment Center web site (http://www.hud.gov/offices/reac/library/lib_mo.cfm) includes an *Instruction Guidebook for Completing Public Housing Assessment System Management Operations Certifications Form HUD 50072*.

HUD's Office of Public and Indian Housing maintains a web site (http://www.hud.gov/offices/pih/programs/ph/am/) that provides general information and updates on asset management. This web site also has information on relevant HUD notices and the Supplement to Handbook 7475.1, which was published in Notice PIH 2007-9 (April 10, 2007).

Copies of HUD forms are available at HUDclips at: http://www.hud.gov/offices/adm/hudclips/index.cfm.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a federal program, the auditor should first look to Part 2, Matrix of Compliance requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Chargeable Fees under the Fee-for-Service Approach*

   a. The PHA may charge each project an asset management fee that may be used to fund operations of the central office (24 CFR section 990.280(b)(5)(ii)).

b. In addition to project-specific records, PHAs may establish COCCs to account for non-project specific costs (e.g., human resources, Executive Director's office, etc). Those costs shall be funded from the property-management fees received from each property, and from the asset management fees to the extent these are available (24 CFR section 990.280 (c)).

c. If a PHA chooses to centralize functions under asset management, it must charge each project using a fee-for-service approach. Each project shall be charged for the actual services received and only to the extent that such amounts are reasonable (24 CFR section 990.280 (d)).

d. PHAs that own and operate 250 or more dwelling rental units under Title I of the US Housing Act of 1937, including units managed by a third-party entity (for example, a resident management corporation) but excluding section 8 units, are required to operate using an asset management model consistent with subpart H of 24 CFR part 990 (24 CFR section 990.260(a)). For CYs 2008 through 2011, PHAs that own and operate 400 or fewer public housing units may elect to be exempt from any asset management requirement impose by HUD in connection with the operating fund rule, provided that an agency seeking a discontinuance of a reduction of subsidy under the operating fund formula shall not be exempt from asset management requirements (Section 225 of Title II of the HUD portion of the Consolidated Appropriations Act, 2008 (Pub. L. No. 110-161 and carried forward in all subsequent Appropriations Acts).

e. For PHAs that have established a COCC, HUD has established the following as the fees the COCC can charge projects or programs (See Section 7.1 to the Supplement to HUD Handbook 7475.1):

(1) Property (project) management fee;

(2) Bookkeeping fees;

(3) Fees for centrally provided direct services (front-line expenses);

(4) Asset management fees;

(5) Capital Fund Program management fees; and

(6) Management fees for other programs.

2. *Uses of Excess Cash*

The operating subsidy shall remain fully fungible between ACC projects until the operating subsidy is calculated by HUD at a project level. After the operating subsidy is calculated at a project level, the operating subsidy funds can be

transferred as the PHA determines during the PHA's fiscal year to another ACC project(s) if a project's financial information meets the requirements described in 24 CFR section 990.280. The transfers cannot be more than the amount of excess cash the project generates (24 CFR section 990.205(a)). Excess cash is calculated at the end of the project's prior fiscal year for use, if applicable, in the current fiscal year. At the end of the first year of project-based accounting, excess cash represents the sum of certain current asset accounts less current liabilities. At the end of the second year of project-based accounting and beyond, excess cash represents the sum of certain current asset accounts less current liabilities and less one month worth of operating expenses for the project. HUD has provided guidance on the use of excess cash in Sections 6.1 through 6.6 in the Supplement to HUD Handbook 7475.1. This guidance has been developed using the norms in the broader multi-family management industry (24 CFR section 990.225).

a. Excess cash may be used for the following purposes:

   (1) Retention for future use;

   (2) Transfer to other projects;

   (3) Payment of an asset management fee to the COCC; and

   (4) Other HUD-approved eligible purposes, including, but not limited to–

      (a) Financing costs for the development of new units (to the extent allowed under program requirements),

      (b) Costs of pursuing PHA-wide lawsuits and addressing legal issues incurred prior to asset management that cannot be charged to specific projects or other programs with any degree of accuracy or fairness, and

      (c) Accrued pension liabilities, retirement benefits liabilities, and other "legacy costs" incurred prior to adoption of asset management (24 CFR section 990.280(b)(5)). (Also see Section 6.2 in the Supplement to HUD Handbook 7475.1.)

b. Proceeds from asset disposals of a project – i.e., the sale of a project's maintenance vehicle – are considered to be assets of the projects and not of the COCC. With HUD approval, certain proceeds may be transferred to the COCC but may still be governed by other restrictions (24 CFR section 990.280(b)(5)). (Also see Section 6.3 in the Supplement to HUD Handbook 7475.1.)

c. Excess cash cannot be used for loans or transfers to the COCC except through payment of asset management fees.

3. Uses of Operating Funds

The Operating Fund was established for the purpose of making assistance available to PHAs for the operation and management of public housing. Transfers out of the Operating Fund can only occur in very limited circumstances, such as when PHAs participate in the Moving to Work Demonstration Program authorized by 204(c)(1) of Title II of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321-282. This would preclude PHAs from using operating subsidy funds to provide temporary loans to other programs within the PHA. Timing differences in a pooled cash environment would not be considered as temporary loans. Inter-fund transactions indicate the existence of temporary loans. Inter-fund receivables are recorded on FDS line 144 (Inter program – due from). In particular, inter-fund receivables should be reviewed to determine whether they are satisfied on a timely basis. In addition, FDS lines 10020 (Operating Transfers Out) and 10094 (Transfers Between Programs and Projects – Out) could indicate whether transfers out of the Operating Fund have been made. If PHAs have transferred funding out of the operating fund, proper authorization from HUD should be documented (42 USC 1437g(e)).

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act apply to construction activities for public housing. However, the requirements do not apply to volunteer work where the volunteer does not receive compensation, or is paid expenses, reasonable benefits, or a nominal fee for such services, and is not otherwise employed at any time in construction work (42 USC 1437j(a) and (b)). HUD's Factors of Applicability for these requirements can be found at http://www.hud.gov/offices/olr/olr_foa.cfm.

E. Eligibility

1. Eligibility for Individuals

Most PHAs devise their own application forms that are filled out by the PHA staff during an interview with the tenant. The head of household signs: (a) a certification that the information provided to the PHA is correct; (b) one or more release forms to allow the PHA to get information from third parties; (c) a federally prescribed general release form for employment information; and (d) a privacy notice. Under some circumstances, other members of the family may be required to sign these forms (24 CFR sections 5.212, 5.230, and 5.601 through 5.615).

The PHA must do the following:

a. As a condition of admission or continued occupancy, require the tenant and other family members to provide necessary information,

documentation, and releases for the PHA to verify income eligibility (24 CFR sections 5.230, 5.609, and 960.259).

b. For both family income examinations and reexaminations, obtain and document in the family file third-party verification of: (1) reported family annual income; (2) the value of assets; (3) expenses related to deductions from annual income; and (4) other factors that affect the determination of adjusted income or income-based rent (24 CFR section 960.259).

c. Determine income eligibility and calculate the tenant's rent payment using the documentation from third-party verification in accordance with 24 CFR part 5, subpart F (24 CFR sections 5.601 *et seq*., and 24 CFR sections 960.253, 960.255, and 960.259).

d. Select tenants from the public housing waiting list (see III.N.1, "Special Tests and Provisions – Public Housing Waiting List") (24 CFR sections 960.206 and 960.208).

e. Reexamine family income and composition at least once every 12 months and adjust the tenant rent and housing assistance payment as necessary using the documentation from third-party verification (24 CFR sections 960.253, 960.257, and 960.259).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable.

J. Program Income

For PHAs that convert to asset management (required of PHAs with 250 or more units), any internal fees that the PHA charges to projects or programs (property management fees, asset management fees, etc.) are not considered program income for purposes of 24 CFR part 85 and OMB Circular A-87, provided that the fees charged are reasonable under the criteria established by HUD; however, other State and local restrictions still may apply. Consequently, any reasonable fees earned by the PHA/COCC will be treated as local revenue subject only to the controls and limitations imposed by the PHA's management, Board, or other authorized governing body (24 CFR 85.25; Section 7.2 in the Supplement to HUD Handbook 7475.1).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program*s – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting

HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons* (*OMB No. 2529-0043*) – For each public and Indian housing grant that involves development, operating, or modernization assistance, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a) and 135.90).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 2. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting

a. HUD-50058, *Family Report (OMB No. 2577-0083)* – The PHA is required to submit this form electronically to HUD each time the PHA completes an admission, annual reexamination, interim reexamination, portability move-in, or other change of unit for a family. The PHA must also submit the Family Report when a family ends participation in the program or moves out of the PHA's jurisdiction under portability.

Key Line Items – The following line items contain critical information:

(1) Line 2a – *Type of Action*

(2) Line 2b – *Effective Date of Action*

(3) Line 3b, 3c – *Names*

(4) Line 3e – *Date of Birth*

(5) Line 3n – *Social Security Numbers*

(6) Line 5a – *Unit Address*

(7) Line 5h, 5i – *Unit Inspection Dates*

(8) Line 7i – *Total Annual Income*

(9) Line 13h – *Contract Rent to Owner*

(10) Line 13k or 13x – *Tenant Rent*

(11) Lines 2k and 17a – *Family's Participation in the Family Self Sufficiency (FSS) Program*

(12) Line 17k(2) – *FSS Account Balance*

b. HUD-52723, *Operating Fund Calculation of Operating Subsidy (OMB No. 2577-0029)* – This form is prepared and submitted on a calendar-year basis and is used by HUD to calculate funding for the upcoming calendar year. The form's data is based on historical information. The auditor is not expected to audit the column headed "HUD Modifications." A PHA

may claim and receive operating subsidy only for "eligible" units as defined in 24 CFR section 990.125 in Column B, Eligible Unit Months.

Key Line Items – The following line items contain critical information:

(1) Section 2, Line 15 – *Total Unit Months*

(2) Section 3, Part A, Line 4 – *PEL*

(3) Section 3, Part A, Line 6 – *UEL*

(4) Section 3, Part A, Line 16 – *Total Add-Ons*

(5) Section 3, Part B, Line 4 – *Total Formula Income*

c. HUD 52722, Operating Fund *Calculation of Allowable Utilities Expense Level (OMB No. 2577-0029)* – PHAs must prepare a separate form HUD-52722 for each of their projects. Operating expenses must be calculated on a project-specific basis, and the calculation must exclude any utility consumption for the COCC (24 CFR section 990.280(b)(4)).

Key Line Items – The following line item contains critical information:

(1) Line 1, *Actual consumption (12-month period 7/1/_ to 6/30/_)*

(2) Line 2, *Rolling base year 1- actual consumption*

(3) Line 3, *Rolling base year 2- actual consumption*

(4) Line 4, *Rolling base year 3- actual consumption*

(5) Line 15, *Payable consumption*

(6) Line 16, *Actual utility costs*

(7) Line 26, *Utilities Expense Level – PUM*

4, Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

1. Public Housing Waiting List

Compliance Requirement – The PHA must establish and adopt written policies for admission of tenants. The PHA tenant selection policies must include requirements for applications and waiting lists, description of the policies for selection of applicants from

the waiting lists, and policies for verification and documentation of information relevant to acceptance or rejections of an applicant (24 CFR sections 960.202 through 960.206).

Audit Objective – Determine whether the PHA is following its own tenant selection policies in placing applicants on the waiting list in selecting applicants from the waiting list to become tenants.

Suggested Audit Procedures

a. Review the PHA's tenant selection policies.

b. Test a sample of applicants added to the waiting list and ascertain if the PHA's tenant selection policies were followed in placing applicants on the waiting list.

c. Test a sample of new tenants to ascertain if they were selected from the waiting list in accordance with the PHA's tenant selection policies.

2. Tenant Participation Funds

Compliance Requirement – When tenant participation funds are provided to a PHA, the PHA must provide those funds to duly elected resident councils. Funding provided by a PHA to a duly elected resident council may be made only under a written agreement between the PHA and the resident council that includes a resident council budget. PHAs are permitted to fund $25 per unit per year for units represented by duly elected resident councils for resident services. Of this $25, $15 per unit per year is provided to fund tenant participation activities. The agreement must require the local resident council to account to the PHA for the use of the funds and permit the PHA to inspect and audit the resident council's financial records related to the agreement (24 CFR section 964.150).

Audit Objective – Determine whether the PHA has properly allocated tenant participation funds to resident councils and has determined that resident councils' expenditures are adequately documented.

Suggested Audit Procedures

a. Review PHA project agreements and records to determine if funding provided for tenant participation has been allocated to resident councils in accordance with a written agreement.

b. Test a sample of the expenditures and supporting documentation reported to the PHA to determine if resident council expenditures are consistent with the resident council budget.

c. Review PHA policies and procedures to determine if adequate controls are in place to account for tenant participation funds.

3. Project-Based Budgeting and Accounting

Compliance Requirement – PHAs implementing asset management shall develop and maintain a system of budgeting and accounting for each project in a manner that allows for analysis of actual revenues and expenses associated with each property (24 CFR section 990.280(a)).

Financial information to be budgeted and accounted for at a project level shall include all data needed to complete a project-based FDS in accordance with GAAP, including revenues, expenses, assets, liabilities, and equity data (24 CFR section 990.280(b)(1)).

Audit Objective – Determine whether each PHA has implemented project-based budgeting and accounting.

Suggested Audit Procedures

a. Obtain the PHA's budget and determine if it is project-based.

b. Review FDS and determine whether each project has its own column on the FDS.

4. Classification of Costs

Compliance Requirement – For PHAs implementing asset management under fee-for-service, costs are classified as either a front-line expense (an expense of the project) or a fee expense (an expense of the management company, i.e., the COCC) (See Table 7.2 and sections 5.2 and 5.3 in the Supplement to HUD Handbook 7475.1 for classifying costs.) (24 CFR section 990.280(d)).

Audit Objective – Determine whether project support costs were properly classified as fee expense or front-line expense.

Suggested Audit Procedures

a. Select a sample of costs charged to the projects and review the classification as either a front-line expense or a fee expense.

b. For any costs selected that contains elements of both front-line expenses and fee expenses, review the documentation of the PHA for the rationale used for the assignment.

5. Balance Sheet Allocations

Compliance Requirement – PHAs implementing asset management using the COCC model must apportion their assets, liabilities, and equities to their projects and COCC at the time of conversion to project-based accounting. Most PHAs have already completed this process; however, a number of PHAs may still be establishing their COCC for the first time. Assets, liabilities, and associated net assets should be assigned to the

applicable project or COCC if a direct relationship exists, including personal and real property. HUD has provided guidance on this subject in Section 4.3 in the Supplement to HUD Handbook 7475.1 and PIH Notice 2008-17, Guidance on Disposition of Excess Equipment and Non-Dwelling Real Property under Asset Management (24 CFR section 990.280(b)(1)).

Audit Objective – Determine if PHAs have apportioned their assets, liabilities, and equity between the projects and COCC.

Suggested Audit Procedures

a. Select a sample of assets, liabilities, and equities.

b. Determine that they were appropriately allocated to projects and COCC.

6. Fees Charged for Centralized Services

Compliance Requirement – In the case where a COCC chooses to centralize functions that directly support a project (e.g., central maintenance), it must charge each project using a fee-for-service approach. Each project must be charged for the actual services received and only to the extent that such amounts are reasonable. Guidance on fee reasonableness for centralized service fees is provided in Section 7.10 in the Supplement to HUD Handbook 7475.1. HUD considers any fees that are within HUD guidance to be reasonable. PHAs are requested to consult with HUD regarding any fees that depart from HUD guidance and HUD will provide its view on the reasonableness of the fees. Any fees above the HUD guidelines that have not been approved by HUD need to be reviewed in detail to determine if the additional costs are justified by local conditions or other factors (24 CFR section 990.280(d)).

Audit Objective – Determine whether the fees charged by the COCC to the project for centralized maintenance and inspections are reasonable.

Suggested Audit Procedures

a. Select a sample of fees charged by the COCC to a project for centralized services for maintenance and inspections.

b. Determine if the fees comply with fee reasonable guidelines set by HUD.

c. For any fees that do not meet the reasonableness guidelines, review the documentation maintained by the PHA to determine if the fees were approved by HUD or are reasonable.

7. Asset Management Fee

Compliance Requirement – The COCC may charge a reasonable asset management fee to projects to fund the operations of the central office. HUD will generally consider an asset management fee charged to each project of $10 per unit month (PUM) as reasonable. Guidance on reasonableness standards for asset management fees is provided in Sections 7.4 and 7.6 in the Supplement to HUD Handbook 7475.1. HUD considers any fees that are within HUD guidance to be reasonable. PHAs are requested to consult with HUD regarding any fees that depart from HUD guidance and HUD will provide its view on the reasonableness of the fees. Any fees above the HUD guidelines that have not been approved by HUD need to be reviewed in detail to determine if the additional costs are justified by local conditions or other factors (24 CFR section 990.280(b)(5)(ii)).

Audit Objective – Determine whether the asset management fees charged by the COCC to the projects is reasonable.

Suggested Audit Procedures

a. Select a sample of projects that were charged an asset management fee.

b. Determine if the fees comply with fee reasonable guidelines set by HUD.

c. For any fees that do not meet the reasonableness guidelines, review the documentation maintained by the PHA to determine if the fees were approved by HUD or are reasonable.

8. Management Fees

Compliance Requirement – The COCC may charge reasonable management fees. Management fees may include property management fees, program management fees, and bookkeeping fees**.** Fee reasonableness standards for the property management fee and bookkeeping fee are provided in Sections 7.4 and 7.5 in the Supplement to HUD Handbook 7475.1. HUD considers any fees that are within HUD guidance to be reasonable. PHAs are requested to consult with HUD regarding any fees that depart from HUD guidance and HUD will provide its view on the reasonableness of the fees. Any fees above the HUD guidelines that have not been approved by HUD need to be reviewed in detail to determine if the additional costs are justified by local conditions or other factors (24 CFR section 990.280(b)(4)).

Audit Objective – Determine whether the fees charged by the COCC for management services are reasonable.

Suggested Audit Procedures

a. Select a sample of property management fees and bookkeeping fees charged by the COCC and determine if the fees comply with fee reasonable guidelines set by HUD.

b. For any fees that do not meet the reasonableness guidelines, review the documentation maintained by the PHA to determine if the fees were approved by HUD or are reasonable.

9. **Allocated Overhead**

Compliance Requirement – Under current appropriation language, all PHAs with over 400 public housing units must convert to asset management (Section 225 of Title II of the HUD portion of the Consolidated Appropriations Act, 2008 (Pub. L. No. 110-161) and carried forwarded in all subsequent Acts). All PHAs that were required to convert to asset management were initially required to be in compliance with cost reasonableness by 2009 as provided in Section 1.4 in the Supplement to HUD Handbook 7475.1. Through HUD guidance this was extended to 2011.

PHAs with over 400 public housing units are allowed two reporting models as part of the conversion to asset management – the establishment of a COCC or the allocated overhead method (FDS line 91810). For those PHAs that established a COCC, the reasonableness of the fees charged is tested in the previous Special Tests (6 through 8). For those PHAs that converted to asset management, but are reporting using the allocated overheard method, reasonableness is tested in this section by reviewing the allocated overhead expense account and comparing fees in that account to the fees standards set by HUD in Sections 7.4, 7.5, and 7.6 in the Supplement to HUD Handbook 7475.1 (24 CFR section 990.280(b)(4)).

Audit Objective – Determine whether the amount of allocated overhead charged to projects is reasonable.

Suggested Audit Procedures

a**.** For PHAs using the allocated overhead method, select a sample of projects and review the amount of overhead costs charged through the allocated overhead expense line.

b. Determine if the allocated overhead expense line is reasonable compared to the fee standards allowed by HUD.

10. Funding Central Office with Capital Fund Program Funds

Compliance Requirement –The Capital Fund was established for the purpose of making assistance available to PHAs to carry out capital and management activities (42 USC 1437g(d)). Project-based budgeting and accounting will be applied to all programs and revenue sources that support projects under an annual contributions contract (e.g., the Operating Fund, the Capital Fund) (24 CFR section 990.280(a)).

In addition to project-specific records, PHAs may establish COCCs to account for non-project specific costs (e.g., human resources, Executive Director's office). These costs

shall be funded from the management fees received from each property and asset management fees to the extent these are available (24 CFR section 990.280(c)).

If a PHA uses Capital Fund Program (CFP) funds to directly support its central office other than through management fee, the PHA may not record fee revenue, such as management fee, asset management fee, bookkeeping fee and front line service fee, under its COCC. In this case, the PHA should report indirect costs as Allocated Overhead (FDS line 91810) under its projects and programs.

However, a PHA could report fee revenue under its COCC under either of the following circumstances. (These activities are considered by HUD as management or capital activities and, therefore, can be directly supported by use of capital fund in accordance with (42 USC 1437g (d)).)

a. PHAs with assets financed under the Capital Fund Finance Program (CFFP) and allocated to the COCC will record the associated debt at the COCC. (Unlike CFP, the CFFP is not a Federal financial assistance program. The CFFP was created to leverage external financing of capital investments using CFP money as a guarantee. For instance, a PHA needs to repair its building at an estimated cost of $500,000. CFP can provide an annual funding of $100,000 to the PHA. Without outside financing, the PHA would not have enough cash to do the work until 5 years later. The PHA can borrow money from a local bank to make the investment now and promise to repay the bank with future CFP funds. By doing so the PHA enters into the CFFP.) Grant revenues related to payments for principal and interest related to these COCC assets may be recorded directly by the COCC from the program. CFP grants are allowed to service the debt service payments for this COCC debt. Payments from the CFP to pay off COCC debt service payments are not considered part of the CFP management fee (Guidance on this is provided in Section 5.9 in the Supplement to HUD Handbook 7475.1).

b. The costs of developing or modernizing an existing ACC non-dwelling structure under a 20-year Capital Fund Declaration of Trust (both COCC and Project Structure) are an eligible Capital Fund expenditure (Guidance on this is provided in Section 5.7 in the Supplement to HUD Handbook 7475.1).

Audit Objective – When a PHA uses the Capital Fund to directly support its central office other than through management fees, determine whether the PHA (a) uses the funds to pay back CFFP debt or to develop or modernize an existing ACC structure, or (b) reports its indirect cost as Allocated Overhead (FDS line 91810).

Suggested Audit Procedures

a. Ascertain if the Capital Fund is used to directly fund the central office other than through management fees. If not no further action is needed.

b. If so, and if all the funds were used to pay CFFP debt or to develop or modernize an existing ACC structure, no further action is needed.

c. If so, and the money is not used to for paying back CFFP debt or for developing or modernizing an existing ACC structure, verify that no fee revenue was reported under the COCC and all indirect costs were reported as Allocated Overhead in FDS line 91810.

11. Recording of Declarations of Trust Against Public Housing Property

Compliance Requirement – A current Declaration of Trust (DOT), in a form acceptable to HUD, must be recorded against all public housing property owned by PHAs (or private entities for public housing developed under 24 CFR part 941, subpart F) that has been acquired, developed, maintained, or assisted with funds from the US Housing Act of 1937. A DOT is a legal instrument that grants HUD an interest in public housing property. It provides public notice that the property must be operated in accordance with all Federal public housing requirements, including the requirement not to convey or otherwise encumber the property unless expressly authorized by federal law and/or HUD. In PIH Notice 2009-28 (HA), PHAs were asked to ensure that current (unexpired) DOTs were recorded against all of their public housing property within 12 months of the date of PHA's next fiscal year beginning with PHAs with fiscal years commencing on October 1, 2009.

The form of DOT that a PHA should execute depends on the funding from HUD. In most instances, the PHA will record the HUD-52190-A for Development Grant Projects or the HUD-52190-B for Public Housing Modernization Grant Projects (*OMB No. 2577-0270*). For mixed-finance development pursuant to 24 CFR part 941 subpart F, the form of DOT is known as the Declaration of Restrictive Covenants, and HUD has model forms drafted for this purpose. HUD has provided guidance on this requirement and document as part of the mixed-finance development application and approval process. See PIH Notice 2010-44 (HA).

A current DOT would include all improvement and modernization efforts on the project. A DOT naming HUD as an interested party must remain in place for: (1) 40 years for acquired and developed property, beginning on the date on which the project becomes available for occupancy as determined by HUD; (2) 20 years for property modernized or receiving assistance of Capital Funds beginning on the latest date on which modernization is complete or assistance is provided with Capital Funds; and (3) 10 years for property receiving Operating Funds, beginning upon the conclusion of the fiscal year of the PHA for which such amounts were provided. After the expiration of the original DOT for a public housing development, if subsequent assistance was received under the US Housing Act of 1937, PHAs are required to record another, current DOT for the duration of the applicable period (24 CFR sections 941.401, 941.403, 941.610, and 968.210).

PHAs should have a list of all property (including land and non-residential inventory, as well as dwelling units and modernization efforts) that a PHA owns and insures that is maintained or financed from the public housing Operating Fund or other US Housing Act of 1937 funds. Public housing project development numbers were reorganized in 2008 and new numbers were introduced; however, the current DOTs may continue to reference development numbers in existence prior to 2008, some of which have been put into "terminated" status. Selecting a sample of properties by development number will enable subsequent audits to cover samples of other projects, so that over time all property that should be under ACC contracts is covered. (No development needs to be sampled more frequently than every 5 years.) It is not necessary that all development numbers be referenced in DOTs. Rather, the audit should determine whether all of the property that should have been placed under a DOT has been treated correctly.

Audit Objective – Determine whether DOTs are being recorded properly for public housing.

Suggested Audit Procedures

a. From a list of all property (including land and non-residential inventory as well as dwelling units and modernization efforts) that a PHA owns and insures, select a sample of public housing projects. Selecting a sample of properties by development number will ensure that subsequent audits can select samples of other projects. (No development needs to be sampled more frequently than every 5 years.)

b. Verify that current DOTs have been recorded for the public housing property in the projects.

12. Depository Agreements

Compliance Requirement – PHAs are required to enter into depository agreements with their financial institution using the HUD-51999 (*OMB No. 2577-0270*) or a form required by HUD in the ACC.. The agreements serve as safe guards for Federal funds and provide third-party rights to HUD (Section 9 of the ACC).

Audit Objective – Determine whether the PHA has entered into the required depository agreements.

Suggested Audit Procedures

a. Verify the existence of depository agreements.

b. Verify that the PHA has met the terms of the agreements.

IV. OTHER INFORMATION

The Moving to Work (MTW) demonstration program (CFDA 14.881) allows selected PHAs the flexibility to design and test various approaches to providing and administering housing assistance consistent with the MTW Agreement executed by the PHA and HUD. An MTW agency may combine funds from the following three programs:

Section 8 Housing Choice Vouchers (CDFA 14.871);
Public Housing Capital Fund (CFDA 14.872); and
Public and Indian Housing (CFDA 14.850).

If a PHA is operating under an MTW Agreement, the auditor should look to the MTW Agreement to determine which funds are included in the MTW Agreement. If Public Housing funds are transferred out of Public Housing, pursuant to an MTW Agreement, they are subject to the requirements of the MTW Agreement and should not be included in the audit universe and total expenditures for Public Housing when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amounts transferred out should not be shown as Public Housing expenditures but should be shown as expenditures for the MTW Demonstration program. Also, if other program funds are transferred into the Public Housing account pursuant to an MTW Agreement, all of the Public Housing funds would then be considered MTW funds.

If the MTW agency does not transfer all the funds from Public Housing into the MTW account or another program, those funds would be considered, and audited, under Public Housing.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.862 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
CFDA 14.886 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (RECOVERY ACT FUNDED)

I. PROGRAM OBJECTIVES

The primary objective of the Indian Community Development Block Grant (CDBG) programs is the development of viable Indian and Alaskan Native communities, including decent housing, a suitable living environment, and expanded economic opportunities, principally for persons of low- and moderate-income. Indian CDBG assistance may not be used to reduce substantially the amount of local financial support for community development activities below the level of support prior to the availability of the assistance (24 CFR section 1003.2). **In addition, the objectives of the Indian CDBG (Recovery Act Funded) program are to reduce greenhouse gas emission, decrease consumer energy costs, increase the quality and longevity of Native American housing stock, unlock private lending, and create or preserve jobs.**

II. PROGRAM PROCEDURES

Two types of grants are eligible under the Indian CDBG program. Single-purpose grants provide funds for one or more single purpose projects which consist of an activity or set of activities designed to meet a specific community development need. This type of grant is awarded through competition with other single-purpose projects. Imminent threat grants alleviate an imminent threat to public health or safety that requires immediate resolution. This type of grant is awarded only after a HUD area office determines that such conditions exist and that funds are available for such grants (24 CFR section 1003.100).

For the Indian CDBG (Recovery Act Funded), only single-purpose grants are awarded through competition with other single-purpose projects. These grants will be awarded only to entities that received Indian CDBG funds in Fiscal Year 2008.

Source of Governing Requirements

The Indian CDBG (Recovery Act Funded) is authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5). Implementing regulations are published at 24 CFR part 1003.

Availability of Other Program Information

Additional information about the Indian CDBG program is available on the Internet at http://www.hud.gov/offices/pih/ih/grants/icdbg.cfm. **Additional information about the Indian CDBG (Recovery Act Funded) program is available on the Internet at http://www.hud.gov/recovery.**

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Indian CDBG* – Funds (including program income generated by activities carried out with grant funds) may only be used for the following activities: (1) the acquisition of real property; (2) the acquisition, construction, reconstruction, or installation of public works, facilities, and site, or other improvements; (3) code enforcement in deteriorated or deteriorating areas; (4) clearance, demolition, removal, and rehabilitation of buildings and improvements; (5) special projects for removal of material and architectural barriers that restrict accessibility by elderly and handicapped individuals; (6) payments to housing owners for losses of rental income incurred in temporarily holding housing for the relocated; (7) disposition of real property acquired under this program; (8) provision of public services (subject to limitations contained in regulations and to certain HUD determinations); (9) payment of the non-Federal share for a grant program that is part of the assisted activities; (10) payment to complete a Title 1 Federal Urban Renewal project; (11) relocation assistance; (12) planning activities; (13) administrative costs; (14) acquisition, construction, reconstruction, rehabilitation, or installation of commercial or industrial buildings; (15) assistance to community-based development organizations; (16) activities related to energy use; (17) assistance to private, for-profit business, when appropriate to carry out an economic development project; (18) substantial reconstruction of housing owned and occupied by low- and moderate-income persons (subject to certain HUD determinations); (19) direct assistance to facilitate and expand homeownership; (20) technical assistance to public or private entities for capacity building (exempt from planning/administration cap); (21) housing counseling and housing activity delivery costs under Indian CDBG and Indian HOME; (22) assistance to colleges and universities to carry out eligible activities; and (23) assistance to public and private entities (including for-profits) to assist micro-enterprises (24 CFR sections 1003.201 through 1003.206).

2. ***Indian CDBG (Recovery Act Funded)* – Funds (including program income generated by activities carried out with grant funds) may be used for the following activities: (1) construction of new housing; (2) rehabilitation of existing housing; (3) acquisition of land to support new housing and public facilities; (3) direct assistance to low- and moderate-income households to facilitate homeownership; (4) construction of tribal and other facilities for single or multiple use, construction of streets, and construction of other public facilities; and (5) economic development projects (see Notice of**

Funding Availability (NOFA), published in the Federal Register on June 1, 2009 (74 FR 26253)) (ARRA, 123 Stat. 217 through 220).

F. Equipment and Real Property Management

1. For equipment purchased with Indian CDBG funds, including ARRA funds, the requirements of 24 CFR section 85.32 apply with the exception that when the equipment is sold, the proceeds are considered program income (24 CFR section 1003.501(a)(9)).

2. Generally, when real property that was acquired or improved using Indian CDBG program funds, including ARRA funds, in excess of $25,000 is disposed of, the Indian CDBG program or Indian CBDG (Recovery Act Funded) must be reimbursed for its fair share of the current market value of the property. If disposition occurs after program closeout, the proceeds shall be used for allowable activities and meeting the primary objective of the program (24 CFR section 1003.504).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2. Level of Effort – Not Applicable

3. Earmarking

a. To be eligible under either Indian CDBG program, a single-purpose grant activity must benefit low- and moderate-income persons. To meet this requirement, not less than 70 percent of the funds of each single-purpose grant must be used for activities that benefit low-and moderate-income persons under the criteria set forth in 24 CFR sections 1003.208(a), (b), (c), or (d). In determining the percentage of funds used for such activities, the provisions of 24 CFR section 1003.208(e)(4) apply.

b. No more that 20 percent of the total grant plus program income received during a program year may be obligated during that year for activities that qualify as planning and administration pursuant to 24 CFR sections 1003.205 and 1003.206 (24 CFR section 1003.206). Technical assistance costs associated with developing the capacity to undertake a specific funded program activity are not considered administrative costs and are not included in the 20 percent limitation on planning and administration costs (24 CFR section 1003.206).

c. Public service activities may comprise no more than 15 percent of the total grant award 24 CFR section 1003.201(e).

H. Period of Availability of Federal Funds

For the Indian CDBG (Recovery Act Funded), grantees must obligate 100 percent of the funds by September 30, 2010, and Implementation Schedules (form HUD 4125 (OMB No. 2577-0191) cannot exceed September 30, 2012 (see Notice of Funding Availability, published in the Federal Register on June 1, 2009 (74 FR 26253).

I. Procurement and Suspension and Debarment

Indian CDBG (Recovery Act Funded) recipients are exempt from the ARRA requirements to use only iron, steel, and manufactured goods produced in the United States in their projects (Section 1605 of ARRA).

J. Program Income

Program income received before grant closeout may be retained by the non-Federal entity if the income is treated as additional Indian CDBG (or **Indian CDBG (Recovery Act Funded))** funds subject to all the applicable requirements governing the use of Indian CDBG **or Indian CDBG (Recovery Act Funded) funds**. However, as noted in 24 CFR section 1003.503(b)(4), program income does not include the first $25,000 in program income received by the grantee and all of its subrecipients in any single year if the total amount of such income does not exceed $25,000 (24 CFR section 1003.503).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting

HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons* (*OMB No. 2529-0043*) – For each Indian CBDG that involves development, operating, or modernization assistance, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a), 135.5 and 135.90).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 2. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting – Not Applicable

4. **Section 1512 ARRA Reporting** – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds only

M. Subrecipient Monitoring

Before disbursing any Indian CDBG **or Indian CDBG (Recovery Act Funded)** funds to a subrecipient, the recipient shall sign a written agreement with the subrecipient. The agreement shall include provisions concerning: the statement of work, records and reports, program income, uniform administrative requirements, and reversion of assets (24 CFR section 1003.502).

N. Special Tests and Provisions

1. Environmental Assessments

Compliance Requirement – An environmental assessment must be prepared for a project unless the grantee determined that it met a criterion specified in the regulations that would exempt or exclude it from Request for Release of Funds (RROF) and

environmental certification requirements (24 CFR sections 58.34 and 58.35). Exempt activities do not require an environmental review; activities which are potential exclusions require an environmental review to determine if an exclusion is applicable. If not applicable, an assessment must be done (24 CFR section 1003.605).

Audit Objective – Determine whether the required environmental reviews are being performed.

Suggested Audit Procedures

a. Select a sample of projects for which expenditures were made and verify that environmental certifications exist.

b. Ascertain that the certifications were supported by an environmental assessment.

c. For any project where an environmental assessment was not performed, ascertain that a written determination was made that the assessment was not required.

d. Ascertain whether documentation exists that any determination not to do an environmental assessment was made consistent with the criteria contained in 24 CFR sections 58.34 and 58.35.

2. Release of Funds

Compliance Requirement – Indian CDBG funds **or Indian CDBG (Recovery Act Funded)** (and local funds to be repaid with Indian CDBG funds) cannot be obligated or expended before receipt of HUD's approval of a RROF and environmental certification, except for exempt activities under 24 CFR section 58.34 or activities found to be categorically excluded under 24 CFR section 58.35 (24 CFR sections 58.22, 58.33 through 35, and 1003.605).

Audit Objective – Determine whether funds were obligated or expended before HUD's approval of the RROF and environmental certification.

Suggested Audit Procedures

a. Examine HUD's approval of the RROF and environmental certification and note receipt dates.

b. Review the expenditure and related records and determine the dates the funds were obligated or expended.

c. Determine that funds, including other than Indian CDBG funds that were subsequently reimbursed by Indian CDBG funds, **or Indian CDBG (Recovery Act Funded**), were obligated or expended subsequent to RROF and environmental certification approval by HUD.

IV. OTHER INFORMATION

For Indian CDBG (Recovery Act Funded) funds, ARRA gave HUD the authority to waive or specify alternative requirements for some of the Indian CDBG statutory and regulatory provisions to facilitate the use of Indian CDBG (Recovery Act Funded) funds. Waivers of some or all of the following requirements have been approved for applications submitted pursuant to the Indian CDBG (Recovery Act Funded) NOFA: Housing Rehabilitation Standards; New Housing Construction Standards; Available Housing Stock; Economic Development Analysis; and Citizen Participation Requirements. Applicants are to include in their application which waivers, if any, they will use.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.866 DEMOLITION AND REVITALIZATION OF SEVERELY DISTRESSED PUBLIC HOUSING (HOPE VI)

I. PROGRAM OBJECTIVES

The objective of HOPE VI revitalization grants is to provide assistance to public housing agencies (PHAs) for the purposes of enabling PHAs to improve the living environment for public housing residents of severely distressed public housing projects through (1) demolition, (2) substantial rehabilitation, (3) reconfiguration, and/or (4) replacement of severely distressed units. An additional objective is to revitalize the sites on which severely distressed public housing projects are located and contribute to the improvement of the surrounding neighborhood.

The objective of HOPE VI demolition grants is to enable PHAs to fund the demolition of severely distressed public housing units and relocation of affected residents, and to provide supportive services to relocated residents.

II. PROGRAM PROCEDURES

Notice of Funding Availability

The Department of Housing and Urban Development (HUD) awards demolition and revitalization grants to eligible organizations through a competitive process. The procedure is set out in the Notices of Funding Availability (NOFAs) for the applicable fiscal year (FY). The NOFA establishes the eligibility requirements for PHAs to apply for a HOPE VI grant; the availability of funds; and the requirements and procedures to be followed in filing an application for the applicable FY.

Grant Agreement

The grant agreement (Agreement) establishes grant requirements; the procedures and content for the Revitalization Plan; the time periods for implementation of the grant; the requirements and procedures for grant-supported activities, including development, rehabilitation, homeownership, demolition, disposition, relocation, acquisition, community and supportive services, administrative fees and costs, and amendment to the Revitalization Plan. In addition, the Agreement defines the various development types in a mixed-income development, including replacement units, rental units, homeownership units, and market rate units and their allowed sources of funding, and the HUD regulations governing their development and location.

Development and Mixed-Finance Development

The selection of a development partner and the general administrative requirements are governed by 24 CFR part 85. The detailed steps to be followed in the phase-by-phase development of an all-public housing development are governed by 24 CFR part 941 – Public Housing Development and 24 CFR part 968 – Public Housing Modernization. The detailed steps to be followed in the phase-by-phase development of a mixed-income/mixed-finance development are

governed by the provisions of 24 CFR part 941 subpart F – Public/Private Partnerships for the Mixed-Finance Development of Public Housing.

The components of a mixed-income/mixed-finance development may be public housing units, low-income tax credit and Section 8 units, and privately financed market rate units. All of the components of the mixed-finance development, other than public housing, must be funded from other financial sources. These objectives are accomplished through the PHA forging partnerships with other public agencies, including local governmental agencies, nonprofit organizations, and private businesses to leverage community support and public housing-funded financial sources for the development.

In general, the procedures to be followed for each phase of development, as set out in the Agreement and the Revitalization Plan are as follows. A mixed-finance proposal (Rental Term Sheet) is prepared that describes the development and development partners; number and types of units; sources and uses of funds (F1s) by specific phase (HOPE VI Budget); schedules; any waivers required; loans and operating subsidy payments to the development entity; estimated construction cost; and any other matters pertinent to the development. Upon approval of the Rental Term Sheet, the PHA has the evidentiary documents for the transaction and the Mixed-Finance Amendment to the ACC prepared for review and approval by HUD.

An approval letter is issued by HUD, authorizing the execution of the applicable HUD documents and the recording of the evidentiaries. A copy of the recorded evidentiaries and the HUD documents are forwarded to HUD Headquarters. Upon review and approval, the HOPE VI funds for the phase, as set out in the HOPE VI Budget, and the F1s are placed in Line of Credit Control System to fund the development costs for the phase. Upon completion of construction, and the meeting of the end of the initial operating period and the date of full availability, the agreed-upon Operating Subsidy is provided for the public housing units. Upon completion of all of the phases of development funded by HOPE VI, the grant is closed out in accordance with the provisions of the Agreement.

Moving to Work Demonstration Program

Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. No. 104-134, 110 Stat.1321-281 through 284) established the Moving to Work (MTW) Demonstration Program (CFDA 14.881). The MTW Demonstration Program offers PHAs the opportunity to design and test innovative, locally-designed housing and self-sufficiency strategies for low, very-low, and extremely low-income families by allowing exemptions from existing public housing and tenant-based Housing Choice Voucher (HCV) rules and permitting PHAs to combine operating, capital, and tenant-based assistance funds into a single agency-wide funding source, as approved by HUD. HOPE VI funds cannot be included as part of that funding source, however the MTW funds can be utilized as part of HOPE VI development activity. If a PHA is operating under an MTW Agreement, the auditor should look to the MTW Agreement to determine any differences from the requirements identified in this program supplement.

Source of Governing Requirements

The program authority for the HOPE VI program is 42 USC 1437v, as amended by section 402 of the HOPE VI Program Reauthorization and Small Community Mainstreet Rejuvenation and Housing Act of 2003 (Pub. L. No. 108-186, approved December 16, 2003). The regulations governing mixed-financing are contained in 24 CFR part 941, subpart F.

Availability of Other Program Information

No program-specific regulations have been published. Each grant is subject to the terms of its Agreement, which is signed by the grantee and HUD. HUD posts guidance on the HOPE VI program on its Home Page (http://www.hud.gov/hopevi), which provides information on timelines, budgets, financial instructions, and other program guidance. HUD also publishes a *Mixed-Finance Guidebook* that is available to the public by calling 1-800-955-2232. Information regarding the financial reporting requirements of the PHAs is provided by HUD on the Real Estate Assessment Center (REAC) home pages (http://www.hud.gov/offices/reac/products/fass/pha_doc.cfm and http://www.hud.gov/offices/reac/library/lib_fapha.cfm).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. HOPE VI revitalization grant funds may be used to fund the revitalization of severely distressed public housing developments (42 USC 1437v(d)). Such activities include:

    a. The demolition of severely distressed public housing developments or portions thereof (42 USC 1437v(d)(1)(C)),

    b. Relocation costs for affected residents (42 USC 1437v(d)(1)(F) and (J)),

    c. Disposition activities (42 USC 1437v(d)(1)(C))

    d. Rehabilitation of existing public housing units and/or community facilities (42 USC 1437v(d)(1)(B)),

    e. Development of new public housing units and community facilities (42 USC 1437v(d)(1)(I)),

    f. Homeownership activities (42 USC 1437v(d)(1)(G)),

g. Acquisition and disposition activities (42 USC 1437v(d)(1)(B),(C) and (J)),

h. Economic development activities (42 USC 1437v(d)(1)(G)),

i. Leveraging of resources (42 USC 1437v(d)(1)(I)),

j. Necessary management improvements (42 USC 1437v(d)(1)(H)),

k. Administrative and consulting costs (42 USC 1437v(d)(1)(D) and (E)),and

l. Community and supportive services (42 USC 1437v(d)(1)(G)) .

2. HOPE VI demolition grant funds may be used to fund the demolition of dwelling units and non-dwelling structures, relocation of affected residents, site restoration, as appropriate, and reasonable administrative costs (42 USC 1437v(d)).

3. The components of mixed-finance development, other than public housing, may not be financed with public housing funds (42 USC 1437v(d)).

D. Davis-Bacon Act

HOPE VI projects developed in accordance with 24 CFR part 941 – Public Housing Development and 24 CFR part 968 – Public Housing Modernization that contain only public housing replacement units, and HOPE VI mixed-finance projects developed in accordance with 24 CFR part 941 subpart F – Public/Private Partnerships for the Mixed-Finance Development of Public Housing where the development entity has been procured by the PHA in accordance with 24 CFR part 85 are subject to the provisions of the Davis Bacon Act (42 USC1437j(a) and (b), 24 CFR sections 941.208 and 941.610(a)(8)(vi)).

G. Matching, Level of Effort, Earmarking

1. Matching

Grantees must provide a five percent (5%) overall match, and if more than five percent (5%) of the grant is used for community and supportive services, any amount over five percent (5%) must be matched (42 USC 1437v(c)).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

f. *Financial Reports (OMB No. 2535-0107)* – Financial Assessment Subsystem, FASS-PHA. 24 CFR part 902 – Public Housing Assessment System (PHAS) Subpart C-Phase Indicator #2 Financial Condition requires the PHA to provide reports on an annual basis. The report requires an assessment on a PHA entity-wide basis, which allows for the oversight of all individual grants and subsidy programs and provides HUD access to any factors it determines are appropriate (42 USC 1437d(j)(1)(K). Financial reporting requirements in 24 CFR section 902.33(a)(2) provide that the information be "submitted electronically in the format prescribed by HUD using the Financial Data Schedule (FDS)." 24 CFR section 902.35, "Financial condition scoring and threshold," establishes the procedures to be observed by the PHA.

Key Line Items – The line items under the following headings contain critical information:

(1) Headings for HUD Programs and Business Activities

(a) HOPE VI (Revitalization of Severely Distressed Public Housing)

(b) Component Units (Non-Profit Entities)

(2) Line Items

(a) FDS Line 125 – (Accounts Receivable – Misc)

(b) FDS Line 144 – (Inter-Program – Due From)

(c) FDS Line 171 – (Notes, Loans, & Mortgages Receivable – Non-current)

(d) FDS Line 172 – (Notes, Loans, & Mortgages Receivable – Non-current – Past Due)

(e) FDS Line 174 – (Other Assets)

(f) FDS Line 176 – (Investment in Joint Ventures)

(g) FDS Line 347 – (Inter-Program – Due To)

(h) FDS Line 348 – (Loan Liability – Current)

(i) FDS Line 355 – (Loan Liability – Non-Current)

(j) FDS Line 10010 – (Operating Transfer In)

(k) FDS Line 10020 – (Operating Transfer Out)

(l) FDS Line 10030 – (Operating Transfers From/To Primary Government)

(m) FDS Line 10093 – (Transfers Between Programs and Projects – In)

(n) FDS Line 10094 – (Transfers Between Programs and Projects – Out)

2. Performance Reporting

HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons* (*OMB No. 2529-0043*) – For each public and Indian housing grant that involves development, operating, or modernization assistance, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a) and 135.90).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 1. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

FASS – PHA, Public Housing Assessment System Phase Indicator #2 – Financial Condition, and HUD-50075, PHA Plans

Compliance Requirement – On an annual basis, the PHA must report on the financial condition of the PHA and on the transactions that the PHA is entering into with private and non-profit entities (24 CFR section 902.33). In the FASS-PHA Financial Assessment Sub System, the PHA transactions with non-profit and private development entities are shown under the headings for HUD Programs and Business Activities for HOPE VI (Revitalization of Severely Distressed Housing) and the Component Units (Non-Profit Affiliates). Such transactions would be noted in the FDS Line items shown above in Section III.L.1.e(2). The FASS-PHA Financial Report is reviewed and approved or rejected by the REAC.

The PHA is required to report in the PHA Plan, in accordance with HUD 50075 (*OMB No. 2577-0226*) any transactions to be entered into with non-profit and private development entities. The PHA submits the Annual Statement, Component 7, for HOPE VI and Mixed-Finance in Part III of the PHA Plan. The PHA Plan, Implementation Schedule, for each active grant, details the eligible activities to be funded and the budget of estimated sources and uses.

Audit Objective – Determine whether the expenditures set out in the FDS line items that indicate participation by non-profit and private development entities (FDS Line Items 125, 144, and 347) agree with the data reported in the PHA Plan.

Suggested Audit Procedures

a. Review the data in FDS Line Items 125, 144, and 347 to determine the extent of non-profit and private development entities using HOPE VI.

b. Ascertain that the data in the FDS Line Items 125, 144, and 347 are substantially in agreement with the estimated sources and uses reported in the PHA Plan, Implementation Schedule (i.e., expenditures do not exceed the budget by 10 percent).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.867 INDIAN HOUSING BLOCK GRANTS
CFDA 14.882 NATIVE AMERICAN HOUSING BLOCK GRANTS (FORMULA) RECOVERY ACT FUNDED
CFDA 14.887 NATIVE AMERICAN HOUSING BLOCK GRANTS (COMPETITIVE) RECOVERY ACT FUNDED

I. PROGRAM OBJECTIVES

The primary objectives of the Indian Housing Block Grants (IHBG) program **and the Native American Housing Block Grant (NAHBG) programs under the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5)** are: (1) to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments on Indian reservations and in other Indian areas for occupancy by low-income Indian families; (2) to coordinate activities to provide housing for Indian tribes and their members and to promote self-sufficiency of Indian tribes and their members; and (3) to plan for and integrate infrastructure resources for Indian tribes with housing development for Indian tribes (24 CFR section 1000.4).

II. PROGRAM PROCEDURES

The IHBG program is formula driven, based on factors that reflect the need of the Indian tribes and the Indian areas of the tribes for assistance for affordable housing activities. To access funds, Indian tribal governments (or tribally designated housing entities (TDHEs)) must submit an Indian Housing Plan (IHP) to the Department of Housing and Urban Development (HUD), and HUD must find that the IHP meets the requirements of Section 102 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). IHBG funds awarded to a recipient may only be used for affordable housing activities that are consistent with its IHP (24 CFR section 1000.6).

Funds under the NAHBG (Formula) program are distributed according to the same funding formula that was used to allocate IHBG funds in Fiscal Year (FY) 2008. To access funds, Indian tribal governments (or TDHEs) must submit an IHP amendment to their FY 2008 IHP to HUD, and HUD must find that the IHP meets the requirements of Section 102 of NAHASDA and ARRA. If a tribe/TDHE did not receive IHBG funds in FY 2008 and received a waiver to receive NAHBG funds, the entity must submit an IHP to receive ARRA funds. NAHBG funds awarded to a recipient may only be used for affordable housing activities that are consistent with its IHP (24 CFR section 1000.6 and ARRA).

Funds under the NAHBG (Competitive) program are awarded through competition with other Tribes or TDHEs across the country. Applications will be reviewed, rated, and awarded as received. The rating factors are: (1) capacity of the applicant, (2) soundness of approach, (3) project readiness, and (4) ARRA priorities.

Source of Governing Requirements

These programs are authorized by NAHASDA, codified at 25 USC 4101 through 4212 and ARRA. Implementing regulations are in 24 CFR part 1000.

Availability of Other Program Information

Additional information about the IHBG program is available on the Internet at http://www.hud.gov/offices/pih/ih/grants/ihbg.cfm. **Additional information about the NAHBG programs is available on the Internet at http://www.hud.gov/recovery.**

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *IHBG* – The following activities to develop or to support affordable housing for rental or home ownership, or to provide housing services with respect to affordable housing are allowable with IHBG funds:

    a. *Indian Housing Assistance* – The provision of modernization or operating assistance for housing previously developed or operated pursuant to a contract between the Secretary and an Indian housing authority, including such amounts as may be necessary to provide for the continued maintenance and efficient operation of such housing (25 USC 4132(1) and 4133(b)).

    b. *Development* – The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related activities (25 USC 4132(2)).

    c. *Housing Services* – The provision of housing-related services for affordable housing, such as housing counseling in connection with rental or home-ownership assistance, establishment and support of resident organizations and resident management corporations, energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in other housing activities assisted pursuant to this section (25 USC 4132(3)).

d. *Housing Management Services* – The provision of management services for affordable housing, including preparation of work specifications; loan processing, inspections; tenant selection; management of tenant-based rental assistance; and management of affordable housing projects (25 USC 4132(4)).

e. *Crime Prevention and Safety Activities* – The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime (25 USC 4132(5)).

f. *Model Activities* – Housing activities under model programs that are designed to carry out the purposes of NAHASDA and are specifically approved by the Secretary as appropriate for such purpose (25 USC 4132(6)).

2. **IHBG and NAHBG –** Unless the conditions specified in 25 USC 4111(d) (regarding tax exemption for real and personal property taxes and user fees) are met, **IHBG and NAHBG** grants funds may not be used for affordable housing activities for rental or lease-purchase dwelling units developed:

a. Under the United States Housing Act of 1937 (42 USC 1437 *et seq*.), or

b. With amounts provided under 25 USC Chapter 43 that are owned by the recipient for the tribe.

3. NAHBG funds (including program income generated by activities carried out with grant funds) may only be used for NAHASDA-eligible activities, including:

a. New construction, acquisition, and rehabilitation of affordable housing, including energy efficiency and conservation;

b. Infrastructure development;

c. Site improvement;

d. Development and rehabilitation of utilities and infrastructure;

e. Utility services;

f. Mold remediation;

g. Investments that leverage private sector funding or financing for renovations;

h. Conversion, demolition, and other financing; and

i. Planning and administration (ARRA, 123 Stat. 215 through 217).

D. Davis-Bacon Act

NAHASDA **and ARRA** impose the Davis-Bacon Act on contracts and agreements for assistance, sale, or lease for payments to laborers and mechanics employed in the development of affordable housing. **However, when using IHBG and NAHBG grant funds,** Indian tribes may determine and apply their own prevailing wage rates in their contracts or agreements for the development and operation of affordable housing in place of federally determined prevailing wage rates.

In general, NAHASDA provides that Davis-Bacon and HUD-determined rates shall not apply to a contract or agreement if the contract or agreement is otherwise covered by a law or regulation adopted by an Indian tribe that provides for the payment of not less than prevailing wages as determined by the tribe. This requires the Indian tribe to pass a tribal law or regulation and ensure that the law requires the payment of not less than those wage rates the tribe determines to be prevailing (Section 104(b) of NAHASDA; 25 USC 4114(b); **Section 1606 of ARRA; Section 1205 of Pub. L. No. 111-32, signed on June 24, 2009*;*** 24 CFR section 1000.16)).

E. Eligibility

1. Eligibility for Individuals

Each recipient shall develop written policies governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under NAHASDA **and ARRA** (25 USC 4133(d)). The following families are eligible for affordable housing activities (25 USC 4131(b)):

a. Low income Indian families on a reservation or Indian area (24 CFR section 1000.104(a)).

b. A non-low income Indian family may receive housing assistance in accordance with 24 CFR section 1000.110, except that non-low income Indian families residing in housing assisted under the Housing Act of 1937 (42 USC 1437 *et seq*.) do not have to meet the requirements of 24 CFR section 1000.110 for continued occupancy (24 CFR section 1000.104(b)).

c. A non-Indian family may receive housing assistance on a reservation or Indian area if the non-Indian family's housing needs cannot be reasonably met without such assistance, and the recipient determines that the presence of that family on the reservation or Indian area is essential to the well-being of Indian families, except that non-Indian families residing in housing assisted under the Housing Act of 1937 do not have to meet these requirements for continued occupancy (24 CFR section 1000.104(c)).

Housing assistance for non-low income Indian families requires HUD approval only as required in 24 CFR sections 1000.108 and 1000.110. Assistance under section 201(b)(3) of NAHASDA for non-Indian families does not require HUD

approval, but only requires that the recipient determine that the presence of that family on the reservation or Indian area is essential to the well-being of Indian families and the non-Indian family's housing needs cannot be reasonably met without such assistance (24 CFR section 1000.106).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2. Level of Effort – Not Applicable

3. Earmarking

a. Up to 10 percent of an annual grant may be used to provide housing assistance to families whose adjusted income (defined at 25 USC 4103(1)) falls within 80 to 100 percent of the median income (defined at 24 CFR section 1000.10). HUD approval is required to exceed this 10 percent cap or to provide assistance to families with incomes in excess of 100 percent of the median income (24 CFR section 1000.110(d)).

b. A recipient may use up to 20 percent of its annual grant for administration and planning. HUD approval must be obtained to exceed this percentage (24 CFR section 1000.238).

H. Period of Federal Availability of Funds

For the NAHBG programs, recipients must obligate 100 percent of their funds within 1 year of the date funds are made available; expend at least 50 percent of such funds within 2 years of the date on which funds became available; and expend 100 percent of such funds within 3 years of such date (ARRA, 123 Stat. 216).

I. Procurement and Suspension and Debarment

For the NAHBG programs, recipients are exempt from the ARRA requirements to use only iron, steel, and manufactured goods produced in the United States in their projects (Section 1605 of ARRA).

J. Program Income

Any program income may be retained by a recipient provided it is used for affordable housing activities, as specified for each program (see III.A above), in accordance with 25 USC 4132. If the amount of income received in a single year by a recipient and all of its

subrecipients, which would otherwise be considered program income, does not exceed $25,000, such funds may be retained but will not be considered to be or be treated as program income (24 CFR section 1000.62).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable (expenditure reporting only)

f. HUD-272-I, *Federal Cash Transactions Report* (*OMB No. 2577-0218*) Applicable

2. Performance Reporting

a. HUD-52735-AS, *Annual Performance Report (OMB No. 2577-0218)* – This report is submitted by paper or electronically via the Internet to the Area Office of Native American Programs (ONAP) within 90 days of the end of the recipient's program year.

Key Line Items – The following items contain critical information:

(1) Part I, Table I – Sources of Funds – column c.

(2) Part I, Table II – Uses of Funds – columns e through i.

(3) Part II, Table III – Inspection of Assisted Housing – columns c through g.

b. HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons* (*OMB No. 2529-0043*) – For each IHBG that involves development, operating, or modernization assistance, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a), 135.5, and 135.90).

Key Line Items –

(1) 3. Dollar Amount of Award

(2) 8. Program Code

(3) Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

(4) Part II, Contracts Awarded, 1. Construction Contracts

(a) A. Total dollar amount of construction contracts awarded on the project

(b) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(c) D. Total number of Section 3 businesses receiving construction contracts

(5) Part II, Contracts Awarded, 2. Non-Construction Contracts

(a) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(b) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(c) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds only

N. Special Tests and Provisions

1. Environmental Review – IHBG and NAHBG

Compliance Requirement – Program regulations provide that a recipient (or beneficiary tribe, if the recipient is a TDHE) may assume responsibilities for environmental review and decision making under the requirements of 24 CFR part 58 or it may allow HUD to retain these responsibilities. If HUD retains the responsibilities, HUD will do reviews under the provisions of 24 CFR part 50 (24 CFR section 1000.20). A HUD environmental review must be completed for any activities not excluded before a

recipient may acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds (24 CFR section 1000.20(a)).

If the recipient or beneficiary tribe assumes these responsibilities, the following applies: an environmental assessment must be prepared for an activity unless the recipient (or beneficiary tribe, if the recipient is a TDHE) determined that the activity met a criterion specified in the regulations that would exempt or exclude it from Request for Release of Funds (RROF) and environmental certification requirements (24 CFR sections 58.34 and 58.35). Exempt activities do not require an environmental review; activities that are potential exclusions require an environmental review to determine if an exclusion is applicable. If not applicable, an assessment must be done. No funds may be committed to a grant activity or project before the completion of the environmental review and approval of the request for release of funds and related certification required by 25 USC 4115(b), except as authorized by 24 CFR section 58, such as for the costs of environmental reviews and other planning and administrative expenses (24 CFR section 1000.20(b)(3)).

Audit Objective – Determine whether (1) the required environmental reviews have been performed and (2) program funds were not obligated or expended prior to completion of the environmental review process.

Suggested Audit Procedures

Select a sample of projects for which expenditures were made and verify that:

a. Environmental certifications were supported by an environmental assessment.

b. For any project where an environmental assessment was not performed, a written determination was made that the assessment was not required and documentation exists to support such determination consistent with the criteria contained in 24 CFR sections 58.34 and 58.35.

c. Funds were not obligated or expended prior to the environmental assessment or a determination that an assessment was not required.

2. Investment of IHBG and NAHBG Funds

Compliance Requirement – A recipient may invest IHBG **and NAHBG** funds for purposes of carrying out IHBG **and NAHBG** activities in investment securities if approved by HUD (24 CFR section 1000.58). Investments may be for a period of time not to exceed two years and only in those accounts or instruments identified in 24 CFR section 1000.58(c). The amount of IHBG **and NAHBG** funds and percentage of those funds which may be invested is restricted by the provisions of 24 CFR section 1000.58(f).

Audit Objective – Determine whether the investment of IHBG **and NAHBG** funds by the recipient meets the requirements of 24 CFR section 1000.58.

Suggested Audit Procedures

If IHBG **or NAHBG** funds have been invested during the audit period:

a. Ascertain that prior written HUD approval had been obtained, and any conditions or restrictions on the approval.

b. Verify that the amount invested is no greater than the allowable percentages of the formula grant amount net of any of this amount allocated for the operating subsidy element of the Formula Current Assisted Stock (FCAS) component of the formula.

c. Verify that the funds were invested only in those allowable accounts or instruments and within any conditions or restriction on the approval.

IV. OTHER INFORMATION

For NAHBG funds, ARRA gave HUD the authority to waive or specify alternative requirements for some of the IHBG statutory and regulatory provisions to facilitate the use of NAHBG funds. Waivers of some or all of the following requirements have been approved in relation to IHPs: Local Cooperation Agreements, and Total Development Costs. Applicants are to submit a letter with the IHP or application (as applicable) identifying which waivers, if any, they will use.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.871 SECTION 8 HOUSING CHOICE VOUCHERS
CFDA 14.880 FAMILY UNIFICATION PROGRAM (FUP)

I. PROGRAM OBJECTIVES

The Housing Choice Voucher Program (HCVP) provides rental assistance to help very low-income families afford decent, safe, and sanitary rental housing. The Family Unification Program (FUP) vouchers assist families where children are separated from the family, or under threat of imminent separation, to lease or purchase decent, safe and sanitary housing.

II. PROGRAM PROCEDURES

The HCVP is administered by local public housing agencies (PHAs) authorized under State law to operate housing programs within an area or jurisdiction. The PHA accepts the application for rental assistance, selects the applicant for admission, and issues the selected family a voucher confirming the family's eligibility for assistance. The family must then find and lease a dwelling unit suitable to the family's needs and desires in the private rental market. The PHA pays the owner a portion of the rent (a housing assistance payment (HAP)) on behalf of the family.

The subsidy provided by the HCVP is considered a tenant-based subsidy because when an assisted family moves out of a unit leased under the program, the assistance contract with the owner terminates and the family may move to another unit with continued rental assistance (24 CFR section 982.1).

HUD enters into annual contributions contracts (ACCs) with PHAs under which the Department of Housing and Urban Development (HUD) provides funds to the PHAs to administer the programs locally. The PHAs enter into HAP contracts with private owners who lease their units to assisted families (24 CFR section 982.151).

In the HCVP, the PHA verifies a family's eligibility (including income eligibility) and then issues the family a voucher. The family generally has 60 days to locate a rental unit where the landlord agrees to participate in the program. The PHA determines whether the unit meets housing quality standards (HQS). If the PHA approves a family's unit and determines that the rent is reasonable, the PHA contracts with the owner to make HAPs on behalf of the family (24 CFR section 982.1(a)(2)).

Under the HCVP, apart from the requirement that the rent must be reasonable in relation to rents charged for comparable units in the private unassisted market, there is generally no limit on the amount of rent that an owner may charge for a unit. However, at initial occupancy of any unit where the gross rent exceeds the payment standard, a family may not pay more than 40 percent of adjusted monthly income toward rent and utilities (24 CFR section 982.508).

The voucher subsidy is set based on the difference between the lower of the PHA's applicable payment standard for the family or the gross rent and the total tenant payment (generally 30 percent of the family's monthly adjusted income). This is the maximum amount of subsidy a

family may receive regardless of the rent the owner charges for the unit (24 CFR part 982, subpart K).

If the cost of utilities is not included in the rent to the owner, the PHA uses a schedule of utility allowances to determine the amount an assisted family needs to cover the cost of utilities. The PHA's utility allowance schedule is developed based on utility consumption and rate data for various unit sizes, structure types, and fuel types. The PHA is required to review its utility allowance schedules annually and to adjust them if necessary (24 CFR section 982.517).

The PHA must inspect units leased under the HCVP at the time of initial leasing and at least annually thereafter to ensure they meet HUD housing quality standards (HQS). The PHA must also conduct supervisory quality control HQS inspections (24 CFR sections 982.305 and 982.405).

PHAs must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements. PHAs are required to maintain a HAP contract register or similar record in which to record the PHA's obligation for monthly HAPs. This record must provide information as to: the name and address of the family, the name and address of the owner, dwelling unit size, the beginning date of the lease term, the monthly rent payable to the owner, monthly rent payable by the family to the owner, and the monthly HAP. The record shall also provide data as to the date the family vacates and the number of days the unit is vacant, if any (24 CFR section 982.158).

The Section 8 Management Assessment Program (SEMAP) is HUD's assessment program to annually and remotely measure the performance of PHAs that administer the HCVP. Under SEMAP, PHAs submit an annual certification, Form HUD-52648 (*OMB No. 2577-0215*), to HUD concerning their compliance with program requirements under 14 indicators of performance (24 CFR part 985).

In the HCVP, required program contracts and other forms must be word-for-word in the form prescribed by HUD Headquarters. Any additions to or modifications of required program contracts or other forms must be approved by HUD headquarters (24 CFR section 982.162).

In addition, housing agencies that are contract administrators for this program must comply with the HUD Uniform Financial Reporting Standards rule. Accordingly, PHAs that administer Section 8 tenant-based housing assistance payment programs are required to submit financial statements, prepared in accordance with generally accepted accounting principles (GAAP), in the electronic format specified by HUD. The unaudited financial statement is due 2 months after the PHA's fiscal year end and the audited financial statement is due 9 months after its fiscal year end (24 CFR section 5.801). The financial statement must include the financial activities of this program.

Under a homeownership option of the HCVP implemented in October 2000, a PHA may choose to provide assistance to a qualified first-time homebuyer to subsidize the family's monthly homeownership expenses. The homeownership option is operated by a PHA as a separate sub-

program of the HCVP, which is subject to somewhat different rules (24 CFR sections 982.625 through 982.641).

The Office of Public and Indian Housing (PIH) issued Notice PIH 2006-03 on January 11, 2006 that eliminated the ACC Reserve Account. In addition, for PHAs with fiscal years ending after December 31, 2004, the requirements to submit Form HUD-52681 for the HCVP were rescinded. HUD will instead use HUD-52681-B and the Voucher Management System (VMS) to monitor the PHA's HCVP financial and operational performance. In 2008, HUD published Notice PIH 2008-09, which clarifies the financial reporting requirements and deadlines for those PHAs that administer the HCVP and HCVP-related programs.

In February 2006, the Disaster Voucher Program (DVP) began. DVP, a component of the HCVP, provides temporary voucher assistance to previously HUD-assisted families impacted by Hurricanes Katrina or Rita. The operating guidelines were issued in Notices PIH 2006-12 and 2006-37. The tenant contribution in Section 8(o) of the US Housing Act of 1937 was waived through December 31, 2007 (see PIH Notice 2007-17). Beginning January 1, 2008, families who obtained DVP tenant assistance will be subject to the tenant contributions requirements of HCVP. Funding was provided to PHAs based on information entered into the Public Housing Information Center (PIC) Disaster Information System. PHAs are required to submit HAP and leasing information using HUD-52681-B and the VMS.

Veterans Affairs Supportive Housing

The 2008 Consolidated Appropriations Act (the Act) (Pub. L. No. 110-161, 121 Stat. 2414-2415), enacted December 26, 2007, provided $75 million for the HUD-Veterans Affairs Supportive Housing (HUD-VASH) voucher program as authorized under Section 8(o)(19) of the US Housing Act of 1937 (42 USC 1437f(o)(19)). The VASH program is included in CFDA 14.871. The HUD-VASH program combines HUD HCVP rental assistance for homeless veterans with case management and clinical services provided by the Department of Veterans Affairs at its medical centers and in the community. VASH HCVP program is administered in accordance with regular HCVP requirements (24 CFR part 982). However, Pub. L. No. 110-161 allows HUD to waive or specify alternative requirements for any provision of any statute or regulation that HUD administers in connection with this program in order to effectively deliver and administer HUD-VASH voucher assistance. The HUD-VASH operating requirements (including the waivers and alternative requirements from HCVP rules) were published in the Federal Register on May 6, 2008 (see Notice FR-5213-N-01, 73 FR 25026-25028, Implementation of the HUD-VA Supportive Housing Program). Notice PIH 2008-37 (HA) provides further guidance on the reporting requirements of VASH. The VASH program is included in calculation of total Federal awards expensed under CFDA 14.871; however for FASS-PH reporting, PHAs are to record rental assistance activities under CFDA 14.VSH. Administrative fee-related revenues and expenses should be recorded under the HCVP as CFDA 14.871 on the FDS. PHAs are required to submit family data using HUD-50058 in PIC, and HAP and leasing information using HUD-52681-B and the VMS.

Family Unification Program

The 2008 Consolidated Appropriations Act, provided $20 million dollars for the Family Unification Program (FUP) as authorized under Section 8(o)(19) of the US Housing Act of 1937. The FUP HCVP vouchers are made available to families for whom the lack of adequate housing is a primary factor in the separation, or threat of imminent separation, of children from their families or in the prevention of reunifying the children with their families. Family unification vouchers enable these families to lease or purchase decent, safe and sanitary housing that is affordable in the private-housing market. The FUP HCVP is administered in accordance with regular HCVP requirements (24 CFR parts 982 and 985). However, for FASS-PH reporting, PHAs are to record rental assistance activities under CFDA 14.FUP. Administrative fee related revenues and expenses should be recorded under the HCVP, CFDA 14.871 on the FDS. PHAs are also required to submit family data (HUD-50058) in PIC, and HAP and leasing information using HUD-52681-B and the VMS.

Non-Elderly Disabled

The 2008 Consolidated Appropriations Act also provided separate funding for non-elderly disabled (NED) vouchers, which are administered in accordance with regular HCVP requirements (24 CFR part 982). For this reason, NED is included in calculation of total federal awards expensed under CFDA 14.871; however for FASS-PH reporting, PHAs are to record rental assistance activities under CFDA 14.NED. Administrative fee related revenues and expenses should be recorded under the HCVP, 14.871 on the FDS. PHAs are also required to submit family data (HUD-50058) in PIC, and HAP and leasing information using HUD-52681-B and the VMS.

Disaster Housing Assistance Program

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. No. 110-329) provided $85 million dollars for the issuance of vouchers to Katrina Disaster Housing Assistance Program (DHAP) participating families as authorized under Section 8(o)(19) of the US Housing Act of 1937. PHAs were invited to apply for these vouchers through letters from HUD. The vouchers are known as the DHAP to HCV Voucher and are subject to the provisions found in 24 CFR parts 982 and 985. PHAs are also required to submit family data using HUD-50058 in PIC, and HAP and leasing information using HUD-52681-B and the VMS.

Temporary Housing Unit to Housing Choice Voucher

The Supplemental Appropriations Act for Fiscal Year 2009 (Pub. L. No. 111-32, enacted June 24, 2009) provided $80 million for HCVP funding that will be awarded to PHAs in areas impacted by Hurricanes Katrina and Rita. These are known as the Temporary Housing Unit (THU) to Housing Choice Voucher (HCV) and are subject to the provisions found in 24 CFR parts 982 and 985. PHAs are also required to submit family data using HUD-50058 in PIC, and HAP and leasing information using HUD-52681-B and the VMS.

Source of Governing Requirements

The HCVP regulations are found in 24 CFR parts 5, 982, and 985.

Availability of Other Program Information

Copies of PIH notices can be found on the Internet at http://www.hud.gov/offices/pih/regs/index.cfm. The Supplement to the Financial Management Handbook, Department of Housing and Urban Development Handbook 7475.1, Changes in Financial Management and Reporting for Public Housing Agencies Under the New Operating Fund Rule (Handbook 7475.1), can be found on the Internet at http://www.hud.gov/offices/pih/publications/notices/07/pih2007-9suppl.pdf.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. PHAs may use HCVP funds only for HAPs to participating owners, and for administrative fees (24 CFR sections 982.151 and 982.152).

    a. Accumulated administrative fees from 2003 funding and prior may be used for any housing related purpose. Unspent administrative fees accumulated after January 1, 2005 (i.e., fee from 2004 and later funding, see III.L.1.g(4)(a), "Financial Reporting – Financial Reports") may be used only to support the HCVP. These funds are still considered to be administrative fee reserves, and are subject to all of the requirements applicable to administrative fee reserves including, but not limited to, those in 24 CFR section 982.155. The fees accumulated from 2004 and later funding must be used for activities related to the provision of tenant-based rental assistance authorized under Section 8 of the United States Housing Act of 1937, including related development activities. PHAs must maintain and report balances for both funding sources (see notice PIH 2010-7(HA) dated March 12, 2010) (Division I, Title II, Section (5) of Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 3296 and subsequent appropriations acts; see Section 5 of Notice PIH 2005-01 and notice PIH 2010-7(HA); 24 CFR section 982.155).

    b. The 2005 Appropriations Act and subsequent appropriations acts require that calendar year (CY) HAP funding to be used for CY HAP and later HAP expenses. PHA's HAP equity balance also known as "net restricted assets" provides the balance of the unspent HAP at any given point in time. A negative HAP equity balance at the calendar year end indicates

that the PHA has or will use the next year HAP funding for last year's HAP expense. PHAs are not allowed to use current year HAP to fund HAP liabilities associated with prior years (Division K, Title II of Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 2412; see Section 15 of Notice PIH 2008-15).

c. HAP funding can only be used to support the payment of HAP expenses. Transfers of HAP and administrative fees, even temporarily, to support another program or use are not allowed, and could be considered a breach of the ACC (see III.L.f(3), FDS Transfer Line Items). Such use may result in civil penalties or sanctions (24 CFR section 985.109).

2. PHAs are allowed to recover their indirect costs related to the HCVP through the use of a fee-for-service model in lieu of a cost allocation plan. In order for a PHA to use a fee-for-service model, the PHA must create a central office cost center (COCC) (24 CFR section 990.280(d)). (Also see Section 7.8 of Handbook 7475.1 and Section 2 of Notice PIH 2008-17). HUD has established the following as the fees the COCC can charge for the HCVP:

   a. HCVP management fee, and

   b. Bookkeeping fee.

   HUD is required to publish a notice in the *Federal Register* that reflects the amount that can be claimed by PHAs administering the program. As of September 6, 2006, HUD has determined that, for PHAs that elect to use a fee-for-service methodology for their HCVPs (as allowed under OMB Circular A-87), a management fee of up to 20 percent of the administrative fee or up to $12 per unit month (PUM) per voucher leased, whichever is higher, is reasonable. PHAs also can charge the HCVP a bookkeeping fee of $7.50 PUM (see 71 FR 52710, HUD Notice – Public Housing Operating Fund Program; Guidance on Implementation of Asset Management, September 6, 2006, Section VIII) (42 USC 1437f(q)(1)).

3. The 2005 Appropriations Act and subsequent Acts prohibit the use of appropriated funds by any PHA for "over-leasing." Over-leasing occurs when a PHA has more unit months under a HAP contract for the CY than are available under its ACC baseline, even if the PHA has sufficient Budget Authority to support the additional unit months. Over-leasing is measured on a CY basis. If a PHA engages in over-leasing, it must identify other non-HAP sources to pay for the overleasing. In addition, the 2008 Appropriations Act and subsequent require that administrative fees be based on actual leasing as of the first of the month (Division I, Title II, Section (5) of Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 3295; Division K, Title II, Section (1) of Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 2413; See Section 7 of Notice PIH 2005-01 and Section 6 of Notice PIH 2008-15). PHAs

submit lease information via VMS. (See also III.L.e(1)(a) VMS Units Month Leased Lines).

E. Eligibility

1. Eligibility for Individuals

Most PHAs devise their own application forms that are filled out by the PHA staff during an interview with the tenant.

The head of the household signs: (a) one or more release forms to allow the PHA to obtain information from third parties; (b) a federally prescribed general release form for employment information; and (c) a privacy notice. Under some circumstances, other members of the family are required to sign these forms (24 CFR sections 5.212 and 5.230).

The PHA must do the following:

a. As a condition of admission or continued occupancy, require the tenant and other family members to provide necessary information, documentation, and releases for the PHA to verify income eligibility (24 CFR sections 5.230, 5.609, and 982.516).

b. For both family income examinations and reexaminations, obtain and document in the family file third-party verification of: (1) reported family annual income; (2) the value of assets; (3) expenses related to deductions from annual income; and (4) other factors that affect the determination of adjusted income or income-based rent (24 CFR section 982.516).

c. Determine income eligibility and calculate the tenant's rent payment using the documentation from third-party verification in accordance with 24 CFR part 5 subpart F (24 CFR section 5.601 *et seq*.) (24 CFR sections 982.201, 982.515, and 982.516).

d. Select tenants from the HCVP waiting list (see III.N.1, "Special Tests and Provisions – Selection from the Waiting List") (24 CFR sections 982.202 through 982.207).

e. Reexamine family income and composition at least once every 12 months and adjust the tenant rent and housing assistance payment as necessary using the documentation from third-party verification (24 CFR section 982.516).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. HUD-52681-B, *Voucher for Payment of Annual Contributions and Operating Statement (OMB No. 2577-0169).* The PHA submits this form electronically to HUD via the VMS monthly on the same basis of accounting (full or modified) as the PHA prepares its annual financial submission to HUD through the FASS-PH system. Congress has instructed HUD to use VMS data to determine renewal funding levels. HUD also uses VMS data for other funding, monitoring, and SEMAP-related decisions. HUD relies on the audit of the key line items below to determine the reasonableness of the data submitted for the purposes of calculating funding under the program.

Key Line Items – All of the line items under the categories below contain critical information:

(1) Unit Months Leased

(2) HAP Expenses

(3) All Specific Disaster Voucher Programs

g. *Financial Reports (OMB No. 2535-0107)* – Financial Assessment Sub-system, FASS-PH. The Uniform Financial Reporting Standards (24 CFR section 5.801) require PHAs to submit timely GAAP-based unaudited and audited financial information electronically to HUD. The FASS-PH system is one of HUD's main monitoring and oversight systems for the HCVP.

Key FDS Line Information – The line items under the following headings contain critical information:

(1) FDS Revenue Line Items: The accuracy of these revenue items should be reviewed in conjunction with the participant's annual budget authority, payment schedules, and other reports.

(a) FDS Line 70600-010 – (Housing Assistance Payments)

(b) FDS Line 70600-020 – (Ongoing Administrative Fees Earned)

(c) FDS Line 71100 – (Investment Income – Unrestricted)

(d) FDS Line 72000 – (Investment Income – Restricted)

(2) FDS Expenditure Line Items: The accuracy of these expenditure items should be reviewed in conjunction with Chapter 7 of the Supplement to HUD Handbook 7475.1, revised April 2007, which provides HUD guidance on maximum fees allowed and associated fee expenses.

(a) FDS Line 91300 – (Management Fee)

(b) FDS Line 91310 – (Book-Keeping Fee)

(c) FDS Line 96900 – (Total Operating Expenses)

(d) FDS Line 97300 – (Housing Assistance Payments)

(3) FDS Transfer Line Items: The accuracy of these transfer items should be reviewed in conjunction with supporting documentation and/or HUD approvals. For FDS reporting, cash and investments in a cash pool or working capital account should be reported as such and not reflected as due to/ due from. Amounts reported on these FDS Lines could represent unallowable costs (see III.A.1.).

(a) FDS Line 144 – (Inter Program – Due From)

(b) FDS Line 10020 – (Operating Transfer Out)

(c) FDS Line 10030 – (Operating Transfers From/To Primary Government)

(d) FDS Line 10040 – (Operating Transfer From/To Component Unit)

(e) FDS Line 11040 – (Prior Period Adjustments, Equity Transfers, and Correction of Errors)

(4) FDS Equity Line Items:

(a) FDS Line 11170 – (Administrative Fee Equity)

This line represents the administrative fee equity for the Section 8 HCVP only. Amounts reported in this line should not be commingled with other voucher-related activities as outlined in Section 10 of PIH-Notice 2008-09. It is equal to the beginning administrative fee equity balance plus the total administrative fee revenue minus total administrative expense. Prior to the 2004 funding, administrative fees could be used for any housing related purposes. In the 2004 and later appropriations acts, Congress limited the use of these administrative fees to Section 8 housing-related activities only (see III.A.1.a, "Activities Allowed and Unallowed"). (b) FDS Line 11180 – (Housing Assistance Payments Equity)

This line represents the HAP equity for the HCVP only. Amounts reported in this line should not be commingled with other voucher-related activities as outlined in PIH-Notice 2008-09. It is equal to the beginning HAP equity plus total HAP revenue minus total HAP expense. Current CY appropriated HAP funding cannot be used to fund prior CY HAP deficits. Additionally, such funds may be used only for HCVP rental assistance purposes and may not be transferred, advanced, or loaned to another program (see III.A.1.b, "Activities Allowed or Unallowed").

(c) Recent Office of Inspector General (OIG) reports have noted deficiencies in the reporting of equity balances. Material deficiencies by the entity may require reconciling of prior-year data to establish valid equity balances.

2. Performance Reporting

a. HUD-52648, *SEMAP Certification – Addendum for Reporting Data for Deconcentration Bonus Indicator (OMB No. 2577-0215)* – PHAs with jurisdiction in metropolitan FMR areas have the option of submitting data to HUD with their annual SEMAP certifications on the percent of their tenant-based Section 8 families with children who live in, and who have moved during the PHA fiscal year to, low poverty census tracts in the PHA's principal operating area. Submission of this information with the SEMAP certification makes the PHA eligible for bonus points under SEMAP (24 CFR section 985.3(h)).

Key Line Items – The following line items contain critical information:

(1) Line 1a – *Number of Section 8 families with children assisted by the HA in its principal operating area at the end of the last PHA fiscal year (FY) who live in low poverty census tracts*

(2) Line 1b – *Total Section 8 families with children assisted by the PHA in its principal operating area at the end of the last PHA FY*

(3) Line 1c – *Percent of all Section 8 families with children residing in low poverty census tracts in the PHA's principal operating area at the end of the last PHA FY*

(4) Line 2a – *Percent of all Section 8 families with children residing in low poverty census tracts at the end of the last completed PHA FY*

(5) Line 2b – *Number of Section 8 families with children who moved to low poverty census tracts during the last completed PHA FY*

(6) Line 2c – *Number of Section 8 families with children who moved during the last completed PHA FY*

b. HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons* (*OMB No. 2529-0043*) – For each public and Indian housing grant that involves development, operating, or modernization assistance, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a) and 135.90).

Key Line Items –

(1) 3. Dollar Amount of Award

(2) 8. Program Code

(3) Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

(4) Part II, Contracts Awarded, 1. Construction Contracts

(a) A. Total dollar amount of construction contracts awarded on the project

(b) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(c) D. Total number of Section 3 businesses receiving construction contracts

(5) Part II, Contracts Awarded, 2. Non-Construction Contracts

(a) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(b) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(c) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting

HUD-50058, *Family Report (OMB No. 2577-0083*) – The PHA is required to submit this form electronically to HUD each time the PHA completes an admission, annual reexamination, interim reexamination, portability move-in, or other change of unit for a family. The PHA must also submit the Family Report when a family ends participation in the program or moves out of the PHA's jurisdiction under portability (24 CFR part 908 and 24 CFR section 982.158).

Key Line Items – The following line items contain critical information.

a. Line 2a – *Type of Action*

b. Line 2b – *Effective Date of Action*

c. Line 3b, 3c – *Names*

d. Line 3e – *Date of Birth*

e. Line 3n – *Social Security Numbers*

f. Line 5a – *Unit Address*

g. Line 5h, 5i – *Unit Inspection Dates*

h. Line 7i – *Total Annual Income*

i. Lines 2k and 17a – *Family's Participation in the Family Self Sufficiency (FSS) Program*

j. Line 17k (2) – *FSS Account Balance*

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

1. Selection from the Waiting List

Compliance Requirement – The PHA must have written policies in its HCVP administrative plan for selecting applicants from the waiting list and PHA documentation must show that the PHA follows these policies when selecting applicants for admission from the waiting list. Except as provided in 24 CFR section 982.203 (Special admission (non-waiting list)), all families admitted to the program must be selected from the waiting list. "Selection" from the waiting list generally occurs when the PHA notifies a family whose name reaches the top of the waiting list to come in to verify eligibility for admission (24 CFR sections 5.410, 982.54(d), and 982.201 through 982.207).

Audit Objective – Determine whether the PHA is following its own selection policies in selecting applicants from the waiting list to become participants.

Suggested Audit Procedures

a. Review the PHA's applicant selection policies.

b. Test a sample of new participants admitted to the program to ascertain if they were selected from the waiting list in accordance with the PHA's applicant selection policies.

c. Test a sample of applicant names that reached the top of the waiting list to ascertain if they were admitted to the program or provided the opportunity to be admitted to the program in accordance with the PHA's applicant selection policies.

2. Reasonable Rent

Compliance Requirement – The PHA's administrative plan must state the method used by the PHA to determine that the rent to owner is reasonable in comparison to rent for other comparable unassisted units. The PHA determination must consider unit attributes such as the location, quality, size, unit type, and age of the unit, and any amenities, housing services, maintenance and utilities provided by the owner.

The PHA must determine that the rent to owner is reasonable at the time of initial leasing. Also, the PHA must determine reasonable rent during the term of the contract: (a) before any increase in the rent to owner; and (b) at the HAP contract anniversary if there is a five percent decrease in the published Fair Market Rent (FMR) in effect 60 days before the HAP contract anniversary. The PHA must maintain records to document the basis for the determination that rent to owner is a reasonable rent (initially and during the term of the HAP contract) (24 CFR sections 982.4, 982.54(d)(15), 982.158(f)(7), and 982.507).

Audit Objective – Determine whether the PHA is documenting the determination that the rent to owner is reasonable in accordance with the PHA's administrative plan at initial leasing and during the term of the contract.

Suggested Audit Procedures

a. Review the PHA's method in its administrative plan for determining reasonable rent.

b. Test a sample of leases for newly leased units and ascertain if the PHA has documented the determination of reasonable rent in accordance with the PHA's administrative plan.

c. Test a sample of leases for which the PHA is required to determine reasonable rent during the term of the HAP contract and ascertain if the PHA has documented the determination of reasonable rent in accordance with the PHA's administrative plan.

3. Utility Allowance Schedule

Compliance Requirement – The PHA must maintain an up-to-date utility allowance schedule. The PHA must review utility rate data for each utility category each year and must adjust its utility allowance schedule if there has been a rate change of 10 percent or more for a utility category or fuel type since the last time the utility allowance schedule was revised (24 CFR section 982.517).

Audit Objective – Determine whether the PHA has reviewed utility rate data within the last 12 months and has adjusted its utility allowance schedule if there has been a rate change of 10 percent or more in a utility category or fuel type since the last time the utility allowance schedule was revised.

Suggested Audit Procedures

a. Review PHA procedures for obtaining and reviewing utility rate data each year.

b. Review data on utility rates that the PHA obtained during the last 12 months and ascertain, based on data available at the PHA, if there has been a change of 10 percent or more in a utility rate since the last time the utility allowance schedule was revised, and if so, verify that the PHA revised its utility allowance schedule to reflect the rate increase.

4. Housing Quality Standards Inspections

Compliance Requirement – The PHA must inspect the unit leased to a family at least annually to determine if the unit meets Housing Quality Standards (HQS) and the PHA must conduct quality control re-inspections. The PHA must prepare a unit inspection report (24 CFR sections 982.158(d) and 982.405(b)).

Audit Objective – Determine whether the PHA documented the required annual HQS inspections and quality control re-inspections.

Suggested Audit Procedure

a. Review the PHA's procedures for performing HQS inspections and quality control re-inspections.

b. Test a sample of units for which rental assistance was paid during the fiscal year and review inspection reports to ascertain if the unit was inspected.

c. Review the PHA's reports of re-inspections to ascertain if quality control re-inspections were performed.

5. HQS Enforcement

Compliance Requirement – For units under HAP contract that fail to meet HQS, the PHA must require the owner to correct any life threatening HQS deficiencies within 24 hours after the inspections and all other HQS deficiencies within 30 calendar days or within a specified PHA-approved extension. If the owner does not correct the cited HQS deficiencies within the specified correction period, the PHA must stop (abate) HAPs beginning no later than the first of the month following the specified correction period or must terminate the HAP contract. The owner is not responsible for a breach of HQS as a result of the family's failure to pay for utilities for which the family is responsible under the lease or for tenant damage. For family-caused defects, if the family does not correct the cited HQS deficiencies within the specified correction period, the PHA must take prompt and vigorous action to enforce the family obligations (24 CFR sections 982.158(d) and 982.404).

Audit Objective – Determine whether the PHA documented enforcement of the HQS.

Suggested Audit Procedures

a. Select a sample of units with failed HQS inspections during the audit period from the PHA's logs or records of failed HQS inspections.

b. Verify that the files document that the PHA required correction of any cited life threatening HQS deficiencies within 24 hours of the inspection and of all other HQS deficiencies within 30 calendar days of the inspection or within a PHA-approved extension.

c. If the correction period has ended, verify that the files contain a unit inspection report or evidence of other verification documenting that any PHA-required repairs were completed.

d. Where the file shows that the owner failed to correct the cited HQS deficiencies within the specified time frame, verify that documents in the file show that the PHA properly stopped (abated) HAPs or terminated the HAP contract.

e. Where the file shows that the family failed to correct the cited HQS deficiencies within the specified time frame, verify that documents in the file show that the PHA took action to enforce the family obligations.

6. Housing Assistance Payment (HAP)

Compliance Requirement – The PHA must pay a monthly HAP on behalf of the family that corresponds with the amount on line 12u of the HUD-50058. This HAP amount must be reflected on the HAP contract and HAP register. (24 CFR section 982.158 and 982 subpart K).

Audit Objective – Determine whether owners are receiving, and HUD is billed for, correct HAPs.

Suggested Audit Procedures

a. Review PHAs' quality control procedures for maintaining the HAP register.

b. Verify that HAP contracts or contract amendments agree with the amount recorded on the HAP register and the amount on 12u of the HUD-50058.

7. Operating Transfers and Administrative Fees

Compliance Requirement – The Annual Contributions Contract (ACC) establishes the amounts HUD will provide a PHA for HAP and administrative fees. HAP may not be used to cover administrative expenses nor may HAP (including Net Restricted Assets – HAP (NRA)) be loaned, advanced, or transferred to other component units or other programs such as Public and Indian Housing (CFDA 14.850) (24 CFR sections 982.151 and 982.152).

Audit Objective – Determine whether transfers/advances of HCVP funds were properly conducted and HCVP HAP and administrative fee funding were used appropriately.

Suggested Audit Procedures

a. Selected a sample of transactions related to the following FDS Lines:

144 – Inter Program – Due From

124 – Accounts receivable – other government

125 – Accounts receivable – miscellaneous

10020 – Operating transfers out)

10030 – Operating transfers from/to primary government

10040 – Operating transfer from/to component unit)

11170 – Administrative fee equity

11180 – Housing assistance payment equity.

b. Test for improper transfers or inappropriate use of funds.

8. Depository Agreements

Compliance Requirement – PHAs are required to enter into depository agreements with their financial institutions in the form required by HUD. The agreements serve as safeguards for Federal funds and provide third-party rights to HUD (24 CFR section 982.156).

Audit Objective – Determine whether the PHA has entered into the required depository agreements.

Suggested Audit Procedures

a. Verify the existence of the agreements.

b. Verify that the PHA has met the terms of the agreements.

9. Rolling Forward Equity Balances

Compliance Requirement – PHAs are required to maintain complete and accurate accounts. In addition, the ACC requires PHA to properly account for program activity. Proper accounting requires that (1) account balances are properly maintained, (2) records and accounting transactions support a proper roll-forward of equity and (3) errors are corrected as detected. Several HUD OIG audits reports have noted that PHAs have not been accounting and reporting HAP and Administrative Fee equity accounts properly. This has resulted in several PHAs not being funded correctly and has resulted in OIG findings against HUD and PHAs. If audit testing, account analysis, or third-party (e.g., HUD) information, provides evidence that the current HAP and Administrative Fee equity is not correctly stated, the PHA is required to correct the account balance. Errors affecting these accounts could have begun starting with 2004 or 2005 financial statements (24 CFR section 982.158).

Audit Objective – Determine whether equity balances have been reconciled and rolled forward correctly.

Suggested Audit Procedures

a. If audit testing, account analysis, or third-party (e.g., HUD) information provides evidence that the current HAP and Administrative Fee equity is not correctly stated, verify that the PHA has corrected the account balances.

b. Verify that, like any prior-year correction entry, these accounting transactions were properly made and the account balances for the HAP and Administrative Fee equity accounts were properly corrected.

IV. OTHER INFORMATION

The MTW program (CFDA 14.881) allows selected PHAs the flexibility to design and test various approaches to providing and administering housing assistance consistent with the MTW Agreement executed by the PHA and HUD. An MTW agency may combine funds from the following three programs:

Section 8 Housing Choice Vouchers (CDFA 14.871);
Public Housing Capital Fund (CFDA 14.872); and
Public and Indian Housing (CFDA 14.850).

If a PHA is operating under an MTW Agreement, the auditor should look to the MTW Agreement to determine which funds are included in the MTW Agreement. If HCVP funds are transferred out of HCVP, pursuant to an MTW Agreement, they are subject to the requirements of the MTW Agreement and should not be included in the audit universe and total expenditures for HCVP when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amounts transferred out should not be shown as HCVP expenditures but should be shown as expenditures for the MTW Demonstration program. Also, if other program funds are transferred into the HCVP account, pursuant to an MTW Agreement, all of the HCVP funds would then be considered MTW funds.

If the MTW agency does not transfer all the funds from the HCVP into the MTW account or another of the authorized programs, those funds would be considered, and audited, under the HCVP.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.872 PUBLIC HOUSING CAPITAL FUND (CFP)
CFDA 14.884 PUBLIC HOUSING CAPITAL FUND COMPETITIVE (RECOVERY ACT FUNDED)
CFDA 14.885 PUBLIC HOUSING CAPITAL FUND STIMULUS (FORMULA) RECOVERY ACT FUNDED

I. PROGRAM OBJECTIVES

The primary objective of the Capital Fund Programs (CFP) is to make assistance available to public housing agencies (PHAs) to carry out capital and management improvement activities. The CFP can also be used for: demolition, resident relocation, resident economic development, security, financing costs, and homeownership. The CFP is the major source of funding made available by HUD to PHAs for their capital activities, including modernization and development of public housing.

The objectives of modernization activities are to improve the physical condition of existing public housing developments, including the redesign, reconstruction, addition, and reconfiguration of public housing sites, buildings, facilities and/or related appurtenances or improvements (including accessibility improvements).

The objectives of management improvement activities are to upgrade the operation of PHA developments, sustain physical improvements at those developments, or correct management deficiencies.

The objectives of development activities are to provide PHAs with the opportunity to replace, build, or acquire units to house low-income families, including costs for planning, financing, land acquisition, demolition, and construction.

II. PROGRAM PROCEDURES

CFP grants are made available to all PHAs, based on a complex formula, which takes into account a number of variables related to unit characteristics and, ultimately, multiplies a per-unit amount by the number of units in the PHA. The PHA also receives funding potentially for up to 10 years for units that have been torn down (or otherwise left the inventory). There are two types of grants: formula grants and replacement housing factor (RHF) grants (both determined by formula). PHAs can use formula grants for any eligible Capital Fund activity. RHF grants can only be used for the development of replacement housing units.

In recent years, Congress has set aside anywhere from $17 to $75 million within the Capital Fund account to assist PHAs that have incurred damage to their units as a result of an emergency or natural disaster. PHAs submit an application for this funding. The funding is allocated based on the order in which the Department of Housing and Urban Development (HUD) receives approvable applications.

In recent years, HUD has permitted PHAs to borrow funding secured to a portion of future Capital Fund grants under the Capital Fund Financing Program (CFFP). PHAs have to obtain HUD's permission prior to borrowing funds securitized by any public housing asset (including real property, other PHA owned property purchased with Federal grant funds, and CFP grant funds themselves). HUD reviews each transaction to ensure that PHAs will not be overcommitted to payment of debt service to the detriment of the public housing stock/program, for the reasonableness of the terms of the transaction, and to mitigate risk of default.

In planning its modernization projects, the PHA is required to consult with residents and local government officials. After grant award, the PHA may select an architect or engineer through competitive negotiation to develop the plans and specifications for the construction work. Construction work, as well as management improvements, may be carried out through contract labor (competitively procured) or the PHA's own work force (force account). The PHA or its architect monitors the work in progress for compliance with contract requirements and acceptable work quality, and submits periodic progress reports to HUD.

PHAs develop additional public housing, including mixed-financed housing in accordance with 24 CFR section 941. For development projects, the PHA is responsible for negotiating a local cooperation agreement that establishes what services the locality will provide to the public housing project, for project planning, and for submitting a development proposal (and a site acquisition proposal, if applicable). This includes selecting sites or properties to be acquired, contracting with builders to construct or rehabilitate housing, contracting with developers for the purchase of completed (new or rehabilitated) housing, and purchasing existing housing that may require repairs. In addition, as a developer, the PHA is responsible for selecting and contracting with other parties (e.g., architects and engineers) and for expediting and coordinating the preparation of required HUD submissions.

On an annual basis, the PHA submits a Public Housing Agency Plan *(OMB No. 2577-0226* – Form HUD-50075*)*, based on the PHA fiscal year, to HUD for approval. The Plan includes a component that outlines the CFP activities the PHA plans to undertake with its Capital Fund annual allocation. A 5-year plan identifying anticipated expenditures for large capital items is also included. Prior to submitting the Plan to HUD for review and approval, the PHA must hold a public hearing and provide residents, local government officials, and other interested parties with an opportunity to comment on the proposed activities.

The Small Public Housing Authorities Paperwork Reduction Act in the Housing and Economic Recovery Act of 2008 (HERA) (Section 2702 of Pub. L. No. 110-289, July 30, 2008) has exempted qualified PHAs from the annual plan requirement. A qualified PHA is a PHA that (1) has a combined total of 550 or less public housing units and section 8 vouchers, (2) is not designated under section 6(j)(2) of the US Housing Act of 1937 (42 USC 1437d(j)(2)) in the Public Housing Assessment System (PHAS) as a troubled public housing agency during the prior 12 months, and (3) does not have a failing score under the section 8 Management Assessment Program (SEMAP) during the prior 12 months. HUD provides approval for specific activities through approving the PHA Plan, which includes the PHA's budget for CFP funds (24 CFR section 968.315). On an annual basis, the PHA also provides HUD with its Annual Statement Component 7 of the PHA Plan (Form HUD-50075, *OMB No. 2577-0226*) in accordance with 24

CFR section 968.325(e), which details the eligible activities to be funded with the current year's grant and the estimated costs. A PHA, including a PHA qualified as exempt from submission of the Annual PHA plan, must have an approved 5-year plan to have access to Capital Funds. The funds are limited to a certain number of budget line items (BLIs) until HUD approves the annual Plan. Once HUD approves the annual Plan, it spreads Capital Funds to all of the appropriate BLIs in the Line of Credit Control System (LOCCS) in accordance with the information contained in the PHA Plan. The PHA can then drawdown funds as needed on a 3-day turnaround basis to pay for approved work activities.

In accordance with HUD's Uniform Financial Reporting Standards rule, annually, a PHA is required to submit financial statements, prepared in accordance with generally accepted accounting principles (GAAP), in the electronic format specified by HUD. The unaudited financial statement is due 2 months after the PHA's fiscal year end and the audited financial statement is due 9 months after its fiscal year end (24 CFR section 5.801). The financial statement must include the financial activities of this program.

PHAs file actual modernization cost certificates (AMCC) and actual development cost certificates (ADCC) with the local HUD Field Office when they complete a modernization or development project.

Public Housing Capital Fund Competitive (Recovery Act Funded)

Title XII of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) provided additional funding for projects through the CFP. On May 12, 2009, HUD issued a Notice of Funding Availability (NOFA) in the Federal Register (74 FR 22175) for a competitive program to PHAs for Capital Fund Recovery Competition (CFRC) grants. On June 3, 2009, HUD published on its Recovery Act website a revised CFRC NOFA that made changes, corrections, and clarifications to a number of criteria established in the CFRC NOFA posted on May 7, 2009.

CFRC grants were awarded under the following categories:

Category 1. Improvements Addressing the Needs of the Elderly and/or Persons with Disabilities.

Category 2. Public Housing Transformation.

Category 3. Gap Financing for Projects that are Stalled due to Financing Issues.

Category 4, Option 1. Creation of Energy Efficient Green Communities: Substantial Rehabilitation or New Construction**.**

Category 4, Option 2. Creation of Energy Efficient Green Communities: Moderate Rehabilitation.

Eligible applicants are all public housing agencies. If an applicant PHA has been designated as "troubled," it must meet specific requirements of the NOFA and be approved by HUD, in order to be considered.

As part of the application for Category 1 (all projects) and Category 4 (Moderate Rehabilitation projects only), a PHA must submit an Annual Statement (Form HUD-50075.1, Parts I & II, *OMB No. 2577-0226*) in accordance with 24 CFR section 968.325(e), which details the eligible activities to be funded with the current year's grant and the estimated costs. PHAs applying for grants in Category 2 (all projects), Category 3 (all projects), and Category 4 (Substantial Rehabilitation projects only), are required to submit to HUD a "sources and uses" statement in a form prescribed by HUD. Once grants are awarded, the receiving PHAs will be required to modify their Annual Plans and Capital Fund 5-Year Action Plans to incorporate these new and/or modified work items.

PHAs receiving a grant will be required to sign an Annual Contributions Contract (ACC) Amendment. Additional requirements imposed by ARRA are reflected in the ACC Amendment for these funds, as well as the NOFA issued May 7, 2009 and a revised NOFA issued June 3, 2009. The ACC Amendment is the obligating document. Both NOFAs are available at the HUD ARRA website on the Internet at: http://www.hud.gov/recovery.

Public Housing Capital Fund Stimulus (Formula) (Recovery Act Funded)

HUD obligated this formula grant funding to 3,134 PHAs on March 18, 2009. HUD calculated the formula grant amount for each PHA using the 2008 Capital Fund formula. PHAs can only use these funds on Capital Fund-eligible activities as described under Section 9 of the US Housing Act of 1937, as amended. PHAs must give priority to the rehabilitation of vacant rental units and capital projects that are already underway and require additional funds or are included in the Capital Fund 5-Year Action Plan. Some PHAs may need to revise the 5-Year Action Plan to identify additional work items for the amount of funding being provided. A PHA must have an approved 5-Year Action Plan to have access to formula grants. PHAs receive one grant and have only one ACC Amendment. Additional requirements imposed by ARRA are reflected in that ACC Amendment for these funds and in PIH Notice 2009-12 (HA) which was issued on March 18, 2009.

Source of Governing Requirements

The programs are authorized under 42 USC 1437g and 3535 (d) **and ARRA**. Implementing regulations are 24 CFR parts 905, 941, and 968 subparts A and B. In addition, the CFP is operated in conjunction with the PHA Plan process discussed at 24 CFR part 903.

Availability of Other Program Information

HUD posts guidance on the CFP to its Office of Capital Improvements Home Page (http://www.hud.gov/offices/pih/programs/ph/capfund/index.cfm) that provides grantees with information on timelines, budgets, financial instructions, and other program guidance. Specific

requirements related to the CFFP can be found by clicking on the CFFP link on the left hand side of the Office of Capital Improvements Home Page. Information regarding the financial reporting requirements of the PHAs is provided by HUD on the Real Estate Assessment Center (REAC) website at http://www.hud.gov/offices/reac/products/fass/pha_doc.cfm and http://www.hud.gov/offices/reac/library/lib_fapha.cfm.

Guidance on ARRA programs can be found in PIH Notice 2009-12 (HA) issued March 18, 2009 and Frequently Asked Questions (FAQ's) which can be found on the Capital Fund webpage on the Internet at: http://www.hud.gov/offices/pih/programs/ph/capfund/ocir.cfm.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. For Capital Fund formula grants **(including ARRA funded grants)** and grants from the set-aside for emergencies and natural disasters, allowed Capital Fund activities include the following: developing, financing, or modernizing public housing; vacancy reduction; deferred maintenance; replacement of obsolete utility systems and dwelling equipment; code compliance; management improvements; demolition and replacement; resident relocation; resident economic empowerment/economic self sufficiency; security; and homeownership (42 USC 1437g(d)).

2. For Capital Fund RHF grants, activities are limited to the development of replacement housing (24 CFR section 905.10(i)(5)(ii)).

3. The PHA may not incur any modernization cost in excess of the total HUD-approved PHA Plan which includes the project budget. Budget revisions may be approved by HUD for deviations from the originally approved modernization program. A PHA shall not incur any modernization cost on behalf of any development that is not covered by its current approved 5-year PHA Plan (24 CFR section 968.225).

4. **For ARRA-funded programs, funds cannot be transferred to or used for operations (BLI 1406), such as staff training, resident assistance, or maintenance staff salaries (unless applied to force account work on a capital project), or rental assistance activities (ARRA, 123 Stat 214).**

5. **For ARRA-funded programs, funds can only be substituted for work items in the PHA Annual Plan or the Capital Fund 5-Year Action Plan that are not**

already obligated to an open Capital Fund grant (see HUD Notice PIH 2009-12, Restrictions on Use of Funds).

6. For ARRA-funded programs, Moving to Work agencies are not permitted to combine ARRA funds with their operating or voucher funds (see HUD Notice PIH 2009-12, VIII, Moving to Work Agency Requirements).

D. Davis-Bacon Act

Projects funded with Capital Funds that are developed in accordance with 24 CFR part 941 – Public Housing Development and/or modernized in accordance with 24 CFR part 968 – Public Housing Modernization that contain only public housing units and mixed-finance projects developed in accordance 24 CFR part 941 subpart F – Public/Private Partnerships for the Mixed-Finance Development of Public Housing are subject to the Davis-Bacon Act (42 USC 1437j (a) and (b), 24 CFR section 941.208 and 24 CFR section 941.610 (a)(8)(vi)).

All ARRA funded projects are subject to the Davis-Bacon Act (Section 1606 of ARRA).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2. Level of Effort – Not Applicable

3. Earmarking

a. All Capital Fund administrative expenditures (BLI 1410) are limited to 10 percent of the total grant, excluding any costs related to lead-based paint or asbestos testing (whether conducted by force account employees or by a contractor), in-house architectural/engineering (A/E) work, or other special administrative costs required by State or local law, unless specifically approved by HUD (24 CFR section 968.112(n)(2)(ii)).

b. A PHA may draw up to 0.11 percent of each expenditure reimbursement for administration of the Recovery Act grant. With field office approval, a PHA may draw beyond 0.11 percent of the expenditure if the PHA demonstrates that it has already incurred the administrative expense but the total amount drawn down for administration is capped at 10 percent of the grant (24 CFR section 968.112 (n)(2)(i) and HUD Notice PIH 2010-34 (HA), Section VI, Restrictions on Use of Funds).

c. Management improvements (BLI 1408) cannot exceed 20 percent of the total grant and cannot be used for operations and rental assistance activities such as staff training, resident assistance, security salaries, and maintenance staff salaries unless applied to force account work on a

capital project (24 CFR section 968.112 (n)(2)(i) and HUD Notice PIH 2010-34 (HA), Section VI, Restrictions on Use of Funds).

d. For Capital Fund grants, operations expenditures (BLI 1406) are limited to 20 percent of the total grant amount for large PHAs (250 PH Units or greater); up to 100 percent of the Capital Fund can be expended from operations (BLI 1406) for small PHAs (less than 250 PH Units) (42 USC 1437g(g)).

H. Period of Availability of Federal Funds

For ARRA-funded programs, recipients must obligate 100 percent of their funds within 1 year of the ACC amendment effective date; expend at least 60 percent of such funds within 2 years of the ACC amendment effective date; and expend 100 percent of such funds within 3 years of the ACC amendment effective date (ARRA, 123 Stat. 215).

I. Procurement and Suspension and Debarment

For ARRA funded programs, PHAs were instructed to amend their procurement policy and standards to conform to 24 CFR part 85 or ARRA. However, the PHAs were permitted to leave intact or insert their own procedures provided that they are not contrary to the purposes of 24 CFR part 85 or ARRA (PIH Notice 2009-12 (HA) Section VI, Procurement, subsection 3). For example, PHAs were permitted to use their existing protest procedures and standards of conduct provided their procedures were not contrary to 24 CFR part 85 and ARRA. Additionally, PHAs awarding contract(s) noncompetitively must do so on a contract-by-contract basis and in compliance with all 24 CFR part 85 requirements, including the requirements for a cost analysis and the conflict-of-interest statement. This noncompetitive process must be documented in the PHA's Capital Fund Stimulus Grant Procurement Policy. PHAs may use the Procurement Handbook for Public Housing Agencies (HUD Handbook 7460.8 Rev-2) for guidance on procurement requirements in 24 CFR part 85. The Procurement Handbook is available on the Internet at http://www.hud.gov/offices/adm/hudclips/handbooks/pihh/74608/index.cfm. **Additional information can be found at the Office of Capital Improvement Recovery Act web page on the Internet at: http://www.hud.gov/offices/pih/programs/ph/capfund/ocir.cfm" (HUD Notice PIH 2009-12 (HA), Procurement** and HUD Notice PIH 2010-34 (HA)**) (ARRA, 123 Stat. 215).**

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement of Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. Financial Reports *(OMB No. 2535-0107)* – Financial Assessment Sub-system, FASS-PHA. 24 CFR part 902 – Public Housing Assessment System (PHAS) Subpart C-Phase Indicator #2 Financial Condition requires the PHA to provide annual reports on a PHA-wide basis (42 USC 1437d (j)(1)(K). Financial reporting requirements in 24 CFR section 902.33(a)(2) provide that the information be submitted electronically in the format prescribed by HUD using the Financial Data Schedule (FDS). Further 24 CFR section 902.35, "Financial condition scoring and threshold," establishes the procedures to be observed by the PHA.

Key Line Items – The line items under the following Headings contain critical information:

(1) Headings for HUD Programs and Activities

(a) Asset Management Property, or AMP (Low-Rent Public Housing and Capital Fund Programs)

(b) Component Units (Non-Profit Entities)

(2) Line Items

FDS Line 125 – (Accounts Receivable – Misc)

FDS Line 144 – (Inter-Program – Due From)

FDS Line 171 – (Notes, Loans, & Mortgages Receivable – Non-current)

FDS Line 172 – (Notes, Loans, & Mortgages Receivable – Non-current Past Due)

FDS Line 174 – (Other Assets)

FDS Line 176 – (Investment in Joint Ventures)

FDS Line 347 – (Inter-Program – Due To)

FDS Line 348 – (Loan Liability – Current)

FDS Line 355 – (Loan Liability – Non-Current)

FDS Line 10010 – (Operating Transfers – In)

FDS Line 10020 – (Operating Transfers – Out)

FDS Line 10030 – (Operating Transfers From/To Primary Government)

FDS Line 10093 – (Transfers Between Programs and Projects-In)

FDS Line 10094 – (Transfers Between Programs and Projects-Out)

g. HUD 53001, *Actual Modernization Cost Certificate (AMCC)* (*OMB No. 2577-0157*)-. Upon expenditure by the PHA of all funds, or termination by HUD of the activities funded in a modernization program, a PHA shall submit the AMCC to HUD for review and approval (24 CFR section 968.145).

2. Performance Reporting

Form HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons*, (*OMB No. 2529-0043*) – For each public and Indian housing grant that involves development, operating, or modernization assistance, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a) and 135.90).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 2. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

1. FASS – PHA, Public Housing Assessment System Phase Indicator #2, Financial Condition, and HUD-50075, PHA Plans

Compliance Requirement – On an annual basis the PHA must report on the financial condition of the PHA and on the transactions that the PHA is entering into with private and nonprofit entities (FDS Line Items 125, 144, and 347) (24 CFR section 902.33). In the FASS-PHA Financial Assessment Sub System, the PHA transactions with non-profit and private development entities are shown under the headings for HUD Programs and Business Activities Asset Management Property, or AMP (Low-Rent and Capital Fund Programs) for the Capital Fund Program. Such transactions would be noted in the FDS Line items shown above in Section III.L.1.e.(2). The FASS-PHA Financial Report is reviewed and approved or rejected by the REAC.

The PHA is required to report in the PHA Plan, in accordance with HUD 50075 (*OMB No. 2577-0226),* any transactions to be entered into with non-profit and private development entities. The PHA submits the Capital Fund Program in Part III of the PHA Plan. The PHA Plan, Implementation Schedule, for each active grant, details the eligible activities to be funded and the budget of estimated sources and uses. The PHA Plan is reviewed and approved by the HUD Field Office in the region in which the PHA is located.

Audit Objective – Determine whether the expenditures set out in the FDS line items that indicate participation by non-profit and private development entities agree with the data reported in the PHA Plan.

Suggested Audit Procedures

a. Review the data in FDS Line Items 125, 144, and 347 to determine the extent of non-profit and private development entities utilizing the Capital Fund Program.

b. Ascertain that the data in the FDS Line Items 125, 144, and 347 are substantially in agreement with the estimated sources and uses reported in

the PHA Plan, Implementation Schedule (i.e., expenditures do not exceed the budget by 10 percent).

2. Debt Secured to Public Housing Asset

Compliance Requirement – PHAs are only permitted to borrow funds secured to public housing assets (including real property, other PHA owned property purchased with Federal grant funds and CFP grant funds themselves) if they have obtained HUD's authorization prior to creating a security interest in public housing assets. This requirement does not prohibit a PHA from borrowing funds that are unsecured or that are not secured to public housing assets. In granting the required authorization, HUD will issue both an approval letter as well as a CFFP ACC Amendment (42 USC 1437z-2).

Audit Objective – Determine whether any debt incurred by the PHA that is secured to public housing assets is duly authorized by HUD.

Suggested Audit Procedures

a. Review the PHAs balance sheet to determine if the PHA has incurred a debt.

b. Examine the documentation that evidences the debt (loan /bond agreement, etc.) to determine if the debt is secured to public housing assets.

c. If the debt is secured to public housing assets, verify that the PHA has the required HUD approval letter authorizing the debt.

3. Environmental Review

Compliance Requirement – An environmental review must be completed for any project or activities **(including those project or activities funded by ARRA)** before a recipient may acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds. Environmental review procedures for entities who are assuming HUD's environmental responsibilities are contained in 24 CFR part 58. An environmental assessment must be prepared for an activity unless the recipient determines that the activity met a criterion specified in the regulations that would exempt or exclude it from Request for Release of Funds (RROF) and environmental certification requirements
(24 CFR sections 50.19(b), 58.34(a) and 58.35(b)). If the responsible entity determines that a project or activity is exempt, it must document in writing its determination for the exemption demonstrating how the conditions specified for exemption are met. Neither a recipient nor any participant in the project, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance until HUD has approved the recipient's RROF and the related certification from the responsible entity (24 CFR section 58.22).

Audit Objective – Determine whether (1) the required environmental reviews have been performed, (2) exemptions to an environmental assessment are properly documented, and (3) program funds were not obligated or expended prior to completion of the environmental review process and the certification and RROF has been approved by HUD.

Suggested Audit Procedures

a. Verify through a review of environmental review certifications that the environmental reviews were conducted for projects and activities unless an exemption was made.

b. Select a sample of projects or activities where an environmental review was performed.

c. Test whether program funds were committed only after completion of the environmental review process and the RROF and certification has been approved by HUD.

d. Select a sample of projects or activities where an environmental review was not performed.

e. Ascertain if a written determination was made that the review was not required. Verify that documentation supporting any determination not to make an environmental review was consistent with the criteria contained in 24 CFR sections 58.34 and 58.35(b).

IV. OTHER INFORMATION

For ARRA funded programs, ARRA gave HUD the authority to waive or specify alternative requirements for some of the statutory and regulatory provisions to facilitate the use of ARRA funds.

The Moving to Work (MTW) demonstration program (CFDA 14.881) allows selected PHAs the flexibility to design and test various approaches to providing and administering housing assistance consistent with the MTW Agreement executed by the PHA and HUD. An MTW agency may combine funds from the following three programs:

Section 8 Housing Choice Vouchers (CDFA 14.871);
Public Housing Capital Fund (CFDA 14.872); and
Public and Indian Housing (CFDA 14.850).

Because the ARRA-funded CFP programs (CFDAs 14.884 and 14.885) cannot be used for operating or rental assistance, HUD has not permitted these programs in the CFP Cluster to be included in the MTW Demonstration program.

If a PHA is operating under an MTW Agreement, the auditor should look to the MTW Agreement to determine which funds are included in the MTW Agreement. If CFP funds are transferred out of CFP, pursuant to an MTW Agreement, they are subject to the requirements of the MTW Agreement and should not be included in the audit universe and total expenditures for CFP when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amounts transferred out should not be shown as CFP expenditures but should be shown as expenditures for the MTW Demonstration program. Also, if other program funds are transferred into the CFP account pursuant to an MTW Agreement, all of the CFP funds would then be considered MTW funds.

Where the MTW agency does not transfer all the funds from the CFP into the MTW account or another of the authorized program, those funds would be considered, and audited, under the CFP.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.873 NATIVE HAWAIIAN HOUSING BLOCK GRANTS
CFDA 14.883 NATIVE HAWAIIAN HOUSING BLOCK GRANTS (RECOVERY ACT FUNDED)

I. PROGRAM OBJECTIVES

The primary objectives of the Native Hawaiian Housing Block Grant (NHHBG) programs are: (1) to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments on Hawaiian home lands for occupancy by low-income Native Hawaiian families; (2) to ensure better access to private mortgage markets and to promote self-sufficiency of low-income Native Hawaiian families; (3) to coordinate activities to provide housing for low-income Native Hawaiian families with Federal, State, and local activities to further economic and community development; (4) to plan for and integrate infrastructure resources on the Hawaiian home lands with housing development; and (5) to promote the development of private capital markets; and to allow the private capital markets to operate and grow, thereby benefiting Native Hawaiian communities.

II. PROGRAM PROCEDURES

The NHHBG programs are distributed according to a formula, based on factors that reflect the needs for assistance for affordable housing activities. To access funds, the Department of Hawaiian Home Lands (DHHL), the recipient, must submit a Housing Plan (HP) to the Department of Housing and Urban Development (HUD), and HUD must find that the HP meets the requirements of section 802 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).

Funding for the NHHBG program under the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) is distributed according to the same funding formula that was used to allocate NHHBG funds in Fiscal Year (FY) 2008. The formula is based on factors that reflect the needs for assistance for affordable housing activities. To access funds, DHHL must submit an amendment to their FY 2008 HP to the HUD, and HUD must find that the HP meets the requirements of section 802 of NAHASDA and ARRA. NHHBG funds awarded to the recipient may only be used for affordable housing activities that are consistent with its HP **and ARRA**.

Source of Governing Requirements

These programs are authorized by NAHASDA, codified at 25 USC 4221 through 4240, **and ARRA**. The implementing regulations are in 24 CFR part 1006.

Availability of Other Program Information

Additional information about HUD ARRA programs is available on the Internet at http://www.hud.gov/recovery and information on the NHHBG program is available at http://www.hud.gov/offices/pih/ih/codetalk/onap/nhhbgprogram.cfm.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Non-ARRA NHHBG funds (including program income generated by activities carried out with grant funds) may only be used for the following NAHASDA-eligible activities:

1. *Development* – The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related activities (25 USC 4229(b)(1)).

2. *Housing Services* – The provision of housing-related services for affordable housing, such as housing counseling in connection with rental or home-ownership assistance, establishment and support of resident organizations and resident management corporations, energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in other housing activities assisted by this program (25 USC 4229(b)(2)).

3. *Housing Management Services* – The provision of management services for affordable housing, including preparation of work specifications; loan processing, inspections; tenant selection; management of tenant-based rental assistance; and management of affordable housing projects (25 USC 4229(b)(3)).

4. C*rime Prevention and Safety Activities* – The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime (25 USC 4229(b)(4)).

5. *Model Activities* – Housing activities under model programs that are designed to carry out the purposes of NAHASDA and are specifically approved by the Secretary of HUD as appropriate for such purpose (25 USC 4229(b)(5)).

6. ARRA NHHBG funds (including program income generated by activities carried out with grant funds) may only be used for the following NAHASDA-eligible activities: new construction, acquisition, rehabilitation, including energy efficiency and conservation, and infrastructure development (ARRA, 123 Stat. 216).

D. Davis-Bacon Act

For non-ARRA NHHBG funds, contracts and agreements for assistance, sale or lease under this part must require prevailing wage rates under the Davis-Bacon Act to be paid to laborers and mechanics employed in the development of affordable housing. When NHHBG assistance is only used to assist homebuyers to acquire single family housing, the Davis-Bacon wage rates apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that NHHBG assistance will be used to assist homebuyers to buy the housing (Section 805(b) of NAHASDA; 24 CFR section 1006.345(a)).

For ARRA NHHBG funds, ARRA imposes the Davis-Bacon Act on all contracts and agreements for payments to laborers and mechanics employed in the development of affordable housing (Section 1606 of ARRA).

E. Eligibility

1. Eligibility for Individuals

The Director of DHHL shall develop written policies governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under NAHASDA (25 USC 4230(d)). The following families are eligible for affordable housing activities:

a. Low-income Native Hawaiian families eligible to reside on the Hawaiian home lands (24 CFR section 1006.301(a)).

b. When approved by HUD, a non-low income Native Hawaiian family may receive assistance for homeownership activities and loan guarantee activities to address a need for housing that cannot be reasonably met without that assistance (24 CFR section 1006.301(b)).

c. A non-Native Hawaiian family may receive housing or NHHBG assistance if the DHHL documents that non-Native Hawaiian family's housing needs cannot be reasonably met without such assistance, and the presence of that family is essential to the well-being of Native Hawaiian families (24 CFR section 1006.301(c)).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2. Level of Effort – Not Applicable

3. Earmarking – Recipients may use up to the amount authorized by HUD of each grant received for administration and planning (24 CFR section 1006.230).

H. Period of Availability of Funds

For ARRA NHHBG funds, **the recipient will be required to obligate 100 percent of its funds within 1 year of the date funds are made available; expend at least 50 percent of such funds within 2 years of the date on which funds became available; and expend 100 percent of such funds within 3 years of such date (ARRA, 123 Stat. 216)**.

J. Program Income

Any program income may be retained by the DHHL provided it is used for affordable housing activities. If the amount of income received in a single year by DHHL, which would otherwise be considered program income, does not exceed $25,000, such funds may be retained but will not be considered to be or be treated as program income (25 USC 4225; 24 CFR section 1006.340).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. **Section 1512 ARRA Reporting –** Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

1. Environmental Review

Compliance Requirement – Program regulations provide that DHHL will assume responsibilities for environmental review and decision-making under the requirements of 24 CFR part 58. Funds may not be committed to a grant activity or project before the completion of the environmental review and approval of the request for release of funds and related certification (24 CFR Section 1006.350).

Audit Objective – Determine whether (1) the required environmental reviews have been performed and (2) program funds were not obligated or expended prior to completion of the environmental review process.

Suggested Audit Procedures

Select a sample of projects for which expenditures were made and verify that:

a. Environmental certifications were supported by an environmental assessment.

b. For any project where an environmental assessment was not performed, a written determination was made that the assessment was not required and documentation exists to support such determination consistent with the criteria contained in 24 CFR sections 58.34 and 58.35.

c. Funds were not committed prior to the environmental assessment or a determination that an assessment was not required.

IV. OTHER INFORMATION

ARRA gave HUD the authority to waive or specify alternative requirements for some of the NHHBG statutory and regulatory provisions to facilitate the use of ARRA NHHBG funds.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.881 MOVING TO WORK DEMONSTRATION PROGRAM

I. PROGRAM OBJECTIVES

The Moving to Work (MTW) Demonstration program offers public housing authorities (PHAs) the opportunity to design and test innovative, locally-designed housing and self-sufficiency strategies for low-, very-low, and extremely low-income families by allowing exemptions from existing public housing and tenant-based Housing Choice Voucher (HCV) rules and, with HUD approval, permits PHAs to combine operating, capital, and tenant-based assistance funds into a single agency-wide funding source.

The purpose of the MTW Demonstration program is to give PHAs and HUD the flexibility to design and test various approaches for providing and administering housing assistance that accomplish the statutory objectives to:

- reduce cost and achieve greater costs effectiveness in Federal expenditures;
- give incentives to families with children where the head of household is working, is seeking work, or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient; and
- increase housing choices for low-income families.

II. PROGRAM PROCEDURES

The MTW Demonstration program is authorized by Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (see "Source of Governing Requirements" below). Initially, 30 PHAs were permitted to participate in the demonstration program and since then Congress has authorized 9 additional agencies. The agencies authorized to conduct MTW programs are required to establish a reasonable rent policy designed to encourage employment and self-sufficiency by participating families, such as by excluding some or all of a family's earned income for purposes of determining rent.

The MTW Demonstration program does not provide any additional funding to PHAs. Funding originates from the following HUD programs:

1. Section 8, Housing Choice Vouchers (CDFA 14.871),
2. Section 9, Public and Indian Housing (CFDA 14.850), and
3. Section 9, Public Housing Capital Fund (CFDA 14.872).

The authorized funding is stated in each PHA's Attachment A of the Standard MTW Agreement.

Statutory Requirements for MTW Agencies

All PHAs participating in the MTW Demonstration program must meet the following statutory requirements:

1. Ensure that at least 75% of the families assisted by the PHA under the demonstration will be very low-income families (i.e., families with incomes of less than 50% of area median income) (Section 204(c)(3)(A) of Pub. L. No. 104-134
(42 USC 1437f(note)));

2. Establish a reasonable rent policy that is designed to encourage employment and self-sufficiency on the part of participating families (Section 204(c)(3)(B) of Pub. L. No. 104-134 (42 USC 1437f(note)));

3. Continue to assist substantially the same total number of low-income families under the demonstration as would have been served had the PHA not participated in MTW Section 204(c)(3)(C) of Pub. L. No. 104-134 (42 USC 1437f(note)));

4. Maintain under the demonstration a comparable mix of families, by family size, as would have been assisted had the PHA not participated in MTW (Section 204(c)(3)(D) of Pub. L. No. 104-134 (42 USC 1437f(note))); and

5. Assure that housing assisted under the demonstration meets housing quality standards established or approved by HUD (Section 204(c)(3)(E) of Pub. L. No. 104-134 (42 USC 1437f(note))).

In addition, the following Sections of the 1937 Housing Act continue to apply:

1. The term "low-income families" is defined by reference to Section 3(b)(2) of the 1937 Housing Act (42 USC 1437a(b)(2)) (Section 204(b) of Pub. L. No. 104-134 (42 USC 1437f(note)));

2. Section 18 of the 1937 Housing Act (42 U.S.C. 1437p) which governs demolition and disposition, applies to public housing notwithstanding any use of the housing under MTW (Section 204(e)(1) of Pub. L. No. 104-134 (42 USC 1437f(note))); and

3. Section 12 of the 1937 Housing Act (42 U.S.C. 1437j), governing wage rates and the community service requirement, applies to housing assisted under MTW, other than housing assisted solely due to occupancy by families receiving tenant-based assistance (Section 204(e)(2) of Pub. L. No. 104-134 (42 USC 1437f(note))).

The Moving to Work Agreement

The Standard MTW Agreement, Attachments and Amendments

A Standard MTW Agreement was developed in 2008 by HUD in consultation with existing MTW Agencies. The Standard MTW Agreement was set up for a 10-year period, 2008-2018. It consists of the following:

- *Attachment A* of the Standard MTW Agreement contains the calculation of subsidies, customized for each individual PHA.

- The Standard MTW Agreement provides a mechanism, through the submission of MTW Plans and Reports, to review and approve new MTW activities and for PHAs to share their anticipated and actual activity outcome data with HUD and the PHA's stakeholders. *Attachment B* of the Standard MTW Agreement contains standard reporting requirements that apply to all MTW Agencies. Activities approved in the Annual MTW Plan must be reported in the ongoing activities section as stipulated in Attachment B.

  1. *Annual MTW Plans*

     If the PHA has ten percent or more of its housing stock in MTW, the PHA will prepare and submit an Annual MTW Plan, in accordance with Attachment B, or equivalent HUD form as approved by OMB, in lieu of the 5-year and Annual MTW. The Annual MTW Plan is due no later than 75 days prior to the start of the PHA's fiscal year. HUD will respond to the PHA within 75 days after receiving the Annual MTW Plan. If HUD does not respond to the PHA within 75 days after an on-time receipt of the PHA's Annual MTW Plan, the PHA's Annual MTW Plan is approved and the PHA is authorized to implement that Plan. If HUD does not receive the PHA's Annual MTW Plan 75 days before the beginning of the PHA's fiscal year, the PHA's Annual MTW Plan is not approved until HUD responds.

  2. *Annual MTW Reports*

     The PHA will prepare Annual MTW Reports, including the required information in HUD Form 50900, which will provide information on the status and outcomes of the activities approved in the Annual MTW Plan (see III.L.1.h, below).

- *Attachment C* of the Standard MTW Agreement contains a standard statement of authorizations that all MTW PHAs may carry out under the MTW Demonstration. The authorizations in Attachment C include acceptable uses of MTW funds and administrative activities related to both Public Housing (CFDA 14.850) and Section 8 Housing Choice Vouchers (CFDA 14.871), authorizations related to Public Housing only, authorizations related to Section 8 Housing Choice Vouchers only and authorizations related to family self-sufficiency.

- *Attachment D of the Standard MTW Agreement* contains a statement of agency-specific authorizations that are customized for each individual PHA. This may include but is not limited to: Legacy and Community-Specific authorizations, authorizations related to both Public Housing and Section 8 Housing Choice Vouchers, authorizations related to public housing only and authorizations related to Section 8 Housing Choice Vouchers only, acceptable uses of MTW funds, asset management, and administrative issues.

- *The First Amendment to the Standard MTW Agreement* deletes Section I.E. of the Standard MTW Agreement. Section I.E. of the Standard MTW Agreement states that "Notwithstanding any provision set forth in this Restated Agreement, including without limitations, the term of years and all extensions, renewals and options, and the terms set forth herein otherwise, any federal law that amends, modifies, or changes the aforementioned term of years and/or other terms of this Restated Agreement shall supersede this Restated Agreement such that the provisions of the law shall apply as set forth in the law." The First Amendment replaces Section II.F of the Standard MTW Agreement and inserts new language regarding local asset management. The First Amendment also addressees financial reporting requirements and other reporting requirements pertaining to the Annual MTW Plan and Report under Attachment B. PHAs are not required to sign the First Amendment.

Procedure for Budget Flexibility

PHAs in the MTW Demonstration program have considerable flexibility in determining how to use Federal funds. They are allowed to combine funds from the Public Housing Operating (CFDA 14.850), and Capital Fund (CFDA 14.772) Programs and the Housing Choice Voucher (CFDA 14.871) tenant-based rental assistance program to meet the purposes of the demonstration if they have requested the use of *Authorization B.1 – Single Fund Budget with Full Flexibility* from Attachment C of the Standard MTW Agreement via an Annual MTW Plan that was approved by HUD. The funds normally are combined into one single fund budget, commonly referred to as the MTW Block Grant. No other funds can be placed into the MTW Block Grant.

Source of Governing Requirements

The MTW program is authorized by Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. No. 104-134, dated April 26, 1996, 110 Stat 1321-281)). The requirements in the Housing Act of 1937 listed above and the other statures that apply to the three programs apply to MTW Agencies, including environmental requirements. In addition, the following sections of the Housing Act of 1937 apply: Section 3(b)(2) (42 USC 1437a(b)(2)); Section 12 (42 USC 1437j); and Section 18 (42 USC 1437p).

Availability of Other Program Information

Additional information regarding the Moving to Work Demonstration program is available on HUD's website, at http://www.hud.gov/offices/pih/programs/ph/mtw//.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a federal program, the auditor should first look to Part 2, Matrix of Compliance requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

The auditor should review the agency's specific MTW Agreement, Attachments, and Amendments for the authorizations applicable to each MTW Agency.

A. Activities Allowed or Unallowed

1. The authorizations in Attachment C of the Standard MTW Agreement include acceptable uses of MTW funds and administrative activities related to both Public Housing (CFDA 14.850) and Section 8 Housing Choice Vouchers (CFDA 14.871), authorizations related to Public Housing only, authorizations related to Section 8 Housing Choice Vouchers only, and authorizations related to family self-sufficiency. Unless otherwise stated in Attachment D of the Standard MTW Agreement, the MTW Demonstration Program applies to all of the PHA's public housing-assisted units (including PHA-owned properties and units comprising a part of mixed-income, mixed finance communities), tenant-based Section 8 voucher assistance, Section 8 project-based voucher assistance under Section 8(o) and Homeownership units developed using Section 8(y) voucher assistance.

2. Activities using the authorizations granted in Attachment C of the Standard MTW Agreement must be included in the PHA's Annual MTW Plan in accordance with HUD Form 50900 and subsequently approved by HUD. HUD will review these activities in order to verify that these activities are within the MTW authorizations provided by HUD. All activities must be approved before the PHA can implement that activity. Lists of approved activities for the MTW Agency can be found in the Ongoing Activities Section of the PHA's HUD Form 50900, Annual MTW Plan and Annual MTW Report.

D. Davis Bacon Act

With respect to public housing, the PHA must comply with Davis-Bacon or HUD-determined wage rate requirements of Section 12 of the Housing Act of 1937 (42 USC 1437j(a) and (b)).

E. Eligibility

1. Eligibility for Individuals – Beneficiaries must be "low-income families," as defined in Section 3(b)(2) of the 1937 Housing Act (42 USC 1437a(b)(2)) (Section 204(b) of Pub. L. No. 104-134 (42 USC 1437f(note))).

2. Eligibility of Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2. Level of Effort – Not Applicable

3. Earmarking

At least 75 percent of the families assisted must be "very low-income families," as defined in Section 3(b)(2) of the Housing Act of 1937 (42 USC 1437a(b)(2)) (Section 204(c)(3)(A) of Pub. L. No. 104-134 (42 USC 1437f(note))).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. HUD-50058-MTW, *Family Report (OMB No. 2577-0083)* – The information on this form is submitted to HUD through the Public and Indian Housing Information Center (PIC). The use of the HUD-50058 MTW form is restricted to MTW agencies. Data must be submitted each time the PHA completes an admission, annual reexamination, interim reexamination, portability move-in, or other change of unit for a family. The PHA must also submit the *Family Report* when a family ends participation in the program or moves out of the PHA's jurisdiction under portability.

Key Line Items – The following line items contain critical information:

(1) Line 2a – *Type of action*

(2) Line 2b – *Effective date of action*

(3) Line 2k – *FSS participation now or in the last year*

(4) Line 3b, 3c – Last *name, First name*

(5) Line 3e – *Date of birth*

(6) Line 3n – *Social Security Numbers*

(7) Line 5a – *Unit address*

(8) Line 5h – *Date unit last past HQS inspection*

(9) Line 5i – *Date of last annual HQS Inspection*

(10) Line 7i – *Total annual income*

(11) Line 13h – *Contract rent to owner*

(12) Line 13k – *Tenant Rent*

(13) Line 13x – *Mixed family tenant rent*

(14) Line 17a – *Participation in special programs –Participation in the Family Self Sufficiency (FSS) Program*

(15) Line 17k(2) – *FSS account information – Balance*

g. *Financial Reports (OMB No. 2535-0107)* – Financial Assessment Sub-system, FASS-PH. The Uniform Financial Reporting Standards (24 CFR section 5.801) require PHAs to submit timely GAAP-based unaudited and audited financial information electronically to HUD.

Key FDS Line Information – The line items under the following headings contain critical information:

(1) FDS Line 122 – (Accounts Receivable – HUD Other Projects)

(2) FDS Line 131 – (Investments – unrestricted)

(3) FDS Line 132 – (Investments – restricted)

(4) FDS Line 144 – (Inter-program – due from)

(5) FDS Line 331 – (Accounts payable – HUD PHA programs)

(6) FDS Line 342 – (Deferred revenue)

(7) FDS Line 345 – (Other current liabilities)

(8) FDS Line 346 – (Accrued liabilities – other)

(9) FDS Line 347 – (Inter-program – due to)

(10) FDS Line 508.1 – (Invested in capital assets, net of related debt)

(11) FDS Line 511.1 – (Restricted Net Assets)

(12) FDS Line 512.1 – (Unrestricted net assets)

(13) FDS Line 97300 – (Housing assistance payments)

(14) FDS Line 10010 – (Operating transfers in)

(15) FDS Line 10020 – (Operating transfers out)

(16) FDS Line 10030 – (Operating transfers from/to primary government)

(17) FDS Line 10093 – (Transfers between programs and projects in)

(18) FDS Line 10094 – (Transfers between programs and projects out)

h. HUD 50900, *Moving to Work Form* (*OMB No. 2577-0216*)

Key Line Items – The following line items contain critical information:

Annual MTW Report, Section VII, Sources and Uses of Funding

(1) A. List planned sources (Operating, Capital, Housing Choice Voucher (HCV)) and uses of MTW funds

(2) B. List planned sources and uses of State or local funds

(3) C. If applicable, list planned sources and uses of the central office cost center (COCC)

(4) E. List or describe use of single-fund flexibility, if applicable, describe uses across traditional program lines or special circumstances in support of an MTW activity

2. Performance Reporting

Annual MTW Plan and Annual MTW Report (*OMB No. 2577-0216*) – PHAs are required to submit an Annual MTW Plan and Annual MTW Report that includes the information listed in HUD Form 50900. PHAs are required to demonstrate that the statutory objectives of (1) "continuing to assist substantially the same total number of eligible low-income families as would have been served had the amounts not been combined" and (2) "maintaining a comparable mix of families

(by family size) is served, as would have been provided had the amounts not been used under the demonstration." The information needed to demonstrate these objectives is contained in Section II.B of the Annual MTW Plan and Report (Section 204(c)(3)(C) and (D) of Pub. L. No. 104-134 (42 USC 1437f(note))).

Key Line Items – The following line items contain critical information:

a. Total number of MTW PH units leased in Plan year

b. Total number of MTW HCV units leased in Plan year

c. Number of project-based vouchers committed or in use at the end of the Plan year

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

1. Reasonable Rent Policy

Compliance Requirement – MTW agencies are required to establish a reasonable rent policy, which shall be designed to encourage employment and self-sufficiency by participating families, consistent with the purpose of this demonstration, such as by excluding some or all of a family's earned income for purposes of determining rent. The rent policy must be in the Annual MTW Plan and Reports (Section 204(c)(3)(B) of Pub. L. No. 104-134 (42 USC 1437f(note))).

Audit Objective – Determined whether the PHA has implemented a reasonable rent policy.

Suggested Audit Procedures

a. Review the reasonable rent policy in the Annual MTW Plan and Reports.

b. Verify that the reasonable rent policy has been implemented.

2. Housing Quality Standards

Compliance Requirement – MTW Agencies must assure that housing assisted under the demonstration program meets housing quality standards established or approved by the Secretary. The HCV program regulations at 24 CFR sections 982.401 through 982.405 set forth basic housing quality standards (HQS) which all units must meet, and the PHA must verify by inspection, before initial assistance can be paid on behalf of a family and at least annually throughout the term of the assisted tenancy. Current HQS regulations

consist of 13 key aspects of housing quality, performance requirements, and acceptability criteria to meet each performance requirement. HQS include requirements for all housing types, including single and multi-family dwelling units, as well as specific requirements for special housing types, such as manufactured homes, congregate housing, single room occupancy, shared housing, and group residences (Section 204(c)(3)(E) of Pub. L. No. 104-134 (42 USC 1437f(note))).

Audit Objective – Determine whether the PHA has implemented procedures to ensure that units meet HUD housing quality standards.

Suggested Audit Procedures

a. Review the Annual MTW Plan to determine how HSQs are proposed to be implemented. The PHA should explain whether it plans to follow HQS as established by HUD or if it plans to develop a local HQS standard that is at least as stringent as the HUD standard.

b. Verify by a review of documentation that the PHA identifies those units on which housing quality inspections are due.

c. Verify by a review of documentation that the PHA performs inspections of these units and that any needed repairs were completed timely.

IV OTHER INFORMATION

An MTW agency may combine funds from the following three programs:

(1) Section 8 Housing Choice Vouchers (CDFA 14.871);

(2) Public Housing Capital Fund (CFDA 14.872); and

(3) Public and Indian Housing (CFDA 14.850).

If a PHA is operating under an MTW Agreement, the auditor should look to the MTW Agreement to determine which funds are included in the MTW Agreement. The amounts transferred into the MTW Block Grant are subject to the requirements of the MTW Agreement and should be included in the audit universe and total expenditures for MTW Agencies (CDFA 14.881) when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amounts transferred in should be shown as expenditures for the MTW program.

If the MTW agency does not set up a separate MTW account, but uses the flexibility of the MTW demonstration program to transfer funds among the three programs, the accounts would become MTW accounts and would need to be identified as MTW funds.

If the MTW agency does not transfer all of the funds from a program into the MTW account or another of the three programs, the remaining funds would be considered, and audited, under the CFDA number for that program.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.907 LEAD-BASED PAINT HAZARD CONTROL IN PRIVATELY-OWNED HOUSING (RECOVERY ACT FUNDED)
CFDA 14.908 HEALTHY HOMES DEMONSTRATION GRANTS (RECOVERY ACT FUNDED)
CFDA 14.909 LEAD HAZARD REDUCTION DEMONSTRATION GRANT PROGRAM (RECOVERY ACT FUNDED)
CFDA 14.910 HEALTHY HOMES TECHNICAL STUDIES GRANTS (RECOVERY ACT FUNDED)

I. PROGRAM OBJECTIVES

The objectives of the Lead-Based Paint Hazard Control in Privately-Owned Housing (LBPHC) program and the Lead Hazard Reduction Demonstration Grant Program (LHRD) are to: (1) maximize the combination of children less than 6 years of age protected from lead poisoning and housing units where lead-hazards are controlled; (2) prevent childhood lead poisoning; (3) stimulate lower-cost and cost-effective methods and approaches to lead hazard control work that can be replicated; (4) build local capacity to safely and effectively address lead hazards during lead hazard control, renovation, remodeling, and maintenance activities by integrating lead safe work practices into housing maintenance, repair, weatherization, rehabilitation and other programs that will continue beyond the grant period; (5) affirmatively further fair housing and environmental justice; (6) develop a comprehensive community approach to address lead hazards in housing by mobilizing public and private resources, involving cooperation among all levels of government, the private sector, and grassroots community-based nonprofit organizations, including faith-based organizations, to develop cost-effective methods for identifying and controlling lead-based paint hazards; (7) establish a public registry of lead-safe housing; and (8) promote job training, employment, and other economic opportunities for low-income and minority residents and businesses that are owned by and/or employ minorities and low-income persons as defined in 24 CFR section 135.5 (see 59 FR 33881, June 30, 1994).

The objective of the Healthy Homes Demonstration Grants (HHD) program is to develop, demonstrate, and promote cost-effective, preventive measures to correct multiple safety and health hazards that produce serious disease in children and other sensitive subgroups, such as the elderly, with a particular focus on low-income households.

The objective of the Healthy Homes Technical Studies Grants program (HHTS) is to fund technical studies to improve methods for detecting and controlling housing-related health and safety hazards.

II. PROGRAM PROCEDURES

Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (ARRA) appropriated $100 million to be used to fund applicants who had applied under the Lead Hazard Reduction Program Notices of Funding Availability (NOFA) for Fiscal Year 2008, and were found in the application review to be qualified for award, but were not awarded because of

funding limitations. LBPHC and LHRD provides grant funds to assist State, tribal, and local governments to identify and control lead-based paint hazards in privately-owned housing that is owned by or rented to low- or very-low income families. State, Tribal, and local governments are the only eligible grantees for the LBPHC and LHRD programs. Grantees must use their LBPHC and LHRD funds to identify and control lead-based paint hazards in privately-owned housing that is owned by or rented to low- or very-low income families, and build local capacity to safely and effectively address lead hazards during lead hazard control, renovation, remodeling, and maintenance activities by integrating lead safe work practices into housing maintenance, repair, weatherization, rehabilitation and other programs that will continue beyond the grant period.

State, Tribal, and local governments, not-for-profit organizations, and for-profit organizations are the only eligible grantees for the HHD and HHTS programs.

Source of Governing Requirements

Authorizations for the LBPHC and LHRD are in Title X of the Housing and Community Development Act of 1992 (Pub L. No. 102-550) and Title XII of ARRA. Authorizations for the HHD and HHTS are Sections 501 and 502 of the Housing and Urban Development Act of 1970; and Consolidated Appropriations Act, 2008 (Pub. L. No. 110-161, 121 Stat. 2428); and Title XII of ARRA.

Availability of Other Program Information

Information that will assist in understanding these programs is available on the Internet at the Office of Healthy Homes and Lead Hazard Control web page and HUD's Recovery Act web page at: http://www.hud.gov/offices/lead/ and http://www.hud.gov/recovery. FY 2008 Notice of Funds Available at http://www.hud.gov/library/bookshelf12/supernofa/nofa08/grplead.cfm. The HHD NOFA is available at http://www.hud.gov/library/bookshelf12/supernofa/nofa08/hhdsec.pdf, and the HHTS NOFA is available at http://www.hud.gov/library/bookshelf12/supernofa/nofa08/ltssec.pdf.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Grantees must use LBPHC and LHRD funds for evaluation and control of lead-based paint hazards in residential housing (Section 1011(e) of Pub L. No. 102-550).

2. Grantees may use HHD funds for evaluation and control of lead-based paint hazards in residential housing as part of overall healthy homes activities (Pub. L. No. 110-161, 121 Stat. 2428).

3. Grantees may use HHTS funds for research activities (Pub. L. No. 110-161, 121 Stat. 2428).

D. Davis-Bacon Act

ARRA impose the Davis-Bacon Act requirements on all contractors and subcontractors for wages paid to laborers and mechanics (Section 1606 of ARRA).

E. Eligibility

1. Eligibility for Individuals – Only privately-owned housing that is owned by or rented to low- or very-low income families is eligible to receive LBPHC, LHRD, HHD, or HHTS assistance (Section 1011(a)(1) of Pub L. No. 102-550).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching

a. Recipients must contribution not less than 10 percent of the total LBPHC grant amount (Section 1011(h) of Pub. L. No. 102-550).

b. Recipients must contribution not less than 25 percent of the total LHRD grant amount or 10 percent if the higher matching requirement is waived by HUD (Pub. L. No. 110-161, 121 Stat. 2428).

c. There are no matching requirements for HHD or HHTS funds.

2. Level of Effort – Not Applicable

3. Earmarking

a. No more than 10 percent of the grant may be used for administrative costs (Section 1011(j) of Pub. L. No. 102-550).

b. No more than 40 percent of a HHTS grant may be used for construction activities (Section IV.E.9 of the HHTS NOFA).

H. Period of Availability of Federal Funds

Recipients must expend at least 50 percent of funds within 2 years of the date on which funds became available to the recipient; and expend 100 percent of such funds within 3 years of such date. A LBPHC funding commitment is available on the date of execution of a written agreement between the Recipient and HUD (ARRA, 123 Stat. 224).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

IV. OTHER INFORMATION

The ARRA gave HUD the authority to waive or specify alternative requirements for some of the statutory and regulatory provisions to facilitate the use of ARRA funds.

DEPARTMENT OF THE INTERIOR

BIA CROSS-CUTTING SECTION

INTRODUCTION

This section contains compliance requirements that apply to more than one program of the Bureau of Indian Affairs (BIA) in the Department of the Interior (DOI) because of requirements set forth in (1) the Indian Self Determination and Education Assistance Act (ISDEAA), as amended, and the Tribally Controlled Schools Act, and (2) Section 111 of the Department of the Interior and Related Agencies Appropriations Act, 2002, (Pub. L. No. 107-63) regarding the investment and deposit of BIA funds advanced to tribal organizations pursuant to the provisions of the ISDEAA and Tribally Controlled Schools Act of 1988. The compliance requirements in this Cross-Cutting Section reference the applicable programs in Part 4, Agency Compliance Requirements. Similarly, the applicable programs in Part 4 reference this Cross-Cutting Section.

CFDA No.	Program Name
ISDEAA Programs	
15.021	Consolidated Tribal Government Program
15.022	Tribal Self-Governance
15.030	Indian Law Enforcement
15.047	Indian Education Facilities, Operations, and Maintenance
Tribally Controlled Schools Act	
15.042	Indian School Equalization Program

I. PROGRAM OBJECTIVES

The ISDEAA, of which the Tribal Self-Governance Act is part, was implemented to establish meaningful Indian self-determination that will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. The Tribally Controlled Schools Act provides a grant process for the operation of schools funded by the BIA.

II. PROGRAM PROCEDURES

The ISDEAA and the Tribally Controlled Schools Act allow tribal organizations to draw down funds in advance of need. The frequency and timing of the drawdowns are set forth in the statutes. The provision for advancing funds is to ensure sufficient capital for the delivery of program services.

The Tribal Self-Governance Act provides for advance payments to tribes and tribal consortia in the form of annual or semiannual payments at the discretion of the tribes (25 USC 458cc (g)(2)). The ISDEAA provides for payments to Indian tribes and tribal organizations on a quarterly basis, in a lump-sum payment, or as semiannual payments, or any other payment method authorized by law with such method as may be requested by the tribe or tribal organization (25 USC 450*l*(c)(b)(6)(B)(i)). The Tribally Controlled Schools Act provides for two payments per year: the first payment to be made not later than July 1 and the second payment not later than December 1 (25 USC 2506(a)(1)).

Regarding the use of these funds prior to their expenditure for the purposes for which they were intended, the Congress provided specific guidance in Section 111 of the Department of the Interior and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-63, that allows these funds to be invested. Indian tribes and tribal organizations are not accountable to BIA for the income earned from these investments (25 USC 450j(b)).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

B. Allowable Costs/Costs Principles

BIA programs in this Supplement that this section applies to are: Consolidated Tribal Government Program (15.021); Indian Law Enforcement (15.030); and Indian School Equalization Program (15.042).

Indian tribes and tribal organizations may without the approval of the BIA expend funds provided under a self-determination contract for purposes identified in 25 USC 450j-1(k), including the following, to the extent that the expenditure of the funds is supportive of a contracted program (25 USC 450j-1(k)).

1. Building, realty, and facilities costs, including rental costs or mortgage expenses.

2. Automated data processing and similar equipment or services.

3. Costs for capital assets and repairs.

4. Costs incurred to raise funds or contributions from non-Federal sources for the purpose of furthering the goals and objectives of the self-determination contract.

5. Interest expenses paid on capital expenditures such as buildings, building renovation or acquisition or fabrication of capital equipment, and interest expenses on loans necessitated due to delays by the Secretary in providing funds under a contract.

6. Expenses of a governing body of a tribal organization that are attributable to the management or operation of programs under ISDEAA.

H. Period of Availability of Federal Funds

BIA programs in this Supplement that this section applies to are: Consolidated Tribal Government Program (15.021); Tribal Self-Governance (15.022); Indian Law Enforcement (15.030); Indian School Equalization Program (15.042); and Indian Education Facilities, Operations, and Maintenance (15.047).

Any funds appropriated under an ISDEAA contract or compact or a Tribally Controlled Schools Act grant are available until expended (25 USC 450*l*(c)(b)(9)).

N. Special Tests and Provisions

Investment and Deposit of Advance Funds

BIA programs in this Supplement that this section applies to are: Consolidated Tribal Government Program (15.021); Tribal Self-Governance (15.022); Indian Law Enforcement (15.030); and Indian School Equalization Program (15.042).

Compliance Requirement – A tribe, tribal organization, or consortia receiving advance payments under the ISDEAA or the Tribally Controlled Schools Act may invest advance payments (some recipients refer to these advance payments as "deferred revenue"), before such funds are expended for the purposes of the grant, contract, or funding agreement, so long as such funds are (1) invested only in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States or securities that are guaranteed or insured by the United States or (2) deposited only in accounts that are insured by an agency or instrumentality of the United States, or are fully collateralized to ensure protection of the advance funds, even in the event of a bank failure (Section 111 of the Department of the Interior and Related Agencies Appropriations Act of 2002, Pub. L. No. 107-63).

Audit Objective – Determine whether Indian tribes, tribal organizations, or consortia are properly investing or depositing advanced ISDEAA or the Tribally Controlled Schools Act funds.

Suggested Audit Procedures

a. Obtain and review tribal policies and procedures for the investment and deposit of ISDEAA or the Tribally Controlled Schools Act funds and verify that those procedures comply with the investment and deposit requirements.

b. Review unused/unexpended BIA advance funds and verify that all unused/ unexpended funds were properly invested or deposited throughout the audit period.

IV. OTHER INFORMATION

BIA programs in this Supplement that this section applies to are: Consolidated Tribal Government Program (15.021) and Tribal Self-Governance (CFDA 15.022) when Temporary Assistance for Needy Families (TANF) (CFDA 93.558) program, the Native Employment Works (NEW) (CFDA 93.594) program, or Child Care and Development Fund (CCDF) (CFDA 93.575/93.596) funds are received under a Pub. L. No. 102-477 Demonstration Project.

A Tribe engaged in a Pub. L. No. 102-477 demonstration project must report expenditures using the CFDA number of the funding program on the Schedule of Expenditures of Federal Awards (SEFA), i.e., TANF—CFDA 93.558, NEW—CFDA 93.594, CCDF—CFDA 93.575/93.596, Consolidated Tribal Government Program—CFDA 15.021, or Tribal Self-Governance—CFDA 15.022.

The recipient must comply with the requirements of the funding program. Accordingly, program funding to Tribes included in a Pub. L. No. 102-477 demonstration project is to be separately audited in accordance with the following parts of this Supplement:

- TANF in accordance with the TANF program supplement in Part 4.
- CCDF in accordance with the CCDF program supplement in Part 4.
- NEW program using Part 7, "Guidance for Auditing Programs Not Included in this Compliance Supplement."
- Consolidated Tribal Governance program in accordance with this Cross-Cutting section and the program supplement in Part 4.
- Tribal Self-Governance in accordance with this Cross-Cutting section and the program supplement in Part 4.

DEPARTMENT OF THE INTERIOR

CFDA 15.021 CONSOLIDATED TRIBAL GOVERNMENT PROGRAM

I. PROGRAM OBJECTIVES

The objective of the Consolidated Tribal Government Program is to provide funds for certain programs of an ongoing nature to Indian tribal governments in a manner which minimizes program administrative requirements and maximizes flexibility.

II. PROGRAM PROCEDURES

The Bureau of Indian Affairs (BIA) makes direct payments to federally recognized Indian tribal governments to carry out a variety of activities for which appropriations are made within the Tribal Priority Allocations activity of the BIA budget. For example, Scholarships, Johnson O'Malley, Job Placement and Training, and Agricultural Extension could be combined under a single contract for education and training. This allows tribal contractors greater flexibility in planning their programs and meeting the needs of their people. The simplified contracting procedures and reduction of tribal administrative costs allow for increased services under these contracts.

Source of Governing Requirements

The program is authorized by the Indian Self-Determination and Education Assistance Act (ISDEAA), Title I, Pub. L. No. 93-638, as amended (25 USC 450 *et seq*.).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look at Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple BIA programs are discussed once in the BIA Cross-Cutting Section of this Supplement (page 4-15.000-1) rather than being repeated in each individual program.

A. Activities Allowed or Unallowed

The ISDEAA provides for the expenditure of funds by Indian tribes and tribal organizations under self-determination contracts for programs and activities previously provided by the BIA. Funds may be used for a variety of programs and services that the Federal Government otherwise would have provided directly. The specific activities allowed will be indicated in the self-determination contract between the tribal organization and the Secretary of the Interior (25 USC 450f). While the tribe or tribal organization may propose to redesign the program or activity, such redesign must be approved by the BIA (25 USC 450j(j)).

B. Allowable Costs/Costs Principles

See BIA Cross-Cutting Section.

H. Period of Availability of Federal Funds

See BIA Cross-Cutting Section.

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

See BIA Cross-Cutting Section.

DEPARTMENT OF THE INTERIOR

CFDA 15.022 TRIBAL SELF-GOVERNANCE

I. PROGRAM OBJECTIVES

The objective of the Tribal Self-Governance program is to further the goals of Indian self-determination by providing funds to Indian tribes to administer a wide range of programs with maximum administrative and programmatic flexibility.

II. PROGRAM PROCEDURES

The Tribal Self-Governance Act of 1994 (25 USC 458aa *et seq*.) established tribal self-governance as a permanent option for tribal governments. Under tribal self-governance, Indian tribes have greater control and flexibility in the use of funds, reduced reporting requirements, and authority to redesign or consolidate programs, services, functions, and activities. Tribes are selected from an applicant pool upon meeting certain eligibility requirements.

The Office of Self-Governance makes direct payments to federally recognized Indian tribal governments and tribal consortia authorized by federally recognized Indian tribal governments. Funds may be used to support tribal programs such as law enforcement, social services, welfare payments, natural resource management and enhancement, housing improvement, and road maintenance (25 USC 458cc(b)).

Source of Governing Requirements

The program is authorized by the Indian Self-Determination and Education Assistance Act (ISDEAA), Title IV, Pub. L. No. 93-638, as amended (25 USC 458aa *et seq*.).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look at Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple Bureau of Indian Affairs (BIA) programs are discussed once in the BIA Cross-Cutting Section of this Supplement (page 4-15.000-1) rather than being repeated in each individual program.

A. Activities Allowed or Unallowed

The ISDEAA provides for the expenditure of funds by Indian tribes and tribal organizations under self-determination contracts or annual funding agreements for programs and activities previously provided by the BIA. Funds may be used for a variety of programs and services that the Federal government otherwise would have provided directly. The specific activities allowed will be indicated in the funding agreement

between the tribal organization and the Secretary of the Interior (25 USC 458cc(b) and (c)). Indian tribes and tribal consortia are provided latitude in redesigning programs and activities. However, such redesign is limited to programs covered by the annual funding agreement (25 USC 458cc(b)(3)).

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act are applicable to construction work financed with grants under this program (25 USC 450e).

H. Period of Availability of Federal Funds

See BIA Cross-Cutting Section.

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

See BIA Cross-Cutting Section.

DEPARTMENT OF THE INTERIOR

CFDA 15.030 INDIAN LAW ENFORCEMENT

I. PROGRAM OBJECTIVES

The objective of the Indian Law Enforcement program is to provide funds to Indian tribal governments to operate police departments and detention facilities.

II. PROGRAM PROCEDURES

The Bureau of Indian Affairs (BIA) makes direct payments to federally recognized Indian tribal governments exercising Federal criminal law enforcement authority over crime under the Major Crimes Act (18 USC 1153) on their reservations. Funds may be used for salaries and related expenses of criminal investigators, uniformed officers, detention officers, radio dispatchers, and administrative support.

Source of Governing Requirements

The program is authorized by the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. No. 93-638, as amended (25 USC 450 *et seq*.) and the Indian Law Enforcement Reform Act, Pub. L. No. 101-379 (25 USC 2801 *et seq.*).

Availability of Other Program Information

Part 40 of the Indian Affairs Manual provides information applicable to all law enforcement programs operated by an Indian tribe or tribal organization under a Self-Determination contract. Part 40 does not apply to Indian tribes which have negotiated Self-Governance compacts. The web site at which this manual has been available is not currently operational.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look at Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple BIA programs are discussed once in the BIA Cross-Cutting Section of this Supplement (page 4-15.000-1) rather than being repeated in each individual program.

A. Activities Allowed or Unallowed

The ISDEAA provides for the expenditure of funds by Indian tribes and tribal organizations under self-determination contracts for programs and activities previously provided by the BIA. Funds may be used for a variety of programs and services that the Federal government otherwise would have provided directly. The specific activities

allowed will be indicated in the self-determination contract between the tribal organization and the Secretary of the Interior (25 USC 450f). While the tribe or tribal organization may propose to redesign the program or activity, such redesign must be approved by the BIA (25 USC 450j(j)).

B. Allowable Costs/Costs Principles

See BIA Cross-Cutting Section.

H. Period of Availability of Federal Funds

See BIA Cross-Cutting Section.

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

See BIA Cross-Cutting Section.

DEPARTMENT OF THE INTERIOR

CFDA 15.042 INDIAN SCHOOL EQUALIZATION PROGRAM

I. PROGRAM OBJECTIVES

The objective of the Indian School Equalization Program is to provide funding for elementary and secondary education.

II. PROGRAM PROCEDURES

The Office of Indian Education Programs makes direct payments to federally recognized Indian tribal governments or tribal organizations currently served by a Bureau of Indian Affairs (BIA)-funded school. Funds may be used for the education of Indian children in BIA-funded schools. Funds may not be used for construction.

Source of Governing Requirements

The program is authorized by the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. No. 93-638, as amended (25 USC 450 *et seq*.), Indian Education Amendments of 1978, Pub. L. No. 95-561 (25 USC 2001 *et seq*.), and Tribally Controlled Schools Act (25 USC 2501 *et seq*.).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look at Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple BIA programs are discussed once in the BIA Cross-Cutting Section of this Supplement (page 4-15.000-1) rather than being repeated in each individual program.

A. Activities Allowed or Unallowed

The expenditure of funds is restricted to those Federal programs covered by the grant. The Tribally Controlled Schools Act provides for the expenditure of funds by Indian tribes and tribal organizations under grants for education-related programs and activities, including school operations, academic, educational, residential, guidance and counseling, and administrative purposes, and support services for the school, including transportation (25 USC 2502).

B. Allowable Costs/Cost Principles

See BIA Cross-Cutting Section.

H. Period of Availability of Federal Funds

See BIA Cross-Cutting Section.

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable only if specifically required in the grant agreement.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

Also see BIA Cross-Cutting Section.

Character Investigations by Indian Tribes and Tribal Organizations

Compliance Requirement – The Indian Child Protection and Family Violence Prevention Act (25 USC section 3201 *et seq*.) requires Indian tribes and tribal organizations that receive funds under the ISDEAA or the Tribally Controlled Schools Act to conduct an investigation of the character of each individual who is employed or is being considered for employment by such Indian tribe or tribal organization in a position that involves regular contact with, or control over, Indian children. The Act further states that the Indian tribe or tribal organization may employ individuals in those positions only if the individuals meet standards of character, no less stringent than those prescribed under subpart B – Minimum Standards of Character and Suitability for Employment (25 CFR part 63), as the Indian tribe or tribal organization establishes.

Audit Objective – Determine whether Indian tribes and tribal organizations are performing the required background character investigations of school employees.

Suggested Audit Procedures

a. Obtain and review policies and procedures for the performance of background investigations.

b. Perform tests of selected security and personnel files of employees occupying positions that have regular contact with or control over Indian children to verify:

(1) A suitability determination was conducted by an appropriate adjudicating official who themselves were the subject of a favorable background investigation (25 CFR section 63.17(c)).

(2) The background investigation covered the past five years of the individual's employment, education, etc. (25 CFR section 63.16(b)).

(3) A security investigation was obtained and compared to the employment application (25 CFR section 63.17(e)(1)).

(4) Written record searches were obtained from local law enforcement agencies, former employers, former supervisors, employment references, and schools (25 CFR section 63.17(e)(2)).

(5) Fingerprint charts were compared to information maintained by the Federal Bureau of Investigation or other law enforcement information maintained by other agencies (25 CFR section 63.17(e)(3)).

DEPARTMENT OF THE INTERIOR

CFDA 15.047 INDIAN EDUCATION FACILITIES, OPERATIONS, AND MAINTENANCE

I. PROGRAM OBJECTIVES

The objective of this program is to provide funds to Bureau of Indian Education (BIE) funded elementary or secondary schools or peripheral dormitories for facilities, operations, and maintenance.

II. PROGRAM PROCEDURES

The Indian Self-Determination and Education Assistance Act (ISDEAA) was implemented to establish meaningful Indian self-determination that will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. The Tribally Controlled Schools Act provides a grant process for the operation of schools funded by the BIE.

Source of Governing Requirements

ISDEAA, Pub. L. No. 93-638, as amended, 25 USC 450, et seq.; Indian Education Amendments of 1978, Pub. L. No. 95-561, 25 USC 2001 to 2021; and Tribally Controlled Schools Act, 25 USC 2501 to 2511. Regulations for ISDEAA are in 25 CFR part 900.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Funds can be used for education related activities, including:

1. School operations, academic, educational, residential, guidance and counseling, and administrative purposes; and

2. Support services for the school, including transportation (25 USC 2502(a)(3)).

G. Matching, Level of Effort, Earmarking

1. Matching

This program has no statutory matching requirements. However, a recipient may commit to providing matching share in the grant agreement.

2 Level of Effort – Not Applicable

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

See BIA Cross-Cutting Section.

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. **Subaward Reporting under the Transparency Act** – Not Applicable

DEPARTMENT OF THE INTERIOR

CFDA 15.225 RECREATION RESOURCE MANAGEMENT

I. PROGRAM OBJECTIVES

The objectives of the Recreation Resource Management program are to provide financial resources and assistance to manage recreational resource values on the public lands administered by the Bureau of Land Management (BLM) and increase public awareness and appreciation of these values.

II. PROGRAM PROCEDURES

BLM provides funds and assistance to a wide variety of entities, including the general public, through grants and cooperative agreements. All public land users benefit through the projects conducted under these programs. Although there is no matching requirement for this programs except as stated below (see III.G.1.b, Matching) involving youth and youth conservations, if the applicants intend to match Federal funds (monetary or in-kind) must be clearly stated in the application.

All projects funded under the Recreation Resource Management program are restricted to lands administered by the BLM. Most of these lands are located in the Western United States and Alaska. Assistance can be used for helping the BLM manage and/or upgrade recreational resources and related facilities, and in providing related public contact/educational opportunities.

Source of Governing Requirements

Federal Land Policy and Management Act of 1976 (FLPMA), as amended, Pub. L. No. 94-579 (43 USC 1737(b)); **American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5**, 123 Stat. 167 and 173; National Trails System Act (16 USC 1246(e) and (h)); Youth Conservation Corps Act of 1970 (16 USC 1723(c)(1)); Public Lands Corps Act (16 USC 1729(a)(1)); and the Wild and Scenic Rivers Act (16 USC 1281).

Availability of Other Program Information

Other program information is available on the BLM Recreation and Visitor Services website at http://www.blm.gov/wo/st/en/prog/Recreation.html .

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look at Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Specific allowable activities are specified in the grant agreements. Allowable activities shall have as their purpose:

1. Manage, develop, or protect recreation resources on public lands managed by the BLM and provide related public contact/educational opportunities (43 USC 1737(b)).

2. Develop, operate, or maintain any portion of a national, scenic or historic trail (16 USC 1246(e) and (h)).

D. Davis-Bacon Act

All construction modernization, renovation, and repair activities funded with ARRA funds are subject to the Davis-Bacon Act requirements (Section 1606 of ARRA).

G. Matching, Level of Effort, Earmarking

1. Matching

a. Except as noted in G.1.b. below, this program has no statutory matching requirements. However, a recipient can commit to providing matching share as shown in the grant agreement.

b. The Public Lands Corps Act stipulates that DOI must share in the costs of work performed by youth or conservation corps with non-Federal sources. The Secretary of the Interior may not pay more than 75 percent of the costs of any appropriate conservation project carried out on public lands by a qualified youth or conservation corps. The non-Federal share of the costs may be provided from non-Federal sources in the form of funds, donations, services, facilities, materials, equipment, or any combination thereof (16 USC 1729).

2 Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. **Subaward Reporting under the Transparency Act** – Applicable (for non-ARRA-funded projects)

DEPARTMENT OF THE INTERIOR

CFDA 15.231 FISH, WILDLIFE AND PLANT CONSERVATION RESOURCE MANAGEMENT

I. PROGRAM OBJECTIVES

The objective of the Fish, Wildlife and Plant Conservation Resource Management program is to provide financial resources and assistance to manage, restore, and protect fish, wildlife and plant conservation habitat on the public lands administered by the Bureau of Land Management (BLM). These programs restore and protect lands containing resource values for regionally or nationally significant species of management concern or wetland and riparian areas; restore and protect crucial habitat through vegetation treatments, installation of wildlife-friendly fences, and creation of fish passages or barriers to protect aquatic species.

II. PROGRAM PROCEDURES

BLM provides funds to the general public through grants and cooperative agreements. All public land users benefit through the projects conducted under these programs. Although there is no matching requirement for this program, except as stated below (see III.G.1.b, Matching) involving youth and youth conservations, if an applicant intend to match Federal funds (monetary or in-kind) it must be clearly stated in the application.

Projects funded under the Fish, Wildlife and Plant Conservation Resource Management program are primarily conducted on lands administered by the BLM, but may also be conducted on other public or private lands. Most of these lands are located in the Western United States and Alaska. Assistance can be used to help protect, restore, and enhance fish, wildlife, and plant conservation resources and to provide related public contact/education opportunities.

Source of Governing Requirements

Federal Land Policy and Management Act of 1976 (FLPMA), as amended, Pub. L. No. 94-579 (43 USC 1737(b)); **American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5, 123 Stat. 167 and 173**; Endangered Species Act, as amended, Pub. L. No. 97-304 (16 USC 1535); Sikes Act, Pub. L. No. 86-797 (16 USC 670h and 670j); Fish and Wildlife Conservation and Water Resources Developments Coordination Act, as amended, Pub. L. No. 85-624 (16 USC 661); Public Lands Corps Act (16 USC 1729(a)(1)); and Watershed Restoration and Enhancement Agreements, as amended, Pub. L. No. 104-208 (16 USC 1011(a)).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Activities Allowed

Specific allowable activities are specified in the grant agreements. Allowable activities shall have as their purpose assistance used to help protect, restore, and enhance fish, wildlife, and plant conservation resources and to provide related public contact/education opportunities.

D. Davis-Bacon Act

All construction modernization, renovation, and repair activities funded with ARRA funds are subject to the Davis-Bacon Act requirements (Section 1606 of ARRA).

G. Matching, Level of Effort, Earmarking

1. Matching

a. Except as noted in G.1.b. below, this program has no statutory matching requirement. However, a recipient can commit to providing matching share in the grant agreement.

b. The Public Lands Corps Act stipulates that DOI must share in the costs of work performed by youth or conservation corps with non-Federal sources. The Secretary of the Interior may not pay more than 75 percent of the costs of any appropriate conservation project carried out on public lands by a qualified youth or conservation corps. The remaining 25 percent of the costs may be provided from non-Federal sources in the form of funds, donations, services, facilities, materials, equipment, or any combination thereof (16 USC 1729).

2 Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. **Subaward Reporting under the Transparency Act** – Applicable (for non-ARRA-funded projects)

DEPARTMENT OF THE INTERIOR

CFDA 15.236 ENVIRONMENTAL QUALITY AND PROTECTION RESOURCE MANAGEMENT

I. PROGRAM OBJECTIVES

The objectives of the Environmental Quality and Protection Resource Management program are to provide financial resources and assistance to: (1) reduce or remove pollutants in the environment for the protection of human health, water and air resources; (2) restore damaged or degraded watersheds; and (3) protect the public through core programs, such as the Abandoned Mine Land program on the public lands administered by the Bureau of Land Management (BLM) and adjacent State and private lands.

II. PROGRAM PROCEDURES

The BLM provides funds and assistance to a wide variety of entities through grants and cooperative agreements. All public land users' benefit through the projects and the associated activities performed under these programs. Although there is no matching requirement for this program, except as stated below (see III.G.1.b, Matching) many recipients contribute resources to accomplish program objectives which must be clearly stated in the application.

All projects funded under the Environmental Quality and Protection Resource Management program are restricted to lands administered by the BLM unless other specific legislative authority exists. Most of these lands are located in the Western United States and Alaska. Assistance can be used for helping or coordinating projects with the BLM for the Hazard Management and Resource Restoration program, the Abandoned Mine Lands program, and the Soil, Water and Air program.

Source of Governing Requirements

Federal Land Policy and Management Act of 1976 (FLPMA), as amended, Pub. L. No. 94-579 (43 USC 1737(b)); **American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5**, 123 Stat. 167; Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-88, Title I, Sec. 112; and Watershed Restoration and Enhancement Agreements, as amended, Pub. L. No. 104-208 (16 USC 1011(a)).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look at Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Specific allowable activities are specified in the grant agreements. Allowable activities shall have as their purpose assistance used to protect human health, water and air resources, restore damaged or degraded watersheds, mitigate physical safety and water quality through restoration of abandoned hardrock mines, and remediate sites impacted by hazardous materials and illegal activities.

D. Davis-Bacon Act

All construction modernization, renovation, and repair activities funded with ARRA funds are subject to the Davis-Bacon Act requirements (Section 1606 of ARRA).

G. Matching, Level of Effort, Earmarking

1. Matching

a. Except as noted in III.G.1.b. below, this program has no statutory matching requirements. However, a recipient can commit to providing matching share as shown in the grant agreement.

b. Cooperative agreements awarded using the authority in the Department of the Interior, Environment, and Related Agencies Appropriations Act of 2010, Pub. L. No. 111-88, require all parties to contribute resources to the accomplishment of the objectives (Pub. L. No. 111-88, Title I, Section 112).

2 Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. **Special Reporting** – Not Applicable

4. **Section 1512 ARRA Reporting** – Applicable

5. **Subaward Reporting under the Transparency Act** – Applicable (for non-ARRA-funded projects)

DEPARTMENT OF THE INTERIOR

CFDA 15.426 COASTAL IMPACT ASSISTANCE PROGRAM

I. PROGRAM OBJECTIVES

The objective of the Coastal Impact Assistance Program (CIAP) program is the conservation, protection, and preservation of coastal areas, including wetlands.

II. PROGRAM PROCEDURES

The U.S. Department of the Interior (DOI), Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), administers the CIAP program through individual noncompetitive grants awarded directly to States and those coastal political subdivisions (CPS) specifically identified in the Act. Grants are administered by a Program Manager and a CIAP Grants Team located at BOEMRE Headquarters in Herndon, Virginia. Other program officials are in located in Camarillo, California for those grants in California, Anchorage, Alaska for those grants in Alaska, and New Orleans, Louisiana for grants for the States of Alabama, Mississippi, Louisiana, and Texas.

Funds are distributed to OCS oil- and gas-producing states (which include Alabama, Mississippi, Louisiana, Texas, California, and Alaska), and CPSs (which include specific coastal counties, boroughs, and parishes) within those States in the amount of $250 million for each of the fiscal years (FY) 2007 through 2010.

The BOEMRE determines CIAP funding allocations using the formulas mandated by Section 31 of the Outer Continental Shelf Lands Act (43 USC 1356a). Funds are allocated to each recipient using qualified OCS revenues received during a specified fiscal year. The Act requires a minimum annual allocation of 1 percent to each State, and provides that 35 percent of each State's share be allocated directly to its CPSs. A State or CPS may not receive less than its allocation unless BOEMRE finds that the proposed uses of funds are inconsistent with the Act, or if a State or CPS chooses to relinquish some or all of its allotted funds.

Source of Governing Requirements

The program is authorized by Section 31 of the Outer Continental Shelf Lands Act (43 USC 1356a).

Availability of Other Program Information

Other program information is available on the CIAP web site at: http://www.boemre.gov/offshore/CIAPmain.htm.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look at Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. A State or CPS shall use CIAP funds only for one or more of the following activities:

    a. Conservation, protection, or restoration of coastal areas, including wetlands;

    b. Mitigation of damage to fish, wildlife, or natural resources;

    c. Planning and the administrative costs of complying with CIAP (see III.G.3 for limitation on amounts that may be expended for this purpose);

    d. Implementation of a federally approved marine, coastal, or comprehensive conservation management plan; and

    e. Mitigation of the impact of OCS activities through funding of onshore infrastructure projects and public service needs (see III.G.3 for limitation on amounts that may be expended for this purpose).

2. The above activities are designed to benefit the coastal zone; however CIAP projects do not need to be undertaken solely within a State's coastal zone (43 USC 1356a(d)(1)).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2 Level of Effort – Not Applicable

3. Earmarking

Not more than 23 percent of the amounts received by a State or CPS shall be used for:

a. Planning assistance and the administrative costs of complying with CIAP; and

b. Mitigation of the impact of OCS activities through funding of onshore infrastructure projects and public service needs (43 USC 1356a(d)(3)).

I. Procurement and Suspension and Debarment

Buy American – All procurement contracts for equipment or products must comply with DOI Buy -American requirements in 43 CFR part 12, subpart E, *Buy American Requirements for Assistance Programs* (43 CFR part 12, subpart E).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

DEPARTMENT OF THE INTERIOR

CFDA 15.504 WATER RECLAMATION AND REUSE PROGRAM

I. PROGRAM OBJECTIVES

The objectives of the Water Reclamation and Reuse Program are: to investigate and identify opportunities for reclamation and reuse of municipal, industrial, domestic, and agricultural wastewater, and naturally impaired ground and surface waters, for the design and construction of demonstration and permanent facilities to reclaim and reuse wastewater; and to conduct research, including desalting, for the reclamation of wastewater and naturally impaired ground and surface waters.

II. PROGRAM PROCEDURES

The Bureau of Reclamation in the Department of the Interior (DOI) has the discretionary authority to fund financial assistance awards for appraisal investigations, feasibility studies, research, and demonstration projects under Sections 1602 through 1605 of the Reclamation Wastewater and Groundwater Study and Facilities Act of 1992, Pub. L. No. 102-575 (43 USC 390h *et seq.*). Funding for construction is limited to projects specifically authorized by statute through Title XVI of Pub. L. No,. 102-575, as amended (43 USC 390h *et seq.*). **Funding provided by the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) was awarded to recipients through separate grants and cooperative agreements to ensure that the project elements and requirements would be separate and distinct from the project elements funded under this CFDA number through annual appropriations.**

Source of Governing Requirements

Title XVI of Pub. L. No. 102-575 (43 USC 390h *et seq.*) **and ARRA, 123 Stat. 137**.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Operation and maintenance costs are only allowable for demonstration water reclamation and reuse projects constructed under this program (43 USC 390h-3).

D. Davis-Bacon Act

All construction activities funded with ARRA funds are subject to Davis-Bacon Act requirements (**Section 1606 of ARRA**).

G. Matching, Level of Effort, Earmarking

1. Matching

a. The Federal share of appraisal investigations can be up to 100 percent (43 USC 390h-1).

b. The Federal share of feasibility studies shall not exceed 50 percent of the total costs unless the Secretary of the Interior determines, based upon a demonstration of financial hardship on the part of the non-Federal participant, that the non-Federal participant is unable to contribute at least 50 percent of the study costs (43 USC 390h-2).

c. The Federal share of the total costs to construct, operate, and maintain cooperative research and demonstration projects shall not exceed 25 percent unless DOI determines that the project is not feasible without a greater than 25 percent Federal contribution (43 USC 390h-3).

d. The federal share of planning, design, and construction of permanent water reclamation and reuse projects shall not exceed 25 percent of the total project costs (43 USC 390h *et seq.*).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program* – Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable (to non-ARRA-funded projects)

DEPARTMENT OF THE INTERIOR

CFDA 15.518 GARRISON DIVERSION UNIT

II. PROGRAM OBJECTIVES

The objective of the Garrison Diversion Unit is to meet the water needs within the State of North Dakota by providing funds for the planning and construction of a multi-purpose water resource development project within the State for irrigation; municipal, rural, and industrial water; fish, wildlife, and other natural resource conservation and development; recreation; flood control; augmented stream flows; ground water recharge; and other project purposes.

II. PROGRAM PROCEDURES

Eligible recipients for this program include the State of North Dakota, the Garrison Conservancy District, the Standing Rock Sioux, the Three Affiliated Tribes, the Spirit Lake Nation, and the Turtle Mountain Band of Chippewa. Federal funding for tribal recipients is accomplished through agreements under the authority of the Indian Self Determination and Education Assistance Act (ISDEAA) (Pub. L. No. 93-638, as amended). **Funding provided by the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) was awarded to non-tribal recipients through separate agreements to ensure that the project elements and requirements would be separate and distinct from the project elements funded under this CFDA number through annual appropriations. Funding provided by ARRA was awarded to tribal recipients through modifications to existing agreements under the authority of the ISDEAA.**

Source of Governing Requirements

Garrison Diversion Unit, Missouri River Basin Project, Pub. L. No. 89-108, 79 Stat. 443; Garrison Diversion Unit Reformulation Act of 1986, Pub. L. No. 99-294, 100 Stat. 418; Reclamation Projects Authorization and Adjustment Act of 1992, Title XVII of Pub. L. No. 102-575, 106 Stat. 4669; Title XXXV of Pub. L. No. 102-575, 106 Stat. 4731; Title VI of the Dakota Water Resources Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763A-281; Indian Self-Determination and Education Assistance Act (25 USC 450); **and ARRA, 123 Stat. 137**. Implementing program regulations for ISDEAA contracts are found at 25 CFR part 900.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

C. Cash Management

Cash management requirements do not apply to Pub. L. No. 93-638 (25 USC 450 *et seq*.) agreements with Indian tribes (25 USC 450*l*).

D. Davis-Bacon Act

All construction, modernization, renovation, or repair activities by non-tribal entities that are funded with ARRA funds are subject to Davis-Bacon Act requirements. Awards to Indian tribes, both those **with ARRA funds**, and those with regular funds, are covered under ISDEAA agreements which require compliance with Davis-Bacon Act requirements for construction, modernization, renovation, or repair activities (**Section 1606 of ARRA,** 25 USC 450e; 25 CFR section 1000.407).

G. Matching, Level of Effort, Earmarking

1. Matching

a. The Federal share of project costs cannot exceed 75 percent for the State of North Dakota and the Southwest Pipeline Project (Section 5, Pub. L. No. 99-294, 100 Stat. 422).

b. Other projects and entities funded through this program are not subject to a cost-share requirement.

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program* – Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial* Report – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

DEPARTMENT OF THE INTERIOR

CFDA 15.520 LEWIS AND CLARK RURAL WATER SYSTEM

I. PROGRAM OBJECTIVES

The objective of the Lewis and Clark Rural Water System is to provide safe and adequate municipal, rural, and industrial water supplies, mitigation of wetland areas, and water conservation for the Lewis and Clark Rural Water System member entities located in southeastern South Dakota, southwestern Minnesota, and northwestern Iowa.

II. PROGRAM PROCEDURES

There is only one eligible entity for this program, the Lewis and Clark Water Supply System, Inc. as identified in the statutory authority as the "water supply system." The Bureau of Reclamation has awarded a long-term cooperative agreement for the project. **For the project elements funded under the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5), a separate cooperative agreement was awarded to ensure that the ARRA funds for the project and the accompanying ARRA requirements would be separate and distinct from the elements of the project funded through annual Federal appropriations.**

Source of Governing Requirements

The program is authorized by the Lewis and Clark Rural Water System Act of 2000, Pub. L. No. 106-246 (114 Stat 579) **and Title VII of ARRA, 123 Stat. 137**.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Allowable activities are the planning and construction of the water supply project (Section 4103 of Pub. L. No. 106-246, 114 Stat. 580).

2. Unallowable activities are the operation, maintenance, repair, and rehabilitation costs of the water supply project (Section 4110 of Pub. L. No. 106-246, 114 Stat. 582).

D. Davis-Bacon Act

All construction modernization, renovation, and repair activities funded with ARRA funds are subject to Davis-Bacon Act requirements (Section 1606 of ARRA).

G. Matching, Level of Effort, Earmarking

1. Matching

a. Except as noted in G.1.b. below, the Federal share cannot exceed 80 percent of project costs, **including ARRA funded costs** (Section 4108(b) of Pub. L. No. 106-246, 114 Stat. 581).

b. For the City of Sioux Falls, South Dakota, the Federal share cannot exceed 50 percent of the incremental cost to the city to participate in the project, **including ARRA funded costs.** Incremental costs are defined in Section 4102(2) as the costs of the savings to the project were the City of Sioux Falls not to participate in the water supply system (Sections 4102(2) and 4108(b) of Pub. L. No. 106-246, 114 Stat. 581).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable.

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program* – Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

DEPARTMENT OF THE INTERIOR

CFDA 15.605 SPORT FISH RESTORATION PROGRAM
CFDA 15.611 WILDLIFE RESTORATION

I. PROGRAM OBJECTIVES

The objective of the Sport Fish Restoration Program is to restore, conserve, and enhance sport fish populations and to provide for public use and enjoyment of these fishery resources.

The objective of the Wildlife Restoration program is to restore, conserve, and enhance wildlife populations, provide for public use and enjoyment of these resources, and to provide training to hunters and archers in skills, knowledge, and attitudes necessary to be responsible hunters or archers.

II. PROGRAM PROCEDURES

The U.S. Fish and Wildlife Service (FWS) makes program and project grants to the fish and game agencies of the 50 States, District of Columbia (not eligible to receive Wildlife Restoration Program funding), Commonwealths of Puerto Rico and the Northern Mariana Islands, and territories of Guam, U.S. Virgin Islands, and American Samoa (collectively referred as "State" or "States") with funds apportioned to each State through a statutory formula. States may submit either a comprehensive plan or project proposal to FWS. When either is approved, the State generally can be paid up to 75 percent of the cost of the work performed.

Source of Governing Requirements

The Sport Fish Restoration Program is authorized by the Sport Fish Restoration (Dingell-Johnson) Act (16 USC 777 through 777*n*). The Wildlife Restoration program is authorized by the Wildlife Restoration (Pittman-Robertson) Act (16 USC 669 through 669*k*). Program regulations are at 50 CFR part 80. Program guidance is available in the FWS Manual chapters pertaining to Wildlife and Sport Fish Restoration grants—Chapters 517 FW through 520 FW.

Availability of Other Program Information

Other program information is available on the FWS Grant Information site on the Internet at http://wsfrprograms.fws.gov/Subpages/GrantPrograms/GrantProgramsIndex.htm. The FWS Manual is available on the Internet at http://wsfrprograms.fws.gov/Subpages/ToolkitFiles/toolkit.pdf.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look at Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Wildlife Restoration – Allowable Activities*

   Specific allowable projects are specified in the grant agreements. Allowable projects shall have as their purpose:

   a. The restoration, conservation, management, and enhancement of wild birds and wild mammals, and the provision for public use of and benefits from these resources (50 CFR section 80.5(a)(1)).

   b. Projects having as their purpose the education of hunters and archers in the skills, knowledge, and attitudes necessary to be a responsible hunter or archer (50 CFR section 80.5(a)(2)).

2. *Sport Fish Restoration – Allowable Activities*

   Specific allowable projects are specified in the grant agreements. Allowable projects shall have as their purpose the restoration, conservation, management, and enhancement of sport fish, and the provision for public use of and benefits from these resources. Sport fish are limited to aquatic, gill-breathing, vertebrate animals, bearing paired fins, and having material value for sport or recreation. Allowable projects include the following:

   a. Aquatic education projects to enhance the public's understanding of water resources and aquatic life forms.

   b. Outreach and communications projects to improve communication with anglers, boaters, and the general public on angling and boating opportunities.

   c. Pumpout stations and waste reception facilities projects to construct, renovate, operate, or maintain pumpout stations and waste reception facilities.

   d. Public boating access projects to conduct surveys to determine the adequacy, number, location, and quality of facilities providing access to recreational waters for all sizes of recreational boats (16 USC 777g; 50 CFR section 80.5(b)(1)).

3. *Unallowable Activities* – The following activities are unallowable except when necessary for the accomplishment of project purposes and approved by the FWS Regional Director:

   a. Law enforcement activities for enforcement of game and fish laws and regulations (50 CFR section 80.6(a)).

b. Public relations activities for the purpose of promoting the activities of State fish and wildlife agency (50 CFR section 80.6(b)).

F. Equipment and Real Property Management

Real property acquired or constructed with Wildlife Restoration and Sport Fish Restoration Program funds shall continue to serve the purpose for which acquired or constructed. When property passes from management control of the State fish and wildlife agency, the control shall be fully restored to the State fish and wildlife agency or the real property shall be replaced using non-Federal funds that are not derived from license revenues. When property is used for purposes which interfere with the accomplishment of approved purposes, the violating activities shall cease and adverse effects must be remedied (50 CFR section 80.14).

G. Matching, Level of Effort, Earmarking

1. Matching

a. Federal participation is limited to 75 percent of eligible costs incurred in the completion of approved work or the Federal share specified in the grant, whichever is less, except that the non-Federal cost sharing for the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia (not eligible to receive Wildlife Restoration Program funding), and the territories of Guam, the U.S. Virgin Islands, and American Samoa may not exceed 25 percent and may be waived at the discretion of the Regional Director (50 CFR section 80.12).

b. The State shall not draw down or request Federal funds for nonconstruction work in excess of the proportional Federal share of the project costs. For construction work, the State may exceed the Federal share limit if deemed appropriate by both the Regional Director and the State (16 USC 669f and 777f).

2 Level of Effort – Not Applicable

3. Earmarking

a. *Indirect Costs Limitation* – The amount of overhead or indirect costs charged to the projects under these programs for State central services provided from outside the State fish and game agency in one year may not exceed three percent of the annual apportionment to the State (50 CFR section 80.15(e)).

b. *Aquatic Resource Education and Outreach and Communication* – Not more than 15 percent of the annual apportionment to each of the 50 States under the provisions of the Sport Fish Restoration Act may be used for aquatic education projects. The Commonwealths of Puerto Rico and the

Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa are not limited to the 15-percent cap imposed on the 50 States. Each of these entities may spend more for these purposes with the approval of the Regional Director (50 CFR section 80.15(f)).

c. *Recreational Boating Access Facilities* – The State must allocate 15 percent of each annual apportionment under the Sport Fish Restoration Act for recreational boating access facilities unless approval is obtained from the Regional Director for a different amount. A broad range of access facilities and associated amenities can qualify for funding under the 15 percent provision, but the State must accommodate powerboats with common horsepower ratings, and must make reasonable efforts to accommodate boats with larger horsepower ratings if they would not conflict with aquatic resources management (50 CFR section 80.24).

H. Period of Availability of Federal Funds

Multi-year Financing Exception – States may finance the acquisition of land and the construction of facilities using funding from more than 1 fiscal year as authorized by the Sport Fish Restoration Act (50 CFR section 80.25).

J. Program Income

Wildlife and Sport Fish Restoration Program funds cannot be used for the purpose of producing income. However, income-producing activities incidental to accomplishment of approved purposes are allowable (50 CFR section 80.14(c)).

Grant agreements will normally contain specific language that income generated by the grantee outside of the grant period from Wildlife and Sport Fish Restoration Program-supported acquisitions or other activities will either be (1) treated as license revenue and used to support the administration of the State fish and wildlife agency, or, (2) if the State so requests, used as additional funding for purposes consistent with the grant program that generated the income.

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting

Form 3-154A and 3-154B, Paid Hunting and Fishing License Certification (OMB Approval No.1018-0007) – The Director of each State fish and wildlife agency must certify annually the number of paid hunting and fishing license holders in the State. Licenses are counted over a period of 12 consecutive months; the State's fiscal year, or other licensing period, may be used, provided it is consistent from year to year. The data is used for calculating the apportionment of the annual appropriation of funds to all State grantees. Therefore, exaggerating the number of license holders could result in award of additional Federal funds to which the State is not entitled. The State must eliminate multiple counting of single individuals in the certified figures. Sampling and other statistical techniques may be utilized by the certifying officer for this purpose.

For purposes of reporting, the State counts a person who possesses a paid license issued in the licensee's name, which includes or excludes the following, as applicable:

a. Trapping licenses, commercial licenses, and other licenses that are not for the express purpose of permitting the holder to hunt or fish for sport or recreation cannot be included.

b. Licenses that do not produce net revenue of at least $1 returned to the State fish and wildlife agency after deducting costs directly associated with issuance of the license are cannot be included.

c. The State may count persons possessing a single-year license (one that is legal for less than 2 years) only in the State-specified license certification period in which the license was purchased.

d. Multiyear license (one that is legal for 2 years or more) may be counted in each of the years for which they are legal if:

(1) the net revenue from the license is in close approximation with the number of years in which the license is legal, and

(2) the State fish and wildlife agency uses statistical sampling or other techniques approved by the Director to determine whether the licensee remains a license holder.

e. Combination fishing and hunting licenses (a single license which permits the holder both to hunt and fish) may be included in the determination of both the number of paid hunting license holders and the number of persons

holding paid licenses to fish for sport or recreation (50 CFR section 80.10).

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

Assent Legislation and Diversion of License Fees

Compliance Requirement – A State may participate in the benefits of the Sport Fish and Wildlife Restoration programs only after it has passed legislation for the conservation of fish and wildlife, including a prohibition against the diversion of license fees paid by hunters and sport fishermen to purposes other than for the administration of the fish and wildlife agency (50 CFR section 80.3).

License fees paid by hunters and fishermen, include any special license, permits, stamps, tags, or access fees. Also included are revenues from the sale, lease, or rental of, or a fee for access to, an asset or recreational opportunity, product, or commodity derived from an asset purchased with state license fee revenue, as well as the interest or dividends earned on the license revenues (50 CFR section 80.4(a)).

Administration of the State fish and wildlife agency includes only those functions required to manage the fish and wildlife-oriented resources of the State (50 CFR section 80.4(b)).

Audit Objective – Determine whether revenues from license fees paid by hunters and sport fishermen are used only for the administration of the State fish and wildlife agency.

Suggested Audit Procedures

1. Ascertain if there are legislative prohibitions in place to prevent diversion of license revenues.

2. Perform tests to ascertain if hunting and sport fishing license revenue was properly accounted for and restricted for use for the administration of the State fish and wildlife agency.

3. Test expenditures from the license fees paid by hunters and sport fisherman to ascertain if they were used for the administration of the State fish and wildlife agency.

4. Perform procedures to ascertain if there were any transfers from the State fish and wildlife agency that divert license fees paid by hunters and sport fisherman from the administration of the State fish and wildlife agency.

DEPARTMENT OF THE INTERIOR

CFDA 15.614 COASTAL WETLANDS PLANNING, PROTECTION AND RESTORATION ACT (National Coastal Wetlands Conservation Grants)

I. PROGRAM OBJECTIVES

The objective of the National Coastal Wetlands Conservation Grant program is to provide funds to coastal States (except Louisiana) for coastal wetlands conservation projects. The primary goal of the National Coastal Wetlands Conservation Grant Program is the long-term conservation of coastal wetland ecosystems. It accomplishes this goal by helping States in their efforts to protect, restore, and enhance their coastal habitats. The program's accomplishments are primarily on-the-ground and measured in acres.

II. PROGRAM PROCEDURES

The National Coastal Wetlands Conservation Grant Program provides funds on a competitive basis for acquisition of interests in coastal lands or waters, and for restoration, enhancement or management of coastal wetlands ecosystems. All coastal States except Louisiana are eligible to apply. Proposed projects must provide for long-term conservation of coastal wetlands or waters and the hydrology, water quality, and fish and wildlife dependent thereon (16 USC 3954; 50 CFR section 84.11). Use of property acquired with grant funds that is inconsistent with program requirements and that is not corrected can be grounds for denying a State future grants under this program (50 CFR section 84.48(a)(6)).

Source of Governing Requirements

The National Coastal Wetlands Conservation Grant program is authorized by Section 305, Title III, Pub. L. 101-646, 16 USC 3951-3956. The National Coastal Wetlands Conservation Grant program regulations are at 50 CFR part 84.

Availability of Other Program Information

Other program information for Coastal Wetlands Planning, Protection and Restoration Act is found at http://www.fws.gov/coastal/CoastalGrants/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

   a. Acquisition of a real property interest in coastal lands or waters from willing sellers or partners (coastal wetlands ecosystems), under terms and conditions that will ensure the real property will be administered for long-term conservation (50 CFR section 84.20(a)(1)).

   b. The restoration, enhancement, or management of coastal wetlands ecosystems (50 CFR section 84.20(a)(2)).

   c. Planning as a minimal component of project plan development (50 CFR section 84.20(b)(6)) (see III.A.2.f. for unallowable planning activities).

2. *Activities Unallowed*

   a. Projects that primarily benefit navigation, irrigation, flood control, or mariculture (50 CFR section 84.20(b)(1)).

   b. Acquisition, restoration, enhancement, or management of lands to mitigate recent or pending habitat losses resulting from the actions of agencies, organizations, companies, or individuals (50 CFR section 84.20(b)(2)).

   c. Creation of wetlands by humans where wetlands did not previously exist (50 CFR section 84.20(b)(3)).

   d. Enforcement of fish and wildlife laws and regulations, except when necessary for the accomplishment of approved project purposes (50 CFR section 84.20(b)(4)).

   e. Research (50 CFR section 84.20(b)(5)).

   f. Planning as a primary project focus (50 CFR section 84.20(b)(6)).

   g. Operations and maintenance (50 CFR section 84.20(b)(7)).

   h. Acquiring and/or restoring upper portions of watersheds where benefits to the coastal wetlands ecosystem are not significant and direct (50 CFR section 84.20(b)(8)).

   i. Projects providing less than 20 years of conservation benefits (50 CFR section 84.20(b)(9)).

F. Equipment and Real Property Management

States must submit documentation (e.g., appraisals and appraisal reviews) to the Fish and Wildlife Service (FWS) Regional Director who must approve it before the State becomes legally obligated for the purchase. States must provide title vesting evidence and summary of land costs upon completion of the acquisition to the FWS Regional Director. Any deed to third parties (e.g., conservation easement or other lien on a third-party property) must include appropriate language to ensure that the lands and/or interests would revert back to the State or Federal Government if the conditions of the grant are no longer being implemented (50 CFR section 84.48(a)(1)).

G. Matching, Level of Effort, Earmarking

1. Matching

a. Except for those insular areas specified in paragraph G.1.b, the Federal share will not exceed 50 percent of approved costs incurred. However, the Federal share may be increased to 75 percent for coastal States that have established and are using a fund as defined in 50 CFR section 84.11. The FWS Service Regional Directors must certify the eligibility of the fund in order for the State to qualify for the 75 percent matching share (50 CFR section 84.46(a)).

b. The following insular areas: American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, have been exempted from the matching share, as provided in Pub. L. 95–134, as amended by Pub. L. 95–348, Pub. L. 96–205, Pub. L. 98–213, and Pub. L. 98–454 (48 USC 1469a). Puerto Rico is not exempt from the match requirements of this program (50 CFR section 84.46(b)).

c. Total Federal contributions (including all Federal sources outside of the program) may not exceed the maximum eligible Federal share under the Program. This includes monies provided to the State by other Federal programs. If the amount of Federal money available to the project is more than the maximum allowed, FWS will reduce the program contribution by the amount in excess (50 CFR section 84.46(h)).

d. Natural Resource Damage Assessment funds that are managed by a non-Federal trustee are considered to be non-Federal, even if these monies were once deposited in the Department of the Interior's Natural Resource Damage Assessment and Restoration Fund, provided the following criteria are met:

(1) The monies were deposited pursuant to a joint and indivisible recovery by the Department of the Interior and non-Federal trustees under the Comprehensive Environmental Response,

Compensation, and Liability Act (CERCLA) or the Oil Pollution Act (OPA);

(2) The non-Federal trustee has joint and binding control over the funds;

(3) The co-trustees agree that monies from the fund should be available to the non-Federal trustee and can be used as a non-Federal match to support a project consistent with the settlement agreement, CERCLA, and OPA; and

(4) The monies have been transferred to the non-Federal trustee (50 CFR section 84.46(i)).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

J. Program Income

If rights or interests obtained with the acquisition of coastal wetlands generate revenue during the grant agreement period, the State will treat the revenue as program income and use it to manage the acquired properties (50 CFR section 84.48(a)(5)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable.

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

1. Trust Fund

Compliance Requirement – The Federal share may be increased to 75 percent for coastal States that have established and are using a "fund" as defined in 50 CFR section 84.11. The fund can be a trust fund from which the principal is not spent, or a fund derived from a dedicated recurring source of monies (50 CFR section 84.46).

Audit Objective – For States that have established and are using a trust fund, determine whether principal and interest are properly accounted for. For States with a dedicated recurring source of monies, examine collection and restrictions to determine if all funds are properly accounted for.

Suggested Audit Procedures

a. Perform tests to ascertain if restricted funds were properly collected (retained) and accounted for.

b. Test expenditures to ascertain if trust funds or dedicated funds were used by the State according to the reported purpose.

2. Operation and Maintenance of Facilities

Compliance Requirement – The coastal States must operate and maintain facilities, structures, or related assets to ensure their use for the stated project purpose and must adequately protect them. If acquired property is used for reasons inconsistent with the purpose(s) for which acquired, such activities must cease and any adverse effects on the property must be corrected by the State or subgrantee with non-Federal monies in accordance with 50 CFR section 80.14 (50 CFR sections 84.48(a)(3) and (b)(3)).

Audit Objective – Determine whether coastal State operation and maintenance procedures ensure that program assets are identified, adequately maintained, protected, and used for stated project purposes.

Suggested Audit Procedures

a. Review property management procedures, and assess their adequacy for identifying and protecting program assets. This includes policies and procedures for addressing the operations and maintenance of the asset.

b. Determine if property inventories or lists of program assets reconcile with grant agreements and stated project purposes.

DEPARTMENT OF THE INTERIOR

CFDA 15.615 COOPERATIVE ENDANGERED SPECIES CONSERVATION FUND

I. PROGRAM OBJECTIVES

The objective of the Cooperative Endangered Species Conservation Fund program is to provide Federal financial assistance to a State or territory, through its appropriate State or territorial agency, to assist in the development of programs for the conservation of federally listed endangered and threatened species.

II. PROGRAM PROCEDURES

Grants for States and territories, offered through the Cooperative Endangered Species Conservation Fund, provide funding for a wide array of voluntary conservation projects for candidate, proposed and listed threatened and endangered species. Grants awarded are in the categories of: Conservation Grants for the implementation of conservation projects; Recovery Land Acquisition for the acquisition of habitat in support of approved species recovery goals or objectives; Habitat Conservation Planning Assistance to support development of Habitat Conservation Plans (HCPs); and HCP Land Acquisition for the acquisition of land associated with approved HCPs. These funds may in turn be awarded to private landowners and groups for conservation projects.

Source of Governing Requirements

The Cooperative Endangered Species Conservation Fund is authorized by the Endangered Species Act of 1973, as amended, 16 USC 1531 to 1543; and the Land and Water Conservation Fund Act of 1965, 16 U.S.C. 4601, as amended. Program regulations are at 50 CFR part 81. Program guidance is available in the Fish and Wildlife Service (FWS) Manual chapters pertaining to Cooperative Endangered Species Conservation Fund grants—Chapters 521 FW and 523 FW.

Availability of Other Program Information

Program information for endangered species grants to States and territories is available on the FWS website on the internet at http://www.fws.gov/endangered/grants/index.html. The FWS Manual is available on the internet at http://wsfrprograms.fws.gov/Subpages/ToolkitFiles/toolkit.pdf.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

All methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Endangered Species Act of 1973 are no longer necessary are allowable. Such methods and procedures include, but are not limited to, habitat restoration, species status surveys, public education and outreach, captive propagation and reintroduction, nesting surveys, genetic studies, habitat acquisition and maintenance, and development of management plans (50 CFR section 81.1(b)).

G. Matching, Level of Effort, Earmarking

1. Matching

a. Except as noted in G.1.b. and c. below, the Federal share of such program costs shall not exceed 75 percent of the program costs (16 USC 1535(d)(2); 50 CFR section 81.8).

b. The Federal share may be increased to 90 percent whenever two or more States having a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into an agreement with the Secretary of the Interior (16 USC 1535(d)(2); 50 CFR section 81.8).

c. Per the FWS Director's Memorandum, of August 23, 1993, the following insular areas: American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, have been exempted from the matching requirement (48 USC 1469a).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. **Performance Reporting** – Not Applicable

3. **Special Reporting** – Not Applicable

4. **Section 1512 ARRA Reporting** – Not Applicable

5. **Subaward Reporting under the Transparency Act –** Applicable

DEPARTMENT OF THE INTERIOR

CFDA 15.623 NORTH AMERICAN WETLANDS CONSERVATION FUND

I. PROGRAM OBJECTIVES

The objective of North American Wetlands Conservation Fund program is to encourage public-private partnerships to protect, enhance, restore, and manage wetland ecosystems and habitats to benefit wetland-associated migratory bird populations.

II. PROGRAM PROCEDURES

The U.S. Fish and Wildlife Service (FWS), within the Department of the Interior, makes grants on a competitive basis to organizations or individuals to acquire, restore, enhance, or create wetland and associated upland habitat. Applicants must submit a comprehensive proposal outlining activities to be completed with project funds and describing the participation of all partner organizations involved in the project. A partner in a project is a group, agency, organization, or individual that participates in the project as a recipient, subrecipient, or match provider. Funds provided directly to a Federal entity by FWS are governed by a separate agreement between FWS and the recipient Federal entity.

Source of Governing Requirements

The North American Wetlands Conservation Program is authorized by the North American Wetlands Conservation Act (NAWCA), 16 USC 4401.

Availability of Other Program Information

Other program information is available on the FWS Grant Information site on the Internet at http://www.fws.gov/grants/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

Allowable activities include acquisition, management, restoration (rehabilitating a degraded or non-functioning wetland ecosystem), enhancement (modifying a functioning wetland ecosystem to provide additional long-term wetlands conservation benefits), and establishment or reestablishment of wetland habitat and wetland-associated upland habitat (16 USC 4401(b)).

2. *Activities Unallowed*

Federally required mitigation activity for compliance with the Fish and Wildlife Coordination Act of 1934 or the Water Resources Development Act of 1986 are unallowable, including, but not limited to, the following:

a. Actions that will put credits into wetlands mitigation banks; and

b. Mitigation activity required by Federal, State, or local wetland regulations (16 USC 4411(b)).

F. Equipment and Real Property Management

Any real property acquired under a grant that is not included in the National Wildlife System and is conveyed to another public agency or other entity is subject to terms and conditions that will ensure that the interest will be administered for the long-term conservation and management of the wetland ecosystem and the fish and wildlife dependent thereon. All interests in real property shall contain provisions that revert interest to the Federal government if the entity fails to manage the property in accordance with the objectives of NAWCA (16 USC 4405(a)(3)).

G. Matching, Level of Effort, Earmarking

1. Matching

The required matching share varies on a grant-by-grant basis and is set forth in the grant award, but must be at least 50 percent of project costs, except that project activities located on Federal lands and waters can be funded with 100 percent Federal funding (16 USC 4407(b)).

2 Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. **Performance Reporting** – Not Applicable

3. **Special Reporting** – Not Applicable

4. **Section 1512 ARRA Reporting** – Not Applicable

5. **Subaward Reporting under the Transparency Act –** Applicable

DEPARTMENT OF THE INTERIOR

CFDA 15.635 NEOTROPICAL MIGRATORY BIRD CONSERVATION

I. PROGRAM OBJECTIVES

The objectives of the Neotropical Migratory Bird Conservation Program are to provide financial resources and foster international cooperation to: (1) perpetuate healthy populations of neotropical migratory birds and (2) assist in the conservation of neotropical migratory birds by supporting conservation initiatives in the United States, Canada, Latin America, and the Caribbean.

II. PROGRAM PROCEDURES

The U.S. Fish and Wildlife Service (FWS), a component of the Department of the Interior, makes grants on a competitive basis to organizations or individuals to protect and manage neotropical migratory bird populations; maintain, manage, protect, and restore neotropical migratory bird habitat; conduct research and monitoring; support law enforcement; and provide for community outreach and education contributing to neotropical migratory bird conservation. Applicants must submit a proposal outlining activities to be completed with grant and required matching funds. A partner in a project is a group, agency, organization, or individual which participates in the project as a recipient, subrecipient, or match provider. Funds provided to a Federal entity are governed through a separate agreement between FWS and the recipient Federal entity.

Source of Governing Requirements

The Neotropical Migratory Bird Conservation Program is authorized by the Neotropical Migratory Bird Conservation Act, 16 USC 6101 *et seq*.

Availability of Other Program Information

Other program information is available on the FWS Grant Information site on the Internet at http://www.fws.gov/grants/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Allowable activities include protection and management of neotropical migratory bird populations; maintenance, management, protection, and restoration of neotropical migratory bird habitat; research and monitoring; law enforcement; and community outreach and education (16 USC 6103(3)).

G. Matching, Level of Effort, Earmarking

1. Matching

A recipient carrying out grant activities in the U.S. or Canada is required to provide a non-Federal matching share in cash. A recipient carrying out grant activities in geographic areas outside of the U.S. or Canada, including Puerto Rico and the U.S. Virgin Islands, is required to provide a non-Federal matching share, which may be in the form of cash or in-kind contributions. The required matching share varies on a grant-by-grant basis and is set forth in the award document, but is at least 75 percent of the project costs (16 USC 6103(2) and 6104(e)).

2 Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

DEPARTMENT OF JUSTICE

CFDA 16.710 PUBLIC SAFETY PARTNERSHIP AND COMMUNITY POLICING GRANTS

I. PROGRAM OBJECTIVES

The Community Oriented Policing Services (COPS) grant programs provide State, local, and tribal law enforcement agencies with resources to address law enforcement needs with a focus on increasing the capacity of those agencies to implement community policing strategies. These strategies are focused on three primary elements of community policing: (1) developing community/law enforcement partnerships; (2) developing problem-solving and innovative approaches to crime issues; and (3) implementing organizational change to build and strengthen community policing infrastructure.

II. PROGRAM PROCEDURES

COPS grant programs are awarded to law enforcement agencies, large and small, across the country. The overall intent of the grant programs is to help develop an infrastructure that will sustain community policing.

COPS grants provide funds for personnel, technology, equipment, training and technical assistance, and innovative community policing strategies. The two main categories of grants are Hiring and Non-Hiring.

Hiring Grants

There are three types of hiring grants:

COPS Hiring Program (CHP), which provide funding directly to State, local and tribal law enforcement agencies to hire and/or rehire full-time sworn officers to increase their community policing capacity and crime prevention efforts;

COPS Hiring Recovery Program (CHRP), **which provides funds to law enforcement agencies to hire new and/or rehire career law enforcement officers in an effort to create and preserve jobs, and to increase their community policing capacity and crime prevention efforts;** and

Tribal Resources Grant Program – Hiring (TRGP-Hiring) grants, which provide funds to tribal law enforcement agencies for the hiring of officers to improve crime-fighting capabilities in Indian Country.

Non-Hiring Grants

There are eight types of non-hiring grants:

Child Sexual Predator Program (CSPP), which provides funds to assist law enforcement agencies with the location, arrest, and prosecution of child sexual predators.

Tribal Resources Grant Program – Equipment/Training (TRGP-E/T), which provides funds to tribal law enforcement agencies for the purchase of equipment and technology to improve crime-fighting capabilities in Indian Country.

Community Policing Development (CPD), which provides funds to advance community policing and problem-oriented policing efforts through the development of products, tools, and applied research that will facilitate the adoption and implementation of training and technical assistance.

Law Enforcement Technology Grants (Tech), which provides funds for projects to develop and implement technologies that will advance community policing and help fight crime.

Methamphetamine Initiative (Meth), which provides funds to assist local law enforcement agencies and task forces with developing innovative community policing responses to problems of crime and disorder related to methamphetamine usage.

Safe Schools Initiative (SSI), which provides funds aimed at preventing violence in public schools, and to support the assignment of officers to work in collaboration with schools and community-based organizations to address the threat of terrorism, crime, disorder, gangs, and drug activities.

Secure Our Schools (SOS), which provides funds to law enforcement agencies to partner with schools for the purchase of crime prevention equipment, staff and student training, and other security improvements.

Tribal Methamphetamine Initiative (Tribal Meth), which provides funds to federally recognized tribes to help address the unique challenges of tribal jurisdictions to combat methamphetamine production, use, and trafficking.

Other Active Programs

Other programs funded in previous years with currently active awards include the COPS Making Officer Redeployment Effective (MORE) program, the Universal Hiring Program (UHP), the Interoperable Communications Technology Program, and the COPS in Schools (CIS) grant program.

Source of Governing Requirements

This program is authorized under the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, Title I, Part Q (42 USC 3796dd - 3796dd-8). Grants are authorized under section 1701 of title I of the 1968 Omnibus Crime Control and Safe Streets Act (42 USC 3796dd) for hiring and rehiring of additional career law enforcement officers under part Q of such title. **Additional funding is provided by the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5, 123 Stat. 130.**

Availability of Other Program Information

The DOJ-COPS home page (http://www.cops.usdoj.gov/) under the selection titled "Grants & Funding" provides information on regulations and other general information about the program.

Additional information about this program is found in the Grant Owner's Manuals developed by the COPS Office. Grant recipients can access the Grants Owner's Manuals and Grant Monitoring Standards for Hiring and Redeployment on the COPS home page by using the Search feature.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Hiring Grants* – Hiring grants (CHP, **CHRP**, UHP, COPS in Schools and TRGP–Hiring) may include programs, projects, and other activities to:

   a. Hire and train new, additional career law enforcement officers for deployment into community-oriented policing (42 USC 3796dd(b)(2)); and

   b. Rehire law enforcement officers who have been laid off or who are scheduled to be laid off on a specific future date as a result of State, local and/or tribal budget reductions for financial reasons unrelated to the availability of COPS grant funds for redeployment into community-oriented policing (42 USC 3796dd(b)(1)).

2. *Non-Hiring Grants* – Non-hiring grants may include programs, projects, and other activities to obtain a wide variety of equipment, technology, support systems, civilian personnel, training, and technical assistance. These grants include programs and projects that are very specific in terms of allowable and unallowable activities. The individual grant must be evaluated to determine allowable activities, in accordance with program guidelines in the Grants Owner's Manual (42 USC 3796dd(b) and (d)).

B. Allowable Costs/Cost Principles

Hiring Costs –

1. CHP, CHRP, and TRGP-Hiring grants fund the approved grants fund the approved entry-level salaries and fringe benefits of newly hired or rehired full-time officers for 36 months of grant funding. The approved entry-level

salaries and fringe benefits are based on a grantee agency's actual entry-level sworn officer salary and fringe benefit costs and are identified on the Final Financial Clearance Memorandum that is sent to the grantee agency. Any additional costs for higher than entry-level salaries and fringe benefits will be the responsibility of the grantee agency (42 USC 3796dd(b)).

2. The CIS program provides up to $125,000 per officer for approved entry-level salary and benefit costs over a 3-year grant period. Any additional funding needed for salary and benefit costs exceeding $125,000 per officer during the 3-year grant period is the responsibility of the grant recipient (see III, Meeting the Local Match, CIS Grants Owner's Manual).

3. Grant funding per officer position under UHP grants may not exceed $75,000 during the 3-year grant period, unless a waiver of this limitation is provided by the COPS Office (42 USC 3796dd-3(c)).

G. Matching, Level of Effort, Earmarking

1. Matching

a. There is no match requirement for CHP, **CHRP**, CSPP, Tech, Meth, SSI, CPD, TRGP, Tribal Meth, and COPS in Schools.

b. COPS MORE, Interoperable Communications Technology Program (ICTP) and UHP grantees are obligated to contribute at least 25 percent of allowable project costs, unless a waiver is obtained from the COPS Office (42 USC 3796dd(g)).

c. Secure Our Schools grantees must contribute at least 50 percent of allowable project costs (42 USC 3797a(d)).

2 Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Repor*t – Applicable

2. Performance Reporting

Department Annual Progress Report (OMB No. 1103-0094) – This report is required at least once a year during the life of the grant for all COPS Hiring grants (CHP, **CHRP**, UHP, COPS in Schools, and TRGP–Hiring).

Key Line Items – The following questions contain critical information:

a. Question 1 – *How many **active** COPS grant position(s) were filled/hired? Full-Time and Part-Time.*

b. Question 2 – *How many of the unfilled COPS grant position(s) do you intend to fill? Full-Time and Part-Time.*

c. Question 3 – *How many of the unfilled grant position(s) are **NOT** going to be filled/hired? Full-Time and Part-Time*

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

DEPARTMENT OF JUSTICE

CFDA 16.738 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM
CFDA 16.803 RECOVERY ACT – EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM / GRANTS TO STATES AND TERRITORIES
CFDA 16.804 RECOVERY ACT – EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM / GRANTS TO UNITS OF LOCAL GOVERNMENT

I. PROGRAM OBJECTIVES

The Edward Byrne Memorial Justice Assistance Grant (JAG) Program (42 USC 3750) is the primary provider of Federal criminal justice funding to State and local jurisdictions. JAG funds support all components of the criminal justice system, from multi-jurisdictional drug and gang task forces to crime prevention and domestic violence programs, courts, corrections, treatment, and justice information-sharing initiatives.

II. PROGRAM PROCEDURES

JAG grants are awarded to States, including the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa, as well as eligible local jurisdictions.

The State Administering Agency (SAA) must make the grant application available for review to the governing body of the State, or to an organization designated by that governing body, at least 30 days before the application is submitted to the Bureau of Justice Assistance (BJA), Department of Justice (DOJ). Also, an SAA must provide an assurance that the application or any future amendment was made public and an opportunity to comment was provided to citizens and to neighborhood or community organizations to the extent applicable law or established procedure makes such an opportunity available.

The JAG funding formula includes a State allocation consisting of a minimum base allocation with the remaining amount determined on population and violent crime statistics. State allocations also have a mandatory "pass through" requirement to local governments.

The SAA must establish a trust fund in which to deposit JAG funds. The trust fund is not required to be an interest-bearing account. States also have a variable percentage of the allocation that is required to be "passed-through" to units of local government. This amount, also calculated by BJA, is based on each State's crime expenditures. In addition, the formula calculates direct allocations for local governments within each State, based on their share of the total violent crime reported within the State. Local governments that are entitled to at least $10,000 awards may apply directly to BJA for local JAG funds. The Office of Justice Programs (OJP) Financial Guide, which contains information on allowable costs, methods of payment,

audit requirements, accounting systems, and financial records, is available on the OJP web site at http://www.ojp.gov/financialguide/.

Source of Governing Requirements

Subpart 1, of Part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 USC 3750 through 3758) and **Title II of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5, 123 Stat. 130**.

Availability of Other Program Information

The BJA home page at http://www.ojp.usdoj.gov/BJA/grant/jag.html provides information on program statutes and other general information about the program.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Use of funds is restricted to the following broad program areas: (a) law enforcement; (b) prosecution and court programs; (c) prevention and education; (d) corrections and community corrections; (e) drug treatment; (f) planning, evaluation, and technology improvement; and (f) crime victim and witness programs (other than compensation).

2. JAG funds cannot be used directly or indirectly for security enhancements or equipment used by non-governmental entities not engaged in criminal justice or public safety.

3. Based on extraordinary and exigent circumstances making the use of funds essential, BJA may certify a State's request to use funds for (a) vehicles (excluding police cruisers), vessels (excluding police boats), or aircraft (excluding police helicopters); (b) luxury items; (c) real estate; or (d) construction projects (other than penal or correctional institutions) (42 USC 3750 through 3759).

D. Davis-Bacon Act

All construction modernization, renovation, and repair activities funded with ARRA funds are subject to the Davis-Bacon Act requirements (Section 1606 of ARRA).

G. Matching, Level of Effort, Earmarking

1. Matching

There is no matching requirement at the Federal level although States and units of local government may require matching from subgrantees.

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Repor*t – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable (non-ARRA funds only)

DEPARTMENT OF LABOR

CFDA 17.207 EMPLOYMENT SERVICE/WAGNER-PEYSER FUNDED ACTIVITIES
CFDA 17.801 DISABLED VETERANS' OUTREACH PROGRAM (DVOP)
CFDA 17.804 LOCAL VETERANS' EMPLOYMENT REPRESENTATIVE (LVER) PROGRAM

I. PROGRAM OBJECTIVES

Wagner-Peyser Act Funded Workforce Preparation Services – General

Wagner-Peyser Act-funded workforce preparation services are an integrated component of the nation's One-Stop Career Center system. They are coordinated with other adult programs under the Workforce Investment Act to ensure that job seekers, workers, and employers have convenient and comprehensive access to a full continuum of workforce-related services.

Wagner-Peyser funded services support the development of a competitive workforce for today's global economy. Under the Wagner-Peyser Act, unemployed individuals and other job seekers obtain critical job search, assessment, and career guidance services to support them in obtaining and retaining employment. In addition, Wagner-Peyser funded activities assist employers with building skilled, competitive workforces through recruitment assistance, employment referrals, and other workforce solutions. Activities funded under the Wagner-Peyser Act also include the development and dissemination of regional workforce information and related resources, which provide both job seekers and employers with comprehensive and accessible economic and industry data to inform workforce and economic development activities.

Disabled Veterans' Outreach Program (DVOP)

In accordance with 38 USC 4103A(a), as amended by the Jobs for Veterans Act (Public Law No. 107-288, November 7, 2002), the primary objective of the DVOP specialist is to provide intensive services to meet the employment needs of eligible veterans with the following order of priority in the provision of services: (1) special disabled veterans; (2) other disabled veterans; and (3) other eligible veterans. Maximum emphasis in meeting the employment needs of veterans shall be placed upon assisting economically and educationally disadvantaged veterans. Intensive services are provided using a case-management approach. Coordination and cooperation is maintained with Local Veterans' Employment Representatives (LVER) staff funded through the Workforce Investment Act (WIA) of 1998 and the Wagner-Peyser Act, and other One-Stop partners collocated in the One-Stop Career Center. Outreach and assistance are provided by DVOP specialists to individuals identified for participation in Homeless Veterans' Reintegration Projects, Vocational Rehabilitation, and other Federal and federally funded employment and training programs. Linkages are developed to assist appropriate grantees and other agencies to promote maximum employment opportunities for veterans.

Local Veterans' Employment Representative (LVER) Program

In accordance with 38 USC 4104(b), as amended by the Jobs for Veterans Act (Public Law No. 107-288, November 7, 2002), the objectives of the LVER program are to (1) conduct outreach to employers in the area to assist veterans in gaining employment, including conducting seminars for employers and, in conjunction with employers, conducting job search workshops and establishing job search groups; and (2) facilitate employment, training, and placement services furnished to veterans in a State under the applicable State employment service delivery systems; generally, the One-Stop Career Center System established by the Workforce Investment Act of 1998 (Public Law No. 105-220). Coordination and cooperation is maintained with DVOP specialists, staff funded through the Workforce Investment Act of 1998 and the Wagner-Peyser Act, and other One-Stop partners collocated in the One-Stop Career Center to ensure priority of service and compliance with Federal regulations, performance standards, and grant agreement provisions to provide veterans with the maximum employment and training opportunities.

II. PROGRAM PROCEDURES

Wagner-Peyser Act Funded Workforce Preparation Services

Federal funds are granted to the States for the delivery of employment and workforce information services through a national network of One-Stop Career Centers.

The State agency responsible for the provision of employment services, generically referred to as the State Workforce Agency (SWA), must submit a 5-year plan for providing services and activities authorized by Section 7(a) of the Act, through the Governor, to the Department of Labor (20 CFR section 652.211). This part of the State plan is submitted under Section 112 of WIA. The Governor has discretion to choose various approaches to planning the utilization of funds reserved by Section 7(b) of the Act.

Jobs for Veterans State Grants

In accordance with the Jobs for Veterans Act (Pub. L. Nos. 107-288 and 109-477) grant funds are provided to States for employing DVOP and LVER staff and deploying them as practicable as possible among One-Stop Career Centers and other suitable locations to carry out intensive services for veterans with employment barriers, assist businesses with their workforce needs and provide or facilitate employment and placement services to ensure that veterans, eligible persons, and transitioning service members receive maximum employment and training opportunities. Additional services are offered to transitioning service members and their spouses, as approved, under the Jobs for Veterans State Grant Plan through Transition Assistance Workshops (CFDA 17.807) conducted by DVOP Specialists and LVER staff trained to do so by the National Veterans' Training Institute (NVTI) authorized under 38 USC 4109. See Part IV of this supplement for additional information.

Source of Governing Requirements

These programs are authorized by the Wagner-Peyser Act, as amended by the Workforce Investment Act of 1998 (WIA), Pub L. No. 105-220 (29 USC 49 *et seq*.), and the Jobs for Veterans Act (Pub. L. Nos. 107-288 and 109-477); 38 USC chapters 41 and 42 (employment and training programs for veterans). Implementing regulations are found in 20 CFR part 652 and at 20 CFR part 1001 and 1010 *et seq*.

Availability of Other Program Information

Other program information is available on the Internet at http://wdr.doleta.gov/directives/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Labor Exchange* – Funds allotted to each State may be utilized by the SWA for a variety of activities, consistent with an approved plan pursuant to the Act and implementing regulations (20 CFR sections 652.5 and 652.8(d)). At a minimum, each SWA shall provide the basic labor exchange elements defined in 20 CFR section 652.3.

2. *Section 7(a)* – Services and activities provided for under Section 7(a) of the Act are:

    a. To unemployed individuals and other job seekers: job search, job placement and job information services, including counseling, testing, occupational and labor market information, assessment, and referral to employers;

    b. To employers: a source for recruitment of qualified job applicants, and technical assistance in resolving workforce problems; and

    c. The following employment-related activities:

        (1) Evaluation of programs;

        (2) Developing linkages between services funded under this Act and related Federal or State legislation, including the provision of labor exchange services at education sites;

(3) Providing employment-related services for workers who have received notice of permanent or impending layoff, and reemployment services for workers in occupations which are experiencing limited demand due to technological change, impact of imports, or plant closures;

(4) Developing and providing State and local labor market and occupational information;

(5) Developing a management information system and compiling and analyzing reports there from; and

(6) Administering the work test for the State unemployment compensation system, and providing job finding and placement services for unemployment insurance claimants (29 USC 49f(a); 20 CFR section 652.210).

3. *Section 7(b)* – Services and activities provided for under Section 7(b) of the Act are:

a. Performance incentives for public employment service offices and programs, consistent with performance standards established by the Secretary;

b. Services for groups with special needs carried out pursuant to joint agreements between the Employment Service and the local workforce investment board and Chief Elected Official(s), or other public agencies or private non-profit organizations; and

c. Exemplary models for delivering Employment Service Program services which incorporate activities listed in Section 7(a) of the Act, including but not limited to reemployment services, evaluating programs, developing partnerships with related programs and entities, developing and distributing labor market and workforce information, compiling and analyzing reports, and administering the UI work test (services of the types described in Section 7(a) of the Act (29 USC 49f(b)).

4. *Section 7(d)* – In addition to the activities described under 2 and 3, above, Section 7(d) of the Act authorizes SWAs to perform such other activities as shall be specified in cost-reimbursement agreements with the Secretary of Labor or with any Federal, State, or local public agency, or WIA administrative entity, or private non-profit organization (29 USC 49f(d)).

5. *Section 7(e)* – Section 7 (e) provides that all services authorized under 7(a) shall be provided as part of a one-stop delivery system established by the State (29 USC 49f(e)).

6. *DVOP* – DVOP includes a wide variety of services directly related to meeting the employment needs of disabled and other eligible veterans as defined at 38 USC 4103A(a) and in Jobs for Veterans State Grant special provisions (based on Pub. L. No. 107-288). These services include, but are not limited to, the following:

   a. Providing intensive services to meet the employment needs of eligible veterans with the following order of priority in the provision of services:

      (1) Special disabled veterans;

      (2) Other disabled veterans; and,

      (3) Other eligible veterans.

   b. Ensuring that maximum emphasis in meeting the employment needs of veterans is placed upon assisting economically and educationally disadvantaged veterans.

   c. Providing intensive services using a case management approach.

   d. Maintaining coordination and cooperation with Local Veterans' Employment Representatives, staff funded through the Workforce Investment Act of 1998, and the Wagner-Peyser Act, and other One-Stop partners collocated in the One-Stop Career Center.

   e. Conduct outreach and assistance to individuals identified for participation in Homeless Veterans' Integration Projects, Vocational Rehabilitation and other Federal and federally funded employment and training programs.

   f. Develop linkages to assist appropriate grantees and other agencies to promote maximum employment opportunities for veterans.

7. *LVER* – LVER staff provide outreach and assistance to employers and facilitate the provision of a variety of services to eligible veterans. These services include, but are not limited to the following (38 USC 4104):

   a. Maintain regular contact with community leaders, employers, labor unions, training programs, and veterans' organizations for the purpose of

      (1) keeping them advised of eligible veterans and eligible persons available for employment and training, and

      (2) keeping eligible veterans and eligible persons advised of opportunities for employment and training;

b. Provide directly, or facilitate the provision of, labor exchange services including intake and assessment, counseling, testing, job-search assistance, and referral and placement services for eligible veterans;

c. Assist, through automated data processing, in securing and maintaining current information regarding available employment and training opportunities; and

d. Conducting job search workshops for job-seeking veterans and Transition Assistance Program (TAP) workshops for transitioning service members and their spouses.

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2 Level of Effort – Not Applicable

3. Earmarking

Ten percent of each State's Wagner-Peyser Act allotment shall be reserved by the SWA to provide services and activities authorized by Section 7(b) of the Act (29 USC 49f(b)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. ETA 9130, *Financial Report (OMB No. 1205-0461)* – DOL requires financial reports to be cumulative by fiscal year of appropriation. All ETA grantees are required to submit quarterly financial reports for each grant award they receive. Reports are required to be prepared using the specific format and instructions for the applicable program(s); in this case, *Employment Service and Unemployment Insurance Programs.* Reports are due 45 days after the end of the reporting quarter. Additional information can be accessed on the Internet at

http://www.doleta.gov/grants/ and scroll down to the section on Financial Status Reporting.

g. VETS-402 (A/B), *Expenditure Detail Report* – This expenditure and staff utilization report, pending OMB approval for use beginning in Fiscal Year 2010, separately identifies by Jobs for Veterans' State Grant-funded Program each category of expenditures each quarter and year-to-date as a supplement to the DVOP and LVER SF 425, *Federal Financial Reports*."

2. Performance Reporting

a. ETA 9002, *Quarterly Reports* (*OMB No. 1205-0240*) is used to report services, activities, and outcomes of service for all job seekers and veterans. This report is submitted quarterly.

Key line items – The following line items in ETA 9002 D (Performance Outcomes – Veterans, Eligible Persons, and TSMs) contain critical information:

(1) Item 6 – *Entered Employment Rate*

(2) Item 9 – *Employment Retention Rate at Six Months*

(3) Item 13 – *Average Earnings*

b. *The Veterans' Employment and Training Service VETS 200 Quarterly Reports* (*OMB No. 1205-0240*) are a subset of the ETA 9002. The data reported contains the similar data elements as the ETA 9002, but only apply to the activities of LVER and DVOP staff. This report is submitted quarterly.

Key line items – The following line item in VETS-200 (C) contain critical information:

(1) Item 19 – *Entered Employment Following S/A Services Rate*

(2) Item 25 – *Employment Retention at Six Months Rate*

(3) Item 26 – *Average Earnings*

The requirements and guidelines for Wagner-Peyser funded services and VETS-funded program reporting are contained in ETA Handbook No. 406 ETA 9002 and VETS 200 Data Preparation Handbook, (*OMB No. 1205-0240*) available on the Internet at http://www.doleta.gov/performance/guidance/WIA//ET-406-Handbook-Expiration-022809.pdf.

3. Special Reporting – Not Applicable

4. **Section 1512 ARRA Reporting** – Applicable (CFDA 17.207)

5. **Subaward Reporting under the Transparency Act** – Not Applicable

IV. OTHER INFORMATION

As a consequence of the passage and implementation of the Jobs for Veterans Act of 2002, since 2004, DVOP/LVER program funding has been provided under the umbrella of Jobs for Veterans State Grants. However, Jobs for Veterans State Grants is not a separate grant program and DVOP and LVER still should be identified by their individual CFDA numbers, 17.801 and 17.804, respectively, on the Schedule of Expenditures of Federal Awards. (Transition Assistance Program (CFDA 17.807), which is not part of this cluster, also is funded under that umbrella).

DEPARTMENT OF LABOR

CFDA 17.225 UNEMPLOYMENT INSURANCE (UI)

I. PROGRAM OBJECTIVES

The UI program, also referred to as Unemployment Compensation (UC), provides benefits to unemployed workers for periods of involuntary unemployment and helps stabilize the economy by maintaining the spending power of workers while they are between jobs. The UI program initially consisted of the regular State programs (20 CFR part 601). However, UC coverage was extended to Federal civilian employees in 1954 by the Unemployment Compensation for Federal Employees (UCFE) program (Pub. L. No. 83-767) and to ex-members of the Armed Forces in 1958 by the Unemployment Compensation for Ex-Service Members (UCX) program (5 USC 8501-8525; Pub. L. No. 85-848). UC programs now cover almost all wage and salaried workers.

The Federal-State Extended Unemployment Compensation Act (EUCA) of 1970 (Pub. L. No. 91-373; 26 USC 3304 note) provided for the Extended Benefit (EB) program (20 CFR part 615). During periods of high unemployment, that program pays extended benefits for an additional (or extended) period of time to eligible unemployed workers who have exhausted their entitlement to UC, UCFE, or UCX. The Supplemental Appropriations Act of 2008 (Pub. L. No. 110-252) created the Emergency Unemployment Compensation Act of 2008 (EUC08) providing additional weeks of benefits to eligible workers in all States.

The Federal Additional Compensation (FAC) Program, authorized under Section 2002(e)(1) of the American Recovery and Reinvestment Act (ARRA), Pub. L. No. 111-5, allows States that enter into an agreement with the Secretary of Labor to pay an additional $25 each week to individuals who are otherwise eligible to receive unemployment compensation for the week.

II. PROGRAM PROCEDURES

The structure of the Federal-State UI Program partnership is based on Federal statute; however, it is implemented through State law. State UI program operations are conducted by the State Workforce Agency (SWA)--the generic name for the agency that has responsibility for the State's Employment Security function. SWAs were previously referred to as State Employment Security Agencies (SESAs).

State responsibilities include: (1) establishing specific, detailed policies and operating procedures which comply with the requirements of Federal laws and regulations; (2) determining the State UI tax structure; (3) collecting State UI contributions from employers (commonly called "unemployment taxes"); (4) determining claimant eligibility and disqualification provisions; (5) making payment of UI benefits to claimants; (6) managing the program's revenue and benefit administrative functions; (7) administering the programs in accordance with established policies and procedures; and (8) enacting State UC law that conforms with Federal UC law.

Unless otherwise noted, responsibilities of the U.S. Department of Labor (DOL) include: (1) allocating available administrative funds among States; (2) administering the Unemployment Trust Fund (UTF) through the U.S. Department of the Treasury and monitoring activities of the UTF; (3) establishing program performance measures; (4) monitoring State performance; (5) ensuring conformity and substantial compliance of State law and operations with Federal law; and (6) setting broad overall policy for program administration.

Note: Informal references are frequently made to eligibility for "weeks" of UC. The auditor is cautioned that eligibility is actually for a maximum dollar amount of UC, which is inaccurately referred to as receipt of UC for a given number of weeks.

Benefits payable under several additional programs also are administered by the SWAs, as agents for DOL; however, they are distinct programs with separate compliance requirements—the Trade Adjustment Assistance/Reemployment Trade Adjustment Assistance (TAA/RTAA) programs to workers adversely affected by foreign trade and the Disaster Unemployment Assistance (DUA) program to workers and self-employed individuals who are unemployed as a direct result of a presidentially declared major disaster, and are not eligible for regular UI benefits paid by States (CFDAs 17.245 and 97.034, respectively). For example, SWAs provide weekly trade readjustment allowances (TRA)/RTAA payments for eligible program participants consistent with the eligibility requirements of CFDA 17.245.

The Federal Emergency Management Agency (FEMA) has delegated to the Secretary of Labor the responsibility for administering those provisions of the Stafford Act that pertain to the DUA program and payment of DUA benefit assistance. Under DUA, the SWA is accountable to DOL and, through DOL, to FEMA. The SWA works in coordination with both agencies in preparing prompt announcements regarding the availability of DUA, submitting initial and supplemental funding requests, and accurately reporting funding and workload information on DUA monthly reports.

FAC is payable in a State for weeks of unemployment beginning with the first week which begins after the date a FAC agreement is signed between the State and the Secretary of Labor.

For each program administered under the UI program umbrella—UC, TRA/ATAA/RTAA, and DUA, States must ensure full payment of applicable benefits "when due," and must deny payments when not due.

Program Funding

UC payments to claimants are funded primarily by State UI taxes on covered employers (three States also have provisions for employee taxes). Some employers make direct reimbursements to the State for UC payments made on their behalf rather than paying UI taxes. State governments, political subdivisions and instrumentalities of the States, federally recognized Indian tribes, and qualified non-profit organizations may reimburse the State for UI benefits paid by the SWA; however, they may elect to be contributory employers (i.e., remit State UI taxes) in lieu of reimbursing the State. Also, States are reimbursed from the UTF for UCFE and UCX paid by the SWA on behalf of various Federal entities. Program administration is funded by a Federal UI tax

on covered employers (see below). Generally, the employment covered by State UI taxes and Federal UI taxes is the same; however, there are specific differences.

State UI taxes and reimbursements are used exclusively for the payment of regular UC and the State share of EB to eligible claimants. UI taxes and reimbursements remitted by employers to the States are deposited in State accounts in the UTF. SWAs periodically draw funds from their UTF accounts for the purpose of making UC payments.

The Federal Unemployment Tax Act (FUTA) imposes a Federal tax on covered employers. Currently, the FUTA tax on covered employment (generally employment subject to a State UI tax) is 6.2 percent of the first $7,000 of covered employee wages. Employers, however, receive two credits against the FUTA tax. One credit is equal to the amount of State UI tax paid by the employer. A second credit is awarded to employers who pay less than the State's maximum tax rate. The employer receives these credits when the State UI law, and its application, conform and substantially comply with FUTA requirements. All States currently meet the Federal criteria for both credits to be applicable to the States' employers. The two credits combined cannot exceed 5.4 percent of taxable employee wages.

FUTA revenues from the remaining 0.8 percent are collected by the IRS and deposited into the general fund of the U.S. Treasury, which by statute are appropriated to the UTF. FUTA revenues are used primarily to finance Federal and SWA administrative expenses, the Federal share of EB, and advances to States whose UTF account balances are exhausted. DOL allocates available administrative grant funds (as appropriated by Congress) to States based on forecasted workload and costs, and is adjusted for increases or decreases in workload during the current year.

Section 903 of the Social Security Act requires the refunding of FUTA taxes to States when amounts in the individual Federal account in the UTF meet their statutory caps. Title IX funds are credited to the State accounts in the UTF and may be used to pay benefit payments under State law and, subject to certain requirements, may be used for administering the UI programs.

States annually compute an "experience rate" for contributing, or tax-remitting, employers. The experience rate is the dominant factor in the computation of an employer's State UI tax rate. While methods of computation differ, the key factor in most methodologies is the amount of UI benefits paid by the SWA within a time period specified by State UI law, to claimants who are former employees of the employer. Also, various methods are used by the SWAs to identify which one or more of the claimant's former employers will be "charged" with the UI benefits paid to the claimant.

Since FEMA has delegated to the Secretary of Labor the responsibility for administering the DUA program, FEMA transfers resources to the Employment and Training Administration (ETA), DOL to provide funding to the affected States. Funding for each disaster is provided separately for administrative costs and benefits. States are expected to report the cost of each disaster separately by administrative cost and benefits. The funding period for the majority of disasters covers a 26-week period after the declaration.

Under the FAC program, each State that has entered into an agreement with the Secretary of Labor will be provided a monthly allotment projected to equal 100 percent of the estimated amount of FAC to be paid to individuals by the State under the agreement and in full accordance with ARRA. States' drawdown of allotments will be monitored, and monthly amounts will be adjusted as needed. States will request funds from a general fund account established by the U.S. Treasury to pay all FAC benefits attributable to all claim types (UC, EB, UCFE, UCX, Emergency Unemployment Compensation, 2008 [EUC08], DUA, and TRA/ATAA/RTAA). All requests will go through the Automated Standard Application for Payments (ASAP) system and will be covered by each State's Treasury-State Agreement (executed under the Cash Management Improvement Act of 1990). Requests will be funded in the same manner as all ASAP transactions elected by the states (FEDWIRE or ACH to the state benefit payment account).

Synopsis of Regular Unemployment Compensation Program

The regular UC program provides UC coverage to most wage and salary workers in each State, the District of Columbia, Puerto Rico, and the Virgin Islands. Except for provisions necessary to comply with Federal law, the provisions of State UC laws vary greatly, including their qualifying requirements and methods used to compute UC amounts.

The period during which a claimant may receive UC is referred to as the "benefit year." In all but one State, a benefit year lasts one year from the effective date of the claim. The total regular UC that a claimant may receive in a benefit year is computed by the SWA in a dollar amount. A claimant may collect UC up to the maximum benefit amount allowable for the benefit year during periods of unemployment that occur during the benefit year. Under State UC laws, the total (maximum) UC a claimant is entitled to vary within certain limits according to the worker's wages in the base period (see III.E, "Eligibility"). Reduced benefits may be paid for weeks of partial unemployment. In some States, the weekly UI benefit payment is augmented by a dependent's allowance, which may be paid for each dependent up to a maximum number of dependents.

Synopsis of Extended Benefits (EB) Program

An interval of high unemployment at a certain level will "trigger on" a period of not less than 13 consecutive weeks during which the State will make EB payments to eligible unemployed workers who have exhausted their entitlement to regular compensation (20 CFR section 615.11). With certain exceptions, EB is payable at the same rate as the claimant's regular compensation benefits (20 CFR section 615.6). The EB period is determined by the State in which the original claim was established (EUCA section 202(a)(2), 20 CFR section 615.2(k)(2)). A reduction in the unemployment rate will "trigger off" the period of EB, ending benefit payments. An alternate trigger is available in some States. For information on the triggers, see (Section 203, EUCA, 20 CFR sections 615.11 through 615.13).

A claimant may receive EB equal to the lesser of the following amounts: (1) one-half the total amount of regular compensation, including dependent's allowances, (2) 13 times the weekly amount of regular compensation, or (3) 39 times the weekly amount of regular compensation reduced by the amount of regular compensation paid to the claimant (EUCA, section 202(a)(2), 20 CFR section 615.7(b)). However, the amount of EB benefits payable increases if the unemployment rate reaches a benchmark level established in EUCA. While EB are payable under the terms and conditions of State law, FUTA requires that State UC law conform to certain provisions of EUCA (26 USC 3304(a)(11)).

States are reimbursed with Federal funds for one-half the cost of EB paid to claimants by the SWAs, with the following exceptions: (1) EB paid to former UCFE and UCX claimants are 100 percent reimbursable from Federal funds; and (2) EB paid to former employees of the State government, and political subdivisions and instrumentalities of the State, and federally recognized Indian tribes are not reimbursable from Federal funds. Reimbursements will be prorated for claimants who had employment in both the private and public sectors during their "base periods." The first week of EB is reimbursable to the State only if the State requires the first week in an individual's benefit year be an unpaid "waiting week" (EUCA section 204; 20 CFR section 615.14). The auditor should refer to 20 CFR section 615.14 for a complete explanation of when EB is not reimbursed to the State.

Section 2005 of Division B, Title II, the Assistance for Unemployed Workers and Struggling Families Act, which is part of ARRA , made several temporary changes to the EB program provided for under the Federal-State Extended Unemployment Act of 1970 (EB law). The temporary changes have been extended subsequent to ARRA (Pub. L Nos. 111-92, 111-118, 111-144, 111-157 and 111-205). One change provided that the Federal government will, in most cases, pay 100 percent of the benefit costs of shareable EB for a specified period (weeks beginning after February 17, 2009 and before December 1, 2010.) In addition, if a claim for EB has been established before the December 1, 2010 date, the Federal government will pay 100 percent of the shareable EB benefit costs based on claims during a phase-out period that ends May 1, 2011. ARRA also continued, through weeks of unemployment ending prior to April 30, 2011, a temporary suspension of the prohibition on Federal sharing of benefit costs for the first week of EB if the State does not have a non-compensable waiting week.

Synopsis of Emergency Unemployment Compensation 2008 (EUC08) Program

The Supplemental Appropriations Act of 2008 (Pub. L. No. 110-252) provides for payment of Emergency Unemployment Compensation (EUC08). EUC08 is payable for weeks of unemployment beginning after the date an agreement is signed with the state and the Federal government will pay 100% of the benefit costs. The EUC08 benefits are payable to eligible unemployed workers who have exhausted their entitlement to regular compensation. EUC08 is payable at the same rate as the claimant's regular compensation benefits. EUC08 benefits are not payable to individuals who have completed the Self- Employment Assistance (SEA) program.

Unlike EB, EUC08 includes a phase out period allowing individuals to claim benefits until their account is exhausted. EUC08 has been amended several times and includes eligibility for several "Tiers" of benefits (Pub. L. Nos. 110-449, 111-5, 111-92, 111-118, 111-144, 111-157, and 111-205). All states are eligible for the first two Tiers of benefits (34 weeks). However, Tiers three and four require a high unemployment rate based on a "trigger" to be payable. Tier three provides 13 additional weeks and Tier four provides an additional 6 weeks of payable benefits. The last date to establish eligibility for any of the Tiers is the week ending November 27, 2010. A state in an extended benefit period may elect to pay EUC08 prior to EB.

Synopsis of UCFE and UCX Programs

For UCFE, the qualifying requirements, determination of UI benefit amounts, and duration of UC are generally determined under the applicable State law, which is generally the State in which the official duty station was located (5 USC 8501-8508; 20 CFR part 609).

The UCX program combines elements of the applicable State law and factors unique to the UCX program, such as "schedules of remuneration" (20 CFR section 614.12), which must be considered by the SWA in making its determinations of eligibility, UI benefit amounts and duration (20 CFR part 614).

States are reimbursed from the UTF for UC paid to UCFE and UCX claimants. On a quarterly basis, States report the amount of UCFE and UCX paid to the DOL, which is responsible for obtaining reimbursement to the UTF from the appropriate Federal agencies (20 CFR sections 609.14 and 614.15).

Synopsis of TRA/ATAA/RTAA Benefit Payments/Wage Subsidies

TRA is available as weekly income support to eligible workers who have exhausted UI benefits. The amendments enacted by the TAA Reform Act of 2002 provide an alternative trade adjustment assistance (ATAA) benefit. The ATAA is available in lieu of TRA to eligible workers who are 50 years of age and older and elect to receive this benefit (20 CFR part 617; Training and Employment Guidance Letters (TEGLs) 11-02 and 2-03). The amendments enacted by Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA or the Trade Act of 2009), which also is part of ARRA, expanded the number of weeks of income support available and also provided a reemployment trade adjustment assistance (RTAA) benefit. The RTAA is available in lieu of TRA to eligible workers who are 50 years of age and older and elect to receive this benefit (20 CFR part 617; TEGL 22-08). TRA and RTAA benefits are available only to petitions filed for coverage under the TAA program on or after May 18, 2009. Previous petitions will continue to be served under the Trade Act of 2002. The Office of Trade Adjustment Assistance administers both programs concurrently.

Synopsis of DUA Benefit Payments

Based on a request by the Governor, the President declares a major disaster and authorizes the type(s) of Federal assistance to be made available and the geographic areas that have been adversely affected by the disaster. The Presidential declaration may

authorize Individual Assistance (IA), which includes the provisions for DUA (20 CFR part 625).

FEMA furnishes funds to the Secretary of Labor, or to his/her designee, who makes funds available to the affected State(s) based on an agreement between the State and the Secretary of Labor for the State's DUA administrative costs and the payment of DUA to eligible individuals.

Synopsis of FAC Program

The FAC program, authorized by ARRA (subsequently extended by Pub. L Nos. 111-118, 111-157, 111-144, and 111-205), provides a $25 weekly supplement to the unemployment compensation of eligible claimants. This $25 supplement, as well as any additional administrative expenses incurred by the State in paying the supplement, is 100 percent funded from Federal general revenues.

FAC is payable to individuals who are otherwise entitled under State law to receive regular UC for weeks of unemployment. FAC is also payable to individuals receiving the following Federal and other State unemployment benefit programs: UCFE, UCX, EUC08, EB, TRA, DUA, Short-Time Compensation (STC), and payments under the SEA programs. However, FAC is not payable as a supplement to State additional compensation.

FAC is payable in a State the week following the week in which the agreement with the Secretary of Labor is signed. In most States, where the week of unemployment ends on Saturday, the first week for which FAC may be paid is the week ending February 28, 2009. FAC is not payable for any claim established with an effective date after June 2, 2010. During the FAC phase-out period, in States where the week of unemployment ends on a Saturday, the last week that FAC benefits may be paid is the week ending December 11, 2010, i.e., in those States, no payment of FAC can be made for a week of unemployment beginning after December 11, 2010. To be eligible to receive FAC funding during the phase-out of the FAC program, an individual has to have established a claim on which FAC is payable.

Source of Governing Requirements

The Federal-State UI program partnership is provided for by Titles III, IX, and XII of the Social Security Act of 1935 (SSA) (42 USC 501, 1101, 1321, *et seq*.) and the FUTA (26 USC 3301 *et seq*.). Program regulations are found in 20 CFR parts 601 through 616. The TAA/ATAA program is authorized by the Trade Act of 1974, as amended by the TAA Reform Act of 2002 (Pub. L. No. 107-210 (19 USC 2271 *et seq*.)). Implementing regulations are 29 CFR part 90, Subpart B, and 20 CFR part 617. Operating instructions for the TAA program are found in TEGL 11-02, and operating instructions for the ATAA program are found in TEGL 2-03. **The RTAA program is authorized by the Trade Act of 2009 (Division B, Title I, Subtitle I of ARRA), which further amended the Trade Act of 1974. Operating instructions for the TAA/RTAA program are found in TEGL 22-08.** Implementing regulations for the DUA program are found at 44 CFR sections 206.8 and 206.141 for FEMA, and 20 CFR part 625 for DOL.

Availability of Other Program Information

Additional information on the UI programs can be found on the Internet at http://ows.doleta.gov/ and http://www.ows.doleta.gov/unemploy/bqc.asp. Additional information on TAA and ATAA program procedures is available at http://www.doleta.gov/tradeact. Additional information on DUA is available at http://www.ows.doleta.gov/unemploy/disaster.

Additional information on the UI programs can be found in Unemployment Insurance Program Letter (UIPL) No. 11-09, dated February 23, 2009, available at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2713.

Additional information on the EUC08 program can be found in UIPL Nos. 23-08, Changes 1, 2, 3, 4, 5, and 6, available at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2649; and UIPL 04-10, Changes 1, 2, 3, 4, and 5, available at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2836.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Administrative grant funds may be used only for the purposes and in the amounts necessary for proper and efficient administration of the UI program (20 CFR part 601; 20 CFR sections 609.14(d); and 614.15(d); 20 CFR section 617.59 (TRA/ATAA); 44 CFR section 206.8 (DUA)).).

2. *Activities Allowed for TRA and ATAA/RTAA*

   a. *TRA* – Allowable activities include payment of weekly TRA benefits to eligible participants (20 CFR sections 617.10 through 617.19).

   b. *ATAA/RTAA* – Allowable activities include payment of ATAA wage subsidies to eligible participants (Section 246 of Pub. L. No. 107-210 and Pub L. No. 111-5)

3. *Activities Allowed for DUA*

   Funds may be used only for the payment of DUA benefits and State administrative costs.

4. ***Activities Allowed and Unallowed for FAC***

a. **FAC payments may be payable either as (1) as an increase of $25 in the weekly benefit payment to the individual, or (2) as a separate $25 supplemental payment made, on the same schedule as regular UC, to the individual (Section2002 (b)(2), ARRA).**

b. **FAC is not payable to individuals receiving State additional compensation**.

E. Eligibility

1. Eligibility for Individuals

a. *Regular Unemployment Compensation Program* – Under State UI laws, a worker's benefit rights depend on the amount of the worker's wages and/or weeks of work in covered employment in a "base period." While most States define the base period as the first 4 of the last 5 completed calendar quarters prior to the filing of the claim, other base periods may be used. To qualify for benefits, a claimant must have earned a certain amount of wages, or have worked a certain number of weeks or calendar quarters within the base period, or meet some combination of wage and employment requirements. Some States require a waiting period of one week of total or partial unemployment before UC is payable. A "waiting period" is a noncompensable period of unemployment in which the worker was otherwise eligible for benefits.

To be eligible to receive UC, all States provide that a claimant must have been involuntarily separated from suitable work, i.e., not because of such acts as leaving voluntarily without good cause, or discharge for misconduct connected with work. After separation, he or she must be able and available for work, in the labor force, legally authorized to work in the U.S., and not have refused an offer of suitable work (20 CFR section 603.2).

b. *EB Program* – To qualify for EB, a claimant must have exhausted regular UC benefits (20 CFR section 615.4(a)). To be eligible for a week of EB, a claimant must apply for and be able and available to accept suitable work, if offered. What constitutes suitable work is dependent on a required SWA's evaluation of the claimant's employment prospects. An EB claimant must make a "systematic and sustained effort" to seek work and must provide "tangible evidence" to the SWA that he or she has done so (20 CFR section 615.8).

c. *EUC08 Program* – To qualify for EUC08, a claimant (1) must have exhausted all rights to regular compensation with respect to a benefit year that ended on or after May 1, 2007; (2) must have no rights to regular compensation or EB; and (3) cannot be receiving compensation under the UC law of Canada. To qualify for EUC08, individuals must have had employment of 20 weeks of work, or the equivalent in wages, in their base periods (Pub. L. No. 110-252, Supplemental Appropriations Act of 2008, Title IV, Section 4001(b)).

d. *UCFE and UCX Programs* – For UCFE, the claimant's eligibility and benefit amount will generally be determined in accordance with the UI law of the State of the claimant's last duty station (20 CFR section 609.8). For UCX, a claimant's eligibility is determined in accordance with the UI law of the State in which the claimant files a first claim after separation from active military service (20 CFR section 614.8).

e. *TRA and ATAA* – For weekly TRA payments, the worker must: (a) have been employed at wages of $30 or more per week in adversely-affected employment with a single firm or subdivision of a firm for at least 26 of the previous 52 weeks ending with the week of the individual's qualifying separation (up to seven weeks of employer-authorized leave, up to seven weeks as a full-time representative of a labor organization, or up to 26 weeks of disability compensation may be counted as qualifying weeks of employment); (b) have exhausted all UC to which he or she is entitled; and (c) be enrolled in or have completed an approved job training program, unless a waiver from the training requirement has been issued after a determination is made that training is not feasible or appropriate (20 CFR section 617.11).

TRA becomes payable to eligible claimants only after they have exhausted their entitlement to regular UI benefits, including EB and EUC08, if applicable. Any UC, EB, and/or EUC08 benefit payments are to be deducted from the TRA entitlement (basic, additional (if applicable), and remedial TRA (if applicable)) and the maximum combined number of weeks for receipt of UC, EB, EUC and TRA cannot exceed 52 weeks, except that up to 52 additional weeks of TRA may be paid to program participants enrolled in approved training and an additional 26 weeks may be paid to program participants enrolled in remedial training (20 CFR sections 617.14 and 617.15; Pub. L. No. 107-210, section 116(a)).

In those States where the combination of UC, EB, and EUC08 exceeds the amount of the basic TRA level of 52 weeks, basic TRA would not be payable. For TRA eligibility derived from petitions filed before May 18, 2009 (2002 program), the enrollment in TAA training must have occurred by the end of the 8th week after the certification or the end of the 16th week of the most recent qualifying separation, unless the requirement is waived.

For TRA eligibility derived from petitions filed on or after May 18, 2009 (2009 program), the enrollment in TAA training must have occurred by the end of the 26th week after the certification or the end of the 26th week of the most recent qualifying separation, unless the requirement is waived.

To be eligible to receive ATAA payments, an individual must be an adversely affected worker covered under a DOL certification of eligibility for TRA and ATAA, and have a qualifying separation which occurred (i) on or after the impact date specified in the certification as the beginning of the import caused unemployment or underemployment and (ii) before the expiration of the 2-year period beginning on the date on which the Secretary of Labor issued the certification for his or her group or, if earlier, before the termination date, if any, specified in the certification, and meet the following conditions at the time of reemployment (19 USC 2318 and TEGLs 11-02 and 2-03):

(1) Be at least age 50 at time of reemployment.

(2) Obtain reemployment by the last day of the 26th week after the worker's qualifying separation from the TRA/ATAA certified employment.

(3) Must not be expected to earn more than $50,000 annually in gross wages (excluding overtime pay) from the reemployment.

(4) Be reemployed full-time as defined by the State law where the worker is employed.

(5) Cannot return to work to the employment from which the worker was separated.

f. *TRA and RTAA* – For weekly TRA payments, the worker must: (1) have been employed at wages of $30 or more per week in adversely affected employment with a single firm or subdivision of a firm for at least 26 of the previous 52 weeks ending with the week of the individual's qualifying separation (up to 7 weeks of employer-authorized leave, up to 7 weeks as a full-time representative of a labor organization, or up to 26 weeks of disability compensation may be counted as qualifying weeks of employment); (2) have exhausted all UC to which he or she is entitled; and (3) be enrolled in or have completed an approved job training program, unless a waiver from the training requirement has been issued after a determination is made that training is not feasible or appropriate (20 CFR section 617.11).

TRA becomes payable to eligible claimants only after they have exhausted their entitlement to regular UI benefits, including EB and EUC08, if applicable. The maximum combined number of weeks for receipt of UC, EB, EUC08, and TRA cannot exceed 52 weeks, except that up to 52 additional weeks of TRA may be paid to program participants enrolled in approved training and an additional 26 weeks may be paid to program participants enrolled in remedial/pre-requisite training (20 CFR sections 617.14 and 617.15; 19 USC 2293(a)).

To be eligible to receive RTAA payments, an individual must be an adversely affected worker covered under a DOL certification of eligibility for TRA, and have a qualifying separation which occurred (1) on or after the impact date specified in the certification as the beginning of the import-caused unemployment or underemployment and (2) before the expiration of the 2-year period beginning on the date on which the Secretary of Labor issued the certification for his or her group or, if earlier, before the termination date, if any, specified in the certification, if he/she meets the following conditions at the time of reemployment (19 USC 2318 and TEGL 22-08):

(1) Is at least 50 years of age.

(2) Earns not more than $55,000 each year in wages from reemployment.

(3) Is employed on a full-time basis as defined by the law of the State in which the worker is employed and is not enrolled in a training program or is employed at least 20 hours per week and is enrolled in a TRA-approved training program.

(4) Is not employed at the firm from which the worker was separated.

g. *DUA* – To be eligible for DUA, individuals must be unable to work at their ongoing employment or self-employment due to the disaster or must be prevented from commencing employment or self-employment. This includes individuals who reside in the major disaster area but are unable to reach their place of employment or self-employment outside of the major disaster area, and individuals who must travel through a major disaster area to their employment or self-employment, but who are unable to do so as a direct result of the major disaster (20 CFR sections 625.4 and 625.5).

DUA weekly benefits and re-employment assistance services are provided to individuals who are unemployed as a direct result of a presidentially declared major disaster and who are not eligible for unemployment compensation but meet the DUA qualifying requirements.

Generally, an applicant is eligible for DUA for a week of unemployment if he or she meets the following conditions (20 CFR section 625.4):

(1) Each week of unemployment claimed begins during the disaster assistance period;

(2) The individual is an unemployed worker or an unemployed, self-employed individual whose unemployment (total or partial) has been found to be the direct result of a major disaster in the major disaster area;

(3) The applicant is able to work and available for work, within the meaning of the applicable State law, except an applicant will be deemed to meet this requirement if any injury directly caused by the major disaster is the reason for inability to work; and

(4) The individual is not eligible for compensation (as defined in 20 CFR section 625.2(d)) or for waiting-period credit for such week under any other Federal or State law; except that an individual determined ineligible because of the receipt of disqualifying income shall be considered eligible for such compensation or waiting period credit.

(5) Claimants eligible for UI are not eligible for DUA. DUA may not be paid as a supplement to unemployment compensation for the same week of unemployment. DUA also is not payable for any unemployment compensation waiting period required under State UC law (20 CFR section 625.4(i)).

(6) The individual files an initial application for DUA within 30 days after the announcement date of the major disaster. An initial application filed later than 30 days after the announcement date shall be considered timely filed if the State finds that there is good cause for the late filing. At the request of the State, the Administrator of the Office of Unemployment Insurance may authorize extension of the 30-day filing requirement for all DUA applicants. In no case will initial applications be accepted if filed after the expiration of the disaster assistance period, including any authorized extensions (20 CFR section 625.8).

h. Aliens must show proof that they are authorized to work by the U.S. Citizenship and Immigration Services (USCIS) in order to be eligible to receive a federal public benefit (42 USC 1302b-7(d) and (e)).

i. ***Federal Additional Compensation Program*** **– For an individual to be eligible for a FAC payment, the applicable State must have a signed FAC agreement with the Secretary. FAC is payable to**

individuals who are otherwise entitled under State or Federal law to receive regular UC for weeks of unemployment. FAC is also payable to individuals receiving the following Federal and other State unemployment benefit programs: UCFE, UCX, EB, EUC08, TRA, DUA, Short-Time Compensation (STC), and payments under the SEA programs.

(1) All program requirements of these programs for regular compensation apply equally to FAC payments. FAC payments must not reduce either the weekly benefit amount or the maximum benefit amount for individuals eligible for benefits under these programs (e.g., the $25 FAC will not be treated as UC under Section 233(a)(1) of the Trade Act of 1974, as amended; therefore, FAC will not reduce the maximum entitlement of basic TRA) (Pub. L. No. 11-5, section2002 (g).

(2) Individuals receiving State additional compensation are not eligible for FAC.

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching –

a. *Shareable Compensation Program (EB)*

From its UI tax revenues, the State is required to pay zero percent (UCFE, UCX), 50 percent (EB), or 100 percent (regular compensation) of the UC paid by the SWA to eligible claimants.

The State is required to provide 50 percent of the amounts paid to the majority of eligible EB claimants (those not covered by Federal law or special provisions of State law) (20 CFR sections 615.2 and 615.14(a)). Those EB amounts paid by the SWA, and that are not the responsibility of the State, are reimbursable to the State from the UTF (20 CFR section 615.14). The first week of EB is reimbursable to the State only if, in addition to other requirements, the State requires the first week of an individual's benefit year to be an "unpaid waiting week" (EUCA section 204; 20 CFR section 615.14).

The 50 percent share of EB for which the State is responsible is prorated for those claimants whose base period includes wages from both public and private sector employment.

For weeks of EB paid by a State that begin after February 17, 2009 and before December 1, 2010, the Federal government will reimburse the State at 100 percent of eligible costs. Also if an EB claim is established prior to December 1, 2010 (week ending December 4, 2010), the Federal government will reimburse the State at 100 percent of eligible costs based on claims paid during a phase-out period that ends May 1, 2011 (week ending April 30, 2011).

b. ***Federal Additional Compensation***

The State is required to pay zero of the FAC paid by the SWA to eligible claimants, i.e., FAC funds are not required to be matched.

c. ***Emergency Unemployment Compensation***

The State is required to pay zero of the EUC08 paid by the SWA to eligible claimants, i.e., EUC08 funds are not required to be matched.

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

1. *TRA/ATAA/RTAA* – Funds allotted to a State for any fiscal year are available for expenditure by the State during the year of award and the two succeeding fiscal years (Section 130 of Pub. L. No. 107-210, 116 Stat. 942; 19 USC 2317).

2. *DUA* – Funding for each disaster is provided separately for administrative costs and benefits. States are expected to report the cost of each disaster separately by administrative cost and benefits. The funding period for the majority of disasters covers a 26-week period after declaration. Immediately after all payment activity has been concluded for a particular disaster, which may be less than 26 weeks after declaration, the DUA program should be closed out by the State.

3. ***FAC* – FAC is payable in a State for weeks of unemployment beginning with the first week which begins after the date a FAC agreement is signed between the State and DOL. With few exceptions, no FAC payment may be made on benefit years that begin on or after June 2, 2010. In most States (where the week begins on a Sunday), the last week that FAC entitlement may be established is the week ending May 29, 2010. The last week FAC is payable is the week ending December 11, 2010.**

4. *EUC08* – EUC08 is payable in a State for weeks of unemployment beginning with the first week after the date an agreement is signed with the State and DOL. An EUC08 claim must be established by the week ending November 27, 2010. The last date for EUC08 payments is May 1, 2011 or the week ending April 30, 2011.

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. Instructions for reporting financial and program activities are contained in ET Handbook 336, 18th Edition, *State Quality Service Plans for Unemployment Insurance Operations*, ET Handbook 401, 3rd Edition, *Unemployment Insurance Reports Handbook 401*, and ET Handbook 356, *Disaster Unemployment Assistance (DUA),* ***and UIPL No. 11-09, Attachment A, New Temporary Federal Additional Compensation Program***. The SWA may file certain reports electronically.

ETA 9130, *Financial Status Report, UI Programs* – This report is used to report program and administrative expenditures. All ETA grantees are required to submit quarterly financial reports for each grant award which they operate, including standard program and pilot, demonstration, and evaluation projects. Additional information on the following forms under *OMB Number 1205-046108* can be accessed on the Internet at http://www.doleta.gov/grants/ and scroll down to the section on Financial Status Reporting. A separate ETA 9130 is submitted for each of the following: UI Administration, Regular UI Benefits, DUA, TRA/ATAA, and UA Projects (administration and benefits).

g. ETA 2112, *UI Financial Transaction Summary (OMB No. 1205-0154)* – A monthly summary of transactions, which account for all funds received in, passed through, or paid out of the State unemployment fund (ET Handbook 401).

h. ETA 581, *Contribution Operations (OMB No. 1205-0178)* – Quarterly report on volume of SWA work, performance in determining the taxable status of employers, and other information pertinent to the overall effectiveness of the tax program (ET Handbook 401).

i. ETA 191, *Financial Status of UCFE/UCX (OMB No. 1205-0162)* – Quarterly report on UCFE and UCX expenditures and the total amount of benefits paid to claimants of specific Federal agencies (ET Handbook 401).

j. ETA 227, *Overpayment Detection and Recovery Activities (OMB No. 1205-0173)* – Quarterly report on results of SWA activities in principal detection areas of benefit payment control (ET Handbook 401).

k. ETA 902, *DUA Activities Under the Stafford Act (OMB No. 1205-0051)* – This report provides monthly data on DUA activities when a major disaster is declared by the President. Its workload items are also used with fiscal reports to estimate the cost of administering this Stafford Act program. (ET Handbook 356).

l. ETA 563, *Trade Adjustment Assistance Quarterly Activities Report (OMB No. 1205-0016)* – This report provides information on a quarterly basis for all TRA/ATAA program activity. Key workload data on TRA/ATAA is needed to measure program performance and to allocate program and administrative funds to the SWAs administering the trade programs. (The ETA 563 will be replaced by the FY 2010 Trade Act Participant Report, TEGL 6-09)

2. Performance Reporting – Not Applicable

3. Special Reporting

ETA 2208A, *Quarterly UI Contingency Report (OMB No. 1205-0132)* – Quarterly report of staff years worked and paid by program category. Key line items are 1 through 7 of Section A. The auditor is not expected to test Sections B through E.

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

1. Employer Experience Rating

Compliance Requirement – Certain benefits accrue to States and employers when the State has a federally approved experience-rated UI tax system. All States currently have an approved system. For the purpose of proper administration of the system, the SWA maintains accounts, or subsidiary ledgers, on State UI taxes received or due from individual employers, and the UC benefits charged to the employer.

The employer's "experience" with the unemployment of former employees is the dominant factor in the SWA computation of the employer's annual State UI tax rate. The computation of the employer's annual tax rate is based on State UI law (26 USC 3303).

Audit Objective – To verify the accuracy of the employer's annual State UI tax rate and to determine if the tax rate was properly applied by the State.

Suggested Audit Procedures

a. Experience rating systems are generally highly automated systems. These systems could contain errors that are material in the aggregate, but which are not susceptible to detection solely by sampling. If errors are detected, sampling may not be the most effective and efficient means to quantify the extent of such errors. For this reason, the auditor should have a thorough understanding of the operation of these systems, and is strongly encouraged to consider the use of computer-assisted auditing techniques (CAATs) to test these systems.

b. On a test basis, reconcile the subsidiary employer accounts with the State's UI general ledger control accounts.

c. Trace a sample of taxes received and benefits paid to postings to the applicable employer accounts. Verify the propriety of any non-charging of benefits paid to an employer account.

d. Trace a sample of postings to employer accounts to documentation of taxes received and benefits paid.

e. On a test basis, recompute employer experience-related tax rates.

2. UI Benefit Payments

Compliance Requirement – Due to the complexity of the UI benefit payment operations, it is unlikely the auditor will be able to support an opinion that UI benefit payments are in compliance with applicable laws and regulations without relying on the SWA's systems and internal controls.

SWAs are required by 20 CFR section 602.11(d) to operate a Benefits Accuracy Measurement (BAM) program to assess the accuracy of UI benefit payments and denied claims. The program estimates error rates, that is, numbers of claims improperly paid or denied and dollar amounts of benefits improperly paid or denied by projecting the results from investigations of small random samples to the universe of all claims paid and denied in a State. Specifically, the SWA's BAM unit is required to draw a weekly sample of payments and denied claims, review the records, and contact the claimant, employers, and third parties (either in-person, by telephone, or by fax) to verify all the information pertinent to the paid or denied claim that was sampled. BAM investigators review cases for adherence to State law and policy. For claims that were overpaid, underpaid, or erroneously denied, the BAM investigator determines the amount of payment error or, for

erroneously denied claims, the potential eligibility of the claimant; the cause of and the responsibility for any payment error; the point in the UI claims process at which the error was detected; and actions taken by the agency and employer prior to the payment or denial decision that is in error. Federal regional office staff members review a sub-sample of completed cases each year in each State. BAM covers State UC, UCFE, and UCX.

Additional information on BAM procedures, historical data, and a State contacts list can be obtained at http://www.ows.doleta.gov/unemploy/bqc.asp.

The auditor also should review the requirements relating to the investigative process and data collection in ET Handbook No. 395, 4th Edition, Benefit Accuracy Measurement State Operations Handbook, Chapters IV, V, VI, VII, and Appendix C (Investigative Guide Source, Action, and Documentation), pertinent UI Program Letters and other sources of information including Question and Answer series on the Employment and Training Web site (see above).

Audit Objective – To verify that States operate a BAM program in accordance with Federal requirements to assess the accuracy of UI benefit payments and denied claims.

Suggested Audit Procedures

a. Review State BAM case investigative procedures and methodology to assess the SWA's adherence to BAM requirements.

b. Determine whether BAM samples of UI weeks paid and disqualifying eligibility determinations (monetary, separation, and non-separation) are selected for investigation and verification once a week by the State agency's BAM unit.

c. Determine whether BAM case sampling and case assignment for paid and denied claims were reviewed for compliance with State law and policy.

d. Determine whether the State agency is meeting its completion requirements and identify any impediments to the State BAM unit's efforts to complete cases timely.

e. Conduct reviews of a representative sub-sample of completed cases to ensure that established procedures were followed (e.g., each completed case has undergone supervisory review) and information is accurately recorded. The auditor should not attempt to conduct a new investigation, or new fact finding.

3. Match with IRS 940 FUTA Tax Form

Compliance Requirement – States are required to annually certify for each taxpayer the total amount of contributions required to be paid under the State law for the calendar year and the amounts and dates of such payments in order for the taxpayer to be allowed the credit against the FUTA tax (26 CFR section 31.3302(a)-3(a)). In order to accomplish

this certification, States annually perform a match of employer tax payments with credit claimed for these payments on the employer's IRS 940 FUTA tax form.

Audit Objective – Determine whether the State properly performed the match to support its certification of State FUTA tax credits.

Suggested Audit Procedures

a. Ascertain the State's procedures for conducting the annual match.

b. Obtain and examine documentation supporting the annual match process from the group of employers' State unemployment tax payments used by the State in its match process.

c. For a sample of employer payments:

(1) Verify that the tax payments met the stated criteria for FUTA tax credits allowance (e.g., timely State unemployment tax filings and payments).

(2) Compare the audit results to the States' reported annual match results.

4. FAC Benefit Payments

Compliance Requirement – Because the FAC is added to a compensation payment after all deductions are made, including offsets for overpayments, FAC may be used only to offset FAC overpayments. Further, section 2002(f) of ARRA provides that "the provisions of section 4005 of the Supplemental Appropriations Act, 2008 (Pub. L. No. 110-252) shall apply with respect to FAC overpayments and fraud and to the same extent and in the same manner as in the case of EUC08.

Since FAC is used only to offset FAC overpayments, the cross-program offset provisions of Section 303(g)(2) of the Social Security Act (which govern recovery of overpayments through offset between State and Federal UC programs) may not be used to recover State UC overpayments from FAC. However, if a State has a Section 303(g)(2) agreement with the Secretary of Labor, the State will use State UC to recover FAC overpayments in accordance with that agreement. A State may also use other Federal UC to recover FAC overpayments made in that State, regardless of whether the State has a Section 303(g)(2) agreement. Further, if a State has an Interstate Reciprocal Overpayment Recovery Arrangement in effect with the National Association of State Workforce Agencies, FAC may only be used to offset FAC overpayments for another State. However, a State may use State or other Federal UC paid in that State to recover FAC overpayments for other States.

Audit Objective – To verify that States operate a FAC program in accordance with Federal requirements and to assess the accuracy of FAC payments.

Suggested Audit Procedures

a. Verify that the State has entered into an agreement with the Secretary of Labor allowing it to carry out the FAC program.

b. Determine if the State is calculating the weekly benefit amount and making any adjustments in accordance with the applicable State law to account for any earnings and any other deductions (e.g., severance, or retirement/pension payments).

c. Determine whether FAC has been paid "with respect to any week for which the individual is … otherwise entitled to" compensation, in accordance with Section 2002(b)(1) of the Act. Therefore, if the individual is eligible to receive at least one dollar ($1) of UC for the claimed week, the State will pay the claimant the $25 FAC. However, if disqualifying income reduces an individual's unemployment compensation payment to $0, the individual is not entitled to the $25 FAC.

d. Determine whether the state is properly offsetting all debts resulting from an overpayment of the individual's unemployment compensation. FAC benefits may only be used to offset FAC overpayments.

e. Determine if individuals are receiving FAC regardless of their maximum benefit amount—as long as the individual is eligible for unemployment compensation for the week, the individual also receives the $25 FAC.

5. EUC Benefit Payments

Compliance Requirement – Under section 4005 of the Supplemental Appropriations Act, 2008 (Pub. L. No. 110-252), each State must require repayment from individuals who have received any overpayment of EUC08 (whether fraudulent or non-fraudulent), unless the State, under the optional language of Section 4005(b), elects to waive recovery. The option to waive recovery applies only to non-fraudulent overpayments.

To the extent allowed by the State law, an EUC08 overpayment may be recovered by offset. However, no single offset may exceed 50 percent of the amount otherwise payable to the individual for a week.

Audit Objective – To verify that States operate a EUC08 program in accordance with Federal requirements and to assess the accuracy of EUC08 payments.

Suggested Audit Procedures

a. Verify that the State has entered into an agreement with the Secretary of Labor allowing it to carry out the EUC08 program.

b. Determine if individuals are receiving EUC08.

c. Determine if the State is using the regular UI weekly benefit amount and making any adjustments in accordance with the applicable State law to account for any earnings and any other deductions (e.g., severance, or retirement/pension payments).

d. Determine whether the State is properly offsetting all debts resulting from an overpayment of the individual's unemployment compensation, i.e., EUC08 benefits can be used to offset any State compensation overpayments, but the EUC08 benefit offset is limited to 50 percent of the weekly benefit payment.

IV. OTHER INFORMATION

State unemployment tax revenues and the governmental, tribal, and non-profit reimbursements in lieu of State taxes (State UI funds) must be deposited to the UTF in the U.S. Treasury, primarily to be used to pay benefits under the federally approved State unemployment law. This program supplement includes several compliance requirements that must be tested with regard to these State UI funds. Consequently, State UI funds, as well as Federal funds for benefit payments under UCFE, UCX, EB, TRA/ATAA/RTAA, DUA, EUC08, **and FAC** shall be included in the total expenditures of CFDA 17.225 when determining Type A programs. State UI funds should be included with Federal funds on the Schedule of Expenditures of Federal Awards. A footnote to the Schedule to indicate the individual State and Federal portions of the total expenditures for CFDA 17.225 is encouraged.

DEPARTMENT OF LABOR

CFDA 17.235 SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

I. PROGRAM OBJECTIVES

The purpose of the Senior Community Service Employment Program (SCSEP) program is to provide, foster, and promote useful part-time work opportunities (usually 20 hours per week) in community service employment activities for low-income persons who are 55 years of age and older. To the extent feasible, SCSEP assists and promotes the transition of program participants into unsubsidized employment.

II. PROGRAM PROCEDURES

To allot program funds for use in each State, the Department of Labor (DOL) utilizes a statutory formula based on the number of persons aged 55 and over, per capita income, and hold-harmless considerations. Program grants are awarded to eligible applicants, which include States, U.S. Territories, and public and private non-profit entities other than political parties (Section 506 of the Act). The relative amount of funding for each type of eligible applicant has historically occurred at proportions of 22 percent to State and Territorial agencies and 78 percent to national grantees. As a result of a competition conducted in 2006, there are now 18 national grantees. The one-year grant period may be extended through a grant modification. The program year is July 1 to June 30.

Source of Governing Requirements

SCSEP is authorized by the Older Americans Act (OAA) of 1965, as amended by Pub. L. No. 109-365 (42 USC 3056 *et seq.*). Implementing regulations are published at 20 CFR part 641.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

   a. Allowable activities include, but are not limited to: outreach, orientation, assessment, counseling, classroom training, job development, community service assignments, payment of wages and fringe benefits, training, supportive services, and placement in unsubsidized employment.

b. Costs of participating as a required partner in the One-Stop Delivery System established in accordance with section 134(c) of the Workforce Investment Act (WIA) of 1998 are allowable, as long as SCSEP services and funding are provided in accordance with the Memorandum of Understanding required by WIA and section 502(b)(1)(O) of the OAA (20 CFR section 641.850(d)).

c. SCSEP funds may be used to meet a recipient's or subrecipient's obligations under section 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, and any other applicable Federal disability nondiscrimination laws to provide accessibility for individuals with disabilities (20 CFR section 641.850(f)).

2. *Activities Unallowed*

a. Legal expenses for the prosecution of claims against the Federal Government, including appeals to an Administrative Law Judge, are unallowable (20 CFR section 641.850(b))

b. In addition to the prohibition contained in 29 CFR part 93, SCSEP funds cannot be used to pay any salaries or expenses related to any activity designed to influence legislation or appropriations pending before the U.S. Congress of any State legislature (29 CFR section 641.850(c)).

c. SCSEP funds may not be used for the purchase, construction, or renovation of any building except for the labor involved in minor remodeling of a public building to make it suitable for use for project purposes; minor repair and rehabilitation of publicly used facilities for the general benefit of the community; and minor repair and rehabilitation by participants of housing occupied by persons with low incomes who are declared eligible for such services by authorized local agencies (20 CFR section 641.850(e)).

E. Eligibility

1. Eligibility for Individuals

Persons 55 years or older whose family is low-income (i.e., income does not exceed the low-income standards defined in 20 CFR section 641.507) are eligible for enrollment (20 CFR section 641.500). Low-income means an income of the family which, during the preceding 6 months on an annualized basis or the actual income during the preceding 12 months, at the option of the grantee, is not more than 125 percent of the poverty levels established and periodically updated by the U.S. Department of Health and Human Services (42 USC 3056p(a)(4)). The poverty guidelines are issued each year in the *Federal Register* and the Department of Health and Human Services maintains a page on the Internet which

provides the poverty guidelines (http://www.aspe.hhs.gov/poverty/index.shtml). Enrollee eligibility is redetermined on an annual basis (20 CFR section 641.505).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching

The grantee must contribute matching, in cash or in-kind, not less than 10 percent of the total cost of the project, except that the Federal Government may pay all costs of any project which is:

a. An emergency or disaster project;

b. A project located in an economically depressed area as determined by the Secretary of Labor in consultation with the Secretary of Commerce and the Director of the Office of Community Services of the Department of Health and Human Services;

c. A project which is exempt by law (42 USC 3056(c)).

2.1 Level of Effort – *Maintenance of Effort* – Not Applicable

2.2 Level of Effort – *Supplement Not Supplant*

Employment of an enrollee shall be only in addition to budgeted employment which would otherwise be funded by the grantee, subgrantee(s), or host agency(ies) without assistance from the Act, and shall not result in employee displacement (including persons in lay-off status) or substitute project jobs for contracted work or other Federal jobs (20 CFR section 641.844).

3. Earmarking

The amount of Federal funds expended for enrollee wages and fringe benefits shall be no less than 75 percent of the grant (20 CFR section 641.873) except in those instances in which a grantee has requested, and DOL has approved such request, to use not less than 65 percent of the grant funds to pay for participant wage and fringe benefits so as to use up to an additional 10 percent of grant funds for participant training and supportive services (42 USC 3056(c)(6)(C)(i))

The amount of Federal funds expended for the costs of administration during the program year shall be no more than 13.5 percent of the grant (20 CFR section

641.867(a)). A waiver of this requirement to increase administrative expenditures to 15 percent may be granted by the Secretary (20 CFR section 641.867(b)).

L. Reporting

1. Financial Reporting

a. ETA 9130, *Financial Report, (OMB No. 1205-0461)* – DOL requires financial reports to be cumulative by fiscal year of appropriation. All ETA grantees are required to submit quarterly financial reports for each grant award they receive. Reports are required to be prepared using the specific format and instructions for the applicable program(s); in this case, *Older Worker Program.* Reports are due 45 days after the end of the reporting quarter. Additional information can be accessed on the Internet at http://www.doleta.gov/grants/ and scroll down to the section on Financial Status Reporting.

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

DEPARTMENT OF LABOR

CFDA 17.245 TRADE ADJUSTMENT ASSISTANCE

I. PROGRAM OBJECTIVES

The purpose of the Trade Adjustment Assistance (TAA) program is to provide assistance to workers adversely affected by foreign trade. Services provided under the TAA program enable workers to return to work that will use the highest skill levels and pay the highest wages, given the workers' preexisting skill levels, and education and the condition of the labor market, and to do so as quickly as possible.

The Trade Act of 1974, as amended by the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. No. 107-210) (TAA or Trade Act of 2002), and further amended by the Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA or Trade Act of 2009) (Division B, Title I, Subtitle I of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5). The Trade Act of 2009 expanded eligibility of the TAA program and replaced Alternative Trade Adjustment Assistance (ATAA) with Reemployment Trade Adjustment Assistance (RTAA). The RTAA program expands the ATAA program for workers 50 years of age and over for petitions filed under the 2009 amendments.

II. PROGRAM PROCEDURES

Funds are provided to State Workforce Agencies (SWAs) which serve as agents of the U.S. Department of Labor (DOL) for administering the worker adjustment assistance provisions of the TAA Program. Funds are awarded for the costs of training, job search and relocation allowances, and administrative costs, and are available for workers covered by both the 2002 and 2009 amendments.

Through their One-Stop Career Centers and other local offices, SWAs arrange for eligible program participants to receive training, job search assistance, relocation allowances, and transportation and/or subsistence allowances for the purpose of attending approved training outside the normal commuting distance of their place of residence (20 CFR part 617). SWAs also serve as agents of DOL for identifying potentially eligible participants and assisting them in applying for the Health Coverage Tax Credit (HCTC) program.

The weekly trade readjustment assistance (TRA) and ATAA/RTAA (depending upon the applicable amendment) subsistence payments and wages subsidies are administered under the UI program (see CFDA 17.225 in this Supplement). The Trade Act of 2002 applies to petitions with TA-W Numbers less than 69,999 with a petition institution date prior to May 18, 2009. The Trade Act of 2009 applies to petitions with TA-W Numbers greater than 70,000 with a petition institution date of May 18, 2009 and beyond.

Source of Governing Requirements

This program is authorized by the Trade Act of 1974 (19 USC 2271 *et seq*), as amended by the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. No. 107-210) and the Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA) (Division B, Title I, Subtitle I of ARRA. Implementing regulations are 29 CFR part 90, subpart B, and 20 CFR part 617. Operating instructions for the TAA/RTAA programs are found in Training and Employment Guidance Letter (TEGL) 22-08, implementing the 2009 amendments, and operating instructions for the ATAA program are found in TEGL 2-03, implementing the 2002 amendments.

Availability of Other Program Information

Additional information on TAA and ATAA/RTAA program procedures may be obtained through the agency web site at http://www.doleta.gov/tradeact.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

The following requirements apply to TRA and ATAA/RTAA.

1. *Activities Allowed under the Trade Act of 2002*

   Allowable activities include job search assistance, relocation allowance, and training (including payments for transportation and subsistence where required for training) to eligible participants (20 CFR sections 617.10 through .19).

2. *Activities Allowed only under the Trade Act of 2009*

   Allowable activities include job search assistance, relocation allowance, and training (including payments for transportation and subsistence where required for training) to eligible participants (20 CFR sections 617.10 through .19). Additional allowable activities include vocational testing, counseling, and job placement services; however, TRA participants may also receive these services through other programs such as the Workforce Investment Act (WIA)
   (20 CFR part 617).

E. Eligibility

1. Eligibility for Individuals

a. *Department of Labor Certification and Qualifying Separations*

TAA – In order to be eligible for training and other reemployment services under the TAA program, an individual must be an adversely affected worker covered under a DOL certification, and have a qualifying separation which occurred (i) on or after the impact date specified in the certification as the beginning of the import caused unemployment or underemployment and (ii) before the expiration of the two-year period beginning on the date on which the Secretary of Labor issued the certification for his or her group or, if earlier, before the termination date, if any, specified in the certification (19 USC 2272; 29 CFR section 90.16).

b. *Training*

Under the Trade Act of 2002, workers must be enrolled in their approved training within 8 weeks of the issuance of the certification or within 16 weeks of their most recent qualifying separation, whichever is later, unless this requirement is waived prior to reaching those deadlines (19 USC 2291(a)(5)(A) and (c)).

Under the Trade Act of 2009, workers must be enrolled in their approved training within 26 weeks of the issuance of the certification or their most recent qualifying separation, whichever is later, unless this requirement is waived prior to reaching those deadlines (19 USC 2291(a)(5)(A)(II) and (c)), as amended by Section 1801(a), ARRA, 123 Stat 375 and 376)

c. *Maximum Number of Weeks for Receipt of Approved Training*

Under the Trade Act of 2002, the maximum duration for any approvable training program is 130 weeks, and no individual shall be entitled to more than one training program under a single certification (19 USC 2293(a)).

Under the Trade Act of 2009, the maximum duration for any approvable training program is 156 weeks and no individual shall be entitled to more than one training program under a single certification (19 USC 2293(a), as amended by Section 1823, ARRA, 123 Stat 377 and 378).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

H. Period of Availability of Federal Funds

Funds allotted to a State for any fiscal year are available for expenditure by the State during the year of award and the two succeeding fiscal years (19 USC 2317(b)).

L. Reporting

1. Financial Reporting

a. SF-269, Financial Status Report – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. ETA-9130, *Financial Report (OMB No. 1205-0461)* – All ETA grantees are required to submit quarterly financial reports for each grant award they receive. Reports are due 45 days after the end of the reporting quarter. Additional information can be accessed on the Internet at http://www.doleta.gov/grants/ and scroll down to the section on Financial Status Reporting.

g. ETA-9117, *Trade Adjustment Assistance (TAA) Program Reserve Funding Request Form (OMB No. 1205-0275)* – SWAs are required to furnish this form to ETA, in conjunction with the SF-424, with each request for TAA program reserve training funds and/or job search and relocation allowances (20 CFR section 617.61; 29 CFR section 97.41).

2. Performance Reporting

Trade Act Participant Report (TAPR*)* FY2010 (*OMB No. 1205-0392)* – SWAs are required to submit quarterly reports on participant characteristics, services and benefits received, and outcomes achieved on a rolling four quarter basis (TEGL 6-09).

Key Line Items – The following line items contain critical information:

(1) Section A.01: Identifying Data – *Individual Identifier*

(2) Section D.01: Employment and Job Retention Information – *Employed in second full quarter after exit*

(3) Section D.01: Employment and Job Retention Information – *Employed in third full quarter after exit*

(4) Section D.01: Employment and Job Retention Information – *Employed in forth full quarter after exit*

Total Earnings from Wage Records:

(5) Section D. 02 Wage Record Data – *Third quarter following exit*

(6) Section D. 02 Wage Record Data – *Fourth quarter following exit*

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

DEPARTMENT OF LABOR

CFDA 17.258 WIA ADULT PROGRAM
CFDA 17.259 WIA YOUTH ACTIVITIES
CFDA 17.260 WIA DISLOCATED WORKERS

I. PROGRAM OBJECTIVES

The Workforce Investment Act of 1998 (WIA) reforms Federal job training programs and creates a new, comprehensive workforce investment system. The reformed system is intended to be customer-focused, to help Americans access the tools they need to manage their careers through information and high quality services, and to help U.S. companies find skilled workers. The cornerstone of the new workforce investment system is One-Stop service delivery, which unifies numerous training, education and employment programs into a single, customer-friendly system in each community so that the customer has access to a seamless system of workforce investment services.

Subtitle B programs for adults and dislocated workers seek to improve employment, retention, and earnings of WIA participants and increase their educational and occupational skill attainment, thereby improving the quality of the workforce, reducing welfare dependency, and enhancing national productivity and competitiveness. Subtitle B Youth activities seek to increase attainment of basic skills, work readiness or occupational skills, and secondary diplomas or other credentials.

II. PROGRAM PROCEDURES

Subtitle B Statewide and Local Workforce Investment Programs

This provides the framework for delivery of workforce investment activities at the State and local levels to individuals who need those services, including job seekers, dislocated workers, youth, incumbent workers, new entrants to the workforce, veterans, persons with disabilities, and employers. Each State's Governor is required to establish a State Board; develop a State Workforce Investment Plan (WIA section 112; 29 USC 2822); designate local workforce investment areas; and oversee the creation of Local Boards and One-Stop service delivery systems in the State.

The Local Workforce Investment Board (Local Board) is appointed by the chief elected official in each local area in accordance with State criteria established under WIA section 117(b), and is certified by the Governor every two years. The Local Board, in cooperation with the chief elected official, appoints a youth council as a subgroup of the Local Board and coordinates workforce and youth plans and activities with the youth council, in accordance with WIA section 117(h). With the chief elected official, the Local Board sets policy for the portion of the Statewide workforce investment system within the local area (29 USC 2832).

Each Local Board, in partnership with the appropriate chief elected officials, develops and submits a comprehensive five-year plan to the Governor which identifies and describes certain policies, procedures and local activities that are carried out in the local area, and that is consistent with the State Workforce Investment Plan and WIA section 118(b) (29 USC 2833(b)). The plan must include a description of the One-Stop delivery system to be established or designated in the local area, including: a copy of the local Memorandums of Understanding (MOU) between the Local Board and each of the One-Stop partners describing the operation of the local One-Stop delivery system; identification of the One-Stop operator or entity responsible for the disbursal of grant funds; and a description of the competitive process to be used to award grants and contracts for activities carried out under this subtitle I of WIA, including the process to be used to procure training services that are made as exceptions to the Individual Training Account process (WIA section 134(d)(4)(G); 29 USC 2864).

The agreement (20 CFR section 662.400(c)) between the Local Board and the One-Stop operator shall specify the operator's role. That role may range between simply coordinating service providers within the center, to being the primary provider of services within the center, to coordinating activities throughout the local One-Stop system. The types of entities that may be selected to be the One-Stop operator include: a postsecondary educational institution; an Employment Service agency established under the Wagner-Peyser Act on behalf of the local office of the agency; a private, non-profit organization (including a community-based organization); a private for-profit entity; a government agency; and another interested organization or entity. The One-Stop operator may be a single entity or a consortium of entities and may operate one or more One-Stop centers. In addition, there may be more than one One-Stop operator in a local area.

The following Federal programs are required by WIA section 121(b)(1) to be partners in the local One-Stop system: programs authorized under Title I of WIA; public labor exchange programs authorized under the Wagner-Peyser Act (29 USC 49 *et seq*.); adult education and literacy activities authorized under title II of WIA; programs authorized under parts A and B of title I of the Rehabilitation Act (29 USC 720 *et seq*.); welfare-to-work programs authorized under sec. 403(a)(5) of the Social Security Act (42 USC 603(a)(5) *et seq*.); senior community service employment activities authorized under title V of the Older Americans Act of 1965 (42 USC 3056 *et seq*.); postsecondary vocational education activities under the Carl D. Perkins Vocational and Applied Technology Education Act (20 USC 2301 *et seq*.); Trade Adjustment Assistance and NAFTA Transitional Adjustment Assistance activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 USC 2271 et seq.); activities authorized under chapter 41 of title 38, USC (local veterans' employment representatives and disabled veterans outreach programs); employment and training activities carried out under the Community Services Block Grant (42 USC 9901 *et seq*.); employment and training activities carried out by the Department of Housing and Urban Development (WIA sec. 121(b)(1)(B)(xi)); and programs authorized under State unemployment compensation laws (in accordance with applicable Federal law).

WIA also provides that other entities that carry out human resource programs, including Federal, State, or local programs and programs in the private sector, may serve as additional partners in the One-Stop system if the Local Board and chief elected official(s) approve the entity's participation. Additional partners may include: Temporary Assistance for Needy Families

programs authorized under part A of title IV of the Social Security Act (42 USC 601 *et seq*.); employment and training programs authorized under section 6(d)(4) of the Food Stamp Act of 1977 (7 USC 2015(d)(4)) and work programs authorized under section 6(o) of the Food Stamp Act of 1977 (7 USC 2015(o)); programs authorized under the National and Community Service Act of 1990 (42 USC 12501 *et seq*.); and other appropriate Federal, State or local programs, including programs related to transportation and housing and programs in the private sector (WIA sec. 121(b)(2); 29 USC 2841(b)(2)).

All required programs must: make available to participants through the One-Stop delivery system the core services that are applicable to the partner's programs (WIA sec. 121(b)(1)(A)); use a portion of funds made available to the partner's program, to the extent not inconsistent with the Federal law authorizing the partner's program, to create and maintain the One-Stop delivery system and provide core services (WIA sec. 134(d)(1)(B)); enter into a memorandum of understanding (MOU) with the Local Board relating to the operation of the One-Stop system, including a description of services, how the cost of the identified services and operating costs of the system will be funded, and methods for referrals (WIA sec. 121(c)); participate in the operation of the One-Stop system consistent with the terms of the MOU and requirements of authorizing laws (WIA sec. 121(b)(1)(B)); and provide representation on the Local Workforce Investment Board (WIA sec. 117(b)(2)(A)(vi); 20 CFR section 662.230).

The applicable core services may be made available by the provision of appropriate technology at the comprehensive One-Stop center, by co-locating personnel at the center, cross-training of staff, or through a cost-reimbursement or other agreement between service providers at the comprehensive One-Stop center and the partner programs, as described in the State Workforce Investment Plan and the local MOU. Core services may also be made available through the networks of affiliated sites and One-Stop partners described in WIA section 134(c)(2) (20 CFR section 662.250).

The workforce investment system established under WIA emphasizes informed customer choice, system performance, and continuous improvement. The eligible provider process is part of the strategy for achieving these goals. A Local Board may not itself provide training services to adults and dislocated workers unless it receives a waiver from the Governor and meets the requirements of WIA section 117(f)(1) (29 USC 2832(f)(1)). Instead, Local Boards, in partnership with the State, identify training providers and programs whose performance qualifies them to receive WIA funds to train adults and dislocated workers. After receiving core and intensive services and in consultation with case managers, eligible participants who need training use the list of these eligible providers, which contains performance and cost information on eligible providers, to make an informed choice (20 CFR section 663.440).

Individual Training Accounts (ITAs) are established for eligible individuals to finance training through these eligible providers. Payments from ITAs may be made in a variety of ways, including the electronic transfer of funds through financial institutions, vouchers, or other appropriate methods. Payments may also be made through payment of a portion of the costs at different points in the training course (20 CFR section 663.410). Exceptions to the use of ITAs are permissible only where the services provided are for on-the-job or customized training; where the Local Board determines that there is an insufficient number of eligible providers available

locally; or in the case of programs of demonstrated effectiveness serving participant populations which face multiple barriers to employment (20 CFR section 663.430).

The ability of providers to successfully perform, the procedures State and Local Boards use to establish training provider eligibility, and the degree to which information, including performance information, on those providers is made available to customers eligible for training services, are key factors affecting the successful implementation of the Statewide workforce investment system (20 CFR section 663.500).

Source of Governing Requirements

The WIA program is authorized by: Title I of the Workforce Investment Act of 1998 (Pub. L. No. 105-220, 112 Stat. 936-1059; 29 USC 2811 *et seq*.). **Additional funding and associated requirements are included in Title VIII of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (ARRA).** The regulations are at 20 CFR parts 660-671.

Availability of Other Program Information

Additional information on programs authorized under the Workforce Investment Act can be found on the Internet at http://www.doleta.gov/programs/adult_program.cfm#wia. The *Planning and Policy Guidance* section is a particularly useful source of information on compliance issues.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable, and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Waivers and Work-Flex*

   a. The Secretary of Labor may waive statutory or regulatory requirements of the adult and youth provisions of the Act and of the Wagner-Peyser Act (29 USC 2939(i)(4); 20 CFR sections 661.400 through .420).

   b. Under an approved Workforce Flexibility plan, a Governor may be granted authority to approve requests for waivers of statutory or regulatory provisions of Title I submitted by local workforce areas (29 USC 2942; 20 CFR sections 661.430 and .440)).

2. *Statewide Activities*

Statewide workforce investment activities include (20 CFR sections 665.200 and .210):

a. State administration of the adult, dislocated worker, and youth workforce investment activities.

b. Providing capacity building and technical assistance to local areas, including Local Boards, One-Stop operators, One-Stop partners, and eligible providers.

c. Conducting research and demonstrations.

d. Establishing and implementing innovative incumbent worker training programs, which may include an employer loan program to assist in skills upgrading, and programs targeted to empowerment zones and enterprise communities.

e. Providing support to local areas for the identification of eligible training providers.

f. Implementing innovative programs for displaced homemakers, and programs to increase the number of individuals trained for and placed in non-traditional employment.

g. Carrying out adult and dislocated worker employment and training activities as the State determines are necessary to assist local areas in carrying out local employment and training activities.

h. Carrying out youth activities Statewide.

i. Preparing the annual performance progress report and submitting it to the Secretary of Labor, as described in 20 CFR section 667.300(e).

j. Carrying out required rapid response activities.

k. Disseminating:

(1) The State list of eligible providers of training services, for adults and dislocated workers.

(2) Information identifying eligible providers of on-the-job training and customized training.

(3) Performance and program cost information about these providers.

(4) A list of eligible providers of youth activities.

l. Conducting evaluations, under WIA section 136(e), of workforce investment activities for adults, dislocated workers and youth, in order to establish and promote methods for continuously improving such activities to achieve high-level performance within, and high-level outcomes from, the Statewide workforce investment system.

m. Providing incentive grants.

n. Providing technical assistance to local areas that fail to meet local performance measures.

o. Assisting in the establishment and operation of One-Stop delivery systems, in accordance with the strategy described in the State Workforce Investment Plan.

p. Providing additional assistance to local areas that have high concentrations of eligible youth.

q. Operating a fiscal and management accountability information system.

3. *Local Activities – Subtitle B Adult and Dislocated Worker Programs*

a. Funds may be used at the local level to pay for core One-Stop system costs as well as for intensive services and training services for program participants.

b. *Core Services* – The following are core services (20 CFR section 662.240):

(1) Eligibility determination for WIA services.

(2) Outreach, intake, and orientation to available information and services.

(3) Initial assessment of skill levels, aptitudes, abilities and supportive services needs.

(4) Career counseling.

(5) Job search and placement assistance.

(6) Provision of employment statistics and job information.

(7) Provision of performance information on eligible providers of training services, youth activities, and adult education.

(8) Provision of information on local area performance.

(9) Provision of information on availability of supportive services.

(10) Provision of information regarding filing Unemployment Insurance (UI) claims.

(11) Assistance in establishing eligibility for welfare to work activities and programs of financial assistance for training and education programs.

(12) Follow-up services including counseling for individual placed into unsubsidized employment for at least 12 months following placement (20 CFR section 663.150).

c. *Intensive Services* – The following are intensive services (29 USC 2864(d)(3); 20 CFR section 663.200):

(1) Specialized assessments including diagnostic testing, in-depth interviewing, and evaluation.

(2) Development of employment plan.

(3) Group counseling.

(4) Individual counseling and career planning.

(5) Case management.

(6) Pre-vocational services, including workplace behavior skills training.

d. *Training Services* – The following are training services (29 USC 2864(d)(4); 20 CFR section 663.300):

(1) Occupational training.

(2) On-the-Job-Training (OJT) (Employers may be reimbursed up to 50 percent of the wage rate of an OJT participant for the extraordinary costs of providing the training and additional supervision related to the OJT. The employer is not required to document its extraordinary costs (20 CFR section 663.710)).

(3) Skill upgrading.

(4) Entrepreneurial training.

(5) Job readiness training.

(6) Adult literacy.

(7) Customized training (Customized training is designed to meet the special needs of an employer. Such employers are required to pay at least fifty percent of the training (20 CFR section 663.715)).

e. At the discretion of the State and Local Boards the following services may be provided (29 USC 2864(e)):

(1) Customized screening and referral.

(2) Supportive services, including needs related payments.

4. *Local Activities – Subtitle B Youth Activities*

a. Youth activities can provide a wide array of activities relating to employment, education and youth development. With the exception of the design framework component (e.g., services for intake, objective assessment, and the development of individual service strategy), these activities must be obtained by grant or contract with a service provider. The activities include but are not limited to the following (29 USC 2843 and 2854(c)(2); 20 CFR sections 664.405(a)(4) and .410):

(1) Tutoring, study skills training, and instruction leading to completion of secondary school, including dropout prevention strategies.

(2) Alternative secondary school services.

(3) Summer employment opportunities that are directly linked to academic and occupational learning.

(4) Paid and unpaid work experience, including internships and job shadowing.

(5) Occupational skills training.

(6) Leadership development opportunities, including community service and peer-centered activities encouraging responsibility and other positive social behaviors.

(7) Supportive services.

(8) Adult mentoring for a period of participation and a subsequent period, for a total of not less than 12 months.

(9) Follow-up services.

(10) Comprehensive guidance and counseling, including drug and alcohol abuse counseling and referral.

b. Funds allocated to a local area for eligible youth shall be used for programs that (20 CFR section 664.405):

(1) Objectively assess academic levels, occupational skills levels, service needs (i.e., occupational, prior work experience, employability, interests, aptitudes), and supportive service needs of each participant;

(2) Develop service strategies that identify an employment goals, achievement objectives, and the appropriate services needed to achieve the goals and objectives for each participant; and

(3) Provide post-secondary education preparation, linkages between academic and occupational learning, preparation for unsubsidized employment opportunities, and effective connections to intermediaries with strong links to the job market and local and regional employers.

5. *Activities Unallowed – All WIA Programs*

WIA title I funds may not be used for the following activities:

a. Construction or purchase of facilities or buildings (20 CFR section 667.260), with the following exceptions:

(1) Providing physical and programmatic accessibility and reasonable accommodation, as required under section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended (20 CFR section 667.260(a)).

(2) Repairs, renovations, alterations and capital improvements of SESA real property and JTPA-owned property which is transferred to WIA title I programs (20 CFR section 667.260(b)).

(3) Disaster relief employment on projects for demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within a disaster area (WIA section173(d); 29 USC 2918(d); 20 CFR section 667.260(d)).

b. Employment-generating activities, economic development activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, and similar activities, unless they directly relate to training for eligible individuals. Employer outreach and job development activities are considered directly related to training for eligible individuals (WIA section 181(e); 29 USC 2931(e); 20 CFR section 667.262).

c. The employment or training of participants in sectarian activities. Participants shall not be employed in the construction, operation, or maintenance of a facility that is or will be used for sectarian instruction or as a place for religious worship. However, WIA funds may be used for the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship if the organization operating the facility is part of a program or activity providing services to WIA participants. (WIA section 188(a)(3); 29 USC 2938(a)(3); 20 CFR section 667.266).

d. Encouraging or inducing the relocation of a business or part of a business from any location in the United States if the relocation results in any employee losing his or her job at the original location (20 CFR section 667.268).

e. Providing customized training, skill training, or on-the-job training or company specific assessments of job applicants or employees of a business or a part of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation resulted in any employee losing his or her job at the original location (20 CFR section 667.268(a)).

f. Paying the wages of incumbent employees during their participation in economic development activities provided through a Statewide workforce investment system (WIA section 181(b)(1); 29 USC 2931(b)(1); 20 CFR section 667.264(a)(1)).

g. Public service employment, except to provide disaster relief employment, as specifically authorized in section 173(d) of WIA (WIA sec. 195(10); 29 USC 2945(10); 20 CFR section 667.264(a)(2)).

6. *Activities Unallowed – All Subtitle B Statewide and Local Programs*

Funds available to States and local areas under subtitle B may not be used for foreign travel (29 USC 2931(e)).

B. Allowable Costs/Cost Principles

1. *One-Stop Centers*

The Department of Labor (DOL), in a collaborative effort with other Federal agencies, published in the *Federal Register* dated May 31, 2001 (66 FR 29637) a notice that provides guidance on resource sharing methodologies for the shared costs of a One-Stop service delivery system.

2. *All Subtitle B Statewide and Local Programs*

For those selected items of cost requiring prior approval, the authority to grant or deny approval is delegated to the Governor for youth, adult, and dislocated worker programs (20 CFR section 667.200(c)).

E. Eligibility

1. Eligibility for Individuals

a. *All Programs*

Selective Service – No participant may be in violation of section 3 of the Military Selective Service Act (50 USC App. 453) by not presenting and submitting to registration under that Act (29 USC 2939(h)).

b. *All Subtitle B Statewide and Local Programs*

(1) An adult must be 18 years of age or older.

(2) A dislocated worker means an individual who meets the definition in 29 USC 2801(9).

(3) A dislocated homemaker means an individual who meets the definition in 29 USC 2801(10).

(4) Before receiving training services, an adult or dislocated worker must have received at least one intensive service, been determined to be unable to obtain or retain employment through intensive services, and met all of the following requirements (20 CFR sections 663.240 and 663.310):

(a) Had an interview, evaluation, or assessment and determined to be in need of training services and have the skills and qualifications to successfully complete the selected training program.

(b) Selected a training service linked to the employment opportunities.

(c) Was unable to obtain grant assistance from other sources, including other Federal programs, to pay the costs of the training.

c. *Subtitle B Youth Activities*

A person is eligible to receive services under Youth Activities if they are between the ages of 14 and 21 at the time of enrollment (20 CFR section 664.200) and demonstrate at least one of the following barriers to employment: deficient in basic literacy skills; a school dropout; homeless; a runaway; a foster child; pregnant or parenting; offender; or an individual who requires additional assistance to complete an educational program, or to secure and hold employment (20 CFR sections 664.200, .205, and .210).

Age eligibility for youth services funded by ARRA is increased from 21 to 24 years of age. (ARRA Title VIII(2), 123 Stat 173).

See III.G.3.d.(2), "Matching, Level of Effort, Earmarking – Earmarking," for the requirement that at least 95 percent of eligible youth participants be disadvantaged low-income youth as defined in 29 USC 2801(25).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

F. Equipment and Real Property Management

Recipients and subrecipients may permit employers to use WIA-funded, local area services, facilities, or equipment on a fee-for-service basis, to provide employment and training activities to incumbent workers if this does not interfere with utilization by eligible participants and the income generated from such fees is treated as program income (29 USC 2945(13); 20 CFR section 667.200(a)(8)).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2 Level of Effort – Not Applicable

3. Earmarking

Subtitle B Statewide and Local Programs

a. *Statewide Activities*

(1) *State Reserve* – A State may reserve up to 15 percent of the amounts allotted for Adult, Dislocated Worker, and Youth Activities. The amounts reserved may be combined and expended on activities described in 20 CFR sections 665.200 and .210 without regard to funding source (20 CFR section 667.130).

(2) *Administrative Cost Limits* – A State may spend up to five percent of the amount allotted for the State's administrative costs (i.e., one-third of the 15 percent State Reserve described in the preceding paragraph) (20 CFR section 667.210). The term "administrative costs" is defined at 20 CFR section 667.220. The funds provided for administrative costs by one of the three funding sources (Adult, Dislocated Worker, and Youth Activities) can be used for administrative costs of the other two sources.

b. *Dislocated Worker Activities – Rapid Response*

Statewide Rapid Response – The State must reserve for rapid response activities a portion of funds, up to 25 percent, allotted for dislocated workers. The funds are used to plan and deliver services to enable dislocated workers to transition to new employment as quickly as possible, following either a permanent closure or mass layoff, or a natural or other disaster resulting in a mass job relocation (20 CFR section 667.130(b)).

c. *Local Areas*

Administrative Cost Limits – A local area may expend no more than ten percent of the Adult, Dislocated Worker, and Youth Activities funds allocated to the local area under sections 128(b) and 133(b) of the Act for administrative costs. The funds provided for administrative costs by one of the three fund sources (Adult, Dislocated Worker, Youth Activities) can be used for administrative costs of the other two sources (20 CFR section 667.210(a)(2)).

d. *Youth Activities*

(1) *Out-of School Youth* – Thirty percent of the Youth Activity funds allocated to the local areas, except for the local area expenditures for administration, must be used to provide services to out-of-school youth (20 CFR section 664.320).

(2) *Low-Income Youth* – A minimum of 95 percent of eligible participants in Youth Activities must meet the criteria of disadvantaged low-income youth as defined in 29 USC 2801(25) (20 CFR section 664.220).

e. *Adult and Dislocated Workers Funds*

Transfers of Funds – Section 133(b)(4) of the WIA authorizes workforce investment areas, with the approval of the Governor, to transfer up to 20 percent of the Adult Activities funds to Dislocated Workers Activities, and up to 20 percent of Dislocated Workers Activities funds to Adult Activities. Effective for Program Year 2003, the transfer limits were

raised to 30 percent by the DOL Appropriations Act (Section 133(b)(4) of the WIA, as amended by Pub. L. No. 108-7).

H. Period of Availability of Federal Funds

1. *Statewide Activities*

Funds allotted to a State for any program year are available for expenditure by the State during that program year and the two succeeding program years (29 USC 2939(g)(2); 20 CFR section 667.107(a)).

2. *Local Areas*

Funds allocated by a State to a local area for any program year are available for expenditure only during that program year and the succeeding program year. Funds which are not expended by a local area in this two-year period must be returned to the State, which can use the funds for Statewide projects during the third program year of availability, or distribute the funds to local areas which had fully expended their allocation of funds for the same program year within the two-year period (29 USC 2939(g)(2); 20 CFR section 667.107(b)).

I. Procurement and Suspension and Debarment

1. *All Subtitle B Statewide and Local Programs*

All procurement contracts and other transactions between Local Boards and units of State or local governments must be conducted only on a cost-reimbursement basis. No provision for profit is allowed (20 CFR section 667.200(a)(3)).

2. *Subtitle B Youth Activities*

The Local Board for each local such area shall identify eligible providers of youth activities by awarding grants or contracts on a competitive basis, based on the recommendations of the youth council and on the criteria contained in the State plan (WIA section 123; 29 USC 2843).

J. Program Income

1. The addition method is required for use on all program income earned under WIA grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the WIA program. However, the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under the grants when these costs have not been charged to the WIA program (20 CFR section 667.200(a)(5)).

2. WIA specifically includes as program income: (a) receipts from goods and services, including conferences; (b) funds provided to a service provider in excess of the costs associated with the services provided; and (c) interest income earned on funds received under WIA. Any excess of revenue over costs incurred for services provided by a governmental or non-profit entity must be included in program income earned (29 USC 2945(7)(B) and 20 CFR section 667.200(a)(6)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, Federal Financial Report – Not Applicable

f. ETA-9130, *Financial Report (OMB No. 1205-0461)* – All ETA grantees are required to submit quarterly financial reports for each grant award they receive. Reports are required to be prepared using the specific format and instructions for the applicable program(s); in this case, *Workforce Investment Act* instructions for the following: *Statewide Adult; Workforce Statewide Youth; Statewide Dislocated Worker; Local Adult; Local Youth; and Local Dislocated Worker.* A separate ETA 9130 is submitted for each of these categories. Reports are due 45 days after the end of the reporting quarter. Additional information can be accessed on the Internet at http://www.doleta.gov/grants/ and scroll down to the section on Financial Status Reporting.

2. Performance Reporting

ETA-9091,*WIA Annual Report* (*OMB Number 1205-0420*) – Sanctions related to State performance or failure to submit these reports timely can result in a total grant reduction of not more than five percent as provided in WIA Section 136 (g)(1)(B). This report is accessible on the Internet at http://www.doleta.gov/Performance/guidance/wia.cfm.

(1) *WIA Tables in Annual Report* – The actual performance level information in the following tables contain critical information.

(a) Table B – *Adult Program Results At-A-Glance*

(b) Table E – *Dislocated Worker Program Results At-A-Glance*

(c) Table H – *Older Youth Program Results At-A-Glance*

(d) Table J – *Younger Youth Program Results At-A-Glance*

(2) *Standardized Record Data (WIASRD)* – The WIASRD data records contain relevant data on individual participants' characteristics, activities and outcomes. They are submitted to DOL in support of the Tables in the Annual Report as required at WIA Section185(d).

WIASRD Key Line Items – The following line items contain critical information:

(a) Item 101 – *Individual identifier*

(b) Item 601 – *Employed in quarter after exit quarter*

(c) Item 608 – *Employed in third quarter after exit quarter*

(d) Item 610 – *Employed in fifth quarter after exit quarter*

Total earnings from wage records for the: (Items 612 - 618)

(e) Item 612 – *Third quarter prior to registration*

(f) Item 613 – *Third quarter prior to dislocation*

(g) Item 614 – *Second quarter prior to registration*

(h) Item 615 – *Second quarter prior to dislocation*

(i) Item 617 – *Second quarter following the exit quarter*

(j) Item 618 – *Third quarter following the exit quarter*

(k) Item 621 – *Type of recognized education/occupational certificate/credential/diploma/degree attained*

(l) Item 622 – *Other reasons for exit*

(m) Item 623 – *In postsecondary education or advanced training in quarter after exit*

(n) Item 624 – *In postsecondary education or advanced training in the third quarter after exit*

3. Special Reporting –

Subtitle B Youth Activities

A new supplemental monthly reporting form, (ETA-9149, *OMB Control Number 1205-0474)* **separate from current data collection instruments, is required to track youth served with Recovery Act funds (ARRA Title VIII (2)).**

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable (non-ARRA funding only)

M. Subrecipient Monitoring

1. *Recipients and Subrecipients*

a. Each recipient and subrecipient must conduct regular oversight and monitoring of its WIA activities and those of its subrecipients and contractors in order to determine whether or not there is compliance with provisions of the Act and applicable laws and regulations and provide technical assistance as necessary and appropriate (20 CFR section 667.400(c)).

b. Commercial organizations which are subrecipients under WIA title I and which expend more than the minimum level specified in OMB Circular A-133 must have either an organization-wide audit conducted in accordance with OMB Circular A-133 or a program specific financial and compliance audit (20 CFR section 667.200(b)(2)(ii)).

2. *States*

a. Each State must have a monitoring system which:

(1) Provides for annual on-site monitoring reviews of local areas' compliance with DOL uniform administrative requirements, as required by WIA section 184(a)(4);

(2) Ensures that established policies to achieve program quality and outcomes meet the Act's objectives, including policies relating to the provision of services by One-Stop Centers, eligible providers of training services, and eligible providers of youth activities;

(3) Enables the Governor to determine if subrecipients and contractors are in substantial compliance with WIA requirements;

(4) Enables the Governor to determine whether a local plan will be disapproved for failure to make acceptable progress in addressing deficiencies; and

(5) Enables the Governor to ensure compliance with WIA nondiscrimination and equal opportunity requirements (20 CFR section 667.410(b)).

b. Each State must conduct an annual on-site monitoring review of each local area's compliance with DOL uniform administrative requirements, including the appropriate administrative requirements and cost principles for subrecipients and other entities receiving WIA funds. The State must require that prompt corrective action be taken if any substantial violations are identified and must impose the sanctions provided in WIA section 184(b) and (c) if a subrecipient fails to take required corrective action. The State may issue additional requirements and instructions to subrecipients on monitoring activities (20 CFR section 667.410(b)).

IV. OTHER

Currently, CFDA 17.260 represents both the WIA Dislocated Worker formula grants and the National Emergency Grants (NEGs). Beginning in PY 2010 (i.e., grants awarded after July 1, 2010), CFDA 17.260 will be archived and any new funds allocated through these two programs will be referenced using two new CFDA numbers: 17.277 for NEGs and 17.278 for WIA Dislocated Formula Grants.

DEPARTMENT OF LABOR

CFDA 17.264 NATIONAL FARMWORKER JOBS PROGRAM

I. PROGRAM OBJECTIVES

The Workforce Investment Act of 1998 (WIA) reformed Federal job training programs and created a new, comprehensive workforce investment system. The reformed system is intended to be customer-focused, to help Americans access the tools they need to manage their careers through information and high quality services, and to help U.S. companies find skilled workers. The cornerstone of the workforce investment system is One-Stop service delivery, which unifies numerous training, education and employment programs into a single, customer-friendly system in each community so that the customer has access to a seamless system of workforce investment services.

Programs under Subtitle D of Title I of WIA (National programs) serve population segments which typically experience more severe workforce problems. Accordingly, the National Farmworker Jobs Program seeks to assist eligible migrant and seasonal farmworkers and their families to achieve economic self-sufficiency.

II. PROGRAM PROCEDURES

The National Farmworker Jobs Program (NFJP) provides funding to assist migrant and seasonal farmworkers and their families achieve economic self-sufficiency by providing supportive services to them while they work in agriculture or by assisting them to acquire new job skills in occupations offering better pay and a more stable employment outlook. The Department of Labor (DOL) awards grants competitively to eligible applicants that submit two-year strategic plans for operating the NFJP in State, substate and multi-State service areas (20 CFR sections 669.200 through 669.210). Awards are for a two-year period, with provision for an additional two-year period without competition when performance is satisfactory.

The NFJP is a required One-Stop partner. Grantees must therefore negotiate Memorandums of Understanding (MOUs) with the local workforce investment boards in the areas of the State where the program operates (20 CFR section 669.220(a)).

Source of Governing Requirements

The WIA program is authorized by: Title I of the Workforce Investment Act of 1998 (Pub. L. No. 105-220, 112 Stat. 936-1059; 29 USC 2811 *et seq.*). The regulations are at 20 CFR parts 660-671.

Availability of Other Program Information

Additional information on programs authorized under the WIA can be found on the Internet at http://www.usworkforce.org and http://www.doleta.gov. The *Questions and Answers* and *Policy-Related Information* sections are particularly useful sources of information on compliance issues.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable, and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

Activities allowed are in accordance with a service delivery strategy described in the grantee's approved two-year grant plan (20 CFR section 669.300). The services available from the NFJP for assisting migrant and seasonal farmworkers are organized as Core Services, Intensive Services, Training Services, and Related Assistance Services (20 CFR section 669.310).

a. *Core Services* include skills assessment, job search, WIA program eligibility determination, and access to the other core services of the Local One-Stop Center (20 CFR sections 669.340 and 350).

b. *Intensive Services* include objective assessment, employment development planning, basic education, dropout prevention, allowance payments, work experience, and Literacy and English-as-a-Second language (20 CFR section 669.370).

c. *Training Services* include occupational skills and job training (which includes On-The-Job Training (OJT)), and classroom training (20 CFR section 669.410).

d. *Related Assistance Services* are short-term forms of direct assistance that support farmworkers and their families to retain or stabilize their agricultural employment or participation in an Intensive or Training Services activity (20 CFR section 669.430).

2. *Activities Unallowed*

WIA title I funds may not be used for the following activities:

a. Construction or purchase of facilities or buildings (20 CFR section 667.260), with the following exceptions:

(1) Providing physical and programmatic accessibility and reasonable accommodation, as required under section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended (20 CFR section 667.260(a)).

(2) Repairs, renovations, alterations and capital improvements of SESA real property and JTPA-owned property which is transferred to WIA title I programs (20 CFR section 667.260(b)).

(3) Disaster relief employment on projects for demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within a disaster area (WIA Section 173(d); 29 USC 2918(d); 20 CFR section 667.260(d)).

b. Employment generating activities, economic development activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, and similar activities not directly related to training for eligible individuals, with the exception of employer outreach and job development activities, which are considered directly related to training for eligible individuals (WIA Section 181(e); 29 USC 2931(e); 20 CFR section 667.262).

c. The employment or training of participants in sectarian activities. Participants shall not be employed in the construction, operation, or maintenance of a facility that is or will be used for sectarian instruction or as a place for religious worship. However, WIA funds may be used for the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship if the organization operating the facility is part of a program or activity providing services to WIA participants. (WIA Section 188(a)(3); 29 USC 2938(a)(3); 20 CFR section 667.266).

d. Encouraging or inducing the relocation of a business or part of a business from any location in the United States if the relocation results in any employee losing his or her job at the original location (20 CFR section 667.268).

e. Providing customized training, skill training, or on-the-job training or company specific assessments of job applicants or employees of a business or a part of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation resulted in any employee losing his or her job at the original location (20 CFR section 667.268(a)).

f. Paying the wages of incumbent employees during their participation in economic development activities provided through a Statewide workforce investment system (WIA Section 181(b)(1); 29 USC 2931(b)(1); 20 CFR section 667.264(a)(1)).

g. Public service employment, except to provide disaster relief employment, as specifically authorized in section 173(d) of WIA (WIA Section 195(10); 29 USC 2945(10); 20 CFR section 667.264(a)(2)).

E. Eligibility

1. Eligibility for Individuals

a. *Selective Service* – No participant may be in violation of section 3 of the Military Selective Service Act (50 USC App. 453) by not presenting and submitting to registration under that Act (29 USC 2939(h)).

b. To be eligible for participation in the NFJP, individuals must (20 CFR section 669.320):

(1) Have been a migrant or seasonal farmworker whose family was disadvantaged (see definition of "disadvantaged" as defined in 20 CFR section 669.110) during any consecutive 12-month period within the 24-month period preceding application for enrollment.

(a) A "seasonal farmworker" is a person who, for 12 consecutive months out of the 24 months prior to application for the program, has been primarily employed in agricultural labor that is characterized by chronic unemployment or underemployment (29 USC 2912(h)(4)).

(b) A "migrant farmworker" is a seasonal farmworker as described in (a) above whose agricultural labor requires travel to a job site such that the farmworker is unable to return to a permanent place of residence within the same day (29 USC 2912(h)(3)).

(2) Be a dependent of the seasonal or migrant farmworker in (1)(a) or (1)(b) above.

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

F. Equipment and Real Property Management

Recipients and subrecipients may permit employers to use WIA-funded, local area services, facilities, or equipment on a fee-for-service basis, to provide employment and training activities to incumbent workers if this does not interfere with utilization by eligible participants and the income generated from such fees is treated as program income (29 USC 2945(13); 20 CFR section 667.200(a)(8)).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2. Level of Effort – Not Applicable

3. Earmarking

Administrative Cost Limits – The percentage of grant funds which may be expended on administrative costs is specified in the grant or contract award document (20 CFR section 667.210(b)). The term "administrative cost" is defined at 20 CFR section 667.220.

H. Period of Availability of Federal Funds

The period of availability for expenditures is set out in the terms and conditions of the award document (20 CFR section 667.107(e)).

I. Procurement and Suspension and Debarment

All procurement contracts and other transactions between Local Boards and units of State or local governments must be conducted only on a cost-reimbursement basis. No provision for profit is allowed (20 CFR section 667.200(a)(3)).

J. Program Income

1. The addition method is required for use on all program income earned under WIA grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the WIA program. However, the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under the grants when these costs have not been charged to the WIA program (20 CFR section 667.200(a)(5)).

2. WIA specifically includes as program income: (a) receipts from goods and services, including conferences; (b) funds provided to a service provider in excess of the costs associated with the services provided; and (c) interest income earned on funds received under WIA. Any excess of revenue over costs incurred for services provided by a governmental or non-profit entity must be included in program income earned (29 USC 2945(7)(B) and 20 CFR section 667.200(a)(6)).

L. Reporting

1. Financial Reporting

a. ETA 9130, *Financial Report (OMB 1205-0461)* – DOL requires financial reports to be cumulative by fiscal year of appropriation. All ETA grantees are required to submit quarterly financial reports for each grant award which they receive. Reports are required to be prepared using the specific instructions for the applicable program(s); in this case, *National Farmworkers Jobs Program.* Reports are due 45 days after the end of the reporting quarter. Additional information can be accessed on the Internet at http://www.doleta.gov/grants/ and scroll down to the section on Financial Status Reporting.

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting

ETA 9095 – *NFJP Program Status Summary* (*OMB No. 1205-0425*) – Grantees report cumulative data on participants on a quarterly and annual basis. This data is used to determine the levels of program service and accomplishments for the program year.

Key Line Items – The following line items contain critical information:

a. Line II A – *Placed in Unsubsidized Employment*

b. Line II B – *Completed Training Services*

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

M. Subrecipient Monitoring

Each recipient and subrecipient must conduct regular oversight and monitoring of its WIA activities and those of its subrecipients and contractors in order to determine whether or not there is compliance with provisions of the Act and applicable laws and regulations and provide technical assistance as necessary and appropriate (20 CFR section 667.400(c)).

DEPARTMENT OF LABOR

CFDA 17.265 NATIVE AMERICAN EMPLOYMENT AND TRAINING

I. PROGRAM OBJECTIVES

The Workforce Investment Act of 1998 (WIA) reforms Federal job training programs and creates a new, comprehensive workforce investment system. The reformed system is intended to be customer-focused, to help Americans access the tools they need to manage their careers through information and high quality services, and to help U.S. companies find skilled workers. The cornerstone of the new workforce investment system is One-Stop service delivery, which unifies numerous training, education and employment programs into a single, customer-friendly system in each community so that the customer has access to a seamless system of workforce investment services.

Programs under Subtitle D of Title I of WIA (National programs) serve population segments which typically experience more severe workforce problems. Accordingly, Indian and Native American Employment and Training grants also seek to promote the economic and social development of Indian, Alaskan Native, and Native Hawaiian communities in accordance with the goals and values of such communities.

II. PROGRAM PROCEDURES

The Department of Labor (DOL) awards Indian and Native American Employment and Training grants to federally recognized Indian tribes, tribal organizations, Alaskan Native entities, Indian-controlled organizations, and Native Hawaiian organizations (20 CFR Subpart B, sections 668.200 through 668.294). Funds are made available for comprehensive workforce investment activities for Indians, Alaskan Natives, and Native Hawaiians (29 USC 2911(d)(2)(A)(i)). Supplemental Youth Services funding is made available to entities serving Native American youth "on or near Indian reservations and in Oklahoma, Alaska, or Hawaii" (29 USC 2911(d)(2)(A)(ii)).

Grantees are required to submit a Comprehensive Services Plan for DOL approval. The Plan must identify program emphasis areas, designate a specific target population to be served by the grant, select appropriate performance measures and standards, establish specific plans for serving youth (if they receive Supplemental Youth Services funding), develop a budget and identify the level of administrative costs needed for the two-year plan, and identify appropriate program linkages with other agencies (20 CFR section 668.720). Services provided under the Plan may include any of the core services (20 CFR section 668.340(b)), intensive services (20 CFR section 668.340(c)), training services (20 CFR section 668.340(d)), and youth services (20 CFR section 668.340(e)) which other Title I grantees may provide, as well as tribal job development, outreach, and related services (20 CFR section 668.340(f)). Grantees are required to negotiate Memorandums of Understanding (MOUs) with the local workforce investment board(s) which operate in whole or in part within the grantee's service area (29 USC 2841(c)).

Source of Governing Requirements

This program is authorized by Title I of the Workforce Investment Act of 1998 (Pub. L. 105-220, 112 Stat. 936-1059; 29 USC 2811 *et seq*.). The regulations are at 20 CFR parts 660-671.

Availability of Other Program Information

Additional information on programs authorized under the Workforce Investment Act can be found on the Internet at http://www.usworkforce.org and http://www.doleta.gov. The *Questions and Answers* and *Policy-Related Information* sections are particularly useful sources of information on compliance issues.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable, and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

   a. Indian and Native American Employment and Training Grantees can provide a wide array of activities relating to employment, training, education, supportive and community services, and youth development as outlined in 20 CFR section 668.340.

   b. *Core Services* include skills assessment, job search, WIA program eligibility determination, and access to the other core services of the Local One-Stop Center (20 CFR section 668.340(b)).

   c. *Intensive Services* include objective assessment, employment development planning, basic education, dropout prevention, allowance payments, work experience, and Literacy and English-as-a-Second language (20 CFR section 668.340(c)).

   d. *Training Services* include, but are not limited to, occupational skills and job training, including On-The-Job Training (OJT), and classroom training (20 CFR section 668.340(d)).

   e. *Youth Activities* include, but are not limited to, improving educational and skill competencies, adult mentoring, training opportunities, supportive services, incentive programs, opportunities for leadership development, preparation for post-secondary education, tutoring, alternative secondary school services, summer employment opportunities, work-experiences, occupational skill training, follow-up services, and comprehensive guidance and counseling (20 CFR section 668.340(e)).

f. *Job Development Activities* include, but are not limited to, support of the Tribal Employment Rights Office (TERO) program, job development contacts with employers, and linkages with education and training programs and other service providers (20 CFR section 668.340(f)).

2. *Activities Unallowed*

WIA title I funds may not be used for the following activities:

a. Construction or purchase of facilities or buildings (20 CFR section 667.260), with the following exceptions:

(1) Providing physical and programmatic accessibility and reasonable accommodation, as required under section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended (20 CFR section 667.260(a)).

(2) Repairs, renovations, alterations and capital improvements of SESA real property and JTPA-owned property which is transferred to WIA title I programs (20 CFR section 667.260(b)).

(3) Disaster relief employment on projects for demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within a disaster area (WIA sec.173(d); 29 USC 2918(d); 20 CFR section 667.260(d)).

b. Employment-generating activities, economic development activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, and similar activities are prohibited, unless they directly relate to training for eligible individuals. Employer outreach and job development activities are considered directly related to training for eligible individuals. (WIA section 181(e); 29 USC 2931(e); 20 CFR section 667.262):

c. The employment or training of participants in sectarian activities. Participants shall not be employed in the construction, operation, or maintenance of a facility that is or will be used for sectarian instruction or as a place for religious worship. However, WIA funds may be used for the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship if the organization operating the facility is part of a program or activity providing services to WIA participants (WIA section 188(a)(3); 29 USC 2938(a)(3); 20 CFR section 667.266).

d. Encouraging or inducing the relocation of a business or part of a business from any location in the United States if the relocation results in any employee losing his or her job at the original location (20 CFR section 667.268).

e. Providing customized training, skill training, or on-the-job training or company-specific assessments of job applicants or employees of a business or a part of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation resulted in any employee losing his or her job at the original location (20 CFR section 667.268(a)).

f. Paying the wages of incumbent employees during their participation in economic development activities provided through a Statewide workforce investment system (WIA sec.181(b)(1); 29 USC 2931(b)(1); 20 CFR section 667.264(a)(1)).

g. Public service employment, except to provide disaster relief employment, as specifically authorized in section 173(d) of WIA (WIA sec. 195(10); 29 USC 2945(10); 20 CFR section 667.264(a)(2)).

E. Eligibility

1. Eligibility for Individuals

a. *Selective Service* – No participant may be in violation of section 3 of the Military Selective Service Act (50 USC App. 453) by not presenting and submitting to registration under that Act (29 USC 2939(h)).

b. A person is eligible to receive services under the INA program if they meet the definition of an Indian, as determined by a policy of the Native American grantee, and are also one of the following (20 CFR section 668.300).

(1) Unemployed.

(2) Underemployed as defined in 20 CFR section 668.150.

(3) Low-income individual as defined in 29 USC 2801(25). (See III.G.3.b, "Matching, Level of Effort, Earmarking – Earmarking," for requirement that at least 95 percent of eligible participants in supplemental youth services be disadvantaged low-income youth.)

(4) The recipient of a bona fide lay-off notice which has taken effect in the last six months or will take effect in the following six month period, who is unlikely to return to a previous industry or occupation, and who is in need of retraining for either employment with another employer or for job retention with the current employer.

(5) An individual who is employed, but is determined by the grantee to be in need of employment and training services to obtain or retain employment that allows for self-sufficiency.

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

F. Equipment and Real Property Management

Recipients and subrecipients may permit employers to use WIA-funded, local area services, facilities, or equipment on a fee-for-service basis, to provide employment and training activities to incumbent workers if this does not interfere with utilization by eligible participants and the income generated from such fees is treated as program income (29 USC 2945(13); 20 CFR section 667.200(a)(8)).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2 Level of Effort – Not Applicable

3. Earmarking

a. *Administrative Cost Limits* – The percentage of grant funds which may be expended on administrative costs is specified in the grant or contract award document (20 CFR section 667.210(b)). The term "administrative costs" is defined at 20 CFR section 667.220.

b. *Supplemental Youth Services* – A minimum of 95 percent of eligible participants in supplemental youth services activities must meet the low-income criteria as defined in 29 USC 2801(25) to participate in the program (20 CFR sections 668.300 and 668.430(b)).

H. Period of Availability of Federal Funds

The period of availability for expenditures is set out in the terms and conditions of the award document (20 CFR section 667.107(e)).

J. Program Income

1. The addition method is required for use on all program income earned under WIA grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the WIA program. However, the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under the grants when these costs have not been charged to the WIA program (20 CFR section 667.200(a)(5)).

2. WIA specifically includes as program income: (a) receipts from goods and services, including conferences; (b) funds provided to a service provider in excess of the costs associated with the services provided; and (c) interest income earned on funds received under WIA. Any excess of revenue over costs incurred for services provided by a governmental or non-profit entity must be included in program income earned (29 USC 2945(7)(B) and 20 CFR section 667.200(a)(6)).

L. Reporting

1. Financial Reporting

a. ETA-9130, *Indian and Native American Programs-Workforce Investment Act-Grantee Activities* (*OMB No.1205-0461*) – This electronic reporting format, based on the ETA 9130, Financial Report, is used to report accrued income, cash on hand, and program and administrative expenditures funded by grants under WIA section 166. Tribes participating in the "477" program authorized by the Indian Employment, Training, and Related Services Demonstration Act of 1992 (Pub. L. No. 102-477) are required to submit a single financial report covering all Federal formula programs that are part of their 477 plan to the Bureau of Indian Affairs.

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting

a. ETA-9084, *Indian and Native American Comprehensive Services Report* (*OMB No. 1205-0422*) – Reports cumulative data on participation, termination, performance measures outcomes, and the socio-economic characteristics of all terminees on a semi-annual and annual basis. The information is used to determine the levels of program service and program accomplishments for the Program Year. Grantees receiving these funds are required to submit a semi-annual and annual report except federally recognized Indian tribes participating in the demonstration under Pub. L. 102-477 (as is the case for ETA-9080 and ETA-9085).

Key Line Items – The following line items contain critical information:

(1) Line B.1. – *Total Exiters*

(2) Line B. 3. – *Total Participants Served*

(3) Line D.1. – *Entered Employment Rate*

(4) Line D. 2. – *Retention Rate*

(5) Line D. 3. – *Average Earnings*

b. ETA-9085, *Indian and Native American Supplemental Youth Services Program Report* (*OMB No. 1205-0422*) – Reports cumulative data on participation, termination, performance outcomes, and socio-economic characteristics of participants. Grantees receiving these funds are required to submit a semi-annual and annual report except federally recognized Indian tribes participating in the demonstration under Pub. L. 102-477 (as is the case for ETA-9080 and ETA-9084).

Key Line Items – The following line items contain critical information:

(1) Line 1 – *Total Participants*

(2) Line 2 – *Total Terminations*

(3) Line 3 – *Total Current Participants*

(4) Line 18 – *Entered Unsubsidized Employment*

(5) Line 23 – *Attained High School Diploma*

(6) Line 24 – *Attained GED*

(7) Line 28 – *Total Participants who Attained 2 or More Goals*

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

M. Subrecipient Monitoring

1. Each recipient and subrecipient must conduct regular oversight and monitoring of its WIA activities and those of its subrecipients and contractors in order to determine whether or not there is compliance with provisions of the Act and applicable laws and regulations and provide technical assistance as necessary and appropriate (20 CFR section 667.400(c)).

2. Commercial organizations which are subrecipients under WIA title I and which expend more than the minimum level specified in OMB Circular A-133 must have either an organization-wide audit conducted in accordance with OMB Circular A-133 or a program specific financial and compliance audit (20 CFR section 667.200(b)(2)(ii)).

DEPARTMENT OF TRANSPORTATION

TRANSIT CROSS-CUTTING SECTION

INTRODUCTION

This section contains compliance requirements that apply to more than one program of the Federal Transit Administration (FTA) in the Department of Transportation. The compliance requirements in this Cross-Cutting Section reference the applicable programs in Part 4, Agency Compliance Requirements. Similarly, the applicable programs in Part 4 reference this Cross-Cutting Section.

CFDA #	Program Name
Federal Transit Cluster	
20.500	Federal Transit — Capital Investment Grants
20.507	Federal Transit — Formula Grants (Urbanized Area Formula Program)
Nonurbanized Area Formula Program	
20.509	Formula Grants for Other Than Urbanized Areas
Transit Services Programs	
20.513	Capital Assistance Program for Elderly Persons and Persons with Disabilities
20.516	Job Access – Reverse Commute
20.521	New Freedom Program

I. PROGRAM OBJECTIVES

Federal transit programs were established to foster the development and revitalization of public transportation systems that (1) maximize the safe, secure, and efficient mobility of individuals; (2) minimize environmental impacts; and (3) minimize transportation-related fuel consumption and reliance on foreign oil.

II. PROGRAM PROCEDURES

Federal transit legislation has established a number of requirements that would apply to all programs funded with Federal transit funds. Certain exceptions or dollar thresholds in these rules may exclude many rural transit activities.

Source of Governing Requirements

The programs in this cluster are authorized by Chapter 53 of 49 USC. Program regulations are at 49 CFR.

Availability of Other Program Information

Information about these programs may be found on the FTA web site at http://www.fta.dot.gov/. Program guidance and application instructions can be found at the "Legislation, Regulations, and Guidance" section of the FTA web site.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

F. Equipment and Real Property Management

This section applies to all of the programs in the Supplement that are listed above.

Recipients, with FTA approval, are allowed to transfer, sell, or lease property, equipment, or supplies acquired with Federal transit funds that are no longer needed for transit purposes. FTA may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose (49 USC 5334 (h) (1) through (h)(3)). If a recipient sells the asset, the proceeds must be used to reduce the gross project costs of another federally funded capital transit project (49 USC 5334(h)(4)) or handled as stated in 49 CFR sections 18.31 or 18.32) (49 USC 5334(h)) and FTA Circular 5010.1.

I. Procurement and Suspension and Debarment

This section applies to all of the programs in the Supplement that are listed above.

1. *Buy America* – All steel, iron, and manufactured products used in the project must be produced in the U.S., as demonstrated by a Buy America certificate, but, in the case of rolling stock, the cost of components produced in the United States is more than 60 percent of the cost of all components of the rolling stock and final assembly of the vehicle takes place in the U.S. (49 CFR part 661).

    a. The FTA Administrator may grant specific waivers following case-by-case determinations that: (1) applying the requirement would be inconsistent with the public interest; (2) the goods are not produced in the U.S. in a sufficient and reasonably available quantity and of satisfactory quality; or (3) the inclusion of the domestically produced material will increase the overall project cost by more than 25 percent (49 CFR sections 661.7(b) through (d)).

    b. Appendix A to 49 CFR section 661.7 provides general waivers for the following items:

(1) Those articles, materials, and supplies listed in 48 CFR section 25.104;

(2) Microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data; and

(3) All "small purchases" (under $100,000) made by FTA recipients with capital, planning, or operating assistance.

c. Appendix A to 49 CFR section 661.11 provides a general Buy America waiver when foreign-sourced spare parts for buses and other rolling stock (including train control, communication, and traction power equipment) whose total cost is 10 percent or less of the overall project contract cost are being procured as part of the same contract for the major capital item.

d. A recipient that purchases rolling stock for transportation of passengers in revenue service must conduct, or cause to be conducted, a pre-award audit before entering into a formal contract for the purchase of rolling stock, and certify that a post-delivery audit is complete before title to the rolling stock is transferred to the recipient, or the rolling stock is put into revenue service, whichever occurs first. Pre-award and post-delivery audits verify the accuracy of the Buy America certification, purchaser's requirements certification, and certification of compliance with or inapplicability of Federal motor vehicle safety standards in 49 CFR part 571 (49 CFR part 663).

2. *Disadvantaged Business Enterprises (DBE)* – Recipients shall require that, as a condition to bid on a transit vehicle procurement in which FTA funds are involved, each transit vehicle manufacturer certify that it has complied with the requirements of 49 CFR section 26.49. Recipients may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles that a manufacturer must meet (49 CFR section 26.49(d)).

3. *Procurement of Vehicles and Facilities* – In prohibiting discrimination in the provision of transportation services against persons with disabilities, the Americans with Disabilities Act of 1990 requires that vehicles purchased or leased after August 25, 1990, and new and altered facilities designed and constructed (as marked by the notice to proceed) after January 25, 1992, must comply with the applicable standards of accessibility in 49 CFR parts 37 and 38 (42 USC 12101-12213).

N. Special Tests and Provisions

1. Charter Service

This section applies to all of the programs in the Supplement that are listed above.

Compliance Requirement – As part of the annual certifications and assurances required by the FTA, a recipient must execute an agreement with FTA which provides that it, and each of its subrecipients and third-party contractors at any level who use FTA-funded vehicles, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal transit laws only in compliance with 49 CFR part 604. Charter service means transportation provided at the request of a third party for the exclusive use of a bus or van for a negotiated price. The following features may be characteristic of charter service: (a) a third party pays the transit provider a negotiated price for the group; (b) any fares charged to individual members of the group are collected by a third party; (c) the service is not part of the transit provider's regularly scheduled service or is offered for a limited period of time; or (d) a third party determines the origin and destination of the trip as well as scheduling. Charter service may also mean transportation is provided by a recipient to the public for events or functions that occur on an irregular basis or for a limited duration, and (a) a premium fare is charged that is greater than the usual or customary fixed route fare or (b) the service is paid for in whole or in part by a third party. Charter service does not include demand response service to individuals. A recipient providing charter service under the exception provisions in 49 CFR section 604.12 shall post the records required under this subpart on the FTA charter registration website 30 days after the end of each calendar quarter (49 CFR part 604).

Audit Objective – Determine whether the use in charter service of any equipment and facilities acquired with FTA funds conformed to 49 CFR part 604.

Suggested Audit Procedures

a. Ascertain if the recipient provides charter service with FTA-funded equipment by:

   (1) Obtaining written representation from the recipient;

   (2) Reviewing the revenue accounts for indications of charter revenue statements; and

   (3) Reviewing the recipient's website and local business "Yellow Pages" for indications of charter-service operations.

b. Review the recipient's policies and procedures for charter, rental, or lease of its transit equipment.

c. Test transactions that meet the definition of charter service and ascertain if:

   (1) The charter service regulation is applicable;

   (2) FTA-assisted equipment or facilities (e.g., parking lots and maintenance garages) were used;

(3) Documentation evidences quarterly reporting of charter service provided under the exceptions in 49 CFR part 604; and

(4) Inventory records were adjusted to extend the useful life of FTA-subsidized transit equipment by the amount of charter service

2. School Bus Operation

This section applies to all of the programs in the Supplement that are listed above.

Compliance Requirement – As part of the annual certifications and assurances required by FTA, a recipient must enter into an agreement with the FTA stating that the recipient will not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators, unless it demonstrates to the FTA Administrator any one of the exceptions listed in 49 CFR section 605.11 applies and the Administrator concurs. Indicators of prohibited exclusive school bus service are:

a. Bus schedules that only operate one way to schools in the morning and the other way from schools in the afternoon.

b. Destination signs that say "school bus" "school special" or a school name.

c. Buses that have flashing lights and swing arms like standard yellow school buses.

d. Bus stop signs that say "school."

e. Bus stops that are located on school property away from general public thoroughfares.

However, all recipients can operate "tripper service," which is defined as regularly scheduled public transportation service that is open to the public, and designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems. Buses used in "tripper service" are required to be clearly marked as open to the public and should not carry designations such as "school bus" or "school special." All routes traveled by tripper buses must be within a grantee or operator's regular route service as indicated in their published schedules (49 CFR part 605).

Audit Objective – Determine whether school bus service provided with FTA-funded equipment was approved by FTA or that FTA-assisted equipment and facilities used to accommodate students conformed to the definition of "tripper service."

Suggested Audit Procedures

a. Ascertain if the recipient operates any transit service exclusively for school children through:

   (1) Reviews of bus schedules, published fares, and service contracts;

   (2) Discussions with recipient officials; and

   (3) Reviews of school district or individual school web sites for information on bus transportation of school students.

b. Ascertain if FTA-funded equipment (*e.g.,* buses or vans) or facilities (e.g., bus maintenance garages) were used to provide school bus service by reviewing inventory records, maintenance logs, parking sites, names on bus and van destination signs, school facilities, or by performing other appropriate procedures.

c. If exclusive school bus service is identified, review documentation that the service was approved by FTA.

DEPARTMENT OF TRANSPORTATION

CFDA 20.106 AIRPORT IMPROVEMENT PROGRAM

I. PROGRAM OBJECTIVES

The objective of the Airport Improvement Program is to assist sponsors, owners, or operators of public-use airports in the development of a nationwide system of airports adequate to meet the needs of civil aeronautics.

II. PROGRAM PROCEDURES

States, counties, municipalities, U.S. Territories and possessions, and other public agencies, including Indian tribes or Pueblos (sponsors) are eligible for airport development grants if the airport on which the development is required is listed in the National Plan of Integrated Airport Systems (NPIAS). Applications for grants must be submitted to the appropriate Federal Aviation Administration (FAA) Airports Office. Primary airport sponsors must notify FAA by January 31 or another date specified in the *Federal Register* of their intent to apply for funds to which they are entitled under Pub. L. No. 97-248 (49 USC Chapter 31). A reminder is published annually in the *Federal Register*. Other sponsors are encouraged to submit early in the fiscal year and to contact the appropriate FAA Airports Office for any local deadlines. Sponsors must formally accept grant offers no later than September 30 for grant funds appropriated for that fiscal year.

The American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) provides for discretionary grant awards (ARRA, 123 Stat. 205) under this program. ARRA-funded grants must be separate from other AIP grants, although FAA may fund a discrete phase of an AIP project with ARRA funding.

Source of Governing Requirements

This program is authorized by 49 USC Chapter 471 **and ARRA (123 Stat. 205)**.

Availability of Other Program Information

Additional program information is provided in FAA Order 5100.38C, *Airport Improvement Program Handbook* (available on the Internet at http://www.faa.gov/airports/aip/aip_handbook) and FAA Advisory Circulars in the 150/5100 series (available on the Internet at http://www.faa.gov/airports/resources/advisory_circulars/). The FAA also maintains an Airports *Federal Register* Notice page available on the Internet at http://www.faa.gov/airports/resources/publications/federal_register_notices/.

Program related questions may be directed to Kendall Ball, FAA Airports Financial Assistance Division, at 202-267-7436 (direct) and 202-267-3831 (main) or by e-mail at Kendall.Ball@faa.dot.gov. Questions related to the revenue diversion and other compliance requirements may be directed to Lyle Fjermedal, FAA Airport Compliance Division at 202-267-5879 (direct) and 202-267-3446 (main) or by e-mail at Lyle.Fjermedal@faa.dot.gov.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

Grants can be made for planning, constructing, improving, or repairing a public-use airport or portions thereof and for acquiring safety or security equipment. Eligible terminal building development is limited to non-revenue-producing public-use areas that are directly related to the movement of passengers and baggage in air carrier and commuter service terminal facilities within the boundaries of the airport. Eligible construction is limited to items of work and to the quantities listed in the grant description and/or special conditions (49 USC 47110).

2. *Activities Unallowed*

a. In general, Federal funds cannot be expended for:

(1) Passenger automobile parking facilities, buildings to be used as hangars, and portions of terminals that are revenue-producing or not directly related to the safe movement of passengers and baggage at the airports, and

(2) Costs incurred before the execution of the grant agreement, unless such costs are for land, necessary costs in formulating a project, or costs covered by a letter of intent. However, an airport designated by the FAA as a primary airport may use passenger entitlement funding made available under 49 CFR section 47114(c) for costs incurred: (1) prior to the execution of the grant agreement; (2) in accordance with the airport layout plan approved by the FAA; and (3) according to all statutory and administrative requirements that would have applied had work on the project not commenced until after the grant agreement had been executed (49 USC 47110(b)(2)(C)).

b. The following are examples of items for which FAA funds cannot be expended (FAA Order 5100.38C, *Airport Improvement Program Handbook*, and FAA Advisory Circulars in the 150/5100 series.)

- Fuel farms.

- Emergency planning.
- Decorative landscaping, sculpture, or art works.
- Communication systems except those used for safety/security.
- Training facilities, except those included in an otherwise eligible project as an integral part of that project and that are of a relatively minor or incidental cost, i.e., less than 10 percent of the project cost. An example of an exception would be a training room included as part of a new Aircraft Rescue and Firefighting (ARFF) facility. Interactive training systems and "live fire" ARFF training facilities are eligible.
- Roads of whatever length, exclusively for the purpose of connecting public parking facilities to an access road.
- Roads serving solely industrial or non-aviation-related areas or facilities.
- General aviation terminals.
- Equipment that is used by air traffic controllers such as Airport surface detection systems (ASDE).
- Maintenance/service facilities except for those allowed to service required ARFF equipment.
- Office/administrative equipment, including data processing equipment, computers, recorders, etc.
- Projects for the determination of latitude, longitude, and elevation except as an incidental part of master planning.

3. *Exception*

For a non-hub airport (one that accounts for less than 0.05 percent of total U.S. passenger boardings), the FAA may approve as allowable costs the expenses of terminal development in a revenue-producing area and construction, repair, and improvement of parking lots (49 USC 47110(d)(2)).

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act are applicable to construction work for airport development projects financed with grants under this program (49 USC 47112).

F. Equipment and Real Property Management

Under this program, FAA is authorized by 49 USC 47107(c), as amended, to allow recipients to reinvest the proceeds from the disposition of real property acquired with Federal awards for noise compatibility or airport development purposes.

G. Matching, Level of Effort, Earmarking

1. Matching

The shares of allowable costs for a particular grant-supported project to be borne by FAA and by other parties are established in the grant agreement. **The Federal share of ARRA-funded projects is 100 percent (ARRA, 123 Stat. 205).**

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

f. FAA Form 5100-127, *Operating and Financial Summary (OMB No. 2120-0557)*

Sponsors of commercial service airports are required to submit this report, which captures revenues and expenditures at the airport, including revenue surplus.

g. FAA Form 5100-126, *Financial Government Payment Report (OMB No. 2120-0557)*

This report captures amounts paid and services provided to other units of government. This reporting requirement technically applies to all sponsors of federally assisted airports who accepted grants with assurance no. 26(d)(I)(ii); however, FAA is currently requiring submission only from commercial service airports. Commercial service airports are the airports

most likely to generate excess revenue that could be diverted to non-airport uses.

2. **Performance Reporting** – Not Applicable

3. **Special Reporting** – Not Applicable

4. **Section 1512 ARRA Reporting –** Applicable

5. **Subaward Reporting under the Transparency Act –** Applicable to non-ARRA funds

N. Special Tests and Provisions

Revenue Diversion

Compliance Requirement – The basic requirement for use of airport revenues is that all revenues generated by a public airport must be expended for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and are directly and substantially related to the actual air transportation of passengers or property. The limitation on the use of revenue generated by the airport shall not apply if the governing statutes controlling the owner's or operator's financing, that was in effect before September 3, 1982, provided for the use of any revenue from the airport to support not only the airport but also the airport owner's or operator's general debt obligations or other facilities (49 USC 47107(b)).

Policies and Procedures Concerning the Generation and Use of Airport Revenue, issued February 16, 1999 (64 FR 7695), contains definitions of airport revenue and unlawful revenue diversion; provides examples of airport revenue; and describes permitted and prohibited uses of airport revenue. The policy can be obtained from FAA's Airports *Federal Register* Notices Page on the Internet (http://www.faa.gov/airports/resources/publications/federal_register_notices/).

Penalties imposed for revenue diversion may be up to three times the amount of the revenues that are used in violation of the requirement (49 USC 4603(a)(5)).

Audit Objective – Determine whether the airport revenues were used for required or permitted purposes.

Suggested Audit Procedures

a. Review the policy for using airport revenue.

b. Perform tests of airport revenue generating activities (e.g., passenger facilities charges, leases, and telephone contracts) to ascertain that all airport-generated revenue is accounted for.

c. Test expenditures of airport revenue to verify that airport revenue is used for permitted purposes.

d. Perform tests of transactions to ascertain that payments from airport revenues to the sponsors, related parties, or other governmental entities are airport-related, properly documented, and are commensurate with the services or products received by the airport.

e. Perform tests to assure that indirect costs charged to the airport from the sponsor's cost allocation plan were allocated in accordance with the FAA policy on cost allocation.

IV. OTHER INFORMATION

The Federal Aviation Reauthorization Act of 1996, Section 805 (49 USC 47107(m)) requires public agencies that are subject to the Single Audit Act Amendments of 1996 (Act) that have received Federal financial assistance for airports to include as part of their single audit a review and opinion of the public agency's funding activities with respect to their airport or local airport revenue system. In the February 16, 1999, *Federal Register* (64 FR 7675), the FAA issued a notice titled *Policy and Procedures Concerning the Use of Airport Revenue*. This notice provides that the opinion required by 49 USC 47107(m) is only required when the Airport Improvement Program (AIP) is audited as major program under Circular A-133 and that the auditor reporting requirements of Circular A-133 satisfy the opinion requirement. However, the notice provides that the AIP may be selected as a major program based upon either the risk-based approach prescribed in Circular A-133 §___.520 or the FAA designating the AIP as a major program under §___.215(c).

DEPARTMENT OF TRANSPORTATION

CFDA 20.205 HIGHWAY PLANNING AND CONSTRUCTION (Federal-Aid Highway Program)
CFDA 20.219 RECREATIONAL TRAILS PROGRAM
CFDA 20.933 SURFACE TRANSPORTATION INFRASTRUCTURE-DISCRETIONARY GRANTS FOR CAPITAL INFRASTRUCTURE II (National Infrastructure Investments TIGER II) (Highways)
CFDA 23.003 APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM

I. PROGRAM OBJECTIVES

The objectives of the Highway Planning and Construction Cluster are to: (1) assist States in the planning and development of an integrated, interconnected transportation system important to interstate commerce and travel by constructing and rehabilitating the National Highway System (NHS), including Interstate highways and most other public roads; (2) provide aid for the repair of Federal-aid highways following disasters; (3) foster safe highway design, and replace or rehabilitate structurally deficient or functionally obsolete bridges; (3) to support community-level transportation infrastructure; and (5) to provide for other special purposes. This cluster also provides for the improvement of roads in Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, the Alaskan Highway, and the Appalachian Development Highway System (ADHS). The objective of the ADHS program is to provide a highway system which, in conjunction with other federally aided highways, will open up areas with development potential within the Appalachian region where commerce and communication have been inhibited by lack of adequate access.

II. PROGRAM PROCEDURES

Federal-aid highway funds are generally apportioned by statutory formulas to the States and generally restricted to use on Federal-aid highways (i.e., roads open to the public and not functionally classified as local or rural minor collector). Exceptions to the use on Federal-aid highways include: (1) planning and research activities; (2) bridge and safety improvements, which may be on any public road; (3) highway safety improvement program projects, bicycle and pedestrian projects, transportation enhancement activities, safe routes to school, and recreational trails projects, which may be located along any road or off road; and (4) the Federal Lands Highway Program. Some categories of funds may be granted directly to Local Public Agencies (LPAs), such as cities, counties, tribal governments, Metropolitan Planning Organizations (MPOs), and other political subdivisions. States also may pass funds through to such agencies. Federal-aid funds may be used for: surveying; engineering; right-of-way acquisition and relocation assistance; capital improvements classified as new construction or reconstruction; improvements for functional, geometric, or safety reasons; 4R projects (restoration, rehabilitation, resurfacing, and reconstruction); planning; research, development, and technology transfer; intelligent transportation systems projects; roadside beautification; wetland and natural habitat mitigation; traffic management and control improvements; improvements necessary to accommodate other transportation modes; development and establishment of transportation management systems; billboard removal; construction of bicycle facilities and pedestrian

facilities; fringe and corridor parking; car pool and van pool projects; and transportation enhancements, such as scenic and historic highway improvements. These funds generally cannot be used for routine highway operational activities, such as police patrols, mowing, snow plowing, or maintenance, unless it is preventative maintenance. Also, certain authorizations (e.g., Surface Transportation Program (STP) Congestion Mitigation and Air Quality (CMAQ) Improvement Program) may be used for improvements to transit; CMAQ funds are for projects and programs in air quality, non-attainment and maintenance areas for ozone, carbon monoxide, and small particulate matter, which reduce transportation related emissions. ADHS projects are subject to the same standards, specifications, policies, and procedures as other Federal-aid highway projects.

Eligibility criteria for the programs differ, so program guidance should be consulted. Projects in urban areas of 50,000 or more population must be based on a transportation planning process carried out by the MPOs in cooperation with the State and transit operators, and be included in metropolitan plans and programs. Projects in nonmetropolitan areas of a State must be consistent with the State's Transportation Plan. All projects must also be included in the approved Statewide transportation improvement program (STIP) developed as part of the required Statewide transportation planning process.

National Infrastructure Investments TIGER II (highways) grants are awarded to a State, local government, transit agency, or collaboration among such entities on a competitive basis for surface transportation projects that will have a significant impact on the Nation, a metropolitan area, or a region. Awards for highway construction projects under this program are subject to the same requirements as CFDA 20.205.

The ADHS is a cost-to-complete program (i.e., sufficient funding is to be provided over time to complete the approved initial construction/upgrading of the system) authorized by Section 201 of the Appalachian Regional Development Act of 1965. The Appalachian Regional Commission (ARC) has programmatic oversight responsibilities, which include approval of the location of the corridors and of State-generated estimates of the cost to complete the ADHS. The Federal Highway Administration (FHWA) has project-level oversight responsibilities for the ADHS program. If the location, scope, and character of proposed ADHS projects are in agreement with the latest approved cost-to-complete estimate and all Federal requirements have been satisfied, FHWA authorizes the work and disburses the ADHS funds. FHWA oversees the construction and accepts the ADHS projects upon satisfactory completion of the work.

Source of Governing Requirements

The primary sources of program requirements are 23 USC (Highways) **and Title XII of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) (ARRA, 123 Stat. 203-208)** and the Consolidated Appropriations Act, 2010 (Pub. L. No. 111-117) (123 Stat. 3036-3037). Implementing regulations are found in 23 CFR (Highways) and 49 CFR (Transportation).

Availability of Other Program Information

The Federal Highway Administration maintains a web site that provides program laws, regulations, and other general information (http://www.fhwa.dot.gov/). Information on the TIGER II program is available at http://www.dot.gov/recovery/ost/tigerii/index.html.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Federal funds can be used only to reimburse costs that are: (a) incurred subsequent to the date of authorization to proceed, except for certain property acquisition costs permitted under 23 USC 108; (b) in accordance with the conditions contained in the project agreement and the plans, specifications, and estimates (PS&E); (c) allocable to a specific project; and (d) claimed for reimbursement subsequent to the date of the project agreement (23 CFR sections 1.9, 630.106, and 630.205).

2. Federal funds can be used to reimburse for administrative settlement costs incurred in defending contract claim proceedings before arbitration boards or State courts only if approved by FHWA for Federal-aid projects. If special counsel is used, it must be recommended by the State Attorney or State Department of Transportation (DOT) legal counsel and approved in advance by FHWA (23 CFR section 140.505).

3. ADHS funds may be used only for work included in the ADHS cost estimate approved by the ARC.

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act are applicable to construction work on highway projects on Federal-aid highways or with ADHS funds. These requirements are not applicable to Federal-aid construction projects that are not located within the right-of-way of a Federal-aid highway. FHWA has provided guidance on the applicability of Davis-Bacon Act requirements on the Internet at: http://www.fhwa.dot.gov/construction/contracts/080625.cfm (23 USC 113 and 40 USC 14701).

F. Equipment and Real Property Management

The State shall charge, at a minimum, a fair market value for the sale, lease, or use of real property acquired with Federal assistance from the Highway Trust Fund (other than the

Mass Transit Account) for the non-transportation purposes and shall use such income for projects eligible under 23 USC. Exceptions may be granted when the property is used for social, environmental or economic purposes (23 USC 156).

G. Matching, Level of Effort, Earmarking

1. Matching

a. The State is generally required to pay a portion of the project costs. Portions vary according to the type of funds authorized and the type of project and are stated in project agreements.

b. A State's matching share for a project may be credited by certain toll revenues used to build or improve highways, bridges and tunnels (23 USC 120(j)).

c. Donations of funds, materials, and services by a person or local government may be credited towards a State's matching share. Donated materials and services must meet the eligibility requirements of the project (23 USC 323(c)).

d. The fair market value of land provided by State or local governments for highway purposes is eligible for matching share on a project. The fair market value of donated land shall not include any increase or decrease in value of donated land caused by the project. The fair market value of donated land shall be established as of the earlier of (1) the date on which the donation becomes effective or (2) the date on which equitable title to the land vests in the State (23 USC 323(b)).

e. For transportation enhancement (TE) projects, funds from Federal agencies (except U.S. DOT) may be credited toward the non-Federal share of the cost of a project. The value of other non-cash contributions may be credited toward the non-Federal share. The non-Federal share may be calculated on a project, multiple-project, or program-wide basis. The total cost of an individual project may be funded with up to 100 percent Federal funds; however, for a fiscal year, the ratio of Federal funds to non-Federal funds for all TE funded projects must comply with the maximum Federal share provisions in 23 USC 120(b). FHWA has issued guidance on these provisions on the Internet at: (http://www.fhwa.dot.gov/environment/te/1999guidance.htm#donations (23 USC 133(e)(5)(C)).

f. Funds appropriated to any Federal land management agency may be used to pay the non-Federal share of any Federal-aid highway project funded under 23 USC 104 (23 USC 120(k)).

g. Federal Lands Highway Program funds may be used to pay the non-Federal share of Federal-aid highway projects which provide access to or within Federal or Indian lands (23 USC 120(*l*)).

h. For the Recreational Trails Program (RTP), funds from other Federal programs (including U.S. DOT) may be credited toward the non-Federal share of the cost of a project. RTP funds may be used to match other Federal programs. The non-Federal share may be calculated on a project, multiple-project, or program-wide basis (23 USC 206(f)). Any project sponsor (except for Federal agencies), whether a private individual or organization or a public agency, may donate funds, materials, services (including volunteer labor), or new right-of-way to be credited to the non-Federal share of an RTP project. Federal project sponsors may provide funds, materials, or services as part of the Federal share, but may not provide new right-of-way (23 USC 206(h)(1)).

i. Any cost in excess of 20 percent of the cost of the replacement or rehabilitation of a bridge not on a Federal-aid highway that is wholly funded with State and local funds may be used to meet the matching share requirement of projects funded under 23 USC 144 (23 USC 144(n)).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

I. Procurement and Suspension and Debarment

In general, State DOTs and LPAs must use qualifications-based selection procedures (Brooks Act) when acting as contracting agencies to procure engineering and design-related services for a construction project using Federal-aid highway funding (23 USC 112(b)(2); 23 CFR part 172). Requirements applicable to engineering and design-related services contracts using Federal-aid highway funding include:

1. Written procedures for each method of procurement used to procure engineering and design services. S
procurement of consultant services:

a. Preparing a scope of work, evaluation factors, and cost estimate;

b. Soliciting proposals;

c. Evaluating and ranking proposals and a documented basis for selection;

d. Negotiating the amount to be paid;

e. Monitoring the consultant's work and preparing a performance evaluation when the work is completed; and

f. Determining the extent to which the consultant, who is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors or deficiencies in design furnished under its contract (23 CFR section 172.9(a)).

2.Instead of performing its own audits of engineering and design contractors, contracting agencies (State
applicable accounting periods, if such rates are not currently under dispute (23 USC 112(b) and 23 CFR section 172.7).

3.Contracts for a consultant to act in a management role for the contracting agency for services that are di

J. Program Income

State and local governments may only use the Federal share of net income from the sale, use, or lease of real property previously acquired with Federal funds if the income is used for projects eligible under 23 USC (23 USC 156).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. PR-20, *Voucher for Work Under Provisions of the Federal-Aid and Federal Highway Acts, as Amended (OMB No. 2125-0507)*

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds only

M. Subrecipient Monitoring

State DOTs are responsible for determining that subrecipients of Federal-aid highway funds have adequate project delivery systems for projects approved under 23 USC. They also are required to determine whether subrecipients have sufficient accounting controls to properly manage such Federal-aid funds (23 USC 106(g)(4)(A)).

N. Special Tests and Provisions

1. Use of Other State or Local Government Agencies

Compliance Requirement – A State may use other public land acquisition organizations or private consultants to carry out the State's authorities under 23 CFR section 710.201(b) in accordance with a written agreement (23 CFR section 710.201(h)).

Audit Objective – Determine whether other public land acquisition organizations or private consultants are carrying out the State's authorities under 23 CFR section 710.201(b) in accordance with their agreements with the State.

Suggested Audit Procedures

a. Examine records and ascertain if other agencies were used for right-of-way activities on Federal-aid projects.

b. Review a sample of right-of-way agreements with other agencies.

c. Perform tests of selected right-of-way activities to other agencies to verify that they comply with the written agreement.

2. Replacement of Publicly Owned Real Property

Compliance Requirement – Federal funds may be used to reimburse the reasonable costs actually incurred for the functional replacement of publicly owned and publicly used real property provided that FHWA concurs that it is in the public interest. The cost of increases in capacity and other betterments are not eligible except: (1) if necessary to replace utilities; (2) to meet legal, regulatory, or similar requirements; or (3) to meet reasonable prevailing standards for the type of facility being replaced (23 CFR section 710.509).

Audit Objective – Determine whether the functional replacement of real property was accomplished within FHWA requirements.

Suggested Audit Procedures

a. Ascertain if there were any functional replacements of publicly owned real property.

b. Verify that FHWA concurred in the State's determination that the functional replacement is in the public interest.

c. Review a sample of transactions involving functional replacements and verify that the transactions were consistent with the FHWA requirements.

3. Project Extensions

Compliance Requirement – FHWA must approve extensions affecting project costs or the amount of liquidated damages, except those for projects administered by the State DOT under 23 USC 106(c) which allow the State DOT to assume the responsibilities for design, plans, specifications, estimates, contract awards and inspection of progress (23 USC 106(c); 23 CFR section 635.121).

Audit Objective – Determine whether proper FHWA approvals were obtained for contract extensions affecting project costs and the amount of liquidated damages assessed.

Suggested Audit Procedures

a. Review the systems for monitoring and controlling contract time and review project files to determine if there were project extensions.

b. Verify that FHWA approval was obtained for time extensions affecting project cost and, where applicable, the amount of liquidated damages assessed.

4. Quality Assurance Program

Compliance Requirement – A State DOT or LPA must have a quality assurance (QA) program, approved by FHWA, for construction projects on the National Highway System to ensure that materials and workmanship conform to approved plans and specifications. Verification sampling must be performed by qualified testing personnel employed by the State DOT, or by its designated agent, excluding the contractor (23 CFR sections 637.201, 637.205, and 637.207).

Audit Objective – Determine whether the State DOT or LPA is following a QA program approved by FHWA.

Suggested Audit Procedures

a. Obtain an understanding of the recipient's QA program.

b. Verify that the QA program has been approved by FHWA.

c. Review documentation of test results on a sample basis to verify that proper tests are being taken in accordance with the QA program.

d. Verify that verification sampling activities are performed by qualified testing personnel employed by the agency, or by its designated agent, excluding the contractor.

5. Contractor Recoveries

Compliance Requirement – When a State recovers funds from highway contractors for project overcharges due to bid-rigging, fraud, or anti-trust violations or otherwise recovers compensatory damages, the Federal-aid project involved shall be credited with the Federal share of such recoveries (Tennessee v. Dole 749 F.2d 331 (6th Cir. 1984); 57 Comp. Gen. 577 (1978); 47 Comp. Gen. 309 (1967)).

Audit Objective – Determine whether the proper credit was made to the Federal share of a project when recoveries of funds are made.

Suggested Audit Procedures

a. Determine the extent to which the State has recovered overcharges and other compensatory damages on Federal-aid projects through appropriate interviews and a review of legal, claim, and cash receipt records.

b. Review a sample of cash receipts and verify that appropriate credit is reflected in billings to the Federal Government.

6. Project Approvals

Compliance Requirement – FHWA project approval and authorization to proceed is required before costs are incurred for all construction projects other than those administered by the State DOT under 23 USC 106(c). Construction projects administered under standard procedures cannot be advertised nor force account work commenced until FHWA: (1) approves the plans, specifications, and estimates; and (2) authorizes the State DOT to advertise for bids or approves the force account work (23 CFR sections 630.205(c), 635.112(a), 635.204, and 635.309). Construction cannot begin until after FHWA concurs in the contract award (23 CFR section 635.114). This requirement does not apply to construction projects administered by the State DOT under 23 USC 106(c) which allow the State DOT to assume the responsibilities for design, plans, specifications, estimates, contract awards, and inspection of progress (23 USC 106(c)).

Audit Objective – Determine whether project activities are started with required Federal approvals.

Suggested Audit Procedures

a. Review a sample of projects and identify dates of the necessary approvals, authorizations, and concurrences.

b. Identify dates that projects were advertised and contract or force account work was initiated and compare to FHWA's approval dates.

DEPARTMENT OF TRANSPORTATION

CFDA 20.223 TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT (TIFIA) PROGRAM

I. PROGRAM OBJECTIVES

The objective of the Transportation Infrastructure Finance and Innovation Act (TIFIA) program is to finance surface transportation projects of national or regional significance by filling market gaps and leveraging substantial public (non-Federal) and private co-investment. TIFIA credit assistance is intended to facilitate the financing of projects that would otherwise have been significantly delayed because of funding limitations or difficulties in accessing the capital markets. Federal credit assistance is provided to eligible highway, transit, rail, and intermodal freight projects, including certain projects that provide access to ports.

II. PROGRAM PROCEDURES

Public or private entities seeking to finance, design, construct, own, or operate and eligible surface transportation project may apply for TIFIA assistance. The program targets large projects, generally in excess of $50 million. The program offers three types of financial assistance featuring maturities up to 35 years after substantial completion of the project: secured loans, loan guarantees, and standby lines of credit. Projects must be consistent with State and local transportation plans.

Source of Governing Requirements

This program is authorized by 23 USC 601 through 609. In addition, 23 USC requirements apply for highway projects, Chapter 53 of 49 USC requirements apply for transit projects, and 49 USC 5333(a) requirements apply for rail projects,

Availability of Other Program Information

Information, including program guidance and application instructions, may be found on the TIFIA website at http://www.fhwa.dot.gov/ipd/tifia.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

Eligible project activities are costs associated with the following:

a. Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other pre-construction activities.

b. Construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment. While the acquisition of real property is an eligible cost under TIFIA, such property must be physically or functionally related to the transportation project. For transit projects, the land must be reasonably necessary for the project, including joint development projects and property must be physically or functionally related to the project (49 USC 5302(a)(1)(G); 49 CFR section 80.3).

c. Capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction. Capitalized interest on TIFIA credit assistance may not be included as an eligible project cost.

d. For a transit project, costs must also meet the definition of a transit capital project found at 49 USC 5302(a)(1) (23 USC 601 (a)).

2. Activities Unallowed

TIFIA administrative charges associated with the application process for TIFIA credit assistance, such as application fees, transaction fees, loan servicing fees, and credit monitoring fees are not eligible project costs (49 CFR section 80.5(b)).

D. Davis-Bacon Act

The provisions of the Davis-Bacon Act apply to projects receiving TIFIA assistance (49 USC 5333(a)).

F. Equipment and Real Property Management

1. For highway projects, recipients shall charge, at a minimum, a fair market value for the sale, lease, or use of real property acquired with Federal assistance from the Highway Trust Fund (other than the Mass Transit Account) for non-transportation purposes and shall use such income for projects eligible under

23 USC. Exceptions may be granted when the property is used for social, environmental or economic purposes (23 USC 156).

2. For transit projects, real property acquired must be used for a public transportation capital project as defined at 49 USC 5302(a)(1). A fair share of revenue must be obtained in exchange for any lease or use or joint development transfer of real property and all proceeds be used for a public transportation purpose (49 USC 5302(a)(1)(G)).

G. Matching, Level of Effort, Earmarking

1. Matching – Credit assistance under TIFIA may comprise no more than 33 percent of total eligible project costs. Eligible project costs are calculated and presented on a cash (year-of-expenditure) basis (49 CFR section 80.5(a)).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

I. Procurement and Suspension and Debarment

In general, recipients must use qualifications-based selection procedures (Brooks Act) when acting as contracting agencies to procure engineering and design-related services for construction of a highway project (23 USC 112(b)(2); 23 CFR part 172) or a transit project (49 CFR section 18.36(t)).

For highway projects, the requirements applicable to engineering and design-related services contracts include:

1. Written procedures for each method of procurement used to procure engineering and design services. Recipient procedures must be approved by the Federal Highway Administration (FHWA). Subrecipient procedures must be approved by the recipient, generally the State DOT. These procedures must provide for the following related to procurement of consultant services:

    a. Preparing a scope of work, evaluation factors, and cost estimate;

    b. Soliciting proposals;

    c. Evaluating and ranking proposals and a documented basis for selection;

    d. Negotiating the amount to be paid;

    e. Monitoring the consultant's work and preparing a performance evaluation when the work is completed; and

f. Determining the extent to which the consultant, who is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors or deficiencies in design furnished under its contract (23 CFR section 172.9(a)).

2. Instead of performing its own audits of engineering and design contractors, contracting agencies are required to accept indirect cost rates that have been established by a cognizant Federal or State agency in accordance with the Federal Acquisition Regulation (48 CFR part 31) for 1-year applicable accounting periods, if such rates are not currently under dispute (23 USC 112(b); 23 CFR section 172.7).

3. Contracts for a consultant to act in a management role for the contracting agency for services that are directly related to a construction project must be approved by FHWA before the consultant is hired (23 CFR section 172.9(d)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

DEPARTMENT OF TRANSPORTATION

CFDA 20.319 HIGH-SPEED RAIL CORRIDORS AND INTERCITY PASSENGER RAIL SERVICE – CAPITAL ASSISTANCE GRANTS

I. PROGRAM OBJECTIVES

The High-Speed Intercity Passenger Rail (HSIPR) Program is intended to develop and expand high-speed and intercity passenger rail service in the United States. The objectives of this program are twofold. In the long-term, the program aims to build an efficient, high-speed passenger rail network connecting major population centers that are 100 to 600 miles apart. In the near-term, the program will begin to lay the foundation for this high-speed passenger rail network by investing in intercity passenger rail infrastructure, equipment, and intermodal connections.

II. PROGRAM PROCEDURES

The HSIPR Program is funded both through annual appropriations **and the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5, 123 Stat. 208), under the title "Capital Assistance for High Speed Rail Corridors and Intercity Passenger Rail Service."** Funding under the HSIPR Program is advanced along four funding tracks in order to both aid in the near-term economic recovery efforts intended under ARRA and to establish the path to realize a fully-developed national high-speed intercity passenger rail network. Track 1 – Projects will fund "ready-to-go" construction projects and the completion of project-level environmental and preliminary engineering documents necessary to prepare projects for construction. Track 2 – Programs will fund sets of inter-related projects that constitute the entirety or a distinct phase (or geographic section) of a long-range service development plan. Track 3 – Planning is aimed at helping establish a "pipeline" of future high-speed rail/intercity passenger rail projects and service development programs by advancing planning activities for applicants at an earlier stage of the development process. Track 4 – Fiscal Year (FY) 2009/FY 2008 Appropriations Projects provide an alternative for projects that would otherwise fit under Track 1.

Depending on the specific funding track applied for, States (including the District of Columbia), groups of States, interstate compacts, public agencies established by one or more States and having responsibility for providing high-speed rail service or intercity passenger rail service, and Amtrak are eligible for HSIPR Program grants. Applicants must provide documents that demonstrate the status of all agreements with relevant stakeholders involved in the particular construction investment, including interstate partners, host railroads, right-of-way owners, and the contract railroad operator providing service.

Source of Governing Requirements

The HSIPR Program consolidates the following recently authorized and closely related programs:

High-Speed Rail Corridor Development program (49 USC 26106),

Intercity Passenger Rail Service Corridor Capital Assistance program (49 USC Chapter 244),

Congestion Grants program (49 USC 24105),

Fiscal Year 2009 Capital Assistance to States – Intercity Passenger Rail Service Program (Pub. L. No. 111-8 (123 Stat. 934)), and

Fiscal Year 2008 Capital Assistance to States – Intercity Passenger Rail Service Program (Pub. L. No. 110-161 (121 Stat. 2393)).

The funding appropriated under ARRA is for the programs authorized in 49 USC 26106, 49 USC Chapter 244, and 49 USC 24105, while the funding provided from the FY 2008 and FY 2009 appropriations acts is governed under provisions unique to those two pieces of legislation. **The Notice of Funding Availability for High-Speed Intercity Passenger Rail ("HSIPR") Program (Program Notice), June 23, 2009, *Federal Register,* 74 FR 29900, describes the interim program guidance applicable to the program.**

Availability of Other Program Information

Additional information about the HSIPR Program is available on the Federal Railroad Administration (FRA) website at http://www.fra.dot.gov/us/content/31. **Included on the FRA website are two documents mandated under ARRA: The High-Speed Rail Strategic Plan and interim program guidance. The strategic plan outlines the initial vision for the program; the interim guidance builds upon the strategic plan by detailing the application requirements and procedures for obtaining funding under the program.**

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a federal program, the auditor should first look to Part 2, Matrix of Compliance requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. **Activities Allowed – ARRA (Tracks 1 and 2)**

   a. **Activities funded under Track 1 must be eligible under the Intercity Passenger Rail Service Corridor Capital Assistance program (49 USC chapter 244) or the Congestion Grants program (49 USC 24105), and include:**

      (1) **Acquiring, constructing, improving, or inspecting equipment, track and track structures, or a facility for use in or for the primary benefit of Intercity Passenger Rail service, including High-Speed Rail; expenses incidental to the acquisition or**

construction (including designing, engineering, location surveying, mapping, inspecting, environmental studies, and acquiring rights-of-way); payments for the capital portions of rail trackage rights agreements; highway-rail grade crossing improvements related to Intercity Passenger Rail service; mitigating environmental impacts; communication and signalization improvements; and relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;

(2) **Rehabilitating, remanufacturing, or overhauling rail rolling stock and facilities used primarily in Intercity Passenger Rail service; and**

(3) **Projects to provide access to Intercity Passenger Rail service rolling stock for non-motorized transportation, including bicycles and recreational equipment, and to provide storage capacity in intercity passenger trains for such transportation, equipment, and other luggage, to ensure passenger safety (See Section 3.5.1 of the Program Notice (74 FR 29910)).**

b. **Activities funded under Track 2 must be eligible under the High-Speed Rail Corridor Development program (49 USC 26106) or the Intercity Passenger Rail Service Corridor Capital Assistance program (49 USC chapter 244), and include:**

(1) **Activities 1 through 3 listed above under Track 1; and**

(2) **Acquiring, constructing, improving or inspecting equipment, track and track structures, or a facility for use in or for the primary benefit of High-Speed Rail service; expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way); payments for the capital portions of rail trackage rights agreements; highway-rail grade crossing improvements related to High-Speed Rail service; mitigating environmental impacts; communication and signalization improvements; and relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing (See Section 3.5.2 of the Program Notice (74 FR 29910)).**

2. *Activities Allowed* – Fiscal Year 2009 and 2008 appropriations acts (Tracks 3 and 4).

   a. Activities funded under Track 3 must be eligible under the provisions of the FY 2009 and FY 2008 Capital Assistance to States – Intercity Passenger Rail Service programs (Pub. L. No. 111-8 and Pub. L. No. 110-161, respectively), and include planning studies that—

      (1) Lead to the completion of a service development plan to support future applications for projects under Track 2;

      (2) Identify and compare the costs, benefits, and impacts of a range of transportation alternatives, including High-Speed Rail and/or Intercity Passenger Rail, as a means of providing decision makers with the information necessary to implement appropriate transportation solutions;

      (3) Support the preparation of environmental documents that are prerequisite to the fulfillment of "service" NEPA studies; and

      (4) Consist of operational analyses and simulations, and projections of future service requirements, leading to systematic and rational priority lists of projects that could be eligible for funding under the Intercity Passenger Rail Service Corridor Capital Assistance program (49 USC chapter 244) or the Congestion Grants program (49 USC 24105), and could ultimately contribute to service development plans (See Section 3.5.2 of the Program Notice (74 FR 29911)).

   b. Activities funded under Track 4 must be eligible under the provisions of the FY 2009 and FY 2008 Capital Assistance to States – Intercity Passenger Rail Service programs (Pub. L. No.111-8 and Pub. L. No.110-161, respectively), and include

      (1) Acquiring, constructing, or improving equipment, track and track structures, or a facility for use in or for the primary benefit of Intercity Passenger Rail service including High-Speed Rail service;

      (2) Expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way);

      (3) Highway rail grade crossing improvements related to Intercity Passenger Rail service;

      (4) Mitigating environmental impacts;

(5) Communication and signalization improvements; and

(6) Rehabilitating, remanufacturing, or overhauling rail rolling stock and facilities used primarily in Intercity Passenger Rail service (See Section 3.5.2 of the Program Notice (74 FR 29911)).

3. *Activities Unallowed* – In no case are Federal funds awarded under the HSIPR Program eligible to be used for rail operating expenses associated with the operation of intercity passenger rail service or for first-dollar liability costs for insurance related to the provision of intercity passenger rail service (49 USC 24404; June 23, 2009, *Federal Register* (74 FR 29916)).

D. Davis-Bacon Act

Two provisions related to the Davis-Bacon Act are included in the ARRA. The first requires that funded projects comply with the requirements of 40 USC 3141–3144, 3146 and 3147. The second provides that 49 USC 24405 shall also apply to the funded projects. The first provision mandates compliance with the Davis-Bacon Act generally. The second provision also mandates compliance the Davis-Bacon Act through 49 USC 24405(c), which provides that the Secretary of Transportation shall require as a condition of making any grant that uses rights-of-way owned by a railroad that the applicant agree to comply with the standards of 49 USC 24312 with respect to the project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 USC 24308(a). 49 USC 24312 provides that Amtrak shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed under an agreement made under 49 USC 24308 will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under 40 USC 3141–3144, 3146 and 3147 and that wages in a collective bargaining agreement negotiated under the Railway Labor Act are deemed to comply with 40 USC 3141–3144, 3146 and 3147. 49 USC 24308 authorizes Amtrak to enter into agreements with rail carriers or regional transportation authorities to use facilities of and have services provided by the carrier or authority under terms on which the parties agree.

FRA has concluded that the two Davis-Bacon requirements can be reconciled in a manner that allows the HSIPR Program to be implemented in a way that is both reasonable and consistent with current practices. For projects that use or propose to use rights-of-way owned by a railroad, the specific provisions of 49 USC 24405(c) apply and recipients are required to comply with the standards of 49 USC 24312 (prevailing wages) in the same manner that Amtrak is required to comply with those standards for construction projects it might undertake. Wages specified in a collective bargaining agreement negotiated under the Railway Labor Act would be deemed to comply with Davis-Bacon Act requirements for these projects. For projects that do not propose to use rights-of-way owned by a railroad, normal Davis-Bacon Act requirements apply and there would be no specific exemption for wages arrived at through a collective bargaining agreement negotiated under the Railway Labor Act. Wage rates on these projects would have to

meet the Secretary of Labor's prevailing wage standards as described above (See June 23, 2009, *Federal Register* (74 FR 29927)).

G. Matching, Level of Effort, Earmarking

1. Matching

a. The matching share of allowable costs for a particular grant is established in the grant agreement.

b. For HSIPR projects funded under the authority of the High-Speed Rail Corridor Development program (49 USC 26106(f)), the Intercity Passenger Rail Service Corridor Capital Assistance program (49 USC 24402(g)(1)(B)), or the Congestion Grants program (49 USC 24105(c)), the Federal share for the cost of the project cannot exceed 80 percent.

c. For ARRA-funded projects, the Federal share for projects funded under 49 USC 26106, 49 USC chapter 244, and 49 USC 24105 shall be, at the option of the recipient, up to 100 percent (ARRA, 123 Stat 208).

d. For HSIPR projects funded from annual appropriations in the FY 2009 and FY 2008 Capital Assistance to States – Intercity Passenger Rail Service programs, the Federal share for the cost of the project cannot exceed 50 percent (Pub. L. No. 111-8, 123 Stat. 934 and Pub. L. No. 110-161, 121 Stat. 2393).

2. Level of Effort – Not Applicable

3. Earmarking

No more than 10 percent of funds made available under the FY 2009 and FY 2008 Capital Assistance to States – Intercity Passenger Rail Service programs may be used for planning activities that lead directly to the development of a passenger rail corridor investment plan (Pub. L. No. 111-8, 123 Stat. 934 and Pub. L. No. 110-161, 121 Stat. 2393).

H. Period of Availability of Federal Funds

Funding for grants under ARRA must be expended by September 30, 2017 (ARRA, 123 Stat. 208; June 23, 2009, *Federal Register* (74 FR 29916)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act –Applicable to non-ARRA funds

DEPARTMENT OF TRANSPORTATION

CFDA 20.500 FEDERAL TRANSIT – CAPITAL INVESTMENT GRANTS
CFDA 20.507 FEDERAL TRANSIT – FORMULA GRANTS (Urbanized Area Formula Program)

I. PROGRAM OBJECTIVES

The objectives of Federal Transit – Capital Investment Grants (49 USC 5309) (5309 program) and Federal Transit – Urbanized Area Formula Grants (49 USC 5307) (5307 program) are to assist in financing the planning, acquisition, construction, preventive maintenance, and improvement of facilities and equipment in public transportation services. Operating expenses are also eligible under the 5307 program in urbanized areas with populations of less than 200,000 and, under some limited exceptions, to some urbanized areas with population of 200,000 and above.

II. PROGRAM PROCEDURES

Grants are awarded to public agencies on approval of applications for specific programs or projects submitted to the Federal Transit Administration (FTA). FTA monitors the progress of those projects through on-site inspections, telephone contacts, correspondence, and quarterly progress and financial status reports.

FTA is required to perform reviews and evaluations of 49 USC 5307 grant activities at least every 3 years. The most recent FTA Triennial Review Workbook provides guidance to FTA staff and recipients on the conduct of triennial reviews and is available at http://www.fta.dot.gov/funding/oversight/grants_financing_10924.html. These reviews are conducted with specific reference to compliance with statutory and administrative requirements and consistency of actual program activities with (1) the approved program of projects and (2) the planning process required under 49 USC 5303. Copies of these triennial reviews are available from the regional offices. Regional office addresses and telephone numbers are available on the FTA web site listed below.

Source of Governing Requirements

The programs in this cluster are authorized by 49 USC 5307 and 5309 and the **American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5)(123 Stat. 209 to 211)**. Program regulations are at 49 CFR parts 601 through 665.

Availability of Other Program Information

Additional information is available on the FTA web site at http://www.fta.dot.gov/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

a. Under the 5307 and 5309 programs, capital activities, as defined in 49 USC 5302 (a), are eligible, including preventive maintenance and certain expenses related to crime prevention and security (49 USC 5307(b) and 5309(b)).

(1) For projects authorized after August 10, 2005, the only capital projects authorized under 49 USC 5309 are:

(a) Bus and bus facilities;

(b) New fixed guideways, including Small Starts;

(c) Fixed guideway modernization; and

(d) Corridor improvements (49 USC 5309(b)(1) through (b)(4)).

(2) Under the 5307 program, operating expenses related to the conduct of emergency response drills with public transportation agencies and local first-response agencies and security training for public transportation employees are eligible capital expenses (49 USC 5302(a)(1)(J)).

b. Under the 5307 program, mobility management, as defined in 49 USC 5302(a)(1)(L), and planning (49 USC 5307 (b)(1)).

c. Under the 5307 and 5309 programs, preliminary engineering and final design, as defined in 49 USC 5302(a)(1)(A) (49 USC 5307(b) and 5309(b)).

d. Under the 5307 program, operating assistance for all urbanized areas under 200,000 population, and certain larger urbanized areas under limited exceptions (49 USC 5307(b)).

2. *Activities Unallowed*

a. Under the 5309 program:

(1) Mobility management;

(2) Operating expenses; and

(3) Alternatives analysis, including planning, with funds appropriated after FY 2005 (49 USC 5309 (b)(1) and 5339).

b. Under the 5307 program, operating assistance in areas over 200,000, unless under certain limited exceptions (49 USC 5307(b)(2)(A)).

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act are applicable to construction work financed with a grant or loan under this program (49 USC 5333).

F. Equipment and Real Property Management

See Transit Cross-Cutting Section.

G. Matching, Level of Effort, Earmarking

1. Matching

The matching share of allowable costs for a particular grant is established in the grant agreement. Generally, the Federal share of capital costs cannot exceed 80 percent and the Federal share of operating expenses cannot exceed 50 percent. The Federal share cannot exceed 90 percent of the cost for vehicle-related equipment and facilities required to comply with the Clean Air Act or the Americans with Disabilities Act of 1990 (49 USC 5307(e), 5309(h) and 5323(i)).

2. Level of Effort – Not Applicable

3. Earmarking

a. One percent of 5307 program funds apportioned to urbanized areas with a population of at least 200,000 shall be made available for transit enhancement activities (49 USC 5307(d)(K)(i)).

b. One percent of 5307 program funds apportioned to urbanized areas with a population of at least 200,000 shall be expended for public transportation security projects. These projects may include increased lighting in, or adjacent to, a public transportation system (including bus stops, subway stations, parking lots, and garages); increased camera surveillance of an area in or adjacent to that system; providing an emergency telephone line

to contact law enforcement or security personnel in an area in or adjacent to that system; and any other project intended to increase the security and safety of an existing or planned public transportation system. If the recipient certifies that the expenditure for security projects is not necessary, the one percent expenditure is not required (49 USC 5307 (d)(1)(J)(i)).

c. Both of these requirements are at the urbanized area, not grant or grantee level (49 USC 5307).

d. **For ARRA funds under the 5307 program, operating assistance is limited to 10 percent of area's apportionment (Section 1202 of Pub. L. No. 111-32, 123 Stat. 1908, June 24. 2009).**

I. Procurement and Suspension and Debarment

See Transit Cross-Cutting Section.

L. Reporting

1. Financial Reporting

a. SF-269A, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting

Report of DBE Awards or Commitments and Payments (OMB No. 2105-0510) – Based on the level of FTA funding, exclusive of transit vehicle purchases, recipients are required to implement a DBE program. To monitor the progress of the DBE program, the recipient is required to submit semi-annual reports based on a recordkeeping system (49 CFR section 26.11 and Appendix B to part 26).

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds only

N. Special Tests and Provisions

Also see Transit Cross-Cutting Section.

Environmental Review

Compliance Requirement – For construction projects, Federal transit law requires that no adverse environmental effect result from the project, or that no feasible and prudent alternative to the adverse effect of the project exist and that all reasonable steps be taken to minimize the adverse effect (49 USC 5324(b)). The National Environmental Policy Act (NEPA) and its implementing regulation (23 CFR part 771, which applies to both FTA and the Federal Highway Administration) require that the significant environmental effects of public transportation projects proposed for FTA assistance be documented, and that alternatives to avoid, minimize, and mitigate the adverse effects be considered (42 USC 4321 et seq.). A sponsor of an FTA-assisted project (i.e., the grant recipient) must comply with all design and mitigation commitments made in any environmental document prepared for the project (49 USC 139(c)(4)).

Accordingly, the measures to mitigate the adverse environmental and community impacts of a project, if any, are described in NEPA and related environmental documents. For projects requiring an Environmental Impact Statement (EIS), mitigation measures are summarized in a Record of Decision. For projects requiring an Environmental Assessment, mitigation measures are summarized in a Finding of No Significant Impact (FONSI). For categorically excluded projects, mitigation usually is not required, but if any mitigation measure is required, it will be documented in the FTA approval memorandum for the project. In all cases, these environmental documents should be referenced in the construction grant agreement with the recipient.

Audit Objective – Determine whether the measures to mitigate the adverse impacts on the community and the environment that were specified in the environmental documents referenced in the grant agreement for construction projects were implemented.

Suggested Audit Procedures

a. Identify any FTA-assisted construction projects and review the grant agreement and environmental documents to identify mitigation measures specified.

b. For a sample of mitigation measures, compare the status of implementation with the commitments made in the environmental documents or grant agreement.

DEPARTMENT OF TRANSPORTATION

CFDA 20.509 FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS (Nonurbanized Area Formula Program)

I. PROGRAM OBJECTIVES

The objectives of the Section 5311 formula program are to initiate, improve, or continue public transportation service in nonurbanized areas by providing financial assistance for operating and administrative expenses, and for the acquisition, construction, and improvement of facilities and equipment. In addition, Section 5311(f) specifically provides for the support of rural intercity bus service. The Rural Transit Assistance Program (RTAP), Section 5311(b)(3), provides additional funding to provide training, technical assistance, research and related support services to support rural transit service.

II. PROGRAM PROCEDURES

State Agencies

The Federal Transit Administration (FTA) annually publishes formula apportionments to the States in a Federal Register Notice published within ten days after the Department of Transportation (DOT) Appropriations Act is signed into law. The Governor of each State designates a State agency to administer the program. The State is responsible for fair distribution of the funds in the State, including Indian reservations. The State may also provide transit service directly or through contracts with private operators. The State describes its procedures for administering the program in a State management plan. The State applies to FTA for approval of a program of projects, usually annually, and reports annually to FTA on financial status and revisions to the program of projects. The State agency may be the recipient on behalf of Indian tribes that are subrecipients, but federally recognized tribes may also elect to apply to FTA as a direct recipient.

FTA monitors compliance with Federal requirements through administrative "State Management Reviews," generally every three years.

Tribal Transit Program

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. No. 109-59) created a new Tribal Transit Program under the Nonurbanized Area Formula Program, and funded it as a takedown under the Section 5311 program. Under the Tribal Transit Program, federally recognized Indian tribes are eligible direct recipients. Based on an annual national competitive selection process conducted by FTA, FTA awards Tribal Transit grants directly to eligible Indian tribes. Recipients of Tribal Transit Program funds may use these funds for any purpose that is eligible under Section 5311. Only federally recognized tribes are eligible recipients under the Tribal Transit Program.

Subrecipients

The State selects subrecipients and monitors their compliance with Federal requirements. FTA does not directly monitor the subrecipients, but checks the State's procedures for monitoring subrecipients during the State Management Review. The State may impose program criteria in addition to those imposed by the FTA and may require additional reports from subrecipients. These State requirements are included in the State Management Plan.

Source of Governing Requirements

This program is authorized by 49 USC 5311 and the **American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) (123 Stat. 209 to 211)**. Program regulations are in 49 CFR. Note that certain exceptions or dollar thresholds in these rules may exclude many rural transit activities.

Availability of Other Program Information

Information about the program may be found on the FTA web site at http://www.fta.dot.gov/. Program Guidance and Application Instructions are contained in FTA Circular 9040.1F which may be found on the web site. In referring to the program, FTA uses the term "rural" to include both rural and small urban areas (all areas not included in the urbanized areas designated by the U.S. Bureau of the Census).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

   a. The project must provide local transportation service (transit service available to the public) in an area other than an urbanized area (49 USC 5311(d)) or support intercity bus transportation (49 USC 5311(f)). Coordination of public transportation assisted under this section with transportation service assisted by other United States Government sources is permitted and encouraged (49 USC 5311(b)).

   b. RTAP funds may be used to provide training, technical assistance, research and other related support services for providers of rural public transit and related services (49 USC 5311(b)(3)).

2. *Activities Unallowed*

a. Planning activities are unallowable with the exception of funds under the Tribal Transit Program or by States for local transportation services and intercity bus transportation (49 USC 5311(c)(1), (e), and (f)).

b. **ARRA Tribal Transit Program funds may not be used for any activities other than for capital projects (ARRA, 123 Stat. 209).**

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act are applicable to construction work financed with a grant under this program (49 USC 5333).

E. Eligibility

1. Eligibility for Individuals – Not Applicable

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

Eligible subrecipients are State and local governments, Indian tribes, non-profit organizations, or operators of public transportation or intercity bus service (49 USC 5311(a)).

F. Equipment and Real Property Management

See Transit Cross-Cutting Section.

G. Matching, Level of Effort, Earmarking

1. Matching

a. Operating assistance requires a 50 percent match, half of which must be non-Federal. Capital and administration require a 20 percent non-Federal match. No match is required for State administration, RTAP, or the Tribal Transit Program. Revenues from providing public transportation (e.g., farebox revenue) may not be used for the match. Amounts received under a service agreement with a State or local social service agency or a private social service organization may be used to match operating assistance. Recipients may use funds from other Federal agencies (non-DOT) for the entire local match if the other agency makes the funds available to the recipient for the purposes of the project. The only DOT funds that States can use as local match for Section 5311 projects are from the Federal Lands Highway Program (49 USC 5311(g)).

b. Higher Federal share rates (sliding-scale match rates) for capital costs are available to 14 States described in 23 USC 120(b). These sliding scale rates are based on the ratio of designated public lands area to the total area of these 14 States. For FTA capital grants, the Federal share increases from 80 percent in proportion to the share of public lands in the State. For FTA operating grants in these same States, the Federal share increases from 50 percent to 62.5 percent (5/8) of the rate for capital grants in those States (49 USC 5311(g)(1)(B)).

c. The Federal share cannot exceed 90 percent for vehicle-related equipment and facilities required to comply with the Clean Air Act or the Americans with Disabilities Act of 1990 (49 USC 5323(i)).

2. Level of Effort – Not Applicable

3. Earmarking

a. The State may expend no more than 15 percent of its annual Section 5311 apportionment for state administration, including planning and technical assistance (49 USC 5311(e)).

b. A State must use at least 15 percent of the annual apportionment to support intercity bus service unless the Governor certifies, after consultation with affected intercity bus service providers, that the intercity bus needs of the State are adequately met (49 USC 5311(f)).

c. **A State may use no more than 10 percent of its ARRA apportionment for operating assistance (Section 1202 of Pub. L. No. 111-32, 123 Stat. 1908, June 24. 2009).**

H. Period of Availability of Federal Funds

The funds are available to the State for the year of apportionment plus 2 years. Once the funds are obligated for an approved project, they remain available to the State until expended (49 USC 5311(c)).

I. Procurement and Suspension and Debarment

See Transit Cross-Cutting Section.

L. Reporting

1. Financial Reporting

a. SF-269A, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting

National Transit Database (NTD) (*OMB No. 2132-0008*) – Recipient are required to submit an annual report containing financial and operating information. The State agency administering the 5311 program is responsible for submitting the rural report on behalf of the State and its subrecipients. Tribes report to NTD directly on Tribal Transit Program grants they receive directly from FTA. The NTD web site is located at http://www.ntdprogram.gov/. Data to be reviewed is on the Rural General Public Service Transit form (RU-20).

Key line items: The following line items contain critical information:

a. Line 05 – Total Annual Operating Expenses

b. Line 08 – Local Operating Assistance

c. Line 13 – Annual Capital Costs

d. Lines 25a, 25b, 25c (Mode), Column g – Total Trips

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds only

N. Special Tests and Provisions

See Transit Cross-Cutting Section.

DEPARTMENT OF TRANSPORTATION

CFDA 20.513 CAPITAL ASSISTANCE PROGRAM FOR ELDERLY PERSONS AND PERSONS WITH DISABILITIES
CFDA 20.516 JOB ACCESS – REVERSE COMMUTE
CFDA 20.521 NEW FREEDOM PROGRAM

I. PROGRAM OBJECTIVES

Capital Assistance Program for Elderly Persons and Persons with Disabilities (5310 program)

The objective of the 5310 program is to improve mobility for elderly individuals and individuals with disabilities throughout the country. Toward this end, the Federal Transit Administration (FTA) provides financial assistance for transportation services planned, designed, and carried out to meet the special transportation needs of elderly individuals and individuals with disabilities in all areas—urbanized, small urban, and rural.

Job Access – Reverse Commute (JARC)

The objectives of the JARC program are to improve access to transportation services to employment and employment-related activities for welfare recipients and eligible low-income individuals and to transport residents of urbanized areas and nonurbanized areas to suburban employment opportunities. Under this program, FTA provides financial assistance for transportation services planned, designed, and carried out to meet the transportation needs of welfare recipients and eligible low-income individuals, and of reverse commuters regardless of income.

New Freedom

The New Freedom program aims to provide additional tools to overcome barriers facing Americans with disabilities seeking integration into the work force and full participation in society. Lack of adequate transportation is a primary barrier to work for individuals with disabilities. The 2000 Census showed that only 60 percent of people between the ages of 16 and 64 with disabilities are employed. The New Freedom program seeks to reduce barriers to transportation services and expand the transportation mobility options available to people with disabilities beyond the requirements of the Americans with Disabilities Act (ADA) of 1990.

II. PROGRAM PROCEDURES

Under the JARC and New Freedom Programs, FTA annually publishes formula apportionments to the States and urbanized areas with populations of 200,000 or greater (i.e., large urbanized areas) in a *Federal Register* notice published within 10 days after the Department of Transportation (DOT) Appropriations Act is signed into law. In the case of the 5310 program, the Governor of each State designates a State agency to administer the program. In the case of the JARC and New Freedom programs, the Governor: (1) designates a State agency to administer the program in nonurbanized areas and in urbanized areas with populations between 50,000 and

199,999; and (2) in consultation with responsible local officials and public transportation providers, designates a recipient to administer the program for the large urbanized area(s). The State agencies or designated recipients (recipients) are responsible for fair distribution of the funds. State agencies or designated recipients must describe their procedures for administering the program in a State management plan (SMP), or, for those JARC and New Freedom-designated recipients serving large urbanized areas, program management plan (PMP).

State agencies and designated recipients apply to FTA for approval of a program of projects, usually annually, and report annually to FTA on financial status and revisions to their program of projects. Federal transit law, as amended by Safe Accountable Flexible Efficient Transportation Equity Act, a Legacy for Users (SAFETEA-LU), requires that projects selected for funding under the 5310, JARC, and New Freedom programs be derived from a locally developed, coordinated public transit-human services transportation plan, and that the plan be developed through a process that includes representatives of public, private, and non-profit transportation and human services providers and participation by members of the public."

FTA monitors compliance with Federal requirements through administrative "State Management Reviews," in which a State agency is generally reviewed every 3 years. Designated recipients who also receive FTA financial assistance under the Urbanized Area Formula Program (CFDA 20.509) are also subject to an FTA "Triennial Review."

Subrecipients

State agencies and designated recipients select subrecipients and monitor their compliance with Federal requirements. FTA does not directly monitor the subrecipients, but checks the State agency and designated recipient's procedures for monitoring during the State Management Review and Triennial Review. The State agency and designated recipient may impose program criteria in addition to those imposed by FTA and may require additional reports from subrecipients. These State and designated recipient's requirements are included in the SMP or PMP.

Source of Governing Requirements

The programs in this cluster are authorized by SAFETEA-LU (Pub. L. No. 109-059, enacted on August 10, 2005). The 5310 program is authorized by 49 USC 5310, the JARC program is authorized by 49 USC 5316, and the New Freedom program is authorized by 49 USC 5317. Program regulations are in 49 CFR.

Availability of Other Program Information

Additional information about the programs may be found on the FTA web site at http://www.fta.dot.gov/. Program guidance and application instructions for the 5310, JARC, and New Freedom programs are contained in FTA Circulars 9070.1F, 9050.1, and 9045.1, respectively. These circulars can be found at the "Legislation, Regulations, and Guidance" section of the FTA web site.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Under the 5310 program, funds are available for capital expenses (and associated administrative, planning, and technical assistance) to support the provision of transportation services to meet the special needs of elderly individuals and individuals with disabilities (49 USC 5310(a)).

2. Under the JARC program, funds may be used for capital, planning, and operating expenses (and associated administrative, planning, and technical assistance) that support access to jobs and reverse commute projects (49 USC 5316(b)).

3. "Access to jobs" projects are defined as projects relating to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment, including:

    a. Transportation projects to finance planning, capital, and operating costs of providing access to jobs under Chapter 53 of 49 USC;

    b. Promoting public transportation by low-income workers, including the use of public transportation by workers with non-traditional work schedules;

    c. Promoting the use of transit vouchers for welfare recipients and eligible low-income individuals; and

    d. Promoting the use of employer-provided transportation, including the transit pass benefit program under section 132 of the Internal Revenue Code of 1986 (49 USC 5316(a)(1)).

4. "Reverse commute" projects are defined as public transportation projects designed to transport residents of urbanized areas and other-than-urbanized areas to suburban employment opportunities, including any projects to:

    a. Subsidize the costs associated with adding reverse commute bus, train, carpool, van routes, or service from urbanized areas and other-than-urbanized areas to suburban workplaces;

    b. Subsidize the purchase or lease by a non-profit organization or public agency of a van or bus dedicated to shuttling employees from their residences to a suburban workplace; or

c. Otherwise facilitate the provision of public transportation services to suburban employment opportunities (49 USC 5316(a)(4)).

5. Under the New Freedom program, funds are available for capital and operating expenses (and associated administrative, planning, and technical assistance) that support new public transportation services beyond those required by the ADA and new public transportation alternatives beyond those required by the ADA designed to assist individuals with disabilities with accessing transportation services, including transportation to and from jobs and employment support services (49 USC 5317(b)(1)).

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act apply to construction work financed by a grant under this program (49 USC 5333).

E. Eligibility

1. Eligibility for Individuals – Not Applicable

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

a. Eligible subrecipients for the 5310 program are:

(1) Private non-profit organizations;

(2) Governmental authorities that certify that no non-profit corporations or associations are readily available in an area to provide the service; and

(3) Governmental authorities approved by the State to coordinate services for elderly individuals and individuals with disabilities (49 USC 5310 (a)(2)).

b. Eligible subrecipients for the JARC and New Freedom programs are:

(1) Private non-profit organizations;

(2) State or local governmental authorities; and

(3) Operators of public transportation services, including private operators of public transportation services (49 USC5316(a)(5) and 5317(a)(2)).

F. Equipment and Real Property Management

See Transit Cross-Cutting Section.

G. Matching, Level of Effort, Earmarking

1. Matching

a. For the 5310 program, the Federal share of project costs may not exceed 80 percent of the net cost of the activity (49 USC 5310(c)(1)(a)).

b. For the JARC and New Freedom programs, the Federal share of capital and planning costs may not exceed 80 percent of the net cost of the activity. The Federal share of the operating costs may not exceed 50 percent of the net operating costs of the activity (49 USC 5316(h) and 5317(g)).

c. For all three transit services programs, the 10 percent that is eligible to fund program administrative costs including administration, planning, and technical assistance may be funded at 100 percent Federal share (49 USC 5310(a)(4), 5316(b)(2), and 5317(b)(2)). (See III.G.3, "Earmarking," below.)

d. For all three transit services programs, the Federal share is 90 percent of the cost for vehicle-related equipment and facilities required to comply with the Clean Air Act (CAA) or the ADA (49 U.S.C. 5323(i)).

2. Level of Effort – Not Applicable

3. Earmarking

For all three transit services programs, no more than 10 percent of a recipient's (i.e., State agency or designated recipient) total fiscal year apportionment may be used to fund program administration costs including administration, planning, and technical assistance (49 USC 5310(a)(4), 5316(b)(2), and 5317(b)(2)).

I. Procurement and Suspension and Debarment

See Transit Cross-Cutting Section.

L. Reporting

1. Financial Reporting

a. SF-269A, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

Also see Transit Cross-Cutting Section.

1. Coordinated Planning

Compliance Requirement – Recipients must certify that the projects selected for funding were derived from a locally developed coordinated public transit-human services transportation plan and the plan was developed through a process that included representatives of public, private, and non-profit transportation and human services provides and participation from the public. The recipient's SMP or PMP should contain information on the project selection process and on the local coordination plan (49 USC 5310(d)(2)(B), 5316(g)(3), and 5317(f)(3)).

Audit Objective – Determine whether subgrants awarded by the State or designated recipient were derived from a locally developed coordinated public transit-human services transportation plan and the plan was developed through a process that included representatives of public, private, and non-profit transportation and human services provides and participation from the public.

Suggested Audit Procedures

a. Obtain and review the recipient's SMP or PMP.

b. Ascertain if the SMP or PMP includes a section(s) on project selection criteria and method of distributing funds.

c. Obtain and review the State or designated recipient's applications for funding submitted to FTA.

d. Obtain and review the State or designated recipient's locally developed transportation-human services coordinated plan.

e. Ascertain if the applications specify the coordinated plan from which each project listed is derived.

2. Competitive Selection Process.

Compliance Requirement – Designated recipients of JARC and New Freedom funds for large urbanized areas are required to conduct, in cooperation with the appropriate metropolitan planning organization, an area-wide solicitation for applications for grants to the recipient and subrecipient. State recipients of JARC and New Freedom funds are required to conduct a state-wide solicitation for applications for grants to the recipient and subrecipients (49 USC 5310(d), 5316(d), and 5317(d)).

Recipients of 5310, JARC, and New Freedom grants are required to certify that allocations to subrecipients were distributed on a fair and equitable basis (49 USC 5310(d)(2)(B), 5316(f)(2), and 5317(e)(2)). An equitable distribution refers to equal access to, and equal treatment by, a fair and open competitive process, although the results of such a process may not be a quantitatively equal allocation of funds among projects or communities. Documentation of the process for ensuring a fair and equitable competitive selection process should be in the SMP or PMP. These documents should describe the recipient's competitive process for selecting projects and distributing funds among various applicants, including the policy rationale and the methods used. Procedures that might indicate a competitive selection process would be: (1) announcements for funding made on an annual basis or not less than once every 3 years; (2) announcements include the program requirements, the process for receiving funds, the timeline for the competitive selection, and selection criteria; (3) public advertisement of the availability of funds and selection criteria in formats and forums appropriate to the potential recipients and subrecipients; and (4) publishing a list of selected projects following the competitive selection process.

Audit Objective – Determine whether the State or designated recipient awarded grants based on a competitive selection process and determine whether grants were distributed on a fair and equitable basis.

Suggested Audit Procedures

a. Obtain and review the recipient's SMP or PMP.

b. Ascertain if the SMP or PMP includes a section(s) on project selection criteria and method of distributing funds.

c. Obtain and review the State or designated recipient's announcements for 5310, JARC, and New Freedom projects.

d. Ascertain if announcements provide for a fair and equitable competitive selection process.

e. Ascertain that announcements invite applications on an area-wide or state-wide basis, as appropriate.

DEPARTMENT OF TRANSPORTATION

CFDA 20.600 STATE AND COMMUNITY HIGHWAY SAFETY
CFDA 20.601 ALCOHOL TRAFFIC SAFETY AND DRUNK DRIVING PREVENTION INCENTIVE GRANTS
CFDA 20.602 OCCUPANT PROTECTION
CFDA 20.603 FEDERAL HIGHWAY SAFETY DATA IMPROVEMENTS INCENTIVE GRANTS
CFDA 20.604 SAFETY INCENTIVE GRANTS FOR USE OF SEATBELTS
CFDA 20.605 SAFETY INCENTIVES TO PREVENT OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS
CFDA 20.609 SAFETY BELT PERFORMANCE GRANTS
CFDA 20.610 STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS GRANTS
CFDA 20.611 INCENTIVE GRANT PROGRAM TO PROHIBIT RACIAL PROFILING
CFDA 20.612 INCENTIVE GRANT PROGRAM TO INCREASE MOTORCYCLIST SAFETY
CFDA 20.613 CHILD SAFETY AND CHILD BOOSTER SEAT INCENTIVE GRANTS

I. PROGRAM OBJECTIVES

The objective of the highway traffic safety grant programs is to provide a coordinated national highway safety program to reduce traffic accidents, deaths, injuries, and property damage.

II. PROGRAM PROCEDURES

Funds are provided to the States, following submission of their highway safety plans, in accordance with a predefined formula and incentive grants. All funding is administered as one combined program.

Source of Governing Requirements

This program is authorized under 23 USC Chapter 4 (Highway Safety) and Pub. L. No. 109-59, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Implementing regulations are 23 CFR parts 1200, 1225, 1240, 1250, 1252, 1313, 1335, 1345, and 1350.

Availability of Other Program Information

The National Highway Traffic Safety Administration maintains a web site that provides program laws, regulations, and other general information (http://www.nhtsa.dot.gov). Program procedures for some programs have been published in the *Federal Register* at 71 FR 4196 (CFDA 20.604), 71 FR 5110 (CFDA 20.613), 71 FR 5727 (CFDA 20.611), 71 FR 5729 (CFDA 20.610).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Funds must be expended as specified in the grantee's highway safety plan. Certain specific costs which will not be approved or that require prior approval have been identified in Highway Safety Grant Funding Policy for the National Highway Traffic Safety Administration (NHTSA)/Federal Highway Administration (FHWA) Field-Administered Grants and are listed below (23 CFR section 1200.20).

1. The following costs are allowable or allowable with specific conditions:

   a. *Equipment* – Major equipment (tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5000 or more per unit) purchases for new and replacement equipment must be pre-approved.

   b. *Installation* – The purchase and installation of regulatory and warning signs and supports and field reference markers are allowable for roads off the Federal aid system.

   c. *Travel* – Travel for out-of-state individuals benefiting the host State's highway safety program is allowable.

   d. *Training* – The cost of training personnel and the development of new training curricula and materials are allowable. However, training costs for Federal employees, with the exception of Department of the Interior personnel assigned Section 402 responsibility, are unallowable.

   e. *Program Administration* – The costs for consultant services, promotional activities, alcoholic beverages to support police "sting" operations, and meetings and conferences are allowable.

   f. *Public Communications* – Advertising space.

   g. *Child Safety Seats* – For *Child Safety and Child Booster Seat Incentive Grants* (CFDA 20.613), child safety seat purchases are limited to 50 percent of the annual award (Section 2011(d) of SAFETEA-LU).

2. The following costs are unallowable:

   a. *Facilities and Construction*: highway construction, maintenance or design, construction or reconstruction of permanent facilities, highway safety appurtenances, office furnishings and fixtures, and land (except for *Incentive Grant Program to Increase Motorcyclist Safety* (CFDA 20.612) funds, which may be used to purchase facilities, including the purchase of land (Section 2010(e)(1)(B)(iv) of SAFETEA-LU)).

   b. *Equipment*: truck scales, traffic signal preemption systems.

   c. *Training*: individual's salary, and training employees of Federal agencies, except as noted above.

   d. *Program Administration*: research costs, expenses to defray activities of Federal agencies, and commercial drivers' compliance requirements.

G. Matching, Level of Effort, Earmarking

1. Matching

a. *State and Community Highway Safety* (CFDA 20.600) and *Safety Incentive Grants for Use of Seatbelts* (CFDA 20.604) – The State shall pay at least 20 percent, or the applicable sliding scale rate, as stated in the grant award, of the total cost of the program. The State shall pay at least 50 percent of the costs for planning and administration (23 USC 120(b) and 402(d); 23 CFR section 1252.4).

b. For *Alcohol Traffic Safety and Drunk Driving Prevention Incentive Grants* (CFDA 20.601), *Occupant Protection* (CFDA 20.602), and *Federal Highway Safety Data Improvements Incentive Grants* (CFDA 20.603), States are required to match Federal funds at 25 percent the first and second years, 50 percent the third and fourth years, and 75 percent the fifth and sixth years (23 USC 405, 410, and 411; 23 CFR sections 1313.4(b), 1335.10, and 1345.4(a)).

c. *Safety Incentives to Prevent Operation of Motor Vehicles by Intoxicated Individuals* (CFDA 20.605), and *Safety Belt Performance Grants* (CFDA 20.609) are 100 percent federally funded (23 USC 163 and 406(g); 23 CFR section 1225.4(b)(3)).

d. *State Traffic Safety Information System Improvements Grants* (CFDA 20.610) and *Incentive Grant Program to Prohibit Racial Profiling* (CFDA 20.611) are 80 percent federally funded (Indian Nations and Territories are exempt from matching requirements and are 100 percent federally funded) (23 USC 408(e)(4); Section 1906(e)(2) of SAFETEA-LU).

e. *Child Safety and Child Booster Seat Incentive Grants* (CFDA 20.613) – States are required to match Federal funds at 25 percent the first, second, and third years, and 50 percent the fourth year (Section 2011(c) of SAFETEA-LU).

f. Additional matching requirements may be specified in the grantee's highway safety plan to limit the maximum Federal share of an ambulance, helicopter, automated external defibrillators, or aircraft to 25 percent.

2.1 Level of Effort – *Maintenance of Effort*

a. For *Incentive Grant Program to Increase Motorcyclist Safety* (CFDA 20.612), a State must maintain its aggregate expenditures from all other sources for motorcyclist safety training programs and motorcyclist awareness programs at or above the average level of such expenditures in fiscal years 2003 and 2004 (23 CFR part 1350).

b. For *Alcohol Traffic Safety and Drunk Driving Prevention Incentive Grants* (CFDA 20.601), a State must maintain its aggregate expenditures from all other sources for alcohol traffic safety programs at or above the average level of such expenditures in fiscal years 2003 and 2004 (23 USC 410(a)(2).

c. For *Occupant Protection* (CFDA 20.602), a State must maintain its aggregate expenditures from all other sources for programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles at or above the average level of such expenditures in fiscal years 2003 and 2004 (23 USC 405(a)(2)).

d. For *State Traffic Safety Information System Improvements Grants* (CFDA 20.610), a State must maintain its aggregate expenditures from all other sources for highway safety data programs at or above the average level of such expenditures in fiscal years 2003 and 2004 (23 USC 408(e)(3)).

e. For *Child Safety and Child Booster Seat Incentive Grants* (CFDA 20.613), a State must maintain its aggregate expenditures from all other sources for child safety seat and child restraint programs at or above the average level of such expenditures in fiscal years 2003 and 2004 (Section 2011(b) of SAFETEA-LU).

2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking

a. At least 40 percent of Federal funds apportioned to a State under *State and Community Highway Safety* (CFDA 20.600) for any fiscal year shall be expended by or for the political subdivisions of the State in carrying out local highway safety programs (23 USC 402(b)(1)(C); 23 CFR part 1250).

b. The costs for planning and administration under *State and Community Highway Safety* (CFDA 20.600) and *Alcohol Traffic Safety and Drunk Driving Prevention Incentive Grants (*CFDA 20.601) shall not exceed 10 percent of the funds received by the State (23 CFR section 1252.4).

c. States receiving grants as High Fatality Rate States under *Alcohol Traffic Safety and Drunk Driving Prevention Incentive Grants* (CFDA 20.601) must use at least one half of those grant monies toward High Visibility Enforcement Campaigns (23 USC 410(g)(2)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. HS-217, *Highway Safety Plan Cost Summary (OMB No. 2127-0003)*

g. *Federal-Aid Reimbursement Voucher (OMB No. 2127-0003)*

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

DEPARTMENT OF THE TREASURY

CFDA 21.012 NATIVE INITIATIVES
CFDA 21.020 COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM

I. PROGRAM OBJECTIVES

The Community Development Financial Institutions (CDFI) Program promotes economic revitalization and community development investment in, and assistance to, CDFIs. Assistance under the CDFI Program is intended to enhance the ability of CDFIs to make loans and investments and provide services to distressed communities and individuals who have been unable to take full advantage of the financial services industry. The Native Initiatives or Native American CDFI Assistance (NACA) Program provides funding to build the community development capacity of certified Native CDFIs, Emerging Native CDFIs, and Sponsoring Entities, and to increase access to capital in Native Communities.

II. PROGRAM PROCEDURES

The CDFI Program is administered by the Community Development Financial Institutions Fund (CDFI Fund), Department of the Treasury. The CDFI Program and the NACA Program provide CDFIs and Native CDFIs with: (1) financial assistance in the form of grants, loans, equity investments, deposits and credit union shares and/or (2) technical assistance in the form of grants. Financial and technical assistance awards are provided through a competitive nationwide evaluation and selection process. After selection, each CDFI Program and the NACA Program award recipient enters into an assistance agreement, which includes performance goals and other terms and conditions.

In order to be eligible to apply for assistance, entities must meet or propose to meet specific CDFI eligibility criteria (12 CFR sections 1805.200 and 1805.201). CDFIs include, among others, entities such as community development banks, community development credit unions, depository institution holding companies, non-profit loan funds, and community development venture capital funds.

An organization wishing to apply for financial assistance only or a combination of financial assistance and technical assistance through the NACA Program must be either a certified Native CDFI or present a plan to be certified. Organizations that are Emerging Native CDFIs or Sponsoring Entities may only apply for technical assistance grants.

Source of Governing Requirements

The CDFI Program is authorized by the Community Development Banking and Financial Institutions Act of 1994 (Pub. L. No. 103-325, 12 USC 4701 *et seq*.). **Additional funding was provided by Title V of the American Recovery and Reinvestment Act of 2009 (ARRA), (Pub. L. No. 111-5, 123 Stat. 148)**. The CDFI Program implementing regulations are codified at 12 CFR part 1805.

The NACA Program is authorized by annual appropriations to the CDFI Fund Program Account and is administered using the implementing regulations for the CDFI Program, which are codified at 12 CFR part 1805.

Availability of Other Program Information

Additional information on the CDFI Program and the NACA Program is available on the CDFI Fund website at http://www.cdfifund.gov. If there are specific questions regarding the programs, **including ARRA funding,** the CDFI Fund may be contacted via telephone at (202) 622-8662, by e-mail at cdfihelp@cdfi.treas.gov, or by facsimile at (202) 622-7754.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Financial Assistance* – The CDFI Fund may provide financial assistance intended to strengthen the capital position and enhance the ability of a CDFI Program or NACA Program award recipient to provide financial products and financial services. The assistance agreement prescribes the specific authorized uses of such financial assistance amounts for each CDFI Program or Native CDFI award recipient (12 CFR sections 1805.300 and 1805.301).

2. *Technical Assistance* – The CDFI Fund may provide technical assistance grants to build the capacity of a CDFI, a Native CDFI, or an entity that proposes to become a CDFI or Native CDFI. Such technical assistance may include training for management and other personnel; development of programs, products, and services; improving financial management and internal operations; enhancing a CDFI's or Native CDFI's community impact; or other activities deemed appropriate by the CDFI Fund. The assistance agreement prescribes the specific authorized uses of such technical assistance amounts for each CDFI or Native CDFI award recipient (12 CFR section 1805.303).

3. *Community Partnerships* – Assistance provided upon approval of an application involving a community partnership shall only be distributed to the CDFI Program award recipient and shall not be used to fund any activities carried out by a community partner or an affiliate of a community partner (12 CFR section 1805.302(c)).

D. Davis-Bacon Act

For ARRA-funded awards, contractors and subcontractors are required to pay prevailing wages to laborers and mechanics in compliance with the Davis-Bacon Act (Section 1606 of ARRA).

E. Eligibility

1. Eligibility for Individuals – Not Applicable

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

A CDFI Program and NACA Program award recipient may not distribute assistance to an affiliate without the prior consent of the CDFI Fund (12 CFR section 1805.302(b)).

G. Matching, Level of Effort, Earmarking

1. Matching

a. *Financial Assistance* – Each CDFI Program and NACA Program non-ARRA award recipient must match financial assistance provided with an amount that is at least comparable in: (1) form to the type of financial assistance provided by the CDFI Fund and (2) value, on a dollar-for-dollar basis, to the financial assistance provided by the CDFI Fund. Such match must come from sources other than the Federal Government, and must consist of non-federal funds. Funds provided to a CDFI pursuant to the Housing and Community Development Act of 1974 are generally considered to be Federal funds, and may not be used to meet the match requirements. The applicable time frame for meeting the match is set forth in the Notice of Funds Availability (NOFA) published in the *Federal Register* for each funding round. The most recent NOFAs can be retrieved from the Internet at http://www.cdfifund.gov (12 CFR sections 1805.500 through 1805.504).

The amount of financial assistance disbursed by the CDFI Fund to a CDFI Program or NACA Program award recipient will not exceed the amount of match that the award recipient has in hand. As a result, the CDFI Fund may make multiple disbursements of financial assistance as the CDFI Program or NACA Program award recipient receives the requisite matching funds.

b. *Technical Assistance* – There is no match requirement for technical assistance amounts under the CDFI Program and NACA Program (12 CFR section 1805.303(d)).

c. There are no matching requirements for ARRA-funded awards (ARRA, 123 Stat. 148).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269A, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable to Technical Assistance

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds

IV. OTHER INFORMATION

As described under II, "Program Procedures," the CDFI Fund provides financial assistance and technical assistance awards through the CDFI and NACA Programs. For determining whether the audit threshold is met and determining Type A programs: (1) financial assistance awards are considered Federal awards expended upon receipt of funds by the recipient, and (2) technical assistance awards are considered Federal awards expended upon expenditure of the funds by the awardee. Assistance provided in the form of a loan requires the recipient to submit annual audited financial statements until the loan is repaid.

NATIONAL ENDOWMENT FOR THE HUMANITIES

CFDA 45.129 PROMOTION OF THE HUMANITIES – FEDERAL/STATE PARTNERSHIP

I. PROGRAM OBJECTIVES

To provide funding through grants to humanities councils in each State (including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands). The 56 state humanities councils support, on a competitive basis, locally initiated humanities programs. State councils also design and conduct humanities projects.

II. PROGRAM PROCEDURES

The National Endowment for the Humanities (NEH) makes general support grants to each of the 56 state humanities councils upon submission and approval of the *NEH/Federal/State Partnership Compliance Plan and Federal/State Partnership Compliance Plan Cover Sheet (OMB No. 3136-0134).* Generally, each grant is for a five-year period with annual awards in the first three years. The grants provide administrative and program support. After receipt of the grant, the state humanities council is required to submit a *Summary Budget for the Funding Period* (*OMB No. 3136-0134*). The state humanities councils may subgrant funds, referred to as "regrants" in this program, to local non-profit organizations, institutions, groups, and individuals.

Source of Governing Requirements

The laws for this program are found in 20 USC 956.

Availability of Other Program Information

NEH maintains a web site on the Internet (http://www.neh.gov) which provides general information about NEH programs. Three publications, titled "General Terms and Conditions for General Support Grants to State Humanities Councils," "Addendum to General Terms and Conditions for General Support Grants to State Humanities Council," and "Matching Guidelines for General Support Grants to State Humanities Councils," are specifically applicable to this program.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Funds may be used to initiate and support programs and research which have substantial scholarly and cultural significance; to insure that the benefit of programs will also be available to citizens where such programs would otherwise be unavailable due to geographic or economic reasons; and to foster education in and public understanding and appreciation of the humanities. (20 USC 956(c)(4), 956(c)(7), and 956(c)(9)).

2. The state humanities councils may regrant funds to organizations (including institutions of higher education and units of State and local governments), groups or persons that form an association to carry out a project, not-for-profit groups (do not have to be incorporated), or individuals. Regrants may not be made to for-profit organizations (20 USC 956(c)(2), 956(h)(1), and 956(l)).

3. Federal regrant funds must be expended according to the *Summary Budget for the Funding Period* (*OMB No. 3136-0134*) and any amendments as approved by NEH. Transfers can be made from other categories to regrants, but written permission from the NEH is required to transfer funds from the regrant category.

G. Matching, Level of Effort, Earmarking

1. Matching

Under this program, state humanities councils receive two types of funding from the NEH: Outright Funds and offers to provide Federal Matching Funds. The amount of each type of funding is identified in the grant award documents.

Councils must cost share the Outright Funds on a dollar-for-dollar basis. Cost sharing for Outright Funds may take the form of cash contributions to the councils from any source (including funds from other Federal agencies), program income the councils have earned, unreimbursed allowable costs that a subrecipient (regrantee) incurs in carrying out a council-funded project, and the value of in-kind contributions made by third parties. In-kind contributions may be in the form of charges for real property and equipment or the value of goods and services directly benefiting and specifically identifiable to the project (20 USC 956(f)(1)).

Federal Matching Funds must also be matched dollar for dollar. The NEH releases Federal Matching Funds to a council only upon certification that the council or its regrantee have raised the required amount of eligible third-party cash gifts to support grant activities per the *Matching Funds Certification Letter* (*OMB No. 3136-0134*) and accompanying instructions (20 USC 960(a)(2)(B)).

For those councils covered by the Economic Development of the Territories Act (the Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands), the matching requirements do not apply to the first $200,000 in Outright Funds (48 USC 1469a(d)).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable (financial status only)

2. Performance Reporting – Not Applicable

3. Special Reporting

Matching Funds Certification Letter (OMB No. 3136-0134) – This letter is used to describe and certify the qualification of third-party gifts for the release of Federal Matching Funds.

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

ENVIRONMENTAL PROTECTION AGENCY

CFDA 66.458 CAPITALIZATION GRANTS FOR CLEAN WATER STATE REVOLVING FUNDS

I. PROGRAM OBJECTIVES

Capitalization grants are awarded to States to create and maintain Clean Water State Revolving Funds (CWSRFs) to: (1) enable States to encourage construction of wastewater treatment facilities to meet the enforceable requirements of the Clean Water Act (Act); (2) increase the emphasis on nonpoint source pollution control and protection of estuaries; and (3) establish permanent financing institutions in each State to provide continuing sources of financing to maintain water quality. The CWSRF provides loans and other types of financial assistance (but not grants) to qualified communities and local agencies. The CWSRF is a permanent revolving fund to provide loans and other assistance (40 CFR section 35.3115).

II. PROGRAM PROCEDURES

The CWSRF program is established in each State by capitalization grants from the Environmental Protection Agency (EPA). Since the enabling legislation was enacted in 1987, capitalization grants have been available to States in most years. EPA implements the CWSRF in a manner that preserves a high degree of flexibility for States in operating their revolving funds in accordance with each State's unique needs and circumstances.

States are required to provide an amount equal to 20 percent of the capitalization grant as State matching funds in order to receive a grant. **However, subgrants awarded under the American Recovery and Reinvestment Act of 2009 (ARRA) do not require a State match (Note that ARRA terms these subawards by States as "grants.")**. Capitalization grant applications shall include: (1) an Intended Use Plan (IUP), which lists proposed projects eligible for financing from CWSRF loans; (2) an identification of the source of the matching amount; (3) a proposed payment schedule; and (4) certain certifications and demonstrations. States may transfer an amount up to 33 percent of its Drinking Water State Revolving Fund (DWSRF) (CFDA 66.468) capitalization grant to the CWSRF or an equivalent amount from the CWSRF to the DWSRF program.

The State shall provide an annual report to EPA on its CWSRF program.

Source of Governing Requirements

The CWSRF program is authorized under Title VI of the Clean Water Act (33 USC 1381 *et seq.*) **and ARRA (Pub. L. No. 111-5) and Conference Report 111-16**. The implementing regulations are found in 40 CFR part 35, subpart K. **Subgrants also are subject to 40 CFR part 31**.

Guidance on cross-collateralization is found in the policy statement entitled *Transfer and Cross-Collateralization of Clean Water Revolving Funds and Drinking Water State Revolving Funds*, published in the October 13, 2000 *Federal Register* (65 FR 60940). Guidance on fees collected under the CWSRF program is found in the policy statement entitled *Fees Charged by States to Recipients of Clean Water State Revolving Fund Assistance*, published in the October 20, 2005 *Federal Register* (70 FR 61039). This guidance supplements the coverage of 40 CFR part 35.

Availability of Other Program Information

General information about the program is available on the EPA Clean Water State Revolving Fund home page (http://www.epa.gov/owm/cwfinance/cwsrf/index.htm). Information regarding EPA's ARRA activity is available at http://www.epa.gov/recovery.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

The audit focus is on a State's CWSRF program, rather than individual capitalization grants awarded to States by EPA.

A. Activities Allowed or Unallowed

1. *Financial Assistance*

   a. The CWSRF may provide financial assistance: (1) to municipalities, inter-municipal, interstate, or State agencies for the construction of publicly owned treatment works, as defined in section 212 of the Act that are on the State's project priority list; (2) for implementing nonpoint source management programs under section 319 of the Act; and (3) for developing and implementing estuary management plans under section 320 of the Act (33 USC 1383(c)).

   b. The allowable types of financial assistance are (33 USC 1383(d)):

      (1) Making loans (not grants) for eligible projects;

      (2) Buying or refinancing of debt obligations of municipal, intermunicipal, and interstate agencies incurred after March 7, 1985;

      (3) Guaranteeing or purchasing insurance for local debt obligations;

(4) Using as a source of revenue or security for CWSRF debt obligations (providing that the net proceeds of the sale of such bonds are deposited in the CWSRF); and

(5) Guaranteeing loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies.

c. ARRA funds may be used for financial assistance as follows:

(1) States may award CWSRF funds under the additional subsidy reserve required by ARRA (see III.G.3.b(1) below) as subgrants.

(2) ARRA-appropriated funds may be used for refinancing of municipal debt or restructuring CWSRF loans only if the initial debt was incurred on or after October 1, 2008 (ARRA, Title VII).

2. CWSRF funds may be used by States for the reasonable costs of administering and managing the CWSRF (33 USC 1383(d)(7)).

3. ARRA-appropriated funds may not be used for the purchase of land or easements for activities authorized by section 603(c) of the Federal Water Pollution Control Act (ARRA, Title VII).

C. Cash Management

The State may draw cash from EPA through the Automated Clearinghouse (ACH) or the Automated Standard Application for Payments (ASAP) system for:

1. *Loans* – when the CWSRF receives a request from a loan recipient, based on incurred costs, including pre-building and building costs.

2. *Refinance or Purchase of Municipal Debt* – generally, when at a rate no greater than equal amounts over the maximum number of quarters that payments can be made, and up to the amount committed to the refinancing or purchase of the local debt.

3. *Purchase of Insurance* – when insurance premiums are due.

4. *Guarantees and Security for Bonds* – immediately, in the event of imminent default in debt service payments on the guaranteed/secured debt; otherwise, up to an amount dedicated for the guarantee or security based on incurred construction costs.

5. *Administrative Expenses* – cash can be drawn based on a schedule that coincides with the rate at which administrative expenses will be incurred (40 CFR section 35.3160).

6. *Subgrants awarded from the additional subsidy reserve under ARRA* – when the State receives a request from a subrecipient based on incurred costs, including pre-building and building costs.

D. Davis Bacon Act

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of Title 40, USC (ARRA, Section 1606).

The non-ARRA portion of this program is not subject to the Davis-Bacon Act.

G. Matching, Level of Effort, Earmarking

1. Matching

States are required to deposit into the CWSRF from State monies, an amount equal to 20 percent of each **non-ARRA** grant payment. If the State provides a match in excess of the required amount, the excess balance may be banked toward subsequent match requirements. States generally report the total amount of their matching for a capitalization grant in an annual CWSRF report to EPA. The match is required to be made on or before the time that EPA funds are drawn (40 CFR section 35.3135(b)).

No State match deposit is required for funds provided under ARRA.

2. Level of Effort – Not Applicable

3. Earmarking

a. The maximum amount allowable for administering and managing the CWSRF is 4 percent of the cumulative amount of capitalization grant awards received. When the administrative expense of the CWSRF exceeds 4 percent, the excess must be paid from sources outside the CWSRF (40 CFR section 35.3120(g)).

b. ARRA includes the following requirements:

(1) Notwithstanding the requirements of Section 603(d) of the Federal Water Pollution Control Act, States shall use not less than 50 percent of the amount of its ARRA-funded capitalization grants to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans, or subgrants, or any combination of these (ARRA, Title VII).

(2) To the extent that there are sufficient eligible project applications, not less than 20 percent of the funds appropriated shall be for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities (ARRA, Title VII).

H. Period of Availability of Federal Funds

1. "Grant payments" from a capitalization grant shall begin in the quarter in which the grant is awarded, and end no later than eight quarters after the grant is awarded, not to exceed 12 quarters from the date of allotment of grant funds to the States (40 CFR section 35.3155(c)).

2. EPA CWSRF grant funds under ARRA must be committed to eligible projects that are under contract or construction in an amount equal to the full value of the ARRA assistance agreement by February 17, 2010 (one year after enactment of ARRA). Each State must certify in writing, and forward to EPA, not later than March 1, 2010, that projects funded under its ARRA grant have met these requirements.

J. Program Income

1. If States collect fees as a result of loans made with grant funds (i.e., funds awarded by EPA in the capitalization grant) and the fees are not included as principal in the loan, they are considered program income and must be accounted for as indicated below.

   The permissible use of fees resulting from loans awarded from a particular capitalization grant varies depending on when the fee is collected.

   a. Regardless of when the funds are used, if the fee is collected during the grant period, i.e., before submission of the final Financial Status Report for the capitalization grant giving rise to the fee, it may be used under either the addition or cost sharing or matching alternatives for use of program income (40 CFR sections 31.25(g)(2) or (g)(3)). Under either alternative or combination of alternatives, use of program income is limited to the activities allowed under section III.A. above, as well as

administrative expenses exceeding the four percent limitation under section III.G.3.a.

b. Fees collected after the grant period may be used as indicated under paragraph 1.a as well as for other water quality-related purposes and combined financial administration of the CWSRFs and DWSRFs where the programs are administered by the same State agency.

(*Fees Charged by States to Recipients of Clean Water State Revolving Fund Assistance*, (October 20, 2005 *Federal Register*, 70 FR 61039), section II.C.

2. Fees included in loan principal are not considered program income (see section III.N.3, "Special Tests and Provisions – Fund Establishment, Loan Repayments, Fund Earnings, and Use of Funds," below).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – The State must provide an Annual Report to EPA according to the schedule in the grant agreement (*OMB No. 2040-0118*) (40 CFR sections 35.3165(a) and (b)).

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds

N. Special Tests and Provisions

1. Environmental Review Requirements

Compliance Requirement – The State must conduct reviews of the potential environmental impacts of all Section 212 construction projects receiving assistance from the CWSRF, including nonpoint source pollution control and estuary protection projects that are also Section 212 projects (40 CFR section 35.3140).

Audit Objective – Determine whether the State is performing environmental reviews before construction proceeds.

Suggested Audit Procedures

a. Inquire of CWSRF management about the environmental review procedures in place.

b. Select a sample of projects that began during the year to ascertain that the decisions were rendered prior to the project proceeding and were approved in the State environmental review process.

2. Binding Commitments

Compliance Requirement – A "binding commitment" is a legal obligation by a State to a local recipient that defines the terms for assistance under the CWSRF. Cumulative binding commitments must equal at least 120 percent of cumulative capitalization grant payments received one year earlier. Binding commitments requirements are intended to help ensure that the State utilizes grant funds in a timely manner. EPA may withhold future payments and require adjustments to the payment schedules before releasing further payments if the State does not meet the binding commitment requirement. States generally report the total amount of their binding commitments in an annual CWSRF report to EPA (40 CFR sections 35.3135(c) and 35.3165(a)).

Audit Objective – Determine whether States have complied with the requirement to make binding commitments equal to or greater than 120 percent of the amount of the capitalization grants.

Suggested Audit Procedures

a. Review binding commitments in conjunction with EPA payment schedules to ascertain if the State entered into cumulative binding commitments in an amount at least equal to 120 percent of the cumulative grant payments received one year earlier (i.e., cumulative binding commitments in the current year should be equal to or greater than 120 percent of cumulative grant payments made through the previous year).

b. Test a sample of binding commitments reported by the State to verify that the amount and date agree with supporting documentation.

3. Fund Establishment, Loan Repayments, Fund Earnings, and Use of Funds

Compliance Requirements – The State shall establish a separate account or series of accounts that is dedicated solely to providing loans and other forms of financial assistance. All loan repayments (including principal and interest), interest earnings on investments, capitalization grants, State match, and transfers from the DWSRF must be credited directly to the CWSRF. Repayment of loans shall begin within one year after project completion, and loans shall be fully amortized over not more than 20 years after project completion (40 CFR sections 35.3110(b) and 35.3120(a) and the policy statement titled *Transfer and Cross-Collateralization of Clean Water Revolving Funds and Drinking Water State Revolving Funds* published in the October 13, 2000, *Federal Register* (65 FR 60940)). Fees included in loan principal must be used as provided in *Fees Charged by States to Recipients of Clean Water State Revolving Fund Assistance,* section I.

Audit Objectives – Determine whether the State has a separate account or series of accounts for the CWSRF. Determine whether principal and interest payments, interest earnings on investments, capitalization grants, State match, and transfers from the DWSRF, were properly credited to the CWSRF. Determine whether fees included in loan principal were used for authorized purposes.

Suggested Audit Procedures

a. Ascertain if the CWSRF is a separate account, or series of accounts, dedicated solely to purposes of the program.

b. Test a sample of projects funded by the CWSRF and for which repayments were due during the year to determine that principal and interest payments were properly credited to the CWSRF accounts and, if spent, were used for authorized purposes.

c. Test a sample of loan agreements and other project records to ascertain if the repayments began within one year of project completion and the loans are scheduled for full amortization within 20 years.

d. Obtain a list of investments made during the year and ascertain if earnings on investments were properly recorded in the CWSRF.

4. CWSRF as Security for Bonds

Compliance Requirement – When funds from the CWSRF are used as security or as a source of revenue for the payment of principal and interest on revenue or general obligation bonds issued by the State, the net proceeds (i.e., funds raised from the sale of bonds less issuance costs) of the sale of such bonds must be deposited in the CWSRF

(40 CFR section 35.3120(d)). Generally, bond proceeds are deposited in accounts established by the bond trust indenture and identified in the Official Offering Statement. This requirement includes the situation where the State employs the cross-collateralization process permitted by the CWSRF program. Cross-collateralization allows for certain assets of both the DWSRF and the CWSRF programs to be pledged as collateral for a single or joint bond issue in proportion to the assets offered as collateral. Proportionality may be achieved at different levels of security: (1) at reserve level; (2) at loan repayment level; or (3) using an alternative structure approved by EPA (40 CFR section 35.3530(d)) and the policy statement titled *Transfer and Cross-Collateralization of Clean Water Revolving Funds and Drinking Water State Revolving Funds* published in the October 13, 2000, *Federal Register* (65 FR 60940).

Audit Objective – Determine whether the State placed the net proceeds from the sale of bonds guaranteed by the CWSRF into the CWSRF.

Suggested Audit Procedures

a. Review bond documentation and trace amounts qualifying as net proceeds to accounts in the CWSRF.

b. Ascertain that the net bond proceeds were deposited into the CWSRF.

c. If the State has employed a cross-collateralization technique, ascertain that the net proceeds deposited into the CWSRF were proportionate to the assets offered as collateral.

IV. OTHER INFORMATION

Subrecipients

CWSRF amounts are awarded by EPA to States as grants. The States then makes subawards in the form of loans to its subrecipients. Therefore, in determining the amount of Federal funds expended to be reported on the Schedule of Expenditures of Federal Awards (SEFA), subrecipients receiving CWSRF loans should include project expenditures incurred under these loans during the audit period as provided in OMB Circular A-133 §__205(a). These are subawards—not direct Federal loans—and, therefore, neither OMB Circular A-133 §__.205(b) nor §__.205(d) applies when calculating the amount of Federal funds expended.

ENVIRONMENTAL PROTECTION AGENCY

CFDA 66.468 CAPITALIZATION GRANTS FOR DRINKING WATER STATE REVOLVING FUNDS

I. PROGRAM OBJECTIVES

Capitalization grants are awarded to States to create and maintain Drinking Water State Revolving Funds (DWSRF) programs. States can use capitalization grant funds to establish a revolving loan fund (DWSRF) to assist public water systems finance the costs of infrastructure needed to achieve or maintain compliance with Safe Drinking Water Act (SDWA) requirements and protect the public health objectives of the Act. The DWSRF can be used to provide loans and other types of financial assistance for qualified communities, local agencies, and private entities. States may also set aside certain percentages of their capitalization grant or allotment for various activities that promote source water protection and enhanced water systems management.

II. PROGRAM PROCEDURES

The DWSRF program is established in each State by capitalization grants from the Environmental Protection Agency (EPA) and State match equaling 20 percent of the EPA capitalization grants. **However, subgrants awarded under the American Recovery and Reinvestment Act of 2009 (ARRA) do not require a State match (Note that ARRA terms these subawards by States as "grants.")**. EPA implements the DWSRF program in a manner that preserves flexibility for States in operating their program in accordance with their unique needs and circumstances. States have the flexibility to set aside up to 31 percent of their capitalization grants for other related activities. States may also transfer an amount up to 33 percent of its DWSRF capitalization grant to the Clean Water State Revolving Fund (CWSRF) (CFDA 66.458) or an equivalent amount from the CWSRF to the DWSRF program. A State may transfer capitalization grant dollars, State match, investment earnings, or principal and interest repayments.

Capitalization grant agreements include: (1) an application; (2) an Intended Use Plan (IUP), which describes how the State intends to use funds made available to it, including a list of proposed projects eligible for financing and a description of the financial status of the program; (3) a proposed payment schedule; (4) certain certifications and demonstrations which can be included in an optional operating agreement; and (5) workplans containing a least a general description of the use of set-aside funds.

The State must annually provide an IUP which describes how the State will use available DWSRF program funds for the year to meet the objectives of the SDWA and further the goal of protecting public health. The IUP explains how all of the funds available to the DWSRF program (including bond proceeds, interest earnings, loan repayments, Federal capitalization grants, State match, etc.) will be expended (40 CFR section 35.3555).

The State also must provide a Biennial Report to the EPA containing detailed information on how the State met the goals and objectives of the previous two fiscal years as stated in its IUP and grant agreement. Such report must cover the State's entire DWSRF program, including its set-aside activities. EPA conducts Annual Review of State programs to assess the success of each program, including activities identified in the IUP and Biennial Report.

Source of Governing Requirements

This program is authorized under Section 1452 of the Public Health Service Act (Title XIV), commonly known as the SDWA (42 USC 300j-12) ***ARRA* (Pub. L. No. 111-5) and Conference Report 111-16**. The implementing regulations for the program can be found at 40 CFR part 35, subpart L. **Subgrants also are subject to 40 CFR part 31 or 40 CFR part 30 (for subgrants to non-profit agencies and with eligible public water systems under ARRA that are for-profit entities)**.

Availability of Other Program Information

Other general information about the program is available on the EPA Drinking Water State Revolving Fund home page (http://www.epa.gov/safewater/dwsrf.html). ***Information regarding EPA's ARRA activity is available at http://www.epa.gov/recovery.***

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

The audit focus is on a State's DWSRF program, rather than individual capitalization grants awarded to States by EPA.

A. Activities Allowed or Unallowed

1. The DWSRF program may provide the following financial assistance to publicly- or privately-owned community water systems and non-profit non-community water systems for eligible drinking water infrastructure projects (40 CFR sections 35.3520 and 35.3525):

    a. Making loans for eligible projects (40 CFR section 35.3520(b).

    b. Purchasing or refinancing existing debt obligations of municipal, intermunicipal and interstate agencies entered into on or after July 1, 1993.

    c. Guarantee of or purchasing insurance for local debt obligations.

    d. Providing a source of revenue or security for DWSRF debt obligations, provided that the net proceeds of the sale of such debt obligations are deposited in the DWSRF.

e. States may award DWSRF funds under the additional subsidy reserve required by ARRA (see III.G.3.d.(1) below) as subgrants (ARRA, Title VII).

f. ARRA-appropriated funds may be used for refinancing of municipal debt or restructuring DWSRF loan sonly if the initial debt was incurred on or after October 1, 2008 (ARRA, Title VII).

2. A State may set aside funds for the following designated set-aside activities (40 CFR section 35.3535):

   a. Administrative expenses (including technical assistance).

   b. Technical assistance to small water systems that regularly serve 10,000 or fewer persons (40 CFR section 35.3505).

   c. State program management.

   d. Local Assistance and other State programs.

3. The DWSRF may not provide assistance for (40 CFR sections 35.3520(d) through (f)):

   a. Dams or reservoirs, water rights, laboratory fees for monitoring, system operation and maintenance, or projects that are primarily fire protection.

   b. Expansion projects pursued solely in anticipation of future growth.

4. In addition to the prohibitions listed in 3. above, no funds appropriated under ARRA may be used for the following purposes:

   a. Local Assistance and other State programs (15 percent) set-aside.

   b. The purchase of land or easements for activities authorized by Section 1452(k) of the Safe Drinking Water Act (ARRA, Title VII).

C. Cash Management

The State may draw cash through the Automated Clearing House (ACH) or the Automated Standard Application for Payments (ASAP) system for (40 CFR sections 35.3560 and 35.3565):

1. *Loans* – when the DWSRF receives a request from a loan recipient, based on incurred costs, including pre-building and building costs.

2. *Refinance or Purchase of Municipal Debt* – generally, at a rate not greater than equal amounts over the maximum number of quarters that payments can be made, and up to the amount committed to the refinancing or purchase of the local debt.

A State may immediately draw cash for up to the greater of $2 million or 5 percent of each fiscal year's capitalization grant to refinance costs.

3. *Purchase of Insurance* – when insurance premiums are due.

4. *Guarantees and Security for Bonds* – immediately, in the event of imminent default in debt service payments on the guaranteed/secured debt; otherwise, up to the amount dedicated for the guarantee or security based on actual construction cost.

5. *Set-Asides* – generally, on an incurred cost basis after workplans have been approved by EPA (40 CFR section 35.3560(e)).

6. Subgrants awarded from the additional subsidy reserve under ARRA – when the State receives a request from a subrecipient based on incurred costs, including pre-building and building costs.

D. Davis Bacon Act

All laborers and mechanics employed by contractors and sub contractors on projects funded directly by or assisted in whole or in part by and through the Federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of Title 40, USC.

The non-ARRA portion of this program is not subject to the Davis-Bacon Act.

G. Matching, Level of Effort, Earmarking

1. Matching

a. States are required to deposit into the DWSRF from State monies an amount equal to 20 percent of each **non-ARRA** grant payment. The match is required to be made on or before the time that EPA funds are drawn. When a letter of credit (LOC) mechanism or similar financial arrangement is used for the State match, payments to the LOC account must be made proportionally on the same schedule as payments for the capitalization grant. Monies from this State match LOC must be drawn into the DWSRF as monies are drawn on the Federal automated clearinghouse account. A State may issue general obligation or revenue bonds to derive the State match. If the State provides a match in excess of the required amount, the excess balance may be banked toward subsequent match requirements (40 CFR section 35.3550(g)).

No State match deposit is required for funds provided under ARRA.

b. In the case of the State Program Management set-aside, the State must also provide an amount equal to 100 percent of said payments. A State is authorized to use the amount of State funds expended on its Public Water System Supervision (PWSS) program in fiscal year 1993 (including PWSS match) as a credit toward meeting its match requirement. The value of this credit can be up to, but not greater than, 50 percent of the amount of match that is required. A State must provide the additional funds necessary to meet the remainder of the match requirement. The sources of these additional funds can be State monies (excluding PWSS match) or documentation of in-kind services. Although required PWSS match cannot be used as a source of additional State monies, State overmatch can be used (40 CFR sections 35.3535(d)(2) and 35.3550(h)).

2. Level of Effort – Not Applicable

3. Earmarking

a. Up to 31 percent of the allotment can be earmarked for set-aside activities as follows:

(1) *Administrative Expenses* – Not to exceed 4 percent of the cumulative allotment (40 CFR section 35.3535(b)).

(2) *Technical Assistance to Small Systems* – Not to exceed 2 percent of the cumulative allotment (40 CFR section 35.3535(c)).

(3) *State Program Management* – Not to exceed 10 percent of the cumulative allotment (40 CFR section 35.3535(d)).

(4) *Local Assistance and Other State Programs* – Not to exceed 15 percent of the capitalization grant and no more than 10 percent is used on any one of the defined activities (40 CFR section 35.3535(e)).

b. A State cannot use more than 30 percent of any particular fiscal year's capitalization grant to provide subsidies in the form of principal forgiveness or negative interest rate loans to communities meeting the State's definition of disadvantaged, or communities the State expects to become disadvantaged as a result of the project (40 CFR section 35.3525(b)).

c. States may earmark DWSRF funds awarded under ARRA for the set-asides described in 3.a.(1), (2), and (3) above; however, no funds may be used for the Local Assistance set-aside described in 3.a.(4).

d. In addition, ARRA includes the following requirements:

(1) Notwithstanding the requirements of Section 1452 (f) of the SDWA, States shall use not less than 50 percent of the amount of its ARRA-funded capitalization grants to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants, or any combination of these (ARRA, Title VII).

(2) To the extent that there are sufficient eligible project applications, not less than 20 percent of the funds appropriated shall be for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities (ARRA, Title VII).

H. Period of Availability of Federal Funds

Grant payments from a capitalization grant, which increase the ceiling of funds from which a State may draw cash for eligible costs, shall begin no earlier than the quarter in which the grant is awarded, and generally end no later than eight quarters after the grant is awarded, not to exceed 12 quarters from the date of allotment of grant funds to the States. State must obligate funds for eligible projects within one year of accepting a payment. States disburse, or liquidate, grant funds for projects in accordance with construction schedules. Funds are disbursed for set-aside activities in accordance with costs being incurred under approved workplans (40 CFR sections 35.3550(e) and 35.3560).

EPA DWSRF grant funds under ARRA must be committed to eligible projects that are under contract or construction in an amount equal to the full value of the ARRA assistance agreement by February 17, 2010 (one year after enactment of ARRA). Each State must certify in writing, and forward to EPA, not later than March 1, 2010, that projects funded under its ARRA grant have met these requirements.

J. Program Income

The State may charge fees to process, manage, or review an application for Federal assistance. Such fees may be collected in an account outside the DWSRF and used to supplement administrative expenses and for other allowable purposes for which a grant is awarded under 42 USC 300j-12. However, if these fees are deposited into the DWSRF, they are subject to the uses of the DWSRF, which do not include the use of funds for administrative purposes (40 CFR section 35.3530(b)).

L. Reporting

1. Financial Reporting

a. SF-269A, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds

N. Special Tests and Provisions

1. Environmental Review Requirements

Compliance Requirement – The State must conduct reviews of the potential environmental impacts of all infrastructure projects and those set-aside activities that impact the quality of the human environment receiving assistance from the DWSRF program. A State Environmental Review Process (SERP) that is equivalent to a National Environmental Policy Act (NEPA) review must be performed on projects and activities with cumulative costs equal to the annual capitalization grant. Other projects must be reviewed under an alternative SERP (40 CFR section 35.3580).

Audit Objective – Determine whether the State performed environmental reviews before projects and activities proceeded.

Suggested Audit Procedures

a. Inquire of DWSRF management about the environmental review procedures in place.

b. Select a sample of projects that began during the year to ascertain that decisions were rendered prior to the project proceeding and were reviewed in accordance with the SERP.

2. Binding Commitments

Compliance Requirement – A "binding commitment" is a legal obligation by a State to a local recipient that defines the terms for assistance under the DWSRF program. Cumulative binding commitments must be made in an amount equal to the amount of each grant payment plus the required State match that is deposited into the DWSRF

within one year after the receipt of each grant payment. Payments for set-asides are not included in the binding commitment calculation. Binding commitment requirements are intended to help assure that the State utilizes grant funds in a timely manner. A State may initiate an adjustment to payment schedules if the State believes that it will not meet the binding commitment requirement. States generally report the total amount of their binding commitments in the Biennial Report to EPA (40 CFR section 35.3550(e)).

Audit Objective – Determine whether the State complied with the requirements to make binding commitments in an amount equal to the amount of each grant payment plus the required State match deposited into the DWSRF within one year after the receipt of each grant payment.

Suggested Audit Procedures

a. Review binding commitments in conjunction with the EPA payment schedules to ascertain if the State entered into binding commitments in an amount equal to the cumulative amount of grant payments plus the cumulative required State match deposited into the Fund, less cumulative set-aside funds, within one year after the receipt of each grant payment.

b. Test a sample of binding commitments reported by the State to verify that the amount and date agree with supporting documentation.

3. Deposits to DWSRF

Compliance Requirements – The State shall establish a separate account, or series of accounts, that is dedicated solely to providing loans and other forms of financial assistance from the DWSRF. All loan repayments (including principal and interest) interest earnings on investments, capitalization grants (except that portion the State intends to use as set-asides), State match and transfers from the CWSRF must be credited directly to the DWSRF. A State must maintain separate and identifiable accounts for the portion of the capitalization grant to be used for set-aside activities (40 CFR sections 35.3550(f) and (g)).

Transfers between the DWSRF and CWSRF must be approved by the State Governor (40 CFR section 35.3530(c)). Repayment of loans shall begin within one year after project completion, and loans shall be fully amortized over not more than 20 years after project completion, with the exception that loans to qualified disadvantaged communities can be amortized over 30 years (40 CFR sections 35.3525(a) and (b)(3)).

Audit Objectives – Determine whether the State has a separate account or series of accounts for the DWSRF program. Determine whether principal and interest payments, interest earnings on investments, set-aside funds, applicable portions of capitalization grants, and State match were credited to the appropriate accounts.

Suggested Audit Procedures

a. Ascertain if the DWSRF is a separate account, or series of accounts, dedicated solely to purposes of the program and that the set-aside funds are deposited into a separate accounts identified for the use of set-aside activities.

b. Test a sample of projects funded by the DWSRF and for which repayments were due during the year to determine that principal and interest payments were properly credited directly to the DWSRF.

c. Test a sample of loan agreements and other project records to ascertain if the repayments began within one year of project completion and the loans are scheduled for full amortization within 20 years, or 30 years for loans to disadvantaged communities.

d. Obtain a list of investments made during the year and ascertain if earnings on investments were directly credited to the DWSRF account.

e. Obtain cash draw records or reports from the EPA Regional office and ascertain if cash draws were directly credited to the DWSRF account and the appropriate State match was deposited.

f. Ascertain if a transfer of funds between the DWSRF and CWSRF programs occurred and if the transfer was approved by the State Governor.

4. DWSRF as Security for Bonds

Compliance Requirement – When funds from the DWSRF are used as security or as a source of revenue for the payment of principal and interest on revenue or general obligation bonds issued by the State, the net proceeds (i.e., funds raised from the sale of bonds less issuance costs) of the sale of such bonds must be deposited in the DWSRF (40 CFR section 35.3525(e)). Generally bond proceeds are deposited in accounts established by the bond trust indenture and identified in the Official Offering Statement. This requirement includes the situation where the State employs the cross-collateralization process permitted by the DWSRF program. Cross-collateralization allows for certain assets of both the DWSRF and the CWSRF programs to be pledged as collateral for a single or joint bond issue in proportion to the assets offered as collateral. Proportionality may be achieved at different levels of security: (1) at reserve level; (2) at loan repayment level; or (3) using an alternative structure approved by EPA (40 CFR section 35.3530(d)).

Audit Objective – Determine whether the State properly deposited and recorded the net proceeds from the sale of bonds guaranteed by the DWSRF into the DWSRF.

Suggested Audit Procedures

a. Review bond documentation and trace amounts qualifying as net proceeds to the appropriate accounts in the DWSRF.

b. Ascertain that the net bond proceeds were deposited into the DWSRF.

c. If the State has employed a cross-collateralization technique, ascertain that the net proceeds deposited into the DWSRF were proportionate to the assets offered as collateral.

5. Repayment of Set-Aside Loans

Compliance Requirement – Assistance from the Local Assistance and Other State Programs set-aside for assistance for land acquisition or conservation easements for source water protection of a public water system or for implementation of voluntary, incentive-based source water quality protection measures for a community water system must be made in the form of a loan which must be repaid within 20 years after completion of the project. Principal and interest payments on these and other set-aside loans must be placed in the DWSRF or in a separate dedicated account or accounts for use of the same set-aside activity in accordance with 40 CFR section 35.3535(e)(2).

Audit Objective – Determine whether principal and interest payments on set-aside loans directly credited to the DWSRF or a separate account to be used for the same set-aside activity.

Suggested Audit Procedures

Test a sample of set-aside loan repayments to ascertain that they were credited to the DWSRF or in a separate dedicated account or accounts for loans made under the set-asides.

IV. OTHER INFORMATION

Subrecipients

DWSRF amounts are awarded by EPA to States as grants. The States then makes subawards in the form of loans to its subrecipients. Therefore, in determining the amount of Federal funds expended to be reported on the Schedule of Expenditures of Federal Awards (SEFA), subrecipients receiving DWSRF loans should include project expenditures incurred under these loans during the audit period as provided in OMB Circular A-133 §__205(a). These are subawards—not direct Federal loans—and, therefore, neither OMB Circular A-133 §__.205(b) nor §__.205(d) applies when calculating the amount of Federal funds expended.

DEPARTMENT OF ENERGY

CFDA 81.041 STATE ENERGY PROGRAM

I. PROGRAM OBJECTIVES

The objective of the State Energy Program (SEP) is to work with the States, Territories, and the District of Columbia (hereinafter "States") to increase the use of energy efficiency and renewable energy across all sectors of the economy nationwide. States use SEP funds to design and implement State-wide energy plans and programs that best meet their individual energy needs. SEP also provides a wide range of technical assistance and support to the States to increase key skills and enhance their ability to design and carry out effective programs.

II. PROGRAM PROCEDURES

Program Administration

To be eligible for a SEP award, a State must submit a SEP State Plan to the Department of Energy (DOE). The State Plan comprises three elements:

- A Master File, which includes information on the State's overall strategic energy plan, the key elements, goals, and objectives of that plan, and how specific SEP activities fit into that overall plan. It must also include a plan for State subrecipient monitoring.

- An Annual File, or application, which includes a description of the energy efficiency and renewable energy programs and activities that the State intends to carry out during the year, with budget information and milestones for each project/activity, and an overall budget broken out by object class.

- A State-wide Energy Emergency Plan, detailing implementation strategies for dealing with energy emergencies.

Upon approval of the annual application, States receive funds from DOE and proceed to implement the programs therein. If States indicate in their annual application the intent to pass-through SEP funds, they are authorized to pass through those funds to a variety of subrecipients including, but not limited to, homeowners, businesses, local governments, institutions, and other State agencies.

In addition to Federal appropriated funds, other sources of funding under this program may include oil overcharge funds, also known as petroleum violation escrow (PVE) funds. If PVE funds are allocated to a State SEP Program, the State is required to follow all program requirements as if those were SEP funds.

Source of Governing Requirements

SEP is authorized by Title III of Pub. L. No. 94-163, the Energy Policy and Conservation Act of 1975, as amended (42 USC 6321-6326). **Pub. L. No. 111-5, the American Recovery and Reinvestment Act of 2009 (ARRA), provided additional funds for SEP, which were made available to States in grant agreements separate from their regular grant allocations.**

SEP's implementing program regulations are found at 10 CFR part 420.

Availability of Other Program Information

Additional details on SEP requirements (ARRA and non-ARRA) can be found in the following State Energy Program Funding Opportunity Announcements:

1. DE-FOA-0000052 (ARRA)
   http://www1.eere.energy.gov/wip/pdfs/sep_arra_foa.pdf

2. DE-FOA-0000231 (non-ARRA)
   http://www1.eere.energy.gov/wip/pdfs/de_foa_0000251.pdf

SEP also issues periodic Program Notices which outline new policies and requirements. Program Notices are available on the web at: http://www1.eere.energy.gov/wip/guidance.html.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed* (for all SEP funds, both ARRA and regular appropriations)

   a. A broad range of energy efficiency and renewable energy activities are eligible for funding under SEP. The following types of activities are allowable:

      (1) mandatory lighting efficiency standards for public buildings;

      (2) carpool, vanpool, and public transportation initiatives;

      (3) energy efficient procurement procedures;

      (4) mandatory thermal efficiency standards for new and renovated buildings;

(5) right turn on red, and left turn from one-way streets onto one-way streets;

(6) coordination among local, state and federal energy efficiency, renewable energy and public transportation programs;

(7) public education to promote energy conservation;

(8) transportation efficiency, such as accelerating use of alternative transportation fuels and hybrid vehicles;

(9) encouraging use of energy efficiency technologies in industry, buildings, transportation and utilities;

(10) financing for energy efficiency and renewable energy capital investments and programs, including loans, performance contracting, rebates and grants;

(11) energy audits for buildings and industrial facilities (including industrial processes) within the state;

(12) adoption of integrated energy plans which provide for periodic evaluation of a state's energy needs, available energy resources and energy costs;

(13) promoting the use of adequate and reliable energy supplies, including greater energy efficiency, that meet applicable safety, environmental, and policy requirements at the lowest cost;

(14) energy efficiency in residential housing;

(15) identifying and educating consumers about deceptive practices related to implementation of energy efficient and renewable resource energy measures;

(16) reducing utility companies' peak demand;

(17) promoting energy efficiency as an integral part of economic development and environmental planning conducted by state and local governments or utilities;

(18) training and education for building designers and contractors to promote buildings that are energy efficient;

(19) building retrofit standards and regulations;

(20) feasibility studies of renewable energy and energy efficiency technologies;

(21) partnerships with other state agencies to leverage additional funds, such as public benefit funds and state and local investments in Clean Air Act compliance; and

(22) collaborative programs for energy efficiency and renewable energy technologies that link a state's energy and environmental objectives (10 CFR sections 420.15 and 420.17).

b. Loan repayments and interest earned on loans can be used **only** on activities that are included in the state's annual application (10 CFR section 420.18(d)).

2. *Activities Unallowed*

Neither ARRA nor non-ARRA SEP funds may be used for the following:

a. Construction, such as construction of mass transit systems and exclusive bus lanes, or for construction or repair of buildings or structures;

b. Purchase of land, a building or structure or any interest therein;;

c. Subsidizing fares for public transportation;

d. Subsidizing utility rate demonstrations or State tax credits for energy conservation measures or renewable energy measures;

e. The conduct of, or purchase equipment to conduct, research, development or demonstration of energy efficiency or renewable energy techniques and technologies not commercially available;

f. Rebates in excess of 50 percent of the total cost of purchasing and installing materials and equipment; or

g. Loan guarantees or loan forgiveness (10 CFR section 420.18).

D. Davis-Bacon Act

The SEP authorizing statute contains no Davis-Bacon Act requirements; therefore, SEP awards funded from annual appropriations are exempt from the requirements of the Davis-Bacon Act**. However, ARRA-funded SEP building retrofit activities are subject to Davis-Bacon Act requirements.**

G. Matching, Level of Effort, Earmarking

1. Matching

States must provide a 20 percent match for their SEP grants, either in cash or in-kind (10 CFR section 420.12). **Pursuant to ARRA Title IV, Section 410 (b), the matching requirement is waived for ARRA funds.**

2. Level of Effort –

Not Applicable

3. Earmarking

a. **Not more than 10 percent of ARRA Federal SEP funds in a State's SEP ARRA grant may be used for administrative expenses.** No percentage limit is specified for regular SEP appropriations (DE-FOA-0000052).

b. Not more than 50 percent of Federal SEP funds in a State's SEP grant may be used for the purchase and installation of equipment and materials for energy efficiency and renewable energy. (This provision does not apply to PVE funds **or ARRA funds**.) (10 CFR section 420.18(e); DE-FOA-0000052)

c. Not more than 20 percent of Federal SEP funds in a State's SEP grant may be used to purchase office supplies, library materials, or otherwise allowable types of equipment (10 CFR section 420.18(b)). (This provision does not apply to PVE funds; **ARRA funds are addressed under 3.a. above**).

H. Period of Availability of Federal funds

1. SEP grants are awarded for a 5-year period and are amended each year. States are permitted to carry forward unobligated funds from one year to the next within the 5-year grant period, provided the subsequent annual application includes activities to be funded with those unobligated funds.

2. **ARRA SEP funds must be expended within 36 months of the effective date of the award (DE-FOA-0000052).**

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* **–** Not Applicable

d. SF-272, *Federal Cash Transactions Report* **–** Not Applicable

e. SF-425, *Federal Financial Report* **–** Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable for ARRA SEP funds

5. Subaward Reporting under the Transparency Act – Applicable for non-ARRA SEP funds.

DEPARTMENT OF ENERGY

CFDA 81.042 WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

I. PROGRAM OBJECTIVES

The objective of the Weatherization Assistance for Low-Income Persons (WAP) program is to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total expenditures on energy, and improve their health and safety. WAP has a special interest in addressing these needs for low-income persons who are particularly vulnerable, such as the elderly, disabled persons, and families with children, as well as those with high energy usage and high energy burdens.

II. PROGRAM PROCEDURES

Program Administration

States may submit an application and plan to the Department of Energy (DOE). The submission describes the proposed weatherization projects and contains a budget, a production schedule of dwelling units to be weatherized with grant funds, a monitoring plan, a training and technical assistance plan, rental procedures, and a health and safety plan. Upon approval, States receive funds from DOE and may enter into sub-agreements with local administering agencies having approved plans. If a State does not submit an application or if the State plan is rejected, a local applicant may submit a plan to carry out weatherization projects. Section 411(c) of the Energy Independence and Security Act of 2007 added Puerto Rico and the U.S. Territories to the definition of "State." As a result, beginning in Fiscal Year 2009, DOE will make WAP awards to American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. References to "State" in this program supplement include these entities.

In addition to Federal appropriated funds, other sources of funding under this program may include oil overcharge funds.

Source of Governing Requirements

WAP is authorized under Title IV, Part A, of the Energy Conservation and Production Act (Act), as amended (42 USC 6861 through 6872), **including amendments made by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5). ARRA also provided additional funding for WAP, which was made available to recipients in grant agreements separate from their regular annual allocations.** Implementing regulations are published at 10 CFR part 440.

Availability of Other Program Information

Program notices are available on the Internet at http://www.waptac.org.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities allowed include only:*

   a. The cost of purchase and delivery of weatherization materials (10 CFR section 440.18(d)(1)). Funds may only be expended on weatherization materials listed in Appendix A of 10 CFR part 440 or as approved by DOE.

   b. Labor costs in accordance with 10 CFR section 440.19.

   c. Transportation of weatherization materials, tools, and equipment, and work crews to a storage site and/or to the site of weatherization work (10 CFR section 440.18(d)(3)).

   d. Maintenance, operation, and insurance of vehicles used to transport weatherization materials (10 CFR section 440.18(d)(4)).

   e. Maintenance of tools and equipment (10 CFR section 440.18(d)(5)).

   f. Purchase or annual lease of tools, equipment and/or vehicles, except that any purchase of vehicles shall be referred to DOE in every instance (10 CFR section 440.18(d)(6)).

   g. Employment of on-site supervisory personnel (10 CFR section 440.18(d)(7)).

   h. Storage of weatherization materials, tools, and equipment (10 CFR section 440.18(d)(8)).

   i. The costs of incidental repairs to make the installation of weatherization materials effective (10 CFR section 440.18(d)(9)).

   j. The cost of liability insurance for weatherization projects for personal injury and property damage (10 CFR section 440.18(d)(10)).

   k. The cost of carrying out low cost/no cost weatherization assistance (10 CFR section 440.20).

   l. The cost of WAP financial audits in accordance with 10 CFR section 440.23.

m. Administrative costs (10 CFR section 440.18(d)(13)).

n. The costs of eliminating health hazards, necessary to ensure the safe installation of weatherization materials (10 CFR section 440.18(d)(15)).

o. Leveraging activities, as specified in leveraging section of the State Plan and grant agreement (10 CFR section 440.18(d)(14)). Leveraging entails a State obtaining additional program-targeted non-Federal or in-kind contributions as a result of WAP-funded activities. Leveraging should be limited to contributions that can be clearly attributed to a State's weatherization activities, and that are used to augment those activities. As of Program Year (PY) 2007, the maximum percentage of Weatherization funds that can be diverted for leveraging activities is 15 percent of the grantee's total allocation.

p. Expenditures for labor, weatherization materials, and related matters for a renewable energy system, as defined in 10 CFR section 440.3, shall not exceed an average of $3,000 per dwelling unit or adjusted amount (as provided in III.B below) (42 USC 6865(c)(4); 10 CFR section 440.18(b)).

2. *Unallowable activities*

a. Funds shall not be used to weatherize a dwelling unit which is designated for acquisition or clearance by a Federal, State or local program within 12 months from the date of the weatherization (10 CFR section 440.18(f)(1)).

b. Funds may not be used to install or otherwise provide weatherization materials for a dwelling unit weatherized previously with grant funds, unless:

(1) The weatherization activities may be considered "low cost/no cost" as described in 10 CFR section 440.20: inexpensive weatherization materials are used; no labor paid with funds provided is used to install weatherization materials referred to here; and a maximum of 10 percent of the amount allocated to a subgrantee, not to exceed $50 in materials costs per dwelling unit, is expended (10 CFR section 440.18(f)(2)(i));

(2) Such a dwelling has been damaged by fire, flood or other act of God and the repair of the damage is not paid for by insurance (10 CFR section 440.18(f)(2)(ii)); or

(3) The dwelling unit was weatherized under the Act or other Federal program during the period September 30, 1975 through September 30, 1985 (10 CFR section 440.18(f)(2)(iii)).

B. Allowable Costs/Cost Principles

Expenditures shall not exceed an average dollar amount per dwelling unit weatherized in the State. This number is adjusted annually by DOE and appears in the grant agreement (10 CFR section 440.18(c)(1)).

D. Davis-Bacon Act

The WAP statute contains no Davis-Bacon Act requirements; therefore, WAP awards funded from annual appropriations are exempt from the requirements of the Davis-Bacon Act; **however, ARRA-funded WAP construction activities are subject to Davis-Bacon Act requirements.**

E. Eligibility

1. Eligibility for Individuals

a. A dwelling unit is eligible for weatherization assistance if it is occupied by a family unit:

(1) Whose income is at or below 200 percent of the poverty level determined in accordance with the criteria established by the Director of the Office of Management and Budget;

(2) That contains a member who has received cash assistance payments under Title IV or XVI of the Social Security Act or applicable State or local law at any time during the 12-month period preceding the determination of eligibility for weatherization assistance; or

(3) If the State elects, is eligible for assistance under the Low-Income Home Energy Assistance Act of 1981, provided that such basis is at least 200 percent of the poverty level (42 USC 6862(7), **as amended by Section 407(a), ARRA, 123 State 146**).

The poverty guidelines are issued each year in the *Federal Register* and HHS maintains a page on the Internet which provides the poverty guidelines (http://aspe.hhs.gov/poverty/index.shtml).

b. In addition, the following requirements apply:

(1) Written permission has been obtained from the owner of the dwelling or his/her agent (10 CFR section 440.22(b)(1)).

(2) Not less than 66 percent (50 percent for duplexes and four-unit buildings and certain types of eligible large multifamily buildings) of the dwelling units in the building:

(a) Are eligible dwelling units in the manner defined in III.E.1.a, Eligibility for Individuals, above (10 CFR section 440.22(b)(2)(i)); or

(b) Will become eligible within 180 days under a Federal, State, or local program for rehabilitating the building or making similar improvements to the building (10 CFR section 440.22(b)(2)(ii)).

(3) If the dwelling to be weatherized is rented, a formal agreement between landlord and tenant has been reached addressing issues of eviction from and sale of property receiving weatherization materials (10 CFR section 440.22(c)).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

A subrecipient is eligible to provide weatherization services under WAP provided that:

a. It is a public or non-profit entity, or a Community Action Agency (CAA) (i.e., a private corporation or public agency established under the Economic Opportunity Act of 1964, which is authorized to administer funds received from Federal, State, or local entities to assess, design, operate, finance, and oversee antipoverty programs) (10 CFR section 440.15(a)(1)); and

b. It has been selected as a participant in the weatherization program on the basis of public comment received during a public hearing (10 CFR section 440.15(a)(2)).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2. Level of Effort – Not Applicable

3. Earmarking

a. Not more than 10 percent of funds may be used in total or in part for administrative costs. A State shall not expend more than 5 percent for such administrative costs, with at least 5 percent going to subrecipients for administration. Subrecipients may spend no more than 10 percent of the grant for administration; however, for subrecipients receiving grants of less than $350,000, a State may permit that entity to expend up to an

additional 5 percent of its subgrant for administrative purposes (10 CFR section 440.18(e)).

b. Not more than 20 percent of the funds may be used to provide, directly or indirectly, training and/or technical assistance to any grantee or subgrantee (42 USC 6866, **as amended by Section 407(d), ARRA, 123 Stat 146**; 10 CFR section 440.23(e)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement and Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds

DEPARTMENT OF ENERGY

CFDA 81.128 ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM

I. PROGRAM OBJECTIVES

The Energy Efficiency and Conservation Block Grant (EECBG) Program, funded for the first time by the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) directs the Department of Energy (DOE) to assist State, local, and tribal governments in implementing strategies to: (1) reduce fossil fuel emissions created as a result of activities within the jurisdiction of eligible entities in a manner that is environmentally sustainable and, to maximum extent practicable , maximize benefits for local and regional communities; (2) reduce total energy use of the eligible entities; and (3) improve energy efficiency in the transportation, building, and other appropriate sectors.

II. PROGRAM PROCEDURES

Program Administration

The EECBG program is structured similarly to the Community Development Block Grant program, which is administered by the Department of Housing and Urban Development (HUD). Over 2,300 State, local, and tribal governments are eligible for direct formula grants from DOE. Competitive grants are also available under the program.

Funding for the EECBG program under ARRA totals approximately $3.2 billion. Of this amount, approximately $2.7 billion have been awarded through formula grants. In addition, approximately $454 million have been allocated through competitive grants. Cities, counties, and tribes that are ineligible for direct formula grants may be able to receive funds from their respective State Energy Offices through subawards.

The competitive grants under the EECBG program are awarded in two topic areas. Topic 1, the Retrofit Ramp-up program applies to programs of $5 to $75 million. DOE is specifically targeting these funds for high-impact awards that will enable large scale programs of ongoing energy efficiency retrofits on residential, commercial, industrial, and public buildings in geographically focused areas. Topic 2, the General Innovation Fund, is based on the EECBG statute, which provides that cities, counties, and tribes that are ineligible for direct formula grants may apply for competitive funds. Topic 2 awards generally are for projects of $1 to $5 million.

Source of Governing Requirements

DOE's authorization for this program is set forth in Title V, Subtitle E of the Energy Independence and Security Act (EISA) (Pub. L. No.110-140), 42 USC 17152 through 17158. ARRA provided funding for the program.

Availability of Other Program Information

For the formula grant funded under the Recovery Act, the Funding Opportunity Announcement (FOA) (Number DE-FOA-0000013) for the EECBG Program is available at http://www1.eere.energy.gov/wip/pdfs/eecbg_foa.pdf

The FOA for the competitive grant funded under the Recovery Act (Number DE-FOA-0000148) can be found at http://www1.eere.energy.gov/wip/pdfs/eecbg_competitive_foa148_amendment3.pdf

In addition to the two FOAs referenced above, EECBG Program Notice 10-011, dated April 21, 2010, http://www1.eere.energy.gov/wip/pdfs/eecbg_recovery_act_program_guidance_10-011.pdf , provides additional details on ARRA funding under this program.

Additional EECBG Program information is available on the Internet at http://www1.eere.energy.gov/wip/guidance.html

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Activities allowed for both the formula and competitive grants include the following:

1. Developing/implementing an energy efficiency and conservation strategy;

2. Retaining technical consultant services to assist in the development of such a strategy;

3. Conducting residential and commercial building energy audits;

4. Establishing financial incentive programs for energy efficiency improvements;

5. Providing subgrants to nonprofit organizations and governmental agencies to perform energy efficiency retrofits (see III.E.3, Eligibility for Subrecipients, and III.G.3, Earmarking);

6. Developing/implementing energy efficiency and conservation programs for buildings and facilities within the jurisdiction of the eligible entity;

7. Developing/implementing programs to conserve energy used in transportation;

8. Developing/implementing building codes and inspection services to promote building energy efficiency;

9. Applying/implementing energy distribution technologies that significantly increase energy efficiency;

10. Increasing participation and efficiency rates for material conservation programs, including source reduction, recycling, and recycled content procurement programs that lead to increases in energy efficiency;

11. Purchasing/implementing technologies to reduce, capture, and use methane and other greenhouse gases generated by landfills or similar sources;

12. Replacing traffic signals and street lighting with energy efficient technologies;

13. Developing, implementing, and installing on or in any government building of the eligible entity of onsite renewable technology that generates electricity from renewable resources; and

14. Any other activity as determined by the Secretary of Energy in consultation with the Secretaries of Transportation and Housing and Urban Development and the Administrator of the Environmental Protection Agency (Note that the authority under this category has only been used to determine as eligible the use of funds to leverage public and private sector funds in support of activities identified as eligible uses under the EECBG authority.) (42 USC 1751).

D. Davis-Bacon Act

All laborers and mechanics employed by any contractor or subcontractor of the grantee during any construction, alteration, or repair activity funded, in whole or in part, by the grant shall be paid wages at rates not less than the prevailing wages for similar construction activities in the locality, as determined by the Secretary of Labor, in accordance with sections 3141 through 3144, 3146, and 3147 of Title 40, United States Code (42 USC 17155 and ARRA, Section 1606).

E. Eligibility

1. Eligibility for Recipients – Not Applicable

2. Eligibility of Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

a. *Cities*

For the purposes of the EECBG Program, "city" includes a city-equivalent unit of local government as defined by the U.S. Census of Governments. For example, a city-equivalent unit of local government such as town, village, or other municipality shall be considered eligible if it meets the

required population thresholds. Consolidated city-county governments will be considered as cities.

Cities that are eligible for direct formula grants from the DOE are those that have a population of at least 35,000, or that are one of the 10 highest populated cities of the state in which the city is located. In states that have incorporated eligible municipalities (villages) within the boundaries of other incorporated eligible municipalities (towns), the village population will be subtracted from the town's population.

Cities that do not meet the eligibility requirements for direct formula grants from DOE may be eligible for formula program funds through subgrants (42 USC 17154(a)(5)).

b. *Counties*

For the purposes of the EECBG Program, "county" includes county-equivalent units of local government as defined by the U.S. Census of Governments. Counties are eligible for direct formula grants from the DOE if the county population is at least 200,000 or if the county is one of the 10 highest populated counties of the state in which it is located. County populations calculated for eligibility for direct formula grants from the DOE do not include the populations of any and all cities within them that are eligible for direct formula grants from the DOE. Counties that do not meet the eligibility requirements for direct formula grants from DOE may be eligible for formula program funds through subgrants (42 USC 17154(a)(5)).

c. *Non-governmental entities*

Nongovernmental organizations are eligible to receive subgrants for the purpose of assisting in the implementation of the energy efficiency and conservation strategy of the eligible unit of local government or Indian tribe (42 USC 17154(a)(5)).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2. Level of Effort – Not Applicable

3. Earmarking

a. A State shall use not less than 60 percent of the amount received to provide subgrants to units of local government in the State that are not eligible units of local government for direct DOE funding (42 USC 17155(c)(1)(A)).

b. A State may use not more than 10 percent of amounts provided under the program for administrative expenses (42 USC 17155(c)(4)).

c. Of amounts provided by DOE directly to an eligible unit of local government or Indian tribe under the EECBG formula program, the recipient may use—

(1) for administrative expenses, excluding the cost of meeting the program's reporting requirements, not more than the greater of 10 percent of the value of the award or $75,000;

(2) for the establishment of revolving loan funds, an amount equal to the greater of 20 percent of the value of the award or $250,000; and

(3) for subgrants to non-governmental organizations, the greater of 20 percent of the amount of the award or $250,000 (42 USC 17155(b)(2)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* **–** Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement and Construction Programs* **–** Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting Under the Transparency Act – Not Applicable

DEPARTMENT OF EDUCATION

CROSS-CUTTING SECTION

INTRODUCTION

This section contains compliance requirements that apply to more than one Department of Education (ED) program either because the program was authorized under the Elementary and Secondary Education Act of 1965 (ESEA), or the program is subject to the General Education Provisions Act (GEPA), or both. **Programs for which funds were appropriated under the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) are included in this Cross-Cutting Section. Each ARRA program is identified by a separate CFDA number specific to the ARRA funding, and is clustered with a corresponding CFDA number for the program as operated under the regular (non-ARRA) appropriation.** The compliance requirements in this Cross-Cutting Section reference the applicable programs in Part 4, Agency Compliance Requirements. Similarly, the applicable programs in Part 4 reference this Cross-Cutting Section.

CFDA No. Program Name	Listed as
ESEA Programs	
84.010 Title I Grants to Local Educational Agencies (LEAs)	Title I, Part A
84.389 Title I Grants to Local Educational Agencies (LEAs), Recovery Act	
84.011 Migrant Education—State Grant Program	MEP
84.186 Safe and Drug-Free Schools and Communities—State Grants	SDFSCA
84.282 Charter Schools	CSP
84.287 Twenty-First Century Community Learning Centers	21st CCLC
84.298 State Grants for Innovative Programs	Title V, Part A
84.318 Education Technology State Grants	Ed Tech
84.386 Education Technology State Grants, Recovery Act	
84.365 English Language Acquisition Grants	Title III, Part A
84.366 Mathematics and Science Partnerships	MSP
84.367 Improving Teacher Quality State Grants	Title II, Part A
84.377 School Improvement Grants	SIG
84.388 School Improvement Grants, Recovery Act	

Other Programs

84.002 Adult Education—State Grant Program	Adult Education
84.027 Special Education—Grants to States (IDEA, Part B)	IDEA
84.391 Special Education—Grants to States (IDEA, Part B), Recovery Act	
84.173 Special Education—Preschool Grants (IDEA Preschool)	
84.392 Special Education—Preschool Grants (IDEA Preschool), Recovery Act	
84.042 TRIO—Student Support Services	TRIO Cluster
84.044 TRIO—Talent Search	
84.047 TRIO—Upward Bound	
84.066 TRIO—Educational Opportunity Centers	
84.217 TRIO—McNair Post-Baccalaureate Achievement	
84.048 Career and Technical Education – Basic Grants to States (Perkins IV)	CTE
84.126 Rehabilitation Services – Vocational Rehabilitation Grants to States	Vocational Rehabilitation
84.390 Rehabilitation Services – Vocational Rehabilitation Grants to States, Recovery Act	
84.181 Special Education—Grants for Infants and Families with Disabilities	IDEA, Part C
84.393 Special Education—Grants for Infants and Families with Disabilities, Recovery Act	
84.394 State Fiscal Stabilization Fund – Education State Fund	**SFSF ESF**
84.397 State Fiscal Stabilization Government Services Fund	**SFSF GSF**
84.395 Race to the Top	RTT
84.410 Education Jobs Fund	Ed Jobs

No Child Left Behind Act

The ESEA was amended January 8, 2002 by the No Child Left Behind Act of 2001 (NCLB)(Pub. L. No. 107-110).

Waivers and Expanded Flexibility

Under Title IX of the ESEA, State educational agencies (SEAs), Indian tribes, local educational agencies (LEAs), and schools through their LEA may request waivers from ED of many of the statutory and regulatory requirements of programs authorized in ESEA. In addition, some States may have been granted authority to grant waivers of Federal requirements under the Education Flexibility Partnership Act of 1999. **Auditors should be aware that, because of ARRA, more waivers than usual may have been requested.** For example, ED has issued guidance inviting SEAs to apply for waivers of certain Title I, Part A (CFDA 84.010 and CFDA 84.389) requirements. A list of SEAs receiving these waivers is available at http://www.ed.gov/nclb/freedom/local/flexibility/waiverletters2009/index.html#ri. For a list of all the waivers the Department granted in FY 2009, some of which extend to 2010-2011 school year, see http://www2.ed.gov/legislation/FedRegister/other/2010-3/091610c.pdf. Auditors should ascertain from the audited SEAs and LEAs whether the SEA or the LEA or its schools are operating under any waivers.

I. PROGRAM OBJECTIVES

The ESEA, as amended by the NCLB, provides for a comprehensive overhaul of Federal support for education, and restructures how these programs provide services. ESEA programs in this Supplement to which this section applies are shown above. Generally these requirements are applicable for fiscal years beginning after June 30, 2002.

Under the NCLB, Federal education programs authorized in the ESEA are designed to work in concert with each other, rather than separately. By emphasizing program coordination, planning, and service delivery among Federal programs and enhancing integration with State and local instructional programs, the ESEA reinforces comprehensive State and local educational reform efforts geared toward ensuring that all children can meet challenging State standards regardless of their background or the school they attend.

Program objectives for non-ESEA programs covered by this cross-cutting section and additional information on program objectives for the ESEA programs are set forth in the individual program sections of this Supplement.

II. PROGRAM PROCEDURES

Plans for ESEA Programs

An SEA must either develop and submit separate, program-specific individual State plans to ED for approval as provided in individual program requirements outlined in the ESEA or submit, in accordance with section 9302 of the ESEA, a consolidated plan to ED for approval. Consolidated plans will provide a general description of the activities to be carried out with ESEA funds. Subgrants to LEAs and other educational service agencies and amounts to be used for State activities are often set by law for ESEA programs. However, SEAs have discretion in using funds available for State activities.

LEAs also have the choice in many cases of submitting individual program plans or a consolidated plan to the SEA to receive program funds. SEAs with approved consolidated State plans may require LEAs to submit consolidated plans.

Unique Features of ESEA Programs That May Affect the Conduct of the Audit

Consolidation of administrative funds (In addition to the compliance requirement in III.A.1, see IV, "Other Information.")

SEAs and LEAs (with SEA approval) may consolidate Federal funds received for administration under many ESEA programs, thus eliminating the need to account for these funds on a program-by-program basis. The amount from each applicable program set aside for State consolidation may not be more than the percentage, if any, authorized for State administration under that program. The amount set aside under each covered program for local consolidation may not be more than the percentage, if any, authorized for local administration under that program. Expenditures using consolidated administrative funds may be charged to the programs on a first in/first out method, in proportion to the funds provided by each program, or another reasonable manner.

Schoolwide Programs (In addition to the compliance requirement in III.A.2, see IV, "Other Information.")

Eligible schools are able to use their Title I, Part A funds, in combination with other Federal, State, and local funds, in order to upgrade the entire educational program of the school and to raise academic achievement for all students. Except for some of the specific requirements of the Title I, Part A program, Federal funds that a school consolidates in a schoolwide program are not subject to most of the statutory or regulatory requirements of the programs providing the funds as long as the schoolwide program meets the intent and purpose of those programs. The Title I, Part A requirements that apply to schoolwide programs are identified in the Title I, Part A program-specific section. If a school does not consolidate Federal funds with State and local funds in its schoolwide program, the school has flexibility with respect to its use of Title I, Part A funds, consistent with section 1114 of ESEA (20 USC 6314), but it must comply with all statutory and regulatory requirements of the other Federal funds it uses in its schoolwide program

Transferability (In addition to the compliance requirement in III.A.3, see III.G.3.b, "Matching, Level of Effort, Earmarking – Earmarking," and IV, "Other Information.")

SEAs and LEAs (with some limitations) may transfer funds from one or more applicable programs to one or more other applicable programs, or to Title I, Part A. Transferred funds are subject to all of the requirements, set-asides, and limitations of the programs into which they are transferred.

Small Rural Schools Achievement Alternative Use of Funds (In addition to the compliance requirement in III.A.4, see IV, "Other Information.")

Eligible LEAs may, after notifying the SEA, spend all or part of the funds they receive under four applicable programs for local activities authorized under one or more of seven applicable programs.

General and Program-Specific Cross-Cutting Requirements

The requirements in this cross-cutting section can be classified as either general or program-specific. General cross-cutting requirements are those that are the same for all applicable programs but are implemented on an entity-level. These requirements need only be tested once to cover all applicable major programs. The general cross-cutting requirements that the auditor only need test once to cover all applicable major programs are: III.G.2.1, "Level of Effort-Maintenance of Effort (SEAs/LEAs);" III.L.3, "Special Reporting;" and, III.N, "Special Tests and Provisions" (III.N.2, "Schoolwide Programs;" and III.N.3, "Comparability"). Program-specific cross-cutting requirements are the same for all applicable programs, but are implemented at the individual program level. These types of requirements need to be tested separately for each applicable major program. The compliance requirement in III.N.1, "Participation of Private School Children," may be tested on a general or program-specific basis.

Program procedures for non-ESEA programs covered by this cross-cutting section and additional information on program procedures for the ESEA programs are set forth in the individual program sections of this Supplement.

Availability of Other Program Information

The ESEA, as reauthorized by the NCLB, is available with a hypertext index on the Internet at http://www.ed.gov/policy/elsec/leg/esea02/index.html. A number of documents contain guidance applicable to the cross-cutting requirements in this Supplement. They include:

- Guidance on the Transferability Authority (June 8, 2004) (http://www.ed.gov/programs/transferability/finalsummary04.doc);

- Guidance on the Rural Education Achievement Program (REAP) (June 2003) (http://www.ed.gov/policy/elsec/guid/reap03guidance.doc);

- State Educational Agency Procedures for Adjusting Basic, Concentration, Targeted, and Education Finance Incentive Grant Allocations Determined by the U.S. Department of Education (May 23, 2003) (http://www.ed.gov/programs/titleiparta/seaguidanceforadjustingallocations.doc);

- How Does a State or Local Educational Agency Allocate Funds to Charter Schools that Are Opening for the First Time or Significantly Expanding Their Enrollment? (December 2000) (http://www.ed.gov/policy/elsec/guid/cschools/cguidedec2000.doc);

- Title I Services to Eligible Private School Children (October 17, 2003) (http://www.ed.gov/programs/titleiparta/psguidance.doc);

- Title IX, Part E Uniform Provisions Subpart 1—Private Schools: Equitable Services to Eligible Private School Students, Teachers, and Other Educational Personnel (March 2009) (http://www.ed.gov/policy/elsec/guid/equitableserguidance.doc);

- Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, not Supplant; Carryover; Consolidating Funds in Schoolwide Programs; and Grantback Requirements (February 2008) (http://www.ed.gov/programs/titleiparta/fiscalguid.doc); and

- Designing Schoolwide Programs (March 2006) (http://www.ed.gov/policy/elsec/guid/designingswpguid.doc).

A number of documents contain guidance applicable to the cross-cutting requirements affected by ARRA. They include:

- **American Recovery and Reinvestment Act of 2009: State Fiscal Stabilization Fund (March 7**, 2009) **(http://www.ed.gov/policy/gen/leg/recovery/factsheet/stabilization-fund.html);**

- **Guidance on the State Fiscal Stabilization Fund Program (April 2009) (http://www.ed.gov/programs/statestabilization/guidance.pdf);**

- Guidance Modification: Funds Provided to Public Institutions of Higher Education for Student Financial Assistance Programs (July 6, 2009) (http://www2.ed.gov/programs/statestabilization/applicant.html)

- Guidance for Grantees and Auditors, State Fiscal Stabilization Program (December 24, 2009) (http://www2.ed.gov/programs/statestabilization/applicant.html)

- **American Recovery and Reinvestment Act of 2009: Title I, Part A Funds for Grants to Local Education Agencies (April 2009) (http://www.ed.gov/policy/gen/leg/recovery/factsheet/title-i.html);**

- **Guidance: Funds under Title I, Part A of the Elementary and Secondary Education Act of 1965 Made Available Under The American Recovery and Reinvestment Act of 2009 (Revised March 2010) (**http://www2.ed.gov/policy/gen/leg/recovery/guidance/title-i-rev-201003.pdf**)**

- **Using Title I, Part A ARRA Funds for Grants to Local Educational Agencies to Strengthen Education, Drive Reform, and Improve Results for Students (September 2009) (http://www.ed.gov/policy/gen/leg/recovery/guidance/titlei-reform.pdf);**

- **Non-Regulatory Guidance on Title I, Part A Waivers (July 2009) (http://www.ed.gov/programs/titleiparta/title-i-waiver.doc).**

- **American Recovery and Reinvestment Act of 2009: IDEA Recovery Funds for Services to Children and Youths with Disabilities (IDEA, Part B) (April 1, 2009)** (**http://www.ed.gov/policy/gen/leg/recovery/factsheet/idea.html**);

- Guidance: Funds for Part B of the Individuals with Disabilities Education Act, Made Available Under the American Recovery and Reinvestment Act of 2009 (Revised July 1, 2009) (**http://www.ed.gov/policy/gen/leg/recovery/guidance/idea-b.doc);**

- **Final notice of adjustments to Title I, Part A and IDEA, section 611 statutory caps on State administration for Federal fiscal year (FY) 2009 (74 FR 55215 (October 27, 2009) (http://edocket.access.gpo.gov/2009/pdf/E9-25839.pdf**);

- **American Recovery and Reinvestment Act of 2009: IDEA Recovery Funds for Services to Infants and Toddlers with Disabilities (IDEA, Part C) (April 1, 2009) (http://www.ed.gov/policy/gen/leg/recovery/factsheet/idea-c.html);**

- **American Recovery and Reinvestment Act of 2009: Using IDEA Part C ARRA Funds to Improve Outcomes for Infants and Toddlers with Disabilities and their Families (September 1, 2009) (www.ed.gov/policy/gen/leg/recovery/guidance/idea-c-reform.pdf); and**

- **Guidance: Enhancing Education through Technology (Ed Tech) Program Funds made Available under the American Recovery and Reinvestment Act of 2009 (July 2009)** (http://www.ed.gov/programs/edtech/guidance-arra.doc)

- Guidance on School Improvement Grants Under Section 1003(g) of the Elementary and Secondary Education Act of 1965 (Revised June 29, 2010) (http://www2.ed.gov/programs/sif/sigguidance05242010.pdf)

- Guidance on Fiscal Year 2010 School Improvement Grants Under Section 1003(g) of the Elementary and Secondary Education Act of 1965 (November 1, 2010) (http://www2.ed.gov/programs/sif/legislation.html#guidance)

A number of documents contain guidance applicable to the cross-cutting requirements affected by the Education Jobs Fund program (Ed Jobs). They include:

- Initial Guidance for States on the Education Jobs Fund Program (August 13, 2010) (http://www2.ed.gov/programs/educationjobsfund/governors-ed-jobs-guidance-final-8-13-10.doc)

- Guidance – When to Treat Expenditures of Education Jobs Funds as State or Local Funds for Purposes of the Fiscal Requirements under Title I, Part A of the Elementary and Secondary Education Act of 1965 (November 2010) (http://www2.ed.gov/programs/titleiparta/fiscalejfguidance.doc)

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Further, if there has been a transfer of funds to a consolidated administrative cost pool from a major program, in developing audit procedures to test compliance with Activities Allowed or Unallowed and Allowable Costs/Cost Principles, the auditor should include the consolidated administrative cost pool in the universe to be tested.

A. Activities Allowed or Unallowed

1. ***Consolidation of Administrative Funds*** (SEAs/LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (except the Governor's Program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287 Title V, Part A (84.298); Ed Tech (84.318* ***and 84.386****); Title III, Part A (84.365); MSP (84.366) (at the LEA level only); Title II, Part A (84.367); and SIG (84.377 and* ***84.388****).*

An SEA may consolidate the amounts specifically made available to it for State administration under one or more ESEA programs (and such other programs as the ED Secretary may designate) if the SEA can demonstrate that the majority of its resources are derived from non-Federal sources. An SEA must use consolidated administrative funds for authorized administrative activities of one or more of the consolidated programs. It may also use such funds for administrative activities designed to enhance the effective and coordinated use of funds under one or more of the programs included in the consolidation, such as coordination of ESEA programs with other Federal and non-Federal programs; the establishment and operation of peer review mechanisms; the dissemination of information regarding model programs and practices; and technical assistance (Section 9201 of ESEA (20 USC 7821)).

An LEA may, with the approval of its SEA, consolidate and use for the administration of one or more ESEA programs not more than the percentage, established in each program, of the total available under those programs. An LEA may use consolidated funds for the administration of the consolidated programs and for uses at the school district and school levels comparable to those authorized for the SEA. An LEA that consolidates administrative funds may not use any other funds under the programs included in the consolidation for administration (Section 9203 of ESEA (20 USC 7823)).

An SEA or LEA that consolidates administrative funds is not required to keep separate records of administrative costs for each individual program. Expenditures of consolidated administrative funds are allowable if they are for administrative costs that are allowable under any of the contributing programs (Sections 9201(c) and 9203(e) of ESEA (20 USC 7821(c) and 7823(e))).

See III.N.2.c, "Special Tests and Provisions – Schoolwide Programs" in this cross-cutting section for discussion of provisions relating to allowable activities for Schoolwide Programs.

See IV, "Other Information," for guidance on the treatment of consolidated administrative funds for purposes of Type A program determination and presentation in the Schedule of Expenditures of Federal Awards (SEFA).

An SEA may consolidate any amounts specifically made available to it for State administration under ARRA and use those consolidated administrative funds for authorized administrative activities of one or more of the consolidated programs (Section 9201 of ESEA (20 USC 7821)).

An LEA, with the approval of its SEA, may consolidate and use for the administration of one or more ESEA programs not more than the percentage, established in each program, of the total available under ARRA (Section 9203 of ESEA (20 USC 7823)).

Because ARRA funds must be accounted for separately from funds available under the regular ESEA appropriation, an SEA or LEA may use any reasonable method (e.g., proportionality) to assign expenditures of State or local consolidated administrative funds to ARRA.

2. ***Schoolwide Programs*** (LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318* ***and 84.386****); Title III, Part A (84.365); MSP (84.366); Title II, Part A (84.367); and SIG (84.377 and* ***84.388****).*

*This section also applies to IDEA (84.027, 84.173****, 84.391, and 84.392****); CTE (84.048); SFSF ESF (****84.394****); and Ed Jobs (84.410).*

An eligible school participating under Title I, Part A may, in consultation with its LEA, use its Title I, Part A funds, along with funds provided from the above-identified programs, to upgrade the school's entire educational program in a schoolwide program. See III.N.2, "Special Tests and Provisions – Schoolwide Programs" in this cross-cutting section for testing related to schoolwide programs (Section 1114 of ESEA (20 USC 6314)).

See IV, "Other Information," for guidance on the treatment of consolidated schoolwide funds for purposes of Type A program determination and presentation in the SEFA.

An eligible school participating under Title I, Part A may, in consultation with its LEA, use its Title I, Part A ARRA funds, along with ARRA funds provided from all programs identified above, to upgrade the school's entire educational program in a schoolwide program (Section 1114 of ESEA (20 USC 6314)).

Because ARRA funds must be accounted for separately from funds available under the regular fiscal year appropriation, an LEA may use any reasonable method (e.g., proportionality) to assign expenditures of ARRA funds consolidated in a schoolwide program to the program that contributed the funds.

3. ***Transferability*** (SEAs and LEAs)

ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a), with the agreement of the Governor); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 ***and 84.386****); and Title II, Part A (84.367).*

SEAs may transfer up to 50 percent of the non-administrative funds allocated for State-level activities from one or more listed applicable programs to one or more of the other listed applicable programs, or to Title I, Part A (CFDA 84.010). Except for 21st CCLC (CFDA 84.287), LEAs not identified for improvement or corrective action under Section 1116(c) of ESEA may also transfer up to 50 percent of the funds allocated to them from one or more of the listed applicable programs to another listed applicable program or to Title I, Part A. LEAs identified for improvement under Section 1116(c) may transfer up to 30 percent of the funds allocated to them for (i) school improvement under Section 1003; or (ii) other LEA improvement activities consistent with Section 1116(c). LEAs identified for corrective action may not transfer funds (Sections 6123(a) and (b) of ESEA (20 USC 7305b(a) and (b))).

Transferred funds are subject to all of the requirements, set-asides, and limitations of the programs into which they are transferred (Section 6123(e) of ESEA (20 USC 7305b(e))).

See III.G.3.b, "Matching, Level of Effort, Earmarking – Earmarking," for additional testing related to transferability.

See IV, "Other Information," for guidance on the treatment of funds transferred under this provision for purposes of Type A program determination and presentation in the SEFA.

4. ***Small Rural Schools Achievement (SRSA) Alternative Uses of Funds Program***

ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a)); Title V, Part A (84.298); Ed Tech (84.318 ***and 84.386****); and Title II, Part A (84.367).*

LEAs that (a) have a total average daily attendance of fewer than 600 students, or serve only schools that are located in counties with a population density of fewer than 10 persons per square mile, and (b) serve only schools that are coded by the National Center for Education Statistics (NCES) as rural (NCES code of 7 or 8), or (with the concurrence of the SEA) are located in an area defined as rural by a governmental agency of the State may, after notifying the SEA, spend all or part of the funds received under the above five programs for local activities authorized under one or more of the following nine programs:

CFDA 84.010	Title I Grants to Local Educational Agencies (LEAs) (Title I, Part A)
CFDA 84.389	**Title I Grants to Local Educational Agencies (LEAs), Recovery Act (Title I, Part A)**
CFDA 84.186	Safe and Drug-Free Schools and Communities—State Grants (SDFSCA)
CFDA 84.287	Twenty-First Century Community Learning Centers (21st CCLC)
CFDA 84.298	State Grants for Innovative Programs (Title V, Part A)
CFDA 84.318	Education Technology State Grants (Ed Tech)
CFDA 84.386	**Education Technology State Grants, Recovery Act (Ed Tech),**
CFDA 84.365	English Language Acquisition Grants (Title III, Part A)
CFDA 84.367	Improving Teacher Quality State Grants (Title II, Part A)

(Section 6211(a)-(c) of ESEA (20 USC 7345(a)-(c)))

See IV, "Other Information," for guidance on the treatment of funds transferred under this provision for purposes of Type A program determination and presentation in the SEFA.

B. Allowable Costs/Cost Principles

1. ***Alternative Fiscal and Administrative Requirements*** (SEAs/LEAs)

This section applies to all ESEA programs in this Supplement: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318* ***and 84.386****); Title III, Part A (84.365); MSP (84.366); Title II, Part A (84.367); and SIG (84.377 and* ***84.388****).*

A State may adopt its own written fiscal and administrative requirements, which are consistent with the provisions of OMB Circular A-87, for expending and accounting for all funds received by SEAs and LEAs under ESEA programs. The written fiscal and administrative requirements must: (a) be sufficiently specific to ensure that funds are used in compliance with all applicable statutory and regulatory provisions, including ensuring that costs are allocable to a particular cost objective; (b) ensure that funds received are spent only for reasonable and necessary costs of the program; and (c) ensure that funds are not used for general expenses required to carry out other responsibilities of State or local governments (34 CFR section 299.2(b)).

2. ***Documentation of Employee Time and Effort (Consolidated Administrative Funds and Schoolwide Programs)***

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (except the Governor's Program authorized under Section 4112(a) with respect to consolidated administrative funds); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318* ***and 84.386****); Title III, Part A (84.365); MSP (84.366) (with respect to schoolwide programs and consolidation of administrative funds at the LEA level); and Title II, Part A (84.367); and SIG (84.377 and* ***84.388****).*

This section also applies to SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a) for schoolwide programs only); IDEA (84.027, 84.173, ***84.391, and 84.392****) (schoolwide programs only); and CTE (84.048) (schoolwide programs only).*

a. *Consolidated Administrative Funds:* An SEA or LEA that consolidates Federal administrative funds under Sections 9201 or 9203 of ESEA (20 USC 7821 or 7823) is not required to keep separate records by individual program. The SEA or LEA may treat the consolidated administrative cost objective as a "dedicated function."

Time-and-effort requirements with respect to consolidated administrative funds vary under different circumstances.

(1) An employee who works solely on a single cost objective (i.e., the consolidated administrative cost objective) must furnish a semi-annual certification that he/she has been engaged solely in activities that support the single cost objective. The certifications must be signed by the employee or a supervisory official having first-hand knowledge of the work performed by the employee in accordance with OMB Circular A-87, Attachment B, paragraph 8.h.(3).

(2) An employee who works in part on a single cost objective (i.e., the consolidated administrative cost objective) and in part on a Federal program whose administrative funds have not been consolidated or on activities funded from other revenue sources must maintain time and effort distribution records in accordance with OMB Circular A-87, Attachment B, paragraphs 8.h.(4), (5), and (6) documenting the portion of time and effort dedicated to:

(a) The single cost objective, and

(b) Each program or other cost objective supported by non-consolidated Federal funds or other revenue sources.

b. *Schoolwide Programs* – A schoolwide program school is permitted to consolidate Federal funds with State and local funds to upgrade the entire educational program of the school. A school that consolidates Federal funds with State and local funds in a consolidated schoolwide pool is not required to maintain separate records by program (Section 1114(a)(3)(C) of ESEA (20 USC 6314(a)(3)(C)); 34 CFR section 200.29(d)). If a schoolwide program school does not consolidate Federal funds in a consolidated schoolwide pool, the school must keep separate records by program. (Guidance is contained in the publication entitled *Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, not Supplant; Carryover; Consolidating Funds in Schoolwide Programs; and Grantback Requirements* (February 2008). This guidance is available on the Internet at http://www.ed.gov/programs/titleiparta/fiscalguid.doc).

Time-and-effort requirements in schoolwide program schools vary under different circumstances.

(1) If a school operating a schoolwide program consolidates Federal, State, and local funds in a consolidated schoolwide pool, an employee who is paid in full with funds from that pool is not required to file a semi-annual certification because there is no distinction between staff paid with Federal funds and staff paid with State or local funds. In effect, payment from the single

consolidated schoolwide pool certifies that the employee works only on activities of the schoolwide program.

(2) If a school operating a schoolwide program does not consolidate Federal funds with State and local funds in a consolidated schoolwide pool, an employee who works, in whole or in part, on a Federal program or cost objective must document time and effort as follows:

(a) An employee who works solely on a single cost objective (i.e., a single Federal program whose funds have not been consolidated or Federal programs whose funds have been consolidated but not with State and local funds) must furnish a semi-annual certification that he/she has been engaged solely in activities that support the single cost objective. The certifications must be signed by the employee or a supervisory official having first-hand knowledge of the work performed by the employee in accordance with OMB Circular A-87, Attachment B, paragraph 8.h.(3).

(b) An employee who works on multiple activities or cost objectives (e.g., in part on a Federal program whose funds have not been consolidated in a consolidated schoolwide pool and in part on Federal programs supported with funds consolidated in a schoolwide pool or on activities that are not part of the same cost objective) must maintain time and effort distribution records in accordance with OMB Circular A-87, Attachment B, paragraph 8.h.(4), (5), and (6). The employee must document the portion of time and effort dedicated to:

(i) The Federal program or cost objective; and

(ii) Each other program or cost objective supported by consolidated Federal funds or other revenue sources.

c. ***Consolidated Administrative Funds (ARRA Funds)*** **– An SEA or LEA that consolidates ARRA administrative funds under Sections 9201 or 9203 of ESEA (20 USC 7821 or 7823) must keep separate records by individual program of the ARRA funds (2 CFR section 176.210). The SEA or LEA may use any reasonable method (e.g., proportionality) to assign expenditures of ARRA consolidated administrative funds to the program that contributed the funds. With respect to documentation of employee time and effort, however, the SEA or LEA may treat the**

consolidated administrative cost objective, including ARRA funds, as a "dedicated function" and follow the requirements discussed in the corresponding provision (see III.B.2.a above) of the cross-cutting section of the Supplement.

d. ***Schoolwide Programs (ARRA Funds)*** **– A schoolwide program school is permitted to consolidate Federal funds, including Title I, Part A funds and other funds available under ARRA, with State and local funds to upgrade the entire educational program of the school. Generally, a school that consolidates Federal funds with State and local funds in a consolidated schoolwide pool is not required to maintain separate records by program (Section 1114(a)(3)(C) of ESEA (20 USC 6314(a)(3)(C)); 34 CFR section 200.29(d)). However, a school that consolidates ARRA funds in a schoolwide program must account for the ARRA funds separately (2 CFR section 176.210). An LEA may use any reasonable method (e.g., proportionality) to assign expenditures of ARRA funds consolidated in a schoolwide program to the program that contributed the funds.**

Although an LEA must account for ARRA funds separately even if it consolidates those funds in a consolidated schoolwide pool, an employee who is paid in full with funds from that pool is not required to file a semi-annual certification because there is no distinction between staff paid with Federal funds and staff paid with State or local funds. In effect, payment from the single consolidated schoolwide pool certifies that the employee works only on activities of the schoolwide program.

If a schoolwide program school does not consolidate ARRA funds in a consolidated schoolwide pool, the school must keep separate records by program or cost objective, including separate records with respect to ARRA funds. (Guidance is contained in the publication entitled Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, Not Supplant; Carryover; Consolidating Funds in Schoolwide Programs; and Grantback Requirements (February 2008). This guidance is available on the Internet at http://www.ed.gov/programs/titleiparta/fiscalguid.doc).

3. ***Indirect Costs*** (All grantees/all subgrantees)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318* ***and 84.386****); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367); and SIG (84.377 and* ***84.388****).*

*This section also applies to Adult Education (84.002); IDEA (84.027, 84.173, **84.391, and 84.392**); CTE (84.048); IDEA, Part C (84.181 **and 84.393**); RTT (**84.395**); and Ed Jobs (84.410) (State administrative costs only).*

A "restricted" indirect cost rate (RICR) must be used for programs administered by State and local governments and their governmental subrecipients that have a statutory requirement prohibiting the use of Federal funds to supplant non-federal funds. Non-governmental grantees or subgrantees administering such programs have the option of using the RICR, or an indirect cost rate of 8 percent, unless ED determines that the RICR would be lower.

The formula for a restricted indirect cost rate is:

RICR = (General management costs + Fixed costs) / (Other expenditures)

General management costs are costs of activities that are for the direction and control of the grantee's (or subgrantee's) affairs that are organization wide, such as central accounting services, payroll preparation and personnel management. For State and local governments, the general management indirect costs consist of (1) allocated Statewide Central Service Costs approved by the Department of Health and Human Services in a formal Statewide Cost Allocation Plan (SWCAP) as "Section I" costs and (2) departmental indirect costs. The term "general management" as it applies to departmental indirect costs does not include expenditures limited to one component or operation of the grantee. Specifically excluded from general management costs are the following costs that are reclassified and included in the "other expenditures" denominator:

(a) Divisional administration that is limited to one component of the grantee;

(b) The governing body of the grantee;

(c) Compensation of the chief executive officer of the grantee;

(d) Compensation of the chief executive officer of any component of the grantee; and

(e) Operation of the immediate offices of these officers.

Also excluded from the SWCAP Section I indirect costs are any occupancy and maintenance type costs as described in 34 CFR section 76.568. However, because these costs are allocated and not incurred at the departmental level, they do not require reclassification to the "other expenditure" denominator.

Fixed costs are contributions to fringe benefits and similar costs associated with salaries and wages that are charged as indirect costs, including retirement, social security, pension, unemployment compensation and insurance costs.

Other expenditures are the grantee's total expenditures for its federally and non-federally funded activities, including directly charged occupancy and space maintenance costs (as defined in 34 CFR section 76.568), and the costs related to the chief executive officer of the grantee or any component of the grantee and its offices. Excluded are general management costs, fixed costs, subgrants, capital outlays, debt service, fines and penalties, contingencies, and election expenses (except for elections required by Federal statute).

Occupancy and space maintenance costs associated with functions that are not organization-wide must be included with other expenditures in the indirect cost formula. These costs may be charged directly to affected programs only to the extent that statutory supplanting prohibitions are not violated. This reimbursement must be approved in advance by ED. Specific occupancy and space maintenance costs may be charged directly only to programs affected by the restricted rate calculation if charging for such costs is approved in advance by ED (34 CFR section 76.568(c)).

Indirect costs charged to a grant are determined by applying the RICR to total direct costs of the grant minus capital outlays, subgrants, and other distorting or unallowable items as specified in the grantee's indirect cost rate agreement.

The other ED programs (those not having a statutory non-supplant requirement) that allow indirect costs do not require a restricted rate and should follow the applicable OMB cost principles circular (34 CFR sections 76.560 and 76.563-76.569).

4. Unallowable Direct Costs to Programs

Officials from ED have noted that some entities have charged costs in the following areas which were determined to be unallowable as specified in the indicated references. Auditors should be alert that if any such costs are charged, charges must be consistent with provisions of OMB Circular A-87.

a. Separation leave costs (OMB Circular A-87, Attachment B, paragraph 8.d.(3)).

b. Severance costs (OMB Circular A-87, Attachment B, paragraph 8.g.(3)).

c. Post retirement health benefit (PRHB) costs (OMB Circular A-87, Attachment B, paragraph 8.f).

5. Unallowable Costs to Programs (Direct or Indirect)

Officials from ED have noted that, in cases where grantees rent or lease buildings or equipment from an affiliate organization, the costs associated with the lease or rental agreement can be excessive. The auditor should be alert to the fact that the measure of allowability in such "less-than-arms-length-relationships" is not fair

market value, but rather the "costs of ownership" standard as referenced in each OMB cost principles circular as follows:

a. OMB Circular A-87, Attachment B, paragraph 37.c.

b. OMB Circular A-21, Section J.43.

c. OMB Circular A-122, Attachment B, Paragraph 43.c.

C. Cash Management

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318* ***and 84.386****); Title III, Part A (84.365); MSP (84.366); Title II, Part A (84.367); and SIG (84.377 and* ***84.388****).*

This section also applies to Adult Education (84.002); IDEA (84.027, 84.173, ***84.391, and 84.392****); TRIO Cluster (84.042, 84.044, 84.047, 84.066 and 84.217); CTE (84.048); Vocational Rehabilitation (84.126); IDEA, Part C (84.181* ***and 84.393****); SFSF ESF (****84.394****); RTT (****84.395****); SFSF GSF (****84.397****); and Ed Jobs (84.410).*

Note: This section applies only to Federal programs in which the entity being audited is a grantee, i.e. the entity receives grant funds directly from ED. Auditors should refer to Part 3, Section C, "Cash Management," for any Federal program in which the entity is being audited is a subrecipient, i.e., Federal funds are received through a pass-through grant from a grantee.

Grantees draw funds via the G5 System. Grantees request funds by:
(1) creating a payment request using the G5 System through the Internet; (2) calling the Payee Hotline; or (3) if the grantee is placed on the reimbursement or cash monitoring payment method, submitting a PMS-270, *Request for Title IV Reimbursement,* to an ED program or regional office. When creating a payment request in G5, the grantee enters the drawdown amounts, by award, directly into G5. Grantees can redistribute drawn amounts between grant awards by making adjustments in G5 to reflect actual disbursements for each award, as long as the net amount of the adjustments is zero. When requesting funds using the other two methods, grantees provide drawdown information to the hotline operator or on the PMS-270.

To assist grantees in reconciling their internal accounting records with the G5 System, using their DUNS (Data Universal Numbering System) number, grantees can obtain a G-5 External Award Activity Report (https://www.g5.gov/) showing cumulative and detail information for each award. The External Award Activity Report can be created with date parameters (Start and End Dates) and viewed on-line. To view each draw per award, the G5 user may click on the award number to view a display of individual draws for that award.

D. Davis-Bacon Act

Under the General Education Provisions Act, when authorized, all construction and minor remodeling projects under ED programs covered by the Cross-Cutting Section are subject to the requirements of the Davis-Bacon Act (20 USC 1232b). Additional ED programs are subject to the Davis-Bacon Act as indicated in the relevant program description.

G. Matching, Level of Effort, Earmarking

1. Matching

See individual program compliance supplement for any matching requirements.

2.1 Level of Effort – *Maintenance of Effort* (SEAs/LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a) when the Governor awards subgrants to LEAs); 21st CCLC (84.287); Ed Tech (84.318* ***and 84.386****); Title III, Part A (84.365); and Title II, Part A (84.367).*

As described in II, "Program Procedures – General and Program-Specific Cross-Cutting Requirements," this requirement is a general cross-cutting requirement that need only be tested once to cover all major programs to which it applies.

An LEA may receive funds under an applicable program only if the SEA finds that the combined fiscal effort per student or the aggregate expenditures of the LEA from State and local funds for free public education for the preceding year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding year, unless specifically waived by ED.

An LEA's expenditures from State and local funds for free public education include expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities. They do not include the following expenditures: (a) any expenditures for community services, capital outlay, debt service and supplementary expenses as a result of a Presidentially declared disaster and (b) any expenditures made from funds provided by the Federal government.

If an LEA fails to maintain fiscal effort, the SEA must reduce the amount of the allocation of funds under an applicable program in any fiscal year in the exact proportion by which the LEA fails to maintain effort by falling below 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the LEA) (Section 9521 of ESEA (20 USC 7901); 34 CFR section 299.5).

In some States, the SEA prepares the calculation from information provided by the LEA. In other States, the LEAs prepare their own calculation. The audit procedures contained in III.G.2.1, "Level of Effort – Maintenance of Effort," should be adapted to fit the circumstances. For example, if auditing the LEA and the LEA does the calculations, the auditor should perform steps a., b., and c. If auditing the LEA and the SEA does the calculation, the auditor should perform step c for the amounts reported to the SEA. If auditing the SEA and the SEA performs the calculation, the auditor should perform steps a. and b. and amend step c to trace amounts to the LEA reports. If auditing the SEA and the LEA performs the calculation, the auditor should perform step a. and, if the requirement was not met, determine if the funding was reduced appropriately.

ARRA provides that, upon prior approval from the Secretary, an SEA or LEA may treat SFSF funds (CFDA 84.394 and CFDA 84.397) that are used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program that ED administers. The auditor should check whether the SEA has met ED's requirements for prior approval to determine whether, as applicable, an SEA or LEA appropriately included expenditures of SFSF funds in maintenance of effort calculations (see ED's guidance for Funds under Title I, Part A of the Elementary and Secondary Education Act of 1965 Made Available Under The American Recovery and Reinvestment Act of 2009 for prior-approval criteria) (Section 14012(d) of ARRA).

An SEA or LEA, is required to get prior approval from the Secretary, before treating Ed Jobs funds (CFDA 84.410) that are used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other ED program (Section 101(5) of Pub. L. No. 111-226; Guidance – When to Treat Expenditures of Education Jobs Funds as State or Local Funds for Purposes of the Fiscal Requirements under Title I, Part A of the Elementary and Secondary Education Act of 1965 (November 2010)).

2.2 Level of Effort – *Supplement Not Supplant* (SEAs/LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318* ***and 84.386****); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).*

General – Including the Safe and Drug-Free Schools Governor's program, an SEA and LEA may use program funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of the Federal funds, be made available from non-Federal sources for the education of participating students. In no case may an LEA use Federal program funds to supplant funds from non-Federal sources (Title I, Part A, Section 1120A(b) of

ESEA (20 USC 6321(b)); MEP, Section 1304(c)(2) of ESEA (20 USC 6394(c)(2)); SDFSCA, Section 4113(a)(8) of ESEA (20 USC 7113(a)(8)); 21st CLCC, Section 4204(b)(2)(G) of ESEA (20 USC 7174(b)(2)(G)); Title V, Part A, Section 5144 of ESEA (20 USC 7217c); Ed Tech, Section 2413(b)(6) of ESEA (20 USC 6763(b)(6)); Title III, Part A, Section 3115(g) (20 USC 6825(g)); MSP, Section 2202(a)(4) of ESEA (20 USC 6662(a)(4)); and Title II, Part A, Sections 2113(f) and 2123(b) of ESEA (20 USC 6613(f) and 6623(b))).

In the following instances, it is presumed that supplanting has occurred:

a. The SEA or LEA used Federal funds to provide services that the SEA or LEA was required to make available under other Federal, State or local laws.

b. The SEA or LEA used Federal funds to provide services that the SEA or LEA provided with non-Federal funds in the prior year.

c. The SEA or LEA used Title I, Part A or MEP funds to provide services for participating children that the SEA or LEA provided with non-Federal funds for nonparticipating children.

These presumptions are rebuttable if the SEA or LEA can demonstrate that it would not have provided the services in question with non-Federal funds had the Federal funds not been available.

Schoolwide Programs – In a Title I schoolwide program, a school is not required to provide supplemental services to identified children. A school operating a schoolwide program does not have to: (1) show that Federal funds used within the school are paying for additional services that would not otherwise be provided; or (2) demonstrate that Federal funds are used only for specific target populations. Such a school, however, is required to use funds available under Title I and any other Federal programs to supplement the total amount of funds that would, in the absence of the Federal funds, be made available from non-Federal sources for that school, including funds needed to provide services that are required by law for children with disabilities and children with limited English proficiency (Title I, Part A, Section 1114(a)(2) of ESEA (20 USC 6314(a)(2)); 34 CFR sections 200.25(c) and (d)).

Title I, Part A and MEP – An SEA and LEA may exclude from determinations of compliance with the supplement not supplant requirement supplemental State or local funds spent in any school attendance area or school for programs that meet the intent and purposes of Title I, Part A or the MEP, respectively, as identified in Title I of ESEA (Sections 1120A(d) and 1304(c)(2) of ESEA (20 USC 6321(d) and 6394(c)(2)); 34 CFR sections 200.79 and 200.88).

SFSF funds (**CFDA 84.394 and CFDA 84.397**) that support activities authorized by Impact Aid (Title VIII of ESEA) (CFDA 84.041 and CFDA 84.404), i.e., the funds are being used as State or local funds, should be treated as non-Federal funds for the purpose of compliance with the Title I, Part A supplement not supplant requirement. If, however, SFSF funds are used for activities that are authorized by the other Federal programs enumerated in Section 14003(a) of the ARRA (See **CFDA 84.394**, III.A.2. a. and b, "Activities Allowed – Education Stabilization Fund – LEAs" for a list of the activities), then those activities should be considered to be federally-funded and would not be part of a supplanting determination under Title I, Part A (See Question C-12 in ED's revised Title I, Part A ARRA guidance)(Section 14003(a) of ARRA).

Ed Jobs funds (CFDA 84.410) that are used in school year 2010-2011 to pay staff in positions that would normally be supported with State or local funds should be treated as non-Federal funds for the purpose of compliance with the Title I, Part A supplement not supplant requirement. Conversely, school staff paid with Ed Jobs funds who are in a position that would otherwise be supported with other Federal funds, with the exception of the Impact Aid funds (or SFSF funds (**CFDA 84.394 and CFDA 84.397**) funds when those funds are used for activities authorized by Impact Aid), should be treated as Federal funds for the purpose of compliance with the Title I, Part A supplement not supplant requirement (See Question 2 in Guidance – When to Treat Expenditures of Education Jobs Funds as State or Local Funds for Purposes of the Fiscal Requirements under Title I, Part A of the Elementary and Secondary Education Act of 1965 (November, 2010))

Title III, Part A – An SEA or LEA may only use funds under Title III, Part A to supplement the level of Federal, State and local public funds that, in the absence of the Title III funds, would have been provided for programs for limited English proficient children and immigrant children and youth (Section 3115(g) of ESEA (20 USC 6825(g))).

3. Earmarking

a. ***Administration*** (SEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****) and MEP (84.011).*

An SEA may reserve for the administration of Title I programs up to one percent from each of the amounts allocated to the State under Title I, Parts A, C (MEP), and D (Subpart 1) or $400,000, whichever is greater. However, if the sum of the amounts appropriated for Parts A, C, and D is equal to or greater than $14 billion, which it is for fiscal year 2010, the amount an SEA may reserve for administration may not exceed one percent of the amount the State would receive if the Title I allocation were $14,000,000,000 (20 USC 6304(b)). ED has provided a table to the State

showing the amount that they could reserve for administration of Title I programs from FY 2010 funds if only $14 billion were appropriated for FY 2010. An SEA may reserve less than one percent from each of Parts A, C, and D. Moreover, an SEA does not need to reserve the same percentage from each part, although the SEA may not reserve more from Parts C and D than it would have reserved if it had reserved proportionate amounts from Parts A, C, and D. An SEA reserving $400,000 must reserve proportionate amounts from each of the amounts allocated to the State under Part A, but is not required to reserve funds proportionately from each of Parts A, C, and D and may, for example, take the reservation entirely out of Part A funds. However, in reserving $400,000, an SEA may not reserve more funds for State administration from Part C or Part D than it would have if it had reserved proportionate funds from Parts A, C, and D.

(Section 1004 of ESEA (20 USC 6304); see also 34 CFR section 200.100(b)). For more detail, see page 33 of the guidance entitled *State Educational Agency Procedures for Adjusting Basic, Concentration, Targeted, and Education Finance Incentive Grant Allocations Determined by the U.S. Department of Educa*tion (May 23, 2003) (http://www.ed.gov/programs/titleiparta/seaguidanceforadjustingallocations.doc).

As explained in III.A.1, "Activities Allowed or Unallowed – Consolidation of administrative funds," the amounts reserved above may be consolidated with State administrative funds available under other applicable programs (Section 9201(a) of ESEA (20 USC 7821(a)).

b. ***Transferability*** (SEAs and LEAs)

ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a), with the agreement of the Governor); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 ***and 84.386****); and Title II, Part A (84.367).*

SEAs may transfer up to 50 percent of each fiscal year's base of non-administrative funds allocated for State-level activities from one or more of the listed applicable programs to one or more of the other listed applicable programs, or to Title I, Part A (CFDA 84.010 and **CFDA 84.389**). Except for 21st CCLC (CFDA 84.287), LEAs not identified for improvement or corrective action under Section 1116 of ESEA may also transfer up to 50 percent of each fiscal year's funds from one or more of the listed applicable programs to another listed applicable program, or to Title I, Part A. LEAs identified for improvement may transfer up to 30 percent of their allocation base. LEAs identified for corrective action may

not transfer funds (Sections 6123(a) and (b) of ESEA (20 USC 7305b(a) and (b))).

The allocation base for a program for a fiscal year equals that fiscal year's original funding plus funds transferred into the program for that fiscal year. Funds may be transferred during a fiscal year's carryover period, as long as the total amount transferred from the fiscal year's allocation base does not exceed the maximum percentage. Funds must be transferred to the receiving program's allocation for the same fiscal year that the funds were allocated to the transferring program (Sections 6123(a) and (b) of ESEA (20 USC 7305b(a) and (b))).

H. Period of Availability of Federal Funds (All grantees)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); CSP (84.282); Title V, Part A (84.298); Ed Tech (84.318* ***and 84.386****); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).*

This section also applies to Adult Education (84.002); IDEA (84.027, 84.173, ***84.391, and 84.392****); CTE (84.048); IDEA, Part C (84.181* ***and 84.393****); SFSF ESF (****84.394****); and SFSF GSF (****84.397****).*

All ESEA and other programs listed above except CSP and subrecipients under CTE – LEAs and SEAs must obligate funds during the 27 months, extending from July 1 of the fiscal year for which the funds were appropriated through September 30 of the second following fiscal year. This maximum period includes a 15-month period of initial availability plus a 12-month period for carryover. For example, funds from the fiscal year 2010 appropriation initially became available on July 1, 2010 and may be obligated by the grantee and subgrantee through September 30, 2012 (Section 421(b) of GEPA (20 USC 1225(b)); 34 CFR sections 76.703 through 76.710).

Title I, Part A – An LEA that receives $50,000 or more in Title I, Part A funds may not carry over beyond the initial 15 months of availability more than 15 percent of its Title I, Part A funds. An SEA may grant a waiver of the percentage limitation for an LEA once every three years if the LEA's request is reasonable and necessary or if supplemental appropriations for Title I, Part A become available for obligation (Section 1127 of ESEA (20 USC 6339)). **Because of the large amount of supplemental FY 2009 Title I, Part A ARRA funds available, many SEAs requested a waiver from the Department to enable them to grant an LEA a waiver of the carryover limitation more frequently than once every 3 years.**

SDFSCA program – An LEA that receives SDFSCA funding may not carry over beyond the initial 15 months of availability more than 25 percent of its SDFSCA State Grant

funds. An SEA may waive the percentage limitation for good cause (Section 4114(a)(3)(B) of ESEA (20 USC 7114(a)(3)(B))).

CSP program – The recipient must obligate funds from a grant during the period for which the funds are available for obligation as set forth in the grant award document. Recipients must maintain documentation to demonstrate that the obligation occurred during the period of availability and was charged to an appropriate year's grant funds. If obligations occur outside of the period of availability, the funds are not timely obligated and must be returned. However, under the "expanded authorities" provisions grantees are permitted to:

a. Extend grants automatically at the end of a project period for up to one year without prior approval (with some exceptions);

b. Carry funds over from one budget period to the next;

c. Obligate funds up to 90 days before the effective date of a budget period without prior approval; and

d. Transfer funds among budget categories without prior approval, except for a limited number of specific cases.

CTE program – In any academic year that a subrecipient does not obligate all of the amounts it is allocated under the Secondary and Postsecondary CTE programs for that year, it must return the unobligated amounts to the State to be reallocated under the Secondary and Postsecondary CTE Programs, as applicable (Section 133(b) of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) (Pub. L. No. 109-270) (20 USC 2353(b))).

Consolidated administrative funds – Consolidated administrative funds must be obligated within the period of availability of the program that the funds came from. Because expenditures in a consolidated administrative fund are not accounted for by specific Federal programs, an SEA or LEA may use a first-in, first-out method for determining when funds were obligated, may attribute costs in proportion to the dollars provided, or may use another reasonable method.

Definition of Obligation – An obligation is not necessarily a liability in accordance with generally accepted accounting principles. When an obligation occurs (is made) depends on the type of property or services that the obligation is for (34 CFR section 76.707):

IF AN OBLIGATION IS FOR --	THE OBLIGATION IS MADE --
(a) Acquisition of real or personal property.	On the date on which the State or subgrantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the State or subgrantee.	When the services are performed.
(c) Personal services by a contractor who is not an employee of the State or subgrantee.	On the date on which the State or subgrantee makes a binding written commitment to obtain the services.
(d) Performance of work other than personal services.	On the date on which the State or subgrantee makes a binding written commitment to obtain the work.
(e) Public utility services.	When the State or subgrantee receives the services.
(f) Travel.	When the travel is taken.
(g) Rental of real or personal property.	When the State or subgrantee uses the property.
(h) A pre-agreement cost that was properly approved by the State under the applicable cost principles.	On the first day of the subgrant period.

The act of an SEA or other grantee awarding Federal funds to an LEA or other eligible entity within a State does not constitute an obligation for the purposes of this compliance requirement. An SEA or other grantee may not reallocate grant funds from one subrecipient to another after the period of availability.

If a grantee or subgrantee uses a different accounting system or accounting principles from one year to the next, it shall demonstrate that the system or principle was not improperly changed to avoid returning funds that were not timely obligated. A grantee or subgrantee may not make accounting adjustments after the period of availability in an attempt to offset audit disallowances. The disallowed costs must be refunded.

Programs to which the rest of this section applies are: Title I, Part A (*84.010* ***and 84.389*****); Ed Tech (***84.318* ***and 84.386*****); IDEA, Part B (***84.027* ***and 84.391*****); IDEA, Part C (***84.173* ***and 84.392*****);** SFSF ESF (***84.394***)*;* and SFSF GSF (***84.397***).

Funds under ARRA for the programs cited above are FY 2009 funds; however, they became available for obligation beginning with the date of enactment of ARRA (February 17, 2009). Funds under the regular FY 2009 appropriation for these programs became available for obligation on July 1, 2009. ARRA funds will remain available for obligation by SEAs and LEAs until September 30, 2011, which includes the one-year carryover period authorized under section 421(b) of the General Education Provisions Act (Section 1603 of ARRA and 20 USC 1225(b)).

L. Reporting

1. Financial Reporting

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318* ***and 84.386****); Title III, Part A (84.365); MSP (84.366); Title II, Part A (84.367); and SIG (84.377 and* ***84.388)****.*

This section also applies to IDEA (84.027, 84.173, ***84.391, and 84.392****); and IDEA, Part C (84.181* ***and 84.393****); RTT (****84.395****); and Ed Jobs (84.410).*

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting

State Per Pupil Expenditure (SPPE) Data (*OMB No. 1850-0067*) (SEAs/LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****) and MEP (84.011).*

As described in II, "Program Procedures – General and Program-Specific Cross-Cutting Requirements," this requirement is a general cross-cutting requirement that need only be tested once to cover all major programs to which it applies.

Each year, an SEA must submit its average State per pupil expenditure (SPPE) data to the National Center for Education Statistics. These SPPE data are used by ED to make allocations under several ESEA programs, including Title I, Part A and MEP. SPPE data are reported on the National Public Education Finance Survey. SPPE data comprise the State's annual current expenditures for free public education, less certain designated exclusions, divided by the State's average daily attendance.

LEAs must submit data to the SEA for the SEA's report. The SEA determines the format of the data submissions.

Current expenditures to be included are those for free public education, including administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities. Current expenditures to be excluded are those for community services, capital outlay, debt service, and expenditures from funds received under Title I and Title V, Part A of ESEA. To determine its expenditures under Titles I and V, Part A of ESEA in a schoolwide program, an LEA could calculate the percentage of funds that Title I and Title V, Part A contributed to the schoolwide program and then apply those percentages to the total expenditures in the schoolwide program. Other reasonable methods may also be used (Section 9101(14) of ESEA (20 USC 7801(14))).

Except when provided otherwise by State law, average daily attendance generally means the aggregate number of days of attendance of all students during a school year divided by the number of days that school is in session during such school year. For purposes of ESEA, average daily membership (or similar data) can be used in place of average daily attendance in States that provide State aid to LEAs on the basis of average daily membership or such other data. When an LEA in which a child resides makes a tuition or other payment for the free public education of the child in a school of another LEA, the child is considered to be in attendance at the school of the LEA making the payment, and not at the school of the LEA receiving the payment. Similarly, when an LEA makes a tuition payment to a private school or to a public school of another LEA for a child with disabilities, the child is considered to be in attendance at the school of the LEA making the payment (Section 9101(1) of ESEA (20 USC 7801(1))).

4. Section 1512 ARRA Reporting – Applicable

*ESEA programs in this Supplement to which this section applies are: Title I, Part A-Recovery Act (**84.389**); Ed Tech-Recovery Act (**84.386**); and SIG-Recovery Act (**84.388**).*

*This section also applies to IDEA – Recovery Act (**84.391 and 84.392**); IDEA, Part C – Recovery Act (**84.393**); Vocational Rehabilitation State Grants – Recovery Act (**84.390**); SFSF ESF (**84.394**); RTT (**84.395**); SFSF GSF (**84.397**); and Ed Jobs (84.410).*

N. Special Tests and Provisions

1. Participation of Private School Children (SEAs/LEAs)

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 **and 84.389**); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A*

(84.298); Ed Tech (84.318 ***and 84.386****); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).*

Depending on how the SEA/LEA implements requirements for the provision of equitable participation of private school children, this requirement may be tested on a general or program-specific basis (as described in II, "Program Procedures – General and Program-Specific Cross-Cutting Requirements").

Compliance Requirements – For programs funded under Title I, Part A (CFDA 84.010), an LEA, after timely and meaningful consultation with private school officials, must provide equitable services to eligible private school children, their teachers, and their families. Eligible private school children are those who reside in a participating public school attendance area and have educational needs under section 1115(b) of ESEA (20 U.S.C. 6315(b)). Title I, Part A funds must be allocated to each participating public school attendance area on the basis of the total number of children from low-income families residing in that area. In calculating the total number of children from low-income families, an LEA must include children from low-income families who attend private schools. An LEA must use the portion of Title I, Part A funds attributable to private school children from low-income families included in the calculation to provide services to eligible private school children. For example, if $100,000 of Title I, Part A funds are allocated based on 100 children from low-income families, 25 of whom are private school children, $25,000 of the $100,000 must be expended to provide equitable services to eligible private school children.

If an LEA reserves funds off the top of its Title I, Part A allocation to provide instructional and related activities for public school students at the district level, the LEA must also provide from those funds, as applicable, equitable services to eligible private school students. From applicable funds reserved for parent involvement and professional development, an LEA must ensure that teachers and families of participating private school children have an equitable opportunity to participate in professional development and parent involvement activities, respectively. The amount of funds available to provide these services must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas (Sections 1113(c) and 1120 of ESEA (20 USC 6313(c) and 6320); 34 CFR sections 200.62 through 200.67 and 200.77 through 200.78).

For all other programs, an SEA, LEA, or any other educational service agency (or consortium of such agencies) receiving financial assistance under an applicable program must provide eligible private school children and their teachers or other educational personnel with equitable services or other benefits under the program. Before an agency or consortium makes any decision that affects the opportunity of eligible private school children, teachers, and other educational personnel to participate, the agency or consortium must engage in timely and meaningful consultation with private school officials. Expenditures for services and benefits to eligible private school children and their teachers and other educational personnel must be equal on a per-pupil basis to the expenditures for participating public school children and their teachers and other

educational personnel, taking into account the number and educational needs of the children, teachers and other educational personnel to be served (Sections 5142 and 9501 of ESEA (20 USC 7217a and 7881); 34 CFR sections 299.6 through 299.9).

The control of funds used to provide equitable services to eligible private school students, teachers and other educational personnel, and families, and title to materials, equipment, and property purchased with those funds must be in a public agency and the public agency must administer the funds, materials, equipment, and property. The provision of equitable services must be by employees of a public agency or through a contract by the public agency with an individual, association, agency, or organization that is independent of any private school or religious organization. The contract must be under the control of the public agency (Sections 1120(d), 5142(c), and 9501(d) of ESEA (20 USC 6320(d), 7217a(c) and 7881(d); 34 CFR sections 200.67 and 299.9).

This compliance requirement also applies to Transferability (See III.A.3, "Activities Allowed or Unallowed – Transferability (SEAs and LEAs)") for transfers made by *SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a), with the agreement of the Governor); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318* ***and 84.386****); and Title II, Part A (84.367)* (Section 6123(e)(2) of ESEA (20 USC 7305b(e)(2))).

Audit Objectives – Determine whether (1) the LEA, SEA, or other agency receiving ESEA funds has conducted timely consultation with private school officials to determine the kind of educational services to provide to eligible private school children, (2) the planned services were provided, and (3) the required amount was used for private school children.

Suggested Audit Procedures (LEA/SEA)

a. Verify, by reviewing minutes of meetings and other appropriate documents, that the SEA or LEA conducted timely consultation with private school officials in making its determinations and set aside the required amount for private school children.

b. Review program expenditure and other records to verify that educational services that were planned were provided.

c. For Title I, Part A, verify that:

   (1) The per pupil allocation (PPA) generated by private school children from low-income families living in participating public school attendance areas is equal to the PPA generated by public school children from low-income families living in the same attendance areas:

   (2) Funds to provide equitable services to private school students were available, as applicable, from funds, if any, reserved off the top of the

LEA's Part A allocation for instructional and related activities at the district level; and

(3) Funds to provide equitable services to teachers and families of participating private school students were available from reservations of funds for professional development and parent involvement.

d. If the LEA provides services to eligible private school students under an arrangement with a third-party provider, verify that the LEA retains proper administration and control by having a written contract that:

(1) Describes the services to be provided; and

(2) Provides that the LEA retains ownership of materials, equipment, and property purchased with Federal I funds.

e. For programs other than Title I, Part A, verify that expenditures are equal on a per-pupil basis for public and private school students, teachers and other educational personnel, taking into consideration their numbers and needs as required by 34 CFR section 299.7.

2. Schoolwide Programs (SEAs/LEAs)

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 **and 84.389**); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 **and 84.386**); Title III, Part A (84.365); MSP (84.366); Title II, Part A (84.367); and SIG (84.377 and **84.388**).*

*This section also applies to IDEA (84.027, 84.173, **84.391 and 84.392**); CTE (84.048); SFSF ESF (**84.394**); and Ed Jobs (84.410).*

As described in II, "Program Procedures – General and Program-Specific Cross-Cutting Requirements," this requirement is a general cross-cutting requirement that only needs to be tested once to cover all major programs to which it applies.

Compliance Requirements – A school participating under Title I, Part A may, in consultation with its LEA, use its Title I, Part A funds, along with funds provided from the above-identified programs and other Federal, State, and local education funds, to upgrade the school's entire educational program in a schoolwide program. At least 40 percent of the children enrolled in the school or residing in the school attendance area for the initial year of the schoolwide program must be from low-income families. The LEA is required to maintain records to demonstrate compliance with this requirement. [Note: For the SIG program (CFDA 84.377 and **CFDA 84.388**), 49 SEAs were granted a waiver to allow a school with less than 40 percent low-income children to operate a schoolwide program as part of implementing one of four school intervention models.]

a. To operate a schoolwide program, a school must include the following three core elements:

(1) Comprehensive needs assessment of the entire school (34 CFR section 200.26(a)).

(2) Comprehensive plan based on data from the needs assessment (34 CFR section 200.26(b)).

(3) Annual evaluation of the results achieved by the schoolwide program and revision of the schoolwide plan based on that evaluation (34 CFR section 200.26(c)).

b. A schoolwide plan also must include the following components:

(1) Schoolwide reform strategies (34 CFR section 200.28(a)).

(2) Instruction by highly qualified professional staff (34 CFR section 200.28(b)).

(3) Strategies to increase parental involvement (34 CFR section 200.28(c)).

(4) Additional support to students experiencing difficulty (34 CFR section 200.28(d)).

(5) Transition plans for assisting preschool children in the successful transition to the schoolwide program (34 CFR section 200.28(e)).

c. A schoolwide program school that consolidates Federal, State, and local funds in a consolidated schoolwide pool may use those funds for any activity in the school. (Consolidating funds in a schoolwide program means that a school treats the funds like they are a single ”pool” of funds--i.e., the funds lose their individual identity and the school has one flexible pool of funds.) The school is not required to maintain separate records that identify by program the specific activities supported by those funds. Also, the school is not required to meet most of the statutory and regulatory requirements of the Federal programs included in the consolidation as long as it meets the intent and purposes of those programs.

If a schoolwide program school consolidates just its Federal funds in a single Federal consolidated schoolwide pool, the school must use those funds to address specific educational needs of the school identified by the needs assessment and articulated in the schoolwide plan. Although the Federal funds lose their specific program identity and may be accounted for as part of the pool, the school must keep records to demonstrate that the consolidated funds support activities that address the intent and purpose of each program. With the exception of discretionary programs as noted below, the school is not required to meet most of the statutory and regulatory requirements of the specific Federal programs

included in the consolidation as long as it meets the intent and purposes of those programs.

If a schoolwide program school does not consolidate its Federal funds, the school must use Title I, Part A funds to support activities that address specific educational needs of the school identified by the needs assessment and articulated in the schoolwide plan. The school must use other Federal funds in accordance with the specific requirements of each Federal program. For more detail on consolidating funds in schoolwide program schools, see pages 49-67 in guidance entitled *Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, not Supplant; Carryover; Consolidating Funds in Schoolwide Programs; and Grantback Requirements* (February 2008). This guidance is available on the Internet at http://www.ed.gov/programs/titleiparta/fiscalguid.doc) (20 USC 6314; 34 CFR sections 200.25 through 200.29).

d. If a schoolwide program school consolidates funds, the school must ensure that its schoolwide program addresses the needs of children who are members of the target population of any Federal program whose funds are consolidated. Specific requirements apply to these programs as follows:

(1) Before consolidating funds or services received under MEP, a schoolwide program must: (a) in consultation with parents of migratory children or organizations representing those parents, first meet the identified needs of migratory children that result from the effects of their migratory lifestyle or are needed to permit migratory children to participate effectively in schools; and (b) document that services addressing those needs have been met (34 CFR section 200.29(c)(1)).

(2) A schoolwide program must have the approval of the Indian parent advisory committee established in section 7114(c)(4) of ESEA (20 USC 7424(c)(4)) before funds received under the Title VII, Part A, Subpart 1 Indian Education program can be consolidated (34 CFR section 200.29(c)(2)).

(3) A schoolwide program may consolidate funds received under IDEA, Part B. However, the amount of funds consolidated may not exceed the amount received by the LEA under IDEA, Part B for that fiscal year, divided by the number of children with disabilities in the jurisdiction of the LEA and multiplied by the number of children with disabilities participating in the schoolwide program. A school that consolidates IDEA, Part B funds may use those funds for any activities under the schoolwide plan but must comply with all other requirements of IDEA, Part B to the same extent it would if it did not consolidate funds under IDEA, Part B in the schoolwide program (34 CFR section 200.29(c)(3)).

In addition, a schoolwide program school may consolidate funds it receives from discretionary programs administered by the ED Secretary; however, it must carry out the activities included in its application for which those funds were awarded. For example, if an LEA consolidates SIG funds (CFDA 84.377 and **CFDA 84.388**), which are discretionary at the State level, in a schoolwide program, the LEA must carry out the activities in its SIG application and adhere to the requirements of each school intervention model it selects to implement in its Tier I and Tier II schools.

e. An SEA must modify State fiscal and accounting procedures, if necessary, to eliminate barriers so that schools can easily consolidate funds from other Federal, State, and local sources in schoolwide programs. The SEA must also notify its LEAs of the authority to operate schoolwide programs.

f. A school participating under Title I, Part A may, in consultation with its LEA, use its Title I, Part A ARRA funds, along with ARRA funds provided from the programs covered by this requirement, and other Federal, State, and local education funds, to upgrade the school's entire educational program in a schoolwide program. At least 40 percent of the children enrolled in the school or residing in the school attendance area for the initial year of the schoolwide program must be from low-income families.

A schoolwide program school that consolidates Federal, State, and local funds in a consolidated schoolwide pool may use those funds for any activity in the school. (Consolidating funds in a schoolwide program means that a school treats the funds like they are a single "pool" of funds, i.e., the funds lose their individual identity and the school has one flexible pool of funds.) Generally, the school is not required to maintain separate records that identify by program the specific activities supported by those funds. However, a school that consolidates ARRA funds in a schoolwide program must account for the ARRA funds separately. An LEA may use any reasonable method (e.g., proportionality) to assign expenditures of ARRA funds consolidated in a schoolwide program to the program that contributed the funds.

(Sections 1111(c)(6), (9) and (10), 1114, 1306(b)(4), and 7115(c) of ESEA (20 USC 6311(c)(6), (9) and (10), 6314, 6396(b)(4), and 7425(c)); Section 613(a)(2)(D) of IDEA (20 USC 1413(a)(2)(D)); 34 CFR sections 200.25 through 200.29).

Audit Objectives (SEA) – Determine whether the SEA has taken steps to (1) notify its LEAs of the authority to consolidate Federal, State, and local funds in schoolwide programs, and (2) remove fiscal and accounting barriers preventing such consolidation of funds.

Suggested Audit Procedures (SEA)

Review documentation to determine whether the SEA notified its LEAs of the authority to consolidate Federal, State, and local funds in schoolwide programs, and examined its fiscal and accounting procedures to remove any barriers preventing such consolidation of funds.

Audit Objectives (LEA) – Determine whether (1) the schools operating schoolwide programs were eligible to do so, and (2) the schoolwide programs included the core elements and components.

Suggested Audit Procedures (LEA)

a. For schools operating a schoolwide program, review records and ascertain if the schools met the poverty eligibility requirements.

b. Review the schoolwide plan and ascertain if it included the required core elements and components described above.

c. Review documentation to support:

   (1) Consultation with parents including, when MEP funds are consolidated, the parents of migratory children or organizations representing those parents; and, when Title VII, Part A, Subpart 1 (Indian Education) funds are consolidated, approval by the Indian parent advisory committee.

   (2) If MEP funds are consolidated in the schoolwide program, the identified needs of migratory children were met before MEP funds were consolidated.

3. Comparability (SEAs/LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****) and MEP (84.011).*

As described in II, "Program Procedures – General and Program-Specific Cross-Cutting Requirements," this requirement is a general cross-cutting requirement that need only be tested once to cover all major programs to which it applies.

Compliance Requirements – An LEA may receive funds under Title I, Part A and the MEP (Title I, Part C) only if State and local funds will be used in participating schools to provide services that, taken as a whole, are at least comparable to services that the LEA is providing in schools not receiving Title I, Part A or MEP funds. An LEA is considered to have met the statutory comparability requirements if it filed with the SEA a written assurance that such LEA has implemented (1) an LEA-wide salary schedule; (2) a policy to ensure equivalence among schools in teachers, administrators, and other staff; and (3) a policy to ensure equivalence among schools in the provision of curriculum materials and

instructional supplies. An LEA may also use other measures to determine comparability, such as comparing the average number of students per instructional staff or the average staff salary per student in each school receiving Title I, Part A or MEP funds with those in schools that do not receive Title I, Part A or MEP funds. If all schools are served by Title I, Part A or MEP, an LEA must use State and local funds to provide services that, taken as a whole, are substantially comparable in each school. Determinations may be made on either a district-wide or grade-span basis.

An LEA may exclude schools with fewer than 100 students from its comparability determinations. The comparability requirement does not apply to an LEA that has only one school for each grade span. An LEA may exclude from determinations of compliance with this requirement State and local funds expended for (1) bilingual education for children with limited English proficiency (LEP); and (2) the excess costs of providing services to children with disabilities as determined by the LEA. The LEA may also exclude supplemental State or local funds for programs that meet the intent and purposes of Title I, Part A or MEP (Sections 1120A(c)-(d) and 1304(c)(2) of ESEA (20 USC 6321(c)-(d) and 6394(c)(2)); 34 CFR sections 200.79 and 200.88).

Each LEA must develop procedures for complying with the comparability requirements and implement the procedures annually. The LEA must maintain records that are updated biennially documenting compliance with the comparability requirements. The SEA, however, is ultimately responsible for ensuring that LEAs remain in compliance with the comparability requirement (Section 1120A(c) of ESEA (20 USC 6321(c))).

SFSF funds (**CFDA 84.394 and CFDA 84.397**) affect Title I, Part A comparability determinations based on how the funds are used. A determination of whether they are treated as Federal funds or State or local funds for purposes of comparability is made based on the particular activity for which the funds are being used. State Fiscal Stabilization Funds may be used for any activity that is authorized by the ESEA; IDEA; the Adult and Family Literacy Act; or the Carl D. Perkins Career and Technical Education Act of 2006, among other specified activities (Section 14003(a) of ARRA). The activities authorized by the ESEA include activities that are authorized by Title VIII of ESEA, the Impact Aid Program (CFDA 84.041 and CFDA 84.404). Because Impact Aid is considered general aid to recipient LEAs, Impact Aid funds may be used for any educational activity consistent with State and local requirements. As such, Impact Aid funds are effectively deemed State and local funds for which no accountability to the Federal government is required, and staff that are paid with Impact Aid funds are included in comparability determinations.

Accordingly, if school personnel are paid with SFSF funds on the basis that the funds are being used for activities that are authorized by Impact Aid, (i.e., the funds are being used to pay school personnel who would ordinarily be supported with State or local funds in the absence of the current economic conditions), then the school personnel should be considered to be paid with State or local funds and should be included in comparability determinations. If, however, school personnel are paid with SFSF funds for activities that are authorized by one of the other Federal programs set forth above (e.g., in the

absence of the SFSF funds, the staff member would otherwise be paid with IDEA funds), then the individual paid with those funds should be considered to be federally funded and should not be included in comparability determinations (Section 14003(a) of ARRA).

School staff paid with Ed Jobs (CFDA 84.410) funds who are in a position that would ordinarily be supported with State or local funds and would ordinarily be included in comparability determinations should continue to be included in those determinations. Conversely, school staff paid with Ed Jobs funds who are in a position that would otherwise be supported with other Federal funds, with the exception of the Impact Aid funds (CFDA 84.041 and **CFDA 84.404**) (or SFSF funds (**CFDA 84.394 and CFDA 84.397**) when those funds are used for activities authorized by Impact Aid), would continue to be excluded from comparability determinations (Question 1, Guidance – When to Treat Expenditures of Education Jobs Funds as State or Local Funds for Purposes of the Fiscal Requirements under Title I, Part A of the Elementary and Secondary Education Act of 1965 (November 2010)).

Audit Objective (SEAs) – Determine whether the SEA is determining if LEAs are complying with the comparability requirements.

Suggested Audit Procedure (SEAs)

For a sample of LEAs, review SEA records that document SEA review of LEA compliance with the comparability requirements.

Audit Objective (LEAs) – Determine whether the LEA has developed procedures for complying with the comparability requirements and maintained records that are updated at least biennially documenting compliance with the comparability requirements.

Suggested Audit Procedures (LEAs)

a. Through inquiry and review, ascertain if the LEA has developed procedures and measures for complying with the comparability requirements.

b. Review LEA comparability documentation to ascertain (1) if it has been updated at least biennially and (2) that it documents compliance with the comparability requirements.

c. Test comparability data to supporting records.

4. Access to Federal Funds for New or Significantly Expanded Charter Schools (SEAs/LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); SDFSCA (84.186) (except the Governor's Program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318* ***and 84.386****); Title III, Part A (84.365); Title II, Part A (84.367); and SIG (84.377 and* ***84.388****).*

*This section also applies to Adult Education (84.002); IDEA (84.027, 84.173****, 84.391, and 84.392****); CTE (84.048); SFSF ESF (****84.394****); and Ed Jobs (84.410).*

As described in II, "Program Procedures – General and Program-Specific Cross-Cutting Requirements," this requirement is a program-specific cross-cutting eligibility requirement that needs to be tested separately for each covered program in the Supplement.

Note: This requirement only applies with respect to funds allocated to new, or significantly expanded, charter schools under a covered program in a State that has charter schools. A *covered program* means an elementary or secondary education program administered by ED under which the Secretary allocates funds to States on a formula basis, except that the term does not include a program or portion of a program under which an SEA awards subgrants on a discretionary, noncompetitive basis. *Charter school* has the same meaning as provided in Title V, Part B, Subpart 1 of ESEA (Section 5210(1) of ESEA (20 USC 7221i(1))). With respect to an existing charter school LEA that has not significantly expanded its enrollment, an SEA must determine the school's eligibility and allocate Federal funds to the school in a manner consistent with applicable Federal statutes and regulations under each covered program.

If a State considers a charter school to be an LEA under a covered program, this requirement applies to the SEA or other State agency responsible for allocating funds under that program—either by formula or through a competition—to LEAs. If a State considers a charter school to be a public school within an LEA under a covered program, this requirement applies to the LEA. The requirements in this Supplement address an SEA's responsibilities with respect to eligible charter school LEAs. An LEA that is responsible for providing funds under a covered program to eligible charter schools must comply with these requirements on the same basis as an SEA.

Compliance Requirements – An SEA must ensure that a charter school LEA that opens for the first time or significantly expands its enrollment receives the funds under each covered program for which it is eligible. *Significant expansion of enrollment* means a substantial increase in the number of students attending a charter school due to a significant event that is unlikely to occur on a regular basis, such as the addition of one or more grades or educational programs in major

curriculum areas. The term also includes any other expansion of enrollment that an SEA determines to be significant.

Except as noted below, if a charter school LEA opens or expands by November 1, the SEA must allocate to the school the funds for which it is eligible no later than 5 months after the school first opens or significantly expands its enrollment; if a charter school LEA opens or significantly expands after November 1 but before February 1, an SEA must allocate to the school a *pro rata* portion of the funds for which the school is eligible on or before the date the SEA makes allocations to other LEAs under that program for the succeeding academic year; if a charter school LEA opens or expands after February 1, the SEA may, but is not required to, allocate to the school a *pro rata* portion of the funds for which the school is eligible.

An SEA must determine a new or expanding charter school LEA's eligibility based on actual enrollment or other eligibility data available on or after the date the charter school LEA opens or significantly expands. An SEA may not deny funding to a new or expanding charter school LEA due to the lack of prior-year data, even if eligibility and allocation amounts for other LEAs are based on prior-year data. An SEA may allocate funds to, or reserve funds for, an eligible charter school LEA based on reasonable estimates of projected enrollment at the charter school LEA. If an SEA allocates more or fewer funds to a charter school LEA than the amount for which the charter school LEA is eligible, based on actual enrollment or eligibility data, the SEA must make appropriate adjustments to the amount of funds allocated to the charter school LEA as well as to other LEAs under a covered program on or before the date the SEA allocates funds to LEAs for the succeeding academic year.

At least 120 days before the date a charter school LEA is scheduled to open or significantly expand its enrollment, the charter school LEA or its authorized public chartering agency must provide the SEA with written notice of that date. Upon receiving such notice, an SEA must provide the charter school LEA with timely and meaningful information about each covered program in which the charter school LEA may be eligible to participate, including notice of any upcoming competitions under the program. An SEA is not required to make allocations within 5 months of the date a charter school LEA opens for the first time or significantly expands if the charter school LEA, or its charter authorizer, fails to provide to the SEA proper written notice of the school's opening or expansion.

For a covered program in which an SEA awards subgrants on a competitive basis, the SEA must provide an eligible charter school LEA that is scheduled to open on or before the closing date of any competition a full and fair opportunity to apply to participate in the program. However, the SEA is not required to delay the competitive process in order to allow a charter school LEA that has not yet opened or expanded to compete. (Section 5206 of ESEA (20 USC 7221e); 34 CFR sections 76.785 through 76.799).

Audit Objectives (SEA/LEA, depending on which entity is responsible for funding charter schools) – Determine whether new or significantly expanding charter schools received the amount of Federal formula funds for which they were eligible in a timely manner.

Suggested Audit Procedures (SEA/LEA, depending on which entity is responsible for funding charter schools)

a. Determine if the entity was responsible for providing Federal formula funds under the applicable covered program to any charter school LEAs/charter schools that opened for the first time or significantly expanded enrollment on or before November 1 of the academic year.

b. Determine if the entity was responsible for providing Federal formula funds under the applicable covered program to any charter school LEAs/charter schools that opened for the first time or significantly expanded enrollment between November 1 and February 1 of the academic year.

c. Review the entity's procedures for allocating Federal formula funds under the applicable covered program to determine whether eligibility to participate in the program was based on enrollment or eligibility data from a prior year. If prior-year data were used for allocations, determine whether the entity properly based the new or expanding charter school LEA's/charter school's eligibility and allocation amount on actual eligibility or enrollment data for the year in which the school opened or expanded.

d. Review documentation to identify the opening or expansion date for each eligible charter school LEA/charter school that opened or significantly expanded its enrollment on or before November 1 of the academic year. Determine whether the charter school LEA/charter school was given access to all of the funds for which it was eligible, in the proper amount, within five months of the opening or expansion date (provided that SEA or LEA notification, data submission, and application requirements were met).

e. Review documentation to identify the opening or expansion date for each eligible charter school LEA/charter school that opened or significantly expanded its enrollment between November 1 and February 1 of the academic year. Determine whether the charter school LEA/charter school was given access to the *pro rata* portion of the funds for which the school was eligible, in the proper amount, on or before the date the SEA or LEA made allocations to other LEAs/public schools under the program for the succeeding academic year (provided that SEA or LEA notification, data submission, and application requirements were met).

f. Review documentation to determine whether the SEA or LEA made necessary adjustments to account for over- or under-allocations once actual eligibility and enrollment data became available.

IV. OTHER INFORMATION

Consolidation of Administrative Funds (SEAs and LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (except the Governor's Program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318* ***and 84.386****); Title III, Part A (84.365); MSP (84.366) (at the LEA level only); Title II, Part A (84.367); and SIG (84.377 and* ***84.388****).*

State and local administrative funds that are consolidated (as described in III.A.1, "Activities Allowed or Unallowed – Consolidation of Administrative Funds (SEAs and LEAs")) should be included in the audit universe and the total expenditures of the programs from which they originated for purposes of (1) determining Type A programs, and (2) completing the Schedule of Expenditures of Federal Awards (SEFA). A footnote showing, by program, amounts of administrative funds consolidated is encouraged.

Schoolwide Programs (LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318* ***and 84.386****); Title III, Part A (84.365); MSP (84.366); Title II, Part A (84.367); and SIG (84.377 and* ***84.388****).*

This section also applies to IDEA (84.027, 84.173, ***84.391, and 84.392****); CTE (84.048); SFSF ESF (****84.394****); and Ed Jobs (84.410).*

Since schoolwide programs are not separate Federal programs, as defined in OMB Circular A-133, expenditures of Federal funds consolidated in schoolwide programs should be included in the audit universe and the total expenditures of the programs from which they originated for purposes of (1) determining Type A programs and (2) completing the SEFA. A footnote showing, by program, amounts consolidated in schoolwide programs is encouraged.

Transferability (SEAs and LEAs)

ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a), with the agreement of the Governor); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318 ***and 84.386****); and Title II, Part A (84.367).*

Expenditures of funds transferred from one program to another (as described in III.A.3, "Activities Allowed or Unallowed – Transferability (SEAs and LEAs)") should be included in the audit universe and total expenditures of the receiving program for purposes of (1) determining Type A programs, and (2) completing the SEFA. A footnote showing amounts transferred between programs is encouraged.

Small Rural Schools Achievement (SRSA) Alternative Uses of Funds Program

ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a)); Title V, Part A (84.298); Ed Tech (84.318 ***and 84.386****); and Title II, Part A (84.367).*

Unlike "Transferability" above, where the funds are actually transferred from one program to another, under SRSA the funds are expended from the original program but for activities allowed under another program. Funds used under the SRSA Alternative Uses of Funds program should be included in the audit universe and total expenditures of the programs from which they originated for purposes of (1) determining Type A programs, and (2) completing the SEFA.

Prima Facie Case Requirement for Audit Findings

Section 452(a)(2) of the General Education Provisions Act (20 USC 1234a(a)(2)) requires that ED officials establish a *prima facie* case when they seek recoveries of unallowable costs charged to ED programs. When the preliminary ED decision to seek recovery is based on an OMB Circular A-133 audit, upon request, auditors will need to provide ED program officials audit documentation. For this purpose, audit documentation (part of which is the auditor's working papers) includes information the auditor is required to report and document that is not already included in the reporting package.

The requirement to establish a *prima facie* case for the recovery of funds applies to all programs administered by ED, with the exception of Impact Aid (CFDA 84.041) and programs under the Higher Education Act, i.e., the Family Federal Education Loan Program (CFDA 84.032) and the other ED programs covered in the Student Financial Assistance Cluster in Part 5 of the Supplement.

DEPARTMENT OF EDUCATION

CFDA 84.002 ADULT EDUCATION – BASIC GRANTS TO STATES

I. PROGRAM OBJECTIVES

The Adult Education and Family Literacy State Grant program provides grants to eligible agencies to provide adult education and literacy services. These grants help adults become literate and obtain the knowledge and skills necessary for employment; obtain the educational skills necessary to become full partners in the educational development of their children; and complete a secondary school education.

II. PROGRAM PROCEDURES

Funds are provided to the State eligible agency each year in accordance with a statutory formula. Eligible agencies develop a 5-year State plan that is approved by the Secretary, which may be revised when substantial changes in conditions occur. Local activities include services or instruction in one or more of the following categories: adult education and literacy services, including workplace literacy services; family literacy services; and English literacy programs.

Eligible providers include a local educational agency; a community-based organization of demonstrated effectiveness; a volunteer literacy organization of demonstrated effectiveness; an institution of higher education; a public or private non-profit agency; a library; a public housing authority; any other non-profit institution that has the ability to provide literacy services to adults and families; and a consortium of the agencies, organizations, institutions, libraries, or authorities described above.

Source of Governing Requirements

The program is authorized by the Adult Education and Family Literacy Act (the Act), Title II of the Workforce Investment Act of 1998 (Pub. L. No. 105-220 (20 USC 9201 *et seq*.)).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple Department of Education (ED) programs are discussed once in the ED Cross-Cutting Section of this supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references to the Cross-Cutting Section for these requirements.

A. Activities Allowed or Unallowed

The eligible agency shall require that each eligible provider receiving a grant or contract establish or operate one or more programs that provide services or instruction in one or more of the following categories: (1) adult education and literacy services, including workplace literacy services; (2) family literacy services; and (3) English literacy programs. Adults include individuals who are at least 16 years of age, who are not enrolled or required to be enrolled in secondary school under State law; and who lack sufficient mastery of basic educational skills, do not have a secondary school diploma or its recognized equivalent, or are unable to speak, read, or write the English language (Pub. L. No. 105-220 (sections 231 and 203 of the Act) (20 USC 9241 and 9202(1))).

1. *State-Level Activities* – State eligible agencies may use funds for the following: (also see III.G.3, "Matching, Level of Effort, Earmarking – Earmarking")

   a. Subgrants to eligible providers.

   b. State administrative costs including the development, and implementation of the State plan; consultation with other appropriate agencies in the development and implementation of activities assisted under the Act; and coordination and non-duplication with related Federal and State programs (section 221 of the Act (20 USC 9221)).

   c. State leadership activities such as professional development programs, technical assistance, support of State literacy resource centers, and monitoring and evaluation of adult education and literacy activities (section 223(a) of the Act (20 USC 9223(a)).

2. *Subrecipient Activities*

   Allowable activities are described in the eligible provider's approved application. Generally, eligible providers must establish or operate one or more programs that provide services or instruction in one or more of the following categories: (1) adult education and literacy services, including workplace literacy services; (2) family literacy services; and (3) English literacy programs. Adults include individuals who are at least 16 years of age, who are not enrolled or required to be enrolled in secondary school under State law; and who lack sufficient mastery of basic educational skills, do not have a secondary school diploma or its recognized equivalent, or are unable to speak, read, or write the English language. Funds can also be used for administrative costs (see III.G.3.b, "Matching, Level of Effort, Earmarking – Earmarking" for limitation) (Pub. L. No. 105-220 (sections 231, 232, 234 and 203 of the Act) (20 USC 9241, 9242, 9243 and 9202(1)).

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

C. Cash Management

See ED Cross-Cutting Section.

G. Matching, Level of Effort, Earmarking

1. Matching

a. Each State eligible agency providing adult education and literacy services shall provide a non-Federal contribution of at least 25 percent of the total amount of funds expended for adult education and literacy activities in the State (section 222(b) of the Act (20 USC 9222(b))).

b. An eligible agency serving an outlying area shall provide a non-Federal contribution equal to 12 percent of the total amount of funds for adult education and literacy activities in the outlying area, unless the Secretary allows a smaller non-Federal contribution (section 222(b) of the Act (20 USC 9222(b))).

c. An eligible agency's non-Federal contribution may be provided in cash or in-kind, fairly evaluated, and shall include only non-Federal funds that are used for adult education and literacy activities in a manner that is consistent with the purpose of the Act (section 222(b) of the Act (20 USC 9222(b))).

2.1 Level of Effort – *Maintenance of Effort*

An eligible agency may receive funds for any fiscal year if the Secretary finds that the fiscal effort per student or the aggregate expenditures of such eligible agency for adult education and literacy activities, in the second preceding fiscal year, was not less than 90 percent of the fiscal effort per student or the aggregate expenditures of the eligible agency for adult education and literacy activities, in the third preceding fiscal year (section 241(b) of the Act (20 USC 9251(b))).

2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking

a. *State Eligible Agency* – The following earmarking requirements are for each yearly grant award and must be met within the period of its availability (generally 27 months) (34 CFR sections 76.703 through 76.710):

(1) Grants and contracts for eligible providers shall not be less than 82.5 percent of the eligible agency's grant funds (section 222(a)(1) of the Act (20 USC 9222(a)(1))).

(2) Correction education and education for other institutionalized individuals shall not be more than 10 percent of the 82.5 percent mentioned above (section 222(a)(1) of the Act (20 USC 9222(a)(1))).

(3) State leadership activities under section 223 of the Act shall not exceed 12.5 percent of the grant funds (section 222(a)(2) of the Act (20 USC 9222(a)(2))).

(4) Necessary and reasonable administrative expenses of the eligible agency shall not be more than five percent of the grant funds, or $65,000, whichever is greater (section 222(a)(3) of the Act (20 USC 9222(a)(3))).

b. *Subrecipients* – Generally, subrecipients may use up to five percent of their funds for non-instructional costs, such as administration of local programs. In cases where the five percent limit is too restrictive, the eligible provider shall negotiate with the eligible agency to determine the adequate level of funds for non-instructional purposes (section 233 of the Act) (20 USC 9243).

H. Period of Availability of Federal Funds

See ED Cross-Cutting Section.

L. Reporting

1. Financial Reporting

a. SF-269 – *Financial Status Report* – Not Applicable

b. SF-270 – *Request for Advance or Reimbursement* – Only grantees placed on reimbursement are required to complete this form to request payment of grant award funds. The requirement to use this form is imposed on an individual recipient basis.

c. SF-271- *Outlay Report and Request for Reimbursement for Construction Programs*- Not Applicable

d. SF-272 – *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable (using ED-specific form – *OMB No. 1830-0027*)

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

Access to Federal Funds for New or Significantly Expanded Charter Schools

See ED Cross-Cutting Section.

DEPARTMENT OF EDUCATION

CFDA 84.010 TITLE I GRANTS TO LOCAL EDUCATIONAL AGENCIES (Title I, Part A of the ESEA)

CFDA 84.389 TITLE I GRANTS TO LOCAL EDUCATIONAL AGENCIES, RECOVERY ACT

I. PROGRAM OBJECTIVES

The objective of these programs is to improve the teaching and learning of children who are at risk of not meeting challenging academic standards and who reside in areas with high concentrations of children from low-income families.

II. PROGRAM PROCEDURES

The Department of Education (ED) provides Title I, Part A funds through each State Educational Agency (SEA) to local educational agencies (LEAs) through a statutory formula based primarily on the number of children ages 5 through 17 from low-income families. This number is augmented by annually-collected counts of children ages 5 through 17 in foster homes, locally operated institutions for neglected or delinquent children, and families above poverty that receive assistance under Temporary Assistance for Needy Families (TANF) (CFDA 93.558), adjusted to account for the cost of education in each State. To receive funds, an SEA must submit to ED for approval either: (1) an individual State plan as provided in Section 1111 of the Elementary and Secondary Education Act (ESEA) (20 USC 6311), or (2) a consolidated plan that includes Part A, in accordance with Section 9302 of the ESEA (20 USC 7842). The individual or consolidated plan, after approval by ED, remains in effect for the duration of the State's participation in Title I, Part A under the current ESEA authorization. The plan must be updated to reflect substantive changes.

To receive Title I, Part A funds, LEAs must have on file with the SEA an approved plan that includes descriptions of the general nature of services to be provided, how program services will be coordinated with the LEA's regular program of instruction, additional LEA assessments, if any, used to gauge program outcomes, and strategies to be used to provide professional development. An LEA may also include Part A as part of a consolidated application submitted to the SEA under Section 9305 of the ESEA (20 USC 7845).

LEAs allocate Title I, Part A funds to eligible school attendance areas based on the number of children from low-income families residing within the attendance area. A school at or above 40 percent poverty may use its Part A funds, along with other Federal, State, and local funds, to operate a schoolwide program to upgrade the instructional program in the whole school (20 USC 6314(a)). Otherwise, a school operates a targeted assistance program in which the school identifies students who are failing, or most at risk of failing, to meet the State's challenging student academic achievement standards and who have the greatest need for assistance. The school then designs, in consultation with parents, staff, and the LEA, an instructional program to meet the needs of those students (20 USC 6315).

For funds under the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5), ED awarded each State 50 percent of the funds from its Fiscal Year (FY) 2009 Title I, Part A allocation provided through the ARRA on April 1, 2009 and the remaining 50 percent of the funds on August 31, 2009 on the basis of the State's existing approved ESEA Consolidated State Application. States were not required to submit additional documentation to receive these funds. By accepting the second half ARRA funds, States agreed to comply with all accountability and reporting requirements in Section 1512 of ARRA.

Source of Governing Requirements

This program is authorized by Title I, Part A of the ESEA, as amended (Pub. L. No. 107-110 (20 USC 6301 through 6339 and 6571 through 6578) **and ARRA**. Program regulations are found at 34 CFR part 200. The Education Department General Administrative Regulations (EDGAR) at 34 CFR parts 76, 77, 81, 82, 98, and 99 also apply to this program, as do certain requirements of 34 CFR part 299 (General Provisions).

Availability of Other Program Information

A number of documents posted on ED's website contain information pertinent to the Title I, Part A requirements in this Compliance Supplement. They are:

- Local Educational Agency Identification and Selection of School Attendance Areas and Schools and Allocation of Title I Funds to Those Areas and Schools (August 2003) (http://www.ed.gov/programs/titleiparta/wdag.doc);
- Public School Choice (January 14, 2009) (http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.doc);
- Report Cards, Title I, Part A (September 12, 2003) (http://www.ed.gov/programs/titleiparta/reportcardsguidance.doc);
- Supplemental Educational Services (January 14, 2009) (http://www.ed.gov/policy/elsec/guid/suppsvcsguid.doc);
- Title I Paraprofessionals (March 1, 2004) (http://www.ed.gov/policy/elsec/guid/paraguidance.doc);
- Title I Services to Eligible Private School Children (October 17, 2003) (http://www.ed.gov/programs/titleiparta/psguidance.doc); and
- LEA and School Improvement (July 21, 2006) (http://www.ed.gov/policy/elsec/guid/schoolimprovementguid.pdf)
- **Funds under Title I, Part A of the Elementary and Secondary Education Act of 1965 Made Available Under the American Recovery and Reinvestment Act of 2009 (March 2010)** (http://www2.ed.gov/policy/gen/leg/recovery/guidance/title-i-rev-201003.pdf **)**

- **The American Recovery and Reinvestment Act of 2009 (ARRA): Using Title I, Part A ARRA Funds for Grants to Local Educational Agencies to Strengthen Education, Drive Reform, and Improve Results for Students (September 2, 2009)** (*http://www.ed.gov/policy/gen/leg/recovery*/guidance/titlei-reform.doc)
- Non-Regulatory Guidance on Title I, Part A Waivers (July 2009) (*http://www.ed.gov/programs/titleiparta/title-i-waiver.doc*)
- Implementing Response to Intervention (RTI) using Title I, Title III, and Coordinated Early Intervening Services (*http://www.ed.gov/programs/titleiparta/rti.html*)
- Final Notice of Adjustments to Title I, Part A and IDEA, Section 611 Statutory Caps on State Administration for Federal Fiscal Year (FY) 2009 (October 27, 2009) (*http://edocket.access.gpo.gov/2009/pdf/E9-25839.pdf*)
- High School Graduation Rate Non-Regulatory Guidance (December 22, 2008) (*http://www2.ed.gov/policy/elsec/guid/hsgrguidance.pdf*)

Additional information is provided in the "Availability of Other Program Information" part of the ED Cross-Cutting Section.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements. Also, as discussed in the Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements. For several specific requirements covered in this Supplement, the Secretary specifically invited SEAs to apply for a waiver with respect to ARRA funds. A reference to those waivers follows the discussion of each requirement.

A. Activities Allowed or Unallowed

Also see ED Cross-Cutting Section.

1. *LEAs* (Targeted assistance programs only. See III.N, "Special Tests and Provisions," for schoolwide programs.)

   In a targeted assistance school, **both ARRA and non-ARRA** funds available under Part A may be used only for programs that are designed to help participating children meet the State's student academic achievement standards

expected of all children. Allowable activities in these schools include, but are not limited to, instructional programs, counseling, mentoring, other pupil services, college and career awareness and preparation, services to prepare students for the transition from school to work, services to assist preschool children in the transition to elementary school programs, parental involvement activities, and professional staff development. If health, nutrition, and other social services are not otherwise available from other sources to participating children, Part A funds may be used as a last resort to provide such services. The LEA's plan will provide a description of the general nature of the services to be provided with Part A funds. However, each Title I school determines the actual program it will provide (Title I, Section 1115 of ESEA (20 USC 6315)).

2. *SEAs*

SEAs must use regular FY 2010 funds to provide subgrants to LEAs in their FY 2010 LEA allocation process. (SEAs allocated ARRA funds to LEAs as part of their FY 2009 LEA allocation process.) SEAs may use **both ARRA and non-ARRA** funds for State administration and for school improvement activities in accordance with the State plan and statutory requirements (Title I, Sections 1003(a)-(e), 1004, 1111, and 1117 of ESEA (20 USC 6303(a)-(e), 6304, 6311, and 6317)). (Also see III.G.3.a below and ED Cross-Cutting Section, 84.000, III.G.3.a)

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

C. Cash Management

See ED Cross-Cutting Section.

E. Eligibility

1. Eligibility for Individuals

Eligible Children (LEA targeted assistance programs only)

Title I, Part A funds are to be used to provide services and benefits to eligible children residing or enrolled in eligible school attendance areas. Once funds are allocated to eligible school attendance areas (see E.2.a and E.2.b below), a school operating a targeted assistance program must use Title I funds only for programs that are designed to meet the needs of children identified by the school as failing, or most at risk of failing, to meet the State's challenging student academic achievement standards. In general, eligible children are identified on the basis of multiple, educationally related, objective criteria established by the LEA and supplemented by the school. Children who are economically disadvantaged, children with disabilities, migrant children, and limited English proficient (LEP)

children are eligible for Part A services on the same basis as other children who are selected for services. In addition, certain categories of children are considered at risk of failing to meet the State's student academic achievement standards and are thus eligible for Part A services because of their status. Such children include: children who are homeless; children who participated in a Head Start, Even Start, Early Reading First, or Title I preschool program at any time in the two preceding years; children who received services under the Migrant Education Program under Title I, Part C at any time in the two preceding years; and children who are in a local institution for neglected or delinquent children or attending a community day program. From the pool of eligible children, a targeted assistance school selects those children who have the greatest need for special assistance to receive Part A services (Title I, Section 1115 of ESEA (20 USC 6315)).

2. Eligibility for Group of Individuals or Area of Service Delivery

a. *School Attendance Areas or Schools* (LEAs with either schoolwide programs or targeted assistance programs)

An LEA must determine which school attendance areas are eligible to participate in Part A. A school attendance area is generally eligible to participate if the percentage of children from low-income families is at least as high as the percentage of children from low-income families in the LEA as a whole or at least 35 percent. An LEA may also designate and serve a school in an ineligible attendance area if the percentage of children from low-income families enrolled in that school is equal to or greater than the percentage of such children in a participating school attendance area. When determining eligibility, an LEA must select a poverty measure from among the following data sources: (1) the number of children ages 5–17 in poverty counted in the most recent census; (2) the number of children eligible for free and reduced price lunches; (3) the number of children in families receiving TANF; (4) the number of children eligible to receive Medicaid assistance; or (5) a composite of these data sources. The LEA must use that measure consistently across the district to rank all its school attendance areas according to their percentage of poverty.

An LEA must serve eligible schools or attendance areas in rank order according to their percentage of poverty. An LEA must serve those areas or schools above 75 percent poverty, including any middle or high schools, before it serves any with a poverty-percentage at or below 75 percent. After an LEA has served all areas and schools with a poverty rate above 75 percent, the LEA may serve lower-poverty areas and schools either by continuing with the district-wide ranking or by ranking its schools at or below 75 percent poverty according to grade-span grouping (e.g., K-6, 7-9, 10-12). If an LEA ranks by grade span, the LEA may use the district-wide poverty average or the poverty average for the respective grade-span grouping. An LEA may serve, for one additional year, an attendance area

that is not currently eligible but that was eligible and served in the preceding year.

An LEA may elect not to serve an eligible area or school that has a higher percentage of children from low-income families if: (1) the school meets the Title I comparability requirements; (2) the school is receiving supplemental State or local funds that are spent according to the requirements in sections 1114 or 1115 of Title I; and (3) the supplemental State and local funds expended in the area or school equal or exceed the amount that would be provided under Part A. An LEA with an enrollment of fewer than 1,000 students or with only one school per grade span is not required to rank its school attendance areas (Title I, Section 1113(a)-(b) of ESEA (20 USC 6313(a)-(b)); 34 CFR section 200.78(a)).

b. *Allocating funds to eligible school attendance areas and schools* (LEAs with either schoolwide programs or targeted assistance programs)

An LEA must allocate Part A funds to each participating school attendance area or school, in rank order, on the basis of the **total** number of children from low-income families residing in the area or attending the school. In calculating the total number of children from low-income families, the LEA must include children from low-income families who reside in a participating area and attend private schools, using the same poverty data, if available, as the LEA uses to count public school children. If the same data are not available, the LEA may use comparable data. If an LEA uses a survey of families of private school children, the LEA may extrapolate, from actual data on a representative sample of private school children, the number of children from low-income families who attend private schools. An LEA may also correlate sources of data, or apply the low-income percentage of each participating public school attendance area to the number of private school children who reside in that area. If an LEA selects a public school to participate on the basis of enrollment, rather than because it serves an eligible school attendance area, the LEA must, in consultation with private school officials, determine an equitable way to count private school children from low-income families in order to calculate the amount of Title I funds available to serve private school children. An LEA may count private school children from low-income families every year or every two years.

If an LEA serves any attendance area with less than a 35 percent poverty rate, the LEA must allocate to all its participating areas an amount per child from a low-income family that equals at least 125 percent of the LEA's Part A allocation per child from a low-income family. (An LEA's allocation per child from a low-income family is the total LEA allocation under subpart 2 of Part A divided by the number of children from low-income families in the LEA according to the poverty measure selected by

the LEA to identify eligible school attendance areas. The LEA then multiplies this per-child amount by 125 percent.) If an LEA serves only areas with a poverty rate greater than 35 percent, the LEA must allocate funds, in rank order, on the basis of the total number of children from low-income families in each area or school, but is not required to allocate a per-pupil amount of at least 125 percent. With the possible exception of a school in corrective action or restructuring, an LEA may not allocate a higher amount per child from a low-income family to areas or schools with lower percentages of poverty than to areas with higher percentages. Because an LEA may not reduce the allocation of a school identified for corrective action or restructuring by more than 15 percent in order to reserve Title I funds for choice-related transportation and supplemental educational services, the final allocation per child from a low-income family of such a school after application of this rule may be higher than a higher-poverty school. If an LEA serves areas or schools below 75 percent poverty by grade-span groupings, the LEA may allocate different amounts per child from a low-income family for different grade-span groupings as long as those amounts do not exceed the amount per child from a low-income family allocated to any area or school above 75 percent poverty. Amounts per child from a low-income family within grade spans may also vary as long as the LEA allocates higher amounts per child from a low-income family to higher poverty areas or schools within the grade span than it allocates to lower poverty areas or schools.

The LEA must reserve the amounts generated by private school children from low-income families who reside in participating public school attendance areas to provide services to eligible private school children (Title I, Section 1113(c) of ESEA (20 USC 6313(c)) and Title I, Section 1116(b)(10)(D) of ESEA (20 USC 6316(b)(10)(D)); 34 CFR sections 200.77 and 200.78).

c. *Serving homeless children in non-participating schools and children in local institutions for neglected or delinquent children*

(1) Before allocating Title I funds to school attendance areas and schools, an LEA must reserve funds to provide services comparable to those provided to children in participating school attendance areas and schools to serve:

- Children in local institutions for neglected children; and
- Homeless children who do not attend participating schools, including providing educationally related support services to children in shelters and other locations where homeless children may live.

(2) An LEA may reserve funds to provide services comparable to those provided to children in participating school attendance areas and schools to serve:

- Children in local institutions for delinquent children; and
- Neglected and delinquent children in community day school programs.

(Title I, Section 1113(c) of ESEA (20 USC 6313(c)); 34 CFR section 200.77).

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort*

See ED Cross-Cutting Section.

2.2 Level of Effort – *Supplement Not Supplant*

See ED Cross-Cutting Section.

3. Earmarking (SEAs)

See ED Cross-Cutting Section and the following:

a. *Targeting School Improvement Funds*

Each SEA must reserve 4 percent of the amount the State receives under subpart 2 of Part A for school improvement activities under sections 1116 and 1117 of Title I. Of the amount reserved, the SEA must allocate not less than 95 percent directly to LEAs for activities under section 1116 in schools identified for school improvement, corrective action, and restructuring. However, the SEA may, with the approval of its LEAs, provide directly for these activities or arrange for them to be provided by other entities such as school support teams or educational service agencies. In allocating these funds to LEAs, the SEA must give priority to LEAs that: (1) serve the lowest-achieving students; (2) demonstrate the greatest need for the funds; and (3) demonstrate the strongest commitment to ensuring that the funds will be used to enable the lowest-achieving schools to meet their progress goals.

In reserving these funds, an SEA may not reduce the sum of the allocations an LEA receives under subpart 2 of Part A below the sum of the allocations the LEA received for the preceding fiscal year. For this calculation, the FY 2010 appropriations act (Pub. L. No. 111-117) excluded the portion of an LEA's FY 2009 allocation provided through ARRA. If funds are insufficient to reserve 4 percent and meet this provision, the SEA is not required to reserve the full amount.

If, after consulting with LEAs, the SEA determines that the amount of funds reserved is greater than needed, the SEA must allocate the excess amount to LEAs (1) in proportion to their allocations under subpart 2 of Part A, or (2) in accordance with the SEA's reallocation procedures under Section 1126(c) of Title I (Title I, Section 1003(a)-(e) of ESEA (20 USC 6303(a)-(e)); 34 CFR section 200.100(a)).

b. *Targeting Funds for Choice-Related Transportation and Supplemental Educational Services*

In the case of a school that is in its first year of school improvement under Section 1116(b)(1)(A), the LEA is required to provide choice-related transportation under Section 1116(b)(9). In the case of a school that is in its second year of school improvement under Section 1116(b)(5), corrective action under Section 1116(b)(7), or restructuring under Section 1116(b)(8), the LEA is required to provide choice-related transportation under Section 1116(b)(9) and supplemental educational services under Section 1116(e). (Note that a State may have received a waiver to permit its LEAs to offer supplemental educational services to students enrolled in schools in the first year of school improvement.) An LEA that is obligated to provide choice-related transportation or choice-related transportation and supplemental educational services must spend an amount equal to at least 20 percent of its allocation under subpart 2 of Part A ("20 percent obligation") to provide such transportation and supplemental educational services, unless a lesser amount is needed to satisfy all requests (Title I, Section 1116(b)(10)(A) of ESEA (20 USC 6316(b)(10)(A))). Of this amount, the LEA must spend a minimum of an amount equal to 5 percent on choice-related transportation (Title I, Section 1116(b)(10)(A)(i) of ESEA (20 USC 6316(b)(10)(A)(i))), and a minimum of an amount equal to 5 percent for supplemental educational services (Title I, Section 1116(b)(10)(A)(ii) of ESEA (20 USC 6316(b)(10)(A)(ii))). The LEA may spend the remaining 10 percent for either or both of these activities (Title I, Section 1116(b)(10)(A)(iii) of ESEA (20 USC 6316(b)(10)(A)(iii))). The LEA may count its costs for outreach and assistance to parents concerning their choice to transfer their child to another public school served by the LEA or to request supplemental educational services, up to an amount equal to 0.2 percent of its subpart 2 allocation, toward its obligation to spend an amount equal to at least 20 percent of its subpart 2

of Part A allocation to provide such transportation and supplemental educational services (34 CFR section 200.48(a)(2)(iii)(C)). The LEA may not include other costs for administration or costs for transportation related to supplemental educational services, if any, toward meeting these percentage requirements. In applying this provision, an LEA may not reduce by more than 15 percent the total amount it makes available under Part A to a school it has identified for corrective action or restructuring (Title I, Section 1116(b)(1)(D) of ESEA (20 USC 6316(b)(1)(D))).

Unless it meets the criteria listed below, if an LEA does not meet its 20 percent obligation in a given school year, the LEA must spend the unexpended amount in the subsequent school year on choice-related transportation costs, supplemental educational services, or parent outreach and assistance. To spend less than the amount needed to meet its 20 percent obligation, at a minimum, an LEA must meet the following criteria: (1) partner, to the extent practicable, with outside groups to help inform eligible students and their families of the opportunities to transfer or to receive supplemental educational services; (2) ensure that eligible students and their parents have a genuine opportunity to sign up to transfer or obtain supplemental educational services, including by providing timely, accurate notice; ensuring that sign-up forms for supplemental educational services are distributed directly to all eligible students and their parents and are made widely available and accessible through broad means; and providing a minimum of two enrollment "windows," at separate points in the school year, that are of sufficient length to enable parents of eligible students to make informed decisions about requesting supplemental educational services and selecting a provider; and (3) ensure that eligible supplemental educational services providers are given access to school facilities, using a fair, open, and objective process, on the same basis and terms as are available to other groups that seek access to school facilities.

An LEA that does not meet its 20 percent obligation in a given school year must notify the SEA that it has met the criteria listed above and intends to spend the remainder of its 20 percent obligation on other allowable activities, specifying the amount of that remainder. The LEA must maintain records that demonstrate it has met these criteria. If an SEA determines, through monitoring, that an LEA has failed to meet any of the criteria listed above, the LEA must spend an amount equal to the remainder of its 20 percent obligation in the subsequent school year, in addition to its 20 percent obligation for that year, on choice-related transportation costs, supplemental educational services, or parent outreach and assistance, or meet the criteria listed above and obtain permission from the SEA before spending less in the subsequent school year (34 CFR section 200.48(d)).

For each student receiving supplemental educational services, the LEA must make available the lesser of (1) the amount of its allocation under subpart 2 of Part A divided by the number of students in the LEA from families below the poverty level as determined by the U.S. Bureau of the Census; or (2) the actual cost of the services received by the student (Title I, Sections 1116(b)(10) and (e)(6) of ESEA (20 USC 6316(b)(10), (e)(6)); 34 CFR section 200.48).

H. Period of Availability of Federal Funds

See ED Cross-Cutting Section and the following.

Title I, Part A ARRA funds are available for obligation beginning with the date of enactment of ARRA, February 17, 2009. Title I, Part A ARRA funds will remain available for obligation by SEAs and LEAs until September 30, 2011, which includes the one-year carryover period authorized under section 421(b) of the General Education Provisions Act. An LEA may carry over to the next fiscal year no more than 15 percent of its FY 2009 Title I, Part A allocation unless it receives a waiver from the SEA. An SEA may provide this waiver no more than once every 3 years. This 3-year limitation may be waived by ED due to the availability of ARRA funds (20 USC 1225(b); Section 1603 of ARRA; Section 1127 of ESEA (20 USC 6339)).

L. Reporting

1. Financial Reporting

See ED Cross-Cutting Section.

2. Performance Reporting

Annual Report Card, High School Graduation Rate – (*OMB No. 1810-0581*) (SEAs/LEAs)

Key Line Item – Beginning with annual report cards providing assessment results for the 2010-2011 school year, a State and its LEAs must report graduation rate data for all public high schools at the school, LEA, and State levels. Graduation rate data must be reported both in the aggregate and disaggregated by each subgroup described in 34 CFR section 200.13(b)(7)(ii) using a 4-year adjusted cohort graduation rate. To remove a student from the cohort, a school or LEA must confirm in writing that the student transferred out, emigrated to another country, or is deceased. To confirm that a student transferred out, the school or LEA must have official written documentation that the student enrolled in another school or in an educational program that culminates in the award of a regular high school diploma. A student who is retained in grade, enrolls in a General Educational Development (GED) program, or leaves school for any other reason may not be counted as having transferred out for the purpose of calculating

graduation rate and must remain in the adjusted cohort (Title I, Sections 1111(b)(2) and (h) of the ESEA (20 USC 6311(b)(2) and (h)); 34 CFR section 200.19(b)).

Note: Some States may have received an extension of the deadline for reporting graduation rates by 2010-11 as provided for in 34 CFR section 200.19(b)(7).

3. Special Reporting

See ED Cross-Cutting Section.

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

1. Participation of Private School Children

See ED Cross-Cutting Section.

2. Schoolwide Programs (LEAs)

See ED Cross-Cutting Section.

3. Comparability

See ED Cross-Cutting Section.

4. Access to Federal Funds for New or Significantly Expanded Charter Schools

See ED Cross-Cutting Section.

5. Identifying Schools and LEAs Needing Improvement

Compliance Requirements

SEAs

An SEA must annually review the progress of each LEA that receives funds under subpart 2 of Part A of Title I to determine whether the LEA made adequate yearly progress as defined by the State. The SEA must identify for improvement any LEA that fails to make adequate yearly progress, as defined by the State, for two consecutive years. In identifying an LEA for improvement, an SEA may base identification on whether the LEA did not make adequate yearly progress because it did not meet (a) the State's annual measurable objectives for the same subject or (b) the same other academic indicator for 2 consecutive years. But the SEA may not limit identification to an LEA that did not make adequate yearly progress only because it did not meet (a) the State's annual measurable

objectives for the same subject or (b) the same other academic indicator for the same subgroup for two consecutive years. The SEA must identify the LEA for corrective action if it continues to fail to make adequate yearly progress at the end of its second full year in improvement (subject to the delay provision discussed in the next paragraph) (Title I, Sections 1116(c)(1), (3), and (10) of ESEA (20 USC 6316(c)(1), (3), and (10)); 34 CFR sections 200.32 and 200.50 through 200.53).

The SEA may delay implementation of corrective action for a period not to exceed one year if the LEA makes adequate yearly progress for one year or its failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the LEA (Title I, Section 1116(c)(10)(F) of ESEA (20 USC 6316(c)(10)(F)); 34 CFR section 200.50(f)).

Each SEA must report annually to the Secretary (*OMB No. 1810-0581*), and make certain information available within the State, including the number and names of each school and LEA identified for improvement, corrective action, and restructuring under section 1116, the reason why each school and LEA was so identified, and the measures taken to address the achievement problems in general of such schools and LEAs. In addition, the SEA must prepare and disseminate an annual State report card that contains, among other things, information on the performance of LEAs regarding adequate yearly progress, including the number and names of each school and LEA identified for improvement, corrective action, and restructuring under Section 1116. Moreover, the SEA must ensure that each LEA collects the data necessary to prepare its annual report card (Title I, Sections 1111(h)(1) and (4) of ESEA (20 USC 6311(h)(1) and (4))).

LEAs

An LEA must annually review the progress of each school served under Title I, Part A to determine whether the school has made adequate yearly progress. The LEA must identify for school improvement any school that fails to make adequate yearly progress, as defined by the SEA, for two consecutive school years. In identifying a school for improvement, an LEA may base identification on whether the school did not make adequate yearly progress because it did not meet (a) the State's annual measurable objectives for the same subject or (2) the same other academic indicator for 2 consecutive years. But the LEA may not limit identification to a school that did not make adequate yearly progress only because it did not meet (a) the State's annual measurable objectives for the same subject or (b) the same other academic indicator for the same subgroup for 2 consecutive years. After a school has been identified for improvement for two school years (subject to the delay provision discussed in the next paragraph), the LEA must identify that school for corrective action if it continues to fail to make adequate yearly progress. After a school has been in corrective action for a full school year (subject to the delay provision discussed in the next paragraph), the LEA must identify it for restructuring if it continues to fail to make adequate yearly progress (Title I, Sections 1116(a) and (b)(1), (7), and (8) of ESEA (20 USC 6316(a) and (b)(1), (7), and (8));
34 CFR sections 200.30 through 200.34).

The LEA may delay, for a period not to exceed one year, implementation of requirements under the second year of school improvement, corrective action, or restructuring if the school makes adequate yearly progress for one year or the failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the school or LEA (Title I, Section 1116(b)(7)(D) of ESEA (20 USC 6316(b)(7)(D)); 34 CFR section 200.35).

Each LEA that receives Title I, Part A funds must prepare and disseminate to all schools in the LEA—and to all parents of students attending those schools—an annual LEA report card that, among other things, includes the number, names, and percentage of schools identified for school improvement and how long the schools have been so identified. The LEA must also publicize and disseminate the results of its annual progress review to parents, teachers, principals, schools, and the community. The LEA should use broad means of communication, such as the Internet and publicly available media, to disseminate and publicize this information (Title I, Sections 1111(h)(2) and 1116(a)(1)(C) of ESEA (20 USC 6311(h)(2) and 6316(a)(1)(C)); 34 CFR sections 200.36 through 200.38).

Note: In many states, the SEA conducts the review of progress of schools within LEAs and sends the results of that review to the LEAs.

Note: Some States are participating in a differentiated accountability pilot through a waiver under section 9401 of ESEA (20 USC 7861). These States have flexibility, for example, with respect to labeling categories of schools for improvement, managing the school improvement timeline, and differentiating school improvement interventions based on severity of need (see http://www.ed.gov/admins/lead/account/differentiatedaccountability/dapstates.html).

Audit Objectives – Determine whether, in collecting, compiling, and reporting progress of LEAs and schools that receive funds under subpart 2 of Part A of Title I, the SEA and LEA complied with the above requirements.

Suggested Audit Procedures

SEAs

a. Review how the SEA collects, compiles, and determines the accuracy of information obtained about the number and names of schools and LEAs in need of improvement and reports this data to ED and the public.

b. Review data received about schools and LEAs to ascertain that those data were included and correctly reflected in the SEA's submission to ED and the information disseminated to the public.

LEAs

a. Review how the LEA determines the schools in need of improvement.

b. Trace the data about the LEA to source records to determine its accuracy, reliability, and completeness.

c. Determine whether the LEA disseminated information to all schools in the LEA and to all parents of students attending those schools and made the information widely available through public means, such as the Internet and the media.

6. Highly Qualified Teachers and Paraprofessionals

Compliance Requirements

Highly qualified teachers.

Beginning after the first day of the 2002-03 school year, an LEA had to ensure that any teacher whom it hired to teach a core academic subject and who worked in a program supported with Title I, Part A funds was highly qualified as defined in 34 CFR section 200.56. This requirement applied to teachers in Title I targeted assistance programs who taught a core academic subject and were paid with Title I, Part A funds and to all teachers who taught a core academic subject in a Title I schoolwide program school. By the end of the 2005-06 school year, the LEA had to ensure that all teachers of core academic subjects, whether or not they work in a program supported with Title I, Part A funds, are highly qualified. "Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. A special education teacher is a "highly qualified teacher" under the ESEA if the teacher meets the requirements for a "highly qualified special education teacher" in 34 CFR section 300.18 (Title I, Section 1119(a) of ESEA (20 USC 6319(a)); 34 CFR sections 200.55 and 200.56 (34 CFR section 200.56(d)).

Note: As provided in letters from the Secretary or the Assistant Secretary for Elementary and Secondary Education, dated October 21, 2005, March 21, 2006, and July 23, 2007 (see below), States that did not reach the goal of having all teachers of core academic subjects be highly qualified by the end of the 2005-2006 school year will not lose Federal funds if they are implementing the law and making a good-faith effort to reach that goal as quickly as possible. All States have negotiated a plan to come into compliance with the highly qualified teacher requirements. In accordance with the July 23, 2007 policy letter, schools should hire the most qualified teachers available; States must annually report to the Federal government information on the quality of teachers and the percentage of classes being taught by highly qualified teachers in the State, LEA, and school (Section 1111(h)(4)(G) of ESEA (20 USC 6311(h)(4)(G))); and LEAs must annually inform parents that they may request, and that the LEA will provide on request, information regarding the professional qualifications of classroom teachers (Section 1111(h)(6) of ESEA (20 USC 6311(h)(6))).

Qualifications of paraprofessionals.

a. An LEA must ensure that each paraprofessional who is hired by the LEA after January 8, 2002 and who works in a program supported with Title I, Part A funds meets specific qualification requirements. Paraprofessionals who work in a program supported with Title I, Part A funds and who were hired by an LEA prior to January 8, 2002, had to meet these requirements by the end of the 2005-2006 school year. The term "paraprofessional" means an individual who provides instructional support; it does not include individuals who have only non-instructional duties (such as providing technical support for computers, providing personal care services, or performing clerical duties). A paraprofessional works in a program supported with Title I, Part A funds if the paraprofessional is paid with Title I, Part A funds in a Title I targeted assistance school or works as a paraprofessional in a schoolwide program school.

b. A paraprofessional must hold a high-school diploma or its recognized equivalent and meet one of the following requirements:

(1) Have completed at least two years of study at an institution of higher education.

(2) Have obtained an associate's or higher degree.

(3) Have met a rigorous standard of quality, and can demonstrate through a formal State or local academic assessment knowledge of, and the ability to assist in instructing, reading/language arts, writing, and mathematics, or reading readiness, writing readiness, and mathematics readiness.

c. A paraprofessional who is proficient in English and a language other than English and acts as a translator or who has duties that consist solely of conducting parental involvement activities need only have a high-school diploma or its recognized equivalent.

(Title I, Section 1119(c)-(f) of ESEA (20 USC 6319(c)-(f));
34 CFR section 200.58)

A number of documents posted on ED's website contain information pertinent to the Title I, Part A requirements regarding highly qualified teachers and paraprofessionals. They are:

- Key Policy Letters Signed by the Education Secretary or Deputy Secretary (March 31, 2004) (http://www.ed.gov/policy/elsec/guid/secletter/040331.html)

- Key Policy Letters Signed by the Education Secretary or Deputy Secretary (October 21, 2005) (http://www.ed.gov/policy/elsec/guid/secletter/051021.html)

- Statement Regarding No Child Left Behind Requirements for Paraprofessionals (June 17, 2005) (http://www.ed.gov/news/pressreleases/2005/06/06172005a.html)

- Key Policy Letter Signed by the Assistant Secretary for Elementary and Secondary Education (March 21, 2006) (http://www.ed.gov/programs/teacherqual/cssoltr.doc)

- Key Policy Letters Signed by the Education Secretary or Deputy Secretary (September 5, 2006) (http://www.ed.gov/policy/elsec/guid/secletter/060905.html)

- Key Policy Letters Signed by the Education Secretary or Deputy Secretary (July 23, 2007) (http://www.ed.gov/policy/elsec/guid/secletter/070723.html)

- Approved State plans for coming into compliance with highly qualified teacher requirements, and related materials (http://www.ed.gov/programs/teacherqual/hqtplans/index.html)

Audit Objective – Determine whether the LEA is hiring only highly qualified teachers to teach core academic subjects in general and is hiring only qualified paraprofessionals in programs supported with Title I, Part A funds. If the LEA is not hiring only highly qualified teachers, determine whether the LEA's hiring of teachers of core academic subjects who are not highly qualified is consistent with the approved State plan.

Suggested Audit Procedures

a. Review LEA procedures for hiring highly qualified teachers of core academic subjects in general and for hiring qualified paraprofessionals in programs supported with Title I, Part A funds.

b. Trace the data to source records to determine if teachers of core academic subjects in general and paraprofessionals working in programs supported with Title I, Part A funds who were hired during the year covered by the audit met the criteria in 34 CFR sections 200.55, 200.56, and 200.58.

c. Ascertain that, during the year covered by the audit, the hiring of teachers of core academic subjects who are not highly qualified was consistent with the approved State plan.

DEPARTMENT OF EDUCATION

CFDA 84.011 MIGRANT EDUCATION – STATE GRANT PROGRAM (Title I, Part C of ESEA)

I. PROGRAM OBJECTIVES

The objectives of the Migrant Education – State Grant Program (Migrant Education Program or MEP) are to: (1) support high-quality and comprehensive educational programs for migratory children to help reduce the educational disruptions and other problems that result from repeated moves; (2) ensure that migratory children who move among the States are not penalized in any manner by disparities among the States in curriculum, graduation requirements, and State academic content and student academic achievement standards; (3) ensure that migratory children are provided with appropriate educational services (including support services) that address their special needs in a coordinated and efficient manner; (4) ensure that migratory children receive full and appropriate opportunities to meet the same challenging State student academic content standards and student academic achievement standards that all children are expected to meet; (5) design programs to help migratory children overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors which inhibit the ability of migrant children to do well in school, and to prepare such children to make a successful transition to postsecondary education or employment; and (6) ensure that migratory children benefit from State and local systemic reforms.

II. PROGRAM PROCEDURES

MEP funds are allocated to a State educational agency (SEA), under either an approved consolidated application or an approved individual program application, in order for the SEA to provide MEP services and activities either directly, or through subgrants to local operating agencies. The amount of funding an SEA receives annually depends, in part, on the number of eligible migrant children that the SEA determined reside within the State. Local operating agencies can be either local educational agencies (LEAs) or other public or non-profit private agencies. Because an SEA may choose to provide MEP services directly or through a local operating agency, some of the suggested audit procedures will apply for an SEA or local operating agency, depending on which agency provides the services and where the records are maintained.

Source of Governing Requirements

This program is authorized by Title I, Part C of the Elementary and Secondary Education Act of 1965, as amended (ESEA)(20 USC 6391 through 6399). The Education Department (ED) General Administrative Regulations at 34 CFR parts 76, 77, 80, 82, and 85 apply to this program. Other requirements in 34 CFR part 200, subparts C (34 CFR sections 200.81 through 200.89) and E (34 CFR sections 200.100 through 200.103), and 34 CFR part 299 also apply.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple ESEA programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references to the Cross-Cutting Section for these requirements. Also, as discussed in the Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements.

A. Activities Allowed or Unallowed

Also see ED Cross-Cutting Section.

1. *SEAs* – SEAs may use funds to operate the program (directly or through contracts), make subgrants to LEAs or other local operating agencies, and pay for State administration. In general, funds available under the MEP may be used only to: (a) identify eligible migratory children and their needs; and (b) provide educational and support services (including, but not limited to, preschool services, professional development, advocacy and outreach, parental involvement activities and the acquisition of equipment) that address the identified needs of the eligible children.

   An SEA may also use MEP funds to carry out administrative activities that are unique to the program. These activities include, but are not limited to, Statewide identification and recruitment of migratory children, interstate and intrastate program coordination, transfer of student records, collecting and using information to make subgrants, and direct supervision of instructional or support staff (Title I, Part C, Sections 1301, 1304(c) and 1306(b) of ESEA (20 USC 6392, 6394(c), and 6396(b)); 34 CFR section 200.82).

2. *LEAs or Other Local Operating Agencies* – LEAs or other local operating agencies use funds in accordance with the agreement with the SEA to (a) identify eligible migratory children and their needs; and (b) provide educational and support services that address the identified needs of the eligible children.

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

C. Cash Management

See ED Cross-Cutting Section.

E. Eligibility

1. Eligibility for Individuals

Only eligible migratory children may receive MEP services. A "migratory child" means a child who is, or the child's parent or child's spouse is, a migratory agricultural worker, including a migratory dairy worker, or a migratory fisher, and who, in the preceding 36 months, in order to obtain, or accompany a parent or spouse, in order to obtain, temporary or seasonal employment in agriculture or fishing work (a) has moved from one school district to another, (b) in a State that is comprised of a single school district, has moved from one administrative area to another within such district, or (c) resides in a school district of more than 15,000 square miles, and migrates a distance of 20 miles or more to a temporary residence to engage in a fishing activity. (Title I, Part C, Section 1309(2)(20 USC 6399(2)). On July 29, 2008, ED issued revised implementing regulations (effective August 28, 2008) in 34 CFR section 200.81 that further define a "migratory child" as well as the following key terms: "migratory agricultural worker," "migratory fisher," "agricultural work," "fishing work," "move" or "moved," "in order to obtain," "temporary employment," "seasonal employment," "personal subsistence," and "qualifying work." An SEA and its local operating agencies are required to use the National Certificate of Eligibility (COE) form *(OMB No. 1810-0662)* to document the SEA's determination of a child's eligibility for the program. ED has identified Required Data Elements and Required Data Sections and provided Instructions and Questions & Answers for the National COE at http://www2.ed.gov/programs/mep/coe-instructions-template.doc (Title I, Part C, Sections 1302 and 1304(b)(1) of ESEA (20 USC 6392 and 6394(b)(1)); 34 CFR section 200.81 and 200.89(c)).

See IV.L.6. **Child Counts – Quality Control Process**, for testing controls related to compliance with eligibility requirements.

2. Eligibility of Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort* – Not Applicable

2.2 Level of Effort – *Supplement Not Supplant*

See ED Cross-Cutting Section.

3. **Earmarking** (SEAs)

See ED Cross-Cutting Section.

H. Period of Availability of Federal Funds

See ED Cross-Cutting Section.

L. Reporting

1. Financial Reporting

See ED Cross-Cutting Section.

2. **Performance Reporting** – Not Applicable

3. Special Reporting

a. *State Per Pupil Expenditure (SPPE) Data* (*OMB No 1850-0067*) (SEAs/LEAs)

See ED Cross-Cutting Section.

b. *Consolidated State Performance Report, Part I, Migrant Child Counts (OMB No. 1810-0614)*

(1) Counts of Migrant Children Eligible for Funding Purposes (SEAs)

The SEA is required—for allocation purposes—to assist ED in determining the number of eligible migratory children who reside in the State, using such procedures as ED requires. Each SEA annually provides unduplicated Statewide counts (and the procedures used to develop these counts) of eligible migratory children in each of two categories: (a) children ages 3 through 21 who resided in the State for one or more days during the preceding September 1-August 31; and (b) such children who were served one or more days in a migrant-funded project conducted either during the summer term or an intersession period (i.e., when a year-round school is not in session). The SEA's report of State child counts is based on data submitted to it by the LEAs or other local operating agencies in the State, and is prepared based on data for the school year prior to the year that is subject to audit. For example, for the audit covering school year 2009-2010, the migrant child count data to be audited is in section 1.10 of the Consolidated State Performance Report, Part I on school year 2008-2009 submitted to ED in December 2009.

SEAs provide an assurance that they will assist ED in determining the number of migratory children in the State so that ED may determine the correct size of the State's annual MEP allocation. The statute and MEP regulations define who is a migrant (or migratory) child (Title I, Part C, Section 1309(2) (20 USC 6399(2)); 34 CFR section 200.81). ED's regulations also specify minimum requirements for quality control systems relative to the determination of a child's program eligibility (also see III.N.6, "Special Tests and Provisions – Child Counts – Quality Control Process") (34 CFR section 200.89(d)).

(2) Reporting the number of eligible migrant children to the SEA (LEAs or other local operating agencies, and SEAs providing direct services)

LEAs or other local operating agencies, and SEAs providing direct services, must implement procedures, based on the eligibility documentation they are required to collect and maintain under 34 CFR section 200.89(c), to count and report eligible children in the two categories specified in III.L.3.b(1) Reporting – Special Reporting (Title I, Part C, Section 1304(c)(7) of ESEA (20 USC 6394(c)(7)); 34 CFR sections 76.730 and 76.731).

c. *Consolidated State Performance Report, Part II, Education of Migrant Children (Title I, Part C) (OMB No. 1810-0614) (SEAs)*

An SEA must annually report population and program performance data that includes the unduplicated number of migrant children who were identified within the State as eligible to be served by the MEP, and who were identified within the State as having priority for services as defined in Title I, Part C, Section 1304(d) of ESEA (20 USC 6394(d). ED offers further explanations of priority for services in non-binding guidance; i.e., guidance that represents an acceptable, but not necessarily the only, way to meet the legal requirements (Chapter V of *Title I, Part C, Education of Migratory Children: Draft Non-Regulatory Guidance*, available on the Internet at http://www2.ed.gov/programs/mep/mepguidance2010.doc). The reported data are for the school year prior to the year that is subject to audit. For example, for the audit covering school year 2009-2010, the Consolidated State Performance Report, Part II to be audited would be in section 2.3 of the report on school year 2008-2009 submitted to ED in February 2009.

Key Line Items – The follow line item contains critical information:

Part II, Section 2.3 , Education of Migratory Children (Title I, Part C), Table 2.3.1.1, Eligible Migrant Children, the line titled "Total," and Table

2.3.1.2, Priority for Service, the line titled "Total." (Information by age/grade level does not need to be tested.)

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act –Applicable

N. Special Tests and Provisions

1. Participation of Private School Children (SEAs/LEAs)

See ED Cross-Cutting Section.

2. Schoolwide Programs (LEAs)

See ED Cross-Cutting Section.

3. Comparability (SEAs/LEAs)

See ED Cross-Cutting Section.

4. Priority for Services

Compliance Requirement – SEAs and LEAs or other local operating agencies must give priority for MEP services to migratory children who are failing, or most at risk of failing, to meet the State's challenging content and performance standards, and whose education has been interrupted in the regular school year (Title I, Part C, Section 1304(d) of ESEA (20 USC 6394(d)).

Audit Objective – (*SEAs providing services directly and LEAs or other local operating agencies*) – Determine whether the SEA or LEA or other local operating agency is defining, and properly identifying and counting, "priority-for-services" migratory children so that priority in the provision of MEP services is given to those migratory children identified as failing, or most at risk of failing, to meet the State's challenging content and performance standards, and whose education has been interrupted in the regular school year (priority children).

Suggested Audit Procedures – (*SEAs providing services directly and LEAs or other local operating agencies*)

a. Review the SEA's or LEA's or other local operating agency's definition of what constitutes failing, or most at risk of failing, to meet the State's challenging content and performance standards, and whose education has been interrupted in the regular school year.

b. Review the SEA's or LEA's or other local operating agency's procedures to identify those individual migrant children who meet the applicable definition of

failing, or most at risk of failing, to meet the State's challenging content and performance standards, and whose education has been interrupted in the regular school year (i.e., migrant children who meet the "priority-for-services" criteria).

c. Review the SEA's or LEA's or other local operating agency's procedures to accurately count and report the unduplicated number of migrant children with "priority-for-services" who were identified and served. See the *Consolidated State Performance Report*: Part II, Section 2.3, Education of Migratory Children (Title I, Part C), Table 2.3.1.2.

d. Review the SEA or LEA's or other local operating agency's process for selecting children to receive MEP services.

e. Select a sample of migratory children who were identified as priority children. Review program records to determine if these children were provided MEP services. (In rare instances, a local project may not have any "priority-for-services" children in its service area, in which case the suggested audit procedures would not apply.)

5. Subgrant Process (SEAs)

Compliance Requirement – SEAs may provide MEP services either directly, or through subgrants to LEAs or other local operating agencies. Where the SEA awards subgrants, in order to target program funds appropriately, the SEA is required determine the amount of the subgrants by taking into account (a) the numbers of migratory children, (b) the needs of migratory children, (c) the "priority-for services" requirement in section 1304 (d) of ESEA (20 USC 6394(d)), and (4) the availability of funds from other Federal, State, and local programs. How the SEA takes into consideration the availability of funds is left to SEA discretion (Title I, Part C, Sections 1301 and 1304(b)(5) of the ESEA (20 USC 6391 and 6394(b)(5))).

Audit Objective – Determine whether the SEA's process to determine the amount of MEP subgrants takes into account current information on numbers of migratory children, needs of migratory children, need to serve priority children, and the availability of funds from other Federal, State, and local programs.

Suggested Audit Procedures

Review the SEA's process for awarding MEP funds to subgrantees to ascertain if the process:

a. Uses current information.

b. Takes into account the (1) the numbers of migratory children, (2) the needs of migratory children, (3) the "priority-for services" requirement in Section 1304(d) of ESEA, and (4) the availability of funds from other Federal, State, and local programs.

6. Child Counts – Quality Control Process

Compliance Requirement – In section 1.10.3 of the Consolidated State Performance Report, Part I (See III.L.3.b., "Reporting – Special Reporting – Consolidated State Performance Report, Part I, Migrant Child Counts"), SEAs are required to describe their quality control process for ensuring that the SEA properly determines and documents the eligibility of each child in the reported count of eligible children. In preparing section 1.10, SEAs may require LEAs and other local operating agencies to submit information to the SEA and comply with specified procedures concerning the child count. The quality control process is described in section 1.10.3.4 of the Consolidated State Performance Report, Part I. This process includes requirements for prospective re-interviewing to validate current-year child eligibility determinations through the re-interview of a randomly selected sample of children previously identified as migratory (34 CFR section 200.89(b)(2)) and other required components, including training recruiters on eligibility requirements; supervision and annual review and evaluation of identification and recruitment practices; resolving eligibility questions raised by recruiters and communicating this information to all local operating agencies; examining each COE by qualified personnel to verify eligibility; validating that eligibility determinations were made properly; and implementing corrective action if the SEA, internal auditors, or other auditors for the Secretary identify COEs that do not sufficiently document a child's eligibility. (20 USC 6394(c)(7); 34 CFR sections 200.89(c) and (d); ED has identified Required Data Elements and Required Data Sections and provided Instructions and Questions & Answers for the National COE at http://www2.ed.gov/programs/mep/coe-instructions-template.doc).

Audit Objective – Determine whether the SEA and LEAs and other local operating agencies (1) established, (2) implemented, and (3) accurately reported in the Consolidated State Performance Report, Part I a quality control process that ensures an accurate eligible-child count and meets the requirements of ED regulations.

Suggested Audit Procedures

SEAs

a. Verify that the SEA established a quality control process that ensures an accurate count of eligible children.

b. Verify that the SEA's quality control process meets the requirements of ED regulations, including processes for prospective re-interviewing of a sample of children.

c. Ascertain whether the quality control process was actually conducted in the manner described.

d. Verify that the SEA accurately reported the quality control process over the count of eligible children in section 1.10.3.4 of the Consolidated State Performance Report, Part I.

LEAs and Other Local Operating Agencies

a. Determine if the LEAs and other local operating agencies were required to submit information to the SEA relating to section 1.10 of the Consolidated State Performance Report, Part I, and if so, what information was required, the processes for obtaining it, and how quality was ensured.

b. Ascertain whether the LEAs and other local operating agencies complied with the SEA's requirements relating to obtaining, processing, and submitting accurate data required for section 1.10 of the Consolidated State Performance Report, Part I.

DEPARTMENT OF EDUCATION

CFDA 84.027 SPECIAL EDUCATION—GRANTS TO STATES (IDEA, Part B)
CFDA 84.173 SPECIAL EDUCATION—PRESCHOOL GRANTS (IDEA Preschool)
CFDA 84.391 SPECIAL EDUCATION—GRANTS TO STATES (IDEA, Part B), RECOVERY ACT
CFDA 84.392 SPECIAL EDUCATION—PRESCHOOL GRANTS (IDEA Preschool), RECOVERY ACT

I. PROGRAM OBJECTIVES

The purposes of the Individuals with Disabilities Education Act (IDEA) are to: (1) ensure that all children with disabilities have available to them a free appropriate public education (FAPE) which emphasizes special education and related services designed to meet their unique needs; (2) ensure that the rights of children with disabilities and their parents or guardians are protected; (3) assist States, localities, educational service agencies and Federal agencies to provide for the education of all children with disabilities; and (4) assess and ensure the effectiveness of efforts to educate children with disabilities. The Assistance for Education of All Children with Disabilities Program (IDEA, Part B) provides grants to States to assist them in meeting these purposes (20 USC 1400 *et seq.*).

IDEA's Special Education—Preschool Grants Program, (Preschool Grants for Children with Disabilities Program), also known as the "619 Program," provides grants to States, and through them to LEAs, to assist them in providing special education and related services to children with disabilities ages three through five and, at a State's discretion, to two-year-old children with disabilities who will turn three during the school year (20 USC 1419).

II. PROGRAM PROCEDURES

A State applying through its State Education Agency (SEA) for assistance under IDEA, Part B must, among other things, submit a plan to the Department of Education (ED) that provides assurances that the SEA has in effect policies and procedures that ensure that all children with disabilities have the right to a FAPE (20 USC 1412(a)).

States that receive assistance under IDEA, Part B, may receive additional assistance under the Preschool Grants Program. A State is eligible to receive a grant under the Preschool Grants Program if (1) the State is eligible under 20 USC 1412 and (2) the State demonstrates to the Secretary that it has in effect policies and procedures that ensure the provision of FAPE to all children with disabilities aged three through five years residing in the State. However, a State that provides early intervention services in accordance with Part C of the IDEA to a child who is eligible for services under Section 1419 is not required to provide that child with FAPE (20 USC 1412(a)(1)(C) and 20 USC 1419(b) and (c)).

Funds from the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) were distributed to the States on a formula basis. States received an initial funding of 50 percent of the amount of their IDEA ARRA awards (under CFDAs 84.391 and 84.392) in April 2009 on the basis of their eligibility for FY 2008 IDEA non-ARRA State Grants (CFDA 84.027) and Preschool Grants to States (CFDA 84.173) and submission of the certification required by section 1607 of ARRA. States did not submit a new IDEA Application or assurances to receive this initial funding. The assurances in a State's approved Fiscal Year (FY) 2008 IDEA applications for funds for CFDA's 84.027 and 84.173, as well as the requirements of ARRA, apply to the use of the IDEA ARRA funds. The second half of the awards were made in August 2009. States were not required to submit additional documentation to receive these funds. By accepting the second half ARRA IDEA funds, States agreed to comply with all accountability and reporting requirements in Section 1512 of ARRA.

Source of Governing Requirements

These programs are authorized under the Individuals with Disabilities Education Act, Part B (IDEA-B) as amended on December 3, 2004 (Pub. L. No. 108-446; 20 USC 1400 *et seq.*) **and ARRA**. Implementing regulations for these programs are 34 CFR part 300.

Availability of Other Program Information

ED has issued guidance on meeting ARRA requirements in: Guidance: Funds for Part B of the Individuals with Disabilities Education Act Made Available Under The American Recovery and Reinvestment Act of 2009 (Apr. 2009, revised July 2009), which is available on the Internet at: (http://www.ed.gov/policy/gen/leg/recovery/guidance/idea-b.doc).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple ED programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements.

A. Activities Allowed or Unallowed

Also see ED Cross-Cutting Section.

1. *SEAs* – Allowable activities for SEAs are subgranting funds to LEAs and State administration, and other State-level activities (See "III.G.3, Earmarking" for a further description of these activities).

2. *LEAs*

a. *IDEA, Part B* – An LEA may only use Federal funds under IDEA, Part B for the excess costs of providing special education and related services to children with disabilities. Special education includes specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings, and instruction in physical education. Related services include transportation and such developmental, corrective and other supportive services as may be required to assist a child with a disability to benefit from special education. Related services do not include a medical device that is surgically implanted or the replacement of such device. A portion of these funds, under conditions specified in the law, may also be used by the LEA: for services and aids that also benefit non-disabled children; for early intervening services; to establish and implement high-cost or risk-sharing funds; and for administrative case management. Excess costs are those costs for the education of an elementary school or secondary school student with a disability that are in excess of the average annual per student expenditure in an LEA during the preceding school-year. LEAs are required to compute the minimum average amount of per pupil expenditure separately for children with disabilities in its elementary schools and for children with disabilities in its secondary schools, and not on a combination of the enrollments in both. Appendix A to 34 CFR part 300 provides detailed guidance and an example for calculating the average per pupil expenditures and the minimum average amounts that the LEA must spend before using IDEA funds (20 USC 1401(8), (26) and (29); 20 USC 1413(a)(2) and (4); 34 CFR sections 300.16, 300.202, and 300.208).

b. *IDEA Preschool* – A LEA may use Federal funds under the Preschool Grants Program only for the costs of providing special education and related services (as described above) to children with disabilities ages three through five and, at a State's discretion, providing a free appropriate public education to two-year-old children with disabilities who will turn three during the school year (20 USC 1419(a)).

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

The use of IDEA funds, **including ARRA funds,** for the acquisition of equipment or construction or alteration of facilities must be approved by ED based on a determination by ED that the program would be improved by allowing funds to be used for these purposes (20 USC 1404).

C. Cash Management

See ED Cross-Cutting Section.

D. Davis-Bacon Act

All construction modernization, renovation, and repair activities funded with ARRA funds are subject to the Davis-Bacon Act requirements (Section 1606 of ARRA).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort* (SEAs/LEAs) **ARRA provides that, upon prior approval from the Secretary, a State or LEA may treat State Fiscal Stabilization Funds (CFDAs 84.934 and 84.937) that are used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any program that ED administers. See ED guidance for Funds for Part B of the Individuals with Disabilities Education Act Made Available under the American Recovery and Reinvestment Act of 2009 (April 2009, revised July 2009) for prior approval criteria (Section 14012(d) of ARRA).**

a. SEAs

(1) A State may not reduce the amount of State financial support for special education and related services for children with disabilities (or State financial support otherwise made available because of the excess costs of educating those children) below the amount of State financial support provided for the preceding fiscal year. The Secretary reduces the allocation of funds under 20 USC 1411 for any fiscal year following the fiscal year in which the State fails to comply with this requirement by the amount by which the State failed to meet the requirement.

If, for any fiscal year, a State fails to meet the State-level maintenance of effort requirement (or is granted a waiver from this requirement), the financial support required of the State in future years for maintenance of effort must be the amount that would have been required in the absence of that failure (or waiver) and not the reduced level of the State's support (20 USC 1412(a)(18); 34 CFR section 300.163).

(2) For any fiscal year for which the Federal allocation received by a State exceeds the amount received for the previous fiscal year and if the State pays or reimburses all LEAs within the State from State revenue 100 percent of the non-federal share of the costs of special education and related services, the SEA may reduce its level of expenditure from State sources by not more than 50 percent of the amount of such excess (20 USC 1413(j)(1)).

b. LEAs

(1) IDEA, Part B funds received by an LEA cannot be used, except under certain limited circumstances, to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds, or a combination of State and local funds, below the level of those expenditures for the preceding fiscal year. To meet this requirement, an LEA must expend, in any particular fiscal year, an amount of local funds, or a combination of State and local funds, for the education of children with disabilities that is at least equal, on either an aggregate or per capita basis, to the amount of local funds, or a combination of State and local funds, expended for this purpose by the LEA in the prior fiscal year. Allowances may be made for: (a) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel; (b) a decrease in the enrollment of children with disabilities; (c) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child has left the jurisdiction of the agency, has reached the age at which the obligation of the agency to provide a FAPE has terminated or no longer needs such program of special education; (d) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment and the construction of school facilities; or (e) the assumption of costs by the high cost fund operated by the SEA under 34 CFR section 300.704 (20 USC 1413(a)(2); 34 CFR sections 300.203 and 300.204).

(2) For any fiscal year for which the federal allocation received by a LEA exceeds the amount received for the previous fiscal year, the LEA may reduce the level of local or State and local expenditures by not more than 50 percent of the excess (20 USC 1413(a)(2)(C)(i)). If an LEA exercises this authority, it must use an amount of local funds equal to the reduction in expenditures under Section 1413(a)(2)(C)(i) to carry out activities authorized under the Elementary and Secondary Education Act (ESEA) of 1965. The amount of funds expended by the LEA for early

intervening services counts toward the maximum amount of State and local expenditures that the LEA may reduce. However, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of Section 1413(a) or the SEA has taken action against the LEA under Section 1416, the SEA shall prohibit the LEA from reducing its local or State and local expenditures for that fiscal year (20 USC 1413(a)(2)(C)).

2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking

Individual State grant award documents identify the amount of funds a State must distribute to its LEAs on a formula basis and the amount it can set aside for administration and other State-level activities.

a. ***IDEA, Part B*** (SEAs)

(1) *Administration:* Each State may reserve, for each fiscal year, not more than the maximum amount the State was eligible to reserve for State administration under 20 USC 1411 for FY 2004, or $800,000 (adjusted for inflation in accordance with 20 USC 1411(e)(1)(B)), whichever is greater. Administration includes the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities. These funds may also be used for the administration of Part C of the IDEA if the SEA is the lead agency (20 USC 1411(e)(1)A) and 1411(f)(2)).

ARRA authorized ED to make reasonable adjustments to State administrative caps to help SEAs defray the costs of ARRA-related data collections. Accordingly, ED issued a final notice of adjustments to the administrative caps for Title I, Part A and IDEA, Section 611, for FY 2009 funds (October 27, 2009, *Federal Register* (74 FR 55219), which lists the additional amount of administrative funds each SEA may reserve from its IDEA, Section 611 allocation (Section 1552 of ARRA).

An SEA may reserve from its FY 2009 IDEA, Section 611 allocation, an amount equal to or less than the figure shown for such State in Column 2 in Table 2 in the notice at 74 FR 55219 to help defray the costs associated with ARRA data collection under IDEA, Section 611. The amount each SEA may reserve is in addition to the amount the SEA is able to reserve for State **administration under Section 611(e) of the IDEA. An SEA may reserve these additional funds from its regular FY 2009**

IDEA, Section 611 allocation, its IDEA, Section 611 ARRA allocation, or a combination of the two allocations provided that the total amount reserved does not exceed the figure listed in Column 2 for each State.

(2) *State-level activities:* The maximum amount a State may reserve for State-level activities in fiscal year 2007 and subsequent fiscal years is as follows: States, for which the amount reserved for State administration is greater than $850,000 and the State reserves funds for the LEA risk pool, may reserve an amount equal to 10 percent of the State's allocation for fiscal year 2006 under 20 USC 1411(d), adjusted cumulatively for inflation. States, for which the amount reserved for administration is greater than $850,000 and the State does not reserve funds for the LEA risk pool, may reserve an amount equal to 9 percent of the State's allocation for fiscal year 2006 under 20 USC 1411(d), adjusted cumulatively for inflation. States for which the amount reserved for State administration is less than or equal to $850,000 and the State reserves funds for the LEA risk pool may reserve an amount equal to 10.5 percent of the State's allocation for fiscal year 2006 under 20 USC 1411(d) ,adjusted cumulatively for inflation. States for which the amount reserved for administration is less than or equal to $850,000 and the State does not reserve funds for the LEA risk pool may reserve an amount equal to 9.5 percent of the State's allocation for fiscal year 2006 under 20 USC 1411(d), adjusted cumulatively for inflation. (20 USC 1411(e)(2) and 34 CFR section 300.704(b)). SEAs must use State-level activity funds for monitoring, enforcement, and complaint investigation, and to establish and implement the mediation process, including providing for the costs of mediators and support personnel.

These funds may also be used:

(a) for support and direct services, including technical assistance and personnel preparation and professional development and training;

(b) to support paperwork reduction activities, including expanding the use of technology in the individualized education plan (IEP) process;

(c) to assist LEAs in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities;

(d) to improve the use of technology in the classroom to enhance learning by children with disabilities ;

(e) to support the use of technology, including technology with universal design principals and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities;

(f) for development and implementation of transition programs;

(g) for assistance to LEAs in meeting personnel shortages;

(h) to support capacity-building activities and improve the delivery of services by LEAs to improve results for children with disabilities;

(i) for alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools;

(j) to support the development of and provision of appropriate accommodations for children with disabilities, or the development and provision of alternative assessments that are valid and reliable for assessing the performance of children with disabilities; and

(k) to provide technical assistance to schools and LEAs and direct services, including supplemental educational services as defined in section 1116(e)(12)(C) of the ESEA (20 USC 6316(e)(12)(C)), in schools or LEAs identified for improvement solely on the basis of the assessment results of the disaggregated group of children with disabilities (20 USC 1411(e)(2)).

(3) *LEA Risk Pool:* Each State has the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-level activities: (a) to establish and make disbursements from the high-cost fund to LEAs; and (b) to support innovative and effective ways of cost-sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs. For purposes of this provision, the term "LEA" includes a charter school that is an LEA, or a consortium of LEAs (20 USC 1411(e)(3)).

(4) *Formula Subgrants to LEAs*: Any funds under this program that the SEA does not retain for administration and other State-level activities shall be distributed to eligible LEAs in the State. An SEA must distribute to each eligible LEA the amount that LEA would have received, from the fiscal year 1999 appropriation, if the State had distributed 75 percent of its grant for that year to LEAs. (This amount is based on the IDEA-B child count conducted on December 1, 1998.) The SEA must then distribute 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the LEA's jurisdiction; and then distribute 15 percent of any remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the State educational agency (20 USC 1411(f)(2)).

(5) *Formula Subgrants to LEAs*: For FY 2009, prior to making subgrants to LEAs, the SEA must first compute the total of its FY 2009 regular IDEA-B allocation (CFDA 84.027) and the IDEA-B funds received under ARRA (CFDA 84.391). Then, the SEA must make its set-aside decisions for administrative and other State-level activities. Next, an SEA must determine whether the set-asides will be deducted from the FY 2009 regular IDEA-B allocation or the IDEA-B ARRA allocation. For ease of recordkeeping, States have been advised by ED to reserve the set-aside amounts from the FY 2009 regular IDEA-B allocation. If the State decides to set aside all funds for State-level activities from its FY 2009 regular IDEA-B allocation, it should follow these steps in making LEA allocations: (1) deduct the amount of the reserved (set-aside) funds from the State's regular IDEA-B allocation; (2) determine the total allocation level for each of its LEAs by calculating allocations based on the sum of available FY 2009 IDEA-B ARRA funds and regular allocations (using the regular formula based on the 1999 base amount, 85 percent population and 15 percent poverty, as described in III.G.3.a.(4) above); (3) determine each LEA's regular allocation by calculating allocations based only on the FY 2009 regular State IDEA-B allocation amount (after set-asides are subtracted) (using the regular formula based on the 1999 base amount, 85 percent population and 15 percent poverty as described in III.G.3.a.(4) above). Each LEA's IDEA-B ARRA allocation is then the difference between the total allocation and the regular allocation (20 USC 1411(f); 34 CFR section 300.705). (See Section A, Timing and Eligibility in the ED Guidance: Funds

for Part B of the Individuals with Disabilities Education Act Made Available Under The American Recovery and Reinvestment Act of 2009 (April 2009)).

b. ***IDEA, Preschool Grants Program*** (SEAs)

(1) *Reservation for State Activities:* For each fiscal year, the Secretary shall determine and report to the SEA an amount that is 25 percent of the amount the State received under this program for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year. These funds may be retained by the State for administration and other State level activities (20 USC 1419(d)).

(a) *State Activities (Administration):* An SEA may use up to 20 percent of the funds it is allowed to retain for State activities under 20 USC 1419(d) for the purposes of administering this program, including the coordination of activities under the IDEA with, and providing technical assistance to, other programs that provide services to children with disabilities. These funds may also be used for the administration of Part C of the IDEA if the SEA is the lead agency for the State under this part (20 USC 1419(e)).

(b) *State Activities (Other State level activities):* SEAs shall use funds reserved for State level activities that are not used for administration for: (a) support services (including establishing and implementing the mediation process required by section 20 USC 1415(e)), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5; (b) direct services for children eligible for services under this program; (c) development of a State improvement plan; (d) activities at the State and local levels to meet the performance goals established by the State and to support implementation of the State improvement plan; or (e) supplementing other funds used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under this program for a fiscal year (20 USC 1419(f)).

(2) *Formula Subgrants to LEAs:* Any funds under this program that the SEA does not retain for administration and other State-level activities shall be distributed to eligible LEAs in the State. An SEA must distribute to each eligible LEA the amount the LEA would

have received from the fiscal year 1997 appropriation if the State had distributed 75 percent of its grant for that year to LEAs. (This amount is based on the IDEA-B child count conducted on December 1, 1996.) The SEA must then distribute 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and then distribute 15 percent of any remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the SEA. (If an SEA determines that an LEA is adequately providing a FAPE to all children with disabilities aged 3 through 5 residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under this program that are not needed by that LEA to provide a FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas they serve) (20 USC 1419(g)).

(3) ***Formula Subgrants to LEAs*: For FY 2009, prior to making subgrants to LEAs, the SEA must first compute the total of its FY 2009 regular IDEA-Preschool allocation and the IDEA-Preschool funds received under ARRA. Then the SEA must make its set-aside decisions for administrative and other State-level activities. Next, an SEA must determine whether the set-asides will be deducted from the FY 2009 regular IDEA-Preschool allocation or the IDEA-Preschool ARRA allocation. For ease of recordkeeping, States have been advised by ED to reserve the set-aside amounts from the FY 2009 regular IDEA-B allocation. If the State decides to set aside all funds for State-level activities from its FY 2009 regular IDEA-Preschool allocation, it should follow these steps in making LEA allocations: (1) deduct the amount of the reserved (set-aside) funds from the State's regular IDEA-B allocation; (2) determine the total allocation level for each of its LEAs by calculating allocations based on the sum of available FY 2009 IDEA-B ARRA funds and regular allocations (using the regular formula based on the 1997 base amount, 85 percent population and 15 percent poverty, as described in III.G.3.b.(2)) above; (3) determine each LEA's regular allocation by calculating allocations based only on the FY 2009 regular State IDEA-B allocation amount (after set-asides are subtracted) (using the regular formula based on the 1997 base amount, 85 percent population and 15 percent poverty as described in III.G.3.b.(2) above). Each LEA's IDEA-B ARRA**

allocation is then the difference between the total allocation and the regular allocation (20 USC 1419(g); 34 CFR section 300.816). (See Section A, Timing and Eligibility in the ED Guidance: Funds for Part B of the Individuals with Disabilities Education Act Made Available Under The American Recovery and Reinvestment Act of 2009 (April 2009).).

c. ***Schoolwide Programs*** (LEAs)

The amount of IDEA- B funds used in a schoolwide program, may not exceed the amount received by the LEA under IDEA-B for that fiscal year divided by the number of children in the jurisdiction of the LEA multiplied by the number of children participating in the schoolwide program (34 CFR section 300.206).

d. ***Redistribution of Formula Funds to LEAs***

If a new LEA is created within a State, the State shall divide the base allocation for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA among the new LEA and affected LEAs based on the relative numbers of children with disabilities currently provided special education by each of the LEAs. If one or more LEAs are combined into a single LEA, the State shall combine the base allocation of the merged LEAs. If, for two or more LEAs, geographic boundaries or administrative responsibilities for providing services to children with disabilities ages 3 through 21 change, the base allocation of affected LEAs shall be redistributed among affected LEAs based on the relative numbers of children with disabilities currently provided special education by each affected LEA. If an LEA received a base payment of zero in its first year of operation, the State shall adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. The State shall divide the base allocation for the LEAs that would have been responsible for serving children with disabilities now being served by the LEA among the LEA and affected LEAs based on the relative numbers of children with disabilities currently provided special education by each of the LEAs (34 CFR section 300.705(b)(2)).

e. ***Early Intervening Services***

An LEA can use not more than 15 percent of the amount of Federal funds (less any amount by which it reduces State and local expenditures under 20 USC 1413(a)(2)(C)) (See G.2.1.b. in this section), in combination with other funds for early intervening services for children in kindergarten through grade 12 who have not been identified under IDEA but need

additional academic and behavioral support to succeed in the general education environment (20 USC 1413(f)).

H. Period of Availability of Federal Funds

See ED Cross-Cutting Section and the following:

Federal funds appropriated under the Special Education ARRA-funded programs (CFDA 84.391 and 84.392) are available for obligation beginning with the date of enactment of ARRA, February 17, 2009. Those funds will remain available for obligation by States until September 30, 2011, which includes the one-year carryover period authorized under the Tydings Amendment (Section 1603 of ARRA and 20 USC 1225(b)).

L. Reporting

1. Financial Reporting

See ED Cross-Cutting Section.

2. Performance Reporting – Not Applicable

3. Special Reporting

Report of Children and Youth with Disabilities Receiving Special Education Under Part B of the Individuals With Disabilities Education Act, as amended (OMB Nos. 1820-0030, 1820-0043, 1820-0517, 1820-0521, and 1820-0621) – Each SEA is required to report to the Secretary an unduplicated count of children with disabilities receiving special education and related services.

The SEA may include in this count children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that: (1) provides them with both special education and related services that meet State standards; (2) provides them only with special education, if a related service is not required, that meets State standards; or (3) in the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under IDEA-B and receive special education or related services or both that meet State standards under 34 CFR sections 300.132 through 300.144 (34 CFR sections 300.640, 300.643, and 300.644).

Each SEA must: (1) establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services; (2) obtain certification from each agency and institution that an unduplicated and accurate count has been made; and (3) ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count (34 CFR sections 300.645(a), (c), and (e)).

LEAs must report to the SEA in accordance with the SEA-established procedure.

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

1. Schoolwide Programs

See ED Cross-Cutting Section.

2. Access to Federal Funds for New or Significantly Expanded Charter Schools

See ED Cross-Cutting Section.

DEPARTMENT OF EDUCATION

CFDA 84.032 FEDERAL FAMILY EDUCATION LOANS (Guaranty Agencies)

I. PROGRAM OBJECTIVES

Non-profit and State guaranty agencies are established to guarantee student loans made by lenders and perform certain administrative and oversight functions under the Federal Family Education Loans (FFEL) program, which includes Federal Stafford Loans (both subsidized and unsubsidized), Federal PLUS loans, and Federal Consolidation loans. The Department of Education (ED) provides reinsurance to the guaranty agency.

II. PROGRAM PROCEDURES

To participate in the FFEL programs and to receive various payments and benefits incident to that participation, a guaranty agency enters into agreements with ED under which the guaranty agency agrees to comply with the applicable law and regulations. In general, guaranty agencies (1) establish and maintain a Federal Fund and the Agency Operating Fund; (2) collect on defaulted loans on which they have paid claims; (3) make timely claim payments to lenders; (4) make timely reinsurance filings with ED; (5) provide accurate and reliable reports to ED; (6) apply proper charges to defaulted borrowers; and (7) take proper enforcement measures with respect to lenders, lender servicers, and defaulted borrowers.

Section 428A of the Higher Education Act, as amended (HEA), allows ED to enter into Voluntary Flexible Agreements (VFA) with guaranty agencies to pilot alternatives to the current guaranty agency financing model or structure. Any guaranty agency or consortium of agencies may apply to enter into a VFA with ED (Section 428A(a)(3) of the HEA (20 USC 1078-1(a)(3))). VFA pilots are uniquely designed by each guaranty agency and may waive some of the compliance requirements. If a VFA exists, the auditor should review the VFA and determine: (1) which of the III. Compliance Requirements below are applicable, and (2) what, if any, additional or alternative audit procedures should be performed to test compliance with the terms of the VFA. (ED entered into five VFA's; four of which ended on December 31, 2007 and the fifth VFA ended on October 1, 2008.)

The Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, provides that, after June 30, 2010, no new student loans will be made under the Federal Family Education Loan (FFEL) Program. Therefore, beginning July 1, 2010, all new subsidized and unsubsidized Stafford Loans made to students, PLUS loans made to parents and to graduate/professional students, and consolidation loans made to borrowers, can only be made under the Federal Direct Student Loans (Direct Loan) program (CFDA 84.268) and will not be handled by guaranty agencies.

Source of Governing Requirements

The FFEL program is authorized by the Higher Education Act (HEA) of 1965, as amended (20 USC 1071 to 1087-2). Program regulations are located at 34 CFR part 682.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

The compliance requirements and suggested audit procedures for allowed and unallowed services are presented separately in III. N.9, "Special Tests and Provisions – Federal Fund and Agency Operating Fund."

L. Reporting

1. Financial Reporting – Not Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting

ED Form 2000, *Guaranty Agency Financial Report* (*OMB No. 1845-0026*) – Guaranty agencies submit this form monthly, monthly/quarterly, or annually. Instructions for this report are available on the Internet at http://www.fp.ed.gov/PORTALSWebApp/fp/proj1.jsp

In determining which amounts to test on ED Form 2000, particular attention should be given to the September 30 amounts for current year defaults, current year collections, loans receivable and the sources and uses of funds in the Federal Fund (or equivalent line items pertaining to the Federal/Operating Funds for the September 30 report). Also, guaranty agencies are required to submit loan level detail information to the National Student Loan Data System (NSLDS) (*OMB No. 1845-0035*). When reviewing support for the above reports, the auditor should consider whether the relevant amounts in these reports reconcile with the NSLDS Extract submitted by the guaranty agency. (Note: There may be some differences between the ED Form 2000 and the NSLDS Extracts due to timing factors (e.g., pulling of NSLDS Extract in third week vs. month end). Finally, ED may send edits back to the guaranty agency to be entered.)

The guaranty agency is required to submit loan-level detail data to the NSLDS. The following are identified as key data elements:

a. Social security number;

b. First name;

c. Date of birth;

d. Original school code;

e. Academic level;

f. Current school code;

g. Enrollment status code;

h. Enrollment status date;

i. Originating lender code;

j. Loan guarantee date;

k. Amount of guarantee;

l. Current holder lender code;

m. Date repayment entered;

n. Loan status code;

o. Loan status date;

p. Outstanding principal;

q. Amount of claim paid to lenders (principal and interest); and

r. Interest and fee amounts for loans in defaulted status.

ED sends edits back to the guaranty agency for disposition. Samples should be selected from the guaranty agency's NSLDS Extracts (Note: Guaranty Agencies may have changed to automated exchanges of data with schools and lenders; thus, hard copy documents may not exist. In this instance, auditors may only be able to trace to system information and not to supporting records.) (34 CFR section 682.414(b)).

In addition to providing ED with information it needs to maintain its accounting and loan database records, data in the ED Form 2000 report are used for various purposes by ED. The use of this data is the subject of several other compliance requirements cited in III.N, "Special Tests and Provisions," which identify the need to test specific items in these reports. For audit efficiency, the auditor may want to test those requirements at the same time as this compliance requirement. The other compliance requirements are III.N.2, "Federal Reinsurance Rate," III.N.3, "Conditions of Reinsurance Coverage," III.N.4, "Death, Disability, Closed Schools, False Certifications, Unpaid Refunds, Bankruptcy, and Teacher Loan Forgiveness Claims," and III.N.9, "Federal Fund and Agency Operating Fund."

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

1. Current Records

Compliance Requirement – The guaranty agency shall maintain current, complete records for each loan that it holds. The records must be maintained in a system that allows ready identification of each loan's current status, updated at least once every 10 business days (34 CFR section 682.414(a)).

Audit Objective – Determine whether the guaranty agency's records are updated for information received from lenders, schools, borrowers, others, and NSLDS on a timely basis.

Suggested Audit Procedures

a. For a sample of loans, compare dates transactions or information was posted to the guaranty agency's system to the dates the source information was received.

b. Identify whether any backlog exists that is over 10 days old.

2. Federal Reinsurance Rate

Compliance Requirement – The applicable Federal reinsurance rate for a loan depends on the amount of reinsurance claims paid to the guaranty agency during the year and the date the loan was made (34 CFR sections 682.404(a) and (b)).

In most cases, for loans made prior to October 1, 1993, when the total amount of reinsurance claims paid to the guaranty agency during a fiscal year is less than five percent of the amount of loans in repayment at the end of the preceding fiscal year, reinsurance is paid for 100 percent of the guaranty agency's losses. When the total amount of reinsurance claims paid to the guaranty agency during a fiscal year reaches five percent of the amount of loans in repayment at the end of the preceding fiscal year, the reinsurance subsequently paid to the guaranty agency during that fiscal year, drops to 90 percent. When the amount of claims reaches nine percent, the reinsurance drops to 80 percent. The reinsurance rate is 100 percent for loans: (1) made under an approved lender-of-last resort program, (2) transferred under a plan to transfer guarantees from an insolvent guaranty agency approved by ED, or (3) meeting the definition of exempt claims (34 CFR sections 682.404(a)(1)(iii) and (a)(2)(iii)).

For loans made from October 1, 1993 to September 30, 1998, the regular reinsurance rates drop to 98/88/78 percent, respectively. For loans made on or after October 1, 1998 the respective rates are 95/85/75 percent (Section 428(c)(1) of the HEA (20 USC 1078(c)(1))).

The Secretary uses the annual ED Form 2000 report for the previous September 30 to calculate the amount of loans in repayment at the end of the preceding fiscal year (34 CFR sections 682.404(a), (b), and (c)).

Past problem areas have been:

Guaranty agencies have:

- Not established systems to verify a student's loan status with lender and school data through a reliable audit trail.

- Established systems to determine loan status that rely on loan characteristic analysis or assumptions that are not adequately tested or verified.

- Not established adequate procedures to ensure that lenders report and agencies properly record loans paid in full.

- Not established adequate procedures to ensure that there is a system to reconcile the guaranty agency's repayment conversion dates to the lender's repayment conversion dates.

Audit Objective – Determine whether the data submitted to ED in the September 30 annual Form 2000 used to calculate loans in repayment is materially correct and supported by the books and records.

Suggested Audit Procedures

a. Compare the amounts of loans in repayment in the guaranty agency system at September 30 to the amount of loans in repayment derived from the September 30 ED Form 2000. Determine the propriety of any difference.

b. Select a sample of loans in in-school, deferment, forbearance, and repayment status from the guaranty agency's system. Verify the loan amount and loan status by contacting the current holder of the loan or schools to confirm the authenticity and status of the loans.

3. Conditions of Reinsurance Coverage

Compliance Requirement – A guaranty agency may make a payment from the Federal Fund and receive a reinsurance payment on a loan only if the requirements in 34 CFR sections 682.406 and 682.414 are met. The lender must provide the guaranty agency with documentation, as described in 34 CFR sections 682.406 and 682.414. Key items in that documentation include:

a. Evidence that the lender exercised due diligence in making, disbursing, and servicing the loan as prescribed by the rules of the guaranty agency, including documentation of:

(1) Timely conversion to repayment;

(2) Collection and payment histories;

(3) Beginning and ending dates of borrower deferments/forbearances;

(4) Required skip-tracing activities; and

(5) No 45-day gaps in collection activities (34 CFR sections 682.406, 682.411, and 682.414).

b. Evidence that the loan was actually in default before the guaranty agency paid a default claim (34 CFR section 682.406(a)(4)).

c. Evidence that the lender filed a default claim with the guaranty agency within 90 days of default (34 CFR section 682.406(a)(5)).

d. Evidence that the loan was legally enforceable by the lender when the guaranty agency paid the claim on the loan to the lender (34 CFR section 682.406(a)(10)).

e. Evidence that the lender provided an accurate collection history and an accurate payment history with the default claim showing that the lender exercised due diligence in collecting the loan (34 CFR section 682.406(a)(3)).

f. Evidence that the lender satisfied all conditions of guarantee coverage set by the guaranty agency (34 CFR section 682.406(a)(7)).

g. Evidence that the guaranty agency reported reinsurance claims to ED within 30 days of lender payment (34 CFR section 682.406(a)(9)).

The Secretary requires a guaranty agency to repay reinsurance payments received on a loan if the lender or the guaranty agency failed to meet these requirements (34 CFR sections 682.406 and 682.414).

Past problem areas have been:

The lender:

- Did not exercise due diligence in collecting the loan in accordance with 34 CFR section 682.411 (34 CFR section 682.406(a)(3)).

- Did not include adequate documentation evidencing: timely conversion to repayment, a detailed collection and detailed payment history, beginning or ending dates of borrowers' deferments/forbearances, performance of

required skip-tracing activities, and no 45-day gaps in collection activities to support claim eligibility and the claim amount (34 CFR section 682.406(a)(3)).

- Did not file a default claim with the guaranty agency within 90 days of default. (Note: The guaranty agency shall reject the claim based on due diligence or timely filing violations, unless it was cured by the lender in accordance with 34 CFR part 682, Appendix D) (34 CFR section 682.406(a)(5)).

- Was paid interest beyond 30 days after a claim was returned for inadequate documentation for claims returned on or after July 1, 1996 (34 CFR section 682.406(a)(6)).

The guaranty agency:

- Filed a request for payment of reinsurance later than 30 days following payment of a default claim to the lender (34 CFR section 682.406(a)(9)).

- Did not pay the lender within 90 days of the date the lender filed the claim (34 CFR section 682.406(a)(8)).

Audit Objective – Determine whether loans for which reinsurance was paid met the requirements for reinsurance.

Suggested Audit Procedures

a. Select a sample of defaulted loans from the guaranty agency's ED Form 2000 reports.

b. Ascertain if, prior to paying claims, the guaranty agency determined that:

(1) The lender exercised due diligence in making, disbursing, and servicing the loan;

(2) The loan was legally enforceable;

(3) The loan was in default;

(4) The claim was timely filed;

(5) The lender provided an accurate collection and payment history showing that the lender exercised due diligence in collecting the loan; and

(6) The lender satisfied conditions of guaranty coverage set by the guaranty agency.

c. Ascertain that the guaranty agency:

(1) Filed a request for payment of reinsurance no later than 30 days following payment of a default claim to the lender; and

(2) Paid the lender or returned the claim to the lender for additional documentation within 90 days of the date the lender submitted the claim.

4. Death, Disability, Closed Schools, False Certification, Unpaid Refunds, Bankruptcy, and Teacher Loan Forgiveness Claims

Compliance Requirements – If an individual borrower dies or the student for whom a parent received a PLUS loan dies, the obligation of the borrower and any endorser to make any further payments on the loan is canceled, in accordance with 34 CFR section 682.402(b). A borrower may file an application for discharge due to total and permanent disability. Total and permanent disability discharges are approved in accordance with 34 CFR section 682.402(c). If a borrower files an application for discharge due to a closed school, the Secretary reimburses the holder of the loan in accordance with 34 CFR section 682.402(d). If a borrower's eligibility to receive a loan was falsely certified by an eligible school, the Secretary reimburses the holder of the loan and discharges the loan in accordance with 34 CFR section 682.402(e). The Secretary reimburses the holder of a loan for the amount of unpaid refunds under certain circumstances in accordance with 34 CFR sections 682.402(l) through (p). If a borrower files a petition for relief under the Bankruptcy Code, the Secretary reimburses the holder of the loan for unpaid principal and interest on the loan, in accordance with 34 CFR section 682.402(f). Exceptions to these regulations are identified in 34 CFR sections 682.402(a)(2) and (3).

A lender must file a death, disability, closed school, false certification, or bankruptcy claim within the period prescribed in 34 CFR section 682.402(g)(2). The guaranty agency shall review a death, disability, closed school, false certification, or bankruptcy claim promptly and shall pay the lender in accordance with 34 CFR section 682.402(h). Guaranty agencies are required to take specific actions in bankruptcy proceedings in accordance with 34 CFR section 682.402(i). In accordance with 34 CFR section 682.402, the guaranty agency shall not request payment from ED until the lender's claim has been paid. A borrower or lender must file an unpaid refund application within the period prescribed in 34 CFR section 682.402(l). The guaranty agency shall review an unpaid refund claim promptly in accordance with 34 CFR section 682.402(l) and shall pay the lender in accordance with 34 CFR section 682.402(n).

If, after being employed full-time as a teacher for 5 consecutive academic years, a borrower applies for teacher loan forgiveness through the loan holder, the guaranty agency must determine if the borrower meets the eligibility requirements and pay the loan holder within 45 days (34 CFR sections 682.216(a) and (f)). (Note: As of publication of the 2009 Supplement, these requirements are in 34 CFR section 682.215; however, 34

CFR section 682.215 will be re-designated as 34 section 682.216 as of July 1, 2009, see 73 FR 63249, dated October 23, 2008).

Audit Objectives – Determine whether death, disability, closed school, false certification, unpaid refund, bankruptcy, and teacher loan forgiveness claims met the requirements for the payment of such claims.

Suggested Audit Procedures

a. Select a sample of death, disability, closed school, false certification, unpaid refund, bankruptcy, and teacher loan forgiveness claims from the guaranty agency's ED Form 2000 reports.

b. Review claim documentation that supports the eligibility of the claims for payment.

5. Default Aversion Assistance

Compliance Requirements – Upon receipt of a complete request from a lender, received not earlier than day 60 and no later than day 120 of delinquency, a guaranty agency shall engage in default aversion activities designed to prevent the default by a borrower. Default aversion activities are activities of a guaranty agency that are directly related to providing collection assistance to the lender on a delinquent loan prior to the loan being legally in a default status. In consideration of such efforts, the guaranty agency receives a default aversion fee (34 CFR section 682.404(k)).

Calculating the Fee – In general, a guaranty agency may transfer a default aversion fee from its Federal Fund to its Operating Fund based on 1 percent of the total unpaid principal and accrued interest owed on loans on which the lender requests default aversion assistance. However, if a loan on which the guaranty agency has received the default aversion fee is subsequently paid as a default claim, the guaranty agency must rebate funds to the Federal Fund by deducting the rebate funds from the default aversion fee calculation. The fees may be transferred from the Federal Fund to the Operating Fund no more frequently than monthly and may not be paid more than once on any loan (34 CFR section 682.404(k)).

Audit Objectives – Determine whether the guaranty agency performed default aversion activities in accordance with the requirements, whether loans on which the default aversion fee was received were qualified, and whether the fees were calculated accurately.

Suggested Audit Procedures

a. For a sample of loans, review documentation supporting that the loans qualified for and the guaranty agency performed the default aversion activities.

b. For a sample of default aversion fee transfers:

(1) Verify that the default aversion fee was calculated accurately.

(2) Verify that default aversion fees were not paid more than once on the same loan.

c. For a sample of defaulted loans, verify that the appropriate default aversion fees are returned to the Federal Fund.

6. Collection Efforts

Compliance Requirements – The guaranty agency must engage in certain collection activities within certain time frames as prescribed by 34 CFR section 682.410(b)(6) on a loan for which it pays a default claim filed by a lender. These collection activities include written notices, contacts with borrowers, wage garnishments, etc. If a guaranty agency contracts with another party to perform default aversion assistance activities and collect defaulted loans, the party that provides default aversion assistance on a loan may not perform collection activity on that loan within three years of the date the default claim is paid (34 CFR sections 682.404(k) and 682.410(b)(6)).

Audit Objectives – Determine whether the guaranty agency performed required collection procedures on defaulted loans and that the collection contractor did not perform collection activities within three years of the default claim payment on loans for which it performed default aversion assistance.

Suggested Audit Procedures

a. If the guaranty agency uses a collection contractor, review the contract to ascertain if the contract specified the required collection procedures to be followed for defaulted loans.

b. For a sample of defaulted loan accounts, review documentation that supports that prescribed collection activities were followed.

c. Verify that the collection contractor did not perform collection activity within the three-year period on loans for which it performed default aversion assistance.

7. Federal Share of Borrower Payments

Compliance Requirement – If the borrower makes payments on a loan after the guaranty agency has paid a claim on that loan, the guaranty agency must pay the Secretary an equitable share of those payments.

The Secretary's equitable share is the portion of payments that remains after deducting:

a. The complement of the reinsurance percentage in effect when reinsurance was paid on the loan (See III.N.2, "Federal Reinsurance Rate," above for the

applicable reinsurance rate. The complement of the reinsurance percentage equals 100 minus the Federal reinsurance rate), and

b. (1) 23 percent of borrower payments received prior to October 1, 2007, or

(2) 16 percent of borrower payments received on or after October, 1, 2007 (Section 428(c)(6) of the HEA (20 USC 1078(c)(6)).

A guarantee agency may not retain an equitable share of loans that have been repaid by a FFEL Consolidated loan or Direct Consolidated Loan program loan.

For defaulted loans, which are repaid by a consolidated loan, under separate authority, agencies are allowed to retain an amount based on the amount of collection costs charged to the borrower and paid off by the consolidation loan; however, the amount that may be retained is as follows–

(1) For payoffs received prior to October 1, 2006, guaranty agencies can charge up to 18.5 percent of the payoff;

(2) For payoffs received on or after October 1, 2006, the guaranty agency can charge up to 18.5 percent of the payoff; however, the Secretary is entitled to the lesser of actual collection costs charged or 8.5 percent of principal and interest outstanding on the loans paid off, except that the guaranty agency may not retain any portion of the collection costs paid by a consolidation loan received in a Federal fiscal year beginning on or after October 1, 2009 that exceed 45 percent of the agency's total collections on defaulted loans that year (34 CFR sections 682.401(b)(27) and 685.220(f)).

A guaranty agency is required to deposit into its Federal Fund all funds received on loans on which a claim has been paid, including default collections, within 48 hours (2 business days) of receipt of those funds, minus any portion that the agency is authorized to deposit into the Operating Fund. "Receipt of Funds" means actual receipt of funds by the guaranty agency or its agent, whichever is earlier (34 CFR section 682.419(b)(6)).

Audit Objective – Determine whether the Secretary's equitable share of borrower payments on defaulted loans is properly computed and deposited into the Federal Fund in a timely manner.

Suggested Audit Procedures

Test a sample of borrower payments on defaulted loans at the loan level to ascertain if the equitable share due ED was deposited into the Federal Fund in a timely manner.

8. Assignment of Defaulted Loans to ED

Compliance Requirement – Unless the Secretary notifies a guaranty agency in writing that other loans must be assigned to the Secretary, a guaranty agency must assign any loan

that meets all of the following criteria as of April 15 of each year: (a) the unpaid principal balance is at least $100; (b) the loan, and any other loans held by the guaranty agency for that borrower, have been held by the agency for at least five years; (c) a payment has not been received on the loan in the last year; and (d) a judgment has not been entered on the loan against the borrower. The Secretary may also direct a guaranty agency to assign to ED certain categories of defaulted loans held by the guaranty agency as described in 34 CFR section 682.409. In determining whether mandatory assignment from a guaranty agency is required, the Secretary will review the adequacy of collection efforts. ED considers the guaranty agency's record of success in collecting its defaulted loans, the age of the loans, and the amount of any recent payments on the loans (Section 428(c)(8) of the HEA (20 USC 1078(c)(8)); 34 CFR section 682.409).

Audit Objective – Determine whether the guaranty agency assigned to ED all loans that meet the criteria.

Suggested Audit Procedures

Review the guaranty agency's aging of loans to ascertain if the guaranty agency is holding loans that should be assigned to ED.

9. Federal Fund and Agency Operating Fund

Compliance Requirements

Federal Fund

A guaranty agency shall deposit in the Federal Fund the following:

a. All amounts received from ED as payment of reinsurance or other claims on loans.

b. All funds received by the guaranty agency from any source on FFEL loans on which a claim has been paid minus the portion the agency is authorized to deposit in its Operating Fund (must be deposited within 48 hours of receipt).

c. Insurance premiums or federal default fees.

d. Amounts received for Supplemental Preclaim Assistance (SPA) activity performed prior to October 1, 1998.

e. 70 percent of amounts received on or after October 1, 1998, for Administrative Cost Allowances (ACA) for loans upon which insurance was issued prior to October 1, 1998.

f. Earnings from investments of the Federal Fund.

g. Other receipts as specified in regulations (34 CFR section 682.419).

The Federal Fund may only be used for the following purposes:

a. To pay lender insurance claims.

b. To transfer default aversion fees into the Agency Operating Fund.

c. For other purposes listed in the regulations (34 CFR section 682.419(c)).

Agency Operating Fund

The guaranty agency shall deposit into the Operating Fund:

a. Loan processing and issuance fees.

b. 30 percent of ACA payments received on or after October 1, 1998, for loans upon which insurance was issued prior to October 1, 1998.

c. Account maintenance fees.

d. Default aversion fees.

e. The portion of the amounts collected on defaulted loans that remains after the Secretary's share of collections has been paid and the complement of the reinsurance percentage has been deposited into the Federal Fund (34 CFR section 682.423).

f. Other receipts as specified in regulations (34 CFR section 682.423).

Funds in the Operating Fund may only be used for application processing, loan disbursement, enrollment and repayment status management, default aversion activities, default collection activities, school and lender training, financial aid awareness and related outreach activities, compliance monitoring, and other SFA-related activities for the benefit of students. During any period in which the Operating Fund contains money transferred in from the Federal Fund, the entire Operating Fund is subject to the restrictions in 34 CFR sections 682.410 and 682.418 (Sections 422B(a)-(e) of the HEA (20 USC 1072b(a)-(e))). The authority to transfer money from the Federal Fund to the Operating Fund expired in 1998 and all funds should have been repaid to the Federal Fund by 2003 (34 CFR sections 682.421 and 682.422).

Past problem areas concerning fund revenue and expense have included:

- Failure to credit funds received into the Federal Fund, including lock-box operations, within the specified period.

- Unauthorized expenses paid from the Federal Fund assets.

- Failure to report all credits to the Federal Fund on ED Form 2000.

- Use of the Federal Funds for other programs (e.g., Leveraging Educational Assistance Partnerships (LEAP) and other State programs).

- Commingling of funds.

Audit Objectives – Determine whether the guaranty agency credited the required amounts to the Federal and Operating Funds, and used the resources of each fund solely for authorized purposes.

Suggested Audit Procedures

a. Review revenue records to assure that amounts required to be credited to the Federal and Operating Funds were so credited. Review revenues and receipts that were not credited to the Federal or Operating Funds to assure that they were not inappropriately omitted.

b. Test expenditures to ascertain if they were made for allowable purposes.

c. Examine the general journal for unusual entries that impact the Federal or Operating funds.

10. Investments – Federal Fund

Compliance Requirement – Funds transferred to the Federal Fund shall be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities selected by the guaranty agency, with the approval of the Secretary. Earnings from the Federal Fund shall be the sole property of the Federal government. (Section 422A(b) of the HEA (20 USC 1072a(b))).

Audit Objective – Determine whether the agency invested Federal funds only in approved securities or other instruments and properly accounted for investment earnings.

Suggested Audit Procedures

a. Review investment activity during the period to ascertain that Federal Fund assets were invested in approved securities or other instruments.

b. Ascertain that earnings were deposited in the Federal Fund.

11. Collection Charges

Compliance Requirement – The guaranty agency must charge each defaulted borrower reasonable costs incurred by the agency for its default collection activities. The agency must charge these costs on defaulted loans whether acquired by a default or bankruptcy claim (34 CFR section 682.410(b)(2)). Costs of collection on defaulted loans include those direct costs of collection activities conducted after default on loans held by the agency, and indirect costs that are properly allocated to those same activities. Direct costs

include the expenses listed in 34 CFR section 30.60(a), such as collection agency charges, court costs, and attorney fees.

Because HEA section 484A(b) makes the defaulter liable only for reasonable collection costs, and costs are reasonable only if they are based on actual collection expenses being incurred by the guaranty agency, the agency must ensure that the estimate is based on reliable data. A charge based on expense and recovery data incurred in the most recently completed and audited fiscal year of the guaranty agency can be reasonably expected to predict actual costs being incurred in the year for which the charge is assessed. However, when changes that will affect that rate are reasonably expected in expenses or recoveries during the year for which the charge is computed, adjustments may be warranted.

The rate or amount to be charged the borrower to satisfy collection costs is the least of the following three rates:

a. The amount or rate, if any, specified in the borrower's note;

b. The rate determined by dividing the agency's expected expenses by its expected recoveries for the period at issue; or

c. The rate that would be charged if the loan were held by ED (through March 1, 2007—25 percent of the amount of principal and interest satisfied from a payment; thereafter, 24 percent of the amount. See: http://www.fsacollections.ed.gov/contractors/ga/).

An agency that is limited to the amount charged by ED must conform its charges to the limits in c. above no later than the date on which it ordinarily implements any adjustment based on its annual assessment of costs and recoveries.

There are instances when collection charges may not be assessed to the borrower at the rate determined as specified above:

a. A guaranty agency may charge collection costs in an amount not to exceed 18.5 percent of the outstanding principal and interest on a defaulted FFELP Consolidation Loan that is paid off by a Federal Consolidation Loan. For defaulted loans consolidated on or after October 1, 2006, the guaranty agency must remit to the Secretary a portion of the collection charge equal to the lesser of the amount charged the borrower or 8.5 percent of the outstanding principal and interest of the loan. On or after October 1, 2009, a guaranty agency must remit directly to the Secretary the entire amount of the collection charge with respect to each defaulted loan that is paid off with excess consolidation proceeds, as defined in 34 CFR section 682.401(b)(27)(v) (34 CFR section 682.401(b)(27)). (See III.N.7, "Federal Share of Borrower Payments.")

b. Borrowers who make the required nine voluntary and on-time payments within 10 months and whose loans are then rehabilitated by sale to an eligible lender may not be charged, for the payment derived from the sale proceeds, more than 18.5

percent of the outstanding principal and interest on the loans being rehabilitated (34 CFR section 682.405(b)(1)(vi)).

c. A guaranty agency may choose not to charge collection costs to a borrower who enters into a voluntary repayment agreement with the guaranty agency during the 60-day period after notice from the guaranty agency that the guaranty agency has paid a default claim and will report default status on the loan to national credit bureaus (34 CFR section 682.410(b)(5)(ii)).

Audit Objective – To determine whether the guaranty agency charged appropriate costs for its default collection activities to borrowers on defaulted loans acquired by the guaranty agency either by payment of a default or bankruptcy claim.

Suggested Audit Procedures

a. Test a sample of defaulted loan accounts to determine whether the guaranty agency charged only for reasonable costs of collection.

b. Ascertain if the method used to calculate the amount charged: (1) included only appropriate expenses of default collection activities, and (2) was limited to the amount prescribed by regulation.

12. Enforcement Action

Compliance Requirement – The guaranty agency shall take measures to ensure enforcement of all Federal, State and guaranty agency requirements and at a minimum, conduct biennial on-site program reviews of lenders and schools that meet criteria specified in 34 CFR section 682.410(c)(1) or are selected using an alternative methodology approved by the Secretary. The guaranty agency is required to use statistically valid techniques to calculate liabilities owed the Secretary that the review indicates may exist; demand prompt payment from the responsible party; and refer to the Secretary any case in which the payment of funds is not made within 60 days. A guaranty agency also is required to adopt procedures for identifying fraudulent loan applications, and to undertake or arrange for the prompt and thorough investigation of criminal or other programmatic misconduct by its program participants. It is responsible also for promptly reporting all of the allegations and indications of fraud or misconduct having a substantial basis in fact, and the scope, progress, and results of the agency's investigations (34 CFR section 682.410(c)).

Audit Objective – Determine whether the guaranty agency is carrying out program reviews and related enforcement activity in accordance with the above requirements.

Suggested Audit Procedures

a. Review the guaranty agency's procedures for selecting lenders and schools to review to ascertain if they meet the regulatory criteria or an alternative methodology approved by the Secretary.

b. Review guaranty agency's program review guidance to ascertain if it is up-to-date and includes, when problems are found, a statistically valid method for determining liabilities due the Secretary.

c. Review program review reports to ascertain if amounts due the Secretary were identified and, if so, whether appropriate demand for payment and follow-up was conducted.

d. Through inquiry and review, determine whether the guaranty agency adopted procedures for identifying fraudulent loan applications and for reporting all allegations of misconduct having a substantial basis to ED. Review guaranty agency records on the follow-up of misconduct to determine whether ED was notified when appropriate.

13. Prohibited Inducements

Compliance Requirement -, The Higher Education Opportunity Act (HEOA), as amended (Pub. L. No. 110-315) amended the prohibited inducement provisions in Section 428(b)(3) of the HEA (20 USC 1078(b)(3)) that govern guaranty agencies in the FFEL Program. These provisions prohibit a guaranty agency from offering, directly or indirectly, premiums, payments, stock or other securities, prizes, travel, entertainment expenses, tuition payment or reimbursement, or any other inducement to the following (34 CFR sections 682.200 *lender* (5) and 682.212):

a. Any school, any school employee, individual, or entity in order to secure applicants for FFEL loans; or

b. Any lender, or any agent, employee, or independent contractor of any lender or guaranty agency in order to administer or market FFEL loans (except for lender-of-last resort loans made under the guaranty agency's program) for the purpose of securing the agency's designation as the guarantor.

The HEOA also prohibits a guaranty agency from performing, or paying another individual to perform, any school-required function for a FFEL participating school, except student loan entrance or exit counseling (Section 428(b)(3) of the HEA (20 USC 1078(b)(3) 34 CFR section 682.200 *lender* 5(i)(10)).

Audit Objectives – Determine whether a guaranty agency paid premiums, payments, stock or other securities, prizes, travel, entertainment expenses, tuition payment or reimbursement, or any other inducements to any school, school employee, individual, or entity to secure applicants for FFEL loans or to lenders or other parties in order to secure guarantees as insurer of loans. Determine whether the guaranty agency performed, or paid another individual to perform, any school-required function for a FFEL participating school, except student loan entrance or exit counseling.

Suggested Audit Procedures

a. Obtain written representation from management whether it: (a) paid, directly or indirectly, premiums, payments, stock or other securities, prizes, travel, entertainment expenses, tuition payment or reimbursement, or any other inducement to schools, school employees, individual, or entity to secure loan applications; or to any lender and its agents, employees, or independent contractors in order to secure guarantees as insurer of loans; and (b) performed, or paid another individual to perform, any school-required function for a FFEL participating school, except student loan entrance or exit counseling.

b. Select a sample of agreements with postsecondary institutions and lenders, and review for evidence of prohibited inducements.

c. Review a sample of disbursements and stock and securities transactions made by the guaranty agency for evidence of whether it: (a) has paid, directly or indirectly, premiums, payments, stock or other securities, prizes, travel, entertainment expenses, tuition payment or reimbursement, or any other inducement to schools, school employees, individual, or entity to secure loan applications; or to any lender and its agents, employees, or independent contractors; and (b) performed, or paid another individual to perform, any school-required function for a FFEL participating school, except student loan entrance or exit counseling.

14. Access to National Student Loan Data System (NSLDS)

Compliance Requirement – The HEOA (Pub. L. No. 110-315) amended Section 485B of HEA (20 USC 1092b) to establish principles for administering the NSLDS. The Secretary is required to ensure that the primary purpose of access to the system by guaranty agencies is for legitimate program operations and to take actions to maintain confidence in the NSLDS, including, at a minimum, developing standardized protocols for limiting access to the data system. NSLDS access and use requirements were issued by ED in Dear Colleague Letter GEN-05-06/FP-05-04 (http://www.ifap.ed.gov/dpcletters/GEN0506.html), *Access To and Use of NSLDS Information,* dated April 8, 2005.

Each organization using the NSDLS is required to establish a Destination Point Administrator (DPA). The roles and responsibilities of the DPA are to ensure that authorized personnel use the NSLDS only for official government business. The responsibilities of the DPA include the following:

a. Ensuring that all users are aware of their responsibilities regarding access to NSLDS.

b. Monitoring the use and access of NSLDS data by all of the organization's users.

c. De-activating a User ID when the person to whom it was assigned is no longer with the organization or otherwise is no longer eligible to have access to NSLDS.

d. Ensuring that information in or received from the NSLDS is protected from access by or disclosure to unauthorized personnel.

Audit Objective – Determine whether the guaranty agency has established required controls and oversight regarding NSLDS access.

Suggested Audit Procedures

a. Review and evaluate the guaranty agency's established and documented controls over access to the NSLDS.

b. Verify that the entity removes NSLDS access when an employee terminates or is reassigned to a position not requiring NSLDS access.

15. Correct Handling of Loans Sold to the U.S. Department of Education

Compliance Requirement – The HEOA amended Section 459A of the HEA (20 USC 1087i-1) to provide that, once a loan is purchased by the Secretary, the guaranty agency shall cease to have any obligations, responsibilities, or rights (including any rights to any payment) for the loan. The guaranty agency must update the NSLDS to report that the ED is now the holder of the loan (20 USC 1092b(a)(7)) and no additional fees are requested. Guaranty agencies annually submit to ED Form 2000, *Guarantee Agency Financial Report*, (*OMB Number 1845-0026*). Line AR-7, Loans Transferred Out on that report shows the loans sold to ED. Also line MR-15 shows the Secretary's fee for defaulted FFEL loans consolidated with Direct Loans and line MR-27 is the total receivable on these loans (see http://www.fp.ed.gov/PORTALSWebApp/fp/fms.jsp) (Section 459A of the HEA (20 USC 1087i-1); 34 CFR section 682.414(b)(4)).

Audit Objective – Determine whether the guaranty agency/servicer has established and implemented controls and processes over loans that have been sold to ED.

Suggested Audit Procedures

a. Review and evaluate the guaranty agency's controls to ensure that, for loans purchased by ED, the NSLDS is updated and the entity no longer bills ED for any fees.

b. Select a sample of loans purchased by ED and trace to ensure the NSLDS was updated and the guaranty agency no longer billed ED for any fees. In doing this, the auditor should verify that the effective date that the loan was transferred out in the guarantor's system matches the loan purchase date.

c. Request the guaranty agency to provide the monthly totals of loan transfers to ED due to loans purchased by ED and verify that these were reflected in line AR-7 of Form 2000.

d. Review/verify amounts reported in lines MR-15 and MR-27 of ED Form 2000 to determine that the Secretary's share was accurately collected and reported.

IV. OTHER INFORMATION

Some "statewide" entities are defined to include a guaranty agency under the FFEL Program (CFDA 84.032). For such entities, this Part 4 section should be used to identify pertinent compliance requirements. Auditors for "statewide" entities that incorporate a guaranty agency must consider the provisions of OMB Circular A-133, paragraph 520(b)(3) in determining major programs. When those provisions apply, coverage of the FFEL Program for a guaranty agency as a major program must be identified and reported on separately as a major program in the Summary of Auditor's Results Section of the Schedule of Findings and Questioned Costs, referring to the program as "CFDA 84.032 (FFEL – Guaranty Agencies)."

DEPARTMENT OF EDUCATION

CFDA 84.032 FEDERAL FAMILY EDUCATION LOANS (Lenders)

I. PROGRAM OBJECTIVES

Institutions that are banks, schools, other financial institutions, governmental entities, or nonprofit organizations that meet the definition of an eligible lender in Section 435(d) of the Higher Education Act of 1965, as amended (HEA) (20 USC 1085(d)) may function as lenders under the Federal Family Education Loans (FFEL) program. All of these types of lenders must comply with the requirements generally applicable to lenders. However, there are additional compliance requirements that apply to schools as lenders.

II. PROGRAM PROCEDURES

Prior to July 1, 2010, eligible banks, savings and loan associations, credit unions, pension funds, insurance companies, and schools could make loans under the FFEL program (34 CFR section 682.101(a)). Under Section 435(d)(1) of the HEA (20 USC 1085(d)(1)), State agencies and nonprofit organizations may also qualify as eligible lenders under certain conditions and for certain purposes. Schools that meet the requirements of 34 CFR section 682.601(a) could also make loans under the FFEL program. An eligible lender that holds loans as an eligible lender trustee for a school, or an organization affiliated with a school, and the school involved in such an arrangement are subject to certain restrictions on lending under Section 435(d)(7) of the HEA (20 USC 1085(d)(7)). These entities may continue to hold FFEL program loans until they are repaid or a claim is paid on the loan.

A lender (other than a school lender) originating or holding more than $5 million in FFEL loans during its fiscal year, and a school lender under 34 CFR section 682.601 that holds any FFEL loans during its fiscal year, must submit an independent annual compliance audit for that year conducted by a qualified independent organization or person (34 CFR section 682.305(c)(1)). Governmental entities or nonprofit organizations that function as lenders under the FFEL program must meet this requirement by auditing the school lender activity as a major program (or, if applicable, as part of the Student Financial Aid (SFA) Cluster) as part of the entity's single audit under OMB Circular A-133. (For Schools that are Lenders, see guidance in IV, Other Information, at the end of this section.)

The Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, provides that, after June 30, 2010, no new student loans will be made under the Federal Family Education Loan (FFEL) Program. Therefore, beginning July 1, 2010, all new subsidized and unsubsidized Stafford Loans made to students, PLUS loans made to parents and to graduate/professional students, and consolidation loans made to borrowers, will be made under the Federal Direct Student Loans (Direct Loan) program (CFDA 84.268).

Source of Governing Requirements

The FFEL program is authorized by Title IV, Part B, of the HEA, as amended (20 USC 1071 through 1087-4). Program regulations are located at 34 CFR part 682.

Availability of Other Program Information

A number of documents contain guidance applicable to FFEL program lenders. They include:

- Dear Partner (Colleague) Letters (http://ifap.ed.gov/ifap/byYear.jsp?type=dpcletters);
- FFEL Special Allowance Rates (http://ifap.ed.gov/ifap/byYear.jsp?type=ffelspecrates)
- FFEL Variable Interest Rates (http://ifap.ed.gov/ifap/byYear.jsp?type=ffelvarrates)
- Dear Colleague Letter FP-07-01 FFELP Loans Eligible for 9.5 Percent Minimum Special Allowance Rate (http://ifap.ed.gov/dpcletters/FP0701.html)
- Dear Colleague Letter FP-07-06 Audit Requirements for 9.5 Percent Minimum Special Allowance Payment Rate (http://ifap.ed.gov/dpcletters/FP0706.html)
- Dear Colleague Letter FP 07-12 -Determination of Not-For-Profit Holder Status for SAP Billing (http://www.ifap.ed.gov/dpcletters/FP0712.html)
- FFEL Prohibited Inducement Guidance (for activities undertaken by a lender prior to July 1, 2008) (http://ifap.ed.gov/eannouncements/0914FFELProhibitedInducementGuidance.html)
- Dear Colleague Letter FP 08-07 Ensuring Continued Access To Student Loans Act of 2008 (http://www.ifap.ed.gov/dpcletters/061908GEN0808.html)
- Dear Colleague Letter FP 08-10 The Higher Education Opportunity Act (http://www.ifap.ed.gov/dpcletters/GEN0812FP0810.html)
- Income-Based Repayment Plan (http://www.fp.ed.gov/fp/attachments/activities_whatsnew/IBR_Bulletin.doc)
- Funds Remittance Guidance (http://www.fp.ed.gov/fp/attachments/activities_whatsnew/FundsRemittance9.0.doc)

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort* – Not Applicable

2.2 Level of Effort – *Supplement Not Supplant*

For schools that are lenders (See III.N.14, Schools as Lenders Eligibility), proceeds from special allowance payments and interest payments from borrowers, interest subsidies received from the U.S. Department of Education (ED), and any other proceeds from the sale of or other disposition of loans, for need-based grant programs shall be used to supplement, not to supplant, non-Federal funds that would otherwise be used for need-based grant programs (Section 435(d)(2)(C) of the HEA (20 USC 1085(d)(2(C)); 34 CFR section 682.601(c)).

3. Earmarking – Not Applicable

I. Procurement and Suspension and Debarment

For schools that are lenders (See III.N.13, Special Tests and Provisions – Making or Holding Loans as a Trustee for an Institution of Higher Education or an Affiliated Organization), any contract awarded for financing, servicing, or administration of FFEL loans must be awarded on a competitive basis (Section 435(d)(2)(A)(iv) of the HEA (20 USC 1085(d)(2)(A)(iv)); 34 CFR section 682.601(a)(4)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. *Lender's Interest and Special Allowance Request and Report (LaRS) (OMB No. 1845-0013)* – The LaRS is used by ED to calculate interest subsidies and special allowance payments due to lenders. It is also used to obtain information about the lender's FFEL program portfolio. For lenders to receive payments of interest benefits and special allowance payments, quarterly reports must be submitted to ED on the LaRS. The lender must submit fully completed quarterly LaRS to ED even if the lender is not owed, or does not wish to receive interest benefits or special allowance payments from ED.

The LaRS must be submitted within 90 days after the end of the quarter to be considered timely. Where testing of LaRS information is requested later in this program supplement, that testing can be done concurrently with this testing. See 34 CFR section 682.414(a)(4)(ii) for more information.

The LaRS is a five-part form with a cover page.

Page 1 – The first page of the form identifies the lender by name and identification number and, if the lender uses a servicer to prepare the form, the servicer's name and identification number. It also requires that an official representative of the lender certify that the data reported is correct and that it conforms to the laws, regulations, and policies applicable to the FFEL Program.

Part I – Lender Origination and Lender Loan Fees – This part contains information on the amount of funds disbursed during the quarter and the amount of loan origination and lender loan fees due to ED.

Part II – Interest Benefits – This part contains information on the amount of interest benefits due to the lender on eligible loans.

Part III – Special Allowance – This part contains information for the lender to request special allowance payments from ED. The loan information must be separated according to loan type, applicable interest rate, and special allowance categories. ED calculates the amount of special allowance payments due to the lender based on this data.

Part IV – Loan Activity – This part contains information regarding any changes in principal amounts for each type of FFEL program loan in the lender's portfolio during the quarter.

Part V – Loan Portfolio Status – This part contains information regarding the status of the outstanding loan principal for each type of FFEL program loan in the lender's portfolio at the end of the quarter.

The information reported on the LaRS is subject to levels of edit checks for data reasonability during ED's processing of the payment request. In some cases, the form will be rejected and returned to the lender for correction. In other cases, ED notifies the lender that its submission failed to pass the edits and instructs it to determine if the errors resulted in an incorrect payment of interest benefits or special allowance. The lender is further instructed by ED to make applicable adjustments to the affected loan balances on the next quarterly report. The lender is required to keep records necessary to support the amounts reported on the LaRS (34 CFR section 682.305(a)).

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

1. Individual Record Review

Compliance Requirement – A lender is required to maintain current, complete, and accurate records of each loan that it holds. These loan records (files) form the basis for the information contained in the LaRS. The records must be maintained in a system that allows ready identification of each loan's status. Except for the loan application and the promissory note, these records may be stored in microform, computer file, optical disk, CD-ROM, or other media formats provided that the means of storage meets the requirements in 34 CFR sections 668.24(d)(3)(i) through (iv) (34 CFR section 682.414(a)).

The required records are identified in 34 CFR section 682.414(a)(4)(ii) and are listed below.

- A copy of the loan application, if a separate application was provided to the lender
- A copy of the signed promissory note
- The repayment schedule
- A record of each disbursement of loan proceeds
- Notices of changes in a borrower's address and status as at least a half-time student
- Evidence of the borrower's eligibility for a deferment
- The documents required for the exercise of forbearance
- Documentation of the assignment of the loan
- A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, interest, late charges, and other costs
- A collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan; each communication (other than regular reports by the lender showing that an

account is current) between the lender and a credit bureau regarding the loan; each effort to locate a borrower whose address is unknown at any time; and each request by the lender for default aversion assistance on the loan

- Documentation of any Master Promissory Note confirmation process or processes

- Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted.

Note: Original Loan Applications and Promissory Notes. If the audit sample includes loans that the lender no longer owns, such as loans that the lender sold to another party, paid by consolidation, or assigned to a guaranty agency, the auditor may perform alternative procedures to obtain access to and review the original documents. The alternative procedures could include, but are not necessarily limited to, the review of: (1) a copy or image maintained by the lender or servicer of the original document, or (2) a certified true copy, obtained from the entity that currently holds the original loan document, that may be compared to the lender's document.

Audit Objective – Determine whether the lender maintained current, complete and accurate loan records.

Suggested Audit Procedures

a. Trace loan information from the lender's summary records/ledgers to detailed loan records.

b. Test a sample of individual loan files and determine if the lender maintained the required documents and the information recorded in the detailed loan record agrees with the information in these documents and the summary records.

2. Interest Benefits

Compliance Requirements

Payment of Interest Benefits

ED pays the lender interest benefits (see 34 CFR section 682.202(a) for applicable FFEL interest rates) on eligible FFEL program loans (subsidized Stafford and certain consolidated loans) on behalf of a qualified borrower during certain loan statuses including:

- All periods prior to the beginning of the repayment period; and

- Any period when the borrower has an authorized deferment (34 CFR section 682.300).

Payment of Interest Benefits on Consolidated Loans

Consolidation loan borrowers qualify for interest benefits during authorized periods of deferment on the portion of the loan that does not represent Health Education Assistance Loans (HEAL) if the loan application was received by the lender on or after:

- January 1, 1993, but prior to August 10, 1993;
- August 10, 1993, but prior to November 13, 1997, if the loan consolidates only subsidized Stafford loans; or
- November 13, 1997 but prior to July 1, 2010, for the portion of the loan that repaid subsidized FFEL loans and Direct Subsidized Loans (34 CFR section 682.301(a)(3)).

Termination of Interest Benefits

Generally, ED's obligation to pay interest benefits to a lender ceases when the eligible borrower enters repayment status and does not qualify for a deferment. Interest benefits to the lender also begin or terminate with certain other date-specific events enumerated in 34 CFR sections 682.300(b)(2) and (c).

Reporting of Interest Benefits

The information needed for ED to calculate interest benefits is reported in Part II of the LaRS. See 34 CFR section 682.202(a) for applicable interest rates for FFEL program loans. The Service members Civil Relief Act (50 USC App. 527) (SCRA), which limits the interest rate on a borrower's loan to 6 percent during the borrower's active duty military service, applies to FFEL loans. This limitation applies to borrowers who were in military service as of August 14, 2008, but a borrower is not entitled to a refund of interest paid above the 6 percent rate prior to that date. The SCRA interest rate limit does not apply to an endorser to a PLUS loan made to a parent or graduate/professional student unless that individual is also performing eligible military service (50 USC App. 527). For any FFEL loan that is subject to the SCRA six percent interest rate limit, for those FFEL loans first disbursed on or after July 1, 2008, the applicable interest rate used in calculating the lender's special allowance payment is the SCRA-determined rate. Interest benefits due the lender may be calculated by using either the average daily balance or actual accrual methods in 34 CFR sections 682.304(b) and (c).

Consolidation Loan Interest Payment Rebate Fee

Consolidation loan interest payment rebate fees are required on a monthly basis from lenders that hold Federal consolidation loans with first disbursements after October 1, 1993. The monthly rebate fee is .0875 percent (1.05 percent annualized) of the unpaid balance of the principal and the accrued unpaid interest on all Federal consolidation loans disbursed after October 1, 1993, and held by the lender on the last day of the month. For loans based on applications received during the period October 1, 1998 through January

31, 1999, inclusive, the monthly rebate fee is .05167 percent (0.62 percent annualized) of the unpaid balance of principal and accrued unpaid interest. Consolidation loan rebate fees (CLRF) are reported monthly using the FFEL Consolidation Loan Rebate Fee Report and Remittance Form (*OMB No. 1845-0046*) (Section 428C(f) of the HEA (20 USC 1078-3(f))).

Audit Objective – Determine whether interest benefits were accurately calculated and billed to ED and that the CLRF were submitted on a monthly basis to ED

Suggested Audit Procedures

a. Test that the loans are assigned the correct interest rate in accordance with 34 CFR section 682.202(a) and 50 USC App. 527, and are reported in the correct interest rate category in the LaRS.

b. Test that the lender begins and ends billings to ED for interest benefits on the appropriate day for loans in an in-school, grace, or authorized deferment period.

c. Review loan records, disbursement records, or other documentation to verify that interest is billed only for periods specified in 34 CFR section 682.300(b)(2) and is not billed for interest covered under 34 CFR section 682.300(c).

d. For consolidated loans that are billed for interest benefits, review the history files, and verify that the loans qualified for interest payments.

e. For consolidated loans subject to the consolidation loan interest payment rebate fee, verify that fees were calculated accurately and submitted on a monthly basis.

f. Test the accuracy of the average daily balance or actual accrual calculations by recalculating amounts or by reasonableness tests.

3. Special Allowance Payments

Compliance Requirement

Special Allowance Payments/Return of Excess Interest

In addition to interest benefits, ED pays a special allowance to the lender on the average daily outstanding balance of eligible FFEL loans. ED will compute the special allowance payable to the lender based upon the average daily balance computed by the lender. The amount of each quarterly special allowance payment will vary according to the type of FFEL program loan, the date the loan was disbursed, the loan period, and the loan status. The lender reports in Part III of the LaRS the average daily principal balance of those loans in each category qualifying for the payment. In addition ED will calculate the amount of excess interest or negative special allowance owed to ED. ED computes the special allowance payment due to the lender during processing of the LaRS (34 CFR sections 682.304 through 682.305).

Loans Eligible for Special Allowance Payments

See 34 CFR section 682.302(b) for details on loans eligible for special allowance payments. Limitations on the payment of a special allowance for PLUS loans were eliminated by the Higher Education Reconciliation Act (HERA), (Pub. L. No. 109-171). Lenders may receive special allowance payments on PLUS loans that were first disbursed on or after January 1, 2000 and before July 1, 2006, for periods beginning April 1, 2006 (Section 438(b)(2)(I) of the HEA (20 USC 1087-1(b)(2)(I)) and Section 8006 of HERA). The average loan principal, including capitalized interest, is to be calculated using the average daily balance method defined in 34 CFR section 682.304(d).

Special Allowance Rates for Loans Made On or After October 1, 2007 but Prior to July 1, 2010

Except for certain loans made from funds derived from tax-exempt sources, the special allowance rate for any eligible loan, for which the first disbursement of principal was made on or after October, 1, 2007, is to be calculated according to the formulas described in:

a. Section 438(b)(2)(I)(vi)(I) of the HEA (20 USC 1087-1(b)(2)(I)(vi)(I)) (34 CFR section 682.302(f)(1)) for a loan that is held by an entity that does not qualify as an "eligible not-for-profit holder," or

b. Section 438(b)(2)(I)(vi)(II) of the HEA (20 USC 1087-1(b)(2)(I)(vi)(II)) (34 CFR section 682.302(f)(2)) for a loan that is held by an entity that qualifies as an "eligible not-for-profit holder."

An "eligible not-for-profit holder" is an eligible lender under Section 435(d) of the HEA (20 USC 1085(d)), other than a school lender, that is–

- A State, or a political subdivision, agency, authority or instrumentality of a State, including an entity eligible to issue bonds described in section 144(b) of the Internal Revenue Code (Code), or in 26 CFR section 1.103-1,
- A not-for-profit entity described in section 150(d)(2) of the Code that has not made the election described in section 150(d)(3) of the Code to relinquish that status,
- A not-for-profit entity described in section 501(c)(3) of the Code;
- A trustee acting on behalf of a governmental or non-profit entity listed above, without regard to whether that entity qualifies as an eligible lender under Section 435(d) in its own right (Section 435(p) of the HEA (20 USC 1085(p)).

Loans that are held by a governmental or non-profit entity that is an eligible lender under Section 435(d) of the HEA may qualify for the higher special allowance rate, as may loans held by an eligible lender trustee on behalf of such an entity. Loans held by the entity or eligible lender trustee qualify for the higher rate only if the governmental or non-profit entity –

- On September 27, 2007, either acted as an eligible lender under Section 435(d) of the HEA (other than as a school lender), or was the sole beneficial owner of a FFEL program loan that was eligible for special allowance payments;
- Is neither owned nor controlled, even in part, by a for-profit entity; and
- Remains the sole beneficial owner of such loans and the income from such loans (Section 435(p)(2) of the HEA (20 USC 1085(p)(2))).

The grant of a security interest in a loan or its income, or the pledge of the loan or income as collateral, in order to secure a debt obligation issued by a governmental or non-profit entity, does not affect the not-for-profit eligibility status of that entity or of an eligible lender trustee to the extent acting on its behalf (Section 435(p)(2)(E) of the HEA (20 USC 1085(p)(2)(E))).

An eligible lender trustee may not receive compensation in excess of reasonable and customary rates for serving as a trustee for a governmental or non-profit entity (Section 435(p)(2)(D) of the HEA (20 USC 1085(p)(2)(D))).

Note that a State is permitted to designate a not-for-profit entity that was not acting as an eligible lender under Section 435(d) of HEA on September 27, 2007, as a new "eligible not-for-profit holder" (34 CFR section 682.302(f)(3)).

Loans Made or Purchased with Funds from the Issuance of Tax-Exempt Obligations

The special allowance rate payable on loans made or purchased from funds derived from tax-exempt obligations depends on the specific source of funds used to acquire the loan, whether specified events occurred after its acquisition, the date the loan was acquired, the rate payable on the loan when it was acquired, and the characteristics of the lender that acquired the loan (Section 438 of the HEA (20 USC 1087-1)).

With limited exceptions, for HERA small lenders (see below), the special allowance rates for loans made on or after October 1, 2007, are the same for all loans, regardless of the source of funding, and differ only with respect to the status of the holder of the loan. Loans made before October 1, 2007, that were acquired with funds from tax-exempt obligations originally issued prior to October 1, 1993 receive a special allowance at one-half the rate otherwise payable, but not less than needed to provide, including the interest on the loan, an annualized return of 9.5 percent. (Sections 438(b)(2)(B)(i), (ii), and (iv) of the HEA (20 USC 1087-1(b)(2)(B)(i), (ii), and (iv)). This separate rate is referred to as the "9.5 percent floor."

Loans acquired with funds from tax-exempt obligations originally issued on or after October 1, 1993 receive the same special allowance rate as loans acquired with funds from sources other than tax-exempt obligations. An obligation that was issued to obtain funds to make loans, or to acquire an interest in a loan (including an interest by pledge of the loan as collateral), is considered to have been originally issued on the date it was issued. A tax-exempt obligation that refunds, or is one of a series of tax-exempt refunding obligations, is considered to have been originally issued when the initial obligation was issued (Section 438(b)(2)(B)(iv) of the HEA (20 USC 1087-1(b)(2)(B)(iv))).

Only loans made or purchased from an eligible funding source specified in 34 CFR section 682.302(c)(3)(i) may qualify for the 9.5 percent floor. Those sources are funds obtained from:

- The proceeds of a tax-exempt obligation originally issued prior to October 1, 1993;
- Collections or default payments by a guarantor on a loan acquired with the proceeds of such an obligation;
- Interest benefits or special allowance payments received on a loan acquired with the proceeds of such an obligation;
- The sale of a loan acquired with the proceeds of such an obligation; or
- The investment of the proceeds of such an obligation.

Special allowance at the 9.5 percent floor may be received on claims submitted for the quarter ending December 31, 2006 and thereafter only if the lender has submitted, and ED has accepted, a report of an audit conducted under a methodology prescribed for this purpose that identifies those loans that have been acquired from the eligible sources in the previous paragraph, and the lender has submitted, for each such claim, a management certification that SAP is claimed at that rate only on loans determined through that process to be eligible. (See Dear Colleague Letters FP-07-01 and FP-07-06.)

However, loans made from or purchased using these eligible sources do not qualify for the 9.5 percent floor if the loans were made or purchased after February 7, 2006 or, for loans made before that date and purchased after that date, did not qualify on that date for special allowance at the 9.5 percent floor. (Section 438(b)(2)(B)(vi) of the HEA (20 USC 1087-1(b)(2)(B)(vi)); 34 CFR section 682.302(e)(4)).

These deadlines are deferred until December 31, 2010 with respect to a "HERA small lender," a loan holder that on February 8, 2006, and during the quarter for which the special allowance is paid:

- Was a unit of state or local government or a private nonprofit entity;

- Was not owned or controlled by, or under common ownership with, a for-profit entity; and

- Held directly or through any subsidiary, affiliate, or trustee, a total unpaid balance of principal equal to or less than $100 million on loans for which special allowances were paid under section 438(b)(2)(B) in the most recent quarterly payment prior to September 30, 2005(Section 438(b)(2)(B)(vii) of the HEA (20 USC 1087-1(b)(2)(B)(vii)); 34 CFR section 682.302(e)(5)).

Loans that are eligible for the 9.5 percent floor may lose eligibility for that rate and revert to the usual rates for any loan that is:

- Pledged or otherwise transferred prior to October 1, 2004 from the tax-exempt obligation used to acquire the loan, unless either of the following applies –

  - The loan is pledged or transferred in consideration of funds listed in 34 CFR section 682.302(c)(3)(i) or from a tax-exempt refunding obligation, or

  - The prior tax-exempt obligation used to acquire the loan is neither retired nor defeased with yield-restricted obligations;

- Financed by a tax-exempt obligation that, after September 30, 2004, has matured, been refunded, or is retired or defeased;

- Refinanced after September 30, 2004 with funds obtained from a source other than the funds listed in 34 CFR section 682.302(c)(3)(i);

- Sold or transferred to any other holder after September 30, 2004.

Section 438(b)(2)(B) of the HEA (20 USC 1087-1(b)(2)(B)); 34 CFR sections 682.302(e)(2) and (3)).

Termination of Special Allowance Payments on a Loan

Special allowance payments on loan balances terminate when a date-specific event occurs and the loan is no longer eligible for the payment. These date-specific events are described in detail in 34 CFR section 682.302(d) and include the following:

- The date a borrower's loan is repaid;

- The date a borrower's loan check is returned uncashed to the lender;

- The date the lender receives payment on a claim for loss on the loan;

- The date the loan ceases to be guaranteed or ceases to be eligible for reinsurance, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

- The 60th day after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor together with all the required documentation on or before the 60th day;

- The 120th day after disbursement if the loan check has not been cashed on or before that date or if the loan proceeds disbursed by EFT have not been released from the restricted account maintained by the school on or before that date; and

- The 30th day after the date the lender received a returned claim from the guaranty agency due solely to inadequate documentation on a loan submitted by the regulatory deadline for loss on the loan (unless the lender files a claim for loss on the loan with the guarantor, together with the required documentation prior to the 30th day).

The date on which the lender determines the loan is legally unenforceable based on receipt of an identity theft report under 34 CFR section 682.208(b)(3).

Loss of Interest and Special Allowance Payment Benefits

A lender can lose reinsurance coverage and interest and special allowance payment benefits due to *violations of due diligence requirements on a loan (See N.*8 below). To reinstate reinsurance and other Federal payments on the loan, the violation has to be "cured" (See N.10 below). See Appendix D of 34 CFR part 682 for more information.

Audit Objective – Determine whether special allowance payments were earned and reported properly.

Suggested Audit Procedures

a. Test that the lender is reporting all eligible loans in its portfolio in Part III of the LaRS by the proper year, quarter, interest rate, and special allowance category.

b. Using the results of any audit conducted by or for the lender under Dear Colleague Letter FP-07-06 and accepted by ED, test that the lender is accurately reporting for the 9.5 percent floor only those loans that—

   (1) were identified as a result of the audit as made or purchased with eligible sources of funds, or

   (2) if made or acquired by the lender after December 31, 2006, were made or purchased with funds obtained from repayments, sales, or interest or special allowance payments on loans that were established by such audit to be first-generation loans, as that term is used in Dear Colleague Letter FP 07-01, and

   (3) unless held by a lender that qualifies for deferral until December 30, 2010:

(a) were made or purchased prior to February 8, 2006, and

(b) were eligible for 9.5 percent floor on February 8, 2006.

c. Test that the lender is terminating special allowance requests on loan balances when a date-specific event specified in 34 CFR section 682.302(d) occurs, as documented in the borrower's file.

d. Test that the lender is terminating billing under the 9.5 percent floor when disqualifying events specified in HEA and 34 CFR sections 682.302(e)(2) and (3) occur.

e. Test the accuracy of the average daily balance calculations as defined in 34 CFR section 682.304(d) by recalculating amounts or by reasonableness tests.

f. Test a sample of loans included in the average daily balances to determine that the average daily balances do not include loans that are not eligible for special allowance payments.

g. For loans made on or after October 1, 2007 through June 30, 2010, for which the lender claimed special allowance as an "eligible not-for-profit holder," examine if the lender claimed special allowance on loans held as a trustee on behalf of another entity —

(1) the claim was limited to loans to which a governmental or non-profit entity listed above held full beneficial ownership; and

(2) the lender was compensated by the governmental or non-profit entity at a rate in excess of that paid other eligible lender trustees holding FFEL program loans, and if so, by what amount.

4. Loan Sales, Purchases, and Transfers Compliance Requirements

Compliance Requirement – Loan sales, purchases, and transfers between eligible lenders entail special portfolio management risks and, therefore, require special controls. The lender must exercise due care in ensuring that gaps in servicing do not occur, possibly affecting the reinsurance of the loan. The lender must notify the borrower, either jointly with the other party or separately, of the transfer of the loan and the purchasing lender must notify the guaranty agency of the loan transfer (34 CFR section 682.208(e)). Within 90 days of its acquisition of the loan, the purchasing lender shall report to at least one national credit bureau the information required in 34 CFR section 682.208(b)(2). In addition, the HEOA amended Section 428 (b)(2)(F) of the HEA (20 USC 1078(b)(2)(F)), which requires that a borrower be notified if the transfer, sale, or assignment of the borrower's loan will result in a change in the identity of the party to whom the borrower must send payments or direct any communications. After August 13, 2008, the borrower also must be advised of the effective date of the transfer of the loan, the date on which the current loan servicer (as of the date of the notice) will stop accepting payments, and the

date on which the new loan servicer will begin accepting payments (20 USC 1078(b)(2)(F)). If an originating lender sells or otherwise transfers a loan to a new holder, ED will hold the originating lender liable for the payment of the origination and lender fees and will not pay interest benefits or a special allowance to the new holder or pay reinsurance to the guaranty agency until the origination fees are paid to ED (34 CFR section 682.305(a)(4)).

Audit Objective – Determine whether loan sales, purchases, and transfers were made in accordance with ED requirements and that accurate records of such transactions were maintained.

Suggested Audit Procedures

a. For a sample of loans, trace the principal amount of loans sold as reported on the LaRS to the bills of sale.

b. Review a sample of the loan purchase/sales agreements and ascertain the terms of the agreements as to the day of sale, transfer of funds, and responsibility for loan origination and lender fees. Test that the sale/purchase was conducted in accordance with these terms and the date-specific event was properly noted in the lender's records as to the start/end date of eligibility for interest benefits and special allowance

c. Select a sample of loans that were transferred to the lender during the audit period and verify that all applicable LaRS loan data, including beginning balances, was entered completely and accurately into the lender's system. Verify that all required supporting loan documentation was obtained and maintained.

d. Select a sample of loans that were transferred, sold, or assigned on or after August 14, 2008, and determine if the borrower was notified with the required information.

5. Enrollment Reports

Compliance Requirement – Schools are required to confirm and report to the National Student Loan Data System (NSLDS) the enrollment status of students who receive Federal student loans. This process is called Enrollment Reporting. Enrollment information is used to determine the borrower's eligibility for in-school status, deferment, interest subsidy, and grace period. Enrollment changes, such as a change from full-time to half-time status, graduation, withdrawal, or an approved leave of absence, are changes that need to be reported. The enrollment information is merged into the NSLDS database and reported to guarantors, lenders, and servicers of student loans.

Lenders must use the NSLDS data to make adjustments for interest and special allowance billings on each loan. The billing for interest benefits and special allowance payments relies on the timely and proper processing of student enrollment information, including timely conversion to repayment status. The conversion of a loan to repayment status is

subject to a number of conditions as defined in 34 CFR section 682.209. Typically, Stafford loan borrowers begin repayment six months following the date on which the borrower is no longer enrolled on at least a half-time basis at a school. PLUS, SLS and consolidation loans go into repayment on the day the loan is disbursed, or if disbursed in multiple installments, on the date the loan is fully disbursed. The first payment is due within 60 days of the date the loan is fully disbursed (34 CFR section 682.209).

Audit Objective – Determine whether, upon receipt of Enrollment Reports or other notification of change information, the lender accurately and timely updated loan records for changes to student status, including conversion to repayment status.

Suggested Audit Procedures

a. Trace a sample of loans from the Enrollment Reports received during the period to loan records to determine if changes to student enrollment status were made accurately.

b. Determine whether conversions to repayment status were made within required time limits.

c. Obtain and review the error reports (manifests, in-school discrepancy reports, or out-of-school status reports), if any, generated by the lender that identify discrepancies between the Enrollment Reports and the lender's records.

d. For a sample of loans, trace student enrollment data to any interim status reports or other notification of change information that may have been received directly from the school.

6. Payment Processing

Compliance Requirement

The lender may credit the entire payment amount first to any late charges accrued or collection costs, then to any outstanding interest, and then to any outstanding principal. A borrower may prepay all or part of a loan at any time without a penalty. Unless the borrower requests otherwise, if a prepayment equals or exceeds the established monthly payment amount, the lender shall apply the prepayment to future installments and advance the next payment due date. The lender must (1) inform the borrower in advance that any additional full payment amounts submitted without instructions as to their handling will be applied to future scheduled payments with the borrower's next scheduled payment due date advanced, or (2) provide a notification after the payment is received stating that the payment has been so applied and the due date of the borrower's next scheduled payment. Information related to the next scheduled payment due date need not be provided to a borrower making prepayments while in an in-school, grace, deferment, or forbearance period when payments are not due (34 CFR section 682.209(b)). Interest must be charged in accordance with 34 CFR sections 682.202(a) and (b).

Income-Based Repayment) Plan

Beginning July 1, 2009, the HEA provides an income-based repayment (IBR) plan that enables a borrower who has had a partial financial hardship to make a lower monthly payment with certain exceptions. The IBR plan has different rules for applying payments. For loans repaid under the IBR plan, the lender must apply payments in the order of (1) accrued interest, (2) collection costs, (3) late charges, and (4) loan principal (Section 428(b)(9)(A)(v) of the HEA (20 USC 1078(b)(9)(A)(v))).

Audit Objective – Determine whether the lender (1) calculated interest and principal in accordance with 34 CFR sections 682.202 (a) and (b), and (2) applied loan payments and prepayments in accordance with 34 CFR section 682.209(b) or the documented specific request of the borrower**.**

Suggested Audit Procedures

a. Test whether the lender applied the borrower payments and prepayments to loan records in accordance with payment application requirements.

b. Test that application of principal and interest were appropriately calculated and that the correct amount was applied to the individual borrower's loan balance.

c. Test if prepayments were allocated in accordance with ED regulatory requirements or, if applicable, borrower instructions.

7. Due Diligence by Lenders in the Collection of Delinquent Loans

Compliance Requirement – Lenders are required to engage in specific collection activities and meet specific claim-filing deadlines on delinquent loans. In the case of a loan made to a borrower who is incarcerated, residing outside the United States or its territories, Mexico, or Canada, or whose telephone number is unknown, the lender may send a forceful collection letter instead of each telephone effort described below. There are also specific collection activities that must be performed before a lender can file a default claim on a loan with an endorser. The due diligence provisions preempt any State law, including State statutes, regulations, or rules that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of that section (34 CFR section 682.411).

Definition of Delinquency – **Delinquency on a loan begins on the first day after the due date of the first missed payment. The due date of the first payment is established by the lender but must follow the deadlines specified in 34 CFR section 682.209(a). If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment. A payment that is within $5.00 of the amount normally required to advance the due date may advance the due date if the lender's procedures allow for that advancement (34 CFR section 682.411(b)).**

Definition of Collection Activity – Collection activity with respect to a loan is defined as:

- Mailing or otherwise transmitting to the borrower at an address that the lender reasonably believes to be the borrower's current address, a collection letter or final demand letter that satisfies the timing and content requirements of 34 CFR sections 682.411(c), (d), (e), or (f);

- Attempting telephone contact with the borrower;

- Conducting skip-tracing efforts, in accordance with 34 CFR sections 682.411(h)(1) or (m)(1)(iii) to locate a borrower whose correct address or telephone number is unknown to the lender;

- Mailing or otherwise transmitting to the guaranty agency a request for default aversion assistance available from the agency on the loan at the time the request is transmitted; or

- Any telephone discussion or personal contact with the borrower as long as the borrower is apprised of the account's past-due status (34 CFR section 682.411(l)(5)).

Gaps in Collection Activity

A lender/servicer may not permit the occurrence of a gap of more than 45 days (or 60 days in the case of a transfer) in collection activity on a loan (34 CFR section 682.411(j)).

Due Diligence Documentation

A lender is required to maintain complete and accurate records of each loan that it holds. In determining whether the lender met the due diligence compliance requirements pertaining to collection of delinquent loans, the documentation maintained must include a collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan; each communication (other than regular reports by the lender showing that an account is current) between the lender and a credit bureau regarding the loan; each effort to locate a borrower whose address is unknown at any time; and each request by the lender for default aversion assistance on the loan (34 CFR section 682.414(a)(4)).

Failure to Comply with Due-Diligence Regulations

Failure to comply with the Federal due-diligence regulations will result in the loss of reinsurance for the guaranty agency, the loss of a lender's right to receive an insurance payment from the guaranty agency's Federal Fund, and the lender's right to receive interest and special allowance (34 CFR part 682, Appendix D, paragraph I.B.3).

Due-Diligence Requirements for Loans with Monthly and Less-than-Monthly Repayment Obligations

The required collection activities are described below. As part of one of the collection activities, the lender must provide the borrower with information on the availability of the Student Loan Ombudsman's office (34 CFR section 682.411).

1 to 15 Days Delinquent: One written notice or collection letter should be sent to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency (except in the case where a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan.) The notice or collection letter sent during this period must include, at a minimum, a lender contact, a telephone number, and a prominent statement informing the borrower that assistance may be available if he or she is experiencing difficulty in making a scheduled repayment.

16 to 180 Days Delinquent (16-240 days delinquent for a loan repayable in installments less frequently than monthly): Unless exempted as set forth in 34 CFR section 682.411(d)(4), during this period the lender shall engage in the following:

- At least four diligent telephone contacts (See definition of a "diligent telephone contact" below) urging the borrower to make the required payments on the loan. At least one of the telephone contacts must occur on or before the 90th day of delinquency and another one must occur after the 90th day of delinquency.

- At least four collection letters – at least two of which must warn the borrower that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus, and that the agency may institute proceedings to offset the borrower's State and Federal income tax refunds and other payments made by the Federal Government to the borrower, or to garnish the borrower's wages, or assign the loan to the Federal Government for litigation against the borrower.

Diligent Efforts for Telephone Contact

Diligent efforts for telephone contact are defined in 34 CFR section 682.411(m) as:

- A successful effort to contact the borrower by telephone;

- At least two unsuccessful attempts to contact the borrower by telephone at a number that the lender reasonably believes to be the borrower's correct telephone number; or

- An unsuccessful effort to ascertain the borrower's correct telephone number, including but not limited to, a directory assistance inquiry as to the borrower's telephone number and sending a letter to or making a diligent effort to contact each reference, relative, and individual identified in the most recent loan application or most recent school certification for that borrower that the lender holds. The lender may contact a school official other than the financial aid administrator who reasonably may be expected to know the borrower's address.

Subsequent Payment or Information Obtained

Following the lender's receipt of a payment on the loan or a correct address for the borrower, the lender's receipt from the drawee of a dishonored check received as a payment on the loan, the lender's receipt of a correct telephone number for the borrower, or the expiration of an authorized deferment or forbearance period, the lender is required to engage only in the following activities (34 CFR section 682.411):

- *For loans less than 91 days delinquent (121 days for a loan repayable in installments less frequently than monthly)* – Two diligent efforts to contact the borrower by telephone.

- *For loans 91-120 days delinquent (121-180 days for a loan repayable in installments less frequently than monthly)* **–** One diligent effort to contact the borrower by telephone.

- *For loans more than 120 days delinquent (180 days for a loan repayable in installments less frequently than monthly)* **–** No additional diligent efforts to contact the borrower by telephone are required.

- *181-270 days delinquent (241-330 days for loans payable in installments less frequent than monthly)* – During this period the lender must engage in efforts to urge the borrower to make the required payments on the loan. These efforts must, at a minimum, provide information to the borrower regarding options to avoid default and the consequences of defaulting on the loan.

- *Final demand on or after the 241st day of delinquency (the 301st day for loans payable in installments less frequent than monthly)* – The lender must send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. The lender must allow the borrower at least 30 days after the date the letter is mailed to respond and bring the loan out of default before filing a default claim on the loan.

Default Aversion Assistance

Default aversion assistance is collection assistance that a guarantor provides to supplement a lender's efforts to prevent default on a borrower's loan; however, it does not replace the lender's responsibility to perform due diligence. Not earlier than the 60th day and no later than the 120th day of delinquency, a lender must request default aversion assistance from the guaranty agency that guarantees the loan (34 CFR section 682.411(i)).

Skip-Tracing Requirements

Skip tracing is the process by which lenders attempt to obtain corrected address or telephone information for borrowers for whom the lender does not have accurate information. Skip-tracing processes must meet regulatory time frames and minimum standards as outlined in 34 CFR section 682.411(h).

Unless the final demand letter (as specified in the Subsequent Payment or Information Obtained section above) has already been sent, the lender shall begin to diligently attempt to locate the borrower through the use of effective commercial skip-tracing techniques within 10 days of its receipt of information indicating that it does not know the borrower's current address. These efforts must include, but are not limited to, sending a letter to or making a diligent effort to contact each endorser, relative, reference, individual, and entity identified in the borrower's loan file, including the schools the student attended. For this purpose, a lender's contact with a school official that might reasonably be expected to know the borrower's address may be with someone other than the financial aid administrator, and may be in writing or by telephone.

These efforts must be completed by the date of default with no gap of more than 45 days between attempts to contact those individuals or entities. Upon receipt of information indicating that it does not know the borrower's current address, the lender shall discontinue the collection efforts described in the Subsequent Payment or Information Obtained section.

If the lender is unable to ascertain the borrower's current address despite its performance of the activities described in the Subsequent Payment or Information Obtained section, the lender is excused thereafter from performance of the collection activities (with the exception of a request for default aversion assistance) unless it receives a communication indicating the borrower's address prior to the 241st day of delinquency (the 301st day for loans payable in less frequent installments than monthly).

Requirements for Loan Endorsers

Loan endorsers are required for PLUS loans for borrowers with an adverse credit history (34 CFR sections 682.201(b)(4) and 682.201(c)(1)(vii)).

Before filing a default claim on a loan with an endorser, the lender must:

- Make a diligent effort to contact the endorser by telephone and send the endorser two letters advising the endorser of the delinquent status of the loan and urging the endorser to make the required payments on the loan.

- At least one letter must warn the endorser that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus.

- On or after the 241st day of delinquency (the 301st day for loans payable in installments less frequent than monthly) send a final demand letter to the endorser requiring repayment of the loan in full and notifying the endorser that a default will be reported to a national credit bureau. The lender shall allow the endorser at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan (34 CFR section 682.411(n)).

Skip Tracing for Loan Endorsers

Unless the final demand letter specified in the paragraph above has already been sent, upon receiving information indicating that it does not know the endorser's current address or telephone number, the lender must diligently attempt to locate the endorser through the use of normal commercial skip-tracing techniques. This effort must include an inquiry to directory assistance (34 CFR section 682.411(n)(3)).

Audit Objective – Determine if the lender complied with the due-diligence requirements for collection of delinquent loans, including the requirements for skip tracing or default aversion assistance.

Suggested Audit Procedures

a. Test a sample of loans that were delinquent from 1 to 15 days, verify that the lender's records document that the required written notice or collection letter was sent to the borrower. Verify that the letter contained the required information.

b. Test a sample of loans that were delinquent between 16 to 180 days (16 to 240 days for loans repayable in installments less frequently than monthly) verify that the lender's records document that the required telephone efforts were made and that the required collection letters were sent to the borrower. Verify that at least two of the letters warned the borrower of possible assignment of the loan to the guaranty agency, reporting the default to all national credit bureaus, offset of income tax refunds to garnish wages, and litigation against the borrower.

c. Test a sample of loans that were delinquent from 181 to 270 days (241 to 331 days for loans payable in installments less frequently than monthly) verify that the lender's records document the lender's efforts to urge the borrower to make the

required payments on the loan and that the efforts, at a minimum, provided information to the borrower regarding options to avoid default and the consequences of defaulting on the loan.

d. Test a sample of loans that are 241 days delinquent (the 301st day for loans payable in installments less than monthly), verify that the lender sent the required final demand letter to the borrower.

e. *Loan Endorser Procedures*: Test a sample of the lender's records to verify that they document that the lender made a diligent effort to contact the endorser by phone, sent the required letters and final demand letter, if applicable, in accordance with requirements.

f. *Skip-Tracing Procedures*: From the sample of delinquent loans where a final demand letter was not sent to the borrower, verify that the lender's records document that the lender attempted to contact each endorser, relative, reference, individual and entity identified in the borrower's loan file within 10 days of receipt of information indicating that the lender did not know the borrower's current address. Verify that these efforts were completed by the date of default with no gap of more than 45 days between attempts. Verify that the lender's efforts for loan endorsers included an inquiry to directory assistance.

g. *Default Aversion Assistance*: Obtain and review the agreement the guaranty agency has with the lender that establishes the time period for default aversion assistance. From the population of delinquent or defaulted loans determine the loans where required default aversion assistance from the loan guaranty agency should have been requested by the lender. For a sample of the loans, verify that the lender's records document that default aversion assistance was requested within the required timeframes.

8. Timely Claim Filings by Lenders or Servicers

Compliance Requirement – Lenders are required to timely file claims with the guaranty agency for payment of death, disability, closed schools, false certification, bankruptcy and default claims. Each type of claim has a separate timely filing requirement (34 CFR sections 682.402(g)(2) and 682.406(a)(5)). A lender has up to 3 years after the default claim filing deadline to successfully cure due-diligence violations that have rendered a loan un-reinsured (34 CFR part 682, Appendix D). The lender is also required to maintain records to document the validity of a claim against a loan guaranty (34 CFR section 682.402(g)(1)).

TYPE OF CLAIM	TIMELY FILING REQUIREMENTS
Default	A lender must submit default claims to the guaranty agency within 90 days of the default.
Death	A lender must submit a claim within 60 days of the date that the lender determines that a borrower (or the student on whose behalf a parent obtained a PLUS loan) has died.
Total and Permanent Disability	A lender must submit a claim within 60 days of the date that the lender determines that a borrower is totally and permanently disabled as described in 34 CFR section 682.200(b) (34 CFR Section 682.402(c)(1)). Effective July 1, 2010, for a borrower who is not a veteran, the lender must submit a disability claim to the guaranty agency within 60 days after the borrower submits a certification by a physician and the lender makes a determination that the certification supports the conclusion that the borrower is totally and permanently disabled as described in 34 CFR section 682.200(b) (34 CFR sections 682.402(c)(2) through (7); (See October 29, 2009, *Federal Register* (74 FR 55997)). Effective July 1, 2010, for borrower that is a veteran, the lender must submit a disability claim to the guaranty agency within 60 days after the veteran or veteran's representative submits a discharge application (on a form approved by the Secretary) along with documentation from the Department of Veterans Affairs (VA) showing that the VA has determined that the veteran is unemployable due to a service-connected disability and the lender makes a determination that the documentation supports the conclusion that the borrower is totally and permanently disabled as described in 34 CFR section 682.200(b) (34 CFR section 682.402(c)(8); (See October 29, 2009, *Federal Register* (74 FR 55997)).
Closed School	The lender shall file a claim within 60 days after the borrower submits to the lender the written request and sworn statement described in 34 CFR section 682.402(d)(3) or after the lender is notified by the Secretary or the Secretary's designee or by the guaranty agency to do so.
False Certification	The lender shall file a claim with the guaranty agency within 60 days after the borrower submits to the lender the written and sworn statement described in 34 CFR section 683.402(e)(3) or after the lender is notified by the Secretary or the Secretary's designee or by the guaranty agency to do so.
Bankruptcy	A lender shall file a bankruptcy claim by the earlier of:(1) 30 days after the date on which the lender receives notice of the first meeting of creditors or other information described in 34 CFR section 682.402(f)(3); or (2) 15 days after the lender is served with a complaint or motion to have the loan determined to be dischargeable on grounds of undue hardship, or if the lender secures an extension of time within which an answer may be filed, 25 days before the expiration of that period, whichever is later.

Records to Support a Claim

The lender is required to maintain records necessary to document the validity of a claim against a loan guaranty (34 CFR section 682.414(a)(4)(ii)). Items to be filed by the lender when making a claim to the guaranty agency include (34 CFR section 682.402):

- The original or a true and exact copy of the promissory note.
- The loan application, if a separate loan application was provided to the lender.
- In the case of a death claim, an original or certified copy of the death certificate or other documentation supporting the discharge request that formed the basis for the determination of death.
- In the case of a disability claim, a copy of the certification of disability described in 34 CFR section 682.402(c)(2).
- In the case of a closed school claim, the documentation described in 34 CFR section 682.402(d)(3) or any other documentation as the Secretary may require.
- In the case of a false certification claim, the documentation described in 34 CFR section 682.402(e)(3).
- In the case of a bankruptcy claim:
  - Evidence that a bankruptcy petition has been filed and all pertinent documents sent to or received from the bankruptcy court by the lender;
  - An assignment to the guaranty agency of any proof of claim filed by the lender regarding the loan; and
  - A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower's loan obligation in bankruptcy and all documents supporting those facts (34 CFR section 682.402(g)(1)(v)).

Audit Objective – Determine whether the lender complied with the documentation requirements and deadlines for timely filing of claims with the guaranty agency concerning death, disability, false certification, closed schools, bankruptcy, or default claims.

Suggested Audit Procedures

a. Select a sample from all loans on which a claim was filed and verify that the lender's records document that a claim was filed with accurate claim payment information and in a timely manner with the guaranty agency.

b. Using the same sample of claims, verify that the lender maintained the required documentation to support the particular type of claim.

9. Curing Due-Diligence and Timely Filing Violations

Compliance Requirement – A due-diligence violation occurs when a lender does not perform a requirement (See III.N.9, "Special Tests and Provisions – Timely Claim Filings by Lenders or Servicers") within the time frame specified. The time interval between collection activities is called a "gap". If the gap between collection activities exceeds that permitted a due diligence violation has occurred and the lender may incur penalties, including loss of insurance and reinsurance on the loan (34 CFR section 682.411 and 34 CFR part 682, Appendix D).

Some examples of due-diligence violations include the lender's failure to perform the following functions in a timely manner:

- Sending the required collection letter(s), including the required final demand letter;
- Making the required telephone contact or diligent effort to contact the borrower;
- Requesting default aversion assistance from the guarantor;
- Conducting skip tracing activity.

A timely filing violation occurs when a lender fails to submit default, death, disability, closed school, or false certification claims within the prescribed time frames prescribed. See III.N.9 above for timely filing requirements.

Cures for Due-Diligence Violations

*Violations of 6 days or less (21 days or less for a transfer***) –** There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer).

Two or fewer violations of 6 days or more (21 days or more for a transfer) and no gap of 46 days or more (61 days for a transfer) **–** Principal will be reinsured, but accrued interest, interest benefits, and special allowance payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default. However, the lender must complete all required activities before the claim filing deadline, except that a default aversion assistance request must be made before the 330th day of delinquency. If the lender fails to make the default aversion assistance request by the 330th day, the Secretary will not pay any accrued interest, interest benefits and special allowance for the most recent 270 days prior to the default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

Three violations of 6 days or more (21 days or more for a transfer) and no gap of 46 days or more (61 days for a transfer) **–** The lender must satisfy the requirements in 34 CFR part 682, Appendix D, I.E.1. or receive a full payment or a new, signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary will not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

More than three violations of 6 days or more (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation **–** The lender must satisfy the requirement outlined in 34 CFR part 682, Appendix D, I.D.1, for the reinsurance on the loan to be reinstated. The Secretary will not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated (34 CFR part 682, Appendix D, I.C.3).

Cures for Timely Filing Violations **–** When a lender has a timely filing violation on a default claim, the guarantee on the loan may be reinstated through one of the following (34 CFR part 682, Appendix D, I.E.1):

- The receipt of one full payment as defined in 34 CFR part 682, Appendix D, I.A,
- The receipt of a new repayment agreement signed by the borrower, or
- Successful completion of the requirements in 34 CFR part 682, Appendix D, I.E.1.

Audit Objective – Determine whether the lender complied with the cure procedures in 34 CFR part 682, Appendix D for loans with due-diligence or timely filing violations. Determine whether the information for cures was accurately reported on the LaRS.

Suggested Audit Procedures

a. Select a sample of cured loans identified on the LaRS and verify that the lender's records document that it performed the required cure procedures.

b. For cured loans for which the lender obtained a new repayment agreement, verify that the agreement meets the repayment period limitations of 34 CFR sections 682.209(a)(8) and 682.209(h)(2).

c. For cured loans for which the lender obtained one full payment, obtain documentation of the payment and verify that the payment complied with the terms of the most current repayment schedule and was valid in accordance with 34 CFR part 682, Appendix D, I.A.

10. Holding Loans as a Trustee for an Institution of Higher Education or an Affiliated Organization

Compliance Requirement – Section 435(d) of the HEA (20 USC 1087(d)) was revised by the Third Higher Education Extension Act of 2006 (Pub. L. No. 109-292) so that, effective September 30, 2006, except as noted below, an eligible lender in the FFEL program may not make or hold a FFEL program loan as a trustee for an institution of higher education or for an organization affiliated with an institution of higher education. An "institution of higher education" is any institution that meets the definition of that term in Sections 101 or 102 of the HEA (20 USC 1001 or 1002). The term "school-affiliated organization" is defined in section 34 CFR section 682.200, as any organization that is directly or indirectly related to a school, including alumni organizations, foundations, athletic organizations, and social, academic and professional organizations (34 CFR section 682.602).

The prohibition on holding or making loans described above does not apply to an eligible lender that was serving as an Eligible Lender Trustee (ELT) for an institution or affiliated organization on September 30, 2006. For the purposes of implementing this restriction, serving as an ELT means that:

a. A formal contract between the lender and institution or organization had been entered into by the ELT and the institution or affiliated organization for this purpose before September 30, 2006, and continues in effect or has been or is renewed after that date; and

b. At least one loan was held in trust by the lender on behalf of the institution or the affiliated organization on September 30, 2006 ((Section 435(d)(7) of the HEA (20 USC 1085(d)(7)); 34 CFR section 682.602).

Restrictions on Existing Eligible Lender Trustee Relationships

Effective January 1, 2007, and for loans first disbursed on or after that date, any eligible lender, institution, or affiliated organization operating under a previously established ELT relationship that continues in effect, must comply with Section 435(d)(2) of the HEA, which includes special requirements for FFEL program school lenders, as specified below:

a. The institution, whether directly involved in an ELT relationship or affiliated with an organization directly involved in an ELT relationship:

   (1) Must employ at least one person whose full-time responsibilities are limited to the administration of programs of financial aid for students attending the institution.

   (2) Must not have a cohort default rate greater than 10 percent.

(3) Must use any proceeds from interest payments from borrowers, interest subsidy payments, and special allowance payments on the loans made and held in trust, and any proceeds from the sale or other disposition of those loans for need-based grants if the institution receives any these proceeds directly or indirectly.

(4) Must ensure that the loans previously made or held by the eligible lender trustee for the institution are included in the required annual FFEL program lender compliance audit.

b. An organization affiliated with the institution must comply with all of the requirements applicable to the institution as noted above except for requirements a.(1), (2), and (3).

c. The eligible lender acting as trustee must comply with all of the requirements applicable to the institution as noted above except for requirements in a.(1), (2), (3), and (7) (Section 435(d) of the HEA (20 USC 1087(d); 34 CFR sections 682.601 and 682.602).

ED has issued a Dear Colleague letter, GEN-06-21, which is available on the Internet at http://www.ifap.ed.gov/dpcletters/attachments/GEN0621.pdf, that provides guidance on this requirement.

Audit Objective – **Determine whether the lender complied with the ELT provisions.**

Suggested Audit Procedures

a. Obtain written representation from management as to whether it has made or held loans, as a trustee, for an institution of higher education or for an organization affiliated with an institution of higher education, except as permitted by law.

b. If the representation provided by management indicates that it made or held loans for an institution of higher education, as a trustee, obtain relevant agreements/contracts, and through review of these and the loan portfolio, determine if the exceptions provided for in the law apply.

c. In auditing the lender and in performing tests relating to other compliance, the auditor should be alert for information that indicates an inaccurate representation by management concerning this compliance requirement. Such indications should be reviewed to determine whether there is an issue of noncompliance.

d. For eligible lenders acting as trustees, test a sample of loans disbursed after January 1, 2007 but prior to July 1, 2010, for compliance with the ELT provisions.

IV. OTHER INFORMATION

Selection of Major Programs When the Entity is a School that is a Lender under the FFEL Program

Some schools make or originate loans under the FFEL program. Under the HEA and 34 CFR section 682.601(a)(7), for any fiscal year beginning on or after July 1, 2006, in which a school engages in activities as an eligible lender, the school must submit a compliance audit covering its activities as a lender. An audit conducted in accordance with OMB Circular A-133, that treats the lender function as a major program, will satisfy that requirement.

If the SFA Cluster (see Part 5) was selected as a major program for a school that is also a lender under the FFEL program, the auditor must also include in the audit coverage, work sufficient to render an opinion, as part of an opinion on the SFA Cluster, on the school's compliance with the requirements set forth in this program supplement. Audit documentation must demonstrate sufficient audit coverage of the above compliance requirements to support that opinion, as well as the compliance requirements set forth in the SFA Cluster. When the SFA Cluster is audited as a major program for a school that is a lender, the program should be listed in the Summary of Auditor's Results Section of the Schedule of Findings and Questioned Costs as "SFA Cluster (including CFDA 84.032 FFEL – Lenders)."

For schools that are lenders, if the SFA Cluster is not selected as a major program, CFDA 84.032 must be covered as a separate major program using this program supplement. In such cases, the program should be listed in the Summary of Auditor's Results Section of the Schedule of Findings and Questioned Costs as "CFDA 84.032 – FFEL – Lenders."

Governmental Lenders Covered as Part of a Statewide Single Audit

Some "statewide" entities are defined to include a governmental lender under the FFEL program. For such entities, this program supplement should be used to identify pertinent compliance requirements. Auditors for such entities with large FFEL lending programs must consider the provisions of OMB Circular A-133, paragraph __.520(b)(3) in determining major programs. When those provisions apply, coverage of the FFEL program for a lender should be identified and reported on separately and listed as a major program in the Summary of Auditor's Results Section of the Schedule of Findings and Questioned Costs as "CFDA 84.032 – FFEL – Lenders."

Use of Third-Party Servicers

Some lenders (including schools that are lenders in the FFEL program) use third-party servicer organizations to perform some or many lender functions. Third-party servicer organizations are required to obtain an annual audit (attestation engagement) under the December 1996 Audit Guide, *Compliance Audits (Attestation Engagements) for Lenders and Lender Servicers Participating in the Federal Family Education Loan Program (Lender Audit Guide)*, issued by ED. Auditors of lenders (including school lenders) may exclude coverage of compliance requirements performed by a third-party servicer, provided the auditor has determined that the third-party servicer has obtained an audit under the Lender Audit Guide for the entire audit period of the lender. If the third-party servicer has a different audit period, the auditor of the

lender must determine that the most recently required audit of the third-party servicer under the Lender Audit Guide has been completed timely, and must obtain a representation from the third-party servicer that it has engaged (or will engage) an auditor to perform the required audit under the Lender Audit Guide for the immediate subsequent audit period. The auditor of the lender must confirm that the audit period of the prior third-party servicer audit, together with the audit period for the subsequent third-party servicer audit, covers the entire audit period of the lender/school lender audit. If the auditor excludes coverage of compliance requirements performed for a third-party servicer, the *Report on Compliance With Requirements Applicable to Each Major Program and on Internal Control Over Compliance in Accordance with OMB Circular A-133* must clearly describe the compliance requirements for which coverage has been excluded, name the third-party servicer that performed those compliance requirements, state that that the third-party servicer has obtained an audit performed under December 1996 Audit Guide, *Compliance Audits (Attestation Engagements) for Lenders and Lender Servicers Participating in the Federal Family Education Loan Program (Lender Audit Guide)*, issued by ED, and specify the period of that audit (attestation engagement).

Alternatively, the auditor may decide to use a third-party servicer's audit (attestation engagement) and rely on it in rendering an opinion on compliance. In such cases, the auditor should obtain the servicer's most recent compliance audit report and any other reports regarding servicer compliance. If the servicer's compliance audit report or other reports contain findings of noncompliance, the auditor should assess the effect of that noncompliance on the nature, timing, or extent of substantive tests to be conducted at the lender and/or the servicer organization, as well as reporting that information. The auditor must also adhere to pertinent generally accepted auditing standards relating to use of servicer organization audits and reliance on the work of other auditors.

DEPARTMENT OF EDUCATION

CFDA 84.041 IMPACT AID (Title VIII of ESEA)
CFDA 84.401 IMPACT AID – SCHOOL CONSTRUCTION, RECOVERY ACT
CFDA 84.404 IMPACT AID – SCHOOL CONSTRUCTION FORMULA GRANT, RECOVERY ACT

I. PROGRAM OBJECTIVES

The objective of the Impact Aid Program (IAP) under Title VIII of the Elementary and Secondary Education Act (ESEA) is to provide financial assistance to local educational agencies (LEAs) whose local revenues or enrollments are adversely affected by Federal activities. These activities include the Federal acquisition of real property (Section 8002) or the presence of children residing on tax-exempt Federal property or residing with a parent employed on tax-exempt Federal property ("federally connected" children) (Section 8003).

II. PROGRAM PROCEDURES

Funds are provided on the basis of statutory criteria and data supplied by LEAs in applications submitted to the Department of Education (ED), with copies provided simultaneously to the State Educational Agency (SEA). ED makes payments directly to the LEA. Generally, payments under Section 8003 of the ESEA are based on membership and attendance counts of federally connected children, with additional funds provided for certain federally connected children with disabilities and children residing on Indian lands. Payments under Section 8002 of the ESEA are based on the estimated assessed value of eligible Federal property and the applicable tax rate, and, in case of insufficient funds, upon a statutory formula that considers past year payments. Except for the additional funds provided for federally connected children with disabilities under Section 8003(d) of the ESEA, funds provided under Sections 8002 and 8003 are considered general aid and generally have no restrictions on their expenditure. Any formula funds that are provided under Section 8007(a) of the ESEA to certain LEAs that received Section 8003 payments must be used for construction, as defined in the statute. Any discretionary construction grant funds that are provided under Section 8007(b) of the ESEA to certain LEAs that received Section 8002 or 8003 payments must be used for emergency repairs or modernization, as defined in the statute and regulations.

The American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) provides for formula grant awards to certain LEAs under Section 8007(a) of ESEA and discretionary grant awards to certain LEAs under Section 8007(b), as modified by ARRA, that must be used for construction, as defined in Section 8013(3) of the ESEA (ARRA, 123 Stat. 181 and Section 805(b) of ARRA, 123 Stat. 189).

Source of Governing Requirements

This program is authorized by Sections 8001-8014 of the ESEA, which is codified at 20 USC 7701 through 7714 **and ARRA**. Implementing regulations are 34 CFR part 222.

Availability of Other Program Information

Additional information on this program (including the Impact Aid statute) may be found on the internet at http://www.ed.gov/about/offices/list/oese/programs.html.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Section 8003(d) – Federally connected children with disabilities –* ***(Allowable under CFDA 84.041 only)***

   LEAs must use the payments provided under Section 8003(d) of the ESEA to conduct programs or projects for the free, appropriate public education of the federally connected children with disabilities who generated those funds. Allowable costs include expenditures reasonably related to the conduct of programs or projects for the free, appropriate public education of children with disabilities, including program planning and evaluation and acquisition costs of equipment, except when the title to that equipment would not be held by the LEA. Costs for school construction are not allowable (Section 8003 of ESEA; 34 CFR section 222.53(c)).

2. *Section 8007 – Construction –* ***(CFDA 84.041, 84.401 and 84.404)***

   LEAs that receive payments under Section 8003 of the ESEA and that meet certain other statutory criteria may receive formula assistance under Section 8007(a) of the ESEA in any fiscal year that the Congress appropriates funds under that Section. LEAs must use the payments provided under Section 8007(a) **and Section 8007(a) funds provided under ARRA** for construction, as defined in Section 8013(3) of the ESEA. Under Section 8013(3), the term "construction" includes: (a) the preparation of drawings and specifications for school facilities; (b) erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities; (c) inspecting and supervising the construction of school facilities; and (d) debt service for such activities (Sections 8007 and 8013(3) of ESEA). Certain LEAs that receive payments under section 8002 or 8003 of the ESEA and that meet other statutory and regulatory criteria may receive discretionary grant assistance under Section 8007(b) of the ESEA **and Section 8007(b) funds provided under ARRA**. Selected grantees must use these funds for emergency or modernization construction grant expenditures, as specified in their grant award documents. Emergency and modernization are defined in

34 CFR section 222.176 and the allowable and unallowable uses of these funds are detailed in 34 CFR sections 222.172 through 222.174.

3. *Section 8002 – Federal property payments and Section 8003(b) – Basic support payments –* ***(Allowable under CFDA 84.041 only)***

Funds made available under Sections 8002 and 8003(b) of the ESEA usually become part of the general operating fund of the LEAs. These funds are available as general aid for free public education and may be used for current operating expenditures or capital outlays in accordance with State laws. The auditor is not expected to perform any tests with respect to the expenditure of these funds.

B. Allowable Costs/Cost Principles

Sections 8002 (Federal property payments) and 8003(b) (Basic support payments) are not subject to the A-102 Common Rule (See Appendix I) or OMB Circular A-87.

D. Davis-Bacon Act

Section 8007 construction funds, **including those funds provided under ARRA**, as well as any Section 8002 or 8003(b) funds spent for construction or minor remodeling, are subject to Davis-Bacon prevailing wage requirements (20 USC 1232b and **Section 1606 of ARRA**).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort* – Not Applicable

2.2 Level of Effort – *Supplement Not Supplant*

Section 8003(d) funds may not supplant any State funds (either general or special education State aid) that were or would have been available to the LEA for the free, appropriate public education of federally connected children with disabilities counted under Section 8003(d). A reduction in the per-pupil amount of State aid for children with disabilities, including children counted under Section 8003(d), from that received in the previous year raises a presumption that supplanting has occurred. An LEA can rebut this presumption by demonstrating that the reduction was unrelated to the receipt of Section 8003(d) funds (Section 8003(d) of ESEA; 34 CFR section 222.54).

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

Section 8007(a) formula funds appropriated by ARRA (CFDA 84.404) are available for obligation beginning with the date of enactment of ARRA (February 17, 2009) and remain available for obligation by LEAs until September 30, 2011 (Section 1603 of the ARRA and 20 USC 1225(b)(1)).

L. Reporting

1. Financial Reporting – Not Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting

Application for Impact Aid – Section 8003 (OMB No. 1810-0687) – Each year an LEA must submit this application, which provides the following information: counts of federally connected children in various categories, membership and average daily attendance data, and information on expenditures for children with disabilities. Membership and average attendance data should be tested. The auditor should use professional judgment when determining which tables to test, taking into account the relative materiality of the number of children reported in other tables. (Note: Eligible LEAs submit a separate application for Section 8002 or Section 8007(b) funding. The auditor is not expected to perform any tests with respect to the Section 8002 or Section 8007(b), **including Section 8007(b) funds from ARRA**, applications.)

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

Required Level of Expenditure

Compliance Requirement – For each fiscal year, the amount of expenditures for special education and related services provided to federally connected children with disabilities must be at least equal to the amount of funds received or credited under Section 8003(d) of the ESEA for that fiscal year. This is demonstrated by comparing the amount of Section 8003(d) funds received or credited with the result of the following calculation:

a. Divide total LEA expenditures for special education and related services for all children with disabilities by the average daily attendance (ADA) of all children with disabilities served during the year.

b. Multiply the amount determined in a. above by the ADA of the federally connected children with disabilities claimed by the LEA for the year.

If the amount of section 8003(d) funds received or credited is greater than the amount calculated above, an overpayment equal to the excess section 8003(d) funds exists. This overpayment may be reduced or eliminated to the extent that the LEA can demonstrate that the average per pupil expenditure for special education and related services provided to federally connected children with disabilities exceeded its average per pupil expenditure for serving non-federally connected children with disabilities (Section 8003(d) of ESEA; 34 CFR section 222.53(d)).

Audit Objective – Determine whether the LEA met the required level of expenditure for providing special education and related services to federally connected children with disabilities.

Suggested Audit Procedures

a. Review the LEA's calculation to ascertain if it shows that the required level of expenditure for federally connected children was met. Check accuracy of calculation.

b. Trace amounts used in the calculation to supporting records.

c. If the LEA's calculation shows that an overpayment was made, verify that the average per pupil expenditure for federally connected children with disabilities exceeded the average per pupil expenditure for non-federally connected children to the extent of the overpayment.

DEPARTMENT OF EDUCATION

CFDA 84.042 TRIO—STUDENT SUPPORT SERVICES
CFDA 84.044 TRIO—TALENT SEARCH
CFDA 84.047 TRIO—UPWARD BOUND
CFDA 84.066 TRIO—EDUCATIONAL OPPORTUNITY CENTERS
CFDA 84.217 TRIO—MCNAIR POST-BACCALAUREATE ACHIEVEMENT

I. PROGRAM OBJECTIVES

The Federal TRIO programs are authorized by Title IV of the Higher Education Act of 1965, as amended, and now consist of seven programs. These programs are designed to help first-generation college and economically disadvantaged students achieve success at the postsecondary level by facilitating high school completion and entry, retention, and completion of postsecondary education. Five of these programs are included in the TRIO single audit cluster. The remaining two TRIO programs do not meet the funding threshold to be included in the Compliance Supplement.

Student Support Services (SSS) program provides academic support services to low-income, first-generation, and disabled college students to enable them to be retained and graduate from institutions of higher education. The program assists participants in making the transition from one level of higher education to the next. The program also fosters an institutional climate supportive of the success of students who are limited English proficient and students from groups that are traditionally underrepresented in postsecondary education, and improves the financial literacy and economic literacy of students.

Talent Search (TS) program identifies qualified youth with the potential for education at the postsecondary level and encourages them to complete or reenter secondary school and undertake a program of postsecondary education. Talent Search program also publicizes the availability of student financial assistance for persons who seek to pursue a postsecondary education.

Upward Bound (UB) program targets low-income and potential first-generation college students who are enrolled in high school, or veterans seeking to prepare themselves for success in postsecondary education. The program provides opportunities for participants to succeed in pre-college performance and ultimately in higher education pursuits.

Educational Opportunity Centers (EOC) program provides counseling and information on college admissions to qualified adults who want to enter or continue a program of postsecondary education. EOC projects also publicize the availability of student financial assistance for persons who seek to pursue a postsecondary education and assist individuals in applying for college admission and financial aid.

Ronald E. McNair Post-Baccalaureate Achievement (McNair) program provides low-income, first-generation college students and students from groups underrepresented in graduate education with effective preparation for doctoral study through involvement in research and other scholarly activities.

II. PROGRAM PROCEDURES

All TRIO grants are competitive discretionary grants.

SSS grants are awarded for 5-year cycles. McNair grants are awarded for 4- to 5-year cycles. Eligible applicants are institutions of higher education or combinations of such institutions.

TS, UB, and EOC grants are awarded for four to five years. Eligible applicants are institutions of higher education, public and private agencies and organizations, combinations of institutions and agencies, and in exceptional cases, secondary schools. The UB program has three types of projects: regular, veterans, and math/science.

Source of Governing Requirements

The Federal TRIO programs are authorized by the Higher Education Act of 1965, as amended (20 USC 1070a *et seq*.). The applicable regulations are at 34 CFR sections 643 (TS); 644 (EOC); 645 (UB); 646 (SSS); and 647 (McNair).

Availability of Other Program Information

Other program information is available on the Internet at http://www.ed.gov/about/offices/list/ope/trio/index.html.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements of a Federal program, the auditor should first look at Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

   a. *SSS and UB Programs*

   Allowable services and activities for these programs include the following: (1) instruction; (2) personal counseling; (3) academic advice and assistance in course selection; (4) tutorial services; (5) exposure to cultural events, academic programs, and other educational activities; (6) activities to acquaint project participants with career options; (7) mentoring; and (8) activities specifically designed for individuals of limited English proficiency (34 CFR sections 645.11 and 646.4).

b. *SSS Only*

(1) Activities to assist students in two-year institutions to secure financial assistance and admission to a four-year program, and to assist students in a four-year program to secure financial assistance and admission to graduate and professional programs (34 CFR sections 646.4(g) and (h)).

(2) Education or counseling services designed to improve the financial literacy and economic literacy of students (34 CFR section 646.4(a)(4)).

(3) Programs and activities stated in 34 CFR sections 646.4(a) and 646.4(b)(1) through (b)(5) (see III.A.1.a above) specifically designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, foster care youth, or other disconnected students (34 CFR section 646.4(b)).

(4) Temporary housing during breaks in the academic year for students who are homeless and foster care youth is allowed (34 CFR sections 646.4(b)(5) and 646.30(j)).

(5) The following cost items are allowable if reasonably related to allowed project activities: (a) cost of remedial and special classes and courses in English language instruction for students of limited English proficiency, under certain circumstances; (b) in-service training of project staff; (c) activities of an academic or cultural nature; (d) transportation of participants and staff to and from approved educational and cultural activities sponsored by the project; (e) purchase, lease, or rental of computer hardware, computer software, or other equipment to be used for student development, student records and project administration; (f) professional development travel for staff; and (g) project evaluation (34 CFR sections 646.30 and 646.31).

(6) Grant Aid to Students – See III.E.1.a, "Eligibility – Eligibility for Individuals" (34 CFR section 646.30(i)).

c. *UB Only*

(1) Special services for veterans to enable them to make the transition to postsecondary education (20 USC 1070a-13(b)(11)).

(2) Career-related work-study positions (20 USC 1070a-13(b)(10)).

(3) Examples of specific allowable cost items are in 34 CFR section 645.40.

(4) Stipends to Students – See III.E.1.c, "Eligibility – Eligibility for Individuals" (34 CFR sections 645.40-645.42).

d. *TS and EOC Programs*

(1) Allowable project services include: (a) academic advice and assistance in course selection; (b) completing college admission and financial aid applications; (c) preparing for college entrance examinations; (d) guidance on secondary school reentry or entry to other programs leading to a secondary school diploma or its equivalent; (e) personal and career counseling; (f) tutorial services; (g) mentoring; (h) activities specifically designed for students of limited English proficiency; (i) (for TS only) exposure to college campuses, cultural events, academic programs, and other sites or activities not usually available to disadvantaged youth; (j) workshops and counseling for parents of students served; and (k) activities to meet specific educational needs of individuals in grades six through eight (34 CFR sections 643.4 and 644.4).

(2) Specific activities may include the following, if reasonably related to the objectives of the TS or EOC project: (a) transportation, meals, and lodging with prior approval for visits to postsecondary educational institutions, participation in "College Day" activities, and career field trips; (b) purchase of testing materials; (c) fees for college admissions applications and entrance examinations with the exceptions noted in 34 CFR sections 643.30(c) and 644.30(c); (d) in-service staff training; (e) rental of space, if space is not owned by the grantee; and (f) purchase of computer hardware, computer software, or other equipment for student development, project administration, and recordkeeping (34 CFR sections 643.30 and 644.30).

e. *McNair Program*

(1) Allowable project services and activities include: (a) opportunities for research and other scholarly activities designed to provide participants with effective preparation for doctoral study; (b) summer internships; (c) seminars and other educational activities; (d) tutoring; (e) academic counseling; (f) assistance in securing admission to and financial aid for enrollment in graduate programs; (g) mentoring; and (h) exposure to cultural events and academic programs not usually available to project participants. (34 CFR section 647.4).

(2) Allowable project activities may include the following, if reasonably related to carrying out a project: (a) activities of an academic or scholarly nature, such as trips to institutions of higher education offering doctoral programs and special lectures, symposia, and professional conferences, which have as their purpose the encouragement and preparation for project participants for doctoral study; (b) stipends (see III.E.1.e, "Eligibility − Eligibility − Eligibility for Individuals"); (c) necessary tuition, room and board, and transportation for students engaged in research internships during the summer; and (d) purchase of computer hardware, computer software, or other equipment for student development, project administration, and recordkeeping (20 USC 1070a-15(e); 34 CFR section 647.30).

2. *Activities Unallowed*

a. *All Programs* – The following cost items can never be charged to any TRIO program: (1) tuition, fees, stipends, and other forms of direct financial support for employees; (2) research not directly related to the evaluation or improvement of the project (except for the research activities of McNair participants); and (3) construction, renovation, and remodeling of any facilities (34 CFR sections 643.31, 644.31, 645.41, 646.31, and 647.31).

b. *SSS Program* – SSS funds cannot be used for activities involved in recruiting students for enrollment at the grantee institution (34 CFR sections 646.30 and 646.31).

c. *UB Program* – The cost of room and board for the following persons may not be charged to the program: (1) administrative and instructional staff personnel who do not have responsibility for dormitory supervision of project participants; and (2) participants in Veterans UB projects (34 CFR sections 645.40 and 645.41).

d. *TS and EOC Program* –- TS and EOC funds cannot be used for tuition, fees, stipends, and other forms of direct financial support for project participants (34 CFR sections 643.31 and 644.31).

C. Cash Management

See ED Cross-Cutting Section.

E. Eligibility

1. Eligibility for Individuals

a. *SSS Program*

(1) *Eligible Participants* – A student is eligible to participate in a SSS project if the student meets all of the following requirements: (a) is a citizen or national of the United States or meets the residency requirements for Federal student financial assistance; (b) is enrolled at the grantee institution or accepted for enrollment in the next academic term at that institution; (c) has a need for academic support as determined by the grantee in order to pursue successfully a postsecondary educational program; and (d) is a low-income individual, a first-generation college student, or an individual with disabilities (34 CFR sections 646.3 and 646.7).

(2) *Grant Aid to SSS Students* – Grant aid to students is restricted to students who meet all the following criteria: (a) participating in the SSS project, undergoing their first two years of postsecondary education; and (b) receiving Federal Pell Grants. In exceptional cases, grant aid may be offered to students who have completed their first two years of postsecondary education and are receiving Federal Pell Grants (34 CFR section 646.30(i)).

The amount of grant aid awarded to an SSS student may not exceed the maximum appropriated Pell Grant ($5,350 for the 2009-2010 academic year) or be less than the minimum appropriated Pell Grant ($976 for the 2009-2010 academic year) (20 USC 1070a-14(c)(1)).

b. *TS Program – Eligible Participants* – An individual is eligible to participant in a TS project if the individual meets all the following requirements: (1) is a citizen, national, or permanent resident of the United States or is in the United States for other than a temporary purpose; (2) has completed five years of elementary education or is at least 11 years of age but not more than 27 years of age (an individual more than 27 years of age and a veteran regardless of age may participate in a TS project if there is no EOC in the area); and (3) is enrolled in or has dropped out of any grade from 6 through 12 or has graduated from secondary school or dropped out of the postsecondary education and needs one or more of the services provided by the project (34 CFR section 643.3).

c. *UB Program*

(1) *Eligible Participants* – An individual is eligible to participate in a Regular, Veterans, or Math-Science UB project if the individual meets all the following requirements: (a) is a citizen, national, or permanent resident of the United States, or is in the United States for other than a temporary purpose; (b) is a potential first-generation college student or a low-income individual; (c) has a need for academic support in order to pursue successfully a program of education beyond high school; and (d) at the time of initial selection has completed the 8th grade but has not entered the 12th grade and is at least 13 years old but not older than 19. A veteran, regardless of age, who meets all other criteria is eligible to participate (34 CFR sections 645.3 and 645.6).

(2) *Stipends* – Stipends for regular and math-science projects may not exceed $40 per month from September to May of the academic year and $60 for each of the summer months (June, July, and August). Youth participating in a work-study position may be paid a stipend of $300 per month during June, July and August. Stipends for participants in veterans projects may not exceed $40 per month. To be eligible for a stipend, participants must show evidence of satisfactory participation in project activities, including regular attendance and performance in accordance with the number of sessions in which a student participated (20 USC 1070a-13(e); 34 CFR section 645.42).

d. *EOC Program – Eligible Participants* – An individual is eligible to participate in an EOC project if the individual meets all of the following requirements: (1) is a citizen, national, or permanent resident of the United States or is in the United States for other than a temporary purpose; (2) is at least 19 years of age (an individual less than 19 years of age and a veteran regardless of age can be served by the EOC project if TS services are not available); and (3) expresses a desire to enroll or is enrolled in a program of postsecondary education and requests information or assistance in applying for admission or financial aid for such a program (34 CFR section 644.3).

e. *McNair Program*

(1) *Eligible Participants* – A student is eligible to participate in a McNair project if the student meets all the following requirements: (a) is a citizen, national, or permanent resident of the United States or is in the United States for other than a temporary purpose; (b) is currently enrolled in a degree program at an institution of higher education that participates in the student financial assistance

programs; (c) is a low-income individual who is a first-generation college student or a member of a group that is underrepresented in graduate education or, under certain circumstances, underrepresented in certain academic disciplines; and (d) has not enrolled in doctoral level study (34 CFR sections 647.3 and 647.7).

(2) *McNair Stipends* – Stipends of up to $2,800 per year for students engaged in approved research internships, provided that the student has completed the sophomore year of study at an eligible institution before the internship begins (20 USC 1070a-15(e); 34 CFR section 647.30).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching. Level of Effort, Earmarking

1. Matching

An institution that operates an SSS project and uses any portion of its SSS program grant for grant aid to students must furnish 33 percent of the total funds it uses for that purpose in cash, from non-federal sources. However, institutions eligible to receive funds under Title III, Part A or B, or Title V of the Higher Education Act, as amended, are not required to provide such matching funds (34 CFR section 646.33(a)).

2. Level of Effort – Not Applicable

3. Earmarking

a. *SSS Program*

(1) At least two-thirds of the students served by an SSS project must be low-income individuals who are the first generation college students or individuals with disabilities. Not less than one-third of the individuals with disabilities must also be low-income individuals. The remaining students served must be low-income individuals, first generation college students, or individuals with disabilities (34 CFR sections 646.7 and 646.11).

(2) An institution operating an SSS project may not award more than 20 percent of its Federal SSS Program funds as grant aid to students (34 CFR section 646.33(a)).

b. *TS Program* – At least two-thirds of the individuals served by a TS project must be low-income individuals who are potential first-generation college students (34 CFR sections 643.10 and 643.7).

c. *UB Program* – Not less than two-thirds of the project's participants must be low-income individuals who are potential first-generation college students. The remaining participants must be either low-income individuals or potential first-generation college students (34 CFR sections 645.21 and 645.6).

d. *EOC Program* – At least two-thirds of the individuals served by an EOC project must be low-income individuals who are potential first-generation college students (34 CFR sections 644.10 and 644.7).

e. *McNair Program* – At least two-thirds of the students served by a McNair project must be low-income individuals who are first-generation college students. The remaining students must be members of groups underrepresented in graduate education (34 CFR sections 647.10 and 647.7).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting

a. *Student Support Services Program Annual Performance Report (OMB No. 1840-0525)* – Grantees must submit an annual performance report to ED each year of the project period.

Key Line Items – The following line items contain critical information:

Section III, *Record Structure for Participant List,* fields:

10 Eligibility
11 First Enrollment Date
12 Date of First Service

15 Participant Status
17 Enrollment Status (at end of the reporting year)
18 College Grade Level (Entry into project)
19 College Grade Level (at the end of the academic reporting year)
26 Academic Standing
27 Undergraduate Degree/Certificate Completed at Grantee Institution

b. *Upward Bound, Upward Bound Math-Science, and Veterans Upward Bound Programs Annual Performance Report (OMB No. 1840-0762)* – Grantees must submit an annual performance report to ED each year of the project period.

Key Line Items – The following line items contain critical information:

(1) Section II-A, *Record Structure for Participant List for Upward Bound and Upward Bound Math-Science Projects,* fields:

17 Eligibility at first entry into project
18 Academic Need
21 Date of First Project Service
22 Grade Level at First Service
24 Participant Status for reporting year
25 Participant Level for reporting period only
26 Grade Level at the *beginning* of Academic Year being reported
33 Participant Retention in Project
36 Date of Last Project Service

(2) Section II-B, *Record Structure for Participant List for Veterans Upward Bound Projects*, fields:

16 Eligibility at first entry into project
18 Educational Status (at the date of first project service)
23 Date of First Project Service
26 Participant Status for reporting year
29 Date of Last Project Service in VUB

c. *Talent Search and Educational Opportunity Centers Programs Annual Performance Report (OMB No. 1840-0561)* – Grantees must submit an annual performance report to ED each year of the project periods.

Key Line Items – The following line items contain critical information:

(1) Section II, *Demographic Profile of Project Participants,* subsection A, *Number of Participants Assisted*

(2) Section II, *Demographic Profile of Project Participants,* subsection B, *Participant Distribution by Eligibility*

(3) Section II, *Demographic Profile of Project Participants and Listing of Target Schools,* subsections F and G, *Veterans Served and Participants with Limited English Proficiency*

(4) Section IV, *Educational Status of Talent Search Participants (at end of budget period or for the fall 2007 term),* lines:

A1. Promoted to next grade in middle or high school
B1. Received high school diploma
E1. Enrolled in postsecondary education (first-time enrollment or reentry)

(5) Section IV, *Educational Status of EOC Participants (at the end of the budget period or for the fall 2007 term),* lines:

A1. Enrolled in a continuing education program
B. Number of such participants who applied for student financial aid
D1. Enrolment in postsecondary education (first-time enrollment or reentry)

d. *Ronald E. McNair Postbaccalaureate Achievement Program Performance Report (OMB No. 1840-0640)* – Grantees must submit an annual performance report to the Department each year of the project period.

Key Line Items – The following items contain critical information:

(1) Section II, *Record Structure for Participant List*, fields:

11-13 Eligibility
14 First School Enrollment Date
15 Project Entry Date
16 Participant Status
17 College Grade Level (entry into project)
18 College Grade Level (Current - at the end of the spring/summer term)
19 Enrollment Status (for the academic year being reported)
21 Highest Degree Earned

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. **Subaward Reporting under the Transparency Act** – Not Applicable

DEPARTMENT OF EDUCATION

CFDA 84.048 CAREER AND TECHNICAL EDUCATION—BASIC GRANTS TO STATES (Perkins IV)

I. PROGRAM OBJECTIVES

Career and Technical Education (Perkins IV) (formerly Vocational and Technical Education—Basic Grants to States (Perkins III)) provides grants to States and outlying areas to develop the career, technical, vocational, and academic skills of secondary students and postsecondary students by: (1) promoting the integration of career, academic, and technical instruction; (2) developing challenging academic and technical standards; (3) increasing State and local flexibility in providing services and activities designed to develop, implement and improve career and technical education, including tech-prep education; (4) conducting and disseminating national research; (5) providing technical assistance; (6) supporting partnerships among secondary schools, postsecondary institutions, baccalaureate degree-granting institutions, area career and technical education schools, local workforce investment boards, business and industry, and intermediaries; and (7) providing individuals with opportunities to develop, in conjunction with other educational and training programs, the knowledge and skills needed to keep the United States competitive.

II. PROGRAM PROCEDURES

Participating States must designate or establish a State board of career and technical education (referred to in Perkins IV as the "eligible agency") to administer and supervise State career and technical education programs. In order to receive funds for program year (PY) 2009 (July 1, 2009 – June 30, 2010), the State must have an approved 5-year State plan for career and technical education or a unified plan.

The Department of Education (ED) allocates funds to the State based on a statutory formula. The State must allocate and use funds for the following statutorily prescribed activities or programs (referred to as the "basic programs"):

1. Secondary and postsecondary career and technical education programs (Section 135 of Perkins IV (20 USC 2355));

2. State leadership activities (Section 124 of Perkins IV (20 USC 2344));

3. State administration (Section 121 of Perkins IV (20 USC 2341)).

The grantee may transfer funds to other State agencies to administer one or more of these programs. A State makes grants to subrecipients (referred to in Perkins IV as the "eligible recipients"), operates programs directly, or contracts for services. Subrecipients submit plans or applications to the State in order to receive funds.

Source of Governing Requirements

This program is authorized by the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) (20 USC 2301 *et seq.*, as amended by Pub. L. No. 109-270). Certain requirements applicable to the Perkins IV grants are contained in the Workforce Investment Act (29 USC 2801 *et seq*.), as amended, (Pub. L. No. 105-220).

Availability of Other Program Information

Program and policy guidance for Perkins IV is available on the Internet at http://www.ed.gov/policy/sectech/leg/perkins/index.html. A number of documents contain guidance applicable to the Career and Technical Education—Basic Grants To States (Perkins IV) requirements in this Supplement. They are available on the Internet at http://www.ed.gov/about/offices/list/ovae/pi/memoperkinsiv.html, and include:

- Questions and Answers Regarding Perkins IV Non-Regulatory Guidance, Version 3 (June 2009)
- The official Fiscal Year 2009 Perkins IV guidance for state Career and Technical Education directors (February 6, 2009)
- Consolidated Annual Report (CAR) for the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) (June 2, 2008)
- Estimated FY 2009 State Allocations under the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) (March 31, 2009)
- Supplemental Information for Completing the Perkins IV Five-Year State Plan (January 22, 2008)
- Questions and Answers Regarding the Implementation of the Carl D. Perkins Career and Technical Education Act of 2006 – Version 2.0 (June 7, 2007)
- Non-Regulatory Guidance Regarding the Consolidation of Title II Tech Prep Funds into Title I Basic Grant Funds (May 17, 2007)
- Student Definitions and Measurement Approaches for the Core Indicators of Performance Under the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) (May 13, 2007)

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple ED programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in

each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements.

A. Activities Allowed or Unallowed

See ED Cross-Cutting Section.

1. *State-Level Activities* – The State plan describes the specific activities to be carried out. A State must use funds for State leadership activities as described in a, b, and c below and State administration as described in 1.d. below.

    a. *State Leadership Activities – Required Uses*. A State must use State leadership funds for:

        (1) Assessing programs conducted with assistance under Perkins IV;

        (2) Developing, improving, or expanding the use of technology in career and technical education;

        (3) Professional development activities that, among other things:

            (a) Provide in-service and pre-service training in career and technical education programs; and

            (b) Are high-quality, sustained, intensive, and classroom-focused and are not 1-day or short-term workshops or conferences;

        (4) Support for strengthening the academic and career and technical education skills of students;

        (5) Providing preparation for nontraditional fields;

        (6) Supporting partnerships among local educational agencies and other education and business entities assisting students to achieve state academic standards and career and technical skills, or complete career and technical programs of study;

        (7) Serving students in State institutions;

        (8) Support for programs for special populations that lead to high-skill, high-wage, high-demand careers; and

        (9) Technical assistance for eligible recipients (Section 124(b) of Perkins IV (20 USC 2344(b))).

    b. *State Leadership Activities – Other Uses*. A State may use State leadership funds for: (1) improvement of career guidance and academic

counseling programs; (2) establishment of agreements, including articulation agreements, between secondary and postsecondary career and technical education programs; (3) support of initiatives to facilitate the transition of subbaccalaureate career and technical education students into baccalaureate degree programs; (4) support for career and technical education students' organizations; (5) support for public charter schools operating career and technical education programs; (6) support for career and technical education programs that offer experience in all aspects of an industry; (7) support for family and consumer sciences programs; (8) support for partnerships between education and business or business intermediaries; (9) support to improve or develop new career and technical education courses and initiatives; (10) awarding incentive grants to eligible recipients; (11) providing for activities to support entrepreneurship education and training; (12) providing career and technical education programs for adults and school dropouts; (13) providing assistance to individuals who participate in career and technical education programs and services under Perkins IV to continue their education and training or to find appropriate jobs; (14) developing valid and reliable assessments of technical skills; (15) developing and enhancing data systems to collect and analyze data on secondary and postsecondary academic and employment outcomes; (16) improving recruitment and retention for career and technical education programs and the transition of individuals to teaching from business and industry; and (17) support for occupational and employment information resources such as described in Section 118 of Perkins IV (Section 124(c) of Perkins IV (20 USC 2344(c))).

c. *State Leadership Activities – Unallowed Uses*. A State may not use State leadership funds for administrative costs (Section 124(d) of Perkins IV (20 USC 2344(d))).

d. *State Administration* – A State may use funds reserved for State administration for: (1) developing the State plan; (2) reviewing local applications; (3) monitoring and evaluating program effectiveness; (4) assuring compliance with all applicable Federal laws; (5) providing technical assistance; and (6) supporting and developing State data systems relevant to the provisions of Perkins IV (Section 112(a)(3) of Perkins IV (20 USC 2322(a)(3))).

2. *Subrecipient Activities – Secondary and Postsecondary Career and Technical Education Programs* – Funds must be used to improve career and technical education programs. The subrecipient plan or approved application describes the specific activities to be carried out. Required uses of funds are identified in Section 135(b) of Perkins IV. Examples of other allowable activities are identified in Section 135(c) of Perkins IV (Sections 135(a), (b), and (c) of Perkins IV (20 USC 2355(a), (b), and (c))).

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

C. Cash Management

See ED Cross-Cutting Section.

E. Eligibility

1. Eligibility for Individuals – Not Applicable

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

a. *Secondary Career and Technical Education Programs* – A subrecipient must be: (1) a local educational agency (LEA), including a public charter school, that is eligible to receive $15,000 or more under Section 131(a) of Perkins IV; (2) an area career and technical education school or an educational service agency that meets the requirements in Section 131(e) of Perkins IV; or (3) a consortium of LEAs that meets the requirements in Section 131(f) of Perkins IV (Section 3(14)(A) of Perkins IV (20 USC 2302(14)(A)) and Sections 131(a), (e), and (f) of Perkins IV (20 USC 2351(a), (e), and (f))).

The State must treat a secondary school funded by the Bureau of Indian Affairs (BIA) within the State as if such school were an LEA within the State for the purpose of receiving a distribution under Section 131 of Perkins IV (Section 131(h) of Perkins IV (20 USC 2351(h))). Except as noted below, the State must provide funds to public charter schools offering a career and technical education program in the same manner as it provides those funds to other schools; career and technical education programs within a charter school must be of sufficient size, scope, and quality to be effective (Section 133(d) of Perkins IV (20 USC 2353(d))). For the definition of "charter school" applicable to Perkins IV, see Section 5210 (20 USC 7221i) of the No Child Left Behind Act of 2001 at http://www.ed.gov/legislation/ESEA02/pg62.html.

For the program year beginning July 1, 2007, and subsequent program years, unless a State has an approved alternative formula, a State must distribute the amount reserved for the secondary school career and technical education programs as follows:

(1) 30 percent to each LEA in proportion to the number of individuals aged 5 through 17, inclusive, who reside in the school district

served by such LEA for the preceding fiscal year compared to the total number of such individuals who reside in the school districts served by all LEAs in the State for such preceding fiscal year, as determined on the basis of the most recent satisfactory data provided to the Secretary by the Bureau of the Census for the purpose of determining eligibility under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA); or student membership data collected by the National Center for Educational Statistics through the Common Core of Data survey system; and

(2) 70 percent to each LEA in proportion to the number of individuals aged 5 through 17, inclusive, who reside in the school district served by such LEA and are from families with incomes below the poverty level for the preceding fiscal year, as determined on the basis of the most recent satisfactory data used under Section 1124(c)(1)(A) of the ESEA (20 USC 6333(c)(1)A)), compared to the total number of such individuals who reside in the school districts served by all the LEAs in the State for such preceding fiscal year (Section 131(a) of Perkins IV (20 USC 2351(a))).

An LEA that does not meet the minimum grant requirement of $15,000 can form a consortium with one or more LEAs to meet the minimum grant requirement (Section 131(f) of Perkins IV (20 USC 2351(f))). The State must waive the minimum grant requirement for an LEA that is in a rural, sparsely populated area or that is a public charter school operating a secondary school career and technical education program if the LEA demonstrates that the LEA is unable to enter into a consortium for purposes of providing activities under Title I, Part C of Perkins IV (Section 131(c)(2) of Perkins VI (20 USC 2351(c)(2))).

If the State reserves 15 percent or less for this program, it may distribute funds on a competitive basis or through any alternative method (Section 133(a) of Perkins IV (20 USC 2353(a))).

b. *Postsecondary Career and Technical Education Programs* – A subrecipient must be an eligible institution, which is: a public or nonprofit private institution of higher education that offers career and technical education courses that lead to technical skill proficiency, an industry-recognized credential, a certificate, or a degree; an LEA providing education at the postsecondary level; an area career technical educational school providing education at the postsecondary level; a postsecondary education institution controlled by BIA or operated by or on behalf of any Indian tribe that is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.)*; an educational service

agency; or a consortium of two or more of these entities (Section 3(13) of Perkins IV (20 USC 2302(13))).

Unless a State has an approved alternative formula, the State must distribute the amounts reserved for the postsecondary career and technical education programs to each eligible institution in proportion to the number of Pell grant recipients and recipients of assistance from BIA enrolled in programs meeting the requirements of Section 135 of Perkins IV at that institution in the preceding year compared to the total of such recipients enrolled in those programs in the State in the preceding year (Section 132(a) of Perkins IV (20 USC 2352(a))). The minimum grant is $50,000; a State must reallocate amounts allocated to recipients that are less than $50,000 to other eligible recipients except as provided below (Section 132(c) of Perkins IV (20 USC 2352(c))).

An eligible institution that does not meet the minimum grant requirement of $50,000 may form a consortium with one or more eligible institutions to meet the minimum grant requirement (Section 132(a)(3) of Perkins IV (20 USC 2352(a)(3))). The State may waive the minimum grant requirement for eligible institutions in rural, sparsely populated areas (Section 132(a)(4) of Perkins IV (20 USC 2352(a)(4))).

If the State reserves 15 percent or less for its postsecondary program, it may distribute these funds on a competitive basis or through any alternative method (Section 133(a) of Perkins IV (20 USC 2353(a))).

G. Matching, Level of Effort, Earmarking

1. Matching

State Administration – A State must match, from non-Federal sources and on a dollar-for-dollar basis, the funds reserved for administration of the State plan. The matching requirement may be applied overall, rather than line-by-line, to State administrative expenditures (Section 112(b) of Perkins IV (20 USC 2322 (b))).

2.1 Level of Effort – *Maintenance of Effort*

a. *General*

(1) A State must maintain its fiscal effort in the preceding year from State sources for career and technical education on **either** an aggregate **or** a per-student basis when compared with such effort in the second preceding year, unless this requirement is specifically waived by the Secretary of Education. For example, to receive its PY 2009 grant award, a State must maintain its level of fiscal effort on either an aggregate or per-student basis in PY 2008

(July 1, 2008 – June 30, 2009) at the level of its fiscal effort in PY 2007 (July 1, 2007 – June 30, 2008). An example of how a State may maintain effort on a per-student basis, but not in the aggregate, is as follows:

In PY 2007, a State spends $50 million from State funds to provide career and technical education to 300,000 students. In PY 2008, the State spends only $49 million to provide career and technical education to 290,000 students. Even though the State's aggregate effort decreased by $1 million, the State's per-student effort increased from $166.67 per student to $168.97 per student. Thus, the State met the maintenance-of-effort requirement for its fiscal year 2009 grant (Section 311(b)(1)(A) of Perkins IV (20 USC 2391(b)(1)(A))).

If a State has been granted a waiver of the maintenance-of-effort requirement that allows it to receive a grant for a program year, the maintenance-of-effort requirement for the year after the year of the waiver is determined by comparing the amount spent for career and technical education from non-Federal sources in the first preceding program year with the amount spent in the third preceding program year (Section 311(b)(2) of Perkins IV (20 USC 2391(b)(2))).

In computing the fiscal effort or aggregate expenditures, a State must exclude capital expenditures, special one-time project costs, and the cost of pilot programs (Section 311(b)(1)(B) of Perkins IV (20 USC 2391(b)(1)(B))).

(2) *Decrease in Federal Support* – If the amount made available for career and technical education programs under Perkins IV for a fiscal year is less than the amount made available for career and technical education programs under Perkins IV for the preceding fiscal year, then the fiscal effort per student or the aggregate expenditures of a State for such preceding fiscal year shall be decreased by the same percentage as the percentage decrease in the amount so made available (Section 311(b)(1)(C) of Perkins IV (20 USC 2391(b)(1)(C))).

b. *Administration*

(1) A State must provide from non-Federal sources for State administration under the Perkins Act an amount that is not less than the amount provided by the State from non-Federal sources for State administrative costs for the preceding fiscal or program year (Section 323(a) of Perkins IV (20 USC 2413(a))).

(2) *Decrease in Federal Support* – If the amount made available for administration of programs under Perkins IV for a fiscal year is less than the amount made available for administration of programs under the Perkins Act for the preceding fiscal year, the amount the State is required to provide from non-Federal sources for costs the State incurs for administration of programs shall be decreased by the same percentage (Section 323(b) of Perkins IV (20 USC 2413(b))).

2.2 Level of Effort – *Supplement Not Supplant*

The State and its subrecipients may use funds for career and technical education activities that shall supplement, and shall not supplant, non-Federal funds expended to carry out career and technical education activities and tech-prep activities (Section 311(a) of Perkins IV (20 USC 2391(a))). The examples of instances where supplanting is presumed to have occurred described in III.G.2.2 of the ED Cross-Cutting Section (84.000) also apply to the career and technical education program.

Notwithstanding the above paragraph, funds made available under Perkins IV may be used to pay for the costs of career and technical education services required in an individualized education plan (IEP) developed pursuant to Section 614(d) of the Individuals with Disabilities Education Act (IDEA) and services necessary to meet the requirements of Section 504 of the Rehabilitation Act of 1973 with respect to ensuring equal access to career and technical education (Section 324(c) of Perkins IV (20 USC 2414(c))).

3. Earmarking

a. *States* – Subject to the requirements discussed below regarding the minimum amount for State administration, a State must reserve the following percentages:

(1) *Secondary and postsecondary career and technical education programs* – not less than 85 percent. A State must distribute all of these funds to its subrecipients. A State may reserve no more than 10 percent of the 85 percent of funds to make grants for activities described in Section 135 of Perkins IV (20 USC 2355) to eligible subrecipients in : (a) rural areas; (b) areas with high percentages of career and technical education students; and (c) areas with high numbers of career and technical education students (Sections 112(a)(1) and (c) of Perkins IV (20 USC 2322(a)(1) and (c))).

(2) *State Leadership Activities* – not more than 10 percent. Within the State leadership activities not more than 1 percent of the amount allocated to each State in Section 111 of Perkins IV (20 USC 2321)

shall be allotted to activities that serve individuals in State institutions. Also, not less than $60,000 and not more than $150,000 of the amount allocated to each State in Section 111 of Perkins IV shall be made available for services that prepare individuals for nontraditional fields (Section 112(a)(2) of Perkins IV (20 USC 2322(a)(2))).

(3) *State Administration* – not more than 5 percent or $250,000, whichever is greater, for administration of the State plan (Section 112(a)(3) of Perkins IV (20 USC 2322 (a)(3))).

A State must consider any tech-prep-education grant funds that it consolidates, as approved in its State plan submitted under Section 122 of Perkins IV (20 USC 2342), as funds allotted under Section 111 of Perkins IV (20 USC 2321) and must distribute these funds in accordance with Section 112 of Perkins IV (20 USC 2322) requirements as described above in paragraphs (1) – (3) (Section 202 of Perkins IV (20 USC 2372)).

b. *Subrecipients* – Subrecipients under the secondary and postsecondary career and technical education programs may use no more than 5 percent of those funds for administrative costs (Section 135(d) of Perkins IV (20 USC 2355(d))).

H. Period of Availability of Federal Funds

See ED Cross-Cutting Section.

L. Reporting

1. Financial Reporting

a. SF-269 – *Financial Status Report* – Not Applicable.

b. SF-270 – *Request for Advance or Reimbursement* – Only grantees placed on reimbursement are required to complete this form to request payment of grant award funds. The requirement to use this form is imposed on an individual recipient basis.

c. SF-271 – *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272 – *Federal Cash Transactions Report* – Not Applicable

e. SF-425 – *Federal Financial Report* – Not Applicable

f. *Financial Status Report (Part C) for the Consolidated Annual Report for the Carl D. Perkins Career and Technical Education Act of 2006 (CAR)*

(OMB No. 1830-0569) – This replaces the SF 269. This form is a web-based format entitled "*Financial Status Report*" (FSR). Each State files two "FSR" forms each December for two distinct grant periods: (1) an interim FSR that reports the expenditure of those Federal funds available to a State on or after July 1 of the preceding year during the first 12 to 15 months of availability and (2) a final FSR that reports the expenditure of those Federal funds available to the State on or after July 1 of the second preceding year for the full 27 months of availability.

g. LEAs and other subrecipients are generally required to report financial information to the pass-through entity. These reports should be tested during audits of LEAs and other subrecipients.

2. Performance Reporting – Not Applicable

3. Special Reporting

Annual Accountability Report (Part D) for the Consolidated Annual Report for the Carl D. Perkins Career and Technical Education Act of 2006 (CAR) (OMB No. 1830-0569). A sample of cells on the CAR should be tested (in a similar manner that is done for a financial report) to ensure that the State has data that supports the numbers in the report. The measures and levels are defined in the Final Agreed Upon Performance Levels form that is incorporated in a State plan and attached to the grant award.

a. *States* – Each State must annually report to the Secretary the progress of the State in achieving the State-adjusted levels of performance on the core indicators of performance, including the levels of performance achieved by the special population categories described in Section 3(29) of Perkins IV and other student categories described in Section 1111(h)(1)(C)(i) of ESEA (20 USC 6311(h)(1)(C)(i)) (Section 113(c) of Perkins IV (20 USC 2323(c))). This report must be provided as part of each State's December 31 *CAR* submission.

The Perkins IV core indicators on which States must report aggregate data are:

Secondary Level:

- Attainment of academic skills – reading/language arts
- Attainment of academic skills – mathematics
- Technical skill attainment
- School completion
- Student graduation rates
- Placement
- Nontraditional participation

- Nontraditional completion

Postsecondary Level:

- Technical skill attainment
- Credential, certificate, degree
- Student retention or transfer
- Student placement
- Nontraditional participation
- Nontraditional completion

States are also required to report disaggregated data on the performance of students by gender, race, ethnicity, migrant status, and the following special population categories described in Section 3(29) of Perkins IV (20 USC 2302 (29))(Section 113(c)(2)(A) of Perkins IV (20 USC 2323(c)(2)(A))):

- Individuals with disabilities
- Individuals from economically disadvantaged families, including foster children
- Individuals preparing for non-traditional fields
- Single parents, including pregnant women
- displaced homemakers
- Individuals with limited English proficiency

Each State negotiates with ED adjusted performance levels (i.e., targets) for each core indicator for each program year (Sections 113(b)(3)(A)(iii) and (iv) of Perkins IV (20 USC 2323 (b)(3)(A)(iii) and (iv))). Each State's adjusted performance levels are contained in a "Final Agreed-Upon Performance Level (FAUPL) Form," which is incorporated by reference into the State plan and grant award (*OMB Number 1830-0029*) (Sections 113(b)(3)(A)(iii) and (v) of Perkins IV (20 USC 2323(b)(3)(A)(iii) and (v))).

A State that retains all, or a portion, of its tech prep grant (Title II) for purposes authorized under Title II of Perkins IV must report its tech prep students as a disaggregated population for each of the section 113 indicators in its *CAR* (Sections 113(c) and 203(e) of Perkins IV (20 USC 2323(c) and 2373(e))).

Each State must review the accountability data submitted by its subrecipients and, in the State's annual *CAR* submission, (1) indicate the total number of subrecipients that failed to meet at least 90 percent of an agreed upon local adjusted level of performance and that will be required to implement a local program improvement plan for the succeeding program year, and (2) note trends, if any, in the performance of these

subrecipients (i.e., core indicators that were most commonly missed, including those for which less than 90 percent was commonly achieved; disaggregated categories of students for whom there were disparities or gaps in performance compared to all students) (Section 113(c) of Perkins IV (20 USC 2323(c))).

b. *Subrecipients* – Each LEA and other subrecipients must annually report to the State the progress of the LEA or other subrecipient in achieving its local adjusted levels of performance on the core indicators of performance, including the levels of performance achieved by the special population categories described in Section 3(29) of Perkins IV and other student categories described in Section 1111(h)(1)(C)(i) of ESEA (20 USC 6311(h)(1)(C)(i)) (Section 113(b)(4)(C) of Perkins IV (20 USC 2323(b)(4)(C))).

The LEA or other subrecipient reports on the Perkins IV core indicators described in paragraph a. above (Section 113(b)(4)(C) of Perkins IV (20 USC 2323(b)(4)(C))). The LEA or other subrecipient is also required to report disaggregated data on the performance of students by gender, race, ethnicity, migrant status, and the special population categories described in Section 3(29) of Perkins IV (20 USC 2302 (29)) (Section 113(b)(4)(C)(ii) of Perkins IV (20 USC 2323(b)(4)(C)(ii))).

Each LEA or other subrecipient negotiates with the State local adjusted performance levels (i.e. targets) for each core indicator for each program year (Sections 113(b)(4)(A)(iii) and (iv) of Perkins IV (20 USC 2323 (b)(4)(A)(iii) and (iv))). Each LEA's or other subrecipient's local adjusted performance levels are incorporated into the local plan required by Section 134 before approval by the State.

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

M. Subrecipient Monitoring

Each State must evaluate annually, using the local adjusted levels of performance described in Section 113(b)(4) of Perkins IV (20 USC 2323(b)(4)), the career and technical education activities of each subrecipient receiving funds under the basic grant program (Title I of Perkins IV) (Section 123(b)(1) of Perkins IV (20 USC 2343(b)(1))). The State determines whether a subrecipient failed to meet at least 90 percent of an agreed upon local adjusted level of performance for any of the core indicators of performance described in Section 113(b)(4) of Perkins IV and, if so, the State must work with the subrecipient to implement the improvement plan required by Section 123(b)(2) (Section 123(b)(2) and (3) of Perkins IV (20 USC 2343(b)(2) and (3))) (See III.N.3, "Special Tests and Provisions – Developing and Implementing Improvement Plans.")

N. Special Tests and Provisions

1. Schoolwide Programs

See ED Cross-Cutting Section

2. Access to Federal Funds for New or Significantly Expanded Charter Schools

See ED Cross-Cutting Section.

3. Developing and Implementing Improvement Plans

a. *States* – Any State that fails to meet at least 90 percent of an agreed upon State adjusted level of performance for any of the core indicators of performance described in Section 113(b)(3) of Perkins IV must develop and implement a program improvement plan, with special consideration given to performance gaps identified under Section 113(c)(2) of Perkins IV. The determination of 90 percent is based on the data submitted to the State. The State must develop and implement its improvement plan in consultation with appropriate agencies, individuals, and organizations during the first program year succeeding the program year for which the State failed to meet its State adjusted levels of performance for any of the core indicators of performance (Section 123(a)(1) of Perkins IV (20 USC 2323(a)(1))).

A State's program improvement plan, which is included in its CAR submission to ED, must address, at a minimum, the following items.

- The core indicator(s) that the State failed to meet at the 90 percent threshold.
- The disaggregated categories of students for which there were quantifiable disparities or gaps in performance compared to all students or any other category of students.
- The action steps which will be implemented, beginning in the current program year, to improve the State's performance on the core indicator(s) and for the categories of students for which disparities or gaps in performance were identified.
- The staff member(s) in the State who are responsible for each action step.
- The timeline for completing each action step.

b. *Subrecipients* – Each LEA or other subrecipient for which the State determines that the LEA or other subrecipient failed to meet at least 90 percent of an agreed upon local adjusted level of performance for any of the core indicators of performance described in Section 113(b)(4) of Perkins IV must develop and implement a program improvement plan with

special consideration given to performance gaps identified under Section 113(b)(4)(C)(ii)(II) of Perkins IV (20 USC 2323(b)(4)(C)(ii)(II)) (Section 123(b)(2) of Perkins IV; 20 USC 2343(b)(2)). The subrecipient must develop and implement the local improvement plan – in consultation with the State, appropriate agencies, individuals, and organizations – during the first program year succeeding the program year for which the LEA or other subrecipient failed to meet any of its local adjusted levels of performance for any of the core indicators of performance (Section 123(b)(2) of Perkins IV (20 USC 2343(b)(2))). The LEA's or other subrecipient's data on each local adjusted level of performance for any of the core indicators of performance described in Section 113(b)(4) of Perkins IV must be available to the general public through a variety of formats, including electronically through the Internet (Section 113(b)(4)(C)(v) of Perkins IV (20 USC 2323(b)(4)(C)(v))).

Audit Objective – (*States*) Determine whether the State developed and implemented a program improvement plan, as required, if it failed to meet at least 90 percent of an agreed upon State adjusted level of performance for any of the core indicators of performance described in Section 113(b)(3) of Perkins IV.

Suggested Audit Procedures (*States*)

a. Ascertain if the State failed to meet at least 90 percent of an agreed upon State adjusted level of performance for any of the core indicators of performance by reviewing data in the CAR.

b. If so, verify that the State developed and implemented a program improvement plan in a manner consistent with the above requirements.

Audit Objective (*Subrecipients*) – Determine whether: (1) a subrecipient's data are publicly available; and (2) the subrecipient developed and implemented a program improvement plan, as required, if the State determined that it failed to meet at least 90 percent of an agreed upon local adjusted level of performance.

Suggested Audit Procedures (*Subrecipients*)

Verify that the LEA's or other subrecipient's:

a. Developed and implemented a program improvement plan in a manner consistent with the above requirements, if the State determined that the LEA or other subrecipient failed to meet at least 90 percent of an agreed upon local adjusted level of performance for any of the core indicators of performance.

b. Provided data on each local adjusted level of performance for the core indicators of performance to the general public through a variety of formats, including electronically through the Internet.

DEPARTMENT OF EDUCATION

CFDA 84.126 REHABILITATION SERVICES--VOCATIONAL REHABILITATION GRANTS TO STATES
CFDA 84.390 REHABILITATION SERVICES--VOCATIONAL REHABILITATION GRANTS TO STATES, RECOVERY ACT

I. PROGRAM OBJECTIVES

The purpose of Title I of the Rehabilitation Act of 1973, as amended (Act), which authorizes the State Vocational Rehabilitation (VR) Services Program, is to assist States in operating statewide comprehensive, coordinated, effective, efficient, and accountable VR programs, each of which is: (1) an integral part of a statewide workforce investment system; and (2) designed to assess, plan, develop, and provide VR services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individuals may prepare for and engage in gainful employment (Section 100(a)(2) of the Act (29 USC 720(a)(2))).

II. PROGRAM PROCEDURES

Federal funds are distributed to the States on a formula basis with the States required to provide a 21.3 percent match. The program is administered by an agency designated by the State as having overall administrative responsibility for the VR program. If the designated State agency is not an agency primarily concerned with VR, or vocational and other rehabilitation of individuals with disabilities, it must include a designated State unit within the agency that is responsible for the designated State agency's VR program (State VR Agency).

The States must submit to the Rehabilitation Services Administration (RSA) a State Plan that provides both assurances and descriptions that are required by Title I of the Act and the implementing regulations (34 CFR part 361). The State Plan is one of the key bases of RSA's monitoring of the State's administration of the VR program.

Services are provided either directly by State VR Agency staff or purchased from community-based vendors. Services, except those of an assessment nature, are provided under the Individualized Plan for Employment (IPE), as determined by the individual, which can be developed by the individual, or with assistance provided by others, including a qualified VR counselor employed by the State VR Agency, to achieve an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities and informed choice.

The Workforce Investment Act of 1998, as amended (WIA), requires the VR program to collaborate with other workforce development, educational, and human resource programs in a one-stop service delivery system. The WIA's objective is to create a seamless delivery system by linking the agencies operating these programs in order to provide universal access to the programs operated by each agency. While the one-stop system operates as a common portal for

gaining access to these programs, each program provides its respective services to persons meeting its respective eligibility criteria.

Agencies responsible for administering the programs whose services are delivered in a one-stop system are known as "partners;" those whose participation is mandated by the WIA, including the State VR agency, are "required partners." Each partner must enter into a Memorandum of Understanding (MOU) with the Local Workforce Investment Board regarding the operation of the one-stop system. The MOU covers the services to be provided through the one-stop system, funding for those services and for the system's administrative costs, and the methods for referring individuals between one-stop operators and partners. It establishes how each partner will participate in the one-stop system and share in the cost of operating it. Each partner's resources may be used only for: (1) services that are authorized under that partner's program and delivered to clients eligible for those services; and (2) administrative costs allocable to the partner's program.

In addition to the MOU required by the WIA, the Rehabilitation Act requires that a State VR agency's State Plan provide for a network of cooperative agreements binding that agency's central and local offices to the central and local offices, respectively, of the other partners in the one-stop service delivery system. States can choose to use the same document to meet the requirements for both the MOU and the cooperative agreements. As used henceforth in this discussion, "MOU" refers to whatever document(s) a State agency uses to meet these requirements.

Funds from the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) were distributed to the States on a formula basis. States received an initial funding of 50 percent of their ARRA VR awards (CFDA 84.390) in April 2009 on the basis of their eligibility for Fiscal Year (FY) 2009 non-ARRA VR State Grant awards (CFDA 84.126) and submission of the certification required by Section 1607 of ARRA. States did not need to submit a new State Plan or assurances to receive this initial funding. The assurances in a State's approved FY 2009 State plan for their non-ARRA VR funds, as well as the requirements of ARRA, apply to the use of the ARRA VR funds. The second half of the awards were made in August 2009. States were not required to submit additional documentation to receive these funds. By accepting the second half ARRA VR funds, States agreed to comply with all accountability and reporting requirements in Section 1512 of ARRA.

Source of Governing Requirements

The VR program is authorized by Title I of the Rehabilitation Act of 1973, as amended (29 USC 701 *et seq*.). The Rehabilitation Act Amendments of 1998 are found in Title IV of the WIA. **The ARRA VR program is also authorized by ARRA.** Program regulations are found at 34 CFR part 361. In addition, the Education Department General Administrative Regulations (EDGAR) at 34 CFR parts 74, 76, 77, 79, 80, 81, 82, 85, and 86 apply to this program. Requirements in 20 CFR part 662 (Description of the One-Stop Service Delivery System) also apply to the extent that VR activities are being conducted as part of a one-stop service delivery system.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Services to Individuals*

   Services provided under the VR programs are any services described in an IPE necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. Section 103(a) of the Act (29 USC 723(a)) contains examples of the types of services that can be provided.

2. *Services to Groups*

   The State VR Agency may provide other services to groups of individuals with disabilities (Section 103(b) of the Act (29 USC 723(b))):

   a. In the case of any type of small business operated by individuals with significant disabilities the operation of which can be improved by management services and supervision provided by the designated State agency, the provision of such services and supervision, along or together with the acquisition by the designated State agency of vending facilities or other equipment and initial stocks and supplies.

   b. *Community Rehabilitation Programs* – The establishment, development, or improvement of a public or other non-profit community rehabilitation program including, under special circumstances, the construction of a facility for a public or non-profit community rehabilitation program.

   c. The provision of other services, that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized plan for employment of any one individual with a disability.

   d. Telecommunications systems that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with disabilities.

   e. Special services to provide non-visual access to information for individuals who are blind, including telecommunications, Braille, sound

recordings or other appropriate media; captioned television, films, or video cassettes for individuals who are deaf or hard of hearing; tactile materials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media.

f. Technical assistance and support services to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990, and that are seeking to employ individuals with disabilities.

g. Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

3. *Participation in a One-Stop Service Delivery System*

Any service or administrative cost charged to the VR programs through participation in the one-stop service delivery system must be: (a) allowable under the program's authorizing statute and regulations; (b) allocable to the program under the State VR agency's cost allocation plan; and (c) consistent with the MOU between the State VR agency and the Local Workforce Investment Board. The MOU is the primary vehicle by which the State VR agency sets forth how it will participate in the one-stop service delivery system and how it will share in the cost of operating the system (29 USC 2841(b)(1)(B)(iv); 34 CFR section 361.4; 20 CFR part 662; Notice: *Resource Sharing for Workforce Investment Act One-Stop Centers: Methodologies for Paying or Funding Each Partner Program's Fair Share of Allocable One-Stop Costs*, issued May 31, 2001 (66 FR 29637)).

The MOU identifies the resources the State VR agency will provide for compliance with 20 CFR section 662.270, which requires the VR programs to support a fair share of the one-stop system's common administrative costs. The amount provided must be proportionate to the use of the system by individuals attributable to this program. The MOU may provide for cash payments of billings from the one-stop operator, or for providing goods and services that benefit the system's operation. Examples of goods and services that the VR agency may provide for this purpose include: (a) making VR staff available to provide training or technical assistance to other partners in such areas as disability, accessibility, adaptive equipment, and rehabilitation engineering; (b) VR staff participation in cooperative efforts with employers to promote job placement (such as job analysis and employer visits); and (c) applying VR staff and other resources to the VR program's participation in information and financial management systems that link all partners to one another.

C. Cash Management

See ED Cross-Cutting Section

E. Eligibility

1. Eligibility for Individuals

An individual is eligible for VR services if the individual (a) has a physical or mental impairment that, for the individual, constitutes or results in a substantial impediment to employment; (b) can benefit in terms of an employment outcome from VR services; and (c) requires VR services to prepare for, secure, retain, or regain employment (Section 102(a)(1) of the Act (29 USC 722(a)(1))).

An individual who is a beneficiary of Social Security Disability Insurance or a recipient of Supplemental Security Income is presumed to be eligible for VR services (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual) unless the State VR Agency can demonstrate by clear and convincing evidence that such individual is incapable of benefiting in terms of an employment outcome from VR services due to the severity of the disability of the individual (Section 102(a)(3) of the Act (29 USC 722(a)(3))).

An individual is presumed to be able to benefit in terms of an employment outcome from VR services unless the State VR Agency can demonstrate by clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome from VR services due to the severity of the individual's disability. This determination must be made through the use of trial work experiences with appropriate supports provided by the State VR Agency, except under limited circumstances when the individual can not take advantage of such experiences (Section 102(a)(2) of the Act (29 USC 722(a)(2))).

The State VR Agency must determine whether an individual is eligible for VR services within a reasonable period of time, not to exceed 60 days, after the individual has submitted an application for the services unless (Section 102(a)(6) of the Act (29 USC 722(a)(6)):

a. Exceptional and unforeseen circumstances beyond the control of the State VR agency preclude making an eligibility determination within 60 days and the State agency and the individual agree to a specific extension of time; or

b. The State VR Agency is exploring an individual's abilities, capabilities, and capacity to perform in work situations through trial work experiences in order to determine the eligibility of the individual or the existence of clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome from VR services.

The State may choose to consider the financial need of eligible individuals, or individuals who are receiving services during a trial work experience or an extended evaluation, for the purpose of determining the extent of their participation in the cost of VR services. The State may not consider financial need when providing services described in 34 CFR section 361.54(b)(3). If the State indicates in its State Plan that it will use financial need tests for one or more types of VR services, it must apply such tests in accordance with its written policies uniformly to all individuals under similar circumstances. The policies may require different levels of need for different geographic regions in the State, but must be applied uniformly to all individuals within each geographic region (34 CFR section 361.54).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching

a. **For the regular VR State Grants program**, the State share of expenditures made by the State VR Agency under the State Plan, including expenditures for the provision of VR services and the administration of the State Plan, is 21.3 percent (Sections 7(14) and 111(a)(1) of the Act (29 USC 705(14) and 731(a)(1))).

b. **For the regular VR State Grants program**, the Federal share of expenditures made for the construction of a facility for community rehabilitation program purposes may not be more than 50 percent of the total cost of the project (34 CFR section 361.60(a)(2)).

c. **There are no matching requirements for expenditures made under the ARRA VR program (ARRA, 123 Stat. 183).**

2.1 Level of Effort – *Maintenance of Effort*

a. The amount otherwise payable to a State for a fiscal year under this section shall be reduced by the amount by which expenditures from non-Federal sources under the State Plan for the previous fiscal year are less than the total of such expenditures for the fiscal year two years prior to the previous fiscal year. For example, for fiscal year 2001, a State's maintenance-of-effort level is based on the amount of its expenditures from non-Federal sources for fiscal year 1999. Thus, if the State's non-Federal expenditures in fiscal year 2001 are less than they were in fiscal year 1999, the State has a maintenance of effort deficit, and the Secretary reduces the State's

allotment for fiscal year 2002 by the amount of that deficit (Section 111(a)(2)(B) of the Act (29 USC 731(a)(2)(B)); 34 CFR section 361.62).

b. If the State Plan provides for the construction of a facility for community rehabilitation program purposes, the amount of the State's share of expenditures for a fiscal year for VR services under the Plan, other than for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation purposes, must be at least equal to the State's share of those expenditures for the second prior fiscal year (34 CFR section 361.62).

2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

Federal funds appropriated for a fiscal year **under the regular VR State Grants program** remain available for obligation in the succeeding fiscal year only to the extent that the State VR Agency met the matching requirement for those Federal funds by obligating, in accordance with 34 CFR section 76.707, the non-Federal share in the fiscal year for which the funds were appropriated. Any program income received during a fiscal year that is not obligated by the State VR Agency by the end of that fiscal year will remain available for obligation by the State VR Agency during the succeeding fiscal year (Section 19 of the Act (29 USC 716); 34 CFR section 361.64).

Federal funds appropriated under the ARRA VR program are available for obligation beginning with the date of enactment of ARRA, February 17, 2009. ARRA VR funds remain available for obligation by States until September 30, 2011, which includes the one-year carryover period authorized under section 19 of the Rehabilitation Act (Section 1603 of ARRA and 29 USC 716).

J. Program Income

Sources of program income include, but are not limited to, payments from the Social Security Administration for rehabilitating Social Security beneficiaries, payments received from workers' compensation funds, fees for services to defray part or all of the costs of services provided to particular individuals, and income generated by a State-operated community rehabilitation program.

Except as indicated below, program income, whenever earned, must be used for the provision of VR services and the administration of the State Plan under the State Vocational Rehabilitation Services Program. Program income is considered earned when it is received (Section 108 of the Act (29 USC 728); 34 CFR section 361.63).

The State VR Agency is authorized to treat program income as a deduction from total allowable costs or as an addition to the grant funds to be used for additional allowable

program expenditures, in accordance with 34 CFR sections 80.25(g)(1) or (2) (34 CFR section 361.63).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

b. SF-270, *Request for Advance or Reimbursement* – Only grantees placed on reimbursement are required to complete this form to request payment of grant award funds. The requirement to use this form is imposed on an individual recipient basis.

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

f. RSA-2, *Program Cost Report (OMB No. 1820-0017).* State VR agencies submit the RSA-2 annually.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

DEPARTMENT OF EDUCATION

CFDA 84.181 SPECIAL EDUCATION—GRANTS FOR INFANTS AND FAMILIES
CFDA 84.393 SPECIAL EDUCATION—GRANTS FOR INFANTS AND FAMILIES, RECOVERY ACT

I. PROGRAM OBJECTIVES

The purposes of the Individuals with Disabilities Education Act (IDEA), Part C (Part C) State formula grant programs are to: (1) to develop and implement a statewide, comprehensive, coordinated, multi-disciplinary interagency system that provides early intervention services for infants and toddlers with disabilities and their families; (2) to facilitate the coordination of payment for early intervention services from Federal, State, local and private sources (including public and private insurance coverage); (3) to enhance the State's capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and (4) to encourage States to expand opportunities for children under the age of three years who would be at risk of having substantial developmental delay if they did not receive early intervention services (20 USC 1431(b); 34 CFR section 303.1).

II. PROGRAM PROCEDURES

Generally, the State is responsible for maintaining and implementing a statewide system to identify, evaluate and provide early intervention services to eligible children and their families. Such a system includes a public awareness and child find system, development and implementation of an individualized family service plan for eligible children, maintenance of a central directory of information about early intervention services, personnel development and contracting for or otherwise providing services to eligible children and their families.

The State designates a lead agency that is responsible for administering, and supervising activities funded by this program. Program services may be carried out by the lead agency, other State agencies, or by public or private organizations either under contract to the State or through other arrangements with such agencies. The lead agency also monitors activities that are covered by the program, whether or not this program funds them. The State also must establish a State Interagency Coordinating Council that, among other things, advises and assists the lead agency in the development and implementation of policies and achieving participation, cooperation, and coordination of all appropriate public agencies in the State.

The amount of a State's allocation under Part C for a fiscal year is based on its proportion of the general population of infants and toddlers, from birth through two years, in the State (i.e., the ratio of the number of infants and toddlers in the State compared to the number of infants and toddlers in all the States).

Funds from the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) were distributed to the States on a formula basis by the Department of Education (ED). States received an initial funding of 50 percent of their IDEA, Part C ARRA awards (CFDA 84.393) in April 2009 on the basis of their eligibility for Fiscal Year (FY) 2008 non-ARRA IDEA funds under CFDA 84.181 and submission of the certification required by section 1607 of ARRA. States did not submit a new IDEA Application or assurances to receive this initial funding. The grant conditions in the State's approved FY 2008 IDEA Part C Application for funds for CFDA 84.181, as well as the requirements of ARRA, apply to the use of the IDEA Part C ARRA funds. The second half of the ARRA IDEA awards were made in August 2009. The grant conditions in the State's approved FY 2009 IDEA Part C Application for funds for CFDA 84.181, as well as the requirements of ARRA, apply to the use of the IDEA Part C ARRA funds in this second award. States were not required to submit additional documentation to receive these funds. By accepting the second half ARRA IDEA Part C funds, States agreed to comply with all accountability and reporting requirements in section 1512 of the ARRA.

Source of Governing Requirements

These programs are authorized under 20 USC 1431 through 1445 **and ARRA**. Implementing regulations specific to this program are in 34 CFR part 303.

Availability of Other Program Information

A number of documents posted on ED's website contain information pertinent to Part C requirements in this program supplement. **They are the ARRA guidance at http://www2.ed.gov/policy/gen/leg/recovery/programs.html and the requirements for equipment/construction at http://spp-apr-calendar.rrfcnetwork.org/explorer/view/id/629**.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for details of the requirements.

Certain compliance requirements that apply to multiple Department of Education (ED) programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references to the Cross-Cutting Section for these requirements.

A. Activities Allowed or Unallowed

The approved application describes the activities to be carried out. Generally, allowable activities for a State include:

1. Maintaining a statewide, comprehensive, coordinated, multi-disciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

2. Providing direct early intervention services for infants and toddlers with disabilities and their families, which are otherwise not funded through other public or private sources.

3. Expanding and improving on services under Part C that are otherwise available for infants and toddlers and their families.

4. Providing a free appropriate public education, in accordance with Part B of the IDEA, to children with disabilities from their third birthday to the beginning of the following school year.

5. With the written consent of the parents, continuing to provide early intervention services under this part to children with disabilities from their third birthday until such children enter, or are eligible under State law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with Part B.

6. In any State that does not provide services for at risk infants and toddlers, to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purpose of: (a) identifying and evaluating at-risk infants and toddlers; (b) making referrals of the infants and toddlers identified and evaluated; and (c) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant and toddler for services.

7. The use of IDEA funds for the acquisition of equipment or construction or alteration of facilities must be approved by ED based on a determination by ED that the program would be improved by allowing funds to be used for these purposes (20 USC 1404, 1433 and 1438).

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section (84.000, Section III, B.3), which explains that a Restricted Indirect Cost Rate (RICR) must be applied. For States, when ED is the cognizant agency for indirect costs under OMB Circular A-87, RICRs are incorporated into indirect cost rate agreements approved by ED.

However, Part C is often administered by State public agencies for which ED is not the cognizant Federal agency for indirect costs. For these State public agencies, the provisions of ED regulations pertaining to RICRs may not be reflected in the indirect cost rate charged to Part C. However, indirect costs charged to Part C must conform to the RICR regulations (20 USC 1437(b)(5)(B); 34 CFR sections 76.560 through 34 CFR 76.580).

C. Cash Management

See ED Cross-Cutting Section.

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort*

The total amount of State and local funds budgeted for expenditure in the current fiscal year for early intervention services for children eligible under Part C and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowances may be made for: (a) decreases in the number of children who are eligible to receive Part C early intervention services and (b) unusually large amounts of funds expended for such long-term purposes such as the acquisition of equipment and the construction of facilities (20 USC 1437(b)(5); 34 CFR section 303.124).

Although this requirement is identified as a supplement not supplant requirement in the law and regulation, this Supplement classifies this type of requirement as maintenance of effort.

2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

See ED Cross-Cutting Section and the following:

ARRA funds under Part C of the IDEA (CFDA 84.393) are available for obligation beginning with the date of enactment of the ARRA (February 17, 2009). IDEA-C ARRA funds will remain available for obligation by States until September 30, 2011, which includes the one-year carryover period authorized under the Tydings Amendment (Section 1603 of ARRA and 20 USC 1225(b)).

L. Reporting

1. Financial Reporting

See ED Cross-Cutting Section.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

DEPARTMENT OF EDUCATION

CFDA 84.186 SAFE AND DRUG-FREE SCHOOLS AND COMMUNITIES -- STATE GRANTS (Title IV, Part A, Subpart 1 of ESEA)

I. PROGRAM OBJECTIVES

The objective of the Safe and Drug-Free School and Communities program authorized by the Safe and Drug-Free Schools and Communities Act (SDFSCA), contained in Title IV of the ESEA, is to support programs that prevent violence in and around schools and by strengthening programs that prevent the illegal use of alcohol, tobacco, and drugs, involve parents, and are coordinated with related Federal, State, and community efforts and resources.

II. PROGRAM PROCEDURES

In general, SDFSCA funds are allocated to States based on their relative share of school-aged population and Title I Concentration Grant funds. Of each State's annual allocation amount, at least 80 percent is awarded to the State Educational Agency (SEA) for programs described in Section 4112(b) of the SDFSCA and no more than 20 percent may be awarded to the Governor for programs described in Section 4112(a) of the SDFSCA. On the grant documents the Department of Education (ED) codes these programs with an "A" following the CFDA number to indicate a grant to the SEA program and a "B" following the CFDA number to indicate a grant to the Governor's program. However, these are treated as one program under OMB Circular A-133.

SEAs may use a portion of the funds they receive for administrative activities and to carry out State-level program activities. The majority of the funds received by an SEA must be distributed to local educational agencies (LEAs) for drug and violence prevention activities. LEAs must submit an application that includes, among other things, how it will use the funds.

Governors also may use a portion of the funds they receive for administration. Excluding the percentage of funds reserved for administration, Governors must make grants to, or enter into contracts with eligible entities for drug and violence prevention activities. Governors may have another State agency, including an SEA, administer the program on their behalf. No matter which agency administers the program, the program remains the responsibility of the Governor's office (Sections 4112 and 4113 of the SDFSCA (20 USC 7112 and 7113)).

Source of Governing Requirements

This program is authorized by Title IV, Part A, Subpart 1 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (Pub. L. No. 107-110), which is codified at 20 USC 7101 through 7117 and 7161 through 7165. There are no program regulations. However, this program is subject to the Education Department General Administrative Regulations (EDGAR) at 34 CFR parts 76, 77, 79, 80, 81, 82, and 85.

Availability of Other Program Information

ED issued non-regulatory guidance to assist in the administration of this program. That guidance and other program information are available on the Internet at http://www.ed.gov/about/offices/list/osdfs/index.html?src=mr.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple ESEA programs are discussed once in the Department of Education (ED) Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references to the Cross-Cutting Section for these requirements. Also, as discussed in the Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements.

A. Activities Allowed or Unallowed

Also see ED Cross-Cutting Section.

1. ***Activities Allowed***

a. *Use of Funds by State*

A State may use SDFSCA funds to carry out various activities including:

(1) *Administration Costs* (Sections 4112(a)(6) and (b)(2)(A) of the SDFSCA (20 USC 7112(a)(6) and (b)(2)(A))).

(2) *State-Level Activities*

A State may use a portion of its SDFSCA funds for grants and contracts to plan, develop, and implement capacity building, technical assistance and training, evaluation, program improvement services, and coordination activities for local educational agencies, community-based organizations, and other public and private entities (Section 4112(c)(2) of the SDFSCA (20 USC 7112(c)(2))).

b. *Use of Funds by the Governor*

A Governor must use a competitive process to award grants or contracts for programs or activities that complement and support the activities of LEAs. Grants or contracts may be awarded to LEAs, community-based organizations (including community anti-drug coalitions) other public

entities and private organizations and consortia of these agencies. Grants or contracts awarded under Section 4112(a)(1) shall be subject to a peer review process (Section 4112(a) of the SDFSCA (20 USC 7112(a))).

c. *Use of Funds by LEAs*

(1) LEAs may use funds for drug and violence prevention activities as listed in Section 4115(b)(2) of the SDFSCA (20 USC 7115(b)(2)). (This Section may be found on the Internet at http://www.ed.gov/legislation/ESEA02/pg52.html)

(2) An LEA may apply to the SEA for a waiver of the requirement found in Section 4115(a)(1)(C) that the program or activity be based on scientifically based research that provides evidence that it will reduce violence and illegal drug use (Section 4115(a)(3) of the SDFSCA (20 USC 7115(a)(3))).

d. *Rural Education Achievement Program (REAP)* (LEAs)

REAP provides authorization to spend all or part of funds under certain programs for activities authorized in other programs. After notification to the SEA, an LEA that meets both of the following requirements may spend all or part of this program's funds for activities authorized in Title I Grants to Local Educational Agencies (LEAs) (84.010); Eisenhower Professional Development State Grants (84.281); and Education Technology Grants (84.318):

(1) Have an Average Daily Attendance of less than 600 students; and

(2) All of the schools in the LEA have been coded as rural schools by the National Center for Educational Statistics (NCES code 7 or 8) (Title III of the Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, 114 Stat. 2763A-89, December 21, 2000).

See the program sections of III.A, "Activities Allowed or Unallowed" in this program supplement for the respective compliance requirements.

e. *Transferability*

See ED Cross-Cutting Section

2. ***Activities Unallowed*** (Governors/SEAs/LEAs) – SDFSCA funds may not be used for construction, or to provide medical services, drug treatment, or rehabilitation. Pupil services or referral to treatment for students who are victims of or witnesses to crime or who use alcohol, tobacco, or drugs are not included in the prohibition (Section 4154 of the SDFSCA (20 USC 7164)).

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

C. Cash Management

See ED Cross-Cutting Section.

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort* (SEAs/LEAs)

See ED Cross-Cutting Section.

2.2 Level of Effort – *Supplement Not Supplant*

See ED Cross-Cutting Section.

3. Earmarking

Also see ED Cross-Cutting Section.

a. *State-level programs, administrative costs, initial allocations to LEAs* (SEAs)

(1) A minimum of 93 percent of the SEA's total allocation must be distributed to its LEAs. Of the amount made available for distribution to LEAs, an SEA must allocate (a) 60 percent based on the relative amount LEAs received under Part A of Title 1 for the preceding fiscal year; and (b) 40 percent to LEAs based on their relative share of enrolled students in public and private non-profit elementary and secondary schools (Sections 4112(b)(1) and 4114(a)(1) of the SDFSCA (20 USC 7112(b)(1) and 7114(a)(1))).

(2) An SEA may reserve not more than five percent of its total allocation for State-level activities authorized under Section 4112(c)(1) of the SDFSCA (20 USC 7112(c)(1))).

b. *Administrative Cost*

(1) *Governor's Program*

A Governor may use no more than three percent of its total allocation for administrative activities (Section 4112(a)(6) of the SDFSCA (20 USC 7112(a)(6))).

(2) *SEA*

An SEA may also reserve not more than three percent of its total allocation for administrative costs, including the implementation of the Uniform Management Information and Reporting System. However, in fiscal year 2002, the SEA may reserve up to an additional one percent of its total allocation for administrative costs, provided that the additional reservation is used to support the Uniform Management Information and Reporting System (Section 4112(b)(2) of the SDFSCA (20 USC 7112(b)(2))).

(3) *LEA*

An LEA may use no more than two percent of its total allocation for administrative activities (Section 4114(a)(2) of the SDFSCA (20 USC 7114(a)(2))).

c. *Cap on Security Devices and Security Personnel (LEAs)*

An LEA may use not more than 40 percent of its allocation to support the following activities (a) through (e) but not more than half of that amount or a maximum of 20 percent to support the following activities (a) through (d). An LEA may use the entire 40 percent to support the following activity (5). However, the LEA may use funds for the following activities (a) through (d) only if funding for these activities was not received from other Federal agencies (Section 4115(c) of the SDFSCA (20 USC 7115(c))).

(1) Acquiring and installing metal detectors, electronic locks, surveillance cameras, or other related equipment and technologies (20 USC 7115(b)(2)(E)(ii)).

(2) Reporting criminal offenses committed on school property (20 USC 7115(b)(2)(E)(iii)).

(3) Developing and implementing comprehensive school security plans or obtaining technical assistance concerning those plans (20 USC 7115(b)(2)(E)(iv)).

(4) Supporting safe zones of passage activities, including bicycle and pedestrian safety programs, which ensure that students can travel; safely to and from school (20 USC 7115(b)(2)(E)(v)).

(5) Hiring and mandatory training of school security personnel who interact with students in support of youth drug and violence prevention activities implemented in schools (20 USC 7115(b)(2)(E)(vi)).

H. Period of Availability of Federal Funds (SEAs/LEAs Programs)

Also see ED Cross-Cutting Section.

1. *Return and Reallocation of Funds* (SEA/LEA)

   a. Except as stated in III.H.2, "Period of Availability of Federal Funds – Carryover of Funds (LEA)" below, an LEA must return to the SEA any funds that remain unobligated after a period of one-year beginning on the date the LEA receives its original allocation. The SEA must reallocate the funds to LEAs that have submitted plans for using the funds for SDFSCA programs and activities on a timely basis (Section 4114(a)(3)(A) of the SDFSCA (20 USC 7114(a)(3)(A))).

   b. If an LEA does not apply for SDFSCA funds or if an LEA is disapproved for funding, the SEA must reallocate that amount to one or more of its other LEAs (Section 4114(a)(3)(C) of the SDFSCA (20 USC 7114(a)(3)(C))).

2. *Carryover of Funds* (LEA)

   An LEA may retain up to 25 percent of its fiscal year allocation for obligation in the next Federal fiscal year. If an LEA wishes to retain an amount greater than 25 percent of its fiscal year allocation for use in a succeeding year, it must demonstrate good cause for such a carryover to its SEA, and the SEA must approve the request for additional carryover (Section 4114(a)(3)(B) of the SDFSCA (20 USC 7114(a)(3)(B))).

L. Reporting

1. Financial Reporting (SEAs/LEAs/Governor's Programs)

See ED Cross-Cutting Section.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act –Applicable

N. Special Tests and Provisions

1. Participation of Private School Children (SEAs/LEAs)

See ED Cross-Cutting Section.

2. Schoolwide Programs (LEAs)

See ED Cross-Cutting Section.

3. Access to Federal Funds for New or Significantly Expanded Charter Schools

See ED Cross-Cutting Section.

DEPARTMENT OF EDUCATION

CFDA 84.282 CHARTER SCHOOLS

I. PROGRAM OBJECTIVES

The objective of the Charter Schools Program (CSP), authorized under Title V, Part B, Subpart 1 of the Elementary and Secondary Education Act, is to increase national understanding of the charter schools model by (1) providing financial assistance for the planning, program design, and initial implementation of charter schools; (2) expanding the number of high-quality charter schools available to students across the Nation; (3) evaluating the effects of charter schools; and (4) encouraging States to provide support to charter schools for facilities financing in an amount more nearly commensurate to the amount States typically have provided for traditional public schools.

II. PROGRAM PROCEDURES

Generally, CSP funds are awarded on a competitive basis to State educational agencies (SEAs) in States with statutes specifically authorizing charter schools. SEAs use their CSP funds to award subgrants to eligible applicants for planning, program design, and initial implementation of charter schools; and to support the dissemination of information about, and successful practices in, charter schools. If an eligible SEA elects not to participate in this program, or its application is not approved, non-SEA eligible applicants, including charter schools, that operate in the State may apply directly to the Secretary.

Grants awarded to SEAs are for a period not to exceed 3 years, unless extended by waiver by ED. Once a 3-year award is over, an SEA may apply for a subsequent 3-yearaward.

A charter school is limited to receiving not more than one grant or subgrant for planning and initial implementation activities and not more than one grant or subgrant for dissemination activities, unless the charter school is granted a waiver. A charter school may apply to the SEA for funds to carry out dissemination activities if the charter school has been in operation for at least 3 consecutive years and has demonstrated overall success, including substantial progress in improving student achievement; high levels of parent satisfaction; and the management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school. A charter school may receive a dissemination grant, whether or not the charter school has applied for or received funds under the CSP for planning or implementation.

Planning and initial implementation grants awarded to non-SEA eligible applicants by the Secretary and subgrants awarded by SEAs are awarded for a period not to exceed 3years, of which not more than 18 months may be used for planning and not more than 2 years may be used for implementation. Grants or subgrants to charter schools for dissemination activities are made for a period not to exceed 2 years.

The Consolidated Appropriations Act, Fiscal Year 2010 (Pub. L. No. 111-117, 123 Stat. 3264, December 16, 2009) authorized the Secretary of Education to make awards to non-profit charter management organizations and other not-for-profit entities for the replication and expansion of successful charter school models. Twelve 5-year grants were awarded in September 2010.

Source of Governing Requirements

This program is authorized by Title V, Part B, Subpart 1 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (20 USC 7221-7221j). This program is subject to the Education Department (ED) General Administrative Regulations at 34 CFR parts 75, 76, 77, 79, 80, 81, 82, 85, 86, and 99. There are no program specific regulations. However, 34 CFR sections 76.785 through 76.799 prescribe administrative requirements that States and local educational agencies must follow when allocating funds to new or expanding charter schools under ED's formula grant programs.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple ESEA programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements. Also, as discussed in the Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements.

A. Activities Allowed or Unallowed

Also see ED Cross-Cutting Section.

1. *Use of Funds by SEAs*

   Funds must be used to award subgrants to eligible applicants. Funds may also be used to establish a revolving loan fund for eligible applicants that have received implementation subgrants, for State dissemination activities, and for administrative costs of the program. See "III.G.3. Matching, Level of Effort, Earmarking – Earmarking" for limitations on amounts that can be used for these activities (20 USC 7221c(f)(1), (4), and (5)).

2. *Use of Funds by Eligible Applicants*

   a. Each eligible applicant may use these funds in accordance with its approved application to plan and implement a charter school, or to disseminate information about the charter school and successful practices in charter schools (20 USC 7221c(f)(2)).

b. An eligible applicant receiving a CSP grant or subgrant may use funds for: (1) post-award planning and design of the educational program, which may include: (a) refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and (b) professional development of teachers and other staff who will work in the charter school; and (2) initial implementation of the charter school, which may include: (a) informing the community about the school; (b) acquiring necessary equipment and educational materials and supplies; (c) acquiring or developing curriculum materials; and (d) other initial operational costs that cannot be met from State or local sources (20 USC 7221c(f)(3)).

c. A charter school receiving funds for dissemination activities may use funds to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program), or to disseminate information about the charter school, through such activities as: (1) assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers, and that agree to be held to at least as high a level of accountability as the assisting charter school; (2) developing partnerships with other public schools, including charter schools, designed to improve student performance in each of the schools participating in the partnership; (3) developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and (4) conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student performance in other schools (20 USC 7221c(f)(6)).

3. *Grants for the Replication and Expansion of High-Quality Charter Schools*

a. Grant funds may be used to replicate or expand a high-quality charter school. Specifically, funds may be used for (i) post-award planning and design of the educational program; and (ii) initial implementation of the charter school (see paragraph 2.b. above).

b. Grant funds may be used for initial operational costs associated with the expansion or improvement of the entity's oversight or management of its schools (see III.G.3.c. below), provided that the specific schools being created or expanded under the grant are beneficiaries of such expansion or improvement.

c. A charter school that has received replication and expansion of high-quality charter schools funds is not eligible to receive funds for the same purpose under section 5202(c)(2) of the ESEA (i.e., other funding under this program), including for planning and program design or the initial implementation of a charter school (20 USC 7221c(f)(3); Program Announcement issued May 24, 2010, *Federal Register* (75 FR 28789-28795)).

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

C. Cash Management

See ED Cross-Cutting Section.

E. Eligibility

1. Eligibility for Individuals – Not Applicable

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

A non-SEA eligible applicant for planning and initial implementation funds is a charter school developer that has applied to an authorized public chartering authority to operate a charter school, and has provided that authority with adequate and timely notice of its application for funding under the CSP. A charter school is a public school that provides a program of elementary or secondary education, or both; is nonsectarian and does not charge tuition; complies with Federal and State civil rights laws; is a school to which parents choose to send their children; and that admits students on the basis of a lottery, if more students apply than can be accommodated. The term "developer" means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators, and other school staff, parents, or other members of the local community in which a charter school project will be carried out. A for-profit entity does not qualify as an eligible applicant for purposes of the CSP. However, a CSP grant recipient may enter into a contract with a for-profit entity for the day-to-day management of the charter school (20 USC 7221i).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2. Level of Effort – Not Applicable

3. Earmarking

a. Each SEA receiving a grant may reserve not more than 5 percent of these funds for administrative expenses associated with the charter school grant program (20 USC 7221c(f)(4)).

b. The SEA must provide 95 percent of the grant funds to eligible applicants in the State for planning and initial implementation activities or for State dissemination activities. Not more than 10 percent of the grant amount may be used to establish a revolving loan fund for eligible applicants that have received a CSP grant and not more than 10 percent of the grant amount may be reserved for dissemination activities (20 USC 7221(f)(1) and (5)).

c. Grantees that receive awards for replication and expansion of high-quality charter schools may not expend more than 15 percent of grant funds for initial operational costs associated with the expansion or improvement of the eligible entity's oversight or management of its schools (see A.3.b. above) (Program Announcement issued May 24, 2010, *Federal Register* (75 FR 28789-28795)).

H. Period of Availability of Federal Funds

See ED Cross-Cutting Section.

L. Reporting

1. Financial Reporting

See ED Cross-Cutting Section.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

DEPARTMENT OF EDUCATION

CFDA 84.287 TWENTY-FIRST CENTURY COMMUNITY LEARNING CENTERS

I. PROGRAM OBJECTIVES

The objective of this program is to establish or expand community learning centers that provide students with academic enrichment opportunities along with activities designed to complement the students' regular academic program. Community learning centers must also offer families of these students literacy and related educational development. Centers, which can be located in elementary or secondary schools or other similarly accessible facilities, provide a range of high-quality services to support student learning and development, including tutoring and mentoring, homework help, academic enrichment (such as hands-on science or technology programs), and community service opportunities, as well as music, arts, sports and cultural activities. At the same time, centers help working parents by providing a safe environment for students during non-school hours or periods when school is not in session.

II. PROGRAM PROCEDURES

With enactment of the No Child Left Behind Act of 2001 (NCLB), the requirements for this program were modified from those previously established under the Improving America's Schools Act (IASA). The NCLB converted the 21st Century Community Learning Centers (CCLC) authority to a State formula grant program. In past years, the U. S. Department of Education (ED) made competitive awards directly to local education agencies (LEAs). Under the reauthorized authority, funds flow to States based on their share of Title I, Part A funds. States, in turn, use their allocations to make competitive awards to eligible entities. The Secretary of Education awards 21st CCLC grants through a formula grant process to States; the States then award, through a competitive process, subgrants to LEAs, community-based organizations (CBOs), other public or private entities, or consortia of two or more of such agencies, organizations, or entities.

Source of Governing Requirements

This program is authorized under Title IV, Part B of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the NCLB (20 USC 7171 *et seq*.; Section 4201 *et seq*. of Pub. L. No. 107-110, 115 Stat. 1765, January 8, 2002) and is subject to the Education Department General Administrative Regulations in 34 CFR parts 74, 76, 77, 79, 80, 81, 82, 85, and 86.

Availability of Other Program Information

Information on this program can be found in Non-Regulatory Guidance on the 21st Century Learning Centers (February 2003) on the Internet at:
http://www.ed.gov/programs/21stcclc/guidance2003.pdf.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple ED programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements.

A. Activities Allowed or Unallowed

Also see ED Cross-Cutting Section.

1. ***SEAs***

a. *Awards to subrecipients* (20 USC 7172(c)(1)).

b. *State Administration*:

(1) The administrative costs of carrying out its responsibilities under Title IV, Part B of the ESEA.

(2) Establishing and implementing a peer review process for grant applications; and

(3) Supervising the awarding of funds to eligible entities (20 USC 7172(c)(2)).

c. *State Activities*:

(1) Monitoring and evaluation of programs and activities.

(2) Providing capacity building, training, and technical assistance.

(3) Conducting a comprehensive evaluation (directly, or through a grant or contract) of the effectiveness of programs and activities.

(4) Providing training and technical assistance to eligible entities who are applicants for or recipients of this program (20 USC 7172(c)(3)).

2. ***LEAs, CBOs, and Other Public or Private Entities***

Grant awards may be use to carry out a broad array of before- and after-school activities (including summer recess periods) that advance student academic achievement including:

a. Remedial education activities and academic enrichment learning programs, including providing additional assistance to students to allow the students to improve their academic achievement.

b. Mathematics and science education activities.

c. Arts and music education activities.

d. Entrepreneurial education programs.

e. Tutoring services (including those provided by senior citizen volunteers) and mentoring programs.

f. Programs that provide after school activities for limited English proficient students that emphasize language skills and academic achievement.

g. Recreational activities.

h. Telecommunications and technology education programs.

i. Expanded library service hours.

j. Programs that promote parental involvement and family literacy.

k. Programs that provide assistance to students who have been truant, suspended, or expelled to allow the students to improve their academic achievement.

l. Drug and violence prevention programs, counseling programs, and character education programs (20 USC 7175(a)).

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

C. Cash Management

See ED Cross-Cutting Section.

E. Eligibility

1. Eligibility for Individuals – Not Applicable

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

SEAs make awards to eligible entities that propose to serve:

a. Students who primarily attend (1) schools eligible for schoolwide programs under section 1114 of the ESEA; or (2) schools that serve a high percentage of students from low-income families; and

b. The families of such students (20 USC 7173(a)(3)).

G. Matching, Level of Effort, Earmarking

1. Matching – LEAs, CBOs, and Other Public or Private Entities

An SEA may require matching funds on a sliding scale based on the relative poverty of the population to be targeted and the ability of the grantee to obtain such matching funds. The match may not exceed the amount of the grant award and may not be derived from other Federal or State funds. Each State educational agency that requires an entity to match funds shall permit the entity to provide all or any portion of such match in the form of in-kind contributions (20 USC 7174(d)).

2.1 Level of Effort – *Maintenance of Effort*

See ED Cross-Cutting Section

2.2 Level of Effort – *Supplement Not Supplant*

See ED Cross-Cutting Section

3. Earmarking

Also see ED Cross-Cutting Section

a. *General –* A State shall reserve not less than 95 percent of the State allotments for each fiscal year for awards to eligible entities under 20 USC 7174 (20 USC 7172(c)(1)).

b. *State Administration* – A SEA may use not more than two percent of the State allotment for State administration (20 USC 7172(c)(2)). (See III.A.1.b, "Activities Allowed or Unallowed – State Administration.")

c. *State Activities* – A State educational agency may use not more than three percent of the State allotment for State-level activities (20 USC 7172(c)(3)). (See III.A.1.c, "Activities Allowed or Unallowed – State Activities.")

H. Period of Availability of Federal Funds

Funds not obligated by the end of the Federal fiscal year for which they were appropriated may be obligated for one additional Federal fiscal year. For example, funds appropriated for the Federal fiscal year 2008 are available from October 1, 2007 (the beginning of Federal fiscal year 2008) until September 30, 2009 (Title III of Pub. L. No. 107-116, School Improvement Programs, 115 Stat. 2202) plus an additional 12 months (34 CFR sections 76.707 through 76.709).

L. Reporting

1. Financial Reporting

See ED Cross-Cutting Section.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

1. Participation of Private School Children

See ED Cross-Cutting Section.

2. Schoolwide Programs

See ED Cross-Cutting Section.

3. Access to Federal Funds for New or Significantly Expanded Charter Schools

See ED Cross-Cutting Section.

DEPARTMENT OF EDUCATION

CFDA 84.298 STATE GRANTS FOR INNOVATIVE PROGRAMS

I. PROGRAM OBJECTIVES

This former Title VI program was reauthorized by the No Child Left Behind Act (NCLB Act), Pub. L. No. 107-110, as Title V, Part A of the Elementary and Secondary Education Act (ESEA). The objectives of Title V, Part A are to: (1) support local educational reform efforts that are consistent with and support statewide education reform efforts; (2) provide funding to enable State Educational Agencies (SEAs) and Local Educational Agencies (LEAs) to implement promising educational reform programs and school improvement programs based on scientifically based research; (3) provide a continuing source of innovation, and educational improvement, including support programs to provide library services and instructional and media materials; (4) meet the educational needs of all students, including at-risk youth; and (5) develop and implement education programs to improve school, student, and teacher performance, including professional development activities and class size reduction programs (Title V, Part A, Section 5101(a) of the ESEA (20 USC 7201(a))).

II. PROGRAM PROCEDURES

Title V, Part A funds are obtained by a State following submission of an application or consolidated plan to the Secretary of Education that satisfies the application requirements as stipulated in the statute. The SEA distributes at least 85 percent of the funds to its LEAs that have filed an application that meets certain requirements. These funds are distributed to LEAs according to the relative enrollments in public and private, nonprofit schools within the school districts of the LEAs, adjusted to provide higher per pupil allocations to those LEAs with children whose education imposes a higher than average cost per child. The criteria for making these adjustments must be approved by the Secretary of Education. LEAs have complete discretion, subject only to legal requirements, in determining the allocation of expenditures of Title V, Part A funds among the allowable program activities (Title V, Part A, Sections 5112 and 5133(d) of the ESEA (20 USC 7211a and 7215b(d))).

Source of Governing Requirements

This program is authorized by Title V, Part A of the ESEA, as amended by the No Child Left Behind Act of 2001 (20 USC 7201 *et seq.*). There are no program regulations. However, the following parts of the Education (ED) Department General Administrative Regulations (EDGAR) apply to this program: 34 CFR parts 76, 77, 80, 81, 82, and 85.

Availability of Other Program Information

Other program information is available on the Internet at http://www.ed.gov/programs/innovative/titlevguidance2002.doc.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple ESEA programs are discussed once in the Department of Education (ED) Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references to the Cross-Cutting Section for these requirements. Also, as discussed in the Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements.

A. Activities Allowed or Unallowed

Also see ED Cross-Cutting Section.

1. *SEAs*

Funds may be used for:

a. One or more program areas, including:

(1) Support for the planning, design, and initial implementation of charter schools under Title V, Part B.

(2) Statewide education reform, school improvement programs and technical assistance and direct grants to LEAs which assist LEAs in providing innovative assistance programs under section 5131 of Title V, Part A.

(3) Support for the design and implementation of high-quality yearly student assessments.

(4) Support for implementation of challenging State and local academic achievement standards.

(5) Support for arrangements that provide for independent analysis to measure and report on school district achievement.

(6) Support for the school renovation, Individuals with Disabilities Education Act, and technology program described in section 321 of the 2001 Department of Education Appropriations Act, Pub. L. No. 106-554.

(7) Support for programs to assist in the implementation of the unsafe school choice policy described in section 9532 of the ESEA (20 USC 7912), which may include payment of reasonable transportation and tuition costs (Title V, Part A, Sections 5121(2) through (8) of the ESEA (20 USC 7213(2) through (8))).

b. To support the provision of supplemental educational services by LEAs to students under Title I, Part A, section 1116(e)(7) of the ESEA (20 USC 6316(e)(7))).

c. State administration, which includes

(1) Allocating funds to LEAs;

(2) Planning, supervising and processing SEA funds; and

(3) Monitoring and evaluating programs and activities (Title V, Part A, section 5121(1) of the ESEA (20 USC 7213(1))).

d. Subgrants to LEAs (Title V, Part A, section 5112(a) of the ESEA (20 USC 7211a(a))).

2. *LEAs*

LEAs must use Title V, Part A funds for programs, projects and activities under one or more of the 27 innovative assistance program areas described in Title V, Part A, section 5131(a) of the ESEA (20 USC 7215(a)). The innovative assistance program areas are:

(i) Programs to recruit, train, and hire highly qualified teachers to reduce class size, especially in the early grades, and professional development activities carried out in accordance with Title II of the ESEA, as amended.

(ii) Technology activities related to the implementation of school-based reform efforts, including professional development to assist teachers and other school personnel (including school library media personnel) regarding how to use technology effectively.

(iii) Programs for the development or acquisition and use of instructional and educational materials, including library services and materials (including media materials), academic assessments, reference materials, computer software and hardware for instructional use, and other curricular materials that are tied to high academic standards, that will be used to improve student achievement, and that are part of an overall education reform program.

(iv) Promising education reform projects, including effective schools and magnet schools.

(v) Programs to improve the academic achievement of disadvantaged elementary and secondary school students, including activities to prevent students from dropping out of school.

(vi) Programs to improve the literacy skills of adults, especially the parents of children served by the LEA, including adult education and family literacy programs.

(vii) Programs to provide for the educational needs of gifted and talented children.

(viii) Planning, design and initial implementation of charter schools as described in Title V, Part B of the ESEA.

(ix) School improvement programs or activities under sections 1116 and 1117 of the ESEA.

(x) Community service programs that use qualified school personnel to train and mobilize young people to measurably strengthen their communities through nonviolence, responsibility, compassion, respect, and moral courage.

(xi) Activities to promote consumer, economic, and personal finance education, such as disseminating information on and encouraging use of the best practices for teaching the basic principles of economics and promoting the concept of achieving financial literacy through the teaching of personal financial management skills.

(xii) Activities to promote, implement, or expand public school choice.

(xiii) Programs to hire and support school nurses.

(xiv) Expansion and improvement of school-based mental health services, including early identification of drug use and violence, assessment, and direct individual or group counseling services provided to students, parents, and school personnel by qualified school-based mental health services personnel.

(xv) Alternative educational programs for those students who have been expelled or suspended from their regular educational setting, including programs to assist students to reenter the regular educational setting upon return from treatment or alternative educational programs.

(xvi) Programs to establish or enhance prekindergarten programs for children.

(xvii) Academic intervention programs that are operated jointly with community-based organizations and that support academic enrichment, and counseling programs conducted during the school day (including during extended school day or extended school year programs), for students most at risk of not meeting challenging State academic achievement standards or not completing secondary school.

(xviii) Programs for cardiopulmonary resuscitation (CPR) training in schools.

(xix) Programs to establish smaller learning communities.

(xx) Activities that encourage and expand improvements throughout the area served by the LEA that are designed to advance student academic achievement.

(xxi) Initiatives to generate, maintain, and strengthen parental and community involvement.

(xxii) Programs and activities that expand learning opportunities through best practice models designed to improve classroom learning and teaching.

(xxiii) Programs to provide same-gender schools and classrooms, consistent with applicable law and with guidelines published by the Secretary of Education in the May 8, 2002, *Federal Register* (67 FR 31101).

(xxiv) Service learning activities.

(xxv) School safety programs, including programs to implement the unsafe school choice policy described in section 9532 of the ESEA (20 USC 7912) and which may include payment of reasonable transportation and tuition costs.

(xxvi) Programs that employ research-based cognitive and perceptual development approaches and rely on a diagnostic-prescriptive model to improve students' learning of academic content at the preschool, elementary, and secondary levels.

(xxvii) Supplemental education services, as defined in section 1116(e) of the ESEA.

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

C. Cash Management

See ED Cross-Cutting Section.

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort* (SEAs)

The combined fiscal effort per child or the aggregate expenditures within the State for free public education for the preceding fiscal year must be at least 90 percent of the combined fiscal effort per child or aggregate expenditures for the second preceding fiscal year, unless specifically waived by the Secretary of Education for one fiscal year only.

Expenditures to be considered are State and local expenditures for free public education. These expenditures include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student activities. States may include in the maintenance of effort calculation expenditures of Federal funds for which no accountability to the Federal Government is required. Certain Impact Aid funds are an example of such funds. (However, Impact Aid funds for which there is a requirement of accountability to the Federal Government, such as those received for children with disabilities, cannot be included in the calculation.) States must be consistent in the manner in which they calculate maintenance of effort from year-to-year in order to ensure that the annual comparisons are on the same basis (i.e., calculations must consistently, from year-to-year, either include or exclude expenditures of Federal funds for which accountability to the Federal Government is not required). Expenditures not to be considered are any expenditures for community services, capital outlay, or debt service, and any expenditures of Federal funds for which accountability to the Federal Government is required. (Title V, Part A, section 5141(a) of the ESEA (20 USC 7217(a))).

2.2 Level of Effort – *Supplement Not Supplant* (SEAs/LEAs)

See ED Cross-Cutting Section.

3. Earmarking (SEAs)

Also see ED Cross-Cutting Section.

a. *Minimum 85 Percent Distribution to LEAs*

An SEA must distribute at least 85 percent of the funds to its LEAs, based on relative enrollments in public and private, non-profit schools within the LEAs (Title V, Part A, section 5112(a) of the ESEA (20 USC 7211a(a))).

The calculation of relative enrollments must be based on the number of children currently enrolled in (1) public schools and (2) those private schools that participated in the Title V, Part A programs during the preceding fiscal year (FY). (For FY 2002 LEA allocations, the State will include in the calculation enrollment data for those private schools that participated in the former Title VI program during the FY 2001 fiscal year.) If current enrollment data is not available, an SEA may use enrollment data from the preceding year (Title V, Part A, section 5112(c) of the ESEA (20 USC 7211a(c))).

The SEA must adjust the relative enrollments to provide higher per-pupil allocations only to those LEAs that serve the greatest numbers or percentages of children living in areas with high concentrations of economically disadvantaged families; children from economically disadvantaged families; or children living in sparsely populated areas. The criteria for making these adjustments must be approved by the Secretary of Education (Title V, Part A, section 5112(c)(3) of the ESEA (20 USC 7211a(c)(3))).

b. *Remaining Reserved for State Use (Maximum of 15 Percent)*

Of the amount reserved for State use, no more than 15 percent may be used for State administration of Title V, Part A or transferred to a Consolidated Administration pool. See "III.A.1, Activities Allowed or Unallowed – SEAs" for what is considered "administration" (Title V, Part A, section 5112(b) of the ESEA (20 USC 7211a(b))).

c. *Allocation of Increased Amounts*

In any fiscal year in which a State's Title V, Part A allocation is larger than its FY 2002 Title V, Part A allocation, it must distribute the entire excess amount to its LEAs using the formula described above in "III.G.3a. Matching, Level of Effort, Earmarking – (Minimum 85 Percent Distribution to LEAs"). In any fiscal year in which the allocation to a small State (any State receiving a minimum allocation of one-half of one percent of the amount available for allocation to the States) exceeds the amount that it received in FY 2002, it must distribute at least 50 percent of the excess amount to its LEAs (Title V, Part A, section 5112(a)(2) of the ESEA (20 USC 7211a(a)(2))).

H. Period of Availability of Federal Funds

See ED Cross-Cutting Section.

L. Reporting

1. Financial Reporting

See ED Cross-Cutting Section.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

1. Participation of Private School Children

See ED Cross-Cutting Section.

2. Schoolwide Programs (LEAs)

See ED Cross-Cutting Section.

3. Access to Federal Funds for New or Significantly Expanded Charter Schools

See ED Cross-Cutting Section.

DEPARTMENT OF EDUCATION

CFDA 84.318 EDUCATION TECHNOLOGY STATE GRANTS
(Enhancing Education through Technology Program)
CFDA 84.386 EDUCATION TECHNOLOGY STATE GRANTS, RECOVERY ACT
(Enhancing Education through Technology Program)

I. PROGRAM OBJECTIVES

The primary goal of the Ed Tech program is to improve student academic achievement through the use of technology in elementary and secondary schools. It is designed to assist every student in becoming technologically literate by the end of eighth grade. The purpose of the program is, among other things, to assist States and localities in implementing and supporting a comprehensive system that effectively uses technology in elementary and secondary schools to improve student academic achievement.

II. PROGRAM PROCEDURES

State educational agencies (SEAs) in the 50 States, the District of Columbia, Puerto Rico, the Outlying areas, and the Bureau of Indian Affairs (BIA) are eligible to participate in the program.

An "eligible local entity" is either a "high-need LEA" or an "eligible local partnership" (Section 2403(3) of the ESEA, as amended by the NCLB (20 USC 6753(1))).

A "high need LEA" is an LEA that (Section 2403(3) of the ESEA as amended by the NCLB (20 USC 6753(3))):

(1) Is among those LEAs in the State with the highest numbers or percentages of children from families with incomes below the poverty line; and

(2) Serves one or more schools identified for improvement or corrective action under Section 1116 of the ESEA, or has a substantial need for assistance in acquiring and using technology.

An "eligible local partnership" is a partnership that includes at least one high-need LEA and at least one of the following (Section 2403(3) of the ESEA, as amended by the NCLB (20 USC 6753(2))):

(1) An LEA that can demonstrate that teachers in its schools are effectively integrating technology and proven teaching practices into instruction, based on a review of relevant research, and that integration results in improvement in classroom instruction and in helping students meet challenging academic standards.

(2) An institution of higher education that is in full compliance with the reporting requirements of section 207(f) of the Higher Education Act of 1965, as amended, and that has not been identified by the State as low-performing under that act.

(3) A for-profit business or organization that develops, designs, manufactures, or produces technology products or services or has substantial expertise in the application of technology in instruction.

(4) A public or private nonprofit organization with demonstrated expertise in the application of educational technology in instruction.

In making competitive awards, an SEA must give priority to applications from LEAs that receive formula allocations too small to carry out the purposes of the program effectively. In addition, an SEA must ensure that competitive awards are of sufficient size and duration to carry out the purposes of the program effectively (Section 2412(b) of the ESEA, as amended by the NCLB (20 USC 6762(b))).

Funds from the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) were distributed to the States on a formula basis by the Department of Education (ED). ARRA provided $650 million in fiscal year (FY) 2009 funds for the Ed Tech program. The Ed Tech ARRA funds are a one-time source of funds that supplement the approximately $265 million of Ed Tech funds made available under the regular FY 2009 appropriation. All Ed Tech ARRA funds are subject to the requirements in Title II, Part D, and Subpart 1 of the ESEA (Title II-D).

Source of Governing Requirements

The Ed Tech program is authorized by Title II, Part D, Subpart 1 of the ESEA, as amended by the NCLB (20 USC 6761 through 6766; Section 2411 *et seq.* of Pub. L. No. 107-110, 115 Stat. 1673, January 8, 2002); **and ARRA**. The Education Department General Administrative Regulations in 34 CFR Parts 76, 77, 79, 80, 81, 82, 85, and 86 apply to this program.

Availability of Other Program Information

Additional information about this program, including guidance relating to funding under ARRA, is available on the Internet at http://www.ed.gov/programs/edtech/legislation.html.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple ED programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements.

A. Activities Allowed or Unallowed

Also see ED Cross-Cutting Section.

1. *SEAs*

   a. State-level activities and to assist local efforts to carry out the purpose of the program, including activities such as the following (Section 2415(a)(1) of the ESEA as amended by the NCLB (20 USC 6765(a)(1))):

      (1) Developing or assisting the development and utilization of innovative strategies for the delivery of academic courses and curricula through the use of technology, including distance learning technologies, and providing other technical assistance with priority given to high-need LEAs.

      (2) Establishing or supporting public-private partnerships to acquire educational technology for high-need LEAs.

      (3) Providing professional development.

      (4) Ensuring access to educational technology for students and faculty.

      (5) Developing performance measurement systems.

      (6) Collaborating with other State educational agencies on distance learning.

2. *LEAs*

   a. Funds may be used for:

      (1) *Professional Development* – To provide ongoing, sustained, and intensive, high-quality professional development (Section 2416(a) of the ESEA as amended by the NCLB (20 USC 6766(a))).

      (2) *Other Activities* (Section 2416(b) of the ESEA as amended by the NCLB (20 USC 6766(b)))

         (a) Increasing accessibility to technology, particularly through public-private partnerships, with special emphasis on accessibility for high-need schools.

         (b) Adapting or expanding applications to technology to enable teachers to increase student academic achievement, including technology literacy, based on the review of relevant research and use of innovative distance learning strategies.

(c) Acquiring proven and effective courses and curricula that include integrated technology and that are designed to help student reach challenging academic standards.

(d) Using technology to promote parental involvement and foster communication among students, parents, and teachers about curricula, assignments, and assessments.

(e) Preparing one or more teachers in schools as technology leaders who will assist other teachers, and providing bonus payments to the technology leaders.

(f) Enhancing existing technology and acquiring new technology to support education reforms and to improve student achievement.

(g) Acquiring connectivity linkages, resources, and services to be used by students and school personnel to improve academic achievement.

(h) Using technology to collect, manage, and analyze data to inform and enhance teaching and school improvement efforts.

(i) Implementing enhanced performance measurement systems to determine the effectiveness of education technology programs funded with Ed Tech funds.

(j) Developing, enhancing, or implementing information technology courses.

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

C. Cash Management

See ED Cross-Cutting Section.

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort*

See ED Cross-Cutting Section.

2.2 Level of Effort – *Supplement Not Supplant* (LEA)

See ED Cross-Cutting Section.

3. Earmarking

Also see ED Cross-Cutting Section.

a. An SEA may retain no more than five percent of its annual allocation for State-level activities (Section 2412(a)(1) of the ESEA as amended by the NCLB (20 USC 6762(a)(1))). Of the amount retained for State-level activities, no more than 60 percent may be used for administrative purposes (Section 2404(d) of the ESEA as amended by the NCLB (20 USC 6754(d))).

b. From the 95 percent or more remaining in its total allocation, an SEA must distribute:

(1) 50 percent by formula to eligible LEAs that have submitted applications to the State. The formula is based on each LEA's proportionate share of SEA funds allocated under Part A of Title I (Section 2412(a)(2)(A) of the ESEA, as amended by the NCLB (20 USC 6762(a)(2)(A))).

(2) 50 percent on a competitive basis to "eligible local entities" that have submitted applications to the State (Section 2412(a)(2)(B) of the ESEA, as amended by the NCLB (20 USC 6762(a)(2)(B))).

(3) Notwithstanding the requirement in paragraph b(1) above, up to 100 percent of fiscal year 2006 funds, but at least 50 percent, may be used for competitive subgrants under Section 2412(a)(2)(B) (Title III of Pub. L. No. 109-149, Department of Education Appropriations Act, 2006, 119 Stat. 2864).

c. Unless an LEA can demonstrate to the satisfaction of its SEA that it already provides high-quality professional development in the integration of technology into curricula, it must use at least 25 percent of its funds for such professional development (Section 2416(a) of the ESEA as amended by the NCLB (20 USC 6766(a))).

H. Period of Availability of Federal Funds

See ED Cross-Cutting Section.

1. Funds are available for obligation for a 15-month period starting July 1 of the fiscal year for which they are appropriated, plus a carryover period of one additional fiscal year. For example, funds appropriated for fiscal year 2006 are

available for obligation from July 1, 2006 through September 30, 2008 (34 CFR section 76.709(a)).

2. **Ed Tech ARRA funds are available for obligation beginning with the date of enactment of ARRA, February 17, 2009. ARRA funds will remain available for obligation by States until September 30, 2011, which includes the one-year carryover period authorized under section 421(b) of the General Education Provisions Act (20 USC 1225(b)) (Section 1603 of ARRA and 20 USC 1225(b)).**

L. Reporting

1. Financial Reporting

See ED Cross-Cutting Section.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds

N. Special Tests and Provisions

1. Participation of Private Schools

See ED Cross-Cutting Section.

2. Schoolwide Programs

See ED Cross-Cutting Section.

3. Access to Federal Funds for New or Significantly Expanded Charter Schools

See ED Cross-Cutting Section.

DEPARTMENT OF EDUCATION

CFDA 84.365 ENGLISH LANGUAGE ACQUISITION GRANTS

I. PROGRAM OBJECTIVES

The objective of Title III, Part A of the Elementary and Secondary Education Act (ESEA) is to improve the education of limited English proficient (LEP) children and youths by helping them learn English and meet challenging state academic content and student academic achievement standards. The program also provides enhanced instructional opportunities for immigrant children and youths.

II. PROGRAM PROCEDURES

The Department of Education (ED) provides Title III, Part A funds to each State Educational Agency (SEA) on the basis of a statutory formula that takes into account the number of LEP and immigrant children and youth in each State. To receive funds, an SEA must submit to ED for approval either: (1) an individual State plan as provided under Section 3113 of the ESEA (20 USC 6823) or (2) a consolidated plan that includes Part A of Title III in accordance with Section 9302 of the ESEA (20 USC 7842). The plan must be updated to reflect substantive changes.

SEAs use Title III, Part A funds for administration, to carry out State activities, and to make two types of subgrants to LEAs. The two types of subgrants are: (1) for school districts that have experienced a significant increase in the number of immigrant children and youth in their schools and (2) for school district to use to serve LEP children. In order to receive one of these subgrants, an LEA must submit to the SEA a plan under either Section 3116 of the ESEA (20 USC 6826) or an approved consolidated plan under Section 9305 of the ESEA (20 USC 7845) (20 USC 6821).

LEAs use their immigrant subgrants to pay for enhanced instructional opportunities for immigrant children and their LEP subgrants to support activities that increase the English proficiency and academic achievement of LEP children by providing high-quality language instruction educational programs that are based on scientifically based research (20 USC 6824). SEAs are required to develop annual measurable achievement objectives for LEP children concerning their development of English proficiency while meeting challenging Sate academic standards. SEAs are required to hold LEAs accountable if they failed to meet these annual achievement objectives (20 USC 6842). In addition, LEAs receiving subgrants under Part A of Title III are required to assess the English language proficiency and academic achievement of the LEP children they serve (20 USC 6823).

Source of Governing Requirements

This program is authorized by Title III, Part A of the ESEA, as amended by the No Child Left Behind Act (Pub. L. No. 107-110) (20 USC 6821 through 6871, 7011 through 7014). The Education Department General Administrative Regulations (EDGAR) at 34 CFR parts 76, 77, 81, and 82 also apply to this program.

Availability of Other Program Information

Additional program information is available on the Internet at http://www.ed.gov/offices/OELA.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements which apply to multiple ESEA programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements. Also, as discussed in the Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements.

A. Activities Allowed or Unallowed

Also see ED Cross-Cutting Section.

1. ***SEA***

   a. *Subgrants to LEAs* (20 USC 6821(b)(1)).

   b. *State administration* (20 USC 6821(b)(3)).

   c. *State activities* – Funds may be used carry out one or more of the following State activities for this program (20 USC 6821(b)(2)):

      (1) Professional development and other activities that assist personnel in meeting State and local certification and licensing requirements for teaching LEP children.

      (2) Planning, evaluation, administration, and interagency coordination related to LEA subgrants.

      (3) Providing technical assistance and other forms of assistance to LEA subgrantees.

      (4) Providing recognition, which may include providing financial awards, to subgrantees that have exceeded their annual measurable achievement objectives pursuant to 20 USC 6842.

2. ***LEA*** – There are two types of subgrants to LEAs:

   a. *Immigrant Subgrants* – Subgrants to LEAs that have experienced significant increases in immigrant children and youth. LEAs receiving subgrants Section 3114 (20 USC 6824) shall use the funds awarded to pay for activities that provide enhanced instructional opportunities for immigrant children and youth. These activities include (20 USC 6825(e)):

      (1) Family literacy, parent outreach, and training activities designed to assist parents to become active participants in the education of their children.

      (2) Support for personnel, including teacher aides who have been specifically trained, or are being trained, to provide services to immigrant children and youth.

      (3) Provision of tutorials, mentoring, and academic or career counseling for immigrant children and youth.

      (4) Identification and acquisition of curricular materials, educational software, and technologies to be used in the program carried out with funds.

      (5) Basic instruction services that are directly attributable to the presence in the school district of immigrant children and youth, including the payment of costs of providing additional classroom supplies, costs of transportation, or such other costs as are directly attributable to such additional basic instruction services.

      (6) Other instruction services that are designed to assist immigrant children and youth to achieve in elementary schools and secondary schools in the United States, such as programs of introduction to the educational system and civics education.

      (7) Activities, coordinated with community-based organizations, institutions of higher education, private sector entities, or other entities with expertise in working with immigrants, to assist parents of immigrant children and youth by offering comprehensive community services.

   b. *LEP Subgrants*

      (1) *Administrative Costs* (20 USC 6825(b)).

      (2) *Required Activities* – An LEA is required to use LEP subgrant funds to (20 USC 6825e):

(a) Increase the English proficiency of LEP children by providing high-quality language instruction educational programs that are based on scientifically based research demonstrating the effectiveness of the programs in increasing English proficiency and student academic achievement in the core academic subjects (20 USC 6825(c)(1)).

(b) Provide high-quality professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals, administrators, and other school or community-based organizational personnel (20 USC 6825(c)(2)).

(3) *Authorized Activities* – An LEA receiving an LEP subgrant may, but is not required to, use those funds for the following activities (20 USC 6825(d)):

(a) Upgrading program objectives and effective instruction strategies.

(b) Improving the instruction program for LEP children by identifying, acquiring, and upgrading curricula, instruction materials, educational software, and assessment procedures.

(c) Providing tutorials and academic or vocational education for LEP children and intensified instruction.

(d) Developing and implementing elementary school or secondary school language instruction educational programs that are coordinated with other relevant programs and services.

(e) Improving the English proficiency and academic achievement of LEP children.

(f) Providing community participation programs, family literacy services, and parent outreach and training activities to LEP children and their families to improve the English language skills of LEP children and to assist parents in helping their children to improve their academic achievement and becoming active participants in the education of their children.

(g) Improving the instruction of LEP children by providing for (i) the acquisition or development of educational technology or instructional materials and (ii) access to, and participation in, electronic networks for materials, training, and communication; and incorporation of these resources into curricula and programs.

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

C. Cash Management

See ED Cross-Cutting Section.

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort*

See ED Cross-Cutting Section.

2.2 Level of Effort – *Supplement Not Supplant*

See ED Cross-Cutting Section.

3. Earmarking (SEAs)

a. *SEA Reserved Funds* – SEAs can reserve up to 5 percent of their entire grant to carry out State activities and for administration. (Please note, however, discussion under SEA administration below, which indicates that there are circumstances under which an SEA can have a reservation for administration that exceeds 5 percent) (20 USC 6821(b)(2)):

(1) *State Activities* – SEA reserved funds not used for administration can be used to carry out one or more of the State activities (20 USC 6821(b)(2)).

(2) *SEA Administration* – SEA's are authorized to reserve up to 3 percent of their grant, or $175,000, whichever is greater, for the costs of administration. Because SEAs can use up to $175,000 of their grant for administration, they may, because of that option, reserve more than 5 percent of their grant for administration (20 USC 6821(b)(3)).

b. *Subgrants to LEAs* – A SEA must expend at least 95 percent for subgrants to LEAs that submit approvable plans under either Section 3116 of the ESEA, (20 USC 6826) or an approvable consolidated plan under Section 9305 of the ESEA (20 USC 7845) as follows (20 USC 6821):

(1) *Immigrant Subgrants* – SEAs are required to reserve not more than 15 percent of their grants for subgrants to LEAs that have experienced a significant increase, as compared to the average of the two preceding fiscal years, in the percentage or numbers of immigrant children and youth, who have enrolled, during the fiscal year preceding the fiscal year for which the grant is made, in public and nonpublic elementary and secondary schools in the geographic areas served by the LEA. In awarding these subgrants, SEAs must equally consider LEAs that have limited or no experience in serving immigrant children and youth and the quality of the local plans that the LEAs submit under Section 3116 of the ESEA (20 USC 6826). SEAs have discretion to award these subgrants on a competitive, formula, or some other basis (20 USC 6824(d)).

(2) *LEP Subgrants* – SEAs are required by to use funds not used for State activities, SEA administration, and immigrant subgrants as described above, to award subgrants to LEAs to serve LEP children. SEAs shall allocate LEP subgrants to their LEAs on a formula basis. The formula is based on the number of LEP children in schools served by a particular LEA as a percentage of the number of such LEP children in the entire State. The SEA, however, shall not award a subgrant if the amount of the subgrant, under the statutory formula for LEP subgrants, would be less than $10,000 (20 USC 6824).

c. *LEA Administrative Costs* **–** An LEA receiving an LEP subgrant may use no more than 2 percent of that subgrant for administrative costs (20 USC 6825(b)).

H. Period of Availability of Federal Funds

See ED Cross-Cutting Section.

L. Reporting

1. Financial Reporting

See ED Cross-Cutting Section.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

1. Participation of Private School Children

See ED Cross-Cutting Section.

2. Schoolwide Programs (LEAs)

See ED Cross-Cutting Section.

3. Access to Federal Funds for New or Significantly Expanded Charter Schools

See ED Cross-Cutting Section.

DEPARTMENT OF EDUCATION

CFDA 84.366 MATHEMATICS AND SCIENCE PARTNERSHIPS

I. PROGRAM OBJECTIVES

The objective of the Mathematics and Science Partnerships program in Title II, Part B of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001 (NCLB) (Pub. L. No. 107-110), is to provide funds to State education agencies (SEAs) for improvement of the academic achievement of students in the areas of mathematics and science through partnerships comprised, at a minimum, of an engineering, mathematics, or science department of an institution of higher education (IHE) and a high-need local educational agency (LEA).

II. PROGRAM PROCEDURES

Mathematics and Science Partnerships grant funds are obtained by a State without the need to submit a program application. Except for funds that it retains for administrative costs, the SEA must award all of the program funds as competitive subgrants to eligible partnerships.

Source of Governing Requirements

This program is authorized by 20 USC 6661-6663. While there are no program regulations, the following parts of the Department of Education (ED) General Administrative Regulations apply to this program: 34 CFR parts 76 and 77. General ESEA requirements in 34 CFR part 299 also apply.

Availability of Other Program Information

There is no additional publicly available guidance on administration of the program.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple ESEA programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements. Also, as discussed in the Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements.

A. Activities Allowed or Unallowed

Also see ED Cross-Cutting Section.

1. ***SEAs***

   a. *Subgrants to Eligible Partnerships* (20 USC 6662).

   b. *Administrative Costs.* An SEA may claim a reasonable and necessary amount of program funds for administrative costs (20 USC 6662).

2. ***Eligible Partnerships***

   a. An eligible partnership project may focus one or more of the broad span of activities designed to improve the quality of instruction in mathematics and science in the State's elementary and secondary schools that are identified in 20 USC 6662(c).

   b. Eligible partnerships also may conduct a wide array of other projects designed to recruit qualified individuals to become mathematics and science teachers, or otherwise to enhance the proficiency of mathematics and science teachers who participate in project activities (20 USC 6662(c)).

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

C. Cash Management

See ED Cross-Cutting Section.

E. Eligibility

1. Eligibility for Individuals – Not Applicable

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

a. An eligible partnership must include both of the following:

(1) An engineering, mathematics, or science department of an institution of higher education, and

(2) A high-need LEA (as defined by the State; the ESEA contains no definition of this term, and ED has not established one) (20 USC 6661(b)(1)).

b. An eligible partnership may include other entities, such as: another engineering, mathematics, science, or teacher training department of an institution of higher education; additional LEAs, public charter schools, public or private elementary schools or secondary schools, or a consortium of such schools; a business; or a non-profit or for-profit organization of demonstrated effectiveness in improving the quality of mathematics and science teachers (20 USC 6661(b)(1)).

c. Eligible partnerships apply to the SEAs for program funds on a competitive basis. The application must contain, at minimum:

(1)The results of a comprehensive assessment of the teacher quality and professional devel

(2) A description of how the activities to be carried out by the eligible partnership will be aligned with challenging State academic content and student academic achievement standards in mathematics and science and with other educational reform activities that promote student academic achievement in mathematics and science;

(3) A description of how the activities to be carried out by the eligible partnership will be based on a review of scientifically based research, and an explanation of how the activities are expected to improve student academic achievement and strengthen the quality of mathematics and science instruction;

(4) A description of:

(a) How the eligible partnership will carry out the authorized activities described in 20 USC 6662(c); and

(b) The eligible partnership's evaluation and accountability plan described in 20 USC 6662(e); and

(5) A description of how the eligible partnership will continue the activities funded under the program after the original grant or subgrant period has expired (20 USC 6662(a)(2) and 6662(b)).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort* – Not Applicable

2.2 Level of Effort – *Supplement Not Supplant* (SEAs/eligible partnerships)

See ED Cross-Cutting Section.

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

See ED Cross-Cutting Section.

L. Reporting

1. Financial Reporting

See ED Cross-Cutting Section.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

1. Participation of Private School Children (LEAs in eligible partnerships)

See ED Cross-Cutting Section.

2. Competition (SEAs)

Compliance Requirement – The SEA must select eligible partnerships for award on a competitive basis. No specific competition requirements have been established by ED. The State must follow its own requirements for competing subgrant awards (20 USC 6662(a)(2)(A)(ii)).

Audit Objective – Determine whether the SEA has selected applications for funding on the basis of a competitive process that follows State procedures.

Suggested Audit Procedures

a. Review the SEA's procedures for competing subgrant awards.

b. Review a sample of funded partnerships to determine if the SEA followed State competition procedures.

DEPARTMENT OF EDUCATION

CFDA 84.367 IMPROVING TEACHER QUALITY STATE GRANTS

I. PROGRAM OBJECTIVES

The objective of the Improving Teacher Quality State Grants program in Title II, Part A of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001 (NCLB) (Pub. L. No. 107-110), is to provide funds to State educational agencies (SEAs), local educational agencies (LEAs), State agencies for higher education (SAHEs), and partnerships comprised of institutions of higher education (IHEs), high-need LEAs and other entities to increase the academic achievement of all students by helping schools and school districts to: (1) improve teacher and principal quality (including hiring teachers to reduce class size) and (2) ensure that all teachers are highly qualified.

II. PROGRAM PROCEDURES

Improving Teacher Quality State Grant funds are obtained by a State on the basis of the Department of Education's (ED) approval of either (1) an individual State plan as provided in Section 2112 of the ESEA (20 USC 2112), or (2) a consolidated application that includes the program, in accordance with Section 9302 of the ESEA (20 USC 7842). Separate grants are provided to SEAs and SAHEs.

Source of Governing Requirements

This program is authorized by Title II, Part A, subparts 1-3 of the ESEA as amended by the NCLB (Pub. L. No. 107-110) (20 USC 2111 – 2134). The program purpose and definitions in Title II, Part A of the ESEA, Sections 2101 and 2102 (20 USC 6601 – 6602), and the accountability provisions in Title II, Part A, Subpart 4, Section 2141 (20 USC 6641) also apply to this program. While there are no program regulations, the following parts of the ED General Administrative Regulations (EDGAR) apply to this program: 34 CFR parts 76, 77, 80, 82, 85, and 86. General ESEA requirements in 34 CFR part 299 also apply. Rules governing the amount of funds available to both the SEA and to the SAHE for the costs of administration and planning were announced in a notice published in the *Federal Register* on May 22, 2002 (67 FR 35967, 35977).

Availability of Other Program Information

Non-regulatory guidance for the Title II, Part A program is available on ED's web site at http://www.ed.gov/programs/teacherqual/guidance.doc.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple ESEA programs are discussed once in the Department of Education (ED) Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements. Also, as discussed in the Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements.

A. Activities Allowed or Unallowed

Also see ED Cross-Cutting Section.

1. ***SEAs***

   a. *Subgrants to LEAs* (Sections 2113(a)(1) of the ESEA; (20 USC 6613(a)(1))).

   b. *Subgrants to Eligible Partnerships* (Sections 2113(a)(2) of the ESEA; 20 USC 6613(a)(2))).

   c. *State Activities* – Allowable State-level activities are identified in Section 2113(c) of the ESEA. Examples of allowable activities include: (1) developing or enhancing activities to encourage high-quality individuals to become teachers or principals through alternative routes for State certification; (2) carrying out activities that focus on increasing the subject matter knowledge of teachers and the instructional leadership skills of principals; (3) reforming and streamlining teacher licensure requirements as well as aligning licensure requirements with State content standards; (4) developing and expanding mentoring activities for new teachers and activities that help teachers use assessment data to guide instructional decisions; (5) implementing teacher testing to assess subject matter knowledge, and conducting activities to help teachers meet the requirements in Section 9101(23) (20 USC 7801(23)) to become "highly qualified;" (6) developing and expanding merit-based performance; and (7) developing systems to measure the effectiveness of professional development on student academic achievement (Section 2113(c) of the ESEA (20 USC 6613(c))).

   d. Administrative costs (Sections 2113(d) of the ESEA; 20 USC 6613(d))).

2. ***LEAs***

   Consistent with the LEA's assessment of need for professional development and hiring, LEAs may use funds for a broad span of activities designed to improve teacher quality that are identified in Section 2123(a) of the ESEA. Examples of allowable activities include: (1) providing "professional development" (as the term is defined in Section 9101(34) of the ESEA, 20 USC 6602(34)) to teachers, and, where appropriate, to principals and paraprofessionals in content knowledge and classroom practice; (2) developing and implementing a wide variety of

strategies and activities to recruit, hire, and retain highly qualified teachers and principals; (3) developing and implementing initiatives to promote retention of highly qualified teachers and principals; (4) carrying out professional development programs to assist principals and superintendents in becoming outstanding managers and educational leaders; and (5) carrying out teacher advancement initiatives that promote professional growth and emphasize multiple career paths and pay differentiation, and establish programs and activities related to exemplary teachers. LEAs also may use funds to hire teachers to reduce class size (Sections 2101 and 2123(a) of the ESEA (20 USC 6601 and 6623(a))).

3. ***Subrecipients of SAHEs – Eligible Partnerships***

Eligible Partnerships must use the funds for the following activities:

a. Professional development activities (as the term is defined in Section 9101(34) of the ESEA (20 USC 6602(34)) in core academic subjects to ensure that teachers and "highly qualified paraprofessionals" (as the term is defined in Section 2102(4) of the ESEA (20 USC 6602(4))), and, if appropriate, principals have subject matter knowledge in the academic subjects the teachers teach, and principals have instructional leadership skills that will help them work effectively with teachers (Sections 2101 and 2134(a)(1) of the ESEA (20 USC 6601 and 6634(a)(1))).

b. Developing and providing assistance to LEAs and to their teachers, highly qualified paraprofessionals, or principals for sustained, high-quality professional development activities that (Sections 2101 and 2134(a)(2) of the ESEA (20 USC 6601 and 6634(a)(2)):

(1) Ensure the use of challenging State academic content standards, student achievement standards, and State assessments to improve instruction.

(2) May include intensive programs designed to prepare these individuals to return to school to provide instruction related to their professional development to others in the school.

(3) May include activities of partnerships between one or more LEAs, schools or IHEs in order to improve teaching and learning in low-performing schools, as the term is used in Section 1116 of the ESEA.

B. Allowable Costs/Cost Principles (All grantees)

See ED Cross-Cutting Section.

C. Cash Management

See ED Cross-Cutting Section.

E. Eligibility

1. Eligibility for Individuals – Not Applicable

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

a. A subgrant to an "Eligible Partnership" must be made on a competitive basis and the Eligible Partnership must include all of the following (Sections 2131(1)(A) and 2132(a) of the ESEA (20 USC 6631(1)(A) and 6632(a))):

(1) A private or State IHE and the division of the institution that prepares teachers and principals.

(2) A school of arts and sciences.

(3) A "high-need LEA" (as the term is defined in Section 2102(3) of the ESEA (20 USC 6602(3))).

b. An Eligible Partnership may include other entities, such as an LEA that is not a high-need LEA, a public charter school, an elementary school or secondary school, an educational service agency, a non-profit educational organization, another IHE, a non-profit cultural organization, a teacher or principal organization, or a business (Section 2131(1)(B) of the ESEA (20 USC 6631(1)(B))).

c. LEAs apply to the SEAs for program funds. The amount of each LEA's allocation that an SEA provides reflects (1) a "hold-harmless" based on the amount of funds the LEA received in FY 2001 under the former Eisenhower Professional Development and Class-Size Reduction programs, and (2) the LEA's share of any funds still remaining. In any year in which the amount available in the State for LEA grants exceeds the sum of the "hold-harmless" amounts for LEAs in the State, the SEA must distribute the excess funds based on the following formula (Section 2121(a) of the ESEA (20 USC 6621(a))):

(1) 20 percent of the excess funds must be distributed to LEAs based on the relative population of children ages five through 17, as determined by the Secretary.

(2) 80 percent of the excess funds must be distributed to LEAs based on the relative numbers of individuals ages five through 17 from families with incomes below the poverty line, as determined by the Secretary.

G. Matching, Level of Effort, Earmarking

1. Matching (LEAs) – Not Applicable

2. Level of Effort – *Maintenance of Effort* (SEAs/LEAs)

See ED Cross-Cutting Section.

2.1 Level of Effort – *Supplement Not Supplant* (SEAs/LEAs)

See ED Cross-Cutting Section. Supplement Not Supplant is not applicable to the SAHEs and their subgrants to Eligible Partnerships (Section 2134 of the ESEA (20 USC 6634)).

3. Earmarking

See ED Cross-Cutting Section.

H. Period of Availability of Federal Funds (All grantees)

See ED Cross-Cutting Section.

L. Reporting

1. Financial Reporting

See ED Cross-Cutting Section.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

1. Participation of Private School Children (SEAs/LEAs)

See ED Cross-Cutting Section.

2. Schoolwide Programs (LEAs)

See ED Cross-Cutting Section.

3. Access to Federal Funds for New or Significantly Expanded Charter Schools

See ED Cross-Cutting Section.

4. Assessment of Need (LEAs)

Compliance Requirement – To be eligible to receive a subgrant of Title II, Part A funds, an LEA must conduct an assessment of local needs for professional development and hiring, as identified by the LEA and school staff. The needs assessment must be conducted with the involvement of teachers, including teachers who work in Title I, Part A targeted assistance programs and schoolwide program schools (Sections 2122(b)(8) and (c) (20 USC 2122(b)(8) and (c))).

Audit Objective – Determine whether the LEA, with the required participation of teachers, conducted the required needs assessment.

Suggested Audit Procedure (LEAs)

Review documentation to ascertain if the LEA conducted the required needs assessment and if teachers, including Title I, Part A teachers from targeted assistance or schoolwide program schools, participated in the needs assessment.

DEPARTMENT OF EDUCATION

CFDA 84.377 SCHOOL IMPROVEMENT GRANTS (Section 1003(g) of the ESEA)
CFDA 84.388 SCHOOL IMPROVEMENT GRANTS, RECOVERY ACT

I. PROGRAM OBJECTIVES

The objective of the School Improvement Grants (SIG) program is to dramatically turn around the academic achievement of students in the Nation's persistently lowest-achieving schools through the successful implementation of four school intervention models.

II. PROGRAM PROCEDURES

The Department of Education (ED) provides SIG funds to State educational agencies (SEAs) through a statutory formula based on each State's combined share of allocations under Title I, Parts A, C, and D of the Elementary and Secondary Education Act of 1965 (ESEA). To receive SIG funds, an SEA must submit to ED for approval an application that meets the SIG final requirements. The SEA in turn must distribute, on a competitive basis, at least 95 percent of the SIG funds it receives to eligible local educational agencies (LEAs) that demonstrate the greatest need for the funds and the strongest commitment to ensure that the funds are used to substantially raise student achievement in the persistently lowest-achieving schools in the State.

Funds are primarily used by LEAs to implement one of the following four school intervention models—turnaround, restart, school closure, or transformation—which are defined as:

Turnaround Model – An LEA must do the following:

- Replace the principal and grant the principal sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to fully implement a comprehensive approach in order to substantially improve student achievement outcomes and increase high school graduation rates;

- Using locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students. Screen all existing staff and rehire no more than 50 percent; and select new staff;

- Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in the turnaround school;

- Provide staff ongoing, high-quality job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;

- Adopt a new governance structure, which may include, but is not limited to, requiring the school to report to a new "turnaround office" in the LEA or SEA, hire a "turnaround leader" who reports directly to the Superintendent or Chief Academic Officer, or enter into a multi-year contract with the LEA or SEA to obtain added flexibility in exchange for greater accountability;

- Use data to identify and implement an instructional program that is research-based and vertically aligned from one grade to the next, as well as aligned with State academic standards;

- Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students;

- Establish schedules and implement strategies that provide increased learning time; and

- Provide appropriate social-emotional and community-oriented services and supports for students.

Restart Model – An LEA converts a school or closes and reopens a school under a charter school operator, a charter management organization (CMO), or an education management organization (EMO) that has been selected through a rigorous review process. A restart model must enroll, within the grades it serves, any former student who wishes to attend the school.

School Closure Model – An LEA closes a school and enrolls the students who attended that school in other schools in the LEA that are higher achieving. These other schools should be within reasonable proximity to the closed school and may include, but are not limited to, charter schools or new schools for which achievement data are not yet available.

Transformation Model – An LEA must do the following:

- Replace the principal who led the school prior to commencement of the transformation model;

- Use rigorous, transparent, and equitable evaluation systems for teachers and principals that —

  (1) Take into account data on student growth as a significant factor as well as other factors, such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high school graduation rates; and

  (2) Are designed and developed with teacher and principal involvement;

- Identify and reward school leaders, teachers, and other staff who, in implementing this model, have increased student achievement and high school graduation rates

and identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, have not done so;

- Provide staff ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies; and

- Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in a transformation model.

Funds were first available for the SIG program in Fiscal Year (FY) 2009 through the Consolidated Appropriations Act, 2009 and **the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5)**. These funds support the implementation of SIG programs beginning in the 2010-2011 school year.

Source of Governing Requirements

This program is authorized by section 1003(g) of the ESEA (20 USC 6303(g)). It is governed by final requirements for School Improvement Grants authorized under Section 1003(g) of Title I of the ESEA, issued October 28, 2010 (75 FR 66363)(SIG final requirements).

Availability of Other Program Information

ED has issued the following guidance documents:

- Guidance on School Improvement Grants Under Section 1003(g) of the Elementary and Secondary Education Act of 1965 (Revised June 29, 2010) (http://www2.ed.gov/programs/sif/sigguidance05242010.pdf)

- Guidance on Fiscal Year 2010 School Improvement Grants Under Section 1003(g) of the Elementary and Secondary Education Act of 1965 (November 1, 2010) (http://www2.ed.gov/programs/sif/legislation.html#guidance)

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each

individual program. Where applicable, this section references the Cross-Cutting Section for these requirements.

A. Activities Allowed or Unallowed

Also see ED Cross-Cutting Section.

1. *Activities Allowed – SEAs*

An SEA may use SIG funds only for administration, evaluation, and technical assistance expenses (Section 1003(g)(8) of ESEA (20 USC 6303(g)(8)); Section II.D of SIG final requirements).

2. *Activities Allowed – LEAs*

An LEA must use SIG funds, both **ARRA** and non-ARRA funds, to implement one of the following four school intervention models—turnaround, restart, school closure, or transformation—in its Tier I and Tier II schools. In addition, an LEA may use SIG funds to continue to implement one of the school intervention models that it began to implement, in whole or in part, within the last two years. An LEA may implement one of the models or another improvement strategy in its Tier III schools (Section II.A of SIG final requirements).

A school that receives SIG funds and Title I, Part A funds (CFDA 84.010) and implements one of the four school improvement models must do so as a schoolwide program school. (See the Cross-Cutting Section for details on schoolwide programs.) As part of the SIG application process, ED granted nearly all SEAs a waiver to allow their Title I, Part A SIG schools with less than 40 percent low-income children to operate a schoolwide program in order to implement one of the school intervention models (Section I.B.3 of SIG final requirements).

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

C. Cash Management

See ED Cross-Cutting Section.

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort* **–** Not Applicable

2.2 Level of Effort – *Supplement Not Supplant*

a. *Title I Tier I, Tier II, and Tier III schools*. An LEA that uses SIG funds to serve one or more Title I Tier I, Tier II, or Tier III schools that operate a schoolwide program, may use SIG funds only to supplement the amount of non-Federal funds that the school would otherwise have received if it were not operating the schoolwide program, including those funds necessary to provide services required by law for students with disabilities and limited English proficient students. Tier I and Tier II schools must operate a schoolwide program to implement one of the SIG school intervention models. However, a school does not need to identify particular children as eligible to participate or demonstrate that SIG funds are used only for activities that supplement those the school would otherwise provide with non-Federal funds (Sections 1114(a)(2)(A)(ii) and (B) of ESEA (20 USC 6314(a)(2)(A)(ii) and (B))).

b. If an LEA uses SIG funds to serve a Title I Tier III school that operates a targeted assistance program (i.e., a Tier III school that does not implement one of the four school intervention models), the supplement not supplant requirement in section 1120A(b) of ESEA does not apply to the use of SIG funds because they are not funds received under Title I, Part A (CFDA 84.010).

c. *Non-Title I Tier I, Tier II, and Tier III schools.* An LEA that uses SIG funds to serve one or more Tier I, Tier II, or Tier III schools that do not receive Title I, Part A funds must ensure that each such school receives all of the State and local funds it would have received in the absence of the SIG funds (Section II.A.6 of SIG final requirements).

3. Earmarking (SEAs)

a. An SEA must allocate at least 95 percent of the SIG funds it receives in a given fiscal year directly to eligible LEAs that submit an approvable application to the SEA, consistent with the carryover requirements in section II.B.9 of the SIG final requirements. With the approval of an LEA, the SEA may directly provide SIG activities to the LEA or arrange for their provision through other entities such as school support teams or educational service agencies (Section 1003(g)(7) (20 USC 6303(g)(7))).

b. If an LEA has nine or more Tier I and Tier II schools, the LEA may not implement the transformation model in more than 50 percent of those schools (Section II.A.2(b) of SIG final requirements).

c. An SEA must award to an eligible LEA a total grant of no less than $50,000 and no more than $2,000,000 per year for each Tier I, Tier II, and Tier III school that the LEA commits to serve (Section 1003(g)(5)(A) of

ESEA (20 USC 6303(g)(5)(A)); Section II.B.5 of SIG final requirements).

H. Period of Availability of Federal Funds

FY 2009 regular and **ARRA** SIG funds are available for obligation until September 30, 2013, through a waiver ED granted to each SEA through the State application process (Section I.B.4 of SIG final requirements).

L. Reporting

1. Financial Reporting

See ED Cross-Cutting Section.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable.

4. Section 1512 ARRA Reporting

See ED Cross-Cutting Section.

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds only

N. Special Tests and Provisions

1. Schoolwide Programs (LEAs)

See ED Cross-Cutting Section.

2. Access to Federal Funds for New or Significantly Expanded Charter Schools

See ED Cross-Cutting Section.

3. Carryover

Compliance Requirement – If not all Tier I schools in a State are served with FY 2009 SIG funds beginning in the 2010-2011 school year, an SEA must carry over at least 25 percent of its FY 2009 funds and award those funds along with its FY 2010 SIG funds for use beginning in school year 2011-2012. Some SEAs received a waiver from ED to carry over less than 25 percent of their FY 2009 SIG funds. This requirement does not apply to an SEA that does not have sufficient school improvement funds to serve all the Tier I schools in the State (Section II.B.9(a) of SIG final requirements).

Audit Objectives – Determine whether the SEA complied with the carryover requirement.

Suggested Audit Procedure

Review documentation to ascertain that the SEA, if it was not granted a waiver, carried over at least 25 percent of its FY 2009 SIG funds, if not all Tier I schools in the State were served with FY 2009 SIG funds in the 2010-2011 school year.

DEPARTMENT OF EDUCATION

CFDA 84.394 STATE FISCAL STABILIZATION FUND (SFSF) – EDUCATION STATE GRANTS, RECOVERY ACT (Education Stabilization Fund)
CFDA 84.397 STATE FISCAL STABILIZATION FUND (SFSF) – GOVERNMENT SERVICES, RECOVERY ACT

I. PROGRAM OBJECTIVES

The objectives of the SFSF programs are to help stabilize State and local governments minimize and avoid reductions in their budgets for education and other essential services in exchange for a State's commitment to advance essential education reforms.

The objectives of the SFSF – Education State Grants (Education Stabilization Fund) program are to support and restore funding for elementary, secondary, and postsecondary education and, as applicable, early childhood education programs and services in States and local educational agencies (LEAs). States must use the Education Stabilization funds to restore State support for elementary and secondary education and public institutions of higher education (IHEs).

The objectives of the SFSF – Government Services program are to support public safety and other government services, which may include assistance for elementary and secondary education and IHEs, and for modernization, renovation, or repair of public school and IHE facilities.

II. PROGRAM PROCEDURES

The American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) authorized the SFSF programs. States apply for funding from the Education Stabilization Fund and the Government Services program under a single application (Section 14002 of ARRA). To receive its initial SFSF allocation under these programs, a State submits an application to the Department of Education (ED) that provides (1) assurances that the State is committed to advancing education reform in four specific areas (increase teacher effectiveness and address inequities in the distribution of highly qualified teachers; establish and use a pre-K-through-college-and-career data system to track progress and foster continuous improvement; make progress towards rigorous college- and career-ready standards and high-quality assessments that are valid and reliable for all students, including limited English proficient students and students with disabilities; and provide targeted, intensive support and effective interventions to turn around schools identified for corrective action and restructuring), (2) baseline data that demonstrate the State's current status in each of the four education reform areas, (3) maintenance-of-effort information, and (4) a description of how the State intends to use its SFSF allocation.

SFSF funds for both programs are allocated to States in two phases. In Phase I, ED allocated 67 percent of a State's total SFSF allocation within 2 weeks of receipt of an approvable SFSF application. However, if a State demonstrated in its application that this amount is insufficient to prevent the immediate layoff of personnel by school districts, IHEs, or State or local agencies, ED can award the State up to 90 percent of its total SFSF allocation in Phase I. If a State demonstrated an immediate need for additional Government Services funds, by submitting a letter to ED justifying the request, then ED may award the State up to 90 percent of its

Government Services funds. The deadline for Phase I applications was July 1, 2009 (see the May 13, 2009 *Federal Register*, 74 FR 22530). In Phase II, the ED will allocate the remaining SFSF funds to a State after it submits an application addressing the requirements established in a *Federal Register* notice.

The application process and program structure for the Insular Areas differs from the process and program structure for the States. However, the general ARRA prohibitions on uses of funds and maintenance of effort (see III.G.2.1) requirements apply to the Insular Areas. The "Insular Areas" are Guam, American Samoa, U.S. Virgin Islands and the Commonwealth of the Northern Mariana Islands. Information on how the program differs for the Insular Areas is available on the Internet at: http://www.ed.gov/programs/statestabilization/applicant.html.

Source of Governing Requirements

These programs are authorized by Title XIV of ARRA. Education Stabilization funds may be used for activities authorized by the Elementary and Secondary Education Act of 1965 (ESEA) (20 USC 6301 et seq.), the Individuals with Disabilities Education Act (20 USC 1400 et seq.), the Adult and Family Literacy Act (20 USC 1400 et seq.), or the Carl D. Perkins Career and Technical Education Act of 2006 (20 USC 2301 et seq.), or for modernization, renovation, or repair of public school facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system. However, Education Stabilization funds may not be used for specifically prohibited purposes described in Section 14003(b) of the ARRA. (Section 14003of ARRA)

Availability of Other Program Information

The ED has issued non-regulatory guidance for the SFSF programs that is available from links on ED's website at: http://www.ed.gov/programs/statestabilization/applicant.html. Included in the guidance identified on this page is guidance issued on December 24, 2009 to address questions raised by auditors. It also includes clarifying guidance on recordkeeping, documentation and reporting.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed – Education Stabilization Fund – States*

   a. States must first use Education Stabilization funds to:

      (1) restore the amount of funds needed to bring aggregate the level of State support for the State's fiscal years 2009, 2010, and 2011 to

the greater of the fiscal year 2008 or 2009 level, using the state's primary elementary and secondary funding formula(e), as described by the State in its application. Also, if a State enacted formulae increases to support elementary and secondary education for the State's fiscal years 2010 and 2011 prior to October 1, 2008, these funds must be used to support such increases; and

(2) provide support to IHEs to restore the amount of funds needed to bring the aggregate level of State support for the State's fiscal years 2009, 2010, and 2011 to the greater of the fiscal year 2008 or 2009 level, as described by the State in its application.

If the Governor determines that the amount of Education Stabilization funds available is insufficient to support public elementary, secondary and postsecondary education at the required levels for fiscal years 2009, 2010, and 2011, the Governor must allocate those funds between those activities proportionally to the relative shortfall for each of these education sectors (Section 14002(a) of ARRA).

The restoration calculations determine the amount of funds that will ultimately be provided to LEAs and IHEs over the period of the program, but do not dictate the timing of the release of those funds. The States do not need to release in a particular fiscal year the amount indicated in the Phase I application needed to restore support for elementary and secondary education or IHEs in that year.

b. Any remaining Education Stabilization funds must be used to provide LEAs in the State with subgrants based on their relative shares of funding under part A of title I of ESEA (20 USC 6311 et seq.) for the most recent year for which data are available (Section 14002(a)(3) of ARRA).

2. *Activities Allowed – Education Stabilization Fund – LEAs*

a. LEAs may use Education Stabilization funds for any activity that is authorized under the following Federal education acts:

- The Elementary and Secondary Education Act of 1965 (ESEA);
- The Individuals with Disabilities Education Act (IDEA);
- The Adult Education and Family Literacy Act; or
- The Carl D. Perkins Career and Technical Education Act of 2006

b. To the extent consistent with State law, an LEA may use Education Stabilization funds for modernization, renovation, or repair of public school facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system. Although ED

encourages that any modernization, renovation or repair is consistent with a recognized green building rating system, this is not a requirement.

c. LEAs, (including charter school LEAs) have considerable flexibility in determining how best to use Education Stabilization funds. Because the amount of Education Stabilization funding that an LEA receives is determined strictly on the basis of formulae and the ARRA gives LEAs considerable flexibility over the use of these funds, neither the Governor nor the SEA may mandate how an LEA will or will not use the funds. As stated above, an LEA may use these funds for activities authorized under the ESEA. Because the ESEA includes the broad Impact Aid authority (see Title VIII of the ESEA), an LEA may use Education Stabilization funds for activities that would be allowable under Impact Aid. This flexibility applies to all LEAs that receive Education Stabilization funds, and is not limited to those LEAs that also receive Impact Aid funds.

Most funds that the ED awards under Impact Aid are considered to be general aid to LEAs. Thus, under the Impact Aid authority, an LEA may use Education Stabilization funds for educational purposes consistent with State and local requirements, subject to ARRA and other applicable Federal requirements, including the limitations discussed below.

Construction of new school buildings is an authorized activity under the Impact Aid construction program in section 8007 of the ESEA. Thus, subject to the ARRA statutory requirements and prohibitions governing the uses of Education Stabilization funds, an LEA (including a charter school LEA) may use the funds to support the construction of new school buildings, including construction activities that are consistent with a recognized green-building rating system.

Because an LEA may consider Education Stabilization funds to be available for any activity authorized under the Impact Aid program, the funds may be used to support both current expenditures and other expenses such as capital expenditures. Among other things, Education Stabilization funds may be used for activities such as: paying the salaries of administrators, teachers, and support staff; purchasing textbooks, computers, and other equipment; supporting programs designed to address the educational needs of children at risk of academic failure, limited English proficient students, children with disabilities, and gifted students; and meeting the general expenses of the LEA (Section 14003 of ARRA).

3. *Activities Allowed – Education Stabilization Fund – IHEs*

   a. IHEs may use Education Stabilization funds for two purposes: (1) education and general expenditures in such a way as to mitigate the need to raise tuition and fees for in-State residents; and (2) modernization, renovation, or repair of IHE facilities that are primarily used for instruction, research, or student housing, including modernization, renovation, and repairs that are consistent with a recognized green-building rating system. Although ED encourages that any modernization, renovation or repair is consistent with a recognized green building rating system, this is not a requirement (Section 14004 of ARRA).

   b. While neither the Governor nor the SEA may mandate how an LEA will or will not use the funds, this limitation does not apply to IHEs. For example, a Governor may restrict an IHE's use of funds to expenditures that would mitigate the need for increases in tuition and fees paid for by in-State students (Section 14004(a) of ARRA).

4. *Activities Allowed – Government Services*

   a. The Governor shall use Government Services funds for public safety and other government services, which may include assistance for elementary and secondary education and IHEs. The Governor may also use Government Services funds for modernization, renovation, or repair of public school and IHE facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system, subject to the requirements in the ARRA. Although ED encourages that any modernization, renovation or repair is consistent with a recognized green building rating system, this is not a requirement. Governors are also permitted to use part of their Government Services funds to support administrative costs associated with implementing ARRA, including costs related to monitoring subgrantees and complying with the ARRA reporting requirements (Section 14002(b) of ARRA).

   b. Unlike the Education Stabilization Fund program, ARRA does not require Governors to use State funding formulae when awarding funds to LEAs, and they do not have to allocate Government Services funds proportionally with an LEA's share of funding under Part A of Title I of the ESEA. Government Services funds may be allocated to any entity for the broad range of public safety and other government services activities, including assistance to elementary and secondary education and IHEs, and for modernization, renovation, or repair of public school and IHE facilities.

The scope of allowable activities under the Government Services program is broad, and is not limited to modernization, renovation, or repair of public school or IHE facilities. Subject to limitations in Section 14004(c) of ARRA (see paragraph III.A. 6.c below), Governors are permitted to use Government Services funds for construction and infrastructure support.

When providing funds to IHEs, the Governor cannot consider the type or mission of the institution, and must consider any IHE (as defined in section 101 of the Higher Education Act (HEA) of 1965 (20 USC 1001) for funding for modernization, renovation, and repairs within that State, as long as that institution continues to meet the eligibility requirements in the programs under title IV of the HEA (Section 14002(b) of ARRA).

5. *Activities Allowed – Both Education Stabilization Fund and Government Services*

Upon prior approval from the Secretary of ED, the State or LEA that receives SFSF funds may treat any portion of such funds that is used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program, including Part C of IDEA, administered by the Secretary (Section 14012(d) of ARRA).

6. *Activities Unallowed – Both Education Stabilization Fund and Government Services*

a. SFSF funds cannot be used to provide financial assistance to students to attend private elementary or secondary schools, unless the funds are used to provide special education related services to children with disabilities as authorized by the IDEA (Section 14011 of ARRA).

b. SFSF funds cannot be used to supplement or restore "rainy day funds," as transferring SFSF funds to a rainy day fund does not constitute an obligation under 34 CFR section 76.707.

c. No entity may use SFSF funds for:

(1) Maintenance of systems, equipment, or facilities;

(2) Modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other public events for which admission is charged to the general public; or

(3) Modernization, renovation, or repair of facilities used for sectarian instruction or religious worship, or in which a substantial portion of the functions of the facilities are subsumed in a religious mission (Section 14004(c) of ARRA).

d. LEAs may not use SFSF funds for:

(1) Payment of maintenance costs;

(2) Stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;

(3) Purchases or upgrades of vehicles;

(4) Improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities; or

(5) School modernization, renovation, or repair of that is inconsistent with State law (Section 14003(b) and (c) of ARRA).

e. IHEs may not use SFSF funds for increasing their endowments (Section 14004(b) of ARRA).

7. *Activities Unallowed – Education Stabilization funds used by IHEs*

While an IHE may use Education Stabilization funds for modernization, renovation, or repair activities, it may not use those funds to support new construction. New construction is not authorized by ARRA, and is not an allowable use of Education Stabilization funds by an IHE (Section 14004(a) of ARRA).

8. *Activities Unallowed – Government Services*

Government Services funds cannot be used to pay down past debt. Government Services funds must be used for public safety and other government services (Section 14002(b)(1) of ARRA).

B. Allowable Costs/Costs Principles

The SFSF program supports a broad array of activities (e.g., general expenditures, operating expenses, salaries, and government services). Similar to Impact Aid funds, SFSF funds are essentially general aid. Thus, the specific cost principles in the OMB Circulars do not apply to SFSF funds. However, SFSF funds must be spent consistent with applicable State and local requirements and the statutory provisions of ARRA. Regardless, while the specific requirements in OMB cost principles, such as OMB Circulars A-21 and A-87, do not apply to SFSF funds, expenditures attributed to the SFSF program must still be "reasonable and necessary, and consistent with applicable State requirements."

States, LEAs, and IHEs must maintain documentation demonstrating the amount of SFSF funds, if any, used to support salaries. However, entities are not required to maintain documentation that identifies the specific individuals whose salaries may be supported with SFSF funds. They may demonstrate, at a minimum, that an aggregate amount of funds was used to support a group of salary expenses. For example, an IHE may use Education Stabilization funds to support an entire pool of salaries as long as those salaries are considered to be education-related expenses.

There are no specific Federal time and effort requirements that apply to individuals whose salaries may be supported with SFSF funds. However, the entities must maintain documentation to support the time and effort of these individuals in the same manner that it supports the time and effort of individuals performing similar duties who are paid with State or local funds. Because the SFSF program does not support specific cost objectives or activities, an individual whose salary is paid in whole or in part with SFSF funds is not required to maintain separate time distribution records. An individual whose salary is supported with both SFSF funds and State funds is not required to maintain records documenting the amount of time spent on SFSF activities because there are no specific "SFSF activities."

At a minimum to show that these costs are "reasonable and necessary," as with other similarly situated employees, the entities must maintain contemporaneous documentation to show that individuals for whom salary is paid (in whole or in part) using SFSF funds, worked sufficient hours to justify the salary, the level of salaries were similar to other employees who performed similar work and were paid from other sources, and that the individuals were not paid more than once for the same work. Thus, the documentation should be able to demonstrate that the costs were reasonable for the service provided, that the service was actually provided, and that no other funds were paid for the same service. (See Guidance for Grantees and Auditors, State Fiscal Stabilization Fund, dated December 24, 2009, which is available at the SFSF website).

D. Davis-Bacon Act

All construction, modernization, renovation, and repair activities are subject to the Davis-Bacon Act (Section 1606 of ARRA).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort (84.394)*

Under the Education Stabilization Fund program, a State is required to maintain its level of support for elementary and secondary education and for IHEs. Those requirements are:

(1) In each of fiscal years 2009, 2010, and 2011, the State will maintain State support for elementary and secondary education at least at the level of such support for fiscal 2006. A State may demonstrate that it is maintaining its level of State support for elementary and secondary education on either an aggregate basis or a per-student basis. It is not necessary for a State to maintain its level of support under each individual formula or program.

(2) In each of fiscal years 2009, 2010, and 2011, the State will maintain State support for IHEs (not including support for capital projects or for research and development or tuition and fees paid by students) at least at the level of such support for fiscal year 2006. A State may demonstrate that it is maintaining its level of State support for IHEs on either an aggregate basis or a full-time-equivalent enrollment basis. It is not necessary for a State to maintain its level of State support for individual categories of activities (Section 14005(d) of ARRA).

However, the Secretary of Education may waive or modify such requirements for fiscal years 2009, 2010, or 2011, if the Secretary determines the State will not provide a smaller percentage of the total revenues available to the State for elementary, secondary, and postsecondary education than that provided in the preceding fiscal year (Section 14012(b) and (c) of ARRA).

Nevertheless, the level of effort required by a State for the following fiscal year shall not be reduced (Section 14012(e) of ARRA).

2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

Funds from both SFSF programs remain available for obligation by recipients and subrecipients through September 30, 2011. With specific approval from ED, funds from both SFSF programs may be used to pay for pre-award costs prior to a specific date, but no earlier than February 17, 2009 (Section 1603 of ARRA and 20 USC 1225(b)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

DEPARTMENT OF EDUCATION

CFDA 84.395 STATE FISCAL STABILIZATION FUND (SFSF) – RACE-TO-THE-TOP INCENTIVE GRANTS, RECOVERY ACT

I. PROGRAM OBJECTIVES

The objectives of Race to the Top are to encourage and reward States that are: creating the conditions for education innovation and reform; achieving significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates and ensuring student preparation for success in college careers; and implementing ambitious plans in the four assurance areas.

II. PROGRAM PROCEDURES

The Race to the Top program provides incentives to States to implement large-scale, system-changing reforms that result in improved student achievement, narrowed achievement gaps, and increased graduation and college enrollment rates. Applications for Race to the Top funds must address the four assurance areas referenced in Section 14006(a)(2) of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5): enhancing standards and assessments; improving the collection and use of data; increasing teacher effectiveness and achieving equity in teacher distribution; and turning around struggling schools.

Source of Governing Requirements

The Race to the Top program is authorized by Section 14006 ARRA.

Availability of Other Program Information

ED has issued non-regulatory guidance for the Race to the Top program that is available from links on ED's website at: http://www.ed.gov/programs/racetothetop

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed – States*

   A State must use the 50 percent of the funds that are not required to be subawarded to LEAs (See III.G.3. below) to implement its approved plan, for State-level activities, for disbursement to LEAs, and for other purposes as the State may have proposed in its plan.

2. *Activities Allowed – LEAs*

An LEA must use the funds in a manner that is consistent with the State's plan and its agreement with the State. A State may establish more specific requirements for its LEAs' use of funds provided they are consistent with ARRA.

3. *Activities Unallowed*

a. An LEA may not use Race to the Top funds for:

(1) Payment of facility maintenance costs;

(2) Stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;

(3) Purchases or upgrades of vehicles;

(4) Improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities; or

(5) School modernization, renovation, or repair of that is inconsistent with State law (Section 14003(b) and (c) of ARRA).

b. Race to the Top funds cannot be used to provide financial assistance to students to attend private elementary or secondary schools, unless the funds are used to provide special education and related services to children with disabilities as authorized by the Individuals with Disabilities Education Act (Section 14011 of ARRA).

c. Race to the Top funds may not be used to pay costs related to statewide summative assessments (Race to the Top Fund, November 18, 2009, *Federal Register*, (74 FR 59801)).

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

C. Cash Management

See ED Cross-Cutting Section.

D. Davis-Bacon Act

All construction, modernization, renovation, and repair activities are subject to the Davis Bacon Act (Section 1606 of ARRA).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2 Level of Effort – Not Applicable

3. Earmarking – Fifty percent of the grant must be subgranted to LEAs based on their relative share of funding under Title I, Part A of the Elementary and Secondary Education Act (ESEA) (20 USC 6311 *et seq.*) for the most recent fiscal year (Section 14006(c) of ARRA).

H. Period of Availability of Federal Funds

States have a 4-year project period, which begins at the time of the award, in which to implement their plans and spend the grant money (34 CFR section 75.250; Race to the Top Fund, April 14, 2010, *Federal Register*, (75 FR 19501).

L. Reporting

1. Financial Reporting

See ED Cross-Cutting Section.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

DEPARTMENT OF EDUCATION

CFDA 84.410 EDUCATION JOBS FUND (Ed Jobs)

I. PROGRAM OBJECTIVES

The objective of the Ed Jobs program is to provide assistance to States to save or create education jobs for the 2010-2011 school year. Jobs funded under this program include those that provide educational and related services for early childhood, elementary, and secondary education.

II. PROGRAM PROCEDURES

States use Ed Jobs funds for administering the program and LEAs use Ed Jobs funds only for compensation and benefits and other expenses, such as support services, necessary to retain existing employees, to recall or rehire former employees, and to hire new employees, in order to provide early childhood, elementary, or secondary educational and related services.

The Department of Education (ED) determines the allocation of each State by formula on the basis of (1) its relative population of individuals who are aged 5 to 24, and (2) its relative total population. The amount of funding available to each State under the program is provided on the program website at http://www2.ed.gov/programs/educationjobsfund/index.html.

ED will reserve one half of one percent of the total Ed Jobs allocation for the Insular Areas (American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands) and one half of one percent to the Bureau of Indian Affairs (BIA) for schools operated or funded by BIA. ED determined the allocation of each Insular Area by formula on the basis of (1) its relative population of individuals who are age 5 to 24, and (2) its relative total population. The amount of funding available to each Insular Area under the program is provided on the program website at http://www2.ed.gov/programs/educationjobsfund/index.html.

- Governors submit applications that include, among other things, assurances that: The State will comply with the maintenance-of-effort (MOE) requirements and, within 60 days of the date of the State's grant award, submit to the Department the most current applicable MOE data available.

- The State will make awards to LEAs on a timely basis so that funds are available for their use during the 2010-2011 school year.

The State will develop and implement a monitoring plan that will enable the State to ensure that its LEAs comply with all applicable programmatic and fiscal requirements. A Governor may not direct how an LEA may use its Ed Job funds. The State may not require an LEA to submit an application for Ed Jobs funds if the LEA has already submitted a State Fiscal Stabilization Fund (SFSF) application. LEAs that have not submitted an SFSF application must submit an Ed Jobs application to the State to receive funds. LEAs decide how to use Ed Jobs fund, consistent with applicable requirements.

Source of Governing Requirements

The Ed Jobs program is authorized in Pub. L. No. 111-226, August 10, 2010. **The Ed Jobs program is administered under the terms and conditions of Sections 14001 through 14013, and Title XV of Division A of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5.**

Availability of Other Program Information

The ED has issued non-regulatory guidance for the Ed Jobs program, including Initial Guidance for State on the Education Jobs Fund Program and Guidance Concerning the Applicability of the Education Jobs Fund Program to Charter Schools, that are available at http://www2.ed.gov/programs/educationjobsfund/applicant.html.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Also see ED Cross-Cutting Section.

1. *Activities Allowed – States*

States may only use Ed Jobs funds for the costs of administering the program and making subawards to LEAs (Section 101(2)-(4) of Pub. L. No. 111-226).

2. *Activities Allowed – LEAs*

An LEA must use its funds only for compensation and benefits and other expenses, such as support services, necessary to retain existing employees, to recall or rehire former employees, and to hire new employees, in order to provide early childhood, elementary, or secondary educational and related services. For purposes of this program, the phrase "compensation and benefits and other expenses, such as support services" includes, among other things, salaries, performance bonuses, health insurance, retirement benefits, incentives for early retirement, pension fund contributions, tuition reimbursement, student loan repayment assistance, transportation subsidies, and reimbursement for childcare expenses. An LEA may use the funds to pay the salaries of teachers and other employees who provide school-level educational and related services. In addition to teachers, employees supported with program funds may include, among others, principals, assistant principals, academic coaches, in-service teacher trainers, classroom aides, counselors, librarians, secretaries, social workers, psychologists, interpreters, physical therapists, speech therapists, occupational therapists,

information technology personnel, nurses, athletic coaches, security officers, custodians, maintenance workers, bus drivers, and cafeteria workers (See questions D-2 and D-3 of Initial Guidance for State on the Education Jobs Fund Program) (Section 101(5) of Pub. L. No. 111-226).

3. *Activities Unallowed – States*

A State may not use program funds, directly or indirectly, to establish, restore, or supplement a "rainy day" fund, or to supplant State funds in a manner that has this effect. Furthermore, a State may not use program funds, directly or indirectly, to reduce or retire debt obligations incurred by the State or to supplant State funds in a manner that has this effect (Section 101(6) of Pub. L. No. 111-226).

4. *Activities Unallowed – LEAs*

a. LEAs are prohibited from using Ed Jobs funds for general administrative expenses as that term is defined by the National Center for Education Statistics (NCES) in its Common Core of Data. These prohibited expenses are administrative expenditures related to the operation of the superintendent's office or the LEA's board of education, including the salaries and benefits of LEA-level administrative employees.

b. LEAs are prohibited from using Ed Jobs funds for other LEA-level support services expenditures, as that term is defined in the Common Core of Data. These prohibited activities include the payment of expenditures for fiscal services, LEA program planners and researchers, and human resource services. For an individual with both LEA-level and school-level responsibilities, an LEA may use Ed Jobs funds to pay only that portion of the employee's salary and benefits associated with the time spent on allowable (i.e., school-level) activities.

c. A charter school LEA generally may not use Ed Jobs funds to pay for the compensation and benefits of employees of a charter management organization or an educational management organization who provide school-level educational and related services in the charter school as they would be considered equivalent to general administrative LEA-level support services (See question 3 in Guidance Concerning the Applicability of the Education Jobs Fund Program to Charter Schools).

d. An LEA, including charter school LEAs, may not use Ed Jobs funds to pay for contractual school-level services by individuals who are not employees of an LEA (e.g., janitors employed by an outside firm). However, an LEA that contracts with another LEA to provide educational and related services may use Ed Jobs funds to pay that portion of the contract associated with the salaries and benefits of the employees of the LEA providing the services (See question D-7 of Initial Guidance for State on

the Education Jobs Fund Program) (Section 101(5) of Pub. L. No. 111-226).

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

C. Cash Management

See ED Cross-Cutting Section.

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort*

Also see ED Cross-Cutting Section.

A State must maintain fiscal effort for education for State fiscal year (FY) 2011 in one of the four ways identified below. Methods 3 and 4 are available only to States with State tax collections for calendar year 2009 that are less than State tax collections for calendar year 2006.

Under each method, the State must separately meet the MOE requirements for both elementary and secondary education and for public institutions of higher education (IHEs).

- **Method 1: Comparing FY 2011 Dollar Levels of Support with FY 2009 Levels**

  Elementary and Secondary Education MOE Requirement

  For State FY 2011, the State will maintain State support for elementary and secondary education (in the aggregate or on the basis of expenditures per pupil) at not less than the level of such support for State FY 2009;

  Public IHE MOE Requirement

  For State FY 2011, the State will maintain State support for public IHEs (not including support for capital projects or for research and development or tuition and fees paid by students) at not less than the level of such support for State FY 2009.

- **Method 2: Comparing FY 2011 Percentages of Support with FY 2010 Percentages**

  Elementary and Secondary Education MOE Requirement

  For State FY 2011, the State will maintain State support for elementary and secondary education at a percentage of the total revenues available to the State that is equal to or greater than the percentage for State FY 2010.

  Public IHE MOE Requirement

  For State FY 2011, the State will maintain State support for public IHEs (not including support for capital projects or for research and development or tuition and fees paid by students) at a percentage of the total revenues available to the State that is equal to or greater than the percentage for State FY 2010.

- **Method 3: Comparing FY 2011 Dollar Levels of Support with FY 2006 Levels**

  Elementary and Secondary Education MOE Requirement

  For State FY 2011, the State will maintain State support for elementary and secondary education (in the aggregate) at not less than the level of such support for State FY 2006. Note: Under Method 3, a State may not use the expenditures per pupil basis.

  Public IHE MOE Requirement

  For State FY 2011, the State will maintain State support for public IHEs (not including support for capital projects or for research and development or tuition and fees paid by students) at not less than the level of such support for State FY 2006.

- **Method 4: Comparing FY 2011 Percentages of Support with FY 2006 Percentages**

  Elementary and Secondary Education MOE Requirement

  For State FY 2011, the State will maintain State support for elementary and secondary education at a percentage of the total revenues available to the State that is equal to or greater than the percentage for State FY 2006;

Public IHE MOE Requirement

For State FY 2011, the State will maintain State support for public IHEs (not including support for capital projects or for research and development or tuition and fees paid by students) at a percentage of the total revenues available to the State that is equal to or greater than the percentage for State FY 2006) (Section 101(10) of Pub. L. No. 111-226).

ED has provided guidance on calculating State tax collections, handling dedicated revenue, and handling deferred payments in questions E-2, E-7, and E-9 of Initial Guidance for State on the Education Jobs Fund Program.

2.2 Level of Effort – *Supplement Not Supplant*

See ED Cross-Cutting Section.

3. Earmarking – State must award at least 98 percent of its allocation of Ed Jobs funds to LEAs (Section 101(2) of Pub. L. No. 111-226).

H. Period of Availability of Federal Funds

The Ed Jobs program supports educational and related services during the 2010-2011 and 2011-2012 school years. The funds are available for obligations that occur as of August 10, 2010 (the date of enactment of Pub. L. No. 111-226) through September 30, 2012. This period includes the additional year of fund availability authorized under the Tydings Amendment (Section 421(b)(b) of the General Education Provisions Act, 20 USC 1225(b)(1)) (Section 101(3) of Pub. L. No. 111-226).

L. Reporting

1. Financial Reporting

See ED Cross-Cutting Section.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting

See ED Cross-Cutting Section.

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

1. Schoolwide Programs

See ED Cross-Cutting Section.

2. Comparability

See ED Cross-Cutting Section.

3. Access to Federal Funds for New or Significantly Expanded Charter Schools

See ED Cross-Cutting Section.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.044 SPECIAL PROGRAMS FOR THE AGING--TITLE III, PART B—GRANTS FOR SUPPORTIVE SERVICES AND SENIOR CENTERS
CFDA 93.045 SPECIAL PROGRAMS FOR THE AGING--TITLE III, PART C—NUTRITION SERVICES
CFDA 93.053 NUTRITION SERVICES INCENTIVE PROGRAM
CFDA 93.705 ARRA – AGING HOME-DELIVERED NUTRITION SERVICES FOR STATES
CFDA 93.707 ARRA – AGING CONGREGATE NUTRITION SERVICES FOR STATES

I. PROGRAM OBJECTIVES

Grants for Supportive Services and Senior Centers

The objective of this program is to assist States and area agencies on aging in facilitating the development and implementation of a comprehensive, coordinated system for providing long-term care in home and community-based settings, in a manner responsive to the needs and preferences of older individuals and their family caregivers, by—

(A) collaborating, coordinating activities, and consulting with other local public and private agencies and organizations responsible for administering programs, benefits, and services related to providing long-term care;

(B) conducting analyses and making recommendations with respect to strategies for modifying the local system of long-term care to better—

(i) respond to the needs and preferences of older individuals and family caregivers;

(ii) facilitate the provision, by service providers, of long-term care in home and community-based settings; and

(iii) target services to older individuals at risk for institutional placement, to permit such individuals to remain in home and community-based settings;

(C) implementing, through the agency or service providers, evidence-based programs to assist older individuals and their family caregivers in learning about and making behavioral changes intended to reduce the risk of injury, disease, and disability among older individuals; and

(D) providing for the availability and distribution (through public education campaigns, Aging and Disability Resource Centers, the area agency on aging itself, and other appropriate means) of information relating to—

(i) the need to plan in advance for long-term care; and

(ii) the full range of available public and private long-term care (including integrated long-term care) programs, options, service providers, and resources (Older Americans Act [OAA] Section 305(a)(3)).

The target population for these supportive services is individuals with greatest economic and social need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas), and older individuals at risk for institutional placement **(**OAA Section 306(a)(1)); however; proof of age (or income) is not required as a condition of receiving services.

Supportive services may include a full range of economic and social services, including, but not limited to: (1) access services (transportation, health services [including mental health services] outreach, information and assistance); (2) legal assistance and other counseling services; (3) health screening services (including mental health screening); (4) ombudsman services; (5) provision of services and assistive devices (including provision of assistive technology services and assistive technology devices); (6) services designed to support States, area agencies on aging, and local service providers in carrying out and coordinating activities for older individuals with respect to mental health services, including outreach for, education concerning, and screening for such services, and referral to such services for treatment; (7) activities to promote and disseminate information about life-long learning programs, including opportunities for distance learning; and (8) services designed to assist older individuals in avoiding institutionalization and to assist individuals in long-term care institutions who are able to return to their communities any other services necessary for the general welfare of older individuals (OAA Section 321). Nutrition services are provided under a separate authorization as described below.

Organizations funded under this program and the nutrition services program (see below) also receive funds from other Federal sources as well as from non-Federal sources.

Grants for Nutrition Services

The purposes of this grant program are to: (1) reduce hunger and food insecurity; (2) promote socialization of older individuals; and (3) promote the health and well-being of older individuals by helping them gain access to nutrition and other disease prevention and health promotion services to delay the onset of adverse health conditions resulting from poor nutritional health or sedentary behavior (OAA Section 330). Services are provided through this program to individuals aged 60 or older, in a congregate setting or in-home. These services include meals, nutrition education, nutrition counseling, and nutrition screening and assessment, as appropriate (OAA Sections 331, 336, and 339). This program is clustered with the grants for supportive

services and senior centers for purposes of this program supplement since these services, although separately earmarked, fall under the overall State planning process and process for allocation of funds.

Nutrition Services Incentive Program

The objective of this grant program is to provide resource incentives to encourage and reward effective and efficient performance in the delivery of nutritious meals to older individuals. The Administration on Aging (AoA) is responsible for this program (previously included in the Supplement as the Department of Agriculture's (USDA) Nutrition Services Incentive Program (CFDA 10.570)) as described in II, "Program Procedures – Administration and Services." This program is included as part of this cluster because of its direct relationship to the nutrition services program.

II. PROGRAM PROCEDURES

Administration and Services

The AoA, a component of the Department of Health and Human Services, administers the supportive services and senior centers program and the nutrition services program in cooperation with States, sub-State agencies, and other service providers. The States receive a formula grant from AoA, which is used by the State Unit on Aging (State Agency) both for its planning, administration, and evaluation of these programs as well as to pass through to other entities.

Planning and Service Areas (PSAs) are designated by the State Agency in accordance with AoA guidelines after considering the geographical distribution of the service populations, location of available services, available resources, other service area boundaries, location of units of general-purpose local government, and other factors. An Area Agency on Aging (Area Agency) is then designated by the State for each PSA after considering the views of affected local governments (States that had a single statewide planning and service area in place prior to fiscal year (FY) 1981 had the option to continue that method of operation; there are currently eight States in this category). A single Area Agency may serve more than one PSA. The Area Agencies, which may be public or private non-profit agencies or organizations, develop and administer counterpart area aging plans, as approved by the State Agency, and, in turn, provide subgrants to or contract with public or private service providers for the provision of services.

With limited exceptions (e.g., ombudsman services, information and assistance, case management[5]), the State Agency and the Area Agencies are precluded from the direct provision of services, unless providing the services is necessary to ensure an adequate supply of services, the services are related to the agency's administrative functions, or where services of comparable quality can be provided more economically by the agency. Federal funds may pay for only a portion of the costs of administration and services with the State and subrecipients required to provide a matching share from other sources.

AoA administers NSIP in cooperation with States, sub-State agencies, and other service providers. Under Section 311(b) (1) and (d) (1) of the OAA, States receive a cash grant from AoA, based on the formula in the OAA. The amount of a State's grant is determined by dividing the number of meals served to eligible persons in the State during the preceding Federal fiscal year by the number of such meals served in all States and Tribes, and applying the resulting ratio to the amount of funds available. Under OAA Section 311(d)(1), a State may choose to use all or any part of its grant to obtain commodities distributed by the USDA through State Distributing Agencies. The amount a State chooses to use in commodities, as well as administrative costs from USDA associated with the purchase of commodities are deducted from the State's grant from AoA. AoA transfers funds to USDA. USDA remains responsible for the overall management of the commodities program, including ordering, purchase, and delivery of the requested commodities. (Also see IV, "Other Information.")

State Plan and Area Plans

A State plan, approved by AoA, is a prerequisite to funding of the supportive services and nutrition programs; however, the State Plan covers the totality of AoA programs for which the State is the recipient under the OAA. The State Plan is developed on the basis of input from the Area Agencies as well as input from the affected populations as a result of public hearings. The State Plan addresses how the State intends to comply with the various requirements of the OAA and, specifically for Title III, its program objectives, designation of Planning and Service Areas (PSAs), and specification of the intrastate allocation formula for distribution of funds to each PSA. The State Plan also contains assurances required by the Act and implementing regulations.

[5] The term "case management service" means a service provided to an older individual, at the direction of the older individual or a family member of the individual (i) by an individual who is trained or experienced in the case management skills that are required to deliver the services and coordination described below; and (ii) to assess the needs, and to arrange, coordinate, and monitor an optimum package of services to meet the needs, of the older individual. Case management includes services and coordination such as (i) comprehensive assessment of the older individual (including the physical, psychological, and social needs of the individual); (ii) development and implementation of a service plan with the older individual to mobilize the formal and informal resources and services identified in the assessment to meet the needs of the older individual, including coordination of the resources and services with any other plans that exist for various formal services, such as hospital discharge plans; and with the information and assistance services provided under the OAA; (iii) coordination and monitoring of formal and informal service delivery, including coordination and monitoring to ensure that services specified in the plan are being provided; (iv) periodic reassessment and revision of the status of the older individual with the older individual or, if necessary, a primary caregiver or family member of the older individual; and (v) in accordance with the wishes of the older individual, advocacy on behalf of the older individual for needed services or resources (OAA Section 102(11)).

Unless a State is not in compliance with Title III requirements, the State Plan may be submitted on a two-, three-, or four-year cycle, at the option of the State, with annual amendments, as appropriate; however, AoA funding is provided annually. States found to be in noncompliance may be required to submit their State Plans annually until they are determined to be in compliance. Area plans are prepared and submitted to the State for approval for either two, three, or four years, with annual adjustments, as necessary.

Source of Governing Requirements

These programs are authorized under Parts B and C, respectively, of Title III of the OAA, as amended, which is codified at 42 USC 3021-3030. These programs may also be referred to as Part B (supportive services and senior centers) and Part C1(congregate nutrition services) and C2 (home-delivered nutrition services). Grants to Indian tribes for similar purposes are authorized under another title of the OAA and are not included in this Supplement. Implementing regulations are published at 45 CFR part 1321.

The Nutrition Services Incentive Program (NSIP) is authorized in Title III of the OAA, as amended, which is codified at 42 USC 3030a. There are no implementing regulations.

Availability of Other Program Information

Additional information about nutrition and supportive services as amended in 2006 is available at the AoA web site at http://aoa.gov/AoARoot/AoA_Programs/index.aspx

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. ***State Agency***

   a. State Agencies may use any amount of Title III-B (supportive services) funding necessary to conduct an effective ombudsman program (42 USC 3024 (d)(1)(B)).

   b. Grant funds may be used for State plan administration, including State Plan preparation, evaluation of activities carried out under the Plan, the collection of data and the conduct of analyses related to the need for services, dissemination of information, short-term training, and demonstration projects (42 USC 3028 (a)).

   c. No supportive services, nutrition services, or in-home services may be provided directly by the State Agency unless the State Agency determines

that direct provision of services is necessary to ensure an adequate supply of services, where such services are related to the agency's administrative functions, or where such services of comparable quality can be provided more economically by the State Agency (42 USC 3027(a)(8)(A)).

2. ***Area Agency***

Supportive Services and Senior Centers and Nutrition Services

a. Funds may be used for plan administration, operation of an advisory council, activities related to advocacy, planning, information sharing, and other activities leading to development or enhancement within the designated service area(s) of comprehensive and coordinated community-based systems of service delivery to older persons (45 CFR section 1321.53).

b. If approved by the State Agency, an Area Agency may use service funds for program development and coordination activities (45 CFR section 1321.17(f)(14)(i)).

c. No supportive services, nutrition services, or in-home services may be provided directly by an Area Agency except if, in the judgment of the State Agency, direct provision of services is necessary to ensure an adequate supply of services, where such services are related to the agency's administrative functions, or where such services of comparable quality can be provided more economically by the agency (42 USC 3027 (a) (8)).

NSIP

Recipient agencies may use the cash received in lieu of commodities only to purchase domestically produced foods for their nutrition projects (42 USC 3030a(d)(4)).

3. ***Service Providers***

Supportive Services and Senior Centers and Nutrition Services

a. Funds may be used to assist in the operation of multi-purpose senior centers and to meet all or part of the costs of compensating professional and technical personnel required for center operation (42 USC 3030d (b)(2)).

b. Funds may be used for nutrition services and supportive services consistent with the terms of the agreement between the Area Agency and the service provider (42 USC 3026(a)(1), 3030d(a), and 3030e).

c. Funds may be used for services associated with access to supportive services for in-home services, and for legal assistance (42 USC 3026 (a)(2)).

d. Nutrition services may be provided to older individuals' spouses, who may not be eligible for these services in their own right, on the same basis as they are provided to older individuals, and may be made available to handicapped or disabled individuals who are less than 60 years old but who reside in housing facilities occupied primarily by older individuals at which congregate nutrition services are provided (42 USC 3030g-21(2)(I)).

e. In accordance with procedures established by the Area Agencies, nutrition project administrators may offer meals to individuals providing volunteer services during the meal hours and to individuals with disabilities who reside at home with eligible individuals (42 USC 3030g-21(2)(H)).

f. Funds may be used for provision of home-delivered meals to older individuals (42 USC 3030f).

g. Funds may be used to acquire (in fee simple or by lease for 10 years or more), alter, or renovate existing facilities or to construct new facilities to serve as multi-purpose senior centers for not less than 10 years after acquisition, or 20 years after completion of construction, unless waived by the Assistant Secretary for Aging (42 USC 3030b).

NSIP

Cash received in lieu of commodities may be used only to purchase domestically produced foods for their nutrition projects (42 USC 3030a(d)(4)).

E. Eligibility

1. Eligibility for Individuals – Not Applicable

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

Service providers may include profit-making organizations except that providers of case management services must be public or non-profit agencies (42 USC 3026(a)(8)(C)).

G. Matching, Level of Effort, Earmarking

1. Matching

a. *State*

(1) States must contribute from State or local sources at least 25 percent of the cost of State Plan administration as their matching share. This may include cash or in-kind contributions by the State or third parties (42 USC 3028 (a)(1) and 42 USC 3029 (b); 45 CFR section 1321.47).

(2) All services, whether provided by the State Agency, an Area Agency or other service provider (including any ombudsman services provided under the authority of 42 USC 3024 (d)(1)(D)) must be funded with a non-Federal match of at least 15 percent. This percentage must be met on a statewide basis. Funds for ombudsman services provided under the authority of 42 USC 3024 (d)(1)(B) are not required to be matched (42 USC 3024 (d)(1)(D); 45 CFR section 1321.47).

b. *State and Area Agencies*

Area Agencies, in the aggregate, must contribute at least 25 percent of the costs of administration of area plans (42 USC 3024 (d)(1)(A); 45 CFR section 1321.47).

(1) *State* – Since this match is computed based on the aggregate of all Area Agencies in the State, the auditor's testing of the amount of this match is performed at the State Agency.

(2) *Area Agencies* – The auditor's testing of the allowability of the matching (e.g., from an allowable source and in compliance with the administrative requirements and allowable costs/cost principles requirements) should be performed at the Area Agencies.

2.1 Level of Effort – *Maintenance of Effort*

State – The State Agency must spend for both services and administration at least the average amount of State funds it spent under the State plan for these activities for the three previous fiscal years. If the State Agency spends less than this amount, the Assistant Secretary for Aging reduces the State's allotments for supportive and nutrition services under this part by a percentage equal to the percentage by which the State reduced its expenditures (42 USC 3029 (c); 45 CFR section 1321.49). See III. L.1, "Reporting – Financial Reporting" for the reporting requirement regarding maintenance of effort.

2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking

a. *State*

(1) Overall expenditures for administration are limited to the greater of five percent (or $300,000 or $500,000 depending on the aggregate amount appropriated or a lesser amount for the U.S. territories) of the overall allotment to a State under Title III unless a waiver is granted by the Assistant Secretary on Aging (42 USC 3028 (b)(1), (2), and (3)).

(2) After a State determines the amount to be applied to State plan administration under 42 USC 3028 (b), the State may:

(a) Make up to (and including) 10 percent of that amount available for the administration of Area Plans. The State may either calculate the 10 percent based on the total allotment from AoA or on the amount remaining after deducting the amount to be applied to State Plan administration (42 USC 3024(d)(1)(A)); and

(b) Use any amounts available to the State for State plan administration which the State determines are not needed for that purpose to supplement the amount available for administration of Area Plans (42 USC 3028(a)(2)).

(3) Any State which has been designated as a single planning and service area may elect to be subject to the State Plan administration limit (five percent) or the Area Plan administration (10 percent) limit (42 USC 3028(a)(3)).

(4) A State may transfer:

(a) Up to 40 percent of a State's separate allotments for congregate and home-delivered nutrition services between those two allotments without AoA approval (42 USC 3028 (b)).

(b) Not more than 30 percent between programs under Part B and Part C (Parts C1 and/or C2) for use as the State considers appropriate (42 USC 3028(b)).

(c) An additional 10 percent may be transferred between C1 and C2 with an AoA waiver (42 USC 3028(b)).

(d) A waiver may be requested to transfer an amount which is above the allowable 30 percent between Parts B and C (42 USC 3030c-3(b)(4)).

A State Agency may not delegate to an Area Agency or any other entity the authority to make such transfers (42 USC 3028(b)(6)).

(5) The State agency will not fund program development and coordinated activities as a cost of supportive services for the administration of area plans until it has first spent 10 percent of the total of its combined allotments under this program on the administration of area plans (45 CFR section 1321.17(f)(14)).

b. *Area Agency*

As provided in agreements with the State Agency, Area Agencies earmark portions of their allotment. The typical earmarks are:

(1) A maximum amount or percentage for program development and coordination activities by that agency (42 USC 3024(d)(1)(D); 45 CFR section 1321.17(f)(14)(i)).

(2) A minimum amount or percentage for services related to access, in-home services, and legal assistance (42 USC 3026(a)(2)).

H. Period of Availability of Federal Funds

Funds are made available to the State annually and must be obligated by the State by the end of the Federal fiscal year in which they were awarded. The State has two years to liquidate all obligations for its administration of the State Plan and for awards to the Area Agencies consistent with its intrastate allocation formula. Therefore, in any given year, multiple years of funding are being used to provide services statewide.

Whenever the Assistant Secretary on Aging determines that any amount allotted to a State under Parts B or C for a fiscal year will not be used to carry out the purpose for which the allotment was made, the funds may be reallotted to one or more other States. Any amount made available to a State as the result of a reallotment shall be regarded as part of the State's allotment for the same fiscal year in which the funds were appropriated, but shall remain available for obligation by the State until the end of the succeeding fiscal year (42 USC 3024 (b)).

J. Program Income

1. Service providers are required to provide an opportunity to individuals being served under all Part B and C services program to make voluntary contributions for services received. These voluntary contributions are to be added to the amounts made available by the State or Area Agency and must be used to expand the service from which they are collected (42 USC 3030c-2(b)).

2. Cost-sharing fees may be collected from Title III-B services except information and assistance, outreach, benefits counseling, or case management services. Cost sharing is not allowed for Title III-C services or Title VII Elder Rights Services (Ombudsman, legal services, elder abuse prevention or other consumer protection services) (42 USC 3030c-2(a)(2)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report*, and *AoA Supplemental Form (OMB No. 0985-0004*) – Applicable (required semi-annually)

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable for non-ARRA funds

M. Subrecipient Monitoring

1. *State Agency*

The State Agency is required to develop policies governing all aspects of programs operated under the State Plan and to monitor their implementation, including assessing performance for quality and effectiveness and specifying data system requirements to collect necessary and appropriate data (45 CFR sections 1321.11 and 1321.17(f)(9)).

2. *Area Agencies*

Area Agencies are required to oversee the activities of service providers with respect to provision of services, reporting, voluntary contributions, and coordination of services (45 CFR section 1321.65).

N. Special Tests and Provisions

Distribution of Cash

Compliance Requirement – States are required to promptly and equitably distribute NSIP cash to recipients of grants or contracts under OAA Title C1 and C2 (42 USC 3030a(d)(4)).

Audit Objective – Determine whether States are distributing cash promptly and equitably.

Suggested Audit Procedures

a. Review the State's procedures for handling NSIP cash to determine whether there is a documented process for distributing cash, including established time frames.

b. Review a sample of transactions during the audit period in which the State received NSIP cash and determine whether the State complied with its established process, including time frames.

IV. OTHER INFORMATION

The NSIP program may include both cash payments and use of cash to purchase commodities from USDA and for USDA administrative expenses. Assistance in the form of commodities is considered Federal awards expended in accordance with the OMB Circular A-133, §___.105, definition of Federal financial assistance and should be valued in accordance with §___.205(g). Therefore, both cash expenditures for the purchase of food and the value of commodities received from the State Distribution Agencies should be (1) used when determining Type A programs and (2) included in the Schedule of Expenditures of Federal Awards in accordance with §__.310(b).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.153 GRANTS FOR COORDINATED SERVICES AND ACCESS TO RESEARCH FOR WOMEN, INFANTS, CHILDREN, AND YOUTH (Ryan White Program)

I. PROGRAM OBJECTIVES

The objective of this program is to improve access to primary medical care, research, and support services for Human Immunodeficiency Virus (HIV)-infected women, infants, children and youth, and affected family members, through the provision of coordinated, comprehensive, culturally and linguistically competent, family-centered services.

II. PROGRAM PROCEDURES

Administration and Services

This program is administered at the Federal level by the HIV/Acquired Immunodeficiency Syndrome (AIDS) Bureau, Health Resources and Services Administration (HRSA), a component of the Department of Health and Human Services.

The Coordinated Services for Women, Infants, Children, and Youth (CSWICY) networks of health care and support services programs provide family-centered outpatient ambulatory health care for women, infants, children and youth with HIV/AIDS. Grantees can also provide additional support services to patients and affected family members.

Grants under this program are awarded to public and non-profit private entities, including health facilities operated by or pursuant to a contract with the Indian Health Service (42 USC 300ff-71(a)). Services may be provided directly by the grantee or through contractual agreements with other service providers. Many of these grantees/providers receive other Federal funding, e.g., other Ryan White HIV/AIDS program funding, community and migrant health centers, but this categorical funding allows them to provide adequate funding for these services.

Source of Governing Requirements

The CSWICY grant program is authorized under Part D of Title XXVI of the PHS Act, as amended by the Ryan White HIV/AIDS Treatment Modernization Act of 2006 (Pub. L. No. 109-415), and the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Ryan White Program) (Pub. L. No. 111-87), and is codified at 42 USC 300ff-71. The program has no specific program regulations.

Availability of Other Program Information

Further information about this program is available at http://www.hab.hrsa.gov/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should look first to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

a. Funds may be used for family-centered care involving outpatient or ambulatory care, directly or through contracts or memoranda of understanding, for women, infants, children and youth with HIV/AIDS. This includes provision of professional, diagnostic and therapeutic services by a primary care provider or a referral to and provision of specialty care; and services that sustain program activity and contribute to or help improve those services (42 USC 300ff-71(a) and (h)(3)).

Funds are not required to be used for primary care services when payments are available for such services from other sources (including Titles XVIII, XIX and XXI of the Social Security Act) (42 USC 300ff-71(i)).

b. Funds may be used for support services for patients and affected family members, including: family-centered care including case management; referrals for additional inpatient hospital services, treatment for substance abuse and mental health services and for other social and support services as appropriate; other services as necessary to enable the patient and the family to participate in the program, including services to recruit and retain youth with HIV; and provision of information and education on opportunities to participate in HIV/AIDS-related clinical research (42 USC 300ff-71(b)(1)–(b)4)).

c. Funds may be used for the establishment of a clinical quality management program to assess the extent to which medical services are consistent with the most recent Public Health Service guidelines for the treatment of HIV/AIDS and related opportunistic infections, to develop strategies for ensuring that such services are consistent with the guidelines and to ensure that improvements in the access to and quality of HIV health services are addressed (42 USC 300ff-71(f)(2)).

d. Funds may be used for administrative expenses, which are defined as funds used by grantees for grant management and monitoring activities, including costs related to any staff or activity other than provision of services. Indirect costs included in a Federal negotiated indirect rate are not considered part of administrative costs (See III.G.3 for a limitation on

expenditures for administrative costs) (42 USC 300ff-71 (f)(1), (h)(1), and (h)(2)).

2. *Activities Unallowed*

a. Grant funds may not be used for AIDS programs, or to develop materials, designed to promote or encourage, directly, intravenous drug abuse or sexual activity, homosexual or heterosexual (42 USC 300ff-84).

b. None of the funds made available under this Act, or an amendment made by this Act, shall be used to provide individuals with hypodermic needles or syringes so that individuals may use illegal drugs (42 USC 300ff-1).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2. Level of Effort – Not Applicable

3. Earmarking

Not more than 10 percent of the amount awarded may be used for administrative expenses. Costs related to provision of services and amounts for indirect costs included in a federally negotiated indirect rate are not considered administrative expenses for purposes of this limitation (42 USC 300ff-71(f)(1), (h)(1), and (h)(2)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable.

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable.

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.210 TRIBAL SELF-GOVERNANCE PROGRAM – IHS COMPACTS/FUNDING AGREEMENTS

I. PROGRAM OBJECTIVES

The objective of this program is to make financial assistance awards to Indian tribes to enable them to assume programs, services, and functions or portions thereof of the Indian Health Service (IHS), Department of Health and Human Services (HHS) that are otherwise available to Indian tribes (tribes) or Indians.

II. PROGRAM PROCEDURES

Title V of the Indian Self-Determination and Education Act (ISDEAA) (Pub. L. No. 106-260), which was signed into law August 18, 2000, provided permanent status for the IHS Tribal Self-Governance program.

A Self-Governance compact is a legally binding and mutually enforceable written agreement, including such terms as the parties intend shall control year after year, that affirms the government-to-government relationship between a Self-Governance Tribe and the United States. As a result, the provisions of compacts vary significantly, with only minimal cross-cutting compliance requirements.

A funding agreement (FA) is a legally binding and mutually enforceable written agreement that identifies the programs, functions, services and activities or portions thereof (PFSAs) that the Self-Governance Tribe will carry out, the funds being transferred from Service Unit, Area and Headquarters levels in support of those PFSAs, and such other terms as are required, or may be agreed upon, pursuant to Title V. Funding under FAs may be multi-year agreements.

Tribal compactors may provide health care services directly at facilities operated by the compactor or by operating a contract health services program as part of the FA. Contract health services are services provided to IHS-eligible beneficiaries by private sector health-care providers, such as hospitals and physicians, under contract with the tribal compactor.

Source of Governing Requirements

Title V of the ISDEAA, as amended, is codified at 25 USC 458aaa.

Regulations concerning the general administration of Indian health programs are found at 42 CFR part 136. Regulations governing Self-Governance compacts and FAs are found at 42 CFR part 137.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Funds may be used to carry out and deliver the health services program. The FA generally identifies the PFSAs (or portions thereof) to be performed or administered by the tribe (25 USC 458aaa-4).

2. A Self-Governance Tribe may incur costs that are reasonable in amount and appropriate to the investment responsibilities of the Self-Governance Tribe (42 CFR section 137.110).

3. Funds may be used to meet matching or cost participation requirements under any other Federal or non-Federal program; when used in this manner they are considered non-Federal funds (42 CFR section 137.217).

B. Allowable Costs/Cost Principles

1. A Self-Governance Tribe must apply the cost principles of the applicable OMB circular, generally OMB Circular A-87, except as modified by 25 USC 450j–1, other provisions of law, or any exemptions to applicable OMB circulars subsequently granted by OMB (42 CFR sections 137.167 and 137.168).

2. For contract health services, the Tribal compactor is the payor of last resort. The contract provider must first seek payment from all alternate resources, such as health care providers and institutions; health care programs including, but not limited to, programs under the Social Security Act (i.e., Medicare or Medicaid); State or local health care programs; and private insurance before seeking payment from the Tribal compactor. Where a third-party liability is established after the claim is paid, reimbursement from the third party should be sought (42 CFR section 136.61).

C. Cash Management

A Self-Governance Tribe may retain and spend interest earned on any funds paid under a compact or FA (25 USC 458aaa–7(h); 42 CFR section 137.100).

E. Eligibility

1. Eligibility for Individuals

a. *Eligibility for services within facilities operated by the IHS (which are billed by IHS to the tribe) or run by a tribal organization for the Federal Government*

(1) Individuals of Indian descent belonging to the Indian community served by the local facilities and program are eligible to receive services. An individual may be regarded as within the scope of the Indian health and medical service if he/she is regarded as an Indian by the community in which he/she lives as evidenced by such factors as tribal membership, enrollment, residence on tax-exempt land, ownership of restricted property, active participation in Indian affairs, or other relevant factors in keeping with the general Bureau of Indian Affairs practices in the jurisdiction (42 CFR section 136.12).

(2) Non-Indian women pregnant with an eligible Indian's child are eligible for services. In cases where the woman is not married to the eligible Indian under applicable state or tribal law, paternity must be acknowledged in writing by the Indian or determined by order of a court of competent jurisdiction. Services may be provided only during the period of her pregnancy through postpartum (generally 6 weeks after delivery) (42 CFR section 136.12).

(3) Services may be provided to non-Indian members of an eligible Indian's household if a medical officer in charge determines that such services are needed to control an acute infectious disease or a public health hazard (42 CFR section 136.12).

(4) Otherwise ineligible individuals may receive temporary care and treatment in case of an emergency, as an act of humanity (42 CFR section 136.14).

(5) Services may be provided on a cost basis to otherwise ineligible persons in accordance with the criteria in Section 813 of the Indian Health Care Improvement Act (25 USC 1621e).

b. *Eligibility for services in the Contract Health Services component of IHS*

(1) In order to qualify for the Contract Health Services component of IHS:

(a) An individual must meet the requirements outlined in paragraph III.E.1.a above (42 CFR section 136.23(a)); and

(b) Must either reside in the United States and on a reservation located within a Contract Health Service Delivery Area (CHSDA) as defined under 42 CFR section 136.22; or, if he/she does not reside on a reservation, reside within a CHSDA; and

(c) Be a member of the tribe or tribes located on that reservation or of the tribes or tribes for which the reservation was established; or maintain close economic and social ties with said tribe or tribes (42 CFR section 136.23(a)).

(2) *Students* – Students continue to be eligible for contract health services during their full-time attendance at programs of vocational, technical, or academic education, including normal school breaks and for a period not to exceed 180 days after the completion of their studies
(42 CFR section 136.23).

(3) *Transients* – Transient persons, such as those who are in travel or are temporarily employed, remain eligible for contract health services during their absence (42 CFR section 136.23).

(4) *Other Persons* – Other persons who leave the CHSDA in which they are eligible and are neither transients nor students remain eligible for contract health services for a period not to exceed 180 days from such departure (42 CFR section 136.23).

(5) *Foster Children* – Indian children who are placed in foster care outside a CHSDA by order of a court of competent jurisdiction and who were eligible for contract health services at the time of the court order shall continue to be eligible for contract health services while in foster care (42 CFR section 136.23).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

H. Period of Availability of Federal Funds

1. An FA shall have the term mutually agreed to by the parties. Absent notification from a tribe that it is withdrawing or retroceding the operation of one or more

PFSAs identified in the FA, the FA shall remain in full force and effect until a subsequent FA is executed (42 CFR section 137.55).

2. All funds paid to an Indian tribe in accordance with a compact or FA shall remain available until expended (25 USC 458aaa-7(i)).

J. Program Income

1. For direct care services, the tribal compactor must pursue reimbursement from all applicable sources (25 USC 1621e, 42 USC 1395qq, and 42 USC 1396j).

2. All Medicare, Medicaid, or other program income earned by a tribe shall be treated as supplemental funding to that negotiated in the FA. The tribe may retain all such income and expend such funds in the current year or in future years except to the extent that the Indian Health Care Improvement Act (25 USC 1601 *et seq.*) provides otherwise for Medicare and Medicaid receipts (25 USC 450j-1 and 25 USC 458 aaa-7(j)). Such funds shall not result in any offset or reduction in the amount of funds the Self-Governance Tribe is authorized to receive under its FA in the year the program income is received or for any subsequent fiscal year (42 CFR section 137.110).

3. *Use of Funds Collected through HHS* – Tribes electing to receive Medicare and Medicaid reimbursement through HHS shall first use such income for the purpose of making any improvements in the hospital or clinic that may be necessary to achieve or maintain compliance with the conditions and requirements applicable generally to facilities of such type under Medicare or Medicaid programs. (Pub. L. No. 106-291, 114 Stat. 978, 42 USC 1395qq, and 25 USC 1642).

IV. OTHER INFORMATION

Funds previously awarded for tribal self-governance planning and negotiation cooperative agreements under CFDA 93.210 are now funded under a separate CFDA number – CFDA 93.444. For purposes of the audit, CFDA 93.444 is considered a separate program and should not be clustered with CFDA 93.210.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.217 FAMILY PLANNING – SERVICES

I. PROGRAM OBJECTIVES

The purpose of the Family Planning – Services Project Grant (FPSPG) program is to provide funds for education, counseling, and comprehensive medical and social services necessary to enable individuals to freely determine the number and spacing of their children; and by doing so, to help reduce maternal and infant mortality and promote the health of mothers and children.

II. PROGRAM PROCEDURES

The FPSPG program is administered by the Office of the Secretary (OS), a component of the Department of Health and Human Services (HHS). Within the OS, the Office of Family Planning is responsible for the program. The program has no statutory funds allocation formula; HHS makes discretionary grant awards whose amounts are based on estimates of the amounts necessary for successful project performance.

Any public or non-profit private entity in a State currently providing family planning services—with priority given to low income families—may apply for a project grant under the program. The entity applying for the grant must follow Public Health System Reporting Requirements and submit to the State a plan for a coordinated and comprehensive program of family planning services.

Family planning services under the FPSPG program must be made available without coercion and with respect for the privacy, dignity, and social and religious beliefs of the individuals being served. To the extent possible, entities that receive grants shall encourage family participation in projects assisted under this program.

Source of Governing Requirements

The FPSPG is authorized under Title X of the Public Health Service Act, as amended (42 USC 300 *et seq.).* The implementing regulations are 42 CFR part 59.

Availability of Other Program Information

Additional information is available on the HHS Office of Population Affairs web site at http://opa.osophs.dhhs.gov/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

   a. *Provision of services* – A project supported by the FPSPG must provide a broad range of family planning methods and services, including infertility services and services to adolescents. Services that may be funded for a particular project are identified in the grant agreement. They may include:

      (1) *Medical services* – These include providing information on all medically approved methods of contraception (including natural family planning methods); counseling services; physical examinations, including cancer detection and laboratory tests; issuance of contraceptive supplies; periodic follow-up examinations; and referral to other medical facilities when medically indicated.

      (2) *Social services* – These include counseling, referral to and from other social and medical service agencies, and such ancillary services as are necessary to facilitate clinic attendance.

      (3) *Information and education* – These activities are designed to achieve community understanding of the program's objectives, inform the community of the availability of program services, and promote continued participation in the project by persons likely to benefit from its services (42 CFR sections 59.5(a)(1) and (b)).

   b. *Purchase of services* – If the grantee obtains services for its clients by contract or other arrangements with service providers, it must do so according to agreements with the providers that specify payment rates and procedures (42 CFR section 59.5(b)(9)).

2. *Activities Unallowed* **–** No FPSGP funds shall be used in programs where abortion is a method of family planning (42 CFR section 59.5(a)(5)).

G. Matching, Level of Effort, Earmarking

1. Matching

The Federal share of a FPSPG project's cost may never equal 100 percent nor be less than 90 percent (with certain exceptions). The Federal and non-Federal shares are stated in the Notice of Grant Award issued to the grantee (42 CFR sections 59.7(b) and (c)).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

J. Program Income

A grantee must charge for family planning services according to the client's ability to pay. A person's inability to pay according to the prescribed fee schedule must not be a deterrent to receiving services. A person from a low-income family may not be charged, except to the extent that payment will be made by a third party (such as an insurer or a government agency) who is authorized or is under legal obligation to pay such charge. Individuals from other than low-income families are charged according to an established fee schedule. For individuals from families with incomes between 101 and 250 percent of the published Income Poverty Guidelines, such a schedule must provide discounts based on ability to pay. Fees for individuals from families with higher incomes are set to recover the reasonable cost of providing the services (42 CFR sections 59.5(a)(7) and (8)).

A "low-income family" is one whose total annual income does not exceed 100 percent of the most recent Income Poverty Guidelines published by HHS in the *Federal Register*. These guidelines may be found on the HHS web site at http://aspe.hhs.gov/poverty/. "Low-income family" also includes members of families whose annual family income exceeds the poverty level, but who the project director has determined are unable, for good reasons, to pay for family planning services. For example, unemancipated minors who wish to receive services on a confidential basis must be considered on the basis of their own resources (42 CFR sections 59.2 and 59.5(a)(6)).

The Notice of Grant Award provides guidance on the use of program income. Generally the addition method is used for this program.

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.224 CONSOLIDATED HEALTH CENTERS (COMMUNITY HEALTH CENTERS, MIGRANT HEALTH CENTERS, HEALTH CARE FOR THE HOMELESS, PUBLIC HOUSING PRIMARY CARE, AND SCHOOL BASED HEALTH CENTERS)

I. PROGRAM OBJECTIVES

In general, the objective of the Consolidated Health Centers program (CHCP) is to provide to populations that would ordinarily not have access to health care (1) primary and preventive health services, (2) referrals to other services, such as hospital and substance abuse services, and (3) case management and other services designed to assist health center patients in establishing eligibility and gaining access to Federal, State, and local programs that provide additional medical, social, or educational support or enabling services, such as transportation, translation and outreach services, and patient education services.

The CHCP typically provides family-oriented primary and preventive health care services for people living in rural and urban medically underserved communities, e.g., those where economic, geographic or cultural barriers limit access to such services for a substantial portion of the population. Some health center delivery sites serve vulnerable populations, including homeless individuals, migrant farm workers, residents of public housing, and school children at risk of poor health outcomes.

Required health services for health centers include services related to family medicine, internal medicine, pediatrics, ob/gyn, lab and radiology services, and prenatal and perinatal services; cancer screening; well-child services; immunizations; screenings for elevated blood lead, communicable diseases, and cholesterol; pediatric eye, ear, and dental screenings; voluntary family planning services; preventive dental services; emergency medical services; referrals to providers of medical services; and, as appropriate, pharmaceutical services.

Some exceptions and special provisions for certain components of the CHCP are:

Health Care for the Homeless (HCH) – In addition to services required of all consolidated health centers, recipients of HCH funding must provide substance abuse services, including detoxification, risk reduction, outpatient treatment, residential treatment, and rehabilitation for substance abuse provided in settings other than hospitals.

Specific provisions of governance requirements for HCH funding can be waived by the Health Resources and Services Administration (HRSA) under a delegation from the Secretary, Department of Health and Human Services (HHS) (see II, "Program Procedures – Administration and Services"). These requirements also may be waived under Public Housing Primary Care (PHPC) and Migrant Health Centers (MHC) components (42 USC 254b(k)(3)(H)(iii)).

Migrant Health Centers – The requirement for an MHC to provide all the primary care services can be waived, and an MHC also may receive approval to provide certain required primary health care services during certain periods of the year only. An MHC may provide health services other than primary care services due to the health needs of the population it serves. These services may include environmental health services, screening for and control of infectious diseases, and injury prevention programs.

II. PROGRAM PROCEDURES

Planning Grants

The purpose of these grants is to assess the health care needs of the population to be served and to plan and develop a health center program that will serve medically underserved populations. This includes efforts to obtain financial and professional support, develop linkages with other health-care providers, and involve the community. Planning grants also may be awarded to health centers to plan or develop a managed care network.

Operational Grants

The purpose of these grants is to support the costs of operating health centers that serve medically underserved populations. Operational grants also may include the operation of managed care and practice management networks and plans.

Administration and Services

CHCP grants are awarded and administered at the Federal level by the Bureau of Primary Health Care (BPHC), HRSA, HHS. Based on applications submitted to and approved by HRSA, grants are provided to public and private non-profit organizations. Factors considered include the population to be served and the current availability of services in the geographical area to be served.

Unless the requirement is waived, grantees are required to have a governing board that is composed of individuals, a majority of whom are being served by the center, and, who, as a group, represent the individuals being served by the center. The responsibilities of the governing board include, among other things, selecting the services to be provided, determining the center's hours of operation, and approving the selection of the center director. Grantees may enter into service and care arrangements with vendors to expand their service networks.

The annual level of HRSA funding for the operation of a health center is determined on the basis of the center's approved scope of services, projected total costs of operation, and expected revenues from program income and funding from non-Federal sources. This includes all State, local, and other operational funding received by or allocated to the approved project, and all premiums, fees, and third-party reimbursements received (adjusted for uncollectible amounts). The Federal dollars awarded are intended to make up the expected difference between the projected costs and revenues.

Source of Governing Requirements

The CHCP is authorized under Section 330 of the Public Health Service Act, as amended. The statutory provisions are codified at 42 USC 254b. The implementing program regulations for Community Health centers (CHC) and MHCs are 42 CFR parts 51c and 56, respectively. The HCH and PHPC components do not have program-specific regulations.

Availability of Other Program Information

Additional program information is available from the BPHC web site at http://www.bphc.hrsa.gov/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Operational Grants for Other than Managed Care and Practice Management Networks and Plans*

   a. Required primary health services include:

      (1) Basic health services related to family medicine, internal medicine, pediatrics, obstetrics, or gynecology that are furnished by physicians and, where appropriate, by physician assistants, nurse practitioners, and nurse midwives (42 USC 254b(b)(1)(A)(i)(I)).

      (2) Diagnostic laboratory and radiological services (42 USC 254b(b)(1)(A)(i)(II)).

      (3) Preventive health services, including prenatal and perinatal services; appropriate cancer screening; well-child services; immunizations against vaccine-preventable diseases; screenings for elevated blood lead levels, communicable diseases and cholesterol; pediatric eye, ear, and dental screenings; voluntary family planning services; and preventive dental services (42 USC 254b(b)(1)(A)(i)(III)).

      (4) Emergency medical services (42 USC 254b(b)(1)(A)(i)(IV)).

      (5) Pharmaceutical services, as may be appropriate for particular centers (42 USC 254b(b)(1)(A)(i)(V)).

(6) Referrals to providers of medical services, (including specialty referral when medically indicated) and other health-related services (including substance abuse and mental health services) (42 USC 254b(b)(1)(A)(ii)).

(7) Patient case management services (including counseling, referral, and follow-up services) and other services designed to assist health center patients in establishing eligibility for and gaining access to Federal, State, and local programs that provide or financially support the provision of medical, social, educational, housing, or other related services (42 USC 254b(b)(1)(A)(iii)).

(8) Services that enable individuals to use the services of the health center (including outreach and transportation services and, if a substantial number of the individuals in the population served by the center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals) (42 USC 254b(b)(1)(A)(iv)).

(9) Education of patients and the general population served by the health center regarding the availability and proper use of health services (42 USC 254b(b)(1)(A)(v)).

b. Additional health services that may be provided as appropriate to meet the health needs of the population to be served include:

(1) Behavioral and mental health and substance abuse services 42 USC 254b(2)(A); however, substance abuse services are required under HCH grants (42 USC 254b(h)(2)).

(2) Recuperative care services (42 USC 254b(b)(2)(B)).

(3) Environmental health services, including the detection and alleviation of unhealthful conditions associated with water supply, chemical and pesticide exposures, air quality, or exposure to lead; sewage treatment; solid waste disposal; rodent and parasitic infestation; field sanitation; housing; and other environmental factors related to health (42 USC 254b(b)(2)(C)).

(4) For MHCs, special occupation-related health services for migratory and seasonal agricultural workers, including screening for and control of infectious diseases (including parasitic diseases) and injury prevention programs (including prevention of exposure to unsafe levels of agricultural chemicals including pesticides) (42 USC 254b(b)(2)(D)).

c. Funds may be used for the reimbursement of members of the grantee's governing board, if any, for reasonable expenses incurred by reason of their participation in board activities (42 CFR sections 51c.107(b)(3) and 56.108(b)(3)).

d. Funds may be used for the cost of insurance for medical emergency and out-of-area coverage (42 CFR section 51c.107(b)(6)).

e. Funds may be used for the acquisition and lease of buildings and equipment (including the costs of amortizing the principal of, and paying the interest on, loans for equipment) (42 USC 254b(e)(2)).

f. Funds may be used for the costs of providing training related to the provision of required primary health care services and additional health services and to the management of health center programs (42 USC 254b(e)(2)).

2. *Planning Grants for Health Centers*

Funds may be used for the acquisition and lease of buildings and equipment (including the costs of amortizing the principal of, and paying the interest on, loans) (42 USC 254b(c)(1)(A)).

3. *Planning Grants for Managed Care or Practice Management Networks or Plans*

a. Funds may be used for the acquisition and lease of buildings and equipment, which may include data and information systems (including the costs of amortizing the principal of, and paying the interest on, loans for equipment) (42 USC 254b(c)(1)(D)).

b. Funds may be used to provide training and technical assistance related to the provision of health services on a prepaid basis or other managed care arrangement, and for other purposes that promote the development of managed care networks and plans (42 USC 254b(c)(1)(D)).

B. Allowable Costs/Cost Principles

Program income, including, but not limited to, fees, premiums and third-party reimbursements may be used for allowable activities (see III.A.1, "Activities Allowed or Unallowed – Operational Grants for Other Than Managed Care and Practice Management Networks and Plans") and for such other purposes as are not specifically prohibited if such use furthers the objectives of the project. As such, program income is subject to the unallowable cost provisions of the program rather than the OMB cost principles circulars (42 USC 254b(e)(5)(D)).

E. Eligibility

1. Eligibility for Individuals

Under HCH funding, if a grantee has provided services to a previously homeless individual and the individual is no longer homeless as a result of becoming a resident in permanent housing, the grantee may continue to provide services for not more than 12 months (42 USC 254b(h)(4)).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

J. Program Income

1. Health centers must have a schedule of fees or payments for the provision of their health services consistent with locally prevailing rates or charges and designed to cover their reasonable costs of operation. They are also required to have a corresponding schedule of discounts applied and adjusted on the basis of the patient's ability to pay (42 USC 254b(k)(3)(G)(i)). The patient's ability to pay is determined on the basis of the official poverty guideline, as revised annually by HHS (42 CFR sections 51c.107(b)(5), 56.108(b)(5), and 56.303(f)). The poverty guidelines are issued each year in the *Federal Register* and HHS maintains a page on the Internet that provides the poverty guidelines (http://aspe.hhs.gov/poverty/).

2. Health centers are required to collect (or make every reasonable effort to collect) appropriate reimbursement for their costs in providing health services to persons eligible for medical assistance under Title XIX of the Social Security Act (Medicaid), entitled to insurance benefits under Title XVIII of the Social Security Act (Medicare) or entitled to assistance for medical expenses under any other public assistance program or private health insurance program. Reimbursement for health services to such persons should be collected on the basis of the full amount of fees and payments for those services without application of any discount (42 USC 254b(k)(3)(F) and (G)(ii)(II)).

3. Program income, including, but not limited to, fees, premiums and third-party reimbursements may be used for allowable activities (see III.A.1. above) and for such other purposes as are not specifically prohibited if such use furthers the objectives of the project (42 USC 254b(e)(5)(D)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable, if specified in the terms and conditions of award.

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – *Uniform Data System (OMB No. 0915-0193)* – This system is comprised of two separate sets of reports, the Universal Report and Grant Reports. The conditions for their use are:

- Grantees that receive a single grant under the consolidated health centers program or that receive CHC and/or MHC funding only are required to complete the *Universal Report* only.

- Grantees that receive multiple awards (in addition to or other than CHC and MHC funding) must complete a *Universal Report* for the combined grants and individual *Grant Reports* for their HCH and PHPC funding, if applicable.

Key Line Items – The following line items contain critical information:

a. Table 5 – Staffing and Utilization

(1) Line 8 – *Total Physicians*

(2) Line 15 – *Total Medical Care Services*

(3) Line 19 – *Total Dental Services*

(4) Line 29 – *Total Enabling Services*

(5) Line 33 – *Total Administration and Facility*

b. Table 8 Part A – Financial Costs

(1) Line 4(c) – *Total Medical Care Services*

(2) Line 10(c) – *Total Other Clinical Services*

(3) Line 13(c) – *Total Enabling and Other Services*

(4) Line 16 – *Total Overhead*

(5) Line 18 – *Value of Donated Facilities, Services, and Supplies*

c. Table 9 Part D – Patient Related Revenue

(1) Line 1 – *Medicaid Non-managed Care*

(2) Line 2a – *Medicaid Managed Care (capitated)*

(3) Line 2b – *Medicaid Managed Care (fee-for-service)*

(4) Line 7 – *Other Public including Non-Medicaid CHIP (non-managed care)*

(5) Line 10 – *Private Non-Managed Care*

(6) Line 11a – *Private Managed Care (capitated)*

(7) Line 11b – *Private Managed Care (fee-for-service)*

(8) Line 13 – *Self Pay*

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

Governing Board

Compliance Requirement – Unless the requirement for a governing board is waived by HRSA or the center is operated by an Indian tribe or tribal or Indian organization under the Indian Self-Determination Act or an urban Indian organization under the Indian Health Care Improvement Act, the health center must have a governing board that (1) is composed of individuals, a majority of whom are being served by the center and who, as a group, represent the individuals being served by the center; (2) meets at least once a month; (3) selects the services to be provided by the center; (4) schedules the hours during which services will be provided by the center; (5) approves the center's annual budget; (6) approves the selection of a director for the center; and (7) except in the case of a public center, establishes general policies for the center (42 USC 254b(k)(3)(H)).

Audit Objectives – Determine whether (1) the center has adopted and periodically reviews and updates, as necessary, by-laws or other internal policies for governing board selection and operation; (2) the board meets at least monthly and approves the annual budget; and (3) for actions occurring during the audit period that, by statute, require governing board decision or approval, the center complied with the statute and its by-laws/internal operating procedures.

Suggested Audit Procedures

a. Ascertain if the center has by-laws or other internal policies addressing the required elements of the board and its operation.

b. Review meeting minutes to ascertain if the board approved the annual budget.

c. As of the end of the year preceding the audit, determine the board membership, services provided, operating hours, and center director. Ascertain if changes occurred in any of these areas during the audit period and, if so, whether the governing board had the type of involvement required by the statute and acted in compliance with the center's by-laws/internal operating procedures.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.268 IMMUNIZATION GRANTS
CFDA 93.712 ARRA – IMMUNIZATION

I. PROGRAM OBJECTIVES

The objective of the immunization grant program is to reduce and ultimately eliminate vaccine preventable diseases (VPDs) by increasing and maintaining high immunization coverage. Emphasis is placed on populations at highest risk for under-immunization and disease, including children eligible under the Vaccines for Children (VFC) program.

II. PROGRAM PROCEDURES

The Immunization Grants program consists of two parts: discretionary Section 317 immunization grants and VFC financed with mandatory Medicaid (CFDA 93.778) funding.

The objective of the discretionary Section 317 immunization grant program is to reduce and ultimately eliminate VPDs by increasing and maintaining high immunization coverage. Emphasis is placed on populations at highest risk for under-immunization and disease, which includes VFC-eligible children. The statute refers to development of programs for all individuals for whom vaccines are recommended, including infants, children, adolescents and adults. The intent of the discretionary Section 317 immunization grant program is to supplement, not supplant, each grantee's immunization effort at the State/local level. The Centers for Disease Control and Prevention (CDC), through its grant guidance, has identified the following areas of activity for programmatic emphasis and funding prioritization: reduce the number of indigenous cases of vaccine-preventable diseases; ensure that two-year olds are appropriately vaccinated; improve vaccine safety surveillance; increase routine vaccination coverage levels for adolescents; and increase the proportion of adults who are vaccinated annually against influenza and who have ever been vaccinated against pneumococcal disease.

VFC, which is authorized by and financed through Title XIX of the Social Security Act (Medicaid), is activity-based financial assistance and direct assistance in the form of vaccine-purchase funds and program operations funds to support implementation of the VFC program. VFC is administered by CDC and is funded entirely by the Federal government. VFC funds are provided to eligible grantees to develop and operate programs designed to ensure effective delivery of vaccination services to eligible children through enrolled providers of medical care. Grantees are required to encourage a variety of providers to participate in the VFC program and to administer vaccines in an appropriate cultural context. Other criteria, detailed in annual grant application guidance documents, may also apply.

Under VFC, children from birth through 18 years of age are eligible for VFC-purchased vaccine if they are Medicaid-eligible, American Indian/Alaskan Native, or without health insurance. Children who are insured but whose insurance does not cover vaccination also are eligible to receive VFC vaccine at Federally Qualified Health Centers or Rural Health Clinics. The intent of the VFC program is to ensure adequate funding for vaccine purchases and to promote

comprehensive health care in a medical setting for all eligible children and reduce the number of children that are referred to the public sector because they cannot afford the vaccine costs. The VFC program authorizes participating immunization providers in all States to receive publicly purchased vaccine for administration to VFC-eligible children. The goal is to ensure that no child contracts a VPD because his or her parent cannot afford to pay for the vaccine or its administration.

VFC and Section 317 financial assistance (FA) is provided/obligated directly to immunization grantees for administrative and operations costs. Similarly, Section 317 FA is obligated to grantees for the purchase of vaccines not available through federal contracts. Funds for direct assistance (DA) vaccines are maintained at CDC, and are periodically obligated to manufacturer contracts. Grantees are given estimated target budgets for their DA vaccine purchase needs. CDC uses these budgets as a control mechanism for vaccine orders.

Vaccines will be maintained by a federally contracted third-party distributor that receives orders from and ships vaccine to providers. Periodically, when the federal distributors' inventory reaches certain minimum thresholds, the distributor makes a request to CDC for replenishment vaccines. CDC reviews these requests and assigns funding sources to them (VFC or 317) based on the aggregate of grantee submitted spend plans. Orders for the vaccines are processed and sent to the appropriate manufacturer(s), referencing funds that were previously obligated to the manufacturer contracts. The manufacturer fulfills the order and ships the vaccines to the federally contracted distributor.

Source of Governing Requirements

These programs are authorized under 42 USC 247b, 42 USC 243, 42 USC 300aa-3, 300aa-25 and 300aa-26, 42 USC 1396s, **and the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (ARRA).** Regulations specific to discretionary Section 317 grants may be found at 42 CFR part 51b.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Discretionary Section 317 grant funds may be used to establish and maintain a preventive health service program, including:

    a. Research into the prevention and control of diseases that may be prevented through vaccination;

    b. Demonstration projects for the prevention and control of such diseases;

c. Public information and education programs for the prevention and control of such diseases;

d. Education, training, and clinical skills improvement activities in the prevention and control of such diseases for health professionals; and

e. Operational activities associated with the conduct of a successful immunization program (42 USC 247b(k)(1)).

2. The VFC program is intended primarily as a vaccine purchase and supply program for eligible children. VFC funds may be expended to support costs associated with:

a. VFC vaccine ordering;

b. VFC vaccine distribution for grantees that have not transitioned to a federally contracted vaccine distributor; and

c. Direct VFC program operations, such as provider recruitment and enrollment, overall VFC program coordination, vaccine management and accountability, VFC provider accountability and site visit assessments, and VFC program evaluation (42 USC 1396s).

J. Program Income

Grantees providing direct immunization services may generate program income from fees or donations. Fees charged under VFC, however, may not exceed the maximum reimbursement schedule established by the Centers for Medicare and Medicaid Services, the delegated authority. This cap does not apply to discretionary Section 317 grants. However, no one may be denied immunization services due to the inability to pay a fee or donation (42 USC 1396s(c)(2)(C)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

1. Control, Accountability, and Safeguarding of Vaccine

Compliance Requirement – Effective control and accountability must be maintained for all vaccine under the VFC program. Vaccine must be adequately safeguarded and used solely for authorized purposes (42 USC 1396s). This includes administration only to VFC program-eligible children, as defined in 42 USC 1396s(b)(2)(A)(i) through (A)(iv), regardless of the child's parent's ability to pay (42 USC 1396s(c)(2)(C)(iii)).

Audit Objective – Determine whether the grantee provides oversight of vaccinating providers to ensure that proper control and accountability is maintained for vaccine, vaccine is properly safeguarded (based on guidance provided by CDC), and VFC-eligibility screening is conducted.

Suggested Audit Procedures

a. Determine if the grantee has a written procedure for overseeing vaccinating providers that provides for sampling of provider's inventory records and assessment of storage procedures. Grantees are not required to sample the records of all providers; however, the written procedure must clearly indicate how the grantee will sample providers' records generally.

b. Determine if the grantee sampled the provider's inventory records to ensure proper recording of receipt, transfer, and usage of vaccine.

c. Determine if the grantee reviewed the provider's storage of vaccine for proper safeguarding, including risks of loss from theft, expiration, or improper storage temperature.

d. Determine if the grantee reviewed a sample of provider medical records for documentation of eligibility screening.

e. Determine if necessary follow-up procedures were followed if any deficiencies were identified.

2. Record of Immunization

Compliance Requirement – A record of vaccine administered shall be made in each person's permanent medical record (or in a permanent office log or file to which a legal representative shall have access upon request) (42 USC 300aa-25) which includes:

a. Date of administration of the vaccine;

b. Vaccine manufacturer and lot number of the vaccine; and

c. Name and address and, if appropriate, the title of the health care provider administering the vaccine.

Audit Objective – Determine whether the grantee provides oversight of vaccinating providers to ensure that the required information has been recorded for vaccine recipients.

Suggested Audit Procedures

a. Determine if the grantee has a written procedure for ensuring that the required information has been recorded for vaccine recipients.

b. Determine if the grantee tested a sample of vaccination records to ascertain if the required information was maintained

c. Determine if the grantee took any follow-up action if the required records and information were not maintained.

IV. OTHER INFORMATION

After the end of each month and after the end of each Federal fiscal year, CDC advises each grantee of the value of all federally funded vaccine, **including ARRA-funded vaccine,** which was distributed, in lieu of cash, directly to the grantee and/or on behalf of the grantee to vaccinating providers located in the grantee's geographical area. The annual dollar value of federally funded vaccine**, including ARRA-funded vaccine,** should be treated by the grantee as grant expenditure for purposes of determining audit coverage and reporting on the Schedule of Expenditures of Federal Awards. Vaccinating providers and vaccinated individuals are not considered subrecipients; therefore, the value of vaccine received is not grant expenditure for purposes of determining audit coverage and reporting for those entities.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.508 AFFORDABLE CARE ACT – TRIBAL MATERNAL, INFANT, AND EARLY CHILDHOOD HOME VISITING GRANT PROGRAM

I. PROGRAM OBJECTIVES

The goals of the Affordable Care Act Tribal Maternal, Infant, and Early Childhood Home Visiting Grant Program include both supporting the development of healthy, happy, successful American Indian and Alaska Native (AIAN) children and families through a coordinated, high-quality, evidence-based home visiting strategy and expanding the evidence base around home visiting programs for American Indian/Alaska Native populations. Home visiting programs are intended to promote outcomes such as improvements in maternal and prenatal health, infant health, and child health and development; reduced child maltreatment; improved parenting practices related to child development outcomes; improved school readiness; improved family socio-economic status; improved coordination of referrals to community resources and supports; and reduced incidence of injuries, crime, and domestic violence. It is envisioned that this program will support and strengthen cooperation and coordination and promote linkages among various programs that serve pregnant women, expectant fathers, young children, and families in tribal communities and result in high-quality, comprehensive early childhood systems in every community.

II. PROGRAM PROCEDURES

Agency Administration and Services

The Administration for Children and Families (ACF) and the Health Resources and Services Administration are jointly funding this program, with awards made by ACF.

Phase 1: Needs Assessment, Planning, and Capacity-Building (Year 1)

- Grantees must (1) conduct a comprehensive community needs assessment and (2) develop a plan and begin to build capacity to respond to identified needs.

Phase 2: Implementation Phase (Years 2-5)

- Grantees will implement the various components of their approved plan to respond to identified needs (submitted at the end of Phase 1 and work closely with ACF and the Health Services and Resources Administration to ensure high-quality, evidence-based home visiting programs in their community.

NOTE: If a grantee completes its needs assessment, submits a plan for responding to identified needs, and receives approval from ACF and HRSA to implement this plan prior to the end of Year 1, it may use the remainder of Year 1 funding to conduct Phase 2 activities, potentially including providing high-quality, evidence-based home visiting services to families.

Cooperative Agreements

Cooperative agreements are awarded to Tribes (or a consortium of Indian Tribes), Tribal Organizations, or Urban Indian Organizations to conduct needs assessments; develop the infrastructure needed for the widespread planning, adopting, implementing, and sustaining of evidence-based maternal, infant, and early childhood home visiting programs; and provide high-quality, evidence-based home visiting services to pregnant women and families with young children aged birth to kindergarten entry. The project period for these grants is 5 years.

Source of Governing Requirements

This program is authorized under Section 511(h)(2)(A) of Title V of the Social Security Act, as added by Section 2951 of the Patient Protection and Affordable Care Act (Affordable Care Act) (Pub. L. No. 111-148).

This program is meant to support critical maternal, infant, and early childhood home visiting services for AIANs in Tribal communities, including Indian Tribes or Urban Indian Centers (as defined by Section 4 of the Indian Health Care Improvement Act, Pub.L. No. 94-437).

Availability of Other Program Information

A copy of the FY 2010 Funding Opportunity Announcement for the Tribal Maternal, Infant, and Early Childhood Home Visiting Program Grantees is available at the following website: http://www.acf.hhs.gov/grants/open/foa/view/HHS-2010-ACF-OFA-TH-0134.

The ACF web site provides general information on this program at http://www.acf.hhs.gov/earlychildhood/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

Funds may be used to--

a. conduct a coordinated needs assessment to identify at-risk Tribal communities through a collaborative process that engages all stakeholders (e.g., maternal and child health; early education and child care; child maltreatment; mental health and substance abuse; domestic violence; AIAN Head Start, Tribal child care, Tribal child welfare, the Indian Health Service, and health and human service agencies as well as partners from the business community);

b. develop the infrastructure and capacity needed to implement and sustain evidence-based maternal, infant, and early childhood home visiting programs in those communities;

c. provide home visiting services to eligible families; and

d. participate in research and evaluation activities to build the knowledge base on home visiting among Tribal populations (Funding Opportunity Announcement, Required Grant Activities).

2. *Activities Unallowed*

a. Pre-award costs may not be paid under this program,

b. Construction is not an allowable activity, and

c. Purchase of real property is not an allowable activity (Funding Opportunity Announcement, Section IV.5).

E. Eligibility

1. Eligibility for Individuals – Not Applicable

2. Eligibility for Groups or Area of Service Delivery

a. Eligible families in at-risk American Indian/Alaska Native communities include pregnant women, expectant fathers, parents, and primary caregivers of children aged birth through kindergarten entry, including grandparents or other relatives of the child, foster parents who are serving as the child's primary caregiver, and non-custodial parents who have an ongoing relationship with, and at times provide physical care for, the child. (Section 2951(k)(2) of Title V of the Social Security Act, as added by Section 2951 of the Affordable Care Act).

b. Grantees are required to give priority to serving high-risk groups including: eligible families who reside in communities in need of such services, as identified in the needs assessment; low-income eligible families; eligible families who are pregnant women who have not attained age 21; eligible families that have a history of child abuse or neglect or have had interactions with child welfare services; eligible families that have a history of substance abuse or need substance abuse treatment; eligible families that have users of tobacco products in the home; eligible families that are or have children with low student achievement; eligible families with children with developmental delays or disabilities; and eligible families who, or that include individuals who, are serving or formerly served in the Armed Forces, including such families that have members of the Armed Forces who have had multiple

deployments outside of the United States (Section 511(d)(4) of Title V, as added by Section 2951,Affordable Care Act).

c. For the purposes of this program, in order to reflect the diverse circumstances of Tribal populations, ACF and HRSA take a broad and inclusive view of the definition of "at-risk community." Grantees may define an at-risk community in the following ways (and each of these possible definitions has implications for the type and quality of data that will be available for the purposes of the needs assessment):

(1) An entire Tribe within a discrete geographic region (i.e., on a reservation) could be considered an at-risk community;

(2) Subgroups of a Tribe within a discrete geographic region (i.e., on a reservation) could be considered at-risk communities; or

(3) Members of a Tribe(s) could live scattered throughout a larger, non-Tribal geographic area interspersed with non-Tribal members (i.e., Indians living in an urban environment) and be considered an at-risk community.

d. The award of home visiting funds to an Indian Tribe, Tribal Organization, or Urban Indian Organization shall not affect the eligibility of any eligible families in at-risk American Indian/Alaska Native communities to receive home visiting services in the State or States in which the grantee is located.

3. Eligibility for Subrecipients – Not Applicable.

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. **Special Reporting** – Not Applicable.

4. **Section 1512 ARRA Reporting** – Not Applicable.

5. **Subaward Reporting under the Transparency Act** – Applicable.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.556 PROMOTING SAFE AND STABLE FAMILIES

I. PROGRAM OBJECTIVES

The Promoting Safe and Stable Families (PSSF) program provides funds to States and federally recognized Indian Tribes (Tribes and Tribal consortia) to prevent the unnecessary separation of children from their families, improve the quality of care and services to children and their families, and ensure permanency for children by reuniting them with their parents, by adoption or by another permanent living arrangement. The program includes: family support, family preservation, time-limited family reunification, and adoption promotion and support services.

II. PROGRAM PROCEDURES

Administration and Services

The Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS), administers the PSSF. To be eligible for funds, each State and Tribe must submit a five-year comprehensive plan, the Child and Family Services Plan (CFSP). This plan encompasses planning and service delivery for the full child welfare services spectrum. This includes: child welfare services under Title IV-B, Subparts 1 and 2; a child welfare staff development and training plan; a diligent recruitment of foster and adoptive families plan that reflects the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed; and child abuse and neglect prevention, foster care, adoption, and foster care independence services, including an education and training voucher program for foster care youth. An Annual Progress and Services Report (APSR) is required that identifies the specific accomplishments and progress made in the past fiscal year toward meeting each goal and objective in the 5-year comprehensive plan and any revisions in the statement of goals and objectives or to the training plan, if necessary, to reflect changed circumstances.

The Associate Commissioner of the ACF Children's Bureau has approval authority for the title IV-B plans. Following ACF approval, allotments are based on the number of children in the States who received food stamps in the previous three years. Grants may also be made to Tribes that qualify under the allotment formula; no Tribe may be funded if its allotment is less than $10,000. PSSF services are based on several key principles. The welfare and safety of children and of all family members should be maintained while strengthening and preserving the family. It is advantageous for the family as a whole to receive services, which identify and enhance its strengths while meeting individual and family needs. Services should be easily accessible, often delivered in the home or in community-based settings, and they should respect cultural and community differences. In addition, they should be flexible, responsive to real family needs, and linked to other supports and services outside the child welfare system. Services should involve community organizations and residents, including parents, in their design and delivery. They should be intensive enough to keep children safe and meet family needs, varying between preventive and crisis services.

Source of Governing Requirements

PSSF is authorized under Title IV-B, Subpart 2 of the Social Security Act, as amended, and is codified at 42 USC 629a through 629e. Implementing program regulations are published at 45 CFR parts 1355 and 1357.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Community-based Services* – Programs delivered in accessible settings in the community and responsive to the needs of the community and the individuals and families residing therein. These services may be provided under public or private non-profit auspices (45 CFR section 1357.10(c)).

2. *Family Preservation Services* – Services for children and families designed to protect children from harm and help families (including foster, adoptive, and extended families) at risk or in crisis, including (42 USC 629a(a)(1)):

    a. Pre-placement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain with their families, where possible;

    b. Service programs designed to help children, where appropriate, return to families from which they have been removed; or be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement;

    c. Service programs designed to provide follow-up care to families to whom a child has been returned after a foster care placement;

    d. Respite care of children to provide temporary relief for parents and other caregivers (including foster parents);

    e. Services designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition;

f. Infant safe haven programs to provide a way for a parent to safely relinquish a newborn infant at a safe heaven designated pursuant to a State law; and

g. Case management services designed to stabilize families in crisis such as transportation, assistance with housing and utility payments, and access to adequate health care.

3. *Family Support Services* – Community-based services to promote the well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families), to increase parents' confidence and competence in their parenting abilities, to afford children a stable and supportive family environment, to strengthen parental relationships and promote healthy marriages, and otherwise to enhance child development. Family support services may include (42 USC 629a(a)(2); 45 CFR section 1357.10(c)):

a. Services, including in-home visits, parent support groups, and other programs designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition;

b. Respite care of children to provide temporary relief for parents and other caregivers;

c. Structured activities involving parents and children to strengthen the parent-child relationship;

d. Drop-in centers to afford families opportunities for informal interaction with other families and with program staff;

e. Transportation, information and referral services to afford families access to other community services, including child care, health care, nutrition programs, adult education literacy programs, legal services, and counseling and mentoring services; and

f. Early developmental screening of children to assess the needs of such children, and assistance to families in securing specific services to meet these needs.

4. *Time-Limited Family Reunification Services* – Services and activities that are provided to a child who is removed from his/her home and placed in a foster family home or a child care institution and to the parents or primary caregiver of such a child, in order to facilitate the reunification of the child safely and appropriately within a timely fashion. These services are provided only during the 15-month period that begins on the date that the child, pursuant to 42 USC 675(5)(F), is considered to have entered foster care. The services and activities are the following (42 USC 629a(a)(7)):

   a. Individual, group, and family counseling;

   b. Inpatient, residential, or outpatient substance abuse treatment services;

   c. Mental health services;

   d. Assistance to address domestic violence;

   e. Services designed to provide temporary child care and therapeutic services for families, including crisis nurseries; and

   f. Transportation to or from any of the services and activities described above.

5. *Adoption Promotion and Support Service* – Services and activities designed to encourage more adoptions out of the foster care system, when adoption promotes the best interest of the child, including such activities as pre- and post-adoptive services and activities designed to expedite the adoption process and support adoptive families (42 USC 629a(a)(8)).

6. A*dministrative Costs*- Administrative costs (defined as costs of auxiliary functions as identified through an agency's accounting system that are allocable, in accordance with the agency's approved cost allocation plan, to the title IV-B, subpart 2 program cost centers; necessary to sustain the direct effort involved in administering the State plan or an activity providing service to the programs: and centralized in the grantee department or in some other agency) are allowable. Administrative costs include, but are not limited to, the following: procurement; payroll; personnel functions; management; maintenance and operation of space and property; data processing and computer services; accounting; budgeting; and auditing (45 CFR sections 1357.32(h)(1) and (2). See III.G.3 for a limitation on the amount of administrative costs.

7 *Program Costs* – Program costs are costs, other than administrative costs, incurred in connection with developing and implementing the CFSP (e.g., delivery of services, planning, consultation, coordination, training, quality assurance measures, data collection, evaluations, and supervision) (45 CFR section 1357.32(h)(3)).

8. Funds awarded under Title IV-B, Subpart 2, may not be used for the purchase or construction of facilities (45 CFR section 1357.32(e)).

G. Matching, Level of Effort, Earmarking

1. Matching

Funds are federally reimbursed at 75 percent of allowable expenditures. The IV-B agency's contribution may be in cash, donated funds, and non-public third party in-kind contributions (45 CFR section 1357.32(d)).

2.1 Level of Effort – *Maintenance of Effort* – Not Applicable

2.2 Level of Effort – *Supplement Not Supplant*

a. States and Tribes (42 USC 629c) may not use Federal funds under title IV-B, Subpart 2, to supplant Federal or non-Federal funds for existing services.

(1) "Non-Federal" funds are defined at 42 USC 629a(a)(9) as "State funds, or at the option of a State, State and local funds." Although State matching may be in the form of cash, donated funds, or non-public third party in-kind contributions, the "supplement not supplant" requirement is limited to non-Federal funds as defined in 42 USC 629a(a)(9).

(2) The base year for determining compliance with this requirement is the amount of funds that the State expended for services in the State's fiscal year 1992 (42 USC 629b(a)(7); 45 CFR section 1357.32(f)). The regulations have not been updated to reflect the amendments to the Social Security Act made by the Adoption and Safe Families Act (ASFA) that added two new service categories (i.e., time-limited family and reunification services and adoption promotion and support services) to those specified in 45 CFR section 1357.32(f); however, the base year (1992) remains the same for all four service areas under title IV-B, subpart 2 (42 USC 629b(a) and (b)(1); ACYF-CB-PI-99-07).

b. The State may not use the amount specified in III.G.3.c. below to supplant any Federal funds paid to the State under part E that could be used for monthly caseworker visitation with children who are in foster care and activities designed to improve caseworker retention, recruitment, training, and ability to access the benefits of technology (Pub. L. No. 109-288, section 3(c)(2)(B)).

3. Earmarking

a. Unless approved by ACF, States must expend a significant portion of their grant, defined as 20 percent, on each of the following: (1) programs of family preservation services, (2) community-based family support services, (3) time-limited family reunification services, and (4) adoption promotion and support services (42 USC 629b(a)(4); 45 CFR section 1357.15(s); ACYF-CB-PI-10-09 (found at http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2010/pi1009.htm).

b. States may not expend more than 10 percent of Federal funds for administrative costs (42 USC 629b(a)(4)). There is no limitation on the percentage of administrative costs that may be reported as State match.

c. A State shall use the special allocation provided pursuant to Pub. L. No. 109-288 to support monthly caseworker visits with children who are in foster care with a primary emphasis on activities designed to improve caseworker retention, recruitment, training, and ability to access the benefits of technology (42 USC 629f(b)(4)).

H. Period of Availability of Federal Funds

Funds must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded (45 CFR section 1357.32(g)), with the exception of those FY 2006 funds provided by the special allocation pursuant to Pub. L. No. 109-288. These latter funds must be expended by September 30, 2009 (Pub. L. No. 109-288, section 3(c)(2)(A)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* –Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.558 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)
CFDA 93.714 .....ARRA – EMERGENCY CONTINGENCY FUND FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) STATE PROGRAMS
CFDA 93.716 ARRA – TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) SUPPLEMENTAL GRANTS

I. PROGRAM OBJECTIVES

The objectives of the State and Tribal TANF programs are to provide time-limited assistance to needy families with children so that the children can be cared for in their own homes or in the homes of relatives; end dependence of needy parents on government benefits by promoting job preparation, work, and marriage; prevent and reduce out-of-wedlock pregnancies, including establishing prevention and reduction goals; and encourage the formation and maintenance of two-parent families. This program replaced the Aid to Families with Dependent Children (AFDC), Job Opportunities and Basic Skills Training (JOBS), and Emergency Assistance (EA) programs.

II. PROGRAM PROCEDURES

Administration and Services

The Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS), administers the TANF program on behalf of the Federal Government. To be eligible for the TANF block grant, a State (including the District of Columbia, the Commonwealth of Puerto Rico, the United States (U.S.) Virgin Islands, Guam, and American Samoa) must periodically submit a State plan containing specified information and assurances.

Following ACF review of the State Plan and determination that it is complete, ACF awards the basic "State Family Assistance Grant" (SFAG) to the State using a formula allocation derived from funding levels under the superseded programs. The SFAG is a fixed amount to the State subject to reductions based on any penalties assessed. In addition, amounts may be adjusted on the basis of separate Federal funding of counterpart Indian Tribal programs within the State. States meeting the qualifying criteria may also receive supplemental grants and payments from the contingency fund. As long as the minimum requirements are met, States have significant flexibility in designing programs and determining eligibility requirements. While States have flexibility and discretion, there are provisions to ensure accountability for results, including requirements for data about expenditures and individuals receiving benefits under the program, and monetary penalties for failure to meet programmatic requirements such as work participation.

The Federal TANF block grant program also has an annual cost-sharing requirement, known as maintenance-of-effort (MOE). If a State fails to meet the required minimum all-family or two-parent work participation rate for a Federal fiscal year (FY), then the State must spend at least 80 percent of its fiscal year historic State expenditures to provide benefits and services to eligible clientele. If the State meets both minimum work participation rate requirements, then the required spending level decreases to 75 percent of its FY 1994 historic State expenditures. "Historic State expenditures" means the State's FY 1994 share of expenditures in the former Aid to Families with Dependent Children (AFDC), AFDC-EA (Emergency Assistance), AFDC-Related Child Care, Transitional Child Care, At-Risk Child Care and Job Opportunities and Basic Skills (JOBS) programs. States may not use more than 15 percent of the total amount of countable expenditures for the fiscal year for administrative activities.

Tribes

Tribal Family Assistance Plans (TFAP) are developed for a 3-year period and submitted to ACF for review and approval. The Tribal Family Assistance Grant (TFAG) is derived from an amount equal to the Federal share of expenditures, other than child care costs, by the State or States under the former AFDC, EA, and JOBS programs for FY 1994 for all American Indian families residing in the service area identified in the TFAP. The TFAG is a fixed amount, subject to reductions based on any penalties assessed. As long as the minimum requirements are met, Indian tribes (Tribes) have significant flexibility in designing programs and determining eligibility requirements and may use grant funds to provide cash or non-cash assistance, including direct services, and for administrative activities.

Tribal TANF grantees may operate the program under a consolidated Pub. L. No. 102-477 demonstration project. Pub. L. No. 102-477 refers to the Indian Employment, Training and Related Services Demonstration Act of 1992, the purpose of which is to provide for the integration of employment, training and related services to improve the effectiveness of those services. Tribes operating a consolidated Pub. L. No. 102-477 project must still submit a TFAP to the Secretary of HHS for review and approval prior to consolidation of the Tribal TANF program into a Pub. L. No. 102-477 plan. Tribal TANF data collection and performance reporting requirements identified or referenced elsewhere in this program supplement apply and all applicable statutory and regulatory requirements remain in effect for the duration of the grant. Therefore, unless HHS has granted a specific waiver of a particular statutory, administrative, financial or programmatic requirement, Tribes that integrate their Tribal TANF program into the Pub. L. No. 102-477 project are subject to all TANF statutory, administrative, and programmatic requirements with the exception of the Tribal TANF financial reporting requirements. These Tribes may submit TANF financial reports annually as an attachment to their Pub. L. No. 102-477 financial report, the Tribal TANF Financial Addendum Report (12g).

Other Considerations

Funding Methods – States

States have different funding options to expend Federal grant funds and State maintenance-of-effort (MOE) funds. This includes the following:

1. *Federal Only* – Under this option, Federal grant funds are segregated from MOE funds that are expended in the TANF program operated by the State.

2. *Commingled Federal/State* – Under this option, States commingle their MOE funds with Federal grant funds expended in the TANF program operated by the State. A commingled funding structure means that all expenditures are subject to all Federal funding restrictions, TANF requirements, and MOE limitations.

3. *Segregated State* – Under this option, MOE funds are segregated from the Federal grant funds and expended in the TANF program operated by the State.

4. *Separate State Program* – Under this option, States spend their MOE funds in separate State programs, operated outside of the TANF program operated by the State.

Federal grant funds and MOE funds must both be used for "expenditures." A definition of the term "expenditure" is found in 45 CFR section 260.30. In addition, section 260.33 explains the circumstances under which certain State tax relief provisions would count as expenditures.

Funding Methods – Tribes

Tribes have different funding options under which to expend Federal grant funds and, where applicable, State MOE funds as follows.

1. *Federal Only* – Under this option, Federal grant funds are segregated from any State-donated MOE funds or tribal funds that are expended in the TANF program operated by the Tribe.

2. *Commingled Federal/State-donated MOE* – Under this option, Tribes commingle their State-donated MOE funds with Federal grant funds expended in the TANF program operated by the Tribe. A commingled funding structure means that all expenditures are subject to all Federal funding restrictions and MOE limitations.

3. *Segregated Tribal* – Under this option, MOE funds are segregated from the Federal grant funds and expended separately in the TANF program operated by the Tribe. See IV, "Other Information," for guidance on State MOE expended by Tribes.

American Recovery and Reinvestment Act

Section 2101 of Subtitle B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) established the Emergency Contingency Fund (Emergency Fund) for the State TANF (CFDA 93.714) Program at section 403(c) of the Social Security Act. In accordance with section 2101(c)(6) of ARRA, for qualifying States, Tribes, and Territories, Emergency Fund awards may be used for the same types of expenditures as SFAG or TFAG grant funds. See III.N.6. of this program supplement regarding qualification criteria.

Policy Announcement TANF-ACF-PI-2009-05 provides additional detail regarding eligibility for the Emergency Fund for State TANF; it is available on the Office of Family Assistance (OFA) website at http://www.acf.hhs.gov/programs/ofa/policy/pa-ofa/2009/pa200901.htm.

ARRA made additional changes to TANF, such as extending supplemental grants (CFDA 93.716) through FY 2010 (Section 2102 of Subtitle B of Pub. L. No. 111-5), expanding flexibility in the use of TANF funds carried over from one fiscal year to the next (Section 2103 of Subtitle B of Pub. L. No. 111-5), and adding a hold-harmless provision to the caseload reduction credit for States and Territories serving more TANF families.

Source of Governing Requirements

These programs are authorized under Title IV-A of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. No. 104-193), and subsequent amendments thereto, and **ARRA**, and are codified at 42 USC 601-619. PRWORA was signed into law on August 22, 1996, and required State implementation no later than July 1, 1997.

On April 12, 1999, ACF published final regulations for the TANF program. These final rules took effect October 1, 1999 (April 12, 1999, *Federal Register* (64 FR 17720 *et seq.*)). ACF also published technical and correcting amendments to the final rule on July 26, 1999, which were also effective on October 1, 1999 (July 26, 1999, *Federal Register* (64 FR 40290 *et seq.*)). Thus, the obligations and expenditures of Federal TANF funds on or after October 1, 1999, and any State actions occurring on or after October 1, 1999, are subject to the provisions in the final rules, as amended (see 45 CFR Parts 260 – 265 for the TANF regulations applicable to States). The Deficit Reduction Act (DRA) of 2005 (Pub. L. No. 109-171), enacted February 8, 2006, included provisions to reauthorize the TANF program. On June 29, 2006, ACF published interim final regulations implementing the changes to the TANF program required by the DRA (June 29, 2006, *Federal Register* (71 FR 37454 *et seq.*), which is available at http://www.acf.hhs.gov/programs/ofa/tanfregs/tfinrule.pdf). On February 5, 2008, ACF published the final regulations implementing the changes to the TANF program required by the DRA of 2005 (February 5, 2008, *Federal Register* (73 FR 6772 *et seq.*), which is available at http://www.acf.hhs.gov/programs/ofa/. The final rule is effective October 1, 2008.

PRWORA also authorized any federally recognized Tribe in the lower 48 states, 13 specified Alaskan Native entities, and consortia of eligible Tribes to apply for funding under section 412 of the Act to administer a Tribal TANF program beginning July 1, 1997. The Foster Care Independence Act of 1999 (Pub. L. No. 106-169, December 14, 1999) also included technical amendments to the Act, which affected program regulations. Implementing regulations for Tribal TANF are in 45 CFR part 286 and were published in the *Federal Register* on February 18, 2000 (65 FR 8477 *et seq.*).

State and *all* Tribal TANF programs (i.e., including Tribal TANF programs in Pub. L. No. 102-477 projects) are subject to the provisions in 45 CFR part 92, the HHS implementation of the A-102 common rule, and OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments [2 CFR part 225]).

Availability of Other Program Information

TANF-ACF-PI-2007-08, dated November 28, 2007 on *Using Federal TANF and State Maintenance-of-Effort (MOE) Funds for Families in Areas Covered by a Federal or State Disaster Declaration* presents items to consider with respect to the current TANF program when addressing the needs of families affected by a Federal or State-declared disaster. TANF-ACF-PI-2007-08 is available at http://www.acf.hhs.gov/programs/ofa/policy/tanf-pi.htm.

Other general program information regarding the State and Tribal TANF programs is available from the Office of Family Assistance (OFA) web site at http://www.acf.hhs.gov/programs/ofa/ . Questions related to the TANF program may be directed to Robert Shelbourne at 202-401-5150 (direct) or by e-mail at robert.shelbourne@acf.dhhs.gov.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

This program makes references to States, however, in some cases, subrecipients of States (e.g., local governments) may be responsible for compliance requirements that are referred to in this Supplement as "State." The auditor should adjust accordingly for the entity being audited.

A. Activities Allowed or Unallowed

1. *Federal Only*

   a. Funds may be used for expenditures for activities that are not permissible under 42 USC 601, but for which the State was authorized to use IV-A or IV-F funds under prior law. The previously authorized activities must have been included in a State's approved State AFDC plan, JOBS plan, or Supportive Services Plan, as in effect on September 30, 1995, or at the State's option, on August 21, 1996. Examples of such activities are

authorized juvenile justice and foster care activities (42 USC 604(a)(2); 45 CFR section 263.11(a)(2)).

b. A State may transfer up to 30 percent of the combined total of current fiscal year funds (not prior fiscal year funds carried into the current fiscal year) received under the State family assistance grant, and supplemental grant for population increases for a given fiscal year to carry out programs under the Social Services Block Grant (Title XX) (CFDA 93.667) and/or the Child Care and Development Block Grant (CFDA 93.575). However, no more than 10 percent may be transferred to Title XX, and such amounts may be used only for programs or services to children or their families whose income is less than 200 percent of the poverty level. Neither contingency funds under 42 USC 603(b) nor emergency funds under 42 USC 603(c) (Pub. L. No. 111-5) can be transferred under this authority (Pub. L. No. 109-171, Sec. 7101(a); Pub. L. No. 110-161 (Consolidated Appropriations Act, 2008 (Social Services Block Grant); 42 USC 604(d); 45 CFR section 263.11(b); and 45 CFR section 264.72(e)). The poverty guidelines are issued each year in the *Federal Register* and HHS maintains a web site that provides the poverty guidelines (http://aspe.hhs.gov/poverty/index.shtml).

2. *Federal Only and Commingled Federal/State* – Funds may not be used to provide medical services other than pre-pregnancy family planning services (42 USC 608(a)(6)).

3. *Federal Only, Commingled Federal/State, Segregated State, Separate State Program*

a. Funds may be used in any manner reasonably calculated to accomplish the purposes of the program, including providing low-income households with assistance in meeting home heating and cooling costs (42 USC 604(a)(1) and 45 CFR section 263.11(a)(1)). As specified in 42 USC 601 and 45 CFR section 260.20, the TANF program has the following purposes:

(1) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) End dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(4) Encourage the formation and maintenance of two-parent families.

b. A State may use funds for programs to prevent and reduce the number of out-of-wedlock pregnancies, including programs targeted to law enforcement officials, the educational system and counseling services, that provide education and training of women and men on the problem of statutory rape (42 USC 602(a)(1)(A)(v) and (vi)).

c. Funds may be used to make payments or provide job placement vouchers to State-approved public and private job placement agencies providing employment placement services to individuals receiving assistance under TANF (42 USC 604(f)).

d. Funds may be used to implement an electronic benefits transfer system (42 USC 604(g)).

e. Funds may be used to carry out a program to fund individual development accounts (42 USC 604(h)(2); 45 CFR sections 263.20 through 263.23) established by individuals eligible to receive assistance under TANF (42 USC 604(h); 45 CFR part 263, subpart C).

f. A State may contract with charitable, religious and private organizations to provide administrative and programmatic services and may provide beneficiaries of assistance with certificates, vouchers, or other forms of disbursement which are redeemable with such organization (42 USC 604a(b),42 USC 604a(k), and 45 CFR section 260.34). However, funds provided directly to participating organizations may not be used for inherently religious activities, such as worship, religious instruction, or proselytization (42 USC 604a(j); 45 CFR section 260.34(c)).

4. *Tribes: Federal Only*

a. Funds may be used for expenditures for activities that are not permissible under 42 USC 601, but for which the State or Tribe was authorized to use IV-A or IV-F funds under prior law. The previously authorized activities must have been included in a State's approved State AFDC plan, JOBS plan, or Supportive Services Plan, as in effect on September 30, 1995, or at the State's option, on August 21, 1996. Examples of such activities are authorized juvenile justice and foster care activities (42 USC 604(a)(2); 45 CFR section 263.11(a)(2)). Use of such funds in the Tribal TANF program is allowed if the geographic area of the Tribal TANF program is within the State(s) having had an approved AFDC State plan(s) under Title IV-A that included these activities. If the Tribe plans to exercise this option, these activities must be included in the approved Tribal TFAP.

b. Tribes may not transfer any Federal TANF funds to the Social Services Block Grant (Title XX) (CFDA 93.667) or the Child Care and Development Block Grant (CFDA 93.575). Funds may not be used to

contribute to or subsidize non-TANF programs (42 USC 604(d); 45 CFR section 286.45 (b)). .

5. *Tribes: Federal Only, Commingled Federal/State-donated MOE, Segregated Tribal*

a. Funds may be used in any manner reasonably calculated to achieve the purposes of the Tribal TANF program, including providing low-income households with assistance in meeting home heating and cooling costs (42 USC 604(a)(1) and 45 CFR section 286.35(a)(1)). As specified in 42 USC 601 and 45 CFR section 286.35, the Tribal TANF program has the following purposes:

(1) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) End dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(4) Encourage the formation and maintenance of two-parent families.

b. A Tribe may use funds for programs to prevent and reduce the number of out-of-wedlock pregnancies, including programs targeted to law enforcement officials, the educational system and counseling services, that provide education and training of women and men on the problem of statutory rape (42 USC 602(a)(1)(A)(v) and (vi)).

c. Funds may be used to make payments or provide job placement vouchers to Tribe-approved public and private job placement agencies providing employment placement services to individuals receiving assistance under TANF (42 USC 604(f)).

d. Funds may be used to implement an electronic benefits transfer system (42 USC 604(g)).

e. Funds may be used to carry out a program to fund individual development accounts (42 USC 604(h)(2)) established by individuals eligible to receive assistance under Tribal TANF (42 USC 604(h); 45 CFR section 286.40).

f. A Tribe may contract with charitable, religious and private organizations to provide administrative and programmatic services and may provide beneficiaries of assistance with certificates, vouchers, or other forms of disbursement which are redeemable with such organization (42 USC

604a(b) and 42 USC 604a(k)). However, Tribes that operate their own TANF program under section 412 of the Social Security Act are not required to follow the Charitable Choice rules because the statutory provisions on Charitable Choice apply only to State and local governments (42 USC 604a(j); September 30, 2003, *Federal Register,* (68 FR 56450 and 56463)).

g. Tribal TANF grantees that expend Federal funds on economic development activities must adhere to the instructions contained in the TANF Program Instruction, TANF-ACF-PI-2005-02, dated April 19, 2005, pertaining to economic development expenditures. This program instruction is available at http://www.acf.hhs.gov/programs/ofa/policy/tanf-pi.htm (45 CFR section 286.35(a)(1)). Tribal TANF grantees operating under a consolidated Pub. L. No. 102-477 demonstration project must receive prior approval from ACF before Tribal TANF funds are encumbered or expended on economic development activities (45 CFR section 286.160(f)).

h. Unlike States, Tribes are not prohibited from expending funds for medical expenses, if the expenditure is in the context of removing barriers to employment, training, or job-related education. However, funds cannot be used for general medical expenses for families. The expenditure of TANF funds is not intended to subsidize, contribute to, or supplant other available medical services or funding – i.e. Indian Health Service, Public Health Service, tribal health services, state, county, and local health services, or other services covered by Medicaid, Medicare, or private health insurance (42 USC 608(a)(6), 45 CFR section 286.45(b)).

C. Cash Management

Tribal TANF grantees are not eligible for any cash management provisions applicable to Pub. L. No. 93-638 Indian Self-Determination contracts or Self-Governance compacts, including the interest exemption.

E. Eligibility

1. Eligibility for Individuals

The State or Tribal Plan provides the specifics on how eligibility is determined in each State or tribal service area. Whenever used in this section, "assistance," has the meaning in 45 CFR section 260.31(a) of the TANF regulations for States and 45 CFR section 286.10 of the Tribal TANF regulations for federally recognized Tribes operating an approved Tribal TANF program. Plan and eligibility requirements must comply with the following Federal requirements:

a. *Federal Only, Commingled Federal/State, Segregated State, and Separate State Program*

(1) Only a financially needy family that consists of, at a minimum, a minor child living with a parent or other caretaker relative, or a pregnant woman may receive TANF "assistance" or most maintenance-of-effort (MOE)-funded benefits, services, or "assistance" regardless of the TANF purpose that the expenditure is reasonably calculated to accomplish (see III.A.3.a, "Activities Allowed or Unallowed – Federal Only, Commingled Federal/State, Segregated State, Separate State Program"). The child must be less than 18 years old, or, if a full-time student in a secondary school (or the equivalent level of vocational or technical training), less than 19 years old. (With respect to segregated or separate State MOE funds, the State could use the definition for minor child given in section 419(2) of the Act or some other definition applicable in State law provided the State can articulate a rationale basis for the age it chooses.) Financially "needy" means financially eligible according to the State's quantified income and resource (if applicable) criteria to receive the benefit (42 USC 602, 602(a)(1)(B)(iii), 42 USC 609(a)(7)(B)(IV), 608(a)(1), 619(2) and 45 CFR section 263.2(b)(2)). See III.G.2.1, "Matching, Level of Effort, Earmarking – Level of Effort" – Maintenance-of-Effort," for the limited MOE pro-family exception to this requirement.

Note: A State may continue to provide federally funded (*Federal Only*) TANF "assistance" pursuant to 42 USC 604(a)(2) using the financial eligibility criteria contained in the State's approved AFDC, EA, JOBS, or Supportive Services plan as of September 30, 1995 (or at State option, as of August 21, 1996). A State may also continue this assistance notwithstanding the family composition requirement described above. (See III A.1.a, "Activities Allowed or Unallowed.")

Only the financially "needy" are eligible for services, benefits, or "assistance" pursuant to TANF purpose 1 or 2 (see III.A.3.a, "Activities Allowed or Unallowed – Federal Only, Commingled Federal/State, Segregated State, Separate State Program") (42 USC 601(a)(1) and (2); 45 CFR sections 260.20(a) and (b)). Financially "needy" for TANF and MOE purposes means financial deprivation, i.e., lacking adequate income and resources. For example, a needy family or a needy parent is one who is financially eligible according to the State's quantified financial eligibility criteria (income and resource (if applicable) standards, April 12, 1999, *Federal Register* (64 FR 17825), 45 CFR section 263.2(b)(3)).

States may choose to use Federal only TANF funds to provide benefits that do not constitute "assistance" to the non-needy pursuant to TANF purpose 3 or 4 only (see III.A.3.a, "Activities Allowed or Unallowed – Federal Only, Commingled Federal/State, Segregated State, Separate State Program") (42 USC 601(a)(3) and (4); 45 CFR sections 260.20(c) and (d)). States may also choose to use MOE funds to provide certain pro-family non-assistance benefits to the non-needy under TANF purpose 3 or 4 (See III.G.2.1, "Matching, Level of Effort, Earmarking – Level of Effort" – Maintenance of Effort," for the limited MOE pro-family exception to this requirement).

(2) Qualified aliens, as defined in 8 USC 1641(b), are the only non-citizens who may receive a TANF public benefit, as defined in 8 USC 1611(c)), using Federal TANF or commingled funds. Qualified aliens are lawful permanent residents, asylees, refugees, aliens paroled into the U.S. for at least one year, aliens whose deportations are being withheld, aliens granted conditional entry, Cuban/Haitian entrants, and certain battered aliens. Victims of severe forms of trafficking and certain family members are also eligible for federally funded or administered public benefits and services to the same extent as refugees.

Qualified aliens, nonimmigrants under the Immigration and Nationality Act, and individuals paroled into the U.S. for less than a year are the only noncitizen groups that are eligible for a non-commingled State or local MOE-funded public benefit, as defined in 8 USC 1621(c). Aliens that are not lawfully present in the U.S. may also be eligible for a State or local MOE-funded public benefit if the State has enacted a law after August 22, 1996 affirmatively providing for such eligibility. (8 USC 1621(d)) All expenditures must meet all MOE requirements at 45 CFR part 263, Subpart A. See III.G.2.1, "Matching, Level of Effort, Earmarking – Level of Effort" – Maintenance of Effort."

States have the authority to decide whether or not to provide a Federal TANF public benefit or a MOE-funded public benefit to otherwise qualified aliens (including nonimmigrants and individuals paroled in the U.S. for less than a year in the case of a noncommingled State or local MOE-funded public benefit) (8 USC 1612(b)(1) and 8 USC 1622(a)). If a State has decided not to help eligible aliens, then the State may not deny eligibility to refugees, asylees, aliens whose deportation has been withheld, Amerasians, and Cuban/Haitian entrants for a period of 5 years after the date of entry into the U.S. or the date asylum or withholding of deportation was granted. Also, such States may never deny eligibility to legal

permanent residents who have worked 40 qualifying quarters after December 31, 1996 and have not received any Federal means-tested public benefit during such period (once the 5-year bar has expired for a qualified alien entering the U.S. on or after August 22, 1996 as described in the next paragraph), or to aliens who are veterans, members of the military on active duty, and their spouses and unmarried dependents (8 USC 1612(b)(2)(A)(ii) 8 USC 1621(2)(B) and
(C), 8 USC 1622(b)(1)-(3)) In other words, Congress did not give States the authority to deny eligibility to all eligible aliens. If the State elects to help all otherwise eligible aliens (as described in the preceding two paragraphs), then this paragraph does not apply.

Unless exempt under 8 USC 1613(b), qualified aliens, as defined in 8 USC 1641(b), entering the U.S. on or after August 22, 1996, are not eligible for a Federal means-test public benefit (e.g., federally funded TANF assistance), as defined in 8 USC 1611(c), for a period of 5 years (8 USC 1613(a)). The 5-year bar begins either on the date of the alien's entry into the U.S. as a qualified alien or on the date the alien residing in the U.S. becomes a qualified alien, whichever is later. If the alien entered the U.S. on or after August 22, 1996, but does not have an immigration status that qualifies (as defined in 8 USC 1641(b)), the individual is not eligible for a Federal public benefit (as defined in 8 USC 1611(c)). The following qualified aliens are exempt from the 5-year bar: refugees, asylees, aliens whose deportation is being withheld, Amerasians, Cuban/Haitian entrants, as well as veterans, members of the military on active duty, and their spouses and unmarried dependent children (8 USC 1613(b)).

If a noncash Federal or State and local public benefit meets the specifications in the Attorney General's Final Order (Order No. 2353-2001 published January 16, 2001 at
66 FR 3613), then the State may provide the benefit regardless of immigration status (8 USC 1611 (b)(1)(D) and 8 USC 1621(b)(4)).

b. *Federal Only and Commingled Federal/State*

(1) Any family that includes an adult or minor child head of household or a spouse of the head of household who has received assistance under any State program funded by Federal TANF funds for 60 months (whether or not consecutive) is ineligible for additional federally funded TANF assistance. However, the State may extend assistance to a family on the basis of hardship, as defined by the State, or if a family member has been battered or subjected to extreme cruelty. In determining the number of months for which

the head of household or the spouse of the head of household has received assistance, the State must not count any month during which the adult received the assistance while living in Indian country or in an Alaskan Native Village and the most reliable data available with respect to that month (or a period including that month) indicate at least 50 percent of the adults living in Indian country or in the village were not employed (42 USC 608(a)(7); 45 CFR sections 264.1(a), (b), and (c)).

(See III.G.3, "Matching, Earmarking, Level of Effort – Earmarking," for testing the limits related to the number of exemptions.)

(2) A State may not provide assistance to an individual who is under age 18, is unmarried, has a minor child at least 12 weeks old, and has not successfully completed high school or its equivalent unless the individual either participates in education activities directed toward attainment of a high school diploma or its equivalent, or participates in an alternative education or training program approved by the State (42 USC 608(a)(4); 45 CFR section 263.11(b)).

(3) A State may not provide assistance to an unmarried individual under 18 caring for a child, if the minor parent and child are not residing with a parent, legal guardian, or other adult relative, unless one of the statutory exceptions applies (42 USC 608(a)(5)).

(4) A State may not provide assistance for a minor child who has been or is expected to be absent from the home for a period of 45 consecutive days or, at the option of the State, such period of not less than 30 and not more than 180 consecutive days unless the State grants a good cause exception, as provided in its State Plan (42 USC 608(a)(10)).

(5) A State may not provide assistance for an individual who is a parent (or other caretaker relative) of a minor child who fails to notify the State agency of the absence of the minor child from the home, as in paragraph e. immediately above, within five days of the date that it becomes clear to that individual that the child will be absent for the specified period of time (42 USC 608(a)(10)(C)).

(6) A State may not use funds to provide cash assistance to an individual during the 10-year period that begins on the date the individual is convicted in Federal or State court of having made a fraudulent statement or representation with respect to place of residence in order to simultaneously receive assistance from two or

more States under TANF, Title XIX, or the Food Stamp Act of 1977, or benefits in two or more States under the Supplemental Security Income program under Title XVI of the Social Security Act. If the President of the United States grants a pardon with respect to the conduct that was the subject of the conviction, this prohibition will not apply for any month beginning after the date of the pardon (42 USC 608(a)(8)).

(7) A State may not provide assistance to any individual who is fleeing to avoid prosecution, or custody or confinement after conviction, for a felony or attempt to commit a felony (or in the State of New Jersey, a high misdemeanor), or who is violating a condition of probation or parole imposed under Federal or State law (42 USC 608(a)(9)(A)).

c. *Federal Only, Commingled Federal/State, Segregated State*

(1) A State shall require, as a condition of providing assistance, that a member of the family assign to the State the rights the family member may have for support from any other person. This assignment does not exceed the amount of assistance provided (42 USC 608(a)(3)).

(2) An individual convicted under Federal or State law of any offense which is classified as a felony and which involves the possession, use, or distribution of a controlled substance (as defined the Controlled Substances Act (21 USC 802(6)) is ineligible for assistance if the conviction was based on conduct occurring after August 22, 1996. A State shall require each individual applying for TANF assistance to state in writing whether the individual or any member of their household has been convicted of such a felony involving a controlled substance. However, a State may by law enacted after August 22, 1996, exempt any or all individuals from this prohibition or limit the time period that this prohibition applies to any or all individuals 21 USC 862a).

(3) If an individual in a family receiving assistance refuses to engage in required work, a State must reduce assistance to the family, at least pro rata, with respect to any period during the month in which the individual so refuses, or may terminate assistance. Any reduction or termination is subject to good cause or other exceptions as the State may establish (42 USC 607(e)(1); 45 CFR sections 261.13 and 261.14(a) and (b)). However, a State may not reduce or terminate assistance based on a refusal to work if the individual is a single custodial parent caring for a child who is less than 6 years of age if the individual can demonstrate the inability

(as determined by the State) to obtain child care for one or more of the following reasons: (a) the unavailability of appropriate care within a reasonable distance of the individual's work or home; (b) unavailability or unsuitability of informal child care; or (c) unavailability of appropriate and affordable formal child care (42 USC 607(e)(2); 45 CFR sections 261.15(a), 261.56, and 261.57).

d. *Tribes: Federal Only, Commingled Federal/State-Donated MOE*

Eligibility for Tribal TANF is defined in the approved TFAP. See IV, "Other Information," for guidance on State MOE expended by Tribes.

The approved TFAP includes the Tribe's proposal for time limits for the receipt of TANF assistance (45 CFR section 286.115), as well as the percentage of the caseload to be exempted from the time limit. These proposed time limits must be approved by ACF (45 CFR section 286.115).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort*

See IV, "Other Information," for guidance on State MOE expended by Tribes.

The following MOE provisions apply to any State funds that are counted towards the maintenance of effort requirements for TANF, whether such State funds are expended under the *Commingled Federal/State, Segregated State, or Separate State Program* funding options.

a. *State Basic MOE* – Every fiscal year, a State must maintain an amount of "qualified State expenditures" (as defined in 42 USC 609(a)(7)(B) and 45 CFR section 263.2) for eligible families (as defined in 42 USC 609(a)(7)(B)(i)(IV) and 45 CFR section 263.2(b)) at least at the applicable percentage of the State's historic State expenditures. Therefore, all amounts claimed for or on behalf of eligible families, including amounts that result from State tax provisions, must be the result of expenditure (42 USC 609(a)(7)(A) and (B)(i)(I); 45 CFR sections 260.30 ("expenditure") and 260.33; 45 CFR section 92.3, and 45 CFR section 92.24). States may claim qualified expenditures for eligible family members who are citizens or aliens. However, the particular aliens for

whom a State may claim qualified expenditures will depend on the State funds used to provide the benefit or service (See III.E.1.a.(2), "Eligibility for Individuals, *Federal only, Commingled Federal/State, Segregated State, or Separate State Program*") and whether the benefit or service is a Federal, State, or local public benefit (8 USC 1611, 1612(b), 1613, 1621-1622, and 1641(b)).

Effective October 1, 2005, for their FY 2006 awards and ending with their FY 2008 awards, States may also claim expenditures on pro-family activities if the expenditure is reasonably calculated to prevent and reduce the incidence of out-of-wedlock births (TANF purpose 3—see III.A.3.a, "Activities Allowed or Unallowed – Federal Only, Commingled Federal/State, Segregated State, Separate State Program"), or encourage the formation and maintenance of two parent families (TANF purpose 4—see III.A.3.a , "Activities Allowed or Unallowed – Federal Only, Commingled Federal/State, Segregated State, Separate State Program"). This new provision allows States to claim for MOE purposes all qualified pro-family expenditures for *non-assistance* benefits and services provided to or on behalf an individual or family, regardless of financial need or family composition, as long as the activity is reasonably calculated to accomplish TANF purpose 3 or TANF purpose 4. Non-assistance benefits and services refer to activities that do not constitute "assistance," as defined in 45 CFR section 260.31(a) (45 CFR sections 263.2(a)(4)(ii) and 263.2(b)).

Effective October 1, 2008 (i.e., FY 2009 awards), States may only claim *certain* pro-family non-assistance expenditures that are reasonably calculated to accomplish TANF purpose 3 or TANF purpose 4. These pro-family expenditures consist of the allowable healthy marriage promotion and responsible fatherhood non-assistance activities enumerated in Title IV-A of the Social Security Act, sections 403(a)(2)(A)(iii) and 403(a)(2)(C)(ii), unless a limitation, restriction or prohibition under45 CFR part 263, Subpart A applies (45 CFR section 263.2(a)(4)(ii); TANF-ACF-PI-2008-10, dated October 23, 2008, available at http://www.acf.hhs.gov/programs/ofa/policy/tanf-pi.htm). States may claim for MOE purposes the qualified pro-family healthy marriage and responsible fatherhood expenditures for *non-assistance* benefits and services provided to or on behalf an individual or family, regardless of financial need or family composition. States must limit the provision of all other qualified MOE-funded assistance and non-assistance benefits to eligible families as defined at 45 CFR section 263.2(b), regardless of the TANF purpose that the expenditure is reasonably calculated to accomplish.

The applicable percentage for each fiscal year is 80 percent of the amount of non-Federal funds the State spent in FY 1994 on AFDC or 75 percent if

the State meets the Act's work participation rate requirements (42 USC 607(a)) for the fiscal year. This is termed "basic MOE" and the requirement is based on the Federal fiscal year. Qualified expenditures with respect to eligible families may come from all programs, i.e., the State's TANF program as well as programs separate from the State's TANF program. This requirement may be met through allowable State or local cash expenditures for goods and services, expenditures for allowable costs incurred by other non-Federal third parties (e.g., a non-profit organization, corporation, or other private party), cash donations by non-Federal third parties or the value of third party in-kind contributions (42 USC 609(a)(7)(A) and 609(a)(7)(B)(i)(I); 45 CFR sections 263.1 and 263.2(e)).

Section 409(a)(7)(B)(iv)(IV) of the Social Security Act allows States to count expenditures made as a condition of receiving Federal funds under Title IV, part A of the Social Security Act toward their MOE requirement. The DRA of 2005 (Pub. L. No. 109-171), enacted February 8, 2006, added the Healthy Marriage Promotion and Responsible Fatherhood Grants and placed these provisions under Title IV, part A of the Social Security Act. If grantees are required to contribute a matching share of the total approved costs of Health Marriage Promotion and Responsible Fatherhood projects (discretionary grants awarded for 5-year project period beginning in FFY 2007 under CFDA 93.086) under subsections 403(a)(2)(A)(iii) and 403(a)(2)(C)(ii) of the Social Security Act, then State expenditures made to meet any required non-Federal share may count toward the State's MOE requirement, provided the expenditure also meets all applicable MOE requirements, restrictions, and limitations (45 CFR section 263.2(g)).

If a State does not meet the basic MOE requirement, a penalty results. The penalty consists of a reduction of the State's Federal TANF grant for the following fiscal year in the amount of the difference between the State's qualified expenditures and the State's basic MOE (42 USC 609(a)(7)(A) and 45 CFR section 263.8). If application of a penalty results in a reduction of Federal TANF funding, a State is required in the immediately succeeding fiscal year to spend from State funds an amount equal to the total amount of the reduction, in addition to the otherwise required basic MOE. The additional funds must be spent in the TANF program, not under "separate State programs." Such expenditures may not be claimed toward the basic MOE (42 USC 609(a)(12); 45 CFR sections 263.6(f) and 264.50).

b. *Limitations on "Qualified State Expenditures"* – Expenditures under pre-existing programs, other than those that would have been previously authorized and allowable under the former AFDC, JOBS, Emergency Assistance, Child Care for AFDC recipients, At-Risk Child Care, or

Transitional Child Programs may not count toward the State's MOE requirement for the current year except to the extent that the current year's expenditures with respect to eligible families exceed the expenditures made under the State or local program in FY 1995.

Exception: If the expenditures are for non-assistance pro-family activities as addressed in paragraph a. immediately above for FYs prior to October 1, 2008 and FYs beginning on or after October 1, 2008, then current year expenditures are not limited to those made with respect to eligible families. If total current fiscal year expenditures for allowable pro-family activities within TANF purpose three or TANF purpose 4 exceed total State expenditures in the program during FY 1995, then the State may claim the excess toward the State's MOE requirement. Thus, to be considered as "exceeding" the FY 1995 level, the expenditures must be new or additional expenditures. (42 USC 609(a)(7)(B)(i)(II)(aa) and 45 CFR section 263.5).

In addition, expenditures by the State from amounts that originated from Federal funds may not count toward meeting a MOE requirement even if the expenditures "qualify" (42 USC 609(a)(7)(B)(iv)(I)).

Except for child-care expenditures, double counting of expenditures to meet the basic MOE requirement is prohibited (42 USC 609(a)(7)(B)(iv)(II-IV); 45 CFR section 263.6). States may count State funds expended to meet the requirements of the Child Care Development Fund Matching Fund (CFDA 93.596) as basic MOE expenditures as long as such expenditures meet the requirements of 42 USC 609(a)(7). The maximum amount of child care expenditures that a State may double-count under this provision is the State's Matching Fund MOE amount under CFDA 93.596 (42 USC 609(a)(7)(B)(iv); 45 CFR sections 263.3 and 263.6).

Expenditures for educational services/activities for eligible families to increase self-sufficiency, job training, and work count if the activities or services are not generally available to other State residents without cost and without regard to their income (42 USC 609(a)(7)(B)(i)(I)(cc); 45 CFR section 263.4, TANF-ACF-PI-2005-01, dated April 14, 2005 at http://www.acf.hhs.gov/programs/ofa/policy/tanf-pi.htm).

Administrative costs in connection with the activities that correspond to the qualified expenditures may not exceed 15 percent of the total amount of countable expenditures for the fiscal year (42 USC 609(a)(7)(B)(i)(I)(dd); 45 CFR section 263.2(a)(5)).

The basic MOE requirement expressly does not count expenditures for services or activities that only fall under 42 USC 604 (a)(2) (see III.A.1.a,

"Activities Allowed or Unallowed"). Such expenditures are not considered "qualified expenditures" (42 USC 609(a)(7)(B)(i)(I); 45 CFR section 263.2(a)(4)).

c. *Contingency Fund MOE* – A State must spend more than 100 percent of its historic State expenditures for FY 1994 to keep any of the Federal contingency funds it received (42 USC 603(b), and 45 CFR sections 264.72(a)(2) and 264.70 through 77). This is termed "Contingency Fund MOE." The Contingency Fund MOE requirement may be met only through qualified expenditures under the State's TANF program. Qualified expenditures consist of those defined and provided under 42 USC 609(a)(7)(B)(i) and 45 CFR sections 263.2 (a)(1),(a)(3) through (a)(5), and 263.2(b), but excludes those expenditures described in 42 USC 609(a)(7)(B)(i)(I)(bb) and 45 CFR section 263.2(a)(2) (42 USC 603(b)(6)(B)(ii)(I) and 609(a)(10)).

d. *1108(b) Territorial Matching Fund MOE Requirement* – See IV, "Other Information," for guidance on the spending requirements applicable to the receipt of Matching Grant funds under section 1108(b) of the Social Security Act (section 1108(b)) (42 USC 1308(b)).

2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking

a. *Federal Only and Commingled Federal/State*

A State may not spend more than 15 percent for administrative purposes, excluding expenditures for information technology and computerization needed for required tracking and monitoring, of the total combined amounts available under the State family assistance grant, supplemental grant for population increases, contingency funds, and emergency funds (42 USC 604(b)(1) and (2); 45 CFR sections 263.0 and 263.13).

b. *Federal Only and Commingled Federal/State*

The average monthly number of families that include an adult or minor child head of household, or the spouse of the head of household, who has received assistance under any State program funded by Federal TANF funds for more than 60 countable months (whether or not consecutive) may not exceed 20 percent of the average monthly number of all families to which the State provided assistance during the fiscal year or the immediately preceding fiscal year (but not both), as the State may elect. To make this determination for a fiscal year, the average monthly number of families with a head of household or spouse of a head of household who received assistance for more than 60 months would be divided by the

average monthly number of families that received assistance in that fiscal year, or, if the State chooses, in the previous fiscal year (42 USC 608(a)(7)(C)(ii); 45 CFR sections 264.1(c) and (e)).

(See III.E.1, "Eligibility – Eligibility for Individuals," for related eligibility testing.)

c. *Tribes: Federal Only and Commingled Federal/State-donated MOE*

The approved TFAP includes a negotiated administrative cost rate for that Tribe for that particular year. As approved in the TFAP, no Tribal TANF grantee may expend more than 35 percent of the total combined Federal TANF funds—i.e., TFAG plus any emergency funds received by the Tribe for FY 2009 and FY 2010—for administrative costs during the first year, 30 percent during the second year, and 25 percent for the third and all subsequent grant periods. The approved tribal administrative cost rate may be found in a letter of approval issued by the ACF/Division of Tribal Services and/or in the approved TFAP. The Tribal administrative cost cap is determined by multiplying the TFAG by the negotiated administrative rate for the fiscal year being tested (45 CFR section 286.50).

In calculating Tribal TANF administrative costs under the Pub. L. No. 102-477 demonstration project, the definitions at 45 CFR section 286.5 will be used in determining what constitutes an administrative cost, and the regulatory limitations on administrative costs, i.e. the administrative cap limits, prescribed under 45 CFR section 286.50 will be adhered to.

Indirect costs may be applied to the Federal TANF funds based on the indirect cost rate negotiated by the Bureau of Indian Affairs, the Department of Health and Human Services' Division of Cost Allocation, or another Federal agency. However, indirect costs applied to TANF funding are subject to and included within the administrative cap limits (45 CFR section 285.55(d)).

H. Period of Availability of Federal Funds

1. *States*

Funds, other than contingency funds, are available to the State until expended for the purpose of providing assistance under the TANF program; contingency funds may be used for qualified expenditures only in the fiscal year for which the funding is provided (42 USC 603(b) and 604(e); 45 CFR sections 263.11(b) and 265.3(c)). Current year TANF funds may be expended on assistance or non-assistance activities during the current fiscal year. However until FY 2009, the following restrictions to unobligated balances and current year obligations on non-assistance apply to the TANF program.

a. *Unobligated Balances Reported on a State Fourth Quarter Financial Report For the Immediately Preceding Fiscal Year* – Pursuant to 42 USC section 604(e) , a State may reserve amounts awarded to the State under section 403 (excluding Contingency Funds), without fiscal year limitation, to provide assistance under the State TANF program.

Prior to October 1, 2008, any Federal unobligated balances carried forward into a fiscal year from a prior fiscal year may only be expended on benefits that meet the definition of assistance at 45 CFR section 260.31(a) and related administrative costs associated with providing such assistance. Effective October 1, 2008, States may use any Federal TANF funds carried forward into a fiscal year from a prior fiscal year to provide, without fiscal year limitation, any benefit or service provided under the State's TANF program (42 USC 604(e), as amended by ARRA).

States have several options for claiming administrative costs when providing assistance with prior year unobligated balances. The State may charge administrative costs related to providing the assistance to the prior year grant if the State has not expended 15 percent of the prior year's Adjusted SFAG on administrative costs previously. If the State has an unobligated balance and has expended the maximum 15 percent on administrative cost previously, the State may charge the administrative costs associated with providing the assistance to current year administrative costs. If the State chooses this option the administrative costs associated with providing assistance with prior year unobligated balances will be included within the 15 percent administrative cost cap for the current fiscal year.

The Federal TANF 15 percent administrative cost cap is based on:

(1) For States, the Adjusted SFAG (reported in Line 4, Column (A) on the ACF-196, *TANF Financial Report) plus* the Federal Contingency Award (reported in Line 1, Column (D)) for States that receive Federal Contingency funds for the fiscal year, and Line 1, Column (E) if a State received Federal emergency funds for fiscal year 2009 and 2010 *divided* by the total amount entered in Line 6j, Columns (A), (D) and (E); and

(2) For Territories, the Adjusted SFAG (reported in Line 4, Columns (A) and (G) (if a Territory receives federal emergency TANF funds for fiscal year 2009 and 2010 on the ACF-196-TR, *Territorial Financial Report) divided* by the total amount entered in Line 6j, Columns (A) and (G). .

The administrative cost cap is tracked by the fiscal year for which the funds were awarded and not by the total the State expends on

administrative costs in a given fiscal year. States may only charge administrative costs to a prior year grant when it is administering assistance with a prior year unobligated balance.

b. *Current Fiscal Year Federal Expenditures on Non-Assistance* –Prior to October 1, 2008, the State must obligate by September 30 of the current fiscal year any funds for expenditures on non-assistance. Non-assistance expenditures are reported on Line 6 categories on the *ACF-196 TANF Financial Report* and the ACF-196-TR, *Territorial Financial Report.* The State must liquidate these obligations by September 30 of the immediately succeeding Federal fiscal year for which the funds were awarded. If the final liquidation amounts are lower than the original amount obligated, this difference must be included in the Unobligated Balance Line Item for the year in which they were awarded. Unobligated balances from previous fiscal years may only be expended on benefits that meet the definition of assistance at 45 CFR section 260.31(a) and related administrative costs associated with providing such assistance.

Effective October 1, 2008, States may use Federal TANF funds carried forward into a fiscal year from a prior fiscal year to provide, without fiscal year limitation, any benefit or service provided under the State's TANF program (42 USC 604(e), as amended by ARRA).

2. *Tribes*

Prior to October 1, 2008, a Tribe may reserve amounts awarded to it, without fiscal year limitation, to provide assistance under the Tribal TANF program. However, a Tribe may only expend funds beyond the fiscal year in which awarded on benefits that meet the definition of assistance at 45 CFR section 286.10 or on the administrative costs directly associated with providing that assistance (45 CFR section 286.60). Effective October 1, 2008, Tribes may use Federal TANF funds carried forward into a fiscal year from a prior fiscal year to provide, without fiscal year limitation, any benefit or service provided under the Tribe's TANF program (42 USC 604(e), as amended by ARRA).

a. *Unobligated Balances Reported on a Tribal Annual SF-269 Financial Report For the Immediately Preceding Fiscal Year* – Pursuant to section 404(e) of the Act (as amended by Pub. L. No. 106-169, the Foster Care Independence Act of 1999), a Tribe may reserve amounts awarded to the Tribe under section 412, without fiscal year limitation, to provide assistance under the Tribal TANF program. Tribes have several options for claiming administrative costs when providing assistance with prior year unobligated balances. The Tribe may charge administrative costs related to providing the assistance to the prior year grant if the Tribe has not exceeded its negotiated administrative cap for that fiscal year, on administrative costs previously. If the Tribe has an unobligated balance

and has exceeded the negotiated administrative cap for the previous fiscal year, the Tribe may charge the administrative costs associated with providing the assistance to current year administrative costs. If the Tribe chooses this option, the administrative costs associated with providing assistance with prior year unobligated balances will be included within the negotiated administrative cost cap for the current fiscal year.

b. *Current Fiscal Year Federal Expenditures on Non-Assistance* – Prior to October 1, 2008, a Tribe must obligate by September 30 of the current fiscal year any funds for expenditures on non-assistance. The Tribe must liquidate these obligations by September 30 of the immediately succeeding Federal fiscal year for which the funds were awarded. If the final liquidation amounts are lower than the original amount obligated, this difference must be included in the Unobligated Balance Line Item for the year in which they were awarded, on the SF-269 report.

Effective October 1, 2008, Tribes may use Federal TANF funds carried forward into a fiscal year from a prior fiscal year to provide, without fiscal year limitation, any benefit or service provided under the Tribe's TANF program (42 USC 604(e), as amended by ARRA).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* -– Not Applicable.

b. ACF-196T, *Tribal TANF Financial Report Form (OMB No. 0970-0345)* – Applicable to Tribes. Not applicable to States. This form is applicable to Tribes not administering TANF programs under a Pub. L. No. 102-477 demonstration project. Beginning with the FY 2009 Award, Tribes must use this form to report TANF expenditures quarterly. This form must be used for reporting both regular TANF grant funds and ARRA-Emergency Fund for TANF Tribal Programs funds.

c. Form 12g, *Tribal TANF Financial Addendum Report* (*OMB Control No. 1076-0135*) – Applicable to Tribal TANF grantees administering TANF programs under a Pub. L. No. 102-477 demonstration project. Not applicable to States. This report must be filed with the Tribe's annual Pub. L. No. 102-477 financial report (*OMB Control No. 1076-0135*). This report is required to be submitted annually and the information must be reported on a FY basis, which runs from October 1 through September 30. The report must cover the entire immediately preceding FY and include all expenditures, obligations, and unliquidated obligations of Federal funds for the period. In addition, the report must be based on and account for the entire Federal Tribal TANF award that was issued for the fiscal year. A

separate 12g report is to be submitted for each fiscal year where Federal funds have not been completely expended. For example, Tribes must submit a report regarding the expenditure of FY 2008 funds in FY 2009 separately from the report on the use of FY 2009 funds in FY 2009. Until the Tribe reports that all of the Federal funds awarded for a given fiscal year have been expended, Tribes must continue to submit reports on the use of funds from that fiscal year. Further, a narrative report is to be prepared that describes the activities and services covered under the category "Total Non-Assistance Expenditures" (see line 4 of the report).

d. Tribal Temporary Assistance for Needy Families (TANF) ACF-196T, *Financial Report For 102-477 Tribes* (*OMB approval number pending*) – Applicable to Tribes administering TANF programs under a Pub. L. No. 102-477 demonstration project that receive ARRA-Emergency Fund for TANF Tribal Programs funds. This report must be used to report ARRA funds expenditures quarterly. This report is required to be submitted quarterly to the Division of Workforce Development in the Office of Indian Energy and Economic Development, Department of the Interior with a copy to ACF.

e. SF-270, *Request for Advance or Reimbursement* – Not Applicable

f. SF-271, *Outlay Report and Request from Reimbursement for Construction Programs* – Not Applicable

g. SF-272, *Federal Cash Transactions Report* – Not Applicable

h. SF-425, *Federal Financial Report* – Applicable (cash status only)

i. ACF-196, *TANF Financial Report (OMB No. 0970-0247)* – States are required to submit this report quarterly in lieu of the SF-269, Financial Status Report/ SF-425, *Federal Financial Report* (financial status). Each State files quarterly expenditure data on the State's use of Federal TANF funds, State TANF MOE expenditures, and State expenditures of MOE funds in separate State programs. If a State is expending Federal TANF funds received in prior fiscal years, it must file a separate quarterly TANF Financial Report for each fiscal year that provides information on the expenditures of that year's TANF funds. This form must be used for reporting both regular TANF grant funds and ARRA-Emergency Fund for TANF State Programs funds.

j. ACF-196-TR, *Territorial Financial Report* – Territories report their expenditures and other fiscal data in this report (45 CFR section 265.3(c)). The Territories must report quarterly on their use of Federal TANF funds, Territorial TANF MOE expenditures, expenditures of MOE funds in separate "State" programs, expenditures made as a result of receiving

matching grant funds under 42 USC 1308(b), and expenditures made under the Federal Adult Assistance Programs (Titles I, X, XIV, and XVI of the Social Security Act) (42 USC subchapters I, X, XIV, and XVI and 42 USC 1308(a)). This form must be used for reporting both regular TANF grant funds and ARRA-Emergency Fund for TANF Territorial Programs funds.

See III.G.2.1, "Matching, Level of Effort, Earmarking – Level of Effort – Maintenance of Effort," and IV, "Other Information," for additional guidance on Territories' spending levels.

2. Performance Reporting

a. ACF-199, *TANF Data Report* (*OMB No. 0970-0309*) and ACF-343, *Tribal TANF Data Report* (*OMB No. 0970-0215*).

One of the critical areas of this reporting is the work participation data, which serve as the basis for ACF to determine whether States and Tribes have met the required work participation rates. A penalty may apply for failure to meet the required rates.

States Work Participation Rates

State agencies must meet or exceed their minimum annual work participation rates. The minimum work participation rates are 50 percent for the overall rate and 90 percent for the two-parent rate. A State's minimum work participation rate may be reduced by its caseload reduction credit. HHS may penalize the State by an amount of up to 21 percent of the SFAG for violation of this provision (42 USC 609(a)(4); 45 CFR section 262.1(a)(4)).

ACF-199 (TANF Data Report) Key Line Items – The following line items contain critical information for making the preceding determinations and for other program purposes. Compare the data entered on the file for the key line items below to the documentation in the case file for completeness, accuracy, and consistency:

Section One – Family-Level Data
Item 12 *Type of Family for Work Participation*
Item 17 *Receives Subsidized Child Care*

Item 28 *Is the TANF family exempt from the Federal time limit provisions*

Section One – Person-Level Data
Item 30 *Family Affiliation Code*
Item 32 *Date of Birth*

Item 38 *Relationship to Head-of-Household*
Item 39 *Parents with a Minor Child*
Item 44 *Number of months countable toward the Federal time limit*
Item 48 *Work-Eligible Individual Indicator*

Item 49 *Work Participation Status*

Section One – Adult Work Participation Activities
Items 50 – 62 *Work Participation Activities*

Item 63 *Number of Deemed Core Hours for Overall Rate*

Item 64 *Number of Deemed Core Hours for the Two-Parent Rate*

Section Three – Active Cases
Item 8 *Total Number of Families*

Tribal Work Participation Rates

Tribal TANF agencies must meet or exceed their minimum annual work participation rates. The minimum work participation rates are contained in the respective Tribal TANF plans. Tribal TANF agencies have the option to negotiate and choose from among a number of work participation rates (e.g., separate rates for one- and two-parent families or an "all-families with parents" rate where one- and two-parent families are combined). HHS may penalize the Tribe by a maximum of five percent of the TFAG for the first violation of this provision. The penalty increases by an additional two percent for each subsequent violation up to a maximum of 21 percent (42 USC 612(c) and 612(g)(2); 45 CFR sections 286.195(a)(3) and 286.205).

ACF-343, *Tribal TANF Data Report* (*OMB No. 0970-0215*) (65 FR 8545, Appendix A, February 18, 2000)

Key Line Items – The following line items contain critical information used in making a determination of a Tribe's Work Participation Rates.

Review the Tribe's TANF plan for a fiscal year to identify the type of family required to participate in work activities and the minimum number of hours per week that the adults and minor heads of household in the family must participate in work activities (45 CFR section 286.80). Compare the data entered on the file for the key line items below to the documentation in the case file for completeness, accuracy, and consistency:

Item 30 *Family Affiliation*

Item 48 *Work Participation Status*

Items 49–62 *Adult Work Participation Activities*

b. ACF 209, *SSP-MOE Data Report (OMB No. 0970-0309)* – This report is submitted quarterly beginning with the first quarter of FFY 2000.

Key Line Items – The following line items contain critical information:

Section One – Family-Level Data
Item 9 *Type of Family for Work Participation*
Item 15 *Receives Subsidized Child Care*

Section One – Person-Level Data
Item 28 *Date of Birth*
Item 34 *Relationship to Head-of-Household*
Item 41 Work-Eligible Individual Indicator

Item 42 *Work Participation Status*

Section One – Adult Work Participation Activities
Items 43 – 55 *Work Participation Activities*

Item 56 *Number of Deemed Core Hours for Overall Rate*

Item 57 *Number of Deemed Core Hours for the Two-Parent Rate*

Section Three – Active Cases
Item 3 *Total Number of SSP-MOE Families*

3. Special Reporting

a. ACF-204, *Annual Report including the Annual Report on State Maintenance-of-Effort Programs (OMB No. 0970-0248)* – Each State must file an annual report containing information on the TANF program and the State's MOE program(s) for that year, including strategies to implement the Family Violence Option, State diversion programs, and other program characteristics. Each State must complete the ACF-204 for each program for which the State has claimed basic MOE expenditures for the fiscal year. States may submit this report as a freestanding report or as an addendum to the fourth quarter TANF Data Report.

Key Line Items – The following ACF-204 line items contain critical information:

(1) *Program Name*
(2) *Description of Major Program Activities*

(3) *Program Purpose(s)*
(4) *Program Type*
(5) *Total State MOE Expenditures*
(6*) Number of Families Served with MOE Funds*
(7*) Eligibility Criteria*
(8) *Prior Program Authorization*
(9*) Total Program Expenditures in FY 1995*

The total MOE expenditures reported in item 5 of the ACF-204 should equal the total MOE expenditures reported in line 7, columns (B) plus (C) of the 4th quarter ACF-196 *TANF Financial Report*; or line 17, column (B) of the ACF-196-TR, *Territorial Financial Report.*

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act –Applicable

N. Special Tests and Provisions

All of the following Special Tests and Provisions apply to a State's TANF program, not to a Tribal TANF program.

1. Child Support Non-Cooperation

Compliance Requirement – If the State agency responsible for administering the State plan approved under Title IV-D of the Social Security Act determines that an individual is not cooperating with the State in establishing paternity, or in establishing, modifying or enforcing a support order with respect to a child of the individual, and reports that information to the State agency responsible for TANF, the State TANF agency must (1) deduct an amount equal to not less than 25 percent from the TANF assistance that would otherwise be provided to the family of the individual, and (2) may deny the family any TANF assistance. HHS may penalize a State for up to five percent of the SFAG for failure to substantially comply with this required State child support program (42 USC 608(a)(2) and 609(a)(8); 45 CFR sections 264.30 and 264.31).

Audit Objective – Determine whether, after notification by the State IV-D agency, the TANF agency has taken necessary action to reduce or deny TANF assistance.

Suggested Audit Procedures

a. Review the State's TANF policies and operating procedures concerning this requirement.

b. Test a sample of cases referred by the IV-D agency to the TANF agency to ascertain if benefits were reduced or denied as required.

2. Income Eligibility and Verification System

Compliance Requirements – Each State shall participate in the Income Eligibility and Verification System (IEVS) required by section 1137 of the Social Security Act as amended. Under the State Plan the State is required to coordinate data exchanges with other federally assisted benefit programs, request and use income and benefit information when making eligibility determinations, and adhere to standardized formats and procedures in exchanging information with other programs and agencies. Specifically, the State is required to request and obtain information as follows (42 USC 1320b-7; 45 CFR section 205.55):

a. Wage information from the State Wage Information Collection Agency (SWICA) should be obtained for all applicants at the first opportunity following receipt of the application, and for all recipients on a quarterly basis.

b. Unemployment Compensation (UC) information should be obtained for all applicants at the first opportunity, and in each of the first three months in which the individual is receiving aid. This information should also be obtained in each of the first three months following any recipient-reported loss of employment. If an individual is found to be receiving UC, the information should be requested until benefits are exhausted.

c. All available information from the Social Security Administration for all applicants at the first opportunity (See *Federal Tax Return Information* below).

d. Information from the Immigration and Naturalization Service and any other information from other agencies in the State or in other States that might provide income or other useful information.

e. Unearned income from the Internal Revenue Service (IRS) (See *Federal Tax Return Information* below).

Federal Tax Return Information – Information from the IRS and some information from the Social Security Administration (SSA) is Federal tax return information and subject to use and disclosure restrictions by 26 USC 6103. Individual data received from the SSA's Beneficiary Earnings Exchange Record (BEER), consisting of wage, self-employment, and certain other income information is considered Federal tax return information. However, benefits payments such as Supplemental Security Income (SSI) are SSA data and not Federal tax return information. Under 26 USC 6103, disclosure of Federal tax return information from IEVS is restricted to officers and employees of the receiving agency. Outside (non-agency) personnel (including auditors) are not authorized to access this information either directly or by disclosure from receiving agency personnel.

The State is required to review and compare the information obtained from each data exchange against information contained in the case record to determine whether it affects the individual's eligibility or level of assistance, benefits or services under the TANF program, with the following exceptions:

a. The State is permitted to exclude categories of information items from follow-up if it has received approval from ACF after having demonstrated that follow-up is not cost effective.

b. The State is permitted, with ACF approval, to exclude information items from certain data sources without written justification if it followed up previously through another source of information. However, information from these data sources that is not duplicative and provides new leads may not be excluded without written justification.

The State shall verify that the information is accurate and applicable to the case circumstances either through the applicant or recipient, or through a third party, if such determination is appropriate based on agency experience or is required before taking adverse action based on information from a Federal computer matching program subject to the Computer Matching and Privacy Protection Act (45 CFR section 205.56).

For applicants, if the information is received during the application process, the State must use the information, to the extent possible, to determine eligibility. For recipients or individuals for whom a decision could not be made prior to authorization of benefits, the State must initiate a notice of case action or an entry in the case record that no case action is necessary within 45 days of its receipt of the information. Under certain circumstances, action may be delayed beyond 45 days for no more than 20 percent of the information items targeted for follow-up (45 CFR section 205.56).

HHS may penalize a State for up to two percent of the SFAG for failure to participate in IEVS (42 USC 609(a)(4) and 1320b-7; 45 CFR sections 264.10 and 264.11).

Audit Objective – Determine whether the State has established and implemented the required IEVS system for data matching, and verification and use of such data. (This audit objective does not include Federal tax return information as discussed in the compliance requirements.)

Suggested Audit Procedures

a. Review State operating manuals and other instructions to gain an understanding of the State's implementation of the IEVS system.

b. Test a sample of TANF cases subject to IEVS to ascertain if the State:

(1) Used the IEVS to determine eligibility in accordance with the State Plan.

(2) Requested and obtained the data from the State Wage Information Collection Agency, the State unemployment agency, the Social Security Administration (excluding Federal tax return information as discussed in the compliance requirements), the Immigration and Naturalization Service, and other agencies, as appropriate, and performed the required data matching.

(3) Properly considered the information obtained from the data matching in determining eligibility and the amount of TANF benefits.

3. Penalty for Refusal to Work

Compliance Requirement – State agency must reduce or terminate the assistance payable to the family if an individual in a family receiving assistance refuses to work, subject to any good cause or other exemptions established by the State. HHS may penalize the State by an amount not less than one percent and not more than five percent of the SFAG for violation of this provision (42 USC 609(a)(14); 45 CFR sections 261.14, 261.16, and 261.54).

Audit Objective – Determine whether the State agency is reducing or terminating the assistance grant of those individuals who refuse to engage in work and are not subject to good cause or other exceptions established by the State.

Suggested Audit Procedures

a. Review the State's TANF policies and operating procedures concerning this requirement.

b. Test a sample of TANF cases where the individual is not working, and ascertain if benefits were reduced or denied to individuals who are not exempt under State rules or do not meet State good cause criteria.

4. Adult Custodial Parent of Child under Six When Child Care Not Available

Compliance Requirement – If an individual is a single custodial parent caring for a child under the age of six, the State may not reduce or terminate assistance for the individual's refusal to engage in required work if the individual demonstrates to the State an inability to obtain needed child care for one or more of the following reasons: (a) unavailability of appropriate child care within a reasonable distance from the individual's home or work site; (b) unavailability or unsuitability of informal child care by a relative or under other arrangements; or (c) unavailability of appropriate and affordable formal child care arrangements. The determination of inability to find child care is made by the State. HHS may penalize a State for up to five percent of the SFAG for violation of this provision (42 USC 607(e)(2) and 609(a)(11); 45 CFR sections 261.15, 261.56, and 261.57).

Audit Objective – Determine whether the State has improperly reduced or terminated assistance to single custodial parents who refused to work because of inability to obtain child care for a child under the age of six.

Suggested Audit Procedures

a. Gain an understanding of the criteria established by the State to determine benefits for a single custodial parent who refused to work because of inability to obtain child care for a child who is under the age of six.

b. Select a sample of single custodial parents caring for a child who is under 6 years of age whose benefits have been reduced or terminated.

c. Ascertain if the benefits were improperly reduced or terminated because of inability to obtain child care.

5. Penalty for Failure to Comply with Work Verification Plan

Compliance Requirement – The State agency must maintain adequate documentation, verification, and internal control procedures to ensure the accuracy of the data used in calculating work participation rates. In so doing, it must have in place procedures to: determine whether its work activities may count for participation rate purposes; determine how to count and verify reported hours of work; identify who is a work-eligible individual; and control internal data transmission and accuracy. Each State agency must comply with its HHS-approved Work Verification Plan in effect for the period that is audited. HHS may penalize the State by an amount not less than one percent and not more than five percent of the SFAG for violation of this provision (42 USC 601, 602, 607, and 609); 45 CFR sections 261.60, 261.61, 261.62, 261.63, 261.64, and 261.65).

Audit Objective – Determine whether the State agency is complying with its Work Verification Plan, including adequate documentation, verification, and internal control procedures.

Suggested Audit Procedures

a. Review the State's Work Verification Plan and operating procedures concerning this requirement.

b. Test a sample of TANF cases that have been reported to HHS under 45 CFR sections 265.3(b)(1) and 265.3(d)(1) and ascertain if the work participation rate data have been documented, verified, and reported in accordance with the State's Work Verification Plan.

6. TANF Emergency Fund Grants – FY 2009 and FY 2010

Compliance Requirement – Three different categories of TANF Emergency Fund grants are available to States, Territories, and Tribes operating TANF programs (referred to collectively as "jurisdictions') for FY 2009 and FY 2010 (42 USC 603(c), as added by Section 2101 of ARRA). Jurisdictions may apply for and receive funds on a quarterly basis under any or all of the three categories described below, if the jurisdiction meets the conditions of the grant category. :

a. *Grant Related to Caseload Increases*: The jurisdiction's average monthly assistance *caseload* in a quarter is higher than its average monthly assistance caseload for the corresponding quarter in the TANF Emergency Fund base year (FY 2007 or 2008, whichever year has lower average monthly assistance caseloads), and its expenditures for *basic assistance* in a quarter are higher than its expenditures for such assistance in the corresponding quarter of the TANF Emergency Fund base year. "Basic assistance" is defined at 45 CFR section 260.31(a)(1)-(2) for States and Territories, and at 45 CFR section 286.10(a)(1) for Tribes.

b. Grant *Related to Increased Expenditures for Non-Recurrent Short-Term Benefits*: The jurisdiction's expenditures for *non-recurrent short-term benefits* in a quarter are higher than its expenditures for such benefits in the corresponding quarter of the TANF Emergency Fund base year (FY 2007 or 2008, whichever year has lower non-recurrent short-term benefit expenditures). "Non-recurrent short-term benefits" are defined at 45 CFR section 260.31(b)(1) for States and Territories, and at 45 CFR section 286.10(b)(1) for Tribes.

c. *Grant Related to Increased Expenditures for Subsidized Employment*: The jurisdiction's expenditures for *subsidized employment* in a quarter are higher than such expenditures in the corresponding quarter of the TANF Emergency Fund base year (FY 2007 or 2008, whichever year has lower subsidized employment expenditures). Subsidized employment refers to "work subsidies," as defined at 45 CFR section 260.31(b)(2) for States and Territories, and at 45 CFR section 286.10(b)(2) for Tribes.

The qualifying expenditures may come from both Federal TANF funds and the jurisdiction's MOE funds. (See II, "Other Considerations, Funding Methods -- States and Tribes.") For each category above, a jurisdiction that qualifies may receive 80 percent of the amount by which expenditures in a quarter for which it is requesting TANF emergency funds exceed such expenditures in the applicable base year.

Audit Objective – Determine whether the jurisdiction qualified for the TANF Emergency Fund grant amounts it requested and received.

Suggested Audit Procedures

a. Request a copy of the jurisdiction's award letter for each quarter during the audit period for which it applied and received an Emergency Fund award in one or more of the three award categories, as well as the most recently submitted Form OFA-100, *OMB No. 0970-0366*). This will include the jurisdiction's most up-to-date data for the requested category(ies) of funding.

b. Determine from the documentation, the jurisdiction's base year for each award category and quarter under which it requested and received any Emergency Fund award (Part 4 of the OFA-100).

c. Depending on the award category, compare the jurisdiction's quarterly submission to ACF (Part 1 of the OFA-100) with the jurisdiction's records for the quarter for which it requested an Emergency Fund award and the corresponding quarter of the base year.

d. Depending on the award category, determine whether the jurisdiction reported its estimated expenditures/actual (revised) expenditures accurately to reflect an appropriate increase in caseloads and/or expenditures that would qualify it for funding during each quarter for which it received an award.

IV. OTHER INFORMATION

Transfers out of TANF

As described in III.A.1.b, "Activities Allowed or Unallowed," States (not Tribes) may transfer a limited amount of Federal TANF funds into the Social Services Block Grant (Title XX) (CFDA 93.667) and the Child Care and Development Block Grant (CFDA 93.575). These transfers are reflected in lines 2 and 3 of both the quarterly *TANF Financial Report* ACF-196, and the quarterly *Territorial Financial Report* ACF-196-TR. The amounts transferred out of TANF are subject to the requirements of the program into which they are transferred and should not be included in the audit universe and total expenditures of TANF when determining Type A programs. The amount transferred out should not be shown as TANF expenditures on the Schedule of Expenditures of Federal Awards, but should be shown as expenditures for the program into which they are transferred. ARRA TANF funds may not be transferred out of TANF.

State MOE Expended by Tribes

A State may provide a Tribe State-donated MOE funds that are expended by the Tribe. For the Tribe, State-donated MOE funds are not Federal awards expended, shall not be considered in determining Type A programs, and shall not be shown as expenditures on the Schedule of Expenditures of Federal Awards. However, State-donated MOE funds expended by a Tribe shall be included by the auditor of the State when testing III.G.2.1, "Matching, Level of Effort, Earmarking – Level of Effort – Maintenance of Effort."

Under the Commingled Federal/State-donated MOE option, Tribes may commingle their State-donated MOE funds with Federal grant funds. Because of the commingling, the audit of the Tribe will include testing of the State-donated MOE and the auditor of the State should consider relying on this testing in accordance with auditing standards and OMB Circular A-133. However, the State-donated MOE is not considered Federal awards expended by the Tribe.

Tribal Expenditures under a Consolidated Demonstration Project

Tribes that integrate their Tribal TANF program into a demonstration project under the authority of Pub. L. No. 102-477 must report their Tribal TANF expenditures on the Schedule of Expenditures of Federal Awards (SEFA) as expenditures under CFDA 93.558. Tribal TANF funds do not lose their identity by virtue of inclusion in a consolidated project.

Spending Levels of the Territories

A funding ceiling applies to Guam, the Virgin Islands, American Samoa and Puerto Rico. The programs subject to the funding ceiling are the Adult Assistance programs under Titles I, X, XIV, and XVI of the Social Security Act; TANF; Foster Care (CFDA 93.658); Adoption Assistance (CFDA 93.659) and Independent Living (CFDA 93.674) programs under Title IV-E of the Social Security Act; and the matching grant under section 1108(b). Total payments to each territory may not exceed the following: Guam – $4,686,000; Virgin Islands – $3,554,000; Puerto Rico – $107,255,000; and American Samoa – $1,000,000. However, the TANF Family Assistance Grant cannot exceed the territory's fixed annual amount (42 USC 1308(a) and (c)).

Territorial Matching Grant Funding Stream

The Matching Grant under section 1108(b) of the Social Security Act (42 USC 1308(b)) is an optional funding stream for the Territories. Each fiscal year, Puerto Rico, the Virgin Islands, and Guam may receive a Matching Grant in an amount that equals 75 percent of the amount, if any, by which the territory's total expenditures during the fiscal year under the TANF program (including transfers to the CCDF (CFDA 93.575 and CFDA 93.596) and SSBG (CFDA 93.667) programs) and the Foster Care program exceed the total of: (1) the amount that equals the territory's Federal TANF grant payable (without regard to any applicable penalties; and (2) the amount that equals the sum expended by the territory during fiscal year 1995 in the AFDC and JOBS programs (other than for child care).

Thus, each territory receiving a Matching Grant has two expenditure requirements: (1) expend an amount that equals the territory's Federal TANF block grant amount; and (2) expend an amount that equals the territory's share of expenditures in the AFDC and JOBS programs (other than for child care) during FY 1995. This latter requirement is the territory's Matching Grant MOE expenditure requirement. Territorial expenditures used to receive section 1108(b) Federal Matching Grant funds are expenditures that exceed the sum of these two expenditure requirements. Territorial expenditures in the TANF program in excess of the total spending requirement that are used to receive section 1108(b) Federal Matching Grant funds may be reported in either column (C) or column (D) of the ACF-196-TR, but not in both (45 CFR section 264.80(a)(1)).

The amounts of the two expenditure requirements are as follows:

Territory	**Federal TANF Block Grant Spending Amount (FGA)**[6]	**Matching Grant MOE Spending Amount**[7]	**Total Spending Requirement**
Puerto Rico	$71,562,501	$28,182,864	$99,745,365
Guam	$3,465,478	$974,517	$4,439,995
Virgin Islands	$2,846,564	$820,380	$3,666,944
American Samoa	$0	$0	$0

See 45 CFR section 264.82 for the types of expenditures using Federal and Territorial funds that may count toward meeting the required block grant spending amount. 45 CFR section 264.81 specifies the types of expenditures that may count toward meeting the Matching Grant MOE requirement. Territorial expenditures may count only once, i.e., to meet either expenditure requirement *or* as an excess expenditure to receive Federal Matching Grant funds under 1108(b). (45 CFR sections 264.80 through 264.85 include the requirements pertinent to receipt of matching funds under section 1108(b)).

[6] Amount reported in Column (C) of the ACF-196-TR.
[7] Amount reported in Column (D) of the ACF-196-TR.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.563 CHILD SUPPORT ENFORCEMENT

I. PROGRAM OBJECTIVES

The objectives of the Child Support Enforcement programs are to: (1) enforce support obligations owed by non-custodial parents, (2) locate absent parents, (3) establish paternity, and (4) obtain child and spousal support.

II. PROGRAM PROCEDURES

Administration and Services

The Child Support Enforcement programs are administered at the Federal level by the Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS). Under the State Child Support Enforcement program (State program), funding is provided to the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam, based on a State plan and amendments, as required by changes in statutes, rules, regulations, interpretations, and court decisions, submitted to and approved by OCSE. Under the Tribal Child Support Enforcement program (tribal program), funding is provided to federally recognized tribes and tribal organizations based on applications, plans, and amendments, as required by changes in statutes, rules, regulations, and interpretations, submitted to and approved by the ACF Central Office.

The State program is an open-ended entitlement program that allows the State to be funded at a specified percentage, Federal financial participation (FFP), for eligible program costs. Under the tribal program, tribes receive funding for a specified percentage of program costs.

State child support agencies are required to conduct self-reviews of their programs. The first round of self-assessments was required to be completed by March 31, 1999 (42 USC 654(15) and 45 CFR part 308).

Source of Governing Requirements

The Child Support Enforcement programs are authorized under title IV-D of the Social Security Act, as amended. This includes amendments as the result of the Deficit Reduction Act of 2005 (DRA) (Pub. L. No. 109-171) **and the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5, Section 2104, 123 Stat 449).** The State program is codified at 42 USC 651 through 669. Implementing program regulations for the State program are published at 45 CFR parts 301 through 308. In addition, with regard to eligibility and other provisions, these programs are closely related to programs authorized under other titles of the Social Security Act, including the Temporary Assistance for Needy Families (TANF) program (CFDA 93.558), the Medicaid program (CFDA 93.778), and the Foster Care (title IV-E) program (CFDA 93.658).

The tribal program is authorized under title IV-D of the Social Security Act, as amended, at 42 USC 655. Implementing program regulations are published at 45 CFR part 309 (*Federal Register*, March 30, 2004, 69 FR 16639). These regulations are available at http://www.acf.hhs.gov/programs/cse/pol/AT/2004/at-04-01a.pdf.

Awards made under the State program with funding periods beginning on or after October 1, 2003, are subject to the HHS implementation of the A-102 Common Rule, 45 CFR part 92 (*Federal Register*, September 8, 2003, 68 FR 52843-52844). The State program also is subject to 45 CFR part 95. The tribal program is subject to the administrative requirements of 45 CFR part 92 (45 CFR part 309. Both programs are subject to the cost principles under 2 CFR PART 225 – Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87,) as provided in *Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government*, HHS Publication ASMB C-10, available on the Internet at http://rates.psc.gov/fms/dca/asmb%20c-10.pdf).

States and tribes are required to adopt and adhere to their own statutes and regulations for program implementation, consistent with the requirements of title IV-D and the approved State plan/tribal plan and application.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should look first to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

Consistent with the approved title IV-D plan, allowable activities include the following. A more complete listing of allowable types of activities, with examples, as appropriate, is included at 45 CFR sections 304.20 through 304.22 for the State program and 45 CFR sections 309.145(a) through (o) for the tribal program.

a. *State and tribal programs*

(1) Parent locator services for eligible individuals (45 CFR sections 304.20(a)(2), 304.20(b), and 302.35(c); 45 CFR section 309.145).

(2) Paternity and support services for eligible individuals (45 CFR section 304.20(a)(3); 45 CFR sections 309.145(b) and (c)).

(3) Program administration, including establishment and administration of the State plan/tribal plan, purchase of equipment, and development of a cost allocation system and other systems necessary for fiscal and program accountability (45 CFR sections 304.20(b)(1) and 304.24; 45 CFR sections 309.145(a)(1) and (a)(2), 309.145(h), 309.145(i), and 309.145(o)).

(4) Establishment of agreements with other State, tribal, and local agencies and private providers, including the costs of cooperative arrangements with appropriate courts and law enforcement officials in accordance with the requirements of 45 CFR section 302.34 , including associated administration and short-term training of staff (45 CFR section 304.21(a); 45 CFR sections 309.145(a)(3)(iii)) and 309.145(m)).

b. *State programs only*

Necessary expenditures for support enforcement services and activities provided to individuals from whom an assignment of support rights (as defined in 45 CFR section 301.1) is obtained (45 CFR sections 304.20, 304.21, and 304.22).

c. *Tribal programs*

(1) The portion of salaries and expenses of a tribe's chief executive and staff that is directly attributable to managing and operating a tribal IV-D program (45 CFR section 309.145(j)).

(2) The portion of salaries and expenses of tribunals and staff that is directly related to required Tribal IV-D program activities (45 CFR section 309.145(k)).

(3) Service of process (45 CFR section 309.145(l)).

(4) Costs associated with obtaining technical assistance from non-Federal third-party sources, including other Tribes, Tribal organizations, State agencies, and private organizations, that are directly related to operating a IV-D program, and costs associated with providing such technical assistance to public entities (45 CFR section 309.145(n)).

2. ***Activities Unallowed***

a. *State and tribal programs*

The following costs and activities are unallowable pursuant to 45 CFR sections 304.23 and 309.155:

(1) Activities related to administering other titles of the Social Security Act.

(2) Construction and major renovations.

(3) Any expenditures that have been reimbursed by fees or costs collected.

(4) Any expenditures for jailing of parents in child support enforcement cases.

(5) Costs of counsel for indigent defendants in IV-D actions.

(6) Costs of guardians *ad litem* in IV-D actions.

b. *State programs*

The following costs and activities are unallowable pursuant to 45 CFR section 304.23:

(1) Education and training programs other than those for title IV-D agency staff or as described in 45 CFR section 304.20(b)(2)(viii).

(2) Any expenditures related to carrying out an agreement under 45 CFR section 303.15.

(3) Any costs of caseworkers (45 CFR section 303.20(e)).

(4) Medical support enforcement activities performed under cooperative arrangements/agreements (45 CFR sections 303.30 and 303.31).

(5) The following costs associated with cooperative arrangements with courts and law enforcement officials are unallowable: service of process and court filing fees unless the court or law enforcement agency would normally be required to pay the costs of such fees; costs of compensation (salary and fringe benefits) of judges; costs of training and travel related to the judicial determination process incurred by judges; office-related costs, such as space, equipment, furnishings and supplies incurred by judges; compensation (salary and fringe benefits), travel and training, and office-related costs

incurred by administrative and support staffs of judges; and costs of cooperative agreements that do not meet the requirements of 45 CFR section 303.107 (45 CFR section 304.21(b)).

E. Eligibility

1. Eligibility for Individuals

Eligible recipients are: (a) individuals applying for or receiving TANF benefits for whom an assignment of child support rights has been made to the State; (b) non-TANF Medicaid recipients; (c) former Aid to Families with Dependent Children/TANF, title IV-E, or Medicaid recipients who continue to receive child support enforcement services without filing an application; (d) individuals needing such services who have applied to a State child support enforcement agency; and (e) for tribal programs, anyone who applies for IV-D services (42 USC 608(a)(3); 45 CFR sections 302.32(a) and 302.33(a); 45 CFR section 309.65(a)(2)).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

F. Equipment and Real Property Management

Under State programs, equipment that is capitalized or depreciated or is claimed in the period acquired and charged to more than one program is subject to 45 CFR section 95.707(b) in lieu of the requirements of the A-102 Common Rule (45 CFR section 95.707(b)).

G. Matching, Level of Effort, Earmarking

1. Matching

State programs

The Federal share of program costs related to determining paternity, including those related to the planning, design, development, installation and enhancement of the statewide computerized support enforcement system is 66 percent. For costs incurred on or before September 30, 2006, the Federal share of laboratory costs for determining paternity was 90 percent (42 USC 655(a)(1)(C) and (a)(2)(C); 45 CFR sections 304.20(c) and 304.30). Effective October 1, 2006, the Federal share of laboratory costs for determining paternity is 66 percent (DRA, Section 7308).

A Federal match of 66 percent is available for State administrative costs of carrying out child support enforcement program activities under title IV-D of the Social Security Act. ARRA temporarily changed the child support authorization language to allow States to use Federal incentive payments provided to States in accordance with Section 458 of the Social Security Act as their State share of expenditures eligible for Federal match. This change is effective October 1, 2008 through September 30, 2010. This change is in effect for any incentive funds expended during FY 2009 and FY 2010, including incentives earned and not expended in prior years (i.e., prior to October 1, 2008). Incentive payments expended during FY 2008 (October 1, 2007-September 30, 2008) are not eligible for additional Federal funds. The requirements of Section 458(f) of the Social Security Act and 45 CFR section 305.35 regarding "reinvestment" of incentive funds remain in effect.

Tribal programs

The Federal share of program costs is 90 percent for the first 3 years and 80 percent thereafter. Unless waived by the Secretary, the tribe or tribal organization must provide the 10 percent and 20 percent share, respectively (45 CFR sections 309.130(c), (d), and (e)).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

1. *State programs* – This program operates on a cash accounting basis and each year's funding and accounting is discrete; i.e., there is no carry-forward of unobligated funds. To be eligible for Federal funding, claims must be submitted to ACF within two years after the calendar quarter in which the State made the expenditure. This limitation does not apply to any claim for an adjustment to prior year costs or resulting from a court-ordered retroactive adjustment (45 CFR sections 95.7, 95.13, and 95.19).

2. *Tribal programs* – A tribe or tribal organization must obligate its Federal title IV-D grant funds no later than the last day of the funding period (equivalent to the Federal fiscal year) for which they were awarded ("obligation period") or the funds must be returned to ACF. Unless an extension is granted by ACF, valid obligations must be liquidated no later than the last day of the 12-month period immediately following the obligation period or the funds must be returned to ACF (45 CFR sections 309.135(b), (c), and (e)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable for tribal programs; Not Applicable for State programs

b. SF-270, *Request for Advance or Reimbursement* – Applicable for tribal programs; Not Applicable for State programs

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable for tribal programs; Not Applicable for State programs

f. OCSE 34A, *Child Support Enforcement Program Quarterly Report of Collections (State programs – OMB No. 0970-0181; tribal programs – OMB No. 0970-0218).*

g. OCSE 396A, *Child Support Enforcement Program Expenditure Report (OMB No. 0970-0181)* – Applicable for State programs only.

Action Transmittal AT-09-02, "Revisions to expenditure reporting instructions for Fiscal Years (FY) 2009 and 2010 to accommodate Public Law 111-5, the American Recovery and Reinvestment Act of 2009 (ARRA)," was issued on March 26, 2009. Under AT-09-02, the reporting instructions for the OCSE-396A report, "Child Support Enforcement Program Expenditure Report," were revised to reflect the change in ARRA which temporarily allows States to use Federal incentive payments provided to States in accordance with Section 458 of the Act as their State share of expenditures eligible for Federal match. This temporary change is effective October 1, 2008 through September 30, 2010. See also III.L.4 below.)

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

There have been no substantive changes in the expenditure reporting burden for States (or Territories) and subrecipients (e.g., counties) as a result of ARRA. As before, State expenditures are reported quarterly to the Federal government on the OCSE-396A form. Also consistent with existing requirements, claims for

administrative expenditures, including administrative expenditures using incentive payments, must be adequately documented for regular audit purposes. Procedures involving subrecipient expenditure reporting within each State or Territory are unaffected by ARRA. Subrecipient reporting practices remain under the jurisdiction of the State or Territory and are subject to that State or Territory's rules and regulations.

5. Subaward Reporting Under the Transparency Act – Applicable

N. Special Tests and Provisions

1. Establishment of Paternity and Support Obligations

Compliance Requirement – The IV-D agency must attempt to establish paternity and a support obligation for children born out of wedlock. The agency must establish a support obligation when paternity is not an issue. These services must be provided for any child in cases referred to the IV-D agency or to individuals applying for services under 45 CFR section 302.33 or 45 CFR section 309.65(a)(2) for whom paternity or a support obligation had not been established (45 CFR sections 303.4 and 303.5, 45 CFR sections 309.100 and 309.105). For State IV-D agencies, these services must be provided within the time frames specified in 45 CFR sections 303.3(b)(3) and (b)(5), 303.3(c) and, 303.4(d).

Audit Objective – Determine whether the IV-D agency attempted to establish, or established, paternity and a support obligation. For State IV-D agencies, determine whether these actions were within the required time frames.

Suggested Audit Procedures

a. Review the agency's procedures for tracking case referrals for the provision of paternity and support obligation services and the type of documentation maintained that these services were provided or attempted.

b. Test a sample of cases referred to the agency during the audit period to ascertain if:

   (1) For cases involving a child born out of wedlock, the agency established or attempted to establish paternity.

   (2) For all cases reviewed, the agency established or attempted to establish a support obligation.

   (3) For State IV-D cases,

      (a) The State achieved a successful outcome (i.e., an order was established within the review period). If so, the case was eligible for closure and time frames need not be evaluated, as provided in 45 CFR section 308.2(b)(1).

(b) Paternity and support obligation services were provided within the required time frames.

2. Enforcement of Support Obligations

Compliance Requirements – For all cases referred to the IV-D agency or applying for services under 45 CFR section 302.33 or 45 CFR section 309.65(a)(2) in which an obligation to support and the amount of the obligation has been established, the agency must maintain a system for (a) monitoring compliance with the support obligation; (b) identifying on the date the parent fails to make payments in an amount equal to support payable for one month, or an earlier date in accordance with State or tribal law, those cases in which there is a failure to comply with the support obligation; and (c) enforcing the obligation. To enforce the obligation the agency must initiate income withholding, if required by and in accordance with 45 CFR section 303.100 or 45 CFR section 309.110. State IV-D agencies must initiate any other enforcement action, unless service of process is necessary, within 30 calendar days of identification of the delinquency or other support-related noncompliance, or location of the absent parent, whichever occurs later. If service of process is necessary, service must be completed and enforcement action taken within 60 calendar days of identification of the delinquency or other noncompliance, or the location of the absent parent whichever occurs later. If service of process is unsuccessful, unsuccessful attempts must be documented and meet the State's guidelines defining diligent efforts. If enforcement attempts are unsuccessful, the State IV-D agency should determine when it would be appropriate to take an enforcement action in the future and take it at that time (45 CFR section 303.6). Optional enforcement techniques available for use by the State's are found at 45 CFR sections 303.71, 303.73, and 303.104.

Audit Objectives – Determine whether the IV-D agency monitored and, when necessary, enforced cases with support obligations. For State IV-D agencies, determine if actions were taken within required time frames.

Suggested Audit Procedures

a. Review the agency's procedures for tracking case referrals and identifying those cases where an obligation to support has been ordered and the amount of the support obligation has been established.

b. Test a sample of cases where an obligation to support had been ordered to ascertain that the agency monitored such cases, and, for State IV-D agencies, identified those cases requiring enforcement within the required time frame.

c. For selected cases identified as requiring enforcement by a State IV-D agency, verify that enforcement action was initiated within the required time frame. Ascertain if a collection resulting from an enforcement action was received. If so, no further audit procedures are necessary. If a collection was not received:

(1) Ascertain if use of income withholding was appropriate. If so, verify that it was initiated within required time frame.

(2) If income withholding was not appropriate and/or was not successful, ascertain if the agency scheduled and took another enforcement action.

d. If a service of process was necessary, but unsuccessful, verify that unsuccessful attempts were documented and met the diligent effort standard under the agency's diligent effort definition.

3. Securing and Enforcing Medical Support Obligations – State Programs

As OCSE works to update medical support rules based on the health care reform legislation, State IV-D agencies will be held harmless from penalties for failure to comply with the Medical Support Final Rule requirements (see AT-10-02). The Final Rule was published in the Federal Register on July 21, 2008 (73 FR 42416) and disseminated via OCSE-AT-08-08.

Compliance Requirements – The State IV-D agency must attempt to secure medical support information, and establish and enforce medical support obligations for all individuals eligible for services under 45 CFR section 302.33. Specifically, the State IV-D agency must determine whether the custodial parent and child have satisfactory health insurance other than Medicaid. If not, the agency must petition the court or administrative authority to include medical support in the form of health insurance coverage and/or cash medical support in all new or modified orders for support be provided by either or both parents. The agency is also required to establish written criteria to identify cases not included above, where there is a high potential for obtaining medical support based on: (a) available evidence that health insurance may be available to either or both parents at reasonable cost, and (b) facts (as defined by the State) which are sufficient to warrant modification of an existing support order to include health insurance coverage for a dependent child(ren). For cases meeting the established criteria, the agency shall petition the court or administrative authority to modify support orders to include medical support in the form of health insurance coverage and/or payment for medical expenses incurred on behalf of the child (45 CFR sections 303.31(b)(1)-(4) and DRA, Section 7307).

For non-TANF cases, the agency shall petition for medical support when the eligible individual is a Medicaid recipient or with consent of the individual if not a Medicaid recipient (45 CFR section 303.31(c)).

In cases where medical support is ordered, the agency is required to verify that it was obtained. If it was not obtained, the agency should take steps to enforce the health insurance coverage required by the support order, unless it determines that health insurance was not available to either or both parents at reasonable cost (45 CFR section 303.31(b)(7) and DRA, Section 7307).

The agency shall inform the Medicaid agency when a new or modified order for child support includes medical support and shall provide information to the custodial parent concerning the health insurance policy secured under any order (45 CFR sections 303.31(b)(5) and (6)).

The medical support provisions outlined in DRA, Section 7307, have an effective date of October 1, 2006. In the case where the Secretary of HHS determines that State legislation is required to meet any of the requirements imposed by subtitle C of title VII of the DRA, the effective date shall be 3 months after the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that began after the date of the enactment of the DRA (February 8, 2006). For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

Audit Objective – Determine whether the State IV-D agency petitioned for and secured or pursued enforcement of medical support in the form of health insurance and/or cash medical support as part of support orders and informed the Medicaid agency and custodial parent as required.

Suggested Audit Procedures

a. Test a sample of cases determined eligible during the audit period for services under 45 CFR section 302.33 to ascertain if the agency determined whether the custodial parent had satisfactory health insurance other than Medicaid.

b. For those selected cases where the custodial parent and child do not have satisfactory health insurance other than Medicaid, verify that the agency petitioned the court or administrative authority for health insurance coverage and/or cash medical support when required.

c. For selected cases where medical support was ordered, ascertain that the agency verified that medical support was obtained by the obligated parent. If medical support was not obtained by the obligated parent, ascertain if the agency either made a determination that health insurance was not available at a reasonable cost or took action to enforce and obtain the medical support.

d. For selected cases where the obligated parent had health insurance or when health insurance was obtained by the agency, ascertain if there is documentation that the Medicaid agency was informed.

4. Provision of Child Support Services for Interstate Cases – State Programs

Compliance Requirements – The State IV-D agency must provide the appropriate child support services needed for interstate cases (cases in which the child and custodial parent live in one State and the responsible relative lives in another State), establish an interstate central registry responsible for receiving, distributing and responding to inquiries on all incoming interstate IV-D cases, and meet required time frames pertaining to provision of interstate services. The case requiring action may be an initiating interstate case (a case sent to another State to take action on the initiating State's behalf) or a responding interstate case (a request by another State to provide child support services or information only). Specific time frame requirements for responding and initiating interstate cases are found in 45 CFR sections 303.7(a)(7), 303.7(b) and 303.7(c)(4)(ii), (c)(6), and (c)(9). (See also 45 CFR sections 302.36 and 303.7).

Audit Objective – Determine whether the State IV-D agency provided required child support services to interstate cases within the required time frames.

Suggested Audit Procedures

a. Review the agency's interstate central registry and ascertain the procedures for receiving, distributing, and responding to all incoming interstate claim cases.

b. Test a sample of initiating interstate cases to verify that required information was provided to the responding State within required time frames.

c. Test a sample of responding interstate cases to verify that required child support enforcement services were provided within the time frames for providing information.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.566 REFUGEE AND ENTRANT ASSISTANCE—STATE-ADMINISTERED PROGRAMS

I. PROGRAM OBJECTIVES

The objective of the Refugee and Entrant Assistance Program is to provide States with funds to assist refugees and Cuban/Haitian entrants in attaining economic and social self-sufficiency as soon as possible after their initial placement in U.S. communities. (The term "refugee" is used to mean an individual who meets the immigration status requirements under 45 CFR section 400.43.)

II. PROGRAM PROCEDURES

Administration and Services

The Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), administers the Refugee and Entrant Assistance Program on behalf of the Federal Government. ORR provides funds to States through two grant programs: (1) Cash/Medical/Administration (CMA) and (2) Refugee Social Services (RSS).

CMA Grants

CMA grants are made to States upon submittal of an approved State plan and Annual State estimate. CMA grants reimburse States for the costs of providing:

1. *Refugee Cash Assistance (RCA)* – monthly cash benefits for refugees who do not meet the eligibility requirements of the Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI) programs;

2. *Refugee Medical Assistance (RMA)* – medical assistance to refugees who do not meet all eligibility requirements for Medicaid and the Children's Health Insurance Program (CHIP) and medical screening to all refugees if done within the refugees' first 90 days upon arrival to the U.S.;

3. *Refugee Unaccompanied Minor (RUM) Assistance* – Child welfare services and foster care to unaccompanied refugee minors (until age 18 or higher age as the State's Title IV-B plan prescribes); and

4. Administrative costs associated with providing RCA, RMA, and RUM, and costs incurred for the overall management of the State's refugee program.

Refugee Social Service Grants

Refugee Social Services grants are made to States upon submittal of an approved State plan and an Annual Services Plan. RSS grants are allocated to States by formula according to each State's percentage of the national refugee and entrant population for the most recent three years. States are required to use these funds to help refugees become economically self-sufficient as quickly as possible, primarily through the provision of employment services.

A State may administer the program as a publicly State-administered program, or may form a public/private partnership by engaging non-profit organizations to deliver program services and benefits. A State administered program must follow the TANF rules on financial eligibility and payment levels unless the State receives an approved waiver under 45 CFR section 400.300 to continue administering RCA according to the rules of the former Aid to Families With Dependent Children (AFDC) Program. Subject to certain limitations, a public/private program may operate according to its own rules.

Source of Governing Requirements

The Refugee and Entrant Assistance Program is governed under the following authority:

The Refugee Act of 1980 (Pub. L. No. 96-212); Refugee Education Assistance Act of 1980 (Pub. L. No. 96-422); Refugee Assistance Amendments of 1982 (Pub. L. No. 97-363); Refugee Assistance Extension Act of 1986 (Pub. L. No. 99-605); Section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act (as included in the fiscal year (FY) 1988 Continuing Resolution (Pub .L. No. 100-202)), insofar as it incorporates by reference with respect to certain Amerasians from Viet Nam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the Immigration and Nationality Act, as amended, including certain Amerasians from Viet Nam who are United States citizens; and, as provided under Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub .L. No. 100-461), 1990 (Pub .L. No. 101-167), and 1991 (Pub .L. No. 101-513); section 107(b)(1)(A) of the Trafficking Victims Protection Act of 2000 (Pub .L. No. 106-386), as amended by the Trafficking Victims Protection Reauthorization Act of 2003 (Pub .L. No. 108-193) and 2005 (Pub .L. No. 109-164), insofar as it states that a victim of a severe form of trafficking and certain other specified family members shall be eligible for federally funded or administered benefits and services to the same extent as a refugee. A "victim of a severe form of trafficking" is defined as a person who is induced by force, fraud or coercion to perform commercial sex acts, or a person who is subjected to involuntary servitude, peonage, debt bondage or slavery through the use of force, fraud or coercion.

Program regulations are at 45 CFR part 400.

Awards under the Refugee and Entrant Assistance Program are subject to the HHS implementation of the A-102 Common Rule This program also is subject to (1) 45 CFR part 95, subparts E (Cost Allocation Plans) and F (Automatic Data Processing Equipment and Services Conditions for Federal Financial Participation (FFP)), and (2) the cost principles under Office of Management and Budget Circular A-87 (as provided in *Cost Principles and Procedures for*

Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government, HHS Publication ASMB C-10, available on the Internet at http://rates.psc.gov/fms/dca/asmb%20c-10.pdf).

Availability of Other Program Information

Additional information is available on the ORR web site at http://www.acf.dhhs.gov/programs/orr.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Program funds are to be used to pay for:

1. *Refugee Cash Assistance* (45 CFR section 400.53) (see III.E.1, "Eligibility – Eligibility for Individuals").

2. *Refugee Medical Assistance* (45 CFR section 400.100) (see III.E.1, "Eligibility – Eligibility for Individuals").

3. *Refugee Unaccompanied Minor Assistance* (45 CFR section 400.116) (see III.E.1, "Eligibility – Eligibility for Individuals").

4. *Refugee Medical Screening*

   A State may charge refugee medical screening costs to RMA upon submission of a medical screening plan which the State Director or designee and the Director of ORR have approved in writing 45 CFR section 400.107. If such screening is done during the first 90 days after a refugee's initial date of entry into the United States, it may be provided without prior determination of the refugee's eligibility under 45 CFR sections 400.94 or 400.100 and may be charged to RMA with the written approval of the Director of ORR. States may charge to RMA the cost of medical screenings done later than 90 days after the refugees' arrival only if the refugees had been determined ineligible for Medicaid or CHIP (CFDA 93.767) under 45 CFR sections 400.94 and 400.100 (45 CFR section 400.107).

5. *Program Administration* – A State may claim against its CMA grant the reasonable and necessary identifiable administrative costs:

   a. Associated with providing RCA, RMA, and assistance and services to unaccompanied refugee minors (45 CFR section 400.207).

b. Incurred by the local resettlement agencies for providing cash assistance under the public/private RCA program (45 CFR section 400.13(e)).

c. Incurred for the overall management of the State's refugee program. Such costs may include: development of the State Plan, overall program coordination, and salary and the travel costs of the State Refugee Coordinator (45 section CFR 400.13(c)).

6. *Employability Services* – A State may provide the following employability services:

a. Employment services, including development of a family self-sufficiency plan and individual employment plan, job development, job search, and job placement (45 CFR section 400.154(a));

b. Aptitude and skills testing, employability assessment (45 CFR section 400.154(b));

c. On-the job training at the employment site (45 CFR section 400.154(c));

d. English language training with emphasis on job-related language skills (45 CFR section 400.154(d));

e. Vocational training when part of an employability plan (45 CFR section 400.154(e));

f. Skills recertification (45 CFR section 400.154(f));

g. Child care when necessary for job retention/acceptance or participation in an employability service (45 CFR section 400.154(g));

h. Transportation when necessary for job retention/acceptance or participation in an employability service (45 CFR section 400.154(h));

i. Translation and interpreter services when necessary for job retention/acceptance or participation in an employability service (45 CFR section 400.154(i));

j. Case management services directed toward a refugee's attainment of employment as soon as possible after arrival in the U.S. (45 CFR section 400.154(j)). All case management services must be charged to RSS; and

k. Assistance in obtaining employment authorization documents (45 CFR section 400.154(j)).

7. *Non-Employability Social Services* – A State may provide non-employability social services, which may include:

   a. Information and referral services (45 CFR section 400.155(a));

   b. Outreach services designed to familiarize refugees with available services and facilitate access to them (45 CFR section 400.155(b));

   c. Social adjustment services including emergency services, health-related services, and home management services (45 CFR section 400.155(c));

   d. Child care, transportation, translation and interpreter services, and case management services which are not directly related to employment or an employability service, when necessary for purposes other than employment or participation in employability services (45 CFR sections 400.155d through 155g);

   e. Any other service approved by the ORR Director which is aimed at helping the refugee attain economic self-sufficiency, family stability, or community integration (45 CFR section 400.155(h)); and

   f. Citizenship and naturalization preparation services (45 CFR section 400.155(i)).

B. Allowable Costs/Costs Principles

The following costs may be charged to the State's CMA grant: (1) certain administrative costs incurred for the overall management of the State's refugee program (such as development of the State plan, salary and travel costs of the State Refugee Coordinator, etc.); and (2) costs incurred by local resettlement agencies to provide cash assistance under public/private RCA programs. All other costs must be allocated among the State's CMA grant, its RSS grant, and any other Refugee Resettlement Program grants it may have received. However, no portion of the cost of case management services (as defined at 7 CFR section 400.2) may be allocated to the State's CMA grant; and administrative costs of managing the services component of the RCA program must be charged to the RSS grant (45 CFR section 400.13).

E. Eligibility

1. Eligibility for Individuals

a. *General Eligibility*

(1) Clients must have either refugee, asylee, entrant, or Amerasian documented status (45 CFR section 400.43) or, if trafficking victims, must have received a certification or eligibility letter from ORR. Those meeting this status will be collectively referred to as

"refugees." (See definition of "victim of severe form of trafficking" under II, "Program Procedures – Source of Governing Requirements.")

(2) A client's eligibility period generally begins on the date he/she arrived in the U.S. (45 CFR sections 400.203(a) and 400.204(a)). On June 15, 2000, however, HHS adopted a policy of setting the eligibility period for asylees (but not refugees) from the date the person receives a final grant of asylum. Additional information on this matter is available on the ORR web site at http://www.acf.dhhs.gov/programs/orr (See State Letter 00-12 (June 15, 2000)).

b. *Refugee Cash Assistance*

(1) *Eligibility Criteria*

Eligibility for RCA is limited to newly arrived refugees who meet all the following criteria:

(a) They have resided in the U.S. less than the RCA eligibility period (currently 8 months) determined by the ORR Director in accordance with 45 CFR section 400.211 (45 CFR section 400.53).

(b) They have been determined ineligible for other federally funded cash assistance programs, such as the following programs authorized by the Social Security Act: TANF, SSI, Old Age Assistance (OAA)(Title I), Aid to the Blind (AB)(Title X), Aid to the Permanently and Totally Disabled (APTD)(Title XIV), and Aid to the Aged, Blind, and Disabled (AABD)(Title XVI)(45 CFR sections 400.51 and 400.53).

(c) They meet the financial eligibility requirements of the applicable type of RCA program: AFDC-type (45 CFR section 400.45), public/private (45 CFR section 400.59), or State-administered (45 CFR section 400.66). In all three types, the administering agency may not treat the following as income or resources available to the applicant: resources remaining in the applicant's country of origin, income earned by the applicant's sponsor, or cash assistance the applicant may have received under reception and placement programs administered by the Department of State or Justice (45 CFR sections 400.45(f)(2), 400.59(b) through (d), and 400.66(b) through (d)).

(d) They are not full-time students in institutions of higher education (45 CFR section 400.53).

(e) If they are mandatory work registrants, they have not, without good cause, failed or refused to meet the work requirements of 45 CFR section 400.75(a), or voluntarily quit a job or refused an offer of appropriate employment within 30 consecutive calendar days immediately prior to the application for assistance. The payment of RCA assistance to an otherwise eligible client must be terminated if the client fails to meet this requirement (45 CFR sections 400.77 and 400.82(a)).

(2) *Benefit Level* – Benefit payments in a State-administered AFDC-type RCA program must be based on the AFDC rate (45 CFR section 400.45(f)(2)). Benefit payments in a State-administered TANF-type RCA program must be based on the TANF rate (45 CFR section 400.66(a)). Benefit payments in a public/private RCA program may neither exceed the rate described in 45 CFR section 400.60(a), nor be less than the State's TANF payment rate (45 CFR section 400.60(b)).

c. *Refugee Medical Assistance*

(1) *Eligibility Criteria*

Eligibility for RMA is limited to newly arrived refugees who meet one of the following sets of conditions:

(a) They are not eligible for Medicaid or CHIP but currently receive RCA (45 CFR section 400.100(d)); or

(b) They meet all of the following criteria:

(i) They have met the same time eligibility requirement stated above for RCA (45 CFR section 400.100(b)).

(ii) They are determined ineligible for Medicaid or CHIP (45 CFR section 400.100(a)(1)).

(iii) They meet one of the following financial eligibility requirements:

(A) In a State with a Medicaid medically needy program, they meet the State's Medicaid medically needy financial eligibility standards or a financial eligibility standard established at 200 percent of the national poverty level (45 CFR section 400.101(a)).

(B) In a State without a Medicaid medically needy program, they meet the State's AFDC payment standards and methodologies in effect as of July 16, 1996, or a financial eligibility standard established at 200 percent of the national poverty level (45 CFR section 400.101(b)).

(C) They did not meet either of these standards, but spent their resources down to the applicable standard using an appropriate method for deducting incurred medical expenses. States must allow applicants for RMA to do this (45 CFR section 400.103).

(c) They are not full-time students in institutions of higher education, unless the State has approved their enrollment as part of the refugee's employability plan under 45 CFR section 400.79 or a plan for an unaccompanied minor in accordance with 45 section CFR 400.100(a).

(2) Earnings from employment do not affect refugees' eligibility for RMA. They remain eligible for RMA through the remainder of the time eligibility period after receiving earnings from employment. Refugees who become ineligible for Medicaid due to employment earnings and have resided in the U.S. less than the time eligibility period will become eligible for RMA for the remainder of the time eligibility period (45 CFR section 400.104) without an additional eligibility determination.

States may not require that a refugee actually receive or apply for RCA as a condition of eligibility for RMA (45 CFR section 400.100(d)).

(3) *Benefit Level* – In providing medical assistance services to eligible refugees, a State must provide at least the same services in the same manner and to the same extent as under the State's Medicaid program (45 CFR section 400.105). A State may provide additional services beyond the scope of the State's Medicaid program to eligible refugees if the State provides these services through public facilities to its indigent residents (45 CFR section 400.106).

d. *Refugee Unaccompanied Minor (RUM) Assistance*

(1) A person must meet the definition of an unaccompanied minor listed in 45 CFR section 400.111.

(2) A RUM remains eligible for assistance until he/she: (1) is reunited with a parent; (2) is united with a non-parental adult to whom legal custody or guardianship has been granted; or (3) has reached the age of 18, or older if the State's Title IV-B plan so prescribes (45 CFR section 400.116).

e. *Refugee Social Services*

(1) In providing social services, the State must serve refugees in the following order of priority listed under 45 CFR section 400.147:

(a) All refugees who have resided in the U.S. less than a year and who apply for services;

(b) Refugees receiving cash assistance;

(c) Unemployed refugees who are not receiving cash assistance; and

(d) Employed refugees in need of services to retain employment.

(2) A State may limit eligibility for services to refugees who are 16 or older who are not full-time students in secondary school, except that such a student may be provided services in order to obtain part-time or temporary (summer) employment while a student or permanent, full-time employment upon completion of schooling (45 CFR section 400.152 (a)).

(3) Except for citizenship and naturalization services and referral and interpreter services, a State may not provide refugee social services to refugees who have been in the U.S. for more than 60 months (45 CFR section 400.152(b)).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

H. Period of Availability of Federal Funds

1. *CMA Funds*

A State must obligate its CMA funds awarded for costs attributable to RCA, RMA and administration during the Federal fiscal year (FFY) in which the grant was awarded. Funds awarded for RUM assistance remain available for obligation in the FFY following the FFY in which the grant was awarded. However, all CMA funds, including funds awarded for RUM services, must be expended by the end of the FFY following the FFY in which the grant was awarded (45 CFR section 400.210(a)).

2. *Social Services Funds*

A State must obligate its Social Services funds within one year after the end of the FFY in which the grant was awarded, and must expend these funds within two years after the end of the FFY in which the grant was awarded (45 CFR 400.210(b)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271 – *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting

ORR-6, *Quarterly Performance Report (QPR) (OMB No. 0970-0036)* – A State is required to submit a QPR which contains a narrative and statistical information on

program performance for cash assistance, medical assistance, social services, medical screening, and the provision of services to unaccompanied minors.

Key Line Items – The following line items contain critical information:

a. Schedule B – *Cash and Medical Assistance*

b. Schedule C – *Services Report*

3. Special Reporting

ORR-11, *State-of-Origin Report* (*OMB No. 0970-0043*) – A State is required to submit this report to account for refugee in-migration from other States (secondary migrants) during the prior FFY.

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.568 LOW-INCOME HOME ENERGY ASSISTANCE

I. PROGRAM OBJECTIVES

The Low-Income Home Energy Assistance Program (LIHEAP) is a block grant program in which States (including territories and Indian tribes) design their own programs, within very broad Federal guidelines. There are four components of LIHEAP: (1) block grants, (2) energy emergency contingency funds, (3) leveraging incentive awards, and (4) the Residential Energy Assistance Challenge Program (REACH). The objectives of LIHEAP are to help low-income people meet the costs of home energy (defined as heating and cooling of residences) increase their energy self-sufficiency, and reduce their vulnerability resulting from energy needs. A primary purpose is meeting immediate home energy needs. The target population is low-income households, especially those with the lowest incomes and the highest home energy costs or needs in relation to income, taking into account family size. Additional targets are low-income households with members who are especially vulnerable, including the elderly, persons with disabilities, and young children.

II. PROGRAM PROCEDURES

LIHEAP Block Grants

The Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Community Services, administers the LIHEAP program at the Federal level. LIHEAP block grant funds are distributed by formula to the States, the District of Columbia, and the territories. In addition, federally or State-recognized Indian tribes (including tribal consortia) have the option of requesting direct funding from ACF, rather than being served by the State in which they are located. Tribes that are directly funded by HHS statutorily receive a share of the funds that would otherwise be allotted to the States in which they are located, based on the number of eligible households in the tribal service area as a percentage of the eligible households in the State, or a larger amount agreed upon in a State/tribe agreement. Over half the States agree to give the tribes located within their State a larger amount than required by the statute.

Each grantee is required to submit a plan/application annually in order to receive block grant funding. The plan contains two parts: (1) an application to describe how the grantee's LIHEAP program will be administered and (2) a program integrity supplement in which the grantee must describe the systems in place to detect and deter fraud and abuse in its LIHEAP program.

State grantees are required to hold a public hearing each year. All grantees must allow for public participation in the development of their annual plans. A separate application is required for those LIHEAP grantees that wish to apply for a leveraging incentive award or a REACH grant.

Energy Emergency Contingency Funds

In addition to appropriations for the LIHEAP block grant program, funds may be awarded to meet the additional home energy assistance needs of States for a natural disaster or other emergency. Contingency funds that are awarded generally must be used under the normal statutory and regulatory requirements that apply to the LIHEAP block grants, unless special conditions are placed upon their use at the time of the award.

Leveraging Incentive Awards

Of the funds appropriated for LIHEAP each year, HHS is required to earmark a portion to reward those LIHEAP grantees that have acquired non-Federal resources to help low-income persons meet their home heating and cooling needs, as an incentive to augment the Federal dollars. This could involve the grantee or private organizations putting some of their own funds into LIHEAP or similar State or private programs, buying fuel at reduced or discount prices through bulk purchases or negotiated agreements, obtaining donations of weatherization materials or fuels, waiving utility fees, or any number of other activities. Awards in the current year are based on leveraging activities carried out during the previous year. Leveraging grants are subject to special terms and conditions, which are specified in the grant awards.

Residential Energy Assistance Challenge Program

Up to 25 percent of the funds earmarked for leveraging incentive awards each year may be set aside for the REACH program to make competitive grants to LIHEAP grantees to help LIHEAP-eligible households reduce their energy vulnerability. The purposes of REACH are: (1) to minimize health and safety risks that result from high energy burdens on low-income households; (2) to prevent homelessness as a result of inability to pay energy bills; (3) to increase efficiency of energy usage by low-income families; and (4) to target energy assistance to individuals who are most in need. REACH grants are to be administered through community-based organizations. REACH grants are subject to special terms and conditions, which are specified in the grant awards.

Source of Governing Requirements

The LIHEAP program is authorized under Title XXVI of the Omnibus Budget Reconciliation Act of 1981, as amended (Pub. L. No. 97-35, as amended, also known as OBRA 1981), which is codified at 42 USC 8621-8629. Implementing regulations for this and other HHS block grant programs authorized by OBRA 1981 are published at 45 CFR part 96. Those regulations include general administrative requirements for the covered block grant programs in lieu of CFR part 92 (the HHS implementation of the A-102 Common Rule)). Requirements specific to LIHEAP are in 45 CFR sections 96.80 through 96.89. In addition, grantees are to administer their LIHEAP programs according to the plans that they have submitted to HHS.

Under the block grant philosophy, each State is responsible for designing and implementing its own LIHEAP program, within very broad Federal guidelines. States must administer their LIHEAP programs according to their approved plan and any amendments and in conformance

with their own implementing rules and policies. States must establish appropriate systems and procedures to prevent, detect and correct waste, fraud and abuse, by clients, vendors, and administering agencies.

As discussed in Appendix I of this Supplement, Federal Programs Excluded from the A-102 Common Rule, States are to use the fiscal policies that apply to their own funds in administering LIHEAP. Procedures must be adequate to assure the proper disbursal of and accounting for Federal funds paid to the grantee, including procedures for monitoring the assistance provided (42 USC 8624(b)(10); 45 CFR section 96.30).

Availability of Other Program Information

The ACF LIHEAP page on the Internet (http://www.acf.hhs.gov/programs/liheap) provides general information about this program.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

The following guidelines apply to LIHEAP block grants and leveraging incentive award funds, unless noted otherwise. Energy emergency contingency funds generally are subject to the LIHEAP block grant requirements, but the contingency grant award letter should be reviewed to see if different requirements apply. REACH grants are subject to special rules described in the award.

1. LIHEAP funds may be used to assist eligible households to meet the costs of home energy, i.e., heating or cooling their residences (42 USC 8621(a) and 8624(b)(1)).

2. LIHEAP funds may be used to intervene in energy-related crisis situations, as defined by the grantee (42 USC 8623(c) and 8624(b)(1)).

3. LIHEAP funds may be used to conduct outreach activities (42 USC 8624(b)(1)).

4. Leveraging incentive awards must be used to increase or maintain heating, cooling, energy crisis, and weatherization benefits for low-income persons (45 CFR section 96.87(j)).

5. Leveraging incentive award funds may not be used for planning, developing, or administering the LIHEAP program (45 CFR section 96.87(j)).

6. LIHEAP funds may be used to provide low-cost residential weatherization and other cost-effective energy-related home repair (42 USC 8624(b)(1)).

7. LIHEAP grantees may use some or all of the rules applicable to the Department of Energy's Weatherization Assistance for Low-Income Persons program (CFDA 81.042) for their LIHEAP funds spent on weatherization (42 USC 8624(c)(1)(D)).

8. LIHEAP funds may be used to provide services that encourage and enable households to reduce their home energy needs and thereby the need for energy assistance, including needs assessments, counseling, and assistance with energy vendors (42 USC 8624 (b)(16)).

9. LIHEAP funds (other than leveraging incentive award funds) may be used to identify, develop, and demonstrate leveraging programs (45 CFR section 96.87(c)).

10. No LIHEAP funds may be used for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or other facility (42 USC 8628).

B. Allowable Costs/Cost Principles

As discussed in Appendix I of this Supplement, Federal Programs Excluded from the A-102 Common Rule, LIHEAP is exempt from the provisions of the OMB cost principles circulars. State cost principles requirements apply to LIHEAP.

E. Eligibility

1. Eligibility for Individuals

Grantees may provide assistance to: (a) households in which one or more individuals are receiving Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Supplemental Nutrition Assistance Program (SNAP) benefits, or certain needs-tested veterans benefits; or (b) households with incomes which do not exceed the greater of 150 percent of the State's established poverty level, or 60 percent of the State median income. Grantees may establish lower income eligibility criteria, but no household may be excluded solely on the basis of income if the household income is less than 110 percent of the State's poverty level. Grantees may give priority to those households with the highest home energy costs or needs in relation to income (42 USC 8624(b)(2)).

2. Eligibility for Group of Individuals or Area of Service Delivery- Not Applicable

3. Eligibility for Subrecipients

To the extent it is necessary to designate local administrative agencies, the grantee is to give special consideration to local public or private non-profit agencies (or their successor agencies) which were receiving energy assistance or weatherization funds under the Economic Opportunity Act of 1964 or other laws, provided that the grantee finds that they meet program and fiscal requirements set by the grantee (42 USC 8624(b)(6)).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2. Level of Effort – Not Applicable

3. Earmarking

The following limitations apply to LIHEAP block grants and leveraging incentive award funds, as noted. Energy emergency contingency funds generally are subject to the requirements applicable to LIHEAP block grant funds, but the contingency grant award letter should be reviewed to see if different requirements were applied. REACH grants are subject to special rules described in the award.

a. *Planning and Administrative Costs*

(1) No more than 10 percent of the LIHEAP funds payable to the State for a Federal fiscal year may be used for planning and administrative costs, including both direct and indirect costs. This limitation applies, in the aggregate, to planning and administrative costs at both the State and subrecipient levels (42 USC 8624(b)(9)(A); 45 CFR section 96.88(a)).

(2) A tribal or territorial grantee may spend up to 20 percent of the first $20,000 and 10 percent of the amount above $20,000 for administration and planning (45 CFR section 96.88(b)).

(3) Leveraging incentive award funds may not be used for planning and administrative costs. However, either in the award year or the following fiscal year, they may be added to the base on which the maximum amount allowed for planning and administration is calculated (45 CFR section 96.87(j)).

b. *Weatherization*

(1) No more than 15 percent of the greater of the funds allotted or the funds available to the grantee for a Federal fiscal year may be used for low-cost residential weatherization or other energy-related home repairs. The Secretary may grant a waiver, and the grantee

may then spend up to 25 percent for residential weatherization or energy-related home repairs (42 USC 8624(k)).

(2) Leveraging incentive award funds may be used for weatherization without regard to the weatherization maximum in the statute. However, they cannot be added to the base on which the weatherization maximum is calculated (45 CFR section 96.87(j)).

c. *Energy Need Reduction Services* – No more than five percent of the LIHEAP funds payable to the grantee may be used to provide services that encourage and enable households to reduce their home energy needs and thereby the need for energy assistance. Such services may include needs assessments, counseling, and assistance with energy vendors (42 USC 8624(b)(16)).

d. *Identifying and Developing Leveraging Programs*

(1) The greater of 0.08 percent of a State's LIHEAP funds (other than leveraging incentive award funds) or $35,000 may be spent to identify, develop, and demonstrate leveraging programs, without regard to the limit on planning and administering LIHEAP (42 USC 8626a(c)(2); 45 CFR section 96.87(c)(2)).

(2) Indian tribes/tribal organizations and territories may spend up to the greater of two percent or $100 on such activities (45 CFR section 96.87(c)(1)).

H. Period of Availability of Federal Funds

At least 90 percent of the LIHEAP block grant funds payable to the grantee must be obligated in the fiscal year in which they are appropriated. Up to 10 percent of the funds payable may be held available (or "carried over") for obligation no later than the end of the following fiscal year. Funds not obligated by the end of the following fiscal year must be returned to ACF. There are no limits on the time period for expenditure of funds (42 USC 8626).

Leveraging incentive award funds and REACH funds must be obligated in the year in which they are awarded or the following fiscal year, without regard to the carryover limit. However, they may not be added to the base on which the carryover limit is calculated (45 CFR sections 96.87(j)(1) and (k)). Funds not obligated within these time periods must be returned to ACF (45 CFR section 96.87(k)).

LIHEAP emergency contingency funds are generally subject to the same obligation and expenditure requirements applicable to the LIHEAP block grant funds, but the contingency award letter should be reviewed to see if different requirements were imposed.

L. Reporting

1. Financial Reporting

a. SF-269A, *Financial Status Report* (Short Form) – Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting

a. *LIHEAP Carryover and Reallotment Report (OMB No. 0970-0106)* – Grantees must submit a report no later then August 1 indicating the amount expected to be carried forward for obligation in the following fiscal year and the planned use of those funds. Funds in excess of the maximum carryover limit are subject to reallotment to other LIHEAP grantees in the following fiscal year, and must also be reported (42 USC 8626)

Key Line Items (not numbered):

(1) "*Carryover amount*"

(2) "*Reallotment amount*")

b. *Annual Report on Households Assisted by LIHEAP (OMB No. 0970-0060)* As part of the application for block grant funds each year, a report is required for the preceding fiscal year of (1) the number and income levels of the households assisted for each component (heating, cooling, crisis, and weatherization), and (2) the number of households served that contained young children, elderly, or persons with disabilities. Territories with annual allotments of less than $200,000 and Indian tribes are required to report only on the number of households served for each component (42 USC 8629; 45 CFR section 96.82)

Key Line Items –

(1) Section 1 – LIHEAP Assisted Households

(2) Section 2 – LIHEAP Applicant Households.

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

IV. OTHER INFORMATION

As described in Part 4, Social Services Block Grant (SSBG) program (CFDA 93.667), III.A, "Activities Allowed or Unallowed," a State may transfer up to 10 percent of its annual allotment under SSBG to this and six other block grant programs.

Amounts transferred into this program are subject to the requirements of this program when expended and should be included in the audit universe and total expenditures of this program when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amounts transferred in should be shown as expenditures of this program when such amounts are expended.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.569 COMMUNITY SERVICES BLOCK GRANT
CFDA 93.710 ARRA – COMMUNITY SERVICES BLOCK GRANT

I. PROGRAM OBJECTIVES

The objective of the Community Services Block Grant (CSBG) program is to provide assistance to a network of community-based organizations for programs and services to ameliorate the causes and consequences of poverty and to revitalize low-income communities. CSBG can be used to fund programs and other activities that assist low-income individuals and families attain self-sufficiency; provide emergency assistance; support positive youth development; promote civic engagement; and improve the organization infrastructure for planning and coordination among multiple resources that address poverty conditions in the community.

II. PROGRAM PROCEDURES

Administration and Services

The CSBG program is administered at the Federal level by the Office of Community Services (OCS), Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS). CSBG funds are awarded to States, territories, and federally and State-recognized Indian tribes and tribal organizations. Funds are distributed in accordance with a pre-established formula after submission of an application to OCS and acceptance of that application as complete in accordance with statutory requirements. In turn, States subgrant the CSBG funds according to statewide formulae to designated community-based non-profit organizations (and, in special circumstances, public organizations) that plan, develop and implement, and evaluate local programs.

Source of Governing Requirements

The CSBG program was reauthorized under the Community Services Block Grant Act of 1998 (Pub. L. 105-285), and is codified at 42 USC 9901-9920. The implementing regulations for this and other block grant programs are published at 45 CFR part 96. Those regulations include both specific requirements and general administrative requirements for the covered block grant programs in lieu of 45 CFR part 92 (the HHS implementation of the A-102 Common Rule). Requirements specific to CSBG are in 45 CFR sections 96.90 through 96.92. Separate regulations governing religious organizations as nongovernmental providers of service (Charitable Choice) are codified at 45 CFR part 1050.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should look first to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

a. Subgrantees may use CSBG funds for any programs, services or other activities related to achieving the broad goals of the CSBG programs, such as reducing poverty, revitalizing low-income communities, and assisting low-income individuals and families. Funds may be used to:

(1) Promote economic self-sufficiency, employment, education and literacy, housing and civic participation.

(2) Support community youth development programs.

(3) Fill gaps in services through information dissemination, referrals, and case management.

(4) Provide emergency assistance through grants and loans, and provision of supplies, services and food stuffs.

(5) Secure more active involvement of the private sector, faith-based institutions, neighborhood-based organizations, and charitable groups.

(6) Plan, coordinate, and develop linkages among public (Federal, States and local), private, and non-profit resources, including religious organizations, to improve their combined effectiveness in ameliorating poverty (42 USC 9901, 42 USC 9908(b), and 42 USC 9920(a); 45 CFR section 1050.3(a)(1)).

b. States may use retained funds to achieve CSBG program goals through activities, including, but not limited to:

(1) Training and technical assistance.

(2) Statewide coordination and communication among eligible entities.

(3) Analysis to better target the distribution of funds to the areas of greatest need.

(4) Individual development accounts and other asset-building programs for low-income individuals.

(5) Coordinating State-operated programs and services targeted to low-income children and families.

(6) State charity tax credits.

(7) Supporting innovative programs and activities conducted by community-based organizations to address the goals of the program.

(8) Administrative functions (42 USC 9901 and 9907(b)).

2. *Activities Unallowed*

a. Funds may not be used to purchase or improve land or to purchase, construct, or permanently improve buildings or facilities, other than low-cost residential weatherization or other energy-related home repairs (this limitation may be waived by ACF) (42 USC 9918(a)).

b. Funds may not be used to support any partisan or non-partisan political activity or to provide voters or prospective voters with transportation to the polls or provide similar assistance in connection with an election or any voter registration (42 USC 9918(b)).

c. No CSBG program funding provided directly to a religious organization may be used for inherently religious activities, such as worship, religious instruction, or proselytization (42 USC 9920(c); 45 CFR section 1050.3(b)).

B. Allowable Costs/Cost Principles

As discussed in Appendix I of this Supplement, Federal Programs Excluded from the A-102 Common Rule, the CSBG program is exempt from the provisions of OMB cost principles circulars at the State level. As a block grant, State cost principles requirements apply to CSBG at the State level. However, OMB administrative requirements and cost principles circulars do apply to subgrantees receiving CSBG funds (42 USC 9916(a)(1)(B)).

E. Eligibility

1. Eligibility for Individuals

The official poverty guideline as revised annually by HHS shall be used to determine eligibility. The poverty guidelines are issued each year in the *Federal Register* and on the HHS web site (http://aspe.hhs.gov/poverty/). A State may adopt a revised poverty guideline but it may not exceed 125 percent of the HHS-determined poverty guidelines (42 USC 9902(2)).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

Subgrants may be made to the following entities, based on receipt of a community plan (42 USC 9908(b)(11):

a. A private non-profit organization (including migrant farm worker organization) with a pre-existing designation as an "eligible entity" immediately prior to enactment of the new CSBG Act on October 27, 1999, and with a governance mechanism meeting the tripartite governing board requirement specified in 42 USC 9910(a)).

b. A subdivision of State government with a pre-existing designation as an "eligible entity" immediately prior to enactment of the new CSBG Act, with a governance mechanism meeting either the "tripartite" board requirements or otherwise assuring decision-making and participation by low-income individuals in the development, planning, implementation, and evaluation of CSBG-funded programs (42 USC 9910(b))

c. A private non-profit organization or subdivision of State government newly designated by the State after October 27, 1999 as an "eligible entity" to provide services in an unserved area, in accordance with the criteria, requirements, and procedures specified by 42 USC 9909.

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2. Level of Effort – Not Applicable

3. Earmarking

a. States must use at least 90 percent of the allotted funds for subgrants to eligible entities (42 USC 9907(a)(1)). See III.H.2, "Period of Availability of Federal Funds," for period of availability of funds to subgrantees.

b. State administrative expenses, including monitoring activities, may not exceed the greater of $55,000 or 5 percent of CSBG funds. Such expenditures must be made from the portion of funds remaining to a State after subgranting at least 90 percent of funds to eligible entities (42 USC 9907(b)(2)).

H. Period of Availability of Federal Funds

1. Amounts unobligated by the State at the end of the fiscal year in which they were first allotted shall remain available for obligation during the succeeding fiscal year (45 CFR section 96.14(a)).

2. CSBG funds granted by the State to subgrantees are available to the subgrantee for obligation during the Federal fiscal year that the grant was made and in the following Federal fiscal year (42 USC 9907(a)(2)).

   However, beginning on October 1, 2000, if more than 20 percent of the funds granted by the State to a subgrantee in one fiscal year remain unobligated at the end of that fiscal year, a State may recapture and redistribute those funds. A State must either (a) redistribute the recaptured funds to an eligible entity located within the community served by the original subgrantee, or (b) require the original subgrantee to distribute the funds to a private non-profit organization within that community. Activities undertaken with redistributed funds must conform with the activities allowed under the CSBG Act (42 USC 9907(a)(3)).

L. Reporting

1. Financial Reporting

a. SF-269A, *Financial Status Report* – Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable for financial status; Not Applicable for cash status

2. Performance Reports – Not Applicable

3. Special Reports – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable for non-ARRA funds

M. Subrecipient Monitoring

States must conduct full onsite reviews of each eligible subgrantee once every three years to check conformity with performance goals, administrative standards, financial management rules, and other requirements. States must conduct an onsite review of each newly designated entity immediately after the completion of the first year in which such entity receives CSBG funding. Follow-up reviews, including prompt return visits to eligible entities and their programs, are required for entities that fail to meet the goals, standards, and requirements established by the State (42 USC 9914(a)).

If a State finds a need for corrective action, the State must (1) inform the subgrantee of the deficiency and require correction; (2) offer training and technical assistance and report to OCS on that assistance, or explain why providing such assistance was not appropriate; (3) and receive an improvement plan from the subgrantee within 60 days, and approve (42 USC 9915). If the subgrantee fails to remedy the deficiency, the State may initiate proceedings to terminate the subgrantees eligibility or reduce its funding (42 USC 9908(b)(8) and 42 USC 9915(a)(5)).

N. Special Tests and Provisions

Subgrant Award and Administration

Compliance Requirements – States must (1) use at least 90 percent of their allotted funds under this program for subgrants to eligible entities, (2) subgrant funds in a timely manner to allow subgrantees a sufficient opportunity to obligate the funds to accomplish program purposes, and (3) adhere to expense limits for administrative activities performed (42 USC 9907(a)(1), (a)(2), (a)(3), and (b)(2)). There is a concern that some States are (1) not allotting the funds to subgrantees, either to the required level or early enough to allow a full period of performance by subgrantees without the possibility of recapture, resulting in unobligated balances of funds, and (2) inappropriately claiming administrative expenses for subgrant award and monitoring.

Audit Objectives – To determine if the State (1) complied with the requirement to subgrant 90 percent of its allotted funds in a timely manner and (2) claimed appropriate administrative expenses.

a. Determine the State's procedures, including any standards for administrative lead time, for issuance of subgrant awards.

b. Determine if the subgrants were made in a timely manner, consistent with CSBG requirements and the State's own procedures.

c. Determine if the State tracks, by each individual subgrant, the issuance date, expenditure by the subgrantee, and the associated administrative costs.

d. Determine if the State is appropriately claiming administrative costs in relation to its award and administration of subgrants.

e. Select a sample of subgrantees and match State-maintained records of disbursement of funds with subgrantee records of receipt of funds from the State.

IV. OTHER INFORMATION

As described in Part 4, Social Services Block Grant (SSBG) program (CFDA 93.667), III.A. "Activities Allowed or Unallowed," a State may transfer up to 10 percent of its annual allotment under SSBG to CSBG and other specified block grant programs for support of health services, health promotion and disease prevention activities, low-income home energy assistance, or any combination of these activities. Amounts transferred into the CSBG program are subject to the requirements of the CSBG program when expended and should be included in the audit universe and total expenditures of this program when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amounts transferred in should be shown as expenditures of this program when such amounts are expended.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.575 CHILD CARE AND DEVELOPMENT BLOCK GRANT
CFDA 93.596 CHILD CARE MANDATORY AND MATCHING FUNDS OF THE CHILD CARE AND DEVELOPMENT FUND
CFDA 93.713 ARRA – CHILD CARE AND DEVELOPMENT BLOCK GRANT

I. PROGRAM OBJECTIVES

The Child Care and Development Fund (CCDF) provides funds to States Territories, and Indian Tribes (Tribe).to increase the availability, affordability, and quality of child care services. Funds are used to subsidize child care for low-income families where the parents are working or attending training or educational programs, as well as for activities to promote overall child care quality for all children, regardless of subsidy receipt. The CCDF consolidates the Child Care and Development Block Grant (CCDBG) and funding formerly provided to States through the child care programs under Title IV-A of the Social Security Act.

II. PROGRAM PROCEDURES

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) repealed the child care programs under Title IV-A of the Social Security Act, i.e., Aid to Families with Dependent Children Child Care, Transitional Child Care and At-Risk Child Care, and required that all Federal child care funds be spent in accordance with the provisions of the amended Child Care and Development Block Grant program. While these Federal child care programs have been consolidated under a single set of eligibility requirements, there are three distinct funding sources. The three sources are the Discretionary Fund (CFDA 93.575), Mandatory Fund (CFDA 93.596), and the Matching Fund (CFDA 93.596). **The American Recovery and Reinvestment Act (ARRA) (Pub. L. No. 111-5 added the Child Care and Development Block Grant (CCDBG) (CFDA 93.713), as one-time supplemental funding, to this cluster. ARRA CCDBG funds are Discretionary Funds and, therefore, are subject to the requirements for the CCDBG Discretionary Funds (CFDA 93.575).** Additionally, under the Temporary Assistance for Needy Families (TANF) program (CFDA 93.558), a State may transfer TANF funds to CCDF and, if so, the funds transferred in are treated as Discretionary Funds (42 USC 606(d); 45 CFR section 98.54(a)).

Administration and Services

The Office of Child Care (OCC) (formerly the Child Care Bureau), Administration for Children and Families (ACF), Department of Health and Human Services (HHS), administers the CCDF. To receive funds a State, Territory, or Tribe must submit a plan containing specific information and assurances. The plan serves as the application for funding for States and Territories and is effective for a two-year period. Tribes, in contrast, must submit a yearly application indicating child counts as well as a tribal plan. A Tribe's plan is also effective for two years. Tribes are generally subject to the same program requirements as States and Territories, except as specifically noted below.

Following ACF approval of the plan (and application, in the case of Tribes), funds are awarded to the designated State, territorial or tribal entity (generally referred to as the lead agency) based on statutory/regulatory formulas. State awards are not adjusted by separate direct Federal funding of counterpart tribal programs within the State. As long as statutory and regulatory requirements are met (e.g., that the States, Territories, and those Tribes receiving grants over $500,000 offer parents certificates for the purchase of child care services), grantees have broad flexibility in designing programs and offering services. For example, CCDF funds may be used in collaborative efforts with Head Start (CFDA 93.600) programs to provide comprehensive child care and development services for children who are eligible for both programs. In fact, the coordination and collaboration between Head Start and the CCDF is mandated by sections 640(g)(2)(D) and (E), and 642(c) of the Head Start Act (42 USC 9835(g)(2)(D) and (E); 42 USC 9837(c)) in the provision of full working day, full calendar year comprehensive services (42 USC 9835(a)(5)(v)). In order to implement such collaborative programs, which share, for example, space, equipment or materials, grantees may blend several funding streams so that seamless services are provided.

Tribes may operate the CCDF program under a consolidated Pub. L. No. 102-477 demonstration project. Pub. L. No. 102-477 refers to the Indian Employment, Training, and Related Services Demonstration Act of 1992, the purpose of which is to provide for the integration of employment, training, and related services to improve the effectiveness of those services. Tribes that integrate their CCDF program into a Pub. L. No. 102-477 project must expend CCDF funds for allowable CCDF purposes in accordance with CCDF statutory and regulatory requirements, with the exception of the requirements to submit a separate biennial CCDF plan and administrative data and financial reports. Tribes participating under a Pub. L. No. 102-477 project submit alternative plans and reports to the Department of the Interior, which serves as the lead Federal agency for Pub. L. No. 102-477. Upon request by a Tribe, under Pub. L. No. 102-477, HHS may also waive certain statutory provisions, regulations, policies, or procedures.

Source of Governing Requirements

The Discretionary Fund (CFDA 93.575) and **ARRA – CCDBG funds (CFDA 93.713**) are authorized by the Child Care and Development Block Grant Act of 1990, as amended by Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act (PWORA) of 1996 (Pub. L. No. 104-193), and subsequent amendments thereto, and codified at 42 USC 9858-9858q, **and ARRA**, respectively. The Mandatory and Matching Funds (CFDA 93.596) are authorized under section 418 of Title IV-A of the Social Security Act as amended by PRWORA and the Deficit Reduction Act of 2005 (Pub. L. No. 109-171), and codified at 42 USC 618. The CCDF (i.e., CFDAs 93.575, 93.596, and **93.713**) is subject to the implementing regulations at 45 CFR parts 98 and 99.

CCDF is not subject to 45 CFR part 92, the HHS implementation of the A-102 Common Rule, or to 2 CFR part 225 (formerly OMB Circular A-87).

Availability of Other Program Information

OCC's web site (http://www.acf.hhs.gov/programs/ccb/) provides general information on this program.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Funds may be used for child care services in the form of certificates, grants, or contracts (42 USC 9858c(c)(2)(A)).

2. Funds may be used for activities that improve the quality or availability of child care services, consumer education, and parental choice (42 USC 9858e).

3. Funds may be used for any other activity that the State deems appropriate to promoting parental choice, providing comprehensive consumer education information to help parents and the public make informed choices about child care, providing child care to parents trying to achieve independence from public assistance, and implementing the health, safety, licensing, and registration standards established in State regulations (42 USC 9858c(c)(3)(B)).

4. No funds may be expended through any grant or contract for child care services for any sectarian purpose or activity, including sectarian worship or instruction (42 USC 9858k(a)).

5. With regard to services to students enrolled in grades 1 through 12, no funds may be used for services provided during the regular school day, for any services for which the students receive academic credit toward graduation, or for any instructional services that supplant or duplicate the academic program of any public or private school (42 USC 9858k(b)).

6. Except for Tribes, no funds can be used for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility (42 USC 9858d(b)).

   Tribes may use funds for the construction and major renovation of child care facilities with ACF approval (42 USC 9858m(c)(6); 45 CFR section 98.84).

   "Construction" is defined as the erection of a facility that does not currently exist. "Major renovation" is considered permanent improvement and is defined as:
   (1) structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area; or
   (2) extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change (45 CFR section 98.2). Improvements or upgrades to a facility which are not specified

under the definitions of construction or major renovation may be considered minor remodeling and are, therefore, allowable.

7. Except for sectarian organizations, funds may be used for the minor remodeling of child care facilities. For sectarian organizations, funds may be used for the renovation or repair of facilities only to the extent that it is necessary to bring the facility into compliance with the health and safety standards required by 42 USC 9858c(c)(2)(F) (42 USC 9858d(b)).

8 ARRA – CCDBG funds can be used for any allowable purpose under CCDF statutory and regulatory requirements. A portion of ARRA – CCDBG funds is targeted for quality activities and infant and toddler quality activities (see III.G.3.c, "Targeted Funds," below)."

B. Allowable Costs/Cost Principles

As indicated in Appendix I of this Supplement, Federal Programs Excluded from the A-102 Common Rule, grantees (lead agencies) shall expend and account for CCDF funds in accordance with the laws and procedures they use for expending and accounting for their own funds (45 CFR section 98.67).

C. Cash Management

For the Matching Fund's (CFDA 93.596) requirement, the drawdown of Federal cash should not exceed the federally funded portion of the State's Matching Funds, taking into account the State matching requirements. For example, the total Matching Fund expenditures for a year—both State and Federal shares—for a fiscal year are $100. Of this $100, the State share of the Matching Fund is $40. For any period, the amount of Federal funds drawn down should not exceed 60 percent of the total expenditures for that period (31 CFR section 205.15(d)).

E. Eligibility

1. Eligibility for Individuals

Lead Agencies must have in place procedures for documenting and verifying eligibility in accordance with the following Federal requirements, as well as the specific eligibility requirements selected by each State/Territory/Tribe in its approved Plan.

a. Children must be under age 13 (or up to age 19, if incapable of self care or under court supervision), who reside with a family whose income does not exceed 85 percent of State/territorial/tribal median income for a family of the same size, and reside with a parent (or parents) who is working or attending a job-training or education program; or are in need of, or are receiving, protective services. Tribes may elect to use State or tribal median income (42 USC 9858n(4); 45 CFR sections 98.20(a) and 98.80(f)).

b. Lead Agencies shall establish a sliding fee scale, based on family size, income, and other appropriate factors, that provides for cost sharing by families that receive CCDF child care services (45 CFR section 98.42). Lead Agencies may exempt families below the poverty line from making copayments and shall establish a payment rate schedule for child care providers caring for subsidized children (45 CFR section 98.43).

2. Eligibility for Group of Individuals or Area of Service Delivery

The award of CCDF funds to an Indian Tribe shall not affect the eligibility of any Indian child to receive CCDF services in the State or States in which the Tribe is located (45 CFR section 98.80(d)).

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

The matching and MOE requirements apply only to the Matching Fund (CFDA 93.596). The State's matching and MOE expenditures are closely related. For a State to receive the allotted share of the Matching Fund, the State must meet the MOE requirement and obligate the Mandatory Fund by year end (see III.H, "Period of Availability of Federal Funds"). The matching and MOE amounts are reported on the CCDF Financial Report (ACF-696) (see III.L.1, "Reporting – Financial Reporting").

1. Matching

a. A State is eligible for Federal matching funds (limit specified in 42 USC 618 and 45 CFR section 98.63) only for those allowable State expenditures that exceed the State's MOE requirement, provided all of the Mandatory Funds (CFDA 93.596) allocated to the State are also obligated by the end of the fiscal year (45 CFR section 98.53).

b. State expenditures will be matched at the Federal Medical Assistance Percentage (FMAP) rate for the applicable fiscal year. This percentage varies by State and is available on the Internet at http://www.aspe.hhs.gov/health/fmap.htm. To be eligible an activity must be allowable and be described in the approved State plan (45 CFR section 98.53).

c. Private or public donated funds may be counted as State expenditures for this purpose subject to the limitations in 45 CFR section 98.53.

d. No more than 30 percent of State matching claims may be for pre-kindergarten services. The 30 percent threshold is based on a regulatory provision implemented beginning in fiscal year (FY) 2008. For any fiscal year prior to 2008, a State may use public pre-kindergarten funds for up to 20 percent of the funds for State match expenditures (45 CFR section

98.53(h)(3)). The same expenditure may not be used for both MOE and matching purposes (45 CFR sections 98.53(d) and 98.53(h)).

2.1 Level of Effort – *Maintenance of Effort*

If a State requests Matching Funds (CFDA 93.596), State MOE (non-Federal) funds for child care activities must be expended in the year for which Matching Funds are claimed in an amount that is at least equal to the State's share of expenditures for FY 1994 or 1995 (whichever is greater) under former Sections 402(g) and (i) of the Social Security Act (42 USC 618). Private or public donated funds may be counted as State expenditures for this purpose (45 CFR section 98.53).

No more than 20 percent of the MOE requirement may be met with State expenditures for pre-kindergarten services. The same expenditure may not be used for both MOE and matching purposes (45 CFR sections 98.53(d) and 98.53(h)).

2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking

a. *Administrative Earmark* – A State/Territory may not spend on administrative costs more than five percent of total CCDF awards expended (i.e., the total of CFDAs 93.575,93.596, **and 93.713**) and any State expenditures for which Matching Funds (CFDA 93.596) are claimed (42 USC 9858c(c)(3)(C); 45 CFR section 98.52).

Tribes are allowed 15 percent of the amount expended under CFDAs 93.575, 93.596, **and 93.713** for administrative costs. Tribes with at least 50 children under age 13 are provided a base amount of $20,000, which may be expended for any purpose consistent with the purpose and requirements of the CCDF. Tribes with fewer than 50 children who are members of a consortium receive a pro rata amount of the $20,000 in proportion to the number of children under age 13 in relation to 50. The base amount is not included in the amount against which the administrative earmark is calculated (45 CFR sections 98.61(c), 98.83(e), and 98.83(g)).

As explained in the preamble to 45 CFR part 98 and the Conference Agreement for PRWORA (H.R. Rep. 104-725 at 411) http://www.acf.hhs.gov/programs/ccb/law/finalrul/fr072498.pdf**,** the following activities are not considered administrative costs (63 FR 39962):

(1) Eligibility determination and redetermination.

(2) Preparation and participation in judicial hearings.

(3) Child care placement.

(4) Recruitment, licensing, inspection, review and supervision of child care placements.

(5) Rate-setting.

(6) Resource and referral services.

(7) Training of child care staff.

(8) Establishment and maintenance of computerized child care information systems.

(9) Establishment and operation of a certificate program.

b. *Quality Earmark* – States and Territories must spend on quality and availability activities, as provided in the State/territorial plan, not less than 4 percent of CCDF funds expended (i.e., the total of CFDAs 93.575, 93.596, **and 93.713** funds) and any State expenditures for which Matching Funds (CFDA 93.596) are claimed (45 CFR section 98.51).

Only those Tribes receiving grants over $500,000 must spend at least four percent of CCDF funds expended on quality activities as described in the tribal plan/application. The $20,000 base amount is not included in the amount against which the quality earmark is calculated (45 CFR sections 98.51(a), 98.83(e), and 98.83(f)).

c. *Targeted Funds* – Congress may also specifically target funds for certain purposes. For example, in the FY 2010 HHS appropriation, Congress specified three types of targeted funds:

(1) resource and referral and school-aged activities (States, Territories, and Tribes);

(2) activities to increase the quality of child care for infants and toddlers (States and Territories); and

(3) quality improvement activities (States and Territories).

In addition, ARRA specified two types of targeted funds for the supplemental FY 2009 ARRA – CCDBG Funds: quality activities (States and Territories) and infant and toddler quality activities (States and Territories).

H. Period of Availability of Federal Funds

1. Discretionary Funds, **including supplemental FY 2009 ARRA – CCDBG funds,** (CFDA 93.575 and CFDA **93.713**) must be obligated by the end of the succeeding fiscal year after award, and expended by the end of the third fiscal year after award (42 USC 9858h(c); 45 CFR section 98.60).

2. Mandatory Funds (CFDA 93.596) for States must be obligated by the end of the fiscal year in which they are awarded if the State also requests Matching Funds (CFDA 93.596). If no Matching Funds are requested for the fiscal year, then the Mandatory Funds (CFDA 93.596) are available until liquidated (45 CFR section 98.60(d)).

3. Mandatory Funds (CFDA 93.596) for Tribes must be obligated by the end of the succeeding fiscal year after award, and liquidated by the end of the third fiscal year after award (45 CFR section 98.60(e)).

4. Matching Funds (CFDA 93.596) must be obligated by the end of the fiscal year in which they are awarded, and liquidated by the end of the succeeding fiscal year after award (45 CFR section 98.60(d)).

For example, availability periods for FY 2010 funds awarded on any date in FY 2010 (October 1, 2009 through September 30, 2010):

If Source of Obligation Is --	**Obligation must Be Made by End of --**	**Obligation must Be Liquidated by End of --**
FY 2010 Discretionary[1, 2] (CFDA 93.575 and CFDA **93.713**)	FY 2011 (i.e., by 9/30/11)	FY 2012 (i.e., by 9/30/12)
FY 2010 Mandatory (State) (CFDA 93.596)	FY 2010 (i.e., by 9/30/10 but ONLY if Matching Funds are used)	No requirement for liquidation by a specific date
FY 2010 Mandatory (Tribes)[2] (CFDA 93.596)	FY 2011 (i.e., by 9/30/11)	FY 2012 (i.e., by 9/30/12)
FY 2010 Matching (CFDA 93.596)	FY 2010 (i.e., by 9/30/10)	FY 2011 (i.e., by 9/30/11)

[1] TANF funds (CFDA 93.558) transferred to the CCDF during a fiscal year are treated as Discretionary Funds of the year they are transferred for purposes of the period of availability (45 CFR section 98.54(a)(1)).

[2] In lieu of the obligation and liquidation requirements cited above, Tribes are required to liquidate CCDF funds used for construction or major renovation by the end of the second fiscal year following the fiscal year for which the grant is awarded (45 CFR section 98.84(e)).

L. Reporting

1. Financial Reporting

   a. SF-269, *Financial Status Report* – Not Applicable

   b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

   c. SF-271, *Outlay Report and Request from Reimbursement for Construction Programs* – Not Applicable

   d. SF-272, *Federal Cash Transactions Report* – Not Applicable

   e. SF-425, *Federal Financial Report* – Not applicable for financial status; Applicable for cash status

   f. ACF-696, *Child Care and Development Fund Financial Report (OMB No 0970-0163)* is due quarterly from States and Territories. The ACF-696T, *Child Care and Development Fund Financial Report for Tribes* (*OMB No. 0970-0195)* is due annually from Tribes except for Tribes operating their CCDF program under a Pub. L. No.102-477 project. These reports are in lieu of the SF-269, *Financial Status Report/*SF-425, *Federal Financial Report* (financial status). Each fiscal year's expenditure report must be separate, therefore, multiple reports may be required if awards from more than one fiscal year are expended in a given quarter. Any funds transferred from TANF are treated as Discretionary Funds for reporting on the ACF-696 (42 USC 604(d); 45 CFR section 98.54(a)). **Supplemental FY 2009 ARRA – CCDBG (Discretionary) Funds must be reported in a separate column on the ACF-696 (or ACF-696T for Tribes).**

2. **Performance Reporting** – Not Applicable

3. **Special Reporting** – Not Applicable

4. **Section 1512 ARRA Reporting** – Applicable

5. **Subaward Reporting under the Transparency Act –** Applicable to non-ARRA funding

M. Subrecipient Monitoring

Lead Agencies that use other governmental or non-governmental subrecipients to administer the program must have written agreements in place outlining roles and responsibilities for meeting CCDF requirements. Lead Agencies shall oversee the expenditure of funds by sub-grantees, monitor programs and services, and ensure that sub-grantees that determine individual eligibility operate according to rules established by the program (45 CFR section 98.11).

N. Special Tests and Provisions

1. Health and Safety Requirements

Compliance Requirement – Lead Agencies must verify that child care providers (unless they meet an exception, e.g., family members who are caregivers or individuals who object to immunization on certain grounds) serving children who receive subsidies meet requirements pertaining to prevention and control of infectious diseases, building and physical premises safety, and basic health and safety training for providers (45 CFR section 98.41).

Audit Objective – Determine whether Lead Agencies ensure that child care providers serving children who receive subsidies meet applicable health and safety requirements.

Suggested Audit Procedures

a. Request that the Lead Agency identify State health and safety requirements for child care providers serving children who receive subsidies.

b. Review the Lead Agency's procedures for documenting and verifying child care provider compliance with relevant health and safety requirements for those providers serving children who receive subsidies.

c. Review a sample of Lead Agency payments to child care providers serving children who receive subsidies to verify that the Lead Agency's procedures were followed to determine compliance with State health and safety requirements before payment was made.

2. Fraud Detection and Repayment

Compliance Requirement – Lead Agencies shall recover child care payments that are the result of fraud. These payments shall be recovered from the party responsible for committing the fraud (45 CFR section 98.60).

Audit Objective – Determine if the Lead Agency correctly identified and reported fraud and took steps to recover payment.

Suggested Audit Procedures

a. Review the Lead Agency's procedures for identifying and recovering payments resulting from fraud, including the lead agency's definition of fraudulent child care payments.

b. Request documentation of any fraudulent payments that have been identified by the Lead Agency. If fraudulent payments occurred, review a sample of those payments to verify that proper procedures were followed to authenticate that a payment was actually fraudulent and, as applicable, recover payment.

IV. OTHER INFORMATION

Under the TANF program (CFDA 93.558), a State may transfer non-ARRA TANF funds to CCDF and the funds transferred are treated as Discretionary Funds under CCDF (42 USC 604(d); 45 CFR section 98.54(a)). The amounts transferred into CCDF should be included in the audit universe and in total expenditures of CCDF when determining Type A programs. On the Schedule of Expenditures of Federal Awards (SEFA), the amount transferred in should be shown as CCDF expenditures when expended.

Tribes that integrate their CCDF program into a demonstration project under the authority of Pub. L. No. 102-477 must report their CCDF expenditures on the SEFA as expenditures under CFDA 93.575/93.596. CCDF funds do not lose their identity by virtue of inclusion in a consolidated project.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.600 HEAD START
CFDA 93.708 ARRA – HEAD START
CFDA 93.709 ARRA – EARLY HEAD START

I. PROGRAM OBJECTIVES

The objectives of the Head Start and Early Head Start programs are to promote the school readiness of low-income preschool children (ages 3 to 5), including children of federally recognized Indian tribes, Alaska Natives, and migratory seasonal and farm workers, and infants and toddlers (birth through age 3) by enhancing their cognitive social and emotional development in learning environments that support their growth in language, literacy, mathematics, science, social and emotional functioning, creative art, physical skills, and approaches to learning. Parents receive social services and participate in various decision-making processes related to the operation of the program.

II. PROGRAM PROCEDURES

Administration and Services

The Office of Head Start (OHS), Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS), administers the Head Start program. OHS provides financial assistance to organizations that are eligible for designation as a Head Start agency for a period not-to-exceed 5 years for the planning, administration, and evaluation of a Head Start program.

Head Start/Early Head Start programs operate in all 50 States, the District of Columbia, Puerto Rico, the U.S. territories, and the Republic of Palau. Grants are awarded to public, non-profit, and for-profit organizations directly by ACF's 10 Regional Offices and, for awards to Tribes, Alaska Native organizations, and organizations serving migrant and seasonal workers, as well as replacement grants, by the OHS Headquarters office in Washington, DC.

Under the Early Head Start program, grants for services to eligible infants, toddlers, and pregnant women are made to Head Start grantees, school systems, universities, colleges, and other public and private entities. Early Head Start grants are subject to most of the same program performance standards and compliance requirements as Head Start grants; therefore, references to Head Start apply to both. For Early Head Start grantees that are also Head Start grantees, the Early Head Start program is not a separate grant; instead, Early Head Start is a separate program account under the same grant award.

A Head Start agency may subgrant operational responsibilities to one or more "delegate agency," but the Head Start agency governing body retains legal and fiscal responsibility for the grant. Delegate agencies may be public, non-profit, or for-profit organizations.

Head Start agencies must collaborate with other entities carrying out early childhood education and child-care programs in the community, including those funded by the Child Care and Development Fund (CCDF) (CFDA 93.575 and CFDA 93.596) and Temporary Assistance to Needy Families (CFDA 93.558). The coordination and collaboration between Head Start and the CCDF entity is mandated by sections 640(a)(5)(E), 640(g)(2)(D) and (E) and 642(c) of the Head Start Act (42 USC 9837(c)) in the provision of full-working day, full calendar-year comprehensive services (42 USC 9835(a)(5)(C)(v)).

In serving families and local communities, Head Start agencies must provide for the regular and direct participation of parents and community residents in the implementation of the Head Start program including decisions that influence the character of such program. As long as the statutory and regulatory performance requirements are met, including requirements for reporting data about expenditures and children and families receiving services, Head Start agencies have significant flexibility and discretion in designing programs to meet local community and family needs.

The Head Start program provides services in the following areas:

Early Childhood Development and Health – Head Start's educational program is designed to meet the needs of each child and family, including those children who are dual-language learners and families who have limited English proficiency, and the local community served, taking into account its ethnic and cultural characteristics. Every child receives a variety of learning experiences to foster intellectual, social, and emotional growth. Head Start also emphasizes the importance of the early identification of health problems. Every child, including children with disabilities is involved in a comprehensive health program in collaboration with parents, which includes immunizations, medical, dental, mental health, and nutritional services.

Head Start agencies are responsible for ensuring that they have qualified staff to implement educational programs that support classroom instructional practices, are able to identify children with special needs, and institute other practices related to school readiness and children's later success in school. Head Start emphasizes the importance of the early identification of health problems or potential health concerns. Head Start agencies are required to provide timely referrals to State or local agencies providing services under the Individuals with Disabilities Act to ensure the provision of special education and related services to meet the special needs of children with disabilities.

Head Start agencies assess and prioritize the nutrition status and nutritional needs of enrolled children, work in collaboration with each child's parents to ensure that children receive needed preventive nutrition and/or treatment services, provide food to help meet children's daily nutritional needs, provide meals that meet U.S. Department of Agriculture (USDA) dietary guidelines for children in settings that are relaxed and promote learning, demonstrate the connection of nutrition to other Head Start activities and its contribution to the child's cognitive, social, emotional, and physical development, provide nutrition education to staff, parents, and children, and involve all staff, parents, and other community agencies, as appropriate, in meeting the child's nutritional needs.

Mental health services must be provided in partnership with families and include on-site consultations with mental health professionals that support the efforts of staff and parents to promote children's mental health.

Family and Community Partnerships – An essential part of the Head Start program is the involvement of parents in parent education, program planning, and operating activities. Many parents serve as members of policy councils and committees and have a voice in Head Start program operations. Participation in classes and workshops on child development and staff visits assist parents in identifying the needs of their children and about educational activities that can take place at home. Specific services are geared to each family after its needs are determined. They include community outreach; referrals; family need assessments; recruitment and enrollment of children; and emergency assistance or crisis intervention.

Grantees engage in a process of collaborative partnership-building with parents to establish mutual trust and to identify family goals, strengths, and necessary services and other supports. Parents are offered opportunities to develop and implement individualized family partnership agreements that describe family goals, responsibilities, timetables and strategies for achieving these goals as well as progress in achieving them.

Grantees take an active role in community planning to encourage strong communication, cooperation, and the sharing of information among agencies and their community partners and to improve the delivery of community services to children and families. In addition, grantees take affirmative steps to establish ongoing collaborative relationships with community organizations to promote the access of children and families to community services that are responsive to their needs, and to ensure that Early Head Start and Head Start programs respond to community needs.

Program Design and Management – Upon receiving designation as a Head Start agency, the organization must establish and maintain a formal structure for program governance, oversight of quality services for children and families, and decision-making related to program design and implementation. Such a structure must include a governing body, a policy council, and, if there is a delegate agency, a policy committee for each such subrecipient.

Policy councils are responsible for aspects of program design and operation and long-and short-term planning and goals and objectives. Policy councils are composed of parents of children who are currently enrolled in the Head Start program, as well as members at large of the community served by the Head Start agency.

Policy committees at the delegate agency level are responsible for aspects of the delegate agency's program design and operation and long-and short-term planning and goals and objectives. These committees are composed of parents of children who are currently enrolled in the Head Start program served by the delegate agency, as well as members at large of the community served by the Head Start delegate agency.

Source of Governing Requirements

Head Start began in 1965 under the Office of Economic Opportunity and is now administered by OHS, ACF, HHS. Head Start programs are currently authorized under the Head Start Act (Pub. L. No. 110-134), as amended by the Improving Head Start for School Readiness Act of 2007 (42 USC 9831-9852. **The American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No 111-5, 123 Stat 178) added funding for these programs.** The implementing program regulations are 45 CFR parts 1301 through 1310.

Availability of Other Program Information

The OHS web page for the Early Childhood Learning and knowledge Center (http://eclkc.ohs.acf.hhs.gov/hslc) provides information about this program.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Funds may be used for the following program services consistent with the Head Start performance standards:

   a. Providing for the direct participation of parents of children in the development, conduct, and program direction at the local community level (42 USC 9833 and 42 USC 9837(b)(1));

   b. Training and technical assistance activities which may include the establishment of local or regional agreements with community experts, institutions of higher education, or private consultants, to make program improvements (42 USC 9835(a)(2)(C));

   c. Improving the compensation (including benefits) of educational personnel, family service workers, and child counselors to—

      (1) ensure that compensation is adequate to attract and retain qualified staff;

      (2) improve staff qualifications and assist with the implementation of career development programs for staff that support ongoing improvement of their skills and expertise; and

      (3) provide educational and professional development to enable teachers to meet professional standards, including providing

assistance to complete post-secondary course work, improve the qualifications and skills of educational personnel to become certified and licensed as bilingual education teachers, or as teachers of English as a second language, and improve the qualifications and skills of educational personnel to teach and provide services to children with disabilities
(42 USC 9835(a)(5)(A) and 42 USC 9835(j)).

d. Supporting staff training, child counseling, and other services necessary to address the challenges of children from immigrant, refugee, and asylee families, homeless children, children in foster care, limited English proficient children, children of migrant or seasonal farmworker families, children from families in crisis, children referred to Head Start programs by child welfare agencies and children who are exposed to chronic violence or substance abuse (42 USC 9835(a)(5)(B)(i));

e. Ensuring the physical environment is conducive to providing effective program services to children and families and are accessible to children and others with disabilities (42 USC 9835(a)(5)(B)(ii));

f. Employing additional qualified classroom staff to reduce the child-to-teacher ratio in the classroom and additional qualified family service workers to reduce the family-to-staff ratio for those workers (42 USC 9835(a)(5)(B)(iii));

g. Increasing hours of program operation, including the conversion of part-day programs to full-working day programs and increasing the number of weeks of operation in a calendar year (42 USC 9835(a)(5)(B)(v));

h. Improving community wide strategic planning and needs assessments and collaboration efforts, including outreach (42 USC 9835(a)(5)(B)(vi));

i. At the Head Start agency's option, transporting children to and from Head Start programs and program activities. When transportation services are provided, they must be provided in accordance with Head Start performance standards. Transportation costs may be paid with quality improvement funds, but, if so, are subject to a 10 percent cap; in any other case, allowable transportation costs are not subject to a cap (42 USC 9835(a)(5)(B)(vii) and 45 CFR part 1310);

j. Establishing and implementing procedures to evaluate the performance of delegate agencies and ensure corrective action for deficiencies identified through such evaluations (42 USC 9836A(d));

k. Correcting areas of noncompliance or deficiencies and developing quality improvement plans (42 USC 9836A(e));

l. Carrying out activities related to operation of the governing body. This includes activities related to administering and overseeing the Head Start grant; developing or implementing practices that ensure, active, independent, and informed governance of the Head Start agency; ensuring the necessary membership on the governing body (i.e., at least one individual with background and expertise in each of the following: fiscal management or accounting and early childhood education and development, and at least one licensed attorney familiar with issues that come before governing bodies); or, as required, employing consultant services to obtain such expertise (42 USC 9837(c)(1)).

m. With the consultation and participation of policy councils, and as appropriate, policy committees and community members, the conduct of an annual self-assessment of the Head Start agency's effectiveness and progress in meeting program goals and objectives as well as in implementing and complying with Head Start performance standards (42 USC 9836A(g));

n. Offering directly, or through referral to local entities, family literacy services, parenting skills training, substance abuse counseling, including information on the effect of drug exposure on infants and fetal alcohol syndrome (42 USC 9837(b)(4) and 42 USC 9837(b)(5));

o. Provision of family needs assessments that include consultation with parents (including foster parents, grandparents, and kinship caregivers) (42 USC 9837(b)(7));

p. Outreach and information to parents of limited English proficient children in an understandable and uniform format (42 USC 9837(b)(11));

q. Collaboration and coordination with public and private entities to improve the availability and quality of services to Head Start children and families, including outreach to the schools in which children participating in Head Start programs will enroll (42 USC 9837(e) and 42 USC 9837A(a));

r. Implementation of a research-based early childhood curriculum (42 USC 9837(f)(3)); and

s. In the case of a Early Head Start program or program component, provision, either directly or through referral, of early continuous, intensive, and comprehensive child development and family support services that enhance the physical, social, emotional, and intellectual development of children under the age of 3 (42 USC 9840A(b)).

2. Funds may be used for development and administrative costs, subject to the limitation in III.G.3, "Matching, Level of Effort, Earmarking – Earmarking." The term "development and administrative costs" means costs incurred in accordance with an approved Head Start budget which do not directly relate to the provision of program component services as described under paragraph 1 of this section (42 USC 9839(b) and 45 CFR section 1301.32 (a)).

3. With specific ACF prior approval only, funds may be used for capital expenditures (including paying the cost of amortizing the principal, and paying interest on, loans) such as construction of new facilities, purchase of new or existing facilities, major renovations on existing facilities, and purchase of vehicles used for programs conducted at the Head Start facilities (42 USC 9839(f) and (g)).

4. Funds may not be used by Head Start agencies to engage in any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election for public or party office or any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election (42 USC 9851(b)(1)). These prohibitions do not apply to the use of Head Start facilities during hours of operation for any nonpartisan organization to increase the number of eligible citizens who register to vote in elections for Federal office (42 USC 9851(b)(2)).

5. Funds from USDA's Child and Adult Care Food Program (CFDA 10.558) must be used as the primary source of payment for children's nutritional services (meals and snacks). Head Start funds may be used to cover those allowable costs not covered by USDA (45 CFR section 1304.23(b)(i)).

6. Funds may be used for professional and dental services as a payer of last resort (45 CFR section 1304.20(c)(5)). (See also III.N.3, "Special Tests and Provisions – Medical and Dental Services.")

B. Allowable Costs/Cost Principles

Indirect costs attributable to common or joint use of facilities or services by Head Start programs and other programs must be fairly allocated among the various programs that utilize such services (42 USC 9839(c)).

D. Davis-Bacon Act

The Davis-Bacon Act applies to construction or major renovation of facilities under the Head start program. 'Major renovation' means the extensive alteration of an existing facility, such as to significantly change its function and purpose, even if such renovation does not include any structural change to the facility. Major renovation also includes a renovation of any kind which has a cost exceeding the lesser of $200,000, adjusted annually to reflect the percentage change in the Consumer Price Index for All Urban

Consumers (issued by the Bureau of Labor Statistics) beginning one year after June 2, 2003, or 25 percent of the total annual direct costs approved for the grantee by ACF for the budget period in which the application is made (42 USC 9839(g)(3); 45 CFR sections 1309.3 and 1309.54).

E. Eligibility

1. Eligibility for Individuals.

a. The general rule is that for Head Start agencies other than Indian tribes/tribal organizations, the enrollees must come from families whose income is below the official Federal poverty guidelines or who are receiving public assistance (income-eligible) (45 CFR section 1305.4 (b)(1)). In addition to the general income eligibility rule, homeless children and children in foster care are categorically eligible to enroll in Head Start programs. Once the needs of these groups are met, then (up to 10 percent of the children who are enrolled may be from families that are not income-eligible (45 CFR section 1305.4 (b)(2)) (45 CFR section 1305.2(l), 42 USC 9840(a)(1)(B)(ii), and 42 USC 9840(a)(1)(B)(iii)(II)).

b. For tribal grantees, the income-eligible percentage that may be enrolled in the programs may be as low as 51 percent, providing certain conditions are met (45 CFR section 1305.4(b)(3)).

c. The family income must be verified by the Head Start grantee before determining that a child is income-eligible (45 CFR section 1305.4(c)). Homeless children may be enrolled while required documentation is obtained within a reasonable amount of time. Verification must include examination of any of the following: Individual Income Tax Form 1040, W-2 forms, pay stubs, pay envelopes, written statements from employers, or documentation showing current status as recipients of public assistance (45 CFR section 1305.4(d)). Although copies of income verification documents need not be retained by grantees, the child or family record must include a statement, signed by an employee of the grantee (Head Start program), identifying which income verification document was examined and stating that the child is income-eligible (45 CFR section 1305.4(e)).

The poverty guidelines are issued each year in the *Federal Register* and HHS maintains a web page that provides the poverty guidelines (http://aspe.hhs.gov/poverty/).

2. Eligibility for Groups of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

Delegate agencies may be public, non-profit, or for-profit organizations (45 CFR section 1301.33).

F. Equipment and Real Property Management

1. Head Start grantees are required to operate and maintain facilities, real property, and related assets to ensure their use for the funded project purpose(s) and to adequately protect such facilities, real property, and related assets.

2. The Federal interest in real property acquired with Head Start funds or which has undergone major renovation with Head Start funds may not be conveyed, transferred, assigned, mortgaged, leased, or otherwise be encumbered or subordinated by a grantee unless approved by ACF (45 CFR section 1309.21(b)).

3. The grantee must file a Notice of Federal Interest when construction or major renovation begins or when an existing facility or land is acquired on which a facility will be built. The Notice of Federal Interest, meeting the requirements of 45 CFR section 1309.21(d)(2), must be filed in the appropriate public records of the jurisdiction in which the property is located (45 CFR section 1309.21(d)(2)).

G. Matching, Level of Effort, Earmarking

1. Matching

Grantees are required to contribute at least 20 percent of the costs of the program through cash or in-kind contributions, unless a lesser amount has been approved by ACF (42 USC 9835(b); 45 CFR sections 1301.20 and 1301.21).

2. Level of Effort – Not Applicable

3. Earmarking

a. *Administrative earmark*. The costs of developing and administering a Head Start program shall not exceed 15 percent of the annual total program costs, including the required non-Federal contribution to such costs (i.e., matching), unless a waiver has been granted by ACF. Development and administrative costs include, but are not limited to, the cost of organization-wide planning, coordination and general purpose direction, accounting and auditing, purchasing and personnel functions, and the cost of operating and maintaining space for these purposes (42 USC 9839(b)(2); 45 CFR section 1301.32).

b. *Targeted earmark*. Each Head Start agency must enroll 100 percent of its funded enrollment (42 USC 9387(g)). For Fiscal Year 2009 and thereafter, not less than 10 percent of the total number of children actually enrolled by each Head Start Agency and each delegate agency must be children with disabilities determined to be eligible for special education and related services unless a waiver has been approved by ACF (42 USC 9835(d)).

c. *Required percentage of income eligibles*

(1) For grantees other than Indian tribes/tribal organizations, at least 90 percent of the enrollees must come from families whose income is below the official Federal poverty guidelines or who are receiving public assistance (income-eligible). Up to 10 percent of the children who are enrolled may be from families that are not income-eligible (45 CFR section 1305.4). The Head Start agency may also enroll up to 35 percent of children from families with income 130 percent below the poverty line as specified in III.E.1.a, Eligibility – Eligibility for Individuals, above.

(2) For tribal grantees, the income-eligible percentage may be as low as 51 percent, providing certain conditions are met (45 CFR section 1305.4(b)(3)).

(3) The family income must be verified by the Head Start grantee before determining that a child is income-eligible (45 CFR section 1305.4(c)).

(4) Verification must include examination of any of the following: Individual Income Tax Form 1040, W-2 forms, pay stubs, pay envelopes, written statements from employers, or documentation showing current status as recipients of public assistance (45 CFR section 1305.4(d)).

(5) Although copies of income verification documents need not be retained by grantees, the child or family record must include a statement, signed by an employee of the grantee (Head Start program), identifying which income verification document was examined and stating that the child is income-eligible (45 CFR section 1305.4(e)).

The poverty guidelines are issued each year in the *Federal Register* and HHS maintains a web page that provides the poverty guidelines (http://aspe.hhs.gov/poverty/).

J. Program Income

Head Start programs may not charge fees for participation in the program nor solicit, encourage, or in any way condition a child's enrollment or participation upon the payment of a fee. If the family of an eligible child volunteers to pay part or all of the costs of the child's participation, the Head Start agency may accept the voluntary payments and record the payments as program income. Such program income must be used for purposes related to the Head Start grant (45 CFR section 1305.9).

A Head Start agency that provides full-working-day services in collaboration with other agencies or entities may collect a family co-payment to support extended day services if a co-payment is required in conjunction with the collaborating agency or entity. The co-payment charged to families receiving services through the Head Start program shall not exceed the co-payment charged to families with similar incomes and circumstances who are receiving the services through participation in a program carried out by another agency or entity (42 USC 9840(b)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds

M. Subrecipient Monitoring

Grantees must establish and implement procedures for the ongoing monitoring of their own Head Start and Early Head Start operations, as well as those of their delegate agencies, to ensure that these operations effectively implement Federal regulations, including procedures for evaluating delegate agencies and procedures for defunding them.

Grantees must inform delegate agency governing bodies of any identified deficiencies in delegate agency operations identified in the monitoring review and assist them in developing plans, including timetables, for addressing identified problems (42 USC 9836A(d) and 45 CFR sections 1304.51(i)(2) and (3)).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.645 CHILD WELFARE SERVICES —STATE GRANTS

I. PROGRAM OBJECTIVES

The purpose of the Stephanie Tubbs Jones Child Welfare Services (CWS) program is to promote State and Tribe flexibility in the development and expansion of a coordinated child and family services program that utilizes community-based agencies and ensures all children are raised in safe, loving families.

II. PROGRAM PROCEDURES

The Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Administration on Children, Youth and Families, Children's Bureau, administers the CWS program on the Federal level. Funds are awarded directly to States and tribes. State agencies can have agreements and contracts with other public agencies and with private agencies for provision of appropriate services. Each State receives a base amount of $70,000. Additional funds are distributed in proportion to the State's population of children under age 21 multiplied by the complement of the State's average per capita income. The funds must go to, and be administered only by, the State child welfare agency, federally recognized Tribes, Tribal Organizations, or Tribal Consortia (hereafter "Tribe").

To be eligible for funds, each State and Tribe must submit a five-year comprehensive plan, the Child and Family Services Plan (CFSP). This plan encompasses planning and service delivery for the full child welfare services spectrum. This includes: Child Welfare Services, services promoting safe and stable families under title IV-B, Subpart 2; a child welfare staff development and training plan; a diligent recruitment of foster and adoptive families plan that reflects the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed; and child abuse and neglect prevention, foster care, adoption, and foster care independence services. The plan must include how the State or Tribe intends to meet specific goals, provide services, and coordinate services. The Children's Bureau has approval authority for the CFSP. An Annual Progress and Services Report (APSR) is required that identifies the specific accomplishments and progress made in the past fiscal year (FY) toward meeting each goal and objective in the 5-year comprehensive plan and any revisions in the statement of goals and objectives or to the training plan, if necessary, to reflect changed circumstances. The Associate Commissioner of the ACF Children's Bureau has approval authority for the title IV-B plans.

As required by the Child and Family Service Improvement Act of 2006 (Pub. L. No. 109-288), which amended Part B of title IV of the Social Security Act, States, in consultation with HHS, were required to establish by June 30, 2008, an outline of steps to be taken to ensure that 90 percent of children in foster care are visited by their caseworkers on a monthly basis by October 1, 2011, and that the majority of the visits occur in the residence of the child (Pub. L. No. 109-288, Section 6(c) (42 USC 622 (b)(17))). HHS must reduce the Federal share of participation in expenditures under the State's title IV-B, subpart 1, program by a certain statutory percentage if

the State does not meet its annual progress toward the 90 percent caseworker visit standard. The law requires the State to submit FY 2007 data, which will be used as a baseline in determining annual progress toward the 90 percent standard (Pub. L. No. 109-288, Section 6(b)(2) (42 USC 623(e)(1) and (2))). The law also requires that States establish target percentages for the children in foster care who will be visited during each and every calendar month for FY 2008 through 2011. If these target percentages are not achieved for a FY, the Federal match rate for title IV-B, subpart 1 funds will be reduced in the subsequent FY in proportion to the amount that the State failed to reach its target (section 424(e)(2)(B) of the Act).

Source of Governing Requirements

The CWS program is authorized under title IV-B, Subpart 1 (sections 421 – 428) of the Social Security Act as amended, and is codified at 42 USC 620-628a. Implementing program regulations are published at 45 CFR parts 1355 and 1357.

III. Compliance Requirements

A. Activities Allowed or Unallowed

1. Prior to fiscal year (FY) 2007, funds for CWS could be used to accomplish the following purposes:

    a. Protecting and promoting the welfare and safety of all children, including individuals with disabilities, homeless, dependent, or neglected children (45 CFR section 1357.10(c)(1));

    b. Preventing or remedying, or assisting in the solution of problems that may result in the neglect, abuse, exploitation, or delinquency of children (45 CFR section 1357.10(c)(2));

    c. Preventing the unnecessary separation of children from their families by identifying family problems and assisting families in resolving their problems and preventing the breakup of the family where the prevention of child removal is desirable and possible (45 CFR section 1357.10(c)(3));

    d. Restoring children who have been removed and may be safely returned to their families, by the provision of services to the child and the family (45 CFR section 1357.10(c)(4));

    e. Assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption (45 CFR section 1357.10(c)(5)); and

    f. Placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate (45 CFR section 1357.10(c)(6)).

2. Beginning in FY 2007, funds may be used for the following purposes:

   a. Protecting and promoting the welfare of all children (Pub. L. No. 109-288, Section 421(1));

   b. Preventing the abuse, neglect, or exploitation of children (Pub. L. No. 109-288, Section 421(2));

   c. Supporting at-risk families through services that allow children to remain with their families or return to their families in a timely manner (Pub. L. No. 109-288, Section 421(3));

   d. Promoting the safety, permanence, and well-being of children in foster care and adoptive families (Pub. L. No. 109-288, Section 421(4));

   e. Providing training, professional development, and support to ensure a well-qualified workforce (Pub. L. No. 109-288, Section 421(5))

3. Funds may be used for administrative costs, subject to the limitation in III.G.3 Matching, Level of Effort, Earmarking – Earmarking) below. The term "administrative costs" means costs for the following but only to the extent incurred in administering the State plan for this program: procurement; payroll management; personnel functions (other than the portion of the salaries of supervisors attributable to time spent directly supervising the provision of services by caseworkers); management; maintenance and operation of space and property; data processing and computer services; accounting; budgeting; auditing; and travel expenses (except those related to the provision of services by caseworkers or oversight of the program). (Pub. L. No. 109-288, Sections 422(b)(14) and (c) and 424(e) (42 USC 622(b)(14) and (c) and 623(e))).

4. Funds may not be used for the purchase or construction of facilities (45 CFR section 1357.30(f)).

G. Matching, Level of Effort, Earmarking

1. Matching

   a. The State and Tribal match requirement is 25 percent of the Federal funds expended (42 USC 623 and 629d(a)(1)(A)). The IV-B agency's contribution may be in cash, donated funds, and non-public third party in-kind contributions (45 CFR section 1357.30(e)(1)).

   b. Beginning in FY 2008, the State can not use more than the amount it spent in FY 2005 using non-Federal funds on foster care maintenance payments as match for the title IV-B, subpart 1, program (Pub. L. No. 109-288, Section 424(d) (42 USC 623(d))).

2.1 Level of Effort – *Maintenance of Effort*

Beginning in FY 2008, a State may not receive an amount of Federal funds under title IV-B for child care, foster care maintenance or adoption assistance payments in excess of the amount of title IV-B, subpart 1, funds they spent on these activities in FY 2005 (Pub. L. No. 109-288, Section 424(c) (42 USC 623(c))).

2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking

Beginning in FY 2008, no more than 10 percent of the expenditures of the State or Tribe with respect to activities funded from amounts provided under title IV-B, subpart 1 may be used for administrative costs (Pub. L. No. 109-288, Sections 422(b)(14) and (c) and 424(e) (42 USC 622(b)(14) and (c) and 623(e))).

H. Period of Availability of Federal Funds

Funds under title IV-B, subpart 1, must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded (45 CFR section 1357.30(i)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable.

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable (expenditure reporting only)

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. **Subaward Reporting under the Transparency Act** – Not Applicable

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.658 FOSTER CARE—TITLE IV-E

I. PROGRAM OBJECTIVES

The objective of the Foster Care program is to help agencies authorized to administer title IV-E programs to provide safe, appropriate, 24-hour, substitute care for children who are under the jurisdiction of the administering IV-E agency and need temporary placement and care outside their homes.

II. PROGRAM PROCEDURES

Administration and Services

The Foster Care program is administered at the Federal level by the Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS). Funding is provided to the 50 States, the District of Columbia, Puerto Rico and federally recognized Indian Tribes, Indian tribal organizations and tribal consortia with approved title IV-E plans, based on a IV-E plan and amendments, as required by changes in statutes, rules, and regulations submitted to and approved by the ACF Children's Bureau Associate Commissioner. This program is considered an open-ended entitlement program and allows the State or Tribe to be funded at a specified percentage (Federal financial participation) for program costs for eligible children.

The designated State or tribal agency for this program, which is authorized under title IV-E of the Social Security Act, as amended, also administers ACF funding provided for other title IV-E programs, e.g., Adoption Assistance (CFDA 93.659); Guardianship Assistance (CFDA 93.090) at agency option and Independent Living Services (CFDA 93.674), as well as Child Welfare Services (CFDA 93.645) and Promoting Safe and Stable Families (CFDA 93.556) programs (title IV-B of the Social Security Act, as amended); and (States only) the Social Services Block Grant program (CFDA 93.667) (title XX of the Social Security Act, as amended). The IV-E agency may either directly administer the Foster Care program or supervise its administration by local level agencies. Where the program is administered by a State, in accordance with the approved IV-E plan, it must be in effect in all political subdivisions of the State, and, if administered by them, program requirements must be mandatory upon them. Where the program is administered by a Tribe, it must be in effect in all political subdivisions within the Tribal service area(s) and for all populations to be served under the plan. If the program is administered by a political subdivision of a Tribe, program requirements must be mandatory upon them.
(42 USC 671(a)(1-4) and 42 USC 679B(c)(1)(B))

Source of Governing Requirements

The Foster Care program is authorized by title IV-E of the Social Security Act, as amended (42 USC 670 *et seq.*). This includes those amendments made by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. No. 110-351). Implementing regulations are at 45 CFR parts 1355, 1356, and 1357. **Section 5001 of the American Recovery and**

Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5, 123 Stat 496) as amended by section 201 of Pub. L No. 111-226 provides for a temporary increase in the Federal Medical Assistance Percentage (FMAP) rates to provide additional funding to IV-E agencies (see paragraph III.G.1.b of this program supplement).

Awards under the Foster Care program with funding periods beginning on or after October 1, 2003, are subject to the HHS implementation of the A-102 Common Rule, 45 CFR part 92 (*Federal Register*, September 8, 2003, 68 FR 52843-52844). Previously, this program and other HHS entitlement programs described in the Supplement (as noted under the applicable program description) were excluded from this coverage. This program also is subject to 45 CFR part 95 (Subpart E Cost Allocation Plans is applicable to States) and the cost principles under Office of Management and Budget Circular A-87 (as provided in *Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government*, HHS Publication ASMB C-10, available on the Internet at http://rates.psc.gov/fms/dca/asmb%20c-10.pdf).

States and Tribes are required to adopt and adhere to their own statutes and regulations for program implementation, consistent with the requirements of title IV-E and the approved IV-E plan.

Availability of Other Program Information

The Children's Bureau manages a policy issuance system that provides further clarification of the law and guides States and Tribes in implementing the Foster Care program. This information may be accessed on the Internet at http://www.acf.hhs.gov/programs/cb/laws_policies/index.htm.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should look first to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

   a. Funds may be expended for Foster Care maintenance payments on behalf of eligible children, in accordance with the IV-E agency's Foster Care maintenance payment rate schedule and in accordance with 45 CFR section 1356.21, to individuals serving as foster family homes, to child-care institutions, or to public or private child-placement or child-care agencies. Such payments may include the cost of (and the cost of providing, including certain associated administrative and operating costs of an institution) food, clothing, shelter, daily supervision, school supplies, personal incidentals, liability insurance with respect to a child, and

reasonable travel to the child's home for visitation, as well as reasonable travel for the child to remain in the same school he or she was attending prior to placement in foster care (42 USC 672(b)(1) and (2), (c)(2), and 675(4)).

b. Funds may be expended for training (including both short and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the agency administering the plan (42 USC 674(a)(3)(A)). All training activities and costs funded under title IV-E shall be included in the Title IV-E agency's training plan for title IV-B (45 CFR section 1356.60(b)(2)).

c. Funds may be expended for short-term training of: relative guardians; State/Tribe-licensed or State/Tribe-approved child welfare agencies providing services to children receiving title IV-E assistance; child abuse and neglect court personnel; agency, child or parent attorneys; guardians ad litem; and, court appointed special advocates (42 USC 674(a)(3)(B), as amended by section 203 of Pub. L. No. 111-351).

d. Funds may be expended for short-term training, including associated travel and per diem, of current or prospective foster parents and staff of licensed or approved child-care institutions at the initiation of or during their period of care (45 CFR section 1356.60(b)(1)(ii)).

e. Funds may be expended for costs directly related to the administration of the program that are necessary for the proper and efficient administration of the title IV-E plan. The approved public assistance cost allocation plan (States) or approved cost allocation methodology (Tribes) shall identify which costs are allocated and claimed under this program. Examples of allowable administrative costs for the administration of the Foster Care program include those associated with eligibility determination and redetermination; referral to services; preparation for and participation in judicial determinations; hearings and appeals; rate setting; placement of the child; development of the case plan; case reviews; case management and supervision; recruitment and licensing of foster homes and institutions; costs related to data collection and reporting; and a proportionate share of related agency overhead (45 CFR section 1356.60(c)).

f. With any required ACF approval, funds may be expended for costs related to design, implementation and operation of a statewide or tribal service area-wide data collection system (45 CFR sections 1356.60(d) and 95.611).

2. *Activities Unallowed*

a. Costs of social services provided to a child, the child's family, or the child's foster family which provide counseling or treatment to ameliorate or remedy personal problems, behaviors, or home conditions are unallowable (45 CFR section 1356.60(c)(3)).

b. Costs claimed as foster care maintenance payments that include medical, educational or other expenses not outlined in 42 USC 675(4)(A).

B. Allowable Costs/Cost Principles

Both States and Tribes are subject to the requirements of OMB Circular A-87 (2 CFR part 225). States also are subject to the cost allocation provisions and rules governing allowable costs of equipment of 45 CFR part 95, which references OMB Circular A-87 at 45 CFR section 95.507(a)(2) (45 CFR sections 1355.57, 95.503, and 95.705).

E. Eligibility

1. Eligibility for Individuals

Foster Care benefits may be paid on behalf of a child only if all of the following requirements are met:

a. Foster Care maintenance payments are allowable only if the foster child was removed from the home of a relative specified in section 406(a) of the Social Security Act, as in effect on July 16, 1996, and placed in foster care by means of a judicial determination, as defined in 42 USC 672(a)(2), or pursuant to a voluntary placement agreement, as defined in 42 USC 672(f), (42 USC 672(a)(1) and (2) and 45 CFR section 1356.21).

(1) *Judicial Determination*

(a) *Contrary to the welfare determination* – A child's removal from the home (unless removal is pursuant to a voluntary placement agreement) must be in accordance with a judicial determination to the effect that continuation in the home would be contrary to the child's welfare, or that placement in foster care would be in the best interest of the child. The judicial determination must be explicitly stated in the court order and made on a case by case basis. The precise language "contrary to the welfare" does not have to be included in the removal court order, but the order must include language to the effect that remaining in the home will be contrary to the child's welfare, safety, or best interest (45 CFR section 1356.21(c)).

(i) *Prior to March 27, 2000* – For a child who entered foster care before March 27, 2000, the judicial determination of contrary to the welfare must be in a court order that resulted from court proceedings that are initiated no later than 6 months from the date the child is removed from the home, consistent with Departmental Appeals Board (DAB) Decision Number 1508 (DAB 1508). The Departmental Appeals Board, through Decision Number 1508, ruled that a petition to the court stating the reason for the State agency's request for the child's removal from home, followed by a court order granting custody to the State agency is sufficient to meet the contrary to the welfare requirement (*Federal Register*. January 25, 2000, Vol. 65, Number 16, pages 4020 and 4088-89).

(ii) *On or after March 27, 2000* – For a child who enters foster care on or after March 27, 2000, the judicial determination of contrary to the welfare must be in the first court ruling that sanctions the child's removal from home (45 CFR section 1356.21(c)). Acceptable documentation is a court order containing a judicial determination regarding contrary to the welfare or a transcript of the court proceedings reflecting this determination (45 CFR section 1356.21(d)). For the first 12 months that a Tribe's title IV-E plan is in effect, the Tribe may use *nunc pro tunc* orders and affidavits to verify reasonable efforts and contrary to the welfare judicial determinations for title IV-E foster care eligibility (42 USC 679c(c)(1)(C)(ii)(I), as added by Section 301, Pub. L. No. 110-351).

(b) *Reasonable efforts to prevent removal determination* – Within 60 days from the date of the removal from home pursuant to 45 CFR section 1356.21(k)(ii), there must be a judicial determination as to whether reasonable efforts were made or were not required to prevent the removal (e.g., child subjected to aggravated circumstances such as abandonment, torture, chronic abuse, sexual abuse, parent convicted of murder or voluntary manslaughter or aiding or abetting in such activities) (45 CFR sections 1356.21(b)(1) and (k)). The judicial determination must be explicitly documented, i.e., so stated in the court order and made on a case by case basis.

(i) *Prior to March 27, 2000* – For a child who entered care foster care before March 27, 2000, the judicial determination that reasonable efforts were made to prevent removal or that reasonable efforts were made to reunify the child and family satisfies the reasonable efforts requirement (*Federal Register*: January 25, 2000, Vol. 65, Number 16, pages 4020 and 4088).

(ii) *On or after March 27, 2000* – For a child who enters foster care on or after March 27, 2000, the judicial determination that reasonable efforts were made to prevent removal or were not required must be made no later than 60 days from the date of the child's removal from the home (45 CFR section 1356.21(b)(1)). Acceptable documentation is a court order containing a judicial determination regarding reasonable efforts to prevent removal or a transcript of the court proceedings reflecting this determination (45 CFR section 1356.21(d)). For the first 12 months that a Tribe's title IV-E plan is in effect, the Tribe may use *nunc pro tunc* orders and affidavits to verify reasonable efforts and contrary to the welfare judicial determinations for title IV-E foster care eligibility (42 USC 679c(c)(1)(C)(ii)(I)), as added by Section 301, Pub. L. No. 110-351).

(c) *Reasonable efforts to finalize a permanency plan* – A judicial determination regarding reasonable efforts to finalize the permanency plan must be made within 12 months of the date on which the child is considered to have entered foster care and at least once every 12 months thereafter while the child is in foster care. The judicial determination must be explicitly documented and made on a case by case basis. If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made within this timeframe, the child is ineligible at the end of the 12th month from the date the child was considered to have entered foster care or at the end of the month in which the subsequent judicial determination of reasonable efforts was due, and the child remains ineligible until such a judicial determination is made (45 CFR section 1356.21(b)(2)).

(i) *Prior to March 27, 2000* – For a child who entered foster care before March 27, 2000, the judicial determination of reasonable efforts to finalize the permanency plan must be made no later than March 27, 2001, because such child will have been in care for 12 months or longer (January 25, 2000, *Federal Register,* Vol. 65, Num 16, pages 4020 and 4088).

(ii) *On or after March 27, 2000* – For a child who enters foster care on or after March 27, 2000, the judicial determination of reasonable efforts to finalize the permanency plan must be made no later than 12 months from the date the child is considered to have entered foster care (45 CFR section 1356.21(b)(2). Acceptable documentation is a court order containing a judicial determination regarding reasonable efforts to finalize a permanency plan or a transcript of the court proceedings reflecting this determination (45 CFR section 1356.21(d)). For the first 12 months that a Tribe's title IV-E plan is in effect, the Tribe may use *nunc pro tunc* orders and affidavits to verify reasonable efforts and contrary to the welfare judicial determinations for title IV-E foster care eligibility (42 USC 679c(c)(1)(C)(ii)(I), as added by Section 301 Pub. L. No. 110-351).

(2) If the removal was by a voluntary placement agreement, it must be followed within 180 days by a judicial determination to the effect that such placement is in the best interests of the child (42 USC 672(e); 45 CFR section 1356.22(b)).

b. The child's placement and care are the responsibility of either the IV-E agency administering the approved title IV-E plan or any other public agency under a valid agreement with the cognizant IV-E agency (42 USC 672(a)(2)).

c. A child must meet the eligibility requirements of the former Aid to Families with Dependent Children (AFDC) program (i.e., meet the State-established standard of need as of July 16, 1996, prior to enactment of the Personal Responsibility and Work Opportunity Reconciliation Act) (42 USC 672(a)). Tribes must use the title IV-A State plan (as in effect as of July 16, 1996) of the State in which the child resided at the time of removal (42 USC 679c(c)(1)(C)(ii)(II)). Program eligibility is limited to an individual defined as a "child." This classification ordinarily ceases at the child's 18th birthday (42 USC 672(a)(3), and 42 USC 675(8)(A)). If, however, the State in which the child was living at removal had as a title

IV-A State plan option (as in effect as of July 16, 1996), a title IV-E agency may provide foster care maintenance payments on behalf of youth who have attained age 18, but are under the age of 19, and who are full-time students expected to complete their secondary schooling or equivalent vocational or technical training before reaching age 19 (45 CFR section 233.90(b)(3)).

Beginning on October 1, 2010, a title IV-E agency may also amend its title IV-E plan to provide that an individual in foster care who is over age 18 (where an existing eligibility age extension provision for a full-time student expected to complete secondary schooling prior to attaining age 19 is not applicable) and has not attained 19, 20, or 21 years old (as the IV-E agency may elect) remains eligible as a child when the youth meets prescribed conditions for continued maintenance payments. A youth over age 18 must also (as elected by the IV-E agency) be (1) completing secondary school (or equivalent), (2) enrolled in post-secondary or vocational school, (3) participating in a program or activity that promotes or removes barriers to employment, (4) employed 80 hours a month, or (5) incapable of any of these due to a documented medical condition (42 USC 675(8)(B)).

Effective on April 8, 2010, the requirement to conduct annual AFDC redeterminations for purposes of determining continuing title IV-E eligibility has been eliminated to ease an administrative burden, The title IV-E agency must (for periods beginning on or after April 8, 2010) establish AFDC eligibility only at the time the child is removed from home or a voluntary placement agreement is entered (42 USC 672(a)(3)(A) and section 8.4A, QA#24 of the Child Welfare Policy Manual).

d. The provider, whether a foster family home or a child-care institution must be fully licensed by the proper State or Tribal foster care licensing authority responsible for licensing such homes or child care institutions. The term "child care institution" as defined in 45 CFR section 1355.20 includes a private child care institution, or a public child care institution which accommodates no more than 25 children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but does not include detention facilities, forestry camps, training schools, or facilities operated primarily for the purpose of detention of children who are determined to be delinquent (42 USC 671(a)(10) and 672(c)). Effective October 1, 2010, the existing statutory definition of a child care institution includes a supervised setting in which an individual who has attained 18 years of age is living independently, consistent with conditions the Secretary establishes in regulations (42 USC 672(c)(2)).

e. The foster family home provider must satisfactorily have met a criminal records check, including a fingerprint-based check, with respect to prospective foster and adoptive parents (42 USC 671(a)(20)(A)). This involves a determination that such individual(s) have not committed any prohibited felonies in accordance with 42 USC 671(a)(20)(A)(i) and (ii). The requirement for a fingerprint-based check took effect on October 1, 2006 unless prior to September 30, 2005 the State has elected to opt out of the criminal records check requirement or State legislation was required to implement the fingerprint-based check, in which case a delayed implementation is permitted until the first quarter of the State's regular legislative session following the close of the first regular session beginning after October 1, 2006. The requirement applies to foster care maintenance payments for calendar quarters beginning on or after the State's effective date for implementation (Pub. L. No. 109-248, section 152(c)(1) and (3)). States that opted out of the criminal records check requirement at section 471(a)(20) of the Social Security Act prior to September 30, 2005 had until October 1, 2008 to implement the fingerprint-based check requirement. Effective October 1, 2008, a State is no longer permitted to opt out of the fingerprint-based check requirement. The opt-out provision does not impact Tribes since they only became eligible to administer a title IV-E plan effective on October 1, 2009. The statutory provisions apply to all prospective foster parents who are newly licensed or approved after the IV-E agency's authorized date for implementation of the fingerprint-based background check provisions
(42 USC 671(a)(20)(B); Pub. L. No. 109-248, section 152(c)(2)).

f. A IV-E agency must check, or request a check of, a State-maintained child abuse and neglect registry in each State the prospective foster and adoptive parents and any other adult(s) living in the home have resided in the preceding 5 years before the State can license or approve a prospective foster or adoptive parent. This requirement became effective on October 1, 2006 unless the State requires legislation to implement the requirement, in which case a delayed implementation is permitted until the first quarter of the State's regular legislative session following the close of the first regular session beginning after October 1, 2006. The requirement applies to foster care maintenance payments for calendar quarters beginning on or after that date. Tribes first became eligible to administer a title IV-E plan effective October 1, 2009 and must, therefore, comply with this requirement (42 USC 671(a)(20)(C); Pub. L. No. 109-248, section 152(c)(2) and (3)).

g. The licensing file for the child-care institution must contain documentation that verifies that safety considerations with respect to staff of the institution have been addressed (45 CFR section 1356.30(f)).

h. Foster care administrative costs for the provision of child-placement services generally are allowable only when performed on behalf of a foster child that is eligible to receive title IV-E foster care maintenance payments (42 USC 674(a)(3)(E) and 45 CFR section 1356.60). The following exceptions apply:

(1) Activities specifically associated with the determination or redetermination of title IV-E eligibility are allowable regardless of the outcome of the eligibility determination (DAB Decision No. 844).

(2) Otherwise allowable activities performed on behalf of title IV-E eligible foster children placed in unallowable facilities and unlicensed relative homes can be allowable under limited circumstances as follows:

(a) For the lesser of 12 months or the average length of time it takes the State or Tribe to issue a license or approval of the home when the child, otherwise title IV-E eligible, is placed in the home of a relative who has an application pending for a foster family home license or approval (42 USC 672(i)(1)(A)).

(b) For not more than one calendar month for an otherwise title IV-E eligible child transitioning from an unlicensed or unapproved facility to a licensed or approved foster family home or child care institution (42 USC 672(i)(1)(B)).

(3) In the case of any other child not in foster care who is potentially eligible for benefits under a title IV-E plan approved under this part and at imminent risk of removal from the home, only if-

(a) Reasonable efforts are being made in accordance with 42 USC 471(a)(15) to prevent the need for, or if necessary to pursue, removal of the child from the home; and

(b) The title IV-E agency has made, not less often than every 6 months, a determination (or redetermination) as to whether the child remains at imminent risk of removal from the home (42 USC 672(i)(2)).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

F. Equipment and Real Property Management

Equipment that is capitalized and depreciated or is claimed in the period acquired and charged to more than one program is subject to 45 CFR section 95.707(b) in lieu of the requirements of the A-102 Common Rule (applies to States only).

G. Matching, Level of Effort, Earmarking

1. Matching

The percentage of required State/Tribe funding and associated Federal funding ("Federal financial participation" (FFP)) varies by type of expenditure as follows:

a. Third party in-kind contributions cannot be used to meet the State's cost sharing requirements (Child Welfare Policy Manual 8.1F.Q#2 8/16/02). The non-applicability of the matching and cost sharing provisions of 45 CFR part 74 to this program conveys to the similar provisions of 45 CFR section 92.24 (as a result of the inclusion of HHS' entitlement programs under 45 CFR part 92) (45 CFR sections 1355.30(c) and 1355.30(n)(1); 45 CFR section 201.5(e)). Tribes receiving title IV-E funds are permitted to use in-kind funds from third-party sources as match for a portion of administrative and training costs. The statute places specific limits on the amount of in-kind expenditures and types of third-party sources (42 USC 679c(c)(1)(D), as added by Section 301, Pub. L. No. 110-351).

b. The percentage of Federal funding in Foster Care maintenance payments will be the Federal Medical Assistance Program (FMAP) percentage. This percentage varies by State and is available on the Internet (http://www.aspe.hhs.gov/health/fmap.htm) (42 USC 674(a)(1); 45 CFR section 1356.60(a)). **ARRA provides for a temporary increase in FMAP rates to provide additional funding to IV-E agencies (ARRA, Section 5001 as amended by Section 201 of the Education, Jobs and Medicaid Assistance Act, Pub. L No. 111-226). These temporary increases will affect rates for FY 2009, FY 2010, and the first three quarters of FY 2011 only (i.e., October 1, 2008 – June 30, 2011). Generally, aside from the possible applicability of a hold-harmless provision, an increase of 6.2 percent will be added to the FMAP percentage rate of every State for quarters from October 1, 2008 through December 31, 2010. In accordance with section 201 of Pub. L. No. 111-226, the ARRA temporary FMAP percentage rate increase is extended for an additional 6 months, but the level of increase is modified as follows: 3.2 percent for the quarter ending March 31, 2011 and 1.2 percent for the quarter ending June 30, 2011.**

Effective October 1, 2009, separate Tribal FMAP rates, which are based upon the Tribe's service area and population, apply to Foster Care program maintenance payments incurred by Tribes that are participating in title IV-E programs through either direct operation of an approved title IV-E plan or through operation of a title IV-E agreement or contract with a State title IV-E agency. The calculated FMAP rate for each Tribe includes any statutory temporary percentage increase applicable to State FMAP rates and applies unless it is exceeded by the FMAP rate for any State in which the Tribe is located (42 USC 679B(d) and 42 USC 679B(e)).

c. The percentage of Federal funding in expenditures for short- and long-term training at educational institutions of employees or prospective employees, and short-term training of current or prospective foster or adoptive parents and members of staff of State/Tribe-licensed or State/Tribe-approved child-care institutions (including travel and per diem) is 75 percent (42 USC 674(a)(3)(A) and (B); 45 CFR section 1356.60(b)).

d. The percentage of Federal funding in expenditures for short-term training of: relative guardians; State/Tribe-licensed or State/Tribe-approved child welfare agencies providing services to children receiving title IV-E assistance; child abuse and neglect court personnel; agency, child or parent attorneys; guardians ad litem; and, court appointed special advocates is subject to an increasing FFP rate for these additional trainee groups as follows: 55 percent in FY 2009; 60 percent in FY 2010; 65 percent in FY 2011; 70 percent in FY 2012; 75 percent in FY 2013 and thereafter (42 USC 674(a)(3)(B), as added by Section 203(b), Pub. L. No. 110-351).

e. The percentage of Federal funding for expenditures for planning, design, development, and installation and operation of a statewide or tribal service area-wide automated child welfare information system meeting specified requirements (and expenditures for hardware components for such systems) is 50 percent (42 USC 674(a)(3)(C) and (D); 45 CFR sections 1355.52 and 1356.60(d)).

f. The percentage of Federal funding of all other allowable administrative expenditures is 50 percent (42 USC 674 (a)(1)(E); 45 CFR section 1356.60(c)).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

This program operates on a cash accounting basis and each year's funding and accounting is discrete. To be eligible for Federal funding, claims must be submitted to ACF within 2 years after the calendar quarter in which the IV-E agency made the expenditure. This limitation does not apply to prior period decreasing adjustments and any claim qualifying for a time limits exception in accordance with 45 CFR section 95.19 (42 USC 1320b–2; 45 CFR sections 95.7, 95.13, and 95.19).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. For reporting periods through September 30, 2010: ACF-IV-E-1, *Foster Care and Adoption Assistance Financial Report (OMB No. 0970-0205)* – Title IV-E agencies report current expenditures for the previous quarter, and estimate costs for the next quarter. Prior quarter adjustment (increasing and decreasing) expenditures applicable to earlier quarters must also be separately reported on this form.

Key Line Items – The following line items contain critical information.

Part 1, *Foster Care Expenditures, columns (a) through (d)*

Part 2, *Prior Quarter Adjustments – Foster Care, columns (a) through (d)*

(Part 3, *Semi-Annual Budget Projections was repealed in January 2009*)

Part 4, *Foster Care Demonstration Projects, columns (a) through (e)*

g. For reporting periods beginning October 1, 2010 or later: CB-496, *Title IV-E Programs Quarterly Financial Report (OMB No. 0970-0205)* – Title IV-E agencies report current expenditures and information on children assisted for the quarter that has just ended and estimates of expenditures and children to be assisted for the next quarter. Prior quarter adjustment (increasing and decreasing) expenditures applicable to earlier quarters must also be separately reported on this form.

Key Line Items – The following line items contain critical information.

Part 1, *Expenditures, Estimates and Caseload Data, columns (a) through (d) (Sections A and D (Foster Care Program))*

Part 2, *Prior Quarter Expenditure Adjustments – Foster Care, columns (a) through (d)*

Part 3, *Foster Care Demonstration Projects, columns (a) through (e)*

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.659 ADOPTION ASSISTANCE—TITLE IV-E

I. PROGRAM OBJECTIVES

The objective of the Adoption Assistance program is to facilitate the placement of children with special needs in permanent adoptive homes and thus prevent long, inappropriate stays in foster care.

II. PROGRAM PROCEDURES

Administration and Services

The Adoption Assistance program is administered at the Federal level by the Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS). The Adoption Assistance program provides Federal matching funds to title IV-E agencies with approved title IV-E plans that provide subsidy payments to parents who adopt eligible children with special needs and enter into an adoption assistance agreement. Depending on the circumstances, the child may also need to meet the eligibility requirements of the Aid to Families with Dependent Children (AFDC) program (i.e., meet the State-established standard of need as of July 16, 1996, prior to enactment of the Personal Responsibility and Work Opportunity Reconciliation Act [PRWORA]) or the Supplemental Security Insurance (SSI) program. In cases where program eligibility requires an assessment of SSI program eligibility, the child will need to meet either all criteria or for an applicable child [defined in III.E.1,a.(1)(a), Eligibility for Individuals, of this program supplement] only the medical and disability criteria. Tribes must use the title IV-A State plan (as in effect as of July 16, 1996) of the State in which the child resided at the time of removal in determining the child's AFDC eligibility (42 USC 679c(c)(1)(C)(ii)(II)).

An adoption assistance agreement is a written agreement between the adoptive parents, the IV-E agency, and other relevant agencies (such as a private adoption agency) specifying the nature and amount of assistance to be given on a monthly basis to parents who adopt eligible special needs children. A child with special needs is defined as a child who the IV-E agency has determined cannot or should not be returned home; has a specific factor or condition, as defined by the State or Tribe, because of which it is reasonable to conclude that the child cannot be adopted without financial or medical assistance; and for whom a reasonable effort has been made to place the child without providing financial or medical assistance (42 USC 673(a)(2)).

Funding is provided to the 50 States, the District of Columbia and Puerto Rico. Federally recognized Indian Tribes, Indian tribal organizations and tribal consortia may also apply for title IV-E funding via the submission of a title IV-E plan. Funding is based on an approved IV-E plan and amendments, as required by changes in statutes, rules, and regulations, submitted to and approved by the ACF Children's Bureau Associate Commissioner. The Adoption Assistance program is an open-ended entitlement program. Federal financial participation in State or tribal expenditures for adoption assistance agreements is provided at the Medicaid match rate for

medical assistance payments, which varies among States and Tribes. Monthly payments to families made on behalf of eligible adopted children also vary from IV-E agency to IV-E agency. Federal financial participation (FFP) is made at an open-ended 50 percent match rate for administrative expenditures and at an open-ended 75 percent for most categories of State/tribal IV-E training expenditures. In addition, the program authorizes Federal matching funds for IV-E agencies that reimburse the non-recurring adoption expenses of adoptive parents of special needs children (regardless of AFDC or SSI eligibility) as administrative expenditures at an open-ended 50 percent FFP rate.

The designated IV-E agency for this program also administers ACF funding provided for other Social Security Act programs (e.g., Foster Care (CFDA 93.658), Guardianship Assistance (CFDA 93.090) at agency option and Independent Living Services (CFDA 93.674) programs (Title IV-E of the Social Security Act); Child Welfare Services (CFDA 93.645) and Promoting Safe and Stable Families (CFDA 93.556) programs (Title IV-B of the Social Security Act, as amended); and (States only) the Social Services Block Grant program (CFDA 93.667) (Title XX of the Social Security Act, as amended)). The IV-E agency may either directly administer the Adoption Assistance program or supervise its administration by local level agencies. Where the program is administered by a State, in accordance with the approved IV-E plan, it must be in effect in all political subdivisions of the State, and, if administered by them, program requirements must be mandatory upon them. Where the program is administered by a Tribe, it must be in effect in all political subdivisions within the Tribal service area(s) and for all populations to be served under the plan. If the program is administered by a political subdivision of a Tribe, program requirements must be mandatory upon them. (42 USC 671(a)(1-4) and 42 USC 679B(c)(1)(B))

Source of Governing Requirements

The Adoption Assistance program is authorized by Title IV-E of the Social Security Act, as amended (42 USC 670 *et seq.*). This includes those amendments made by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. No. 110-351). Implementing regulations are published at 45 CFR parts 1355 and 1356. States and Tribes are to implement the program according to their IV-E plan, which is submitted to ACF for approval. **Section 5001 of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5, 123 Stat 496) as amended by Section 201 of Pub. L No. 111-226, provides for a temporary increase in the Federal Medical Assistance Percentage (FMAP) rates to provide additional funding to IV-E agencies (see paragraph III.G.1.b, Matching, of this program supplement).**

Awards made under the Adoption Assistance program with funding periods beginning on or after October 1, 2003, are subject to the HHS implementation of the A-102 Common Rule, 45 CFR part 92 (*Federal Register*, September 8, 2003, 68 FR 52843-52844). Previously, this program and other HHS entitlement programs described in the Compliance Supplement (as noted under the applicable program description) were excluded from this coverage. This program also is subject to 45 CFR part 95 (Subpart E Cost Allocation Plans is applicable to States) and the cost principles under Office of Management and Budget Circular A-87 (as provided in *Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for*

Agreements with the Federal Government, HHS Publication ASMB C-10, available on the Internet at http://rates.psc.gov/fms/dca/asmb%20c-10.pdf). States and Tribes are required to adopt and adhere to their own statutes and regulations for program implementation, consistent with the requirements of Title IV-E and the approved IV-E Plan.

Availability of Other Program Information

The Children's Bureau manages a policy issuance system that provides further clarification of the law and guides States and Tribes in implementing the Adoption Assistance program. This information may be accessed on the Internet at http://www.acf.dhhs.gov/programs/cb/laws_policies/laws/cwpm/index.jsp.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Adoption Assistance Subsidies* – Funds may be expended for adoption assistance agreement subsidy payments, in accordance with the State's or Tribe's foster care maintenance payment rate schedule. Subsidy payments are made to adoptive parents based on the need(s) of the child (i.e. developmental, cognitive, emotional behavioral) and the circumstances of the adopting parents (42 USC 673(a)(2)). Subsidy payment amounts cannot be based on any income eligibility requirements of the prospective adoptive parents (45 CFR section 1356.41(c)). Adoption assistance subsidy payments cannot exceed the foster care maintenance payment the child would have received in a foster family home; however, the amount of the subsidy payments may be up to 100 percent of the foster care maintenance payment rate (42 USC 673(a)(3)).

2. *Administrative Costs*

   a. *Program Administration* – Funds may be expended for costs directly related to the administration of the program. Approved public assistance cost allocation plans (States) or approved cost allocation methodology (Tribes) will identify which costs are allocated and claimed under this program (45 CFR section 1356.60(c)).

   b. *Nonrecurring Costs* – Funds may be expended by a IV-E agency under an adoption assistance agreement for nonrecurring expenses up to $2,000 (gross amount), for any adoptive placement (45 CFR section 1356.41(f)(1)). Nonrecurring adoption expenses are defined as reasonable and necessary adoption fees, court costs, attorney fees and other expenses that are directly related to the legal adoption of a child with special needs.

Other expenses may include those costs of adoption incurred by or on behalf of the adoptive parents, such as, the adoptive home study, health and psychological examination, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the placement or adoptions process (45 CFR section 1356.41(i)).

c. *Adoption Placement Costs* – Funds expended by the IV-E agency for adoption placements (including nonrecurring costs) are considered an administrative expenditure and are subject to the matching requirements in section III.G.3.c (45 CFR section 1356.41(f)(1)).

3. *Training*

a. Funds may be expended for short-term training of current or prospective adoptive parents and members of the staff of State/Tribe-licensed or State/Tribe-approved child care institutions (including travel and per diem) at the initiation of or during their period of care (42 USC 674(a)(3)(B) and 45 CFR section 1356.60(b)(1)(ii)).

b. Funds may be expended for short-term training of: relative guardians; State/Tribe-licensed or State/Tribe-approved child welfare agencies providing services to children receiving title IV-E assistance; child abuse and neglect court personnel; agency, child or parent attorneys; guardians ad litem; and, court appointed special advocates (42 USC 674(a)(3)(B), as amended by section 203 of Pub. L. No. 111-351).

c. Funds may be expended for training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the agency administering the plan (42 USC 674(a)(3)(A)).

B. Allowable Costs/Cost Principles

Both States and Tribes are subject to the requirements of OMB Circular A-87. States also are subject to the cost allocation provisions and rules governing allowable costs of equipment of 45 CFR part 95, which references OMB Circular A-87 at 45 CFR section 95.507(a)(2) (45 CFR sections 1355.57, 95.503, and 95.705).

E. Eligibility

1. Eligibility for Individuals

a. Adoption assistance subsidy payments may be paid on behalf of a child only if all of the following requirements are met:

(1) ***Categorical Eligibility***

(a) A*pplicable and Non-Applicable Children* – An applicable child is a child for whom an adoption assistance agreement was entered into in fiscal year (FY) 2010 or later and who meets the applicable age requirement (differs over a 9 fiscal year phase-in period beginning in FY 2010), or a child who has been in foster care under the responsibility of the title IV-E agency for at least 60 consecutive months, or a sibling to either such child if both are to have the same adoption placement (42 USC 673(e)(2) and (e)(3)). The applicable age requirement is met only if the child has attained that age any time before the end of the Federal fiscal year during which the adoption assistance agreement is entered into. The applicable age for FY 2010 agreements includes children who will turn age 16 or older in that FY. In each subsequent FY, the age to apply the revised "applicable child" program rules decreases by 2 years (e.g., children who turn 14 or older in FY 2011 and children who turn 12 or older in FY 2012) until children of any age may be eligible according to the revised criteria in FY 2018 (42 USC 673(e)(1)(B), as amended by Section 402, Pub. L. No. 110-351).

A child who is referred to as "not an applicable child" is one for whom an adoption assistance agreement was entered into in FY 2009 or earlier or in a later FY if the applicable child requirements pertinent to the FY in which the adoption assistance agreement was entered into are not satisfied. In this instance the revised "applicable child" eligibility criteria do not apply and the eligibility requirements in place prior to October 1, 2009 apply (42 USC 673(a)(2)(A)(i)).

(b) *Adoption agreements entered into prior to the beginning of FY 2010 , or agreements entered into during FY 2010 or thereafter for a "non-applicable child"* – The child is categorically eligible if:

(i) the child was eligible, or would have been eligible, for the former AFDC program (i.e., met the State-established standard of need as of July 16, 1996, prior to enactment of the PRWORA (Tribes must use the title IV-A State plan in effect as of July 16, 1996 of the State in which the child resided at the time of removal in determining the child's AFDC

eligibility (42 USC 679c(c)(1)(C)(ii)(II))) except for his/her removal from the home of a relative pursuant to either a voluntary placement agreement or as a result of a judicial determination to the effect that continuation in the home of removal would have been contrary to the welfare of the child; or

(ii) the child is eligible for SSI; or

(iii) the child is a child whose costs in a foster family home or child care institution are covered by the foster care maintenance payments being made with respect to his/her minor parent (42 USC 673(a)(2)(A)(i)(I)).

(c) *Adoption agreements entered into during FY 2010 or thereafter for an "applicable child"* – The child is categorically eligible if the child:

(i) at the time of the initiation of adoption proceedings, was in the care of a public or private child placement agency by way of a voluntary placement, voluntary relinquishment or a court-ordered removal with a judicial determination that remaining at home would be contrary to the child's welfare; or

(ii) meets the disability or medical requirements of the SSI program; or

(iii) was residing with a minor parent in foster care (who was placed in foster care by way of a voluntary placement, voluntary relinquishment or court-ordered removal); or,

(iv) was eligible for adoption assistance in a previous adoption in which the adoptive parents have died or had their parental rights terminated (42 USC 673(a)(2)(A)(ii)(I) and 673(a)(2)(C)(ii)); and

(v) does not fit within the following prohibited class for the payment of an adoption assistance payment (including payments of non-recurring expenses under 42 USC 673(a)(1)(B)(i)), i.e., an "applicable child" who is not a citizen or resident of the U.S. and was either adopted outside the U.S. or brought

to the U.S. for the purpose of being adopted (42 USC 673(a)(7) as added by Pub. L. No. 110-351).

(2) The following additional eligibility provisions must be met in addition to the establishment of categorical eligibility:

(a) The child was determined by the IV-E agency as someone who cannot or should not be returned to the home of his or her parents (42 USC 673(c)(1));

(b) The child was determined by the IV-E agency to be a child with special needs. Special needs means that there is a specific factor or condition (such as ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance under title IV-E and medical assistance under title XIX. In the case of an applicable child, the child is also considered to have special needs if that applicable child meets all of the medical or disability requirements for Supplemental Security Income (SSI) and the IV-E agency determines that it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance under title IV-E and medical assistance under title XIX. The criteria for the factor or condition element of the special needs determination will be met if an applicable child meets all the medical or disability requirements for SSI (42 USC 673(c)(1)(B) and 673(c)(2)(B), as amended/added by Pub. L. No. 110-351).

(c) The IV-E agency has made reasonable efforts to place the child for adoption without a subsidy. The only exception to this requirement is where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of the parents as a foster child (42 USC 673(c)(1)(B) and 673(c)(2) as amended/added by Pub. L. No. 110-351).

(d) The agreement for the subsidy was signed and was in effect before the final decree of adoption and contains information concerning the nature of services; the amount and duration of the subsidy; the child's eligibility for Title XX services and Title XIX Medicaid; and covers the child should he/she

move out of State with the adoptive family (42 USC 675(3)).

(e) The prospective adoptive parent(s) must satisfactorily have met a criminal records check, including a fingerprint-based check (42 USC 671(a)(20)(A)). This involves a determination that such individual(s) have not committed any prohibited felonies in accordance with 42 USC 671(a)(20)(A)(i) and (ii). The requirement for a fingerprint-based check took effect on October 1, 2006, unless prior to September 30, 2005 the State has elected to opt out of the criminal records check requirement or State legislation was required to implement the fingerprint-based check, in which case a delayed implementation is permitted until the first quarter of the State's regular legislative session following the close of the first regular session beginning after October 1, 2006. The requirement applies to adoption assistance payments for calendar quarters beginning on or after the State's effective date for implementation (Pub. L. No. 109-248, section 152(c)(1) and (3)). States that opted out of the criminal records check requirement at section 471(a)(20) of the Social Security Act prior to September 30, 2005 had until October 1, 2008 to implement the fingerprint-based check requirement. Effective October 1, 2008, a State is no longer permitted to opt out of the fingerprint-based check requirement. The opt out provision does not impact Tribes since they only became eligible to administer a title IV-E plan effective on October 1, 2009 (42 USC 671(a)(20)(B); Pub. L. No. 109-248, section 152(c)(2) and 45 CFR sections 1356.30(b) and (c)).

(f) The prospective adoptive parent(s) any other adult living in the home who has resided in the provider home in the preceding 5 years must satisfactorily have met a child abuse and neglect registry check. This requirement became effective on October 1, 2006 unless the State requires legislation to implement the requirement, in which case a delayed implementation is permitted until the first quarter of the State's regular legislative session following the close of the first regular session beginning after October 1, 2006. The requirement applies to foster care maintenance payments for calendar quarters beginning on or after that date. Tribes first became eligible to administer a title IV-E plan effective on October 1, 2009 and must, therefore,

comply with this requirement (42 USC 671(a)(20)(C); Pub. L. No. 109-248, sections 152(c)(2) and (3)).

(g) Once a child is determined eligible to receive title IV-E adoption assistance, he or she remains eligible and the subsidy continues until: (i) the age of 18 (or 21 if the IV-E agency determines that the child has a mental or physical disability which warrants the continuation of assistance); (ii) the IV-E agency determines that the parent is no longer legally responsible for the support of the child, or (iii) the IV-E agency determines the child is no longer receiving any support from the parents (42 USC 673(a)(4)(A) and (B)).

Beginning on October 1, 2010, a title IV-E agency may amend its title IV-E plan to provide for a definition of a "child" as an individual who has not attained 19, 20, or 21 years old (as the IV-E agency may elect) (42 USC 675(8)(B)(iii)). This definition of a child will then permit payment of adoption assistance for a child who is over age 18 (where the IV-E agency does not determine that the child has a mental or physical disability which warrants the continuation of assistance up to age 21) if such a youth is part of an adoption assistance agreement that is in effect under section 473 of the Social Security Act and the youth had attained 16 years of age before the agreement became effective. As an additional requirement, a youth over age 18 must also (as elected by the IV-E agency) be (i) completing secondary school (or equivalent), (ii) enrolled in post-secondary or vocational school, (iii) participating in a program or activity that promotes or removes barriers to employment, (iv) employed 80 hours a month, or (v) incapable of any of these due to a documented medical condition (42 USC 675(8)(B)).

b. Nonrecurring expenses of adoption may be paid on behalf of a child only if all of the following requirements are met:

(1) The agreement, as a separate document or part of an agreement for State/Tribe or Federal Adoption assistance payment or services, was signed prior to the final decree of adoption (45 CFR section 1356.41(b)).

(2) The agreement indicates the nature and amount of the nonrecurring expenses to be paid (45 CFR section 1356.41(a)).

(3) The State or Tribe has determined that the child is a child with special needs (45 CFR section 1356.41(d)).

(4) The child has been placed for adoption in accordance with applicable State and local laws (45 CFR section 1356.41(d)).

(5) The costs incurred by or on behalf of adoptive parents are not otherwise reimbursed from other sources (45 CFR section 1356.41(g)).

c. There may be no income-eligibility requirement (means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance subsidy payments or nonrecurring expenses of adoption (45 CFR sections 1356.40(c) and 1356.41(c)).

d. In the case of a child adopted after the dissolution of a guardianship where the child was receiving title IV-E guardianship assistance payments, the child's eligibility for adoption assistance is to be determined without consideration of the placement of the child with the relative guardian and any kinship guardianship assistance payments made on behalf of the child. Thus, if such a child is adopted, the title IV-E agency would apply the adoption assistance criteria for the child as if the guardianship had never occurred (42 USC 673(a)(1)(D) as added by Section 101(c) of Pub. L. No. 110-351).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

F. Equipment and Real Property Management

Equipment that is capitalized and depreciated or is claimed in the period acquired and charged to more than one program is subject to 45 CFR section 95.707(b) in lieu of the requirements of the A-102 Common Rule (applies to States only).

G. Matching, Level of Effort, Earmarking

1. Matching

The percentage of required State/tribal funding and associated Federal funding ("Federal financial participation" (FFP)) varies by type of expenditure as follows:

a. Third party in-kind contributions cannot be used to meet the State's cost sharing requirements (Child Welfare Policy Manual Section 8.1F.Q#2 8/16/02). The non-applicability of the matching and cost sharing provisions of 45 CFR part 74 to this program conveys to the similar

provisions of 45 CFR section 92.24 (as a result of the inclusion of HHS' entitlement programs under 45 CFR part 92) (45 CFR sections 1355.30(c) and 1355.30(n)(1); 45 CFR section 201.5(e)). Tribes receiving title IV-E are permitted to use in-kind funds from third-party sources as match for a portion of administrative and training costs. The statute places specific limits on the amount of in-kind expenditures and types of third-party sources and authorizes the Secretary to set future limits in regulation (42 USC 679c(c)(1)(D), as added by Section 301, Pub. L. No. 110-351).

b. *Adoption Assistance Subsidy Payments* – The percentage of title IV-E funding in Adoption Assistance subsidy payments will be the Federal Medical Assistance Program (FMAP) percentage. This percentage varies by State and is available on the Internet at http://www.aspe.hhs.gov/health/fmap.htm (42 USC 674(a)(1); 45 CFR section 1356.60(a)). **ARRA provides for a temporary increase in FMAP percentages to provide additional funding to IV-E agencies (ARRA, Section 5001 as amended by Section 201 of the Education, Jobs and Medicaid Assistance Act, Pub. L No. 111-226). These temporary increases will affect rates for FYs 2009 and 2010 and the first three quarters of FY 2011 only (i.e., October 1, 2008 – June 30, 2011). Generally, aside from the possible applicability of a hold harmless provision, an increase of 6.2 percent will be added to the FMAP percentage rate of every State for quarters from October 1, 2008 through December 31, 2010. In accordance with Section 201 of Pub. L. No. 111-226, the ARRA temporary FMAP percentage rate increase is extended for an additional 6 months, but the level of increase is modified as follows: 3.2 percent for the quarter ending March 31, 2011 and 1.2 percent for the quarter ending June 30, 2011.**

Effective October 1, 2009, separate Tribal FMAP rates, which are based upon the Tribe's service area and population, apply to Foster Care program maintenance payments incurred by Tribes that are participating in title IV-E programs through either direct operation of an approved title IV-E plan or through operation of a title IV-E agreement or contract with a State title IV-E agency. The calculated FMAP rate for each Tribe includes any statutory temporary percentage increase applicable to State FMAP rates and applies unless it is exceeded by the FMAP rate for any State in which the Tribe is located (42 USC 679B(d) and 42 USC 679B(e)).

c. *Staff and Adoptive Parent Training* – The percentage of Federal funding in expenditures for short- and long-term training at educational institutions of employees or prospective employees, and short-term training of current or prospective foster or adoptive parents and members of staff of State/Tribe-licensed or State/Tribe-approved child care institutions (including travel and per diem) is 75 percent (42 USC 674(a)(3)(A) and (B); 45 CFR section 1356.60(b)).

d. *Professional Partner Training* – The percentage of Federal funding in expenditures for short-term training of: relative guardians; State/Tribe-licensed or State/Tribe-approved child welfare agencies providing services to children receiving title IV-E assistance; child abuse and neglect court personnel; agency, child or parent attorneys; guardians ad litem; and, court appointed special advocates is subject to an increasing FFP rate for these additional trainee groups as follows: 55 percent in FY 2009; 60 percent in FY 2010; 65 percent in FY 2011; 70 percent in FY 2012; 75 percent in FY 2013 and thereafter (42 USC 674(a)(3)(B), as added by Section 203(b) of Pub .L. No. 110-351).

e. *Administrative Costs*

(1) The percentage of Federal funding for expenditures for planning, design, development, and installation and operation of a statewide or tribal service area-wide automated child welfare information system meeting specified requirements (and expenditures for hardware components for such systems) is 50 percent (42 USC 674(a)(3)(C) and (D); 45 CFR sections 1355.52 and 1356.60(d)).

(2) The percentage of Federal funding for adoption placement non-recurring cost expenditures is 50 percent for IV-E agency expenditures up to $2000 for each adoptive placement (45 CFR section 1356.41(f)(1)).

(3) The percentage of Federal funding of all other allowable administrative expenditures, is 50 percent (42 USC 674(a)(3)(E); 45 CFR sections 1356.41(f) and 1356.60(c)).

2.1 Level of Effort – *Maintenance of Effort*

A IV-E agency is required to spend an amount equal to any savings in State or tribal expenditures under title IV-E as a result of applying the differing program eligibility rules to applicable children for a fiscal year to provide any service that is permitted under title IV-B or IV-E (42 USC 673(a)(8)).

2.2 Level of Effort – *Supplement Not Supplant*– Not Applicable

3. Earmarking – Not Applicable

H. Period of Availability of Federal Funds

This program operates on a cash accounting basis and each year's funding and accounting is discrete. To be eligible for Federal funding, claims must be submitted to ACF within two years after the calendar quarter in which the IV-E agency made the expenditure. This limitation does not apply to prior period decreasing adjustments and any claim qualifying for a time limits exception in accordance with 45 CFR section 95.19 (42 USC 1320b–2; 45 CFR sections 95.7, 95.13, and 95.19).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable.

e. SF-425, *Federal Financial Report* – Not Applicable

f. For reporting periods through September 30, 2010: ACF-IV-E-1, *Foster Care and Adoption Assistance Financial Report* (*OMB No. 0970-0205*) – Title IV-E agencies report current expenditures for the previous quarter, and estimate costs for the next quarter. Prior quarter adjustment (increasing and decreasing) expenditures applicable to earlier quarters must also be separately reported on this form.

Key Line Items – The following items contain critical information:

Part 1, *Adoption Assistance Expenditures, columns (a) through (d)*

Part 2, *Prior Quarter Adjustments – Adoption Assistance, columns (a) through (d)*

Part 4, *Foster Care and Adoption Assistance Demonstration Projects, columns (a) through (d)* (applicable only for States with approved Title IV-E waiver demonstration)

g. For reporting periods beginning October 1, 2010 or later: CB-496, *Title IV-E Programs Quarterly Financial Report (OMB No. 0970-0205)* – Title IV-E agencies report current expenditures and information on children assisted for the quarter that has just ended and estimates of expenditures and children to be assisted for the next quarter. Prior quarter adjustment

(increasing and decreasing) expenditures applicable to earlier quarters must also be separately reported on this form.

Key Line Items – The following line items contain critical information.

Part 1, *Expenditures, Estimates and Caseload Data, columns (a) through (d) (Sections B and D (Adoption Assistance Program))*

Part 2, *Prior Quarter Expenditure Adjustments – Adoption Assistance, columns (a) through (d)*

Part 3, – *Foster Care and Adoption Assistance Demonstration Projects, columns (a) through (e)*

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.667 SOCIAL SERVICES BLOCK GRANT

I. PROGRAM OBJECTIVES

The purpose of the Social Services Block Grant (SSBG) program is to provide funds to States (including the District of Columbia and five territories) to provide services for individuals, families, and entire population groups in one or more of the following areas: (1) achieving or maintaining economic self-support and self-sufficiency to prevent, reduce, or eliminate dependency; (2) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests; (3) preserving, rehabilitating, or reuniting families; (4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of intensive care; and (5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

II. PROGRAM PROCEDURES

Administration and Services

The SSBG program is administered by the Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS). Funds are awarded based on the State's population following receipt and review of the State's report on the proposed use of funds for the coming year, which serves as the State's plan. States have the flexibility to determine what services will be provided, consistent with the statutory goals and objectives, who is eligible, and how funds will be distributed among services and entities within the State, including whether to provide services directly or obtain them from other public or private agencies and individuals. The State must also conduct a public hearing on the proposed use and distribution of funds, as included in the report, as a prerequisite to the receipt of SSBG funds.

Source of Governing Requirements

The SSBG program is authorized under Title XX of the Social Security Act, as amended, and is codified at 42 USC 1397 through 1397e. The implementing regulations for this and other block grant programs authorized by Omnibus Budget Reconciliation Act of 1981 are published at 45 CFR part 96. Those regulations include both specific requirements and general administrative requirements in lieu of 45 CFR part 92 (the HHS implementation of the A-102 Common Rule) for the covered block grant programs. Requirements specific to SSBG are in 45 CFR sections 96.70 through 96.74.

As discussed in Appendix I of this Supplement, Federal Programs Excluded from the A-102 Common Rule, States are to use the fiscal policies that apply to their own funds in administering SSBG. Procedures must be adequate to assure the proper disbursal of and accounting for Federal funds paid to the grantee, including procedures for monitoring the assistance provided (45 CFR section 96.30).

Under the block grant philosophy, each State is responsible for designing and implementing its own SSBG program, within very broad Federal guidelines. States must administer their SSBG program according to their approved plan and any amendments and in conformance with their own implementing rules and policies.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Services provided with SSBG funds may include, but are not limited to, child care services, protective services for children and adults, services for children and adults in foster care, services related to the management and maintenance of the home, day care services for adults, transportation services, family planning services, training and related services, employment services, information, referral, counseling services, the preparation and delivery of meals, health support services, and appropriate combinations of services designed to meet the special needs of children, the aged, the mentally retarded, the blind, the emotionally disturbed, the physically handicapped, and alcoholics and drug addicts (42 USC 1397a(a)). Uniform definitions for these services are included in Appendix A to 45 CFR part 96 – Uniform Definitions of Services.

   Expenditures for these services may include expenditures for administration, including planning and evaluation, personnel training and retraining directly related to the provision of those services (including both short- and long-term training at educational institutions), and conferences and workshops, and assistance to individuals participating in such activities (42 USC 1397a(a)).

2. A State may purchase technical assistance from public or private entities if the State determines that such assistance is required in developing, implementing, or administering the SSBG program (42 USC 1397a(e)).

3. A State may transfer up to 10 percent of its annual allotment to the following block grants for support of health services, health promotion and disease prevention activities, low-income home energy assistance, or any combination of these activities: Preventive Health and Health Services Block Grant (CFDA 93.991); Block Grants for Prevention and Treatment of Substance Abuse (CFDA 93.959); Maternal and Child Health Services Block Grant to the States (CFDA 93.994); Low-Income Home Energy Assistance (CFDA 93.568); and Community Services Block Grant (CFDA 93.569) (42 USC 1397a(d); 45 CFR section 96.72).

4. In Fiscal Year (FY) 2006, a one-time SSBG allotment was made available to each State to support social services as under the regular SSBG program, as well as health and mental health services, and facility repair and construction for the populations and areas affected by the 2005 Gulf Coast hurricanes (Pub. L. No. 109-148). (See III.H, "Period of Availability of Federal Funds.")

5. In FY 2009, an additional amount of funding was made available to those States (a) for which the President declared a major disaster during 2008 and (b) previously receiving a declaration for Hurricanes Katrina and Rita. That funding is available to support services as under the regular SSBG program, as well as health and mental health services, and for repair and construction of health care facilities (including mental health facilities), child care centers, and other social service facilities (Pub. L. No. 110-329, Chapter 7).

6. Funds may not be used for:

   a. Except as provided in III.A.4 and 5, above, purchase or improvement of land, or the purchase, construction, or permanent improvement (other than minor remodeling) of any facility (unless the restriction is waived by ACF) (42 USC 1397(d)(a)(1)).

   b. Cash payments for costs of subsistence or for the provision of room and board (other than costs of subsistence during rehabilitation, room and board provided for a short term as an integral but subordinate part of a social service, or temporary shelter provided as a protective service) (42 USC 1397(d)(a)(2)).

   c. Wages of any individual as a social service (other than payment of wages of Temporary Assistance for Needy Families (TANF) (CFDA 93.558) recipients employed in the provision of child day care services) (42 USC 1397(d)(a)(3)).

   d. Medical care (other than family planning services, rehabilitation services, or initial detoxification of an alcoholic or drug-dependent individual) unless it is an integral but subordinate part of an allowable social service under SSBG (unless the restriction is waived by ACF) (42 USC 1397(d)(a)(4)).

   e. Social services (except services to an alcoholic or drug-dependent individual or rehabilitation services) provided in and by employees of any hospital, skilled nursing facility, intermediate care facility, or prison, to any individual living in such institution (42 USC 1397(d)(a)(5)).

   f. The provision of any educational service that the State makes generally available to its residents without cost and without regard to their income (42 USC 1397(d)(a)(6)).

g. Any child day care services unless such services meet applicable standards of State and local law (42 USC 1397(d)(a)(7)).

h. The provision of cash payments as a service (this limitation does not apply to payments to individuals with respect to training or attendance at conferences or workshops) (42 USC 1397(d)(a)(8)).

i. Any item or service (other than an emergency item of service) furnished by an entity, physician, or other individual during the period of exclusion from reimbursement by various provisions of Federal regulations (42 USC 1397(d)(a)(9)).

B. Allowable Costs/Cost Principles

As discussed in Appendix I of this Supplement, Federal Programs Excluded from the A-102 Common Rule, SSBG is exempt from the provisions of the OMB cost principles circulars. State cost principles requirements apply to SSBG.

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2. Level of Effort – Not Applicable

3. Earmarking

The State shall use all of the amount transferred in from TANF (CFDA 93.558) only for programs and services to children or their families whose income is less than 200 percent of the official poverty guideline as revised annually by HHS (42 USC 604(d)(3)(A) and 9902(2)). Additional information on this transfer in is provided in IV, "Other Information."

The poverty guidelines are issued each year in the *Federal Register* and HHS maintains a page on the Internet that provides the poverty guidelines (http://aspe.hhs.gov/poverty/).

H. Period of Availability of Federal Funds

SSBG funds must be expended by the State in the fiscal year allotted or in the succeeding fiscal year (42 USC1397a(c)). However, the funds made available under the additional FY 2006 allotment (Pub. L. No. 109-148) expire on September 30, 2009 (Pub. L. No. 110-28, Section 4702).

IV. OTHER INFORMATION

Transfers out of SSBG

As discussed in III.A, "Activities Allowed or Unallowed," funds may be transferred out of SSBG to other Federal programs. The amounts transferred out of SSBG are subject to the requirements of the program into which they are transferred and should not be included in the audit universe and total expenditures of SSBG when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amount transferred out should not be shown as SSBG expenditures but should be shown as expenditures for the program into which they are transferred.

Transfers into SSBG

A State may transfer up to 10 percent of the combined total of the State family assistance grant, supplemental grant for population increases, and bonus funds for high performance and illegitimacy reduction, if any, (all part of TANF) for a given fiscal year to carry out programs under the SSBG. Such amounts may be used only for programs or services to children or their families whose income is less than 200 percent of the poverty level. The amount of the transfers is reflected on the quarterly ACF-196, *Temporary Assistance for Needy Families (TANF) Financial Report*. The amounts transferred into this program are subject to the requirements of this program when expended and should be included in the audit universe and total expenditures of this program when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amounts transferred in should be shown as expenditures of this program when such amounts are expended.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.718 HEALTH INFORMATION TECHNOLOGY REGIONAL EXTENSION CENTERS PROGRAM

I. PROGRAM OBJECTIVES

The purpose of the Health Information Technology Regional Extension Centers (REC) program is to furnish assistance, defined as education, outreach, and technical assistance, to help providers in their geographic service areas select, successfully implement, and meaningfully use certified electronic health record (EHR) technology to improve the quality and value of health care. Regional centers will also help providers achieve, through appropriate available infrastructures, exchange of health information in compliance with applicable statutory and regulatory requirements, and patient preferences.

II. PROGRAM PROCEDURES

The Health Information Technology for Economic and Clinical Health (HITECH) Act, part of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) authorizes incentive payments for eligible Medicare and Medicaid providers' meaningful use of certified EHR technology. The detailed criteria to qualify for meaningful use incentive payments are established by the Secretary of HHS through the formal rulemaking process with Stage 1 Meaningful Use criteria released July 13, 2010. In 2015, providers are expected to have adopted and be actively utilizing an EHR in compliance with the meaningful use definition or they will be subject to financial penalties under Medicare (per Sections 4101(b) and 4102(b) of ARRA).

Providers seeking to meaningfully use EHRs face a variety of challenging tasks. Those tasks include assessing needs, selecting and negotiating with a system vendor or reseller, implementing project management, and instituting workflow changes to improve clinical performance and ultimately, outcomes. Past experience has shown that robust local technical assistance can result in effective implementation of EHRs and quality improvement throughout a defined geographic area.

The REC program, administered by the Office of the National Coordinator for Health Information Technology (ONC), within the Office of the Secretary, Department of Health and Human Services, has established 62 regional centers, each serving a defined geographic area. Entities eligible to serve as regional centers are domestic, nonprofit institutions or organizations, or group thereof.

Awards under this program were made as 4-year cooperative agreements with one 4-year budget period. Each regional center will provide federally supported individualized technical assistance to a minimum of 1,000 priority primary-care providers in the 4 years of the cooperative agreement. Funding for years 3 and 4 are contingent upon the Regional Extension Center receiving a positive biennial evaluation at the end of year 2.

Pursuant to requirements of the HITECH Act, priority in providing technical assistance under the REC program must be given to providers that are primary-care providers (physicians and/or other health care professionals with prescriptive privileges, such as physician assistants and nurse practitioners) in any of the following settings:

- individual and small group practices (ten or fewer professionals with prescriptive privileges) primarily focused on primary care;
- public and critical access hospitals;
- community health centers and rural health clinics; and
- other settings that predominantly serve uninsured, underinsured, and medically underserved populations.

The regional centers are expected to leverage and undertake activities that are in synergy with the expertise, capability, and activities of federally supported practice networks, where locally available, including, but not limited to, those supported by the Indian Health Service, the Health Resources and Services Administration, the Substance Abuse and Mental Health Services Administration, the Department of Veterans Affairs, the Department of Defense, and relevant Centers for Medicare & Medicaid Services demonstration projects.

Source of Governing Requirements

This program is authorized by Section 3012 of the Public Health Service Act, as added by ARRA, specifically Title XIII of Division A and Title IV of Division B (the HITECH Act) (42 USC 300jj-32). There are no program regulations for this program. .

Availability of Other Program Information

Additional program information, including the three funding opportunity announcements that resulted in the 62 REC awards, can be found at: http://healthit.hhs.gov/portal/server.pt?open=512&objID=1335&mode=2&cached=true.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Project funds (cooperative agreement funds and required cost-sharing amounts) may be used in two categories: core support, which includes outreach and educational activities, management activities, local workforce support, and participation peer-learning and knowledge transfer activities, and direct assistance

support, for use in providing direct on-site technical assistance to providers. Consistent with the category funding limitations established in the award for the two categories of support, project funds may be used for the following types of activities:

a. Planning and implementing outreach, education, and on-site technical assistance programs necessary to assist providers in the REC's geographic service area to meet meaningful use criteria established by the Secretary of HHS. This dissemination of knowledge about the effective strategies and practices to select, implement, and meaningfully use certified EHR technology to improve quality and value of healthcare includes activities such as (1) materials designed to be widely and rapidly disseminated, both for provider self-study and for use by other regional centers; (2) support of regional communities of practice for providers and those who support their health IT implementation; (3) health IT training events for clinical professionals and their support staff; and (4) instruction and assistance on using health IT to enhance the patient-provider relationship and encourage patient self-management. Training events, programs, and communities of practice may be co-sponsored with other local resources, such as (but not necessarily limited to) State and local health services oversight agencies, professional organizations, provider organizations, and consumer organizations.

b. Participating in activities of the consortium facilitated by the REC and comprised of all of the regional centers, including (1) participating in national meetings and hosting regional network meetings; (2) using the client management, tracking, reporting application (furnished through the Health Information Technology Research Center); and (3) making tools and materials developed using funding provided through the cooperative agreement available for sharing with other regional centers, interested stakeholders, and the public, directly and/or via the REC.

c. Activities related to assessing the health IT needs of priority primary-care providers and selecting and negotiating contracts with vendors or resellers (of EHR systems, hardware and network infrastructure, and IT services), as well as assisting those providers in holding vendors accountable for adhering to service-level agreements. This includes designing group purchasing plans and helping providers select the highest-value option (defined as that which offers the greatest opportunity to achieve and maintain meaningful use of EHRs and improved quality of care at the most favorable cost of ownership and operation, including both the initial acquisition of the technology, cost of implementation, and ongoing maintenance and predictable needed upgrades over time).

d. Practice and workflow redesign necessary to achieve meaningful use of EHRs. This includes working with the priority primary-care providers and their EHR vendor(s) to implement and troubleshoot the use of the EHR system for the consistent documentation of essential clinical information in structured format; instituting electronic administrative transactions, electronic prescribing, electronic laboratory ordering and resulting, sharing key clinical data across practice settings; providing patient access to their health information; public health reporting; and policies and practices that protect the privacy and security of personal health information.

e. Assistance to priority primary-care providers in connecting to available health information exchange infrastructure(s), including local health information exchange organizations and state-based shared utilities or directory services, in compliance with applicable statutory and regulatory requirements, patient preferences, and the State Plans for health information exchange (HIE) (developed and HHS-approved under cooperative agreements issued by ONC pursuant to Section 3013 of the PHS Act as added by ARRA (CFDA 93.719).

f. Activities that support providers in implementing best practices with respect to the privacy and security of personal health information, including: implementation and maintenance of physical and network security, user-based access controls, disaster recovery, encryption and storage of backup media, human resources training and policies; and identification of state laws and regulatory requirements that impact privacy and security policies for electronic interoperable health information exchange.

g. Reviewing the utilization of the EHRs within participating practices, and providing appropriate feedback and support to improve low utilization of features essential for meaningful use (e.g., electronic prescribing).

h. Helping priority primary-care providers to understand, and implement technology and process changes needed to attain meaningful use requirements and demonstrate this attainment, as defined by the Secretary through Medicare and Medicaid regulations and guidance.

i. Partnering with local resources, such as community colleges, to promote integration of health IT into the initial and ongoing training of health professionals and supporting staff. Regional centers may provide internship opportunities for local training programs, provide instructors for didactic programs, and use local training programs' graduates to fulfill the workforce needs of their extension activities and the implementation, maintenance, and use needs of the centers' participating providers.

2. Project funds may not be used for the following:

   a. Pre-award costs.

   b. Purchase or improvement of land, or purchase, construction, or making permanent improvements to any building except for minor remodeling. (42 USC 300-jj(c) and Funding Opportunity Announcement, sections I. and IV.6).

E. Eligibility

1. Eligibility for Individuals – Not Applicable

2. Eligibility for Group of Individuals or Area of Service Delivery

Each regional center shall aim to provide assistance and education to all providers in a region, but shall prioritize any direct assistance first to the following:

a. Public or not-for-profit hospitals or critical access hospitals.

b. Federally qualified health centers (as defined in section 1861(aa)(4) of the Social Security Act).

c. Entities that are located in rural and other areas that serve uninsured, underinsured, and medically underserved individuals (regardless of whether such area is urban or rural).

d. Individual or small group practices (or a consortium thereof) that are primarily focused on primary care.

Note: A practice otherwise meeting the definition of individual or small-group physician practice may participate in shared-services and/or group purchasing agreements, and/or reciprocal agreements for patient coverage, with other physician practices without affecting their status as individual or small-group practices for purposes of the regional centers.

(42 USC 300jj-32(c)(4)(D) and Funding Opportunity Announcement, Appendix E).

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Maintenance of Effort

1. Matching

Based on an assessment of current national economic conditions, the Secretary of HHS waived the 50 percent limitation on HHS funding for annual capital and operating and maintenance funds needed to establish and maintain a regional center (42 USC 300-jj(c)(5)). In place of these funding requirements, the Secretary has structured the funding partnership between HHS and the regional centers that requires recipients to contribute 10 percent of project costs each year of the cooperative agreement.

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

I. Procurement and Suspension and Debarment

Regional centers that choose to offer group purchasing of EHR software, IT support services, and/or hardware must provide a choice of offerings. The selection process for vendors must be open and competitive and the selection committee must include representatives of the priority primary-care providers actively practicing within the regional center's geographic service area (Funding Opportunity Announcement, Section I).

J. Program Income

Program income generated by the REC shall be retained by the REC and first be used to finance the non-federal share of the project. After the cost sharing requirement is met, program income generated shall be added to funds committed to the project by ONC and used to further eligible project or program objectives (Funding Opportunity Announcement, Sections. III. and IV.).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable (for reports due prior to December 30, 2010)

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable (expenditure portion applicable for reports due December 30, 2010 and after)

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. **Section 1512 ARRA Reporting** – Applicable

5. **Subaward Reporting under the Transparency Act** – Not Applicable

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.719 ARRA – STATE GRANTS TO PROMOTE HEALTH INFORMATION TECHNOLOGY

I. PROGRAM OBJECTIVES

The purpose of the State Grants to Promote Health Information Technology (State Health Information Exchange Cooperative Agreements) program is to continuously improve and expand health information exchange (HIE) services over time to reach all health care providers in an effort to improve the quality and efficiency of health care. This program is one of several programs that, collectively, are intended to facilitate the adoption and use of electronic health records (EHRs) and facilitate and expand the secure, electronic movement and use of health information among organizations according to nationally recognized standards. The governance, policy, and technical infrastructure supported through this program will enable standards-based HIE and a high-performance health care system. This program builds on existing efforts to advance regional and State-level HIE while moving towards nationwide interoperability.

II. PROGRAM PROCEDURES

The American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) includes the Health Information Technology for Economic and Clinical Health Act of 2009 (the HITECH Act) that sets forth a plan for advancing the appropriate use of health information technology (HIT) to improve quality of care and establish a foundation for health care reform. Widespread adoption and meaningful use of HIT is one of the foundational steps in improving the quality and efficiency of health care. The appropriate and secure electronic exchange and consequent use of health information to improve quality and coordination of care is a critical enabler of a high-performance health care system.

The State HIE program is administered by the Office of the National Coordinator for Health Information Technology (ONC), an office within the Office of the Secretary, Department of Health and Human Services. Awards are in the form of cooperative agreements to States (which includes the District of Columbia and the U.S. territories – Puerto Rico, U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa) or State-designated non-profit entities (SDEs). ONC will award no more than one cooperative agreement per State; however groups of States may combine their efforts into one project, resulting in an award to a multi-State consortium. Each cooperative agreement award is for both planning and implementation, except for States that have a plan approved by the National Coordinator prior to award, in which case they receive implementation funding only. Funding amounts will be determined as follows: Base Allocation + Equity Adjustments + Needs-Based Adjustments.

These cooperative agreements focus on developing the State-wide policy, governance, technical infrastructure and business practices needed to support the delivery of HIE services. The resulting capabilities for healthcare-providing entities to exchange health information must meet the Medicaid and Medicare meaningful use requirements for health care providers (specifically Medicare and Medicaid Electronic Health Record Incentive Program 42 CFR parts 412, 413,

422, and 495) to achieve financial incentives. Cooperative agreement recipients will evolve and advance the necessary governance, policies, technical services, business operations and financing mechanisms for HIE over a 4-year performance period.

Source of Governing Requirements

This program is authorized by Section 3013 of the Public Health Service Act (PHSA), as added by ARRA, specifically Title XIII of Division A and Title IV of Division B (the HITECH Act) (42 USC 300jj-33), Subtitle B—Incentives for the Use of Health Information Technology. There are no program regulations for this program. The compliance requirements specified below are found in the statute and/or in the State Health Information Exchange Cooperative Agreement Program Funding Opportunity Announcement (Funding Opportunity Announcement) August 20, 2009.

Availability of Other Program Information

Additional program information can be found at http://healthit.hhs.gov. The Funding Opportunity Announcement is available at this site. Program Information Notices (PINs) will be regularly issued to provide cooperative agreement recipients additional guidance to supporting the evolving requirements of meaningful use as they are developed. The first PIN was issued in July, 2010 and these are posted on the ONC website (www.healthit.hhs.gov).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Project funds (cooperative agreement funds and required matching amounts) may be used for developing or upgrading required plans, i.e., a strategic plan and an operational plan (42 USC 300jj-33(c)).

2. Project funds (cooperative agreement funds and required matching amounts) may be used for the following types of implementation activities:

    a. Establishing a governance structure to ensure the coordination, integration, and alignment of efforts with Medicaid and public health programs through efforts of the State Health IT Coordinators.

    b. Establishing mechanisms to provide oversight and accountability of HIE.

    c. Developing financial policies and implementing procedures to monitor spending and provide appropriate financial controls.

d. Developing a business plan with feasible public/private financing mechanisms for ongoing information exchange among health care providers and with those offering services for patient engagement and information access.

e. Developing or facilitating the creation of a State-wide technical infrastructure that supports State-wide HIE, including (1) electronic eligibility and claims transactions; (2) electronic prescribing and refill requests; (3) electronic clinical laboratory ordering and results delivery; (4) electronic public health reporting (i.e., immunizations, notifiable laboratory results); (5) quality reporting; (6) prescription fill status and/or medication fill history; and (7) clinical summary exchange for care coordination and patient engagement.

f. Developing or facilitating the creation and use of shared directories and technical services. Directories may include, but are not limited to: providers (e.g., with practice location(s), specialties, health plan participation, disciplinary actions, etc); laboratory service providers, radiology service providers, health plans (e.g., with contact and claim submission information, required laboratory or diagnostic imaging service providers, etc.). Shared Services may include, but are not limited to, patient matching, provider authentication, consent management, secure routing, advance directives and messaging.

g. Providing technical assistance as needed to Health Information Organizations (HIOs) and others developing HIE capacity within the State.

h. Establishing a State-wide policy framework.

i. Implementing enforcement mechanisms that ensure those implementing and maintaining health information exchange services have appropriate safeguards in place and adhere to legal and policy requirements that protect health information

(42 USC 300jj-33(d); Funding Opportunity Announcement, Section I.D.2)

3. Project funds may not be used for the following:

a. Pre-award costs; and

b. Purchase or improvement of land, or purchase, construction, or making permanent improvements to any building except for minor remodeling (Funding Opportunity Announcement, Section IV.F.).

G. Matching, Level of Effort, Maintenance of Effort

1. Matching

The HITECH Act requires a match to federal monies awarded under this program beginning in fiscal year 2011, with an increasing level of match for each year of the program as shown below. Matching requirements can be provided through cash and/or in-kind contributions (42 USC 300jj-33(i)(1) and (2))

Fiscal Year of Funding	Match Required
2010	None
2011 (begins Oct. 1, 2010)	$1 for each $10 Federal dollars
2012 (begins Oct 1, 2011)	$1 for each $7 Federal dollars
2013 (begins Oct 1, 2012)	$1 for each $3 Federal dollars

2. Level of Effort – Not Applicable

3. Earmarking

1. The State HIE program cooperative agreements are funded with monies through three separate funding streams. The recipient is responsible for tracking and reporting expenditures for each funding stream. The specific allocations for each funding category are included on the Notice of Award, which includes, as an attachment, "State Health Information Exchange Cooperative Agreement Program Guidance for Reporting Expenditures." This guidance provides instruction for allowable program activities within each funding stream.

   Planning funds (CAN #19999SH): As required in Section 3013, recipients cannot expend funds on implementation until they obtain ONC approval on submitted State plans. To support the State planning activities, ONC allocated funds to each recipient receiving a cooperative agreement that does not have an approved plan. Recipients are allowed 10 percent or a maximum of $1 million, whichever is the smaller amount, of their total award for planning expenses.

   Sub-national/Regional (intra-state) HIE (CAN#19999NF): Congress provided not more than and also not less than $300 million for intra-state HIE development. This activity is interpreted by ONC to be funding for implementation and operational activities that directly enable or benefit HIE activities within the State. Each recipient is given a specific

allowance for intra-state HIE capacity development in proportion to its overall award. The recipient must not spend more and must not spend less than this allowance on intra-state activities.

Nationwide (inter-state) HIE (CAN#19999SJ): ONC provided an additional amount of funding per recipient for HIE activities that enable State participation in inter-state HIE and the Nationwide Health Information Network activities. Inter-state HIE costs are those in any of the five domains listed above that are expended in order that health information is enabled to be shared across State borders between unaffiliated organizations.

2. Two percent of total project costs must be used for project evaluation (Funding Opportunity Announcement, Section IV.F).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable (for reports due prior to December 30, 2010)

To report expenditures within each of the three funding streams that comprise the State HIE program cooperative agreement awards, recipients are instructed to report the funds expended within each CAN on the Financial Status Report (SF-269) in Section 12 "Remarks".

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* (cash status) – Applicable (expenditure portion applicable for reports due December 30, 2010 and after)

2. Performance Reporting – Not Applicable.

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.767 CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP)

I. PROGRAM OBJECTIVES

Title XXI of the Social Security Act (Act) authorizes the Children's Health Insurance Program (CHIP) to assist State efforts in initiating and expanding the provision of child health assistance to uninsured, low-income children. Under title XXI, States may provide child health assistance primarily for obtaining health benefits coverage through (1) obtaining coverage under a separate child health program that meets specific requirements; (2) expanding benefits under the State's Medicaid plan under title XIX of the Act; or (3) a combination of both. To be eligible for funds under this program, States must submit a State child health plan (State plan), which must be approved by the Secretary.

II. PROGRAM PROCEDURES

Administration and Services

At the Federal level, CHIP is administered by the Department of Health and Human Services, through the Center for Medicaid, CHIP, Survey, and Certification (CMCS) of the Centers for Medicare and Medicaid Services (CMS).

Title XXI authorizes grants to States that initiate or expand health insurance programs for low-income, uninsured children. Under title XXI, CHIP is jointly financed by the Federal and State governments and is administered by the States. Within broad Federal guidelines, each State determines the design of its program, eligible groups, benefit packages, payment levels for coverage and administrative and operating procedures. CHIP provides a capped amount of funds to States on a matched basis. Federal payments under title XXI to States are based on State expenditures under approved plans that could be effective on or after October 1, 1997.

The Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub. L. No. 110-173) extended CHIP funding through March 31, 2009 to provide adequate funding to States for the purpose of maintaining their current enrollment through that date. Subsequently, the Children's Health Insurance Reauthorization Act of 2009 (CHIPRA 2009) (Pub. L. No. 111-3) reauthorized CHIP through FY 2013.

State Plans

Title XXI State plans and amendments to those plans are approved in CMS's central office. The plans are submitted for review by an intra-Departmental team, which must decide upon approval or disapproval within a 90-day period. This "90-day clock" can be stopped by sending a formal written request for additional information from the State, and can be restarted at the same point when a response is formally received. Copies of State plans are available from the State CHIP administrator and through the CMS website: http://www.cms.gov/home/chip.asp.

Waivers

The State may apply for a waiver of CHIP Federal requirements. Waivers are intended to provide flexibility needed to enable States to try new or different approaches to the efficient and cost-effective delivery of health care services, or to adapt their programs to the special needs of particular areas or groups of enrollees. Waivers allow exceptions to State plan requirements that permit the State to implement innovative programs or activities on a time-limited basis. Such demonstration projects are subject to specific safeguards for the protection of enrollees and the program. The Secretary will approve only demonstration projects that are consistent with key principles of the CHIP statute. States' waiver authority is found at 42 USC 1397gg(e), which extends to CHIP the Medicaid waiver authority at 42 USC 1315.

Source of Governing Requirements

This program is authorized by Section 490l(a) of the Balanced Budget Act of 1997 (BBA), Pub. L. No. 105-33, as amended by Pub. L. No. 105-100, which added title XXI to the Social Security Act (Act), and subsequent amendments to title XXI. Title XXI authorizes CHIP to assist State efforts to initiate and expand the provision of child health assistance to uninsured, low-income children. Title XXI is codified at 42 USC 1397aa-1397jj. The regulations for this program are found at 42 CFR part 457.

Awards under CHIP are no longer excluded from coverage under the HHS implementation of the A-102 Common Rule, 45 CFR part 92 (*Federal Register*, September 8, 2003, 68 FR 52843-52844). This change is effective for any grant award under this program made after issuance of the initial awards for the second quarter of Federal fiscal year (FY) 2004. This program also is subject to the requirements of 45 CFR part 95 and the cost principles under Office of Management and Budget Circular A-87 (as provided in *Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government*, HHS Publication ASMB C-10, available on the Internet at http://rates.psc.gov/fms/dca/asmb%20c-10.pdf).

Availability of Other Program Information

States and other interested parties can access information on the Department's policies on this and other issues on the Internet at http://www.cms.gov/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed* – States have general flexibility in allocating their individual allotments toward activities needed to conduct the CHIP (42 USC 1397ee(a)). In addition to expenditures for child health assistance under the plan for targeted low-income children, other allowable activities, to the extent permitted by 42 USC 1397ee(c), include payment of other child health assistance for targeted low-income children; expenditures for health services initiatives for improving the health of children (targeted and other low income) under the plan; expenditures for outreach activities; and other reasonable costs incurred by the State to administer the plan (42 USC 1397ee).

2. *Activities Unallowed* – Federal funds may not be expended under the State plan to pay for any abortion or to assist in the purchase, in whole or in part, of health coverage that includes coverage of abortion, except if necessary to save the life of the mother or if the pregnancy is the result of incest or rape (42 USC 1397ee(c)).

E. Eligibility

1. Eligibility for Individuals

a. States have flexibility in determining eligibility levels for individuals for whom the State will receive enhanced matching funds within the guidelines established under the Act. Generally, a State may not cover children with higher family income without covering children with a lower family income, nor deny eligibility based on a child having a preexisting medical condition. States are required to include in their State plans a description of the standards used to determine eligibility of targeted low-income children. State plans should be consulted for specific information concerning individual eligibility requirements (42 USC 1397bb(b)).

States have the option to extend eligibility to low-income targeted pregnant women. There is no income eligibility level for pregnant women in CHIP that is lower than the State's Medicaid level, and States must cover pregnant women up to 185 percent of the Federal poverty level before they can elect the option to include pregnant women in the CHIP State plan (Pub. L. No. 111-3, Section 111).

b. Qualified aliens, as defined at 8 USC 1641, who entered the United States on or after August 22, 1996, are not eligible for a separate child health program under title XXI (CHIP) for a period of five years, beginning on the date the alien became a qualified alien, unless the alien is exempt from this five year bar under the terms of 8 USC 1613. States must provide coverage under a separate child health program under title XXI to all other otherwise eligible qualified aliens who are not barred from coverage under 8 USC 1613 (42 CFR section 457.320(b)(6)).

c. States may elect to provide medical assistance, notwithstanding section 401(a), 402(b), 403, and 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, to children and pregnant women who are lawfully residing in the United States and who are otherwise eligible for such assistance. This optional coverage in CHIP is only applicable if the State has elected to apply this allowance with respect to such category of children or pregnant women under title XIX Pub. L. No. 111-3, Section 214).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching

The State matching rate for its CHIP expenditures is determined in accordance with the Federal matching rate for such expenditures, referred to as the enhanced Federal medical assistance percentage (Enhanced FMAP) for a State. That is, the CHIP State matching rate is calculated by subtracting the Medicaid FMAP rate from 100, taking 30 percent of the difference, and then adding it to the Medicaid FMAP rate. The Enhanced FMAP is calculated in accordance with 42 USC 1397ee(b), which provides that the Enhanced FMAP for a State shall never exceed 85 percent. Calculated FMAPs and enhanced FMAPs may be found on the Internet at http://www.aspe.hhs.gov/health/fmap.htm (42 USC 1397ee(a) and (b)).

A qualifying State may elect to be paid from the State's allotment for any of FYs 2009 through 2013, an amount equal to the additional amount that would have been paid to the State under title XIX with respect to expenditures if the enhanced FMAP had been substituted for the FMAP (42 USC 1397ee(g)(4)). The qualifying States are Connecticut, Hawaii, Maryland, Minnesota, New Hampshire, New Mexico, Rhode Island, Tennessee, Vermont, Washington, and Wisconsin (as determined by CMS on the basis of the criteria in Pub. L. No. 108-74, section 1(g)(2) and Pub. L. No. 108-127, section 1).

2.1 Level of Effort – *Maintenance of Effort*

a. In order to receive Federal matching funds for CHIP expenditures at the enhanced matching rate, each State must continue to maintain its Medicaid eligibility standards and the methodologies that were applied in its Medicaid State plans as of June 1, 1997 (42 USC 1397ee(d)(1) and 1397jj(b)).

b. Three States, New York, Florida and Pennsylvania, maintain "existing comprehensive State-based programs." For these three States only, beginning with FY 1999, the amount of the State's allotment for a fiscal year is reduced by the amount that the "children's health insurance expenditures" for the previous fiscal year is less than the total of such expenditures for FY 1996. For purposes of this provision, the term "children's health insurance expenditures" means: the State share of title XXI (CHIP) expenditures; the State share of expenditures under title XIX (Medicaid) attributable to an enhanced FMAP under section 1905(u) of the Act (42 USC 1396d(u)); and State expenditures for health benefits coverage under an existing comprehensive State-based program (42 USC 1397cc(d)(1) and 1397ee(d)(2)).

2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking

Expenditures not directly related to providing child health insurance assistance under the plan are limited to 10 percent of the State's total expenditures through CHIP. The following expenditures are subject to the 10 percent limit: (a) payment for other child health assistance for targeted low-income children; (b) expenditures for health services initiatives under the State child health assistance plan for improving the health of children; (c) expenditures for outreach activities; and (d) other reasonable costs incurred by the State to administer the State child health assistance plan (42 USC 1397ee(c)). States may apply for a waiver, or variance of this 10 percent cap under 42 USC 1397ee(c)(2). If applicable, information regarding such a waiver is in the State plan.

The 10 percent limit is applied on an annual fiscal-year basis and is calculated based on: (a) the total amounts of expenditures and (b) the quarter in which such expenditures are claimed by the State for the fiscal year (42 USC 1397ee).

H. Period of Availability of Federal Funds

The availability of amounts allotted for each of FYs 1998 through 2008 shall remain available for expenditure by the State through the end of the second succeeding fiscal year (i.e., the year of the award and two subsequent fiscal years); and for FY 2009 and each fiscal year thereafter, shall remain available for expenditure by the State through the end of the succeeding fiscal year (i.e., the year of award and one subsequent fiscal year) (42 USC 1397dd(e) and (f), as amended by Pub. L. No. 111-3, Section 105),

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Applicable

e. SF-425, *Federal Financial Report* – Applicable for cash status; Not Applicable for financial status

f. CMS-64, *Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (OMB No. 0938-0067)*

g. CMS-21, *Quarterly Children's Health Insurance Program Statement of Expenditures for Title XXI (OMB No. 0938-0731)*

Key Line Items – The following line items contain critical information:

CMS-21 Base – The CMS-21 consists of three parts: CMS-21 Base, CMS-21B, and CMS-21C. Only CMS-21 Base is expected to be tested for compliance.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.720 STATE SURVEY AND CERTIFICATION AMBULATORY SURGICAL CENTER HEALTHCARE ASSOCIATED INFECTION (ASC-HAI) PREVENTION INITIATIVE
CFDA 93.775 STATE MEDICAID FRAUD CONTROL UNITS
CFDA 93.777 STATE SURVEY AND CERTIFICATION OF HEALTH CARE PROVIDERS AND SUPPLIERS
CFDA 93.778 MEDICAL ASSISTANCE PROGRAM (Medicaid; Title XIX)

Note: In accordance with OMB Circular A-133, §___.525(c)(2), when the auditor is using the risk-based approach for determining major programs, the auditor should consider that the Department of Health and Human Services (HHS) has identified the Medicaid Assistance Program as a program of higher risk.

Medicaid is the largest dollar Federal grant program and under OMB budgetary guidance and Pub. L. No. 107-300, HHS is required to provide an estimate of improper payments for Medicaid. Improper payments mean any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and includes any payment to an ineligible recipient, and any payment for an ineligible service, any duplicate payment, payments for services not received, and any payments that does not account for credit for applicable discounts. In addition, the Patient Protection and Affordable Care Act (Affordable Care Act) (Pub. L. No. 111-148) will result in significant expansion of the program in the future (see IV, "Other Information," in this program supplement).

While not precluding an auditor from determining that the Medicaid Cluster qualifies as a low-risk program (e.g., because prior audits have shown strong internal controls and compliance with Medicaid requirements), the above should be considered as part of the risk assessment process and audit documentation should support the consideration.

I. PROGRAM OBJECTIVES

Medical Assistance Program

The objective of the Medical Assistance Program (Medicaid or Title XIX of the Social Security Act, as amended, (42 USC 1396 *et seq*.)) is to provide payments for medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children.

State Medicaid Fraud Control Units

States are required as part of their Medicaid State plans to maintain a State Medicaid Fraud Control Unit (MFCU), unless the Secretary of HHS determines that certain safeguards are met regarding fraud and abuse. The mission of the MFCUs is to investigate and prosecute fraud by Medicaid providers. The State MFCUs also review complaints alleging abuse or neglect of patients in health care facilities receiving payments under the State Medicaid plan, and may

review complaints of misappropriation of patients' private funds in such facilities. States are required to refer all suspected violations of applicable Medicaid laws and regulations by providers to the MFCU. Federal requirements for the establishment and continued operations of the units are contained in 42 USC 1396b(a)(6), 1396b(b)(3), and 1396b(q); and 42 CFR part 1007. A key requirement of the governing regulations is that a unit must be a single identifiable entity of State government.

The HHS Office of the Inspector General (OIG) is the agency responsible for the Federal oversight of the State MFCUs. In order to receive the Federal grant funds necessary to sustain their operations, the units must submit an application for Federal assistance to the OIG on an annual basis.

The recently enacted Affordable Care Act provides additional tools and resources to fight fraud in the health care system by providing an additional $350 million over the next 10 years through the Health Care Fraud and Abuse Control Account. The Affordable Care Act toughened sentencing for criminal activity, enhanced screenings and enrollment requirements, encouraged increased sharing of data across government, expanded overpayment recovery efforts, and provided greater oversight of private insurance abuses. The Affordable Care Act also included tools and resources to help States reduce improper payments through the establishment of recovery audit contractors (RACs).

State Survey and Certification of Health Care Providers and Suppliers

The objective of the State Survey and Certification of Health Care Providers and Suppliers program is to determine whether the providers and suppliers of health care services under the Medicaid program are in compliance with regulatory health and safety standards and conditions of participation. This program is administered in a manner similar to Medicaid and includes an approved State plan that addresses Federal requirements.

Even though the State MFCUs and State Survey and Certification of Health Care Providers and Suppliers have substantially less Federal expenditures than the Medicaid Assistance Program, they are clustered with Medicaid because these programs provide significant controls over the expenditures of Medicaid funds. It is unlikely that the expenditures for these two programs would be material to the Medicaid cluster; however, noncompliance with the requirements to administer these controls may be material.

State Survey and Certification Ambulatory Surgical Center Healthcare-Associated Infection (ASC-HAI) Prevention Initiative

The objectives of the ASC-HAI Prevention Initiative, which was enacted as part of the Affordable Care Act, are as follows:

(1) Improve State agency inspection capability and frequency for onsite surveys of Ambulatory Surgical Centers (ASCs) nationwide;

(2) Use a new infection control survey tool developed by the Centers for Disease Control and Prevention and the Centers for Medicare & Medicaid Services (CMS);

(3) Improve the survey process through the use of a CMS tracer methodology; and

(4) Use multi-person teams for ASCs over a certain size or complexity.

II. PROGRAM PROCEDURES

The following paragraphs are intended to provide a high-level, overall description of how Medicaid generally operates. It is not practical to provide a complete description of program procedures because Medicaid operates under both Federal and State laws and regulations and States are afforded flexibility in program administration. Accordingly, the following paragraphs are not intended to be used in lieu of or as a substitute for the Federal and State laws and regulations applicable to this program.

Administration

The U.S. Department of Health and Human Services (HHS) Centers for Medicare and Medicaid Services (CMS) administers the Medicaid program in cooperation with State governments. The Medicaid program is jointly financed by the Federal and State governments and administered by the States. For purposes of this program, the term "State" includes the 50 States, the District of Columbia, and five U.S. territories: Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Medicaid operates as a vendor payment program, with States paying providers of medical services directly. Participating providers must accept the Medicaid reimbursement level as payment in full. Within broad Federal rules, each State decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures.

State Plans

States administer the Medicaid program under a State plan approved by CMS. The Medicaid State plan is a comprehensive written statement submitted by the State Medicaid agency describing the nature and scope of its Medicaid program. A State plan for Medicaid consists of preprinted material that covers the basic requirements, and individualized content that reflects the characteristics of each particular State's program. The State plan is referenced to the applicable Federal regulation for each requirement and will also contain references to applicable State regulations.

The State plan contains all information necessary for CMS to determine whether the State plan can be approved to serve as a basis for determining the level of Federal financial participation in the State program. The State plan must specify a single State agency (hereinafter referred to as the "State Medicaid agency") established or designated to administer or supervise the administration of the State plan. The State plan must also include a certification by the State Attorney General that cites the legal authority for the State Medicaid agency to determine eligibility.

The State plan also specifies the criteria for determining the validity of payments disbursed under the Medicaid program. This encompasses the system the State will use to ensure that payments are disbursed only to eligible providers for appropriately priced services that are covered by the

Medicaid program and provided to eligible beneficiaries. Payments must also be based on claims that are adequately supported by medical records, and payments must not be duplicated.

A State plan or plan amendment will be considered approved unless CMS sends the State written notice of disapproval or a request for additional information within 90 days after receipt of the State plan or plan amendment. Copies of the State plan are available from the State Medicaid agency.

Waivers

The State Medicaid agency may apply for a waiver of Federal requirements. Waivers are intended to provide the flexibility needed to enable States to try new or different approaches to the efficient and cost-effective delivery of health care services, or to adapt their programs to the special needs of particular areas or groups of beneficiaries. Waivers allow exceptions to State plan requirements and permit a State to implement innovative programs or activities on a time-limited basis, and are subject to specific safeguards for the protection of beneficiaries and the program.

Actions that States may take if waivers are obtained include: (1) implement a primary care case-management system or a specialty physician system; (2) designate an entity to act as a central broker in assisting Medicaid beneficiaries to choose among competing health care plans; (3) share with beneficiaries (through the provision of additional services) cost-savings made possible through the beneficiaries' use of more cost effective medical care; (4) limit beneficiaries' choice of providers to providers that fully meet reimbursement, quality, and utilization standards, which are established under the State plan and are consistent with access, quality, and efficient and economical furnishing of care; (5) include as medical assistance, under its State plan, home and community-based services furnished to beneficiaries who would otherwise need inpatient care that is furnished in a hospital or nursing facility, and is reimbursable under the State plan; and (6) impose a deduction, cost-sharing or similar charge of up to twice the nominal charge established under the State plan for outpatient services for certain non-emergency services (except that, pursuant to the Deficit Reduction Act of 2005, a State may, at its option and without a waiver, charge higher co-payments for non-emergency services provided in an emergency room). A State may also obtain a waiver of statutory requirements to provide an array of home and community-based services, which may permit an individual to avoid institutionalization (42 CFR part 441 subpart G). Depending on the type of requirement being waived, a waiver may be effective for initial periods ranging from two to five years, with varying renewal periods. Copies of waivers are available from the State Medicaid agency.

Payments to States

Once CMS has approved a State plan and waivers, it makes quarterly grant awards to the State to cover the Federal share of Medicaid expenditures for services, training, and administration. The amount of the quarterly grant is determined on the basis of information submitted by the State Medicaid agency (in quarterly estimate and quarterly expenditure reporting). The grant award authorizes the State to draw Federal funds as needed to pay the Federal financial participation portion of qualified Medicaid expenditures. The HHS Payment Management System, Division

of Payment Management (PMS-DPM) in Rockville, Maryland, disburses Federal funds to States including funding under Medicaid. Currently, all States use a system developed by HHS, called SMARTLINK, to request funds on an as-needed basis. States may use one of two payment mechanisms which are linked to SMARTLINK: (1) wire transfers through the Automated Clearinghouse in conjunction with the Federal Reserve Bank, which are settled the day after the request date, or (2) FEDWIRE transfers through the Department of the Treasury, which is a same-day payment mechanism. The payment method is selected by the State and approved by the Department of the Treasury and HHS before payments are made through either mechanism. States report cash activity to PMS-DPM with a quarterly Cash Transactions Report (PSC-272).

State Expenditure Reporting

Thirty days after the end of the quarter, States electronically submit the CMS-64, Quarterly Statement of Expenditures for the Medical Assistance Program. The CMS-64 presents expenditures and recoveries and other items that reduce expenditures for the quarter and prior period expenditures. The amounts reported on the CMS-64 and its attachments must be actual expenditures for which all supporting documentation, in readily reviewable form, has been compiled and is available immediately at the time the claim is filed. States use the Medicaid Budget and Expenditure System to electronically submit the CMS-64 directly to CMS.

Eligibility

Eligibility for Medicaid is based on categorical (e.g., families and children, aged, blind, and disabled) and financial (e.g., income/resources) status. The States must provide services to mandatory categorically needy and other required special groups. States may provide coverage to members of optional groups and medically needy individuals (individuals who are eligible for Medicaid after deducting medical expenditures from their income). Eligibility criteria will be specified in the individual State plan.

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the cash welfare program known as Aid for Dependent Children (AFDC) was repealed and replaced with block grants to States known as Temporary Assistance for Needy Families (TANF). Under Medicaid, children and parents who received AFDC were automatically enrolled in Medicaid. However, Medicaid for children and parents who would have met the State's old AFDC income and asset standards in place on July 16, 1996, has been preserved whether or not these individuals are eligible for the new TANF system (Pub. L. No. 104-193).

States must provide limited Medicaid coverage for "qualified Medicare beneficiaries." These are aged and disabled persons who are receiving Medicare, whose income is below 100 percent of the Federal poverty level, and whose resources do not exceed twice the allowable amount under SSI (42 CFR section 407.40).

The State plan will specify if determinations of eligibility are made by agencies other than the State Medicaid agency and will define the relationships and respective responsibilities of the State Medicaid agency and the other agencies. States are required to have (1) documentation of qualified alien status if the applicant/recipient is not a U.S. citizen, (2) facts in the case record to

support the agency's eligibility determination, and (3) a written application on a form prescribed by the agency and signed under a penalty of perjury. The State must require a written application signed under penalty of perjury and include in each applicant's case record facts to support the agency's decision on his/her application. The State must provide notice of its decision concerning eligibility and provide timely and adequate notice of the basis for discontinuing assistance. In cases of persons who are not U.S. citizens, the State must obtain documentation of qualified alien status (42 CFR sections 435.907, 435.912, and 435.913; 42 USC 1320b-7; Section 1137 of the Social Security Act).

Services

Medicaid expenditures include medical assistance payments for eligible recipients for such services as hospitalization, prescription drugs, nursing home stays, outpatient hospital care, and physicians' services, and expenditures for administration and training. In order for a medical assistance payment to be considered valid, it must comply with the requirements of Title XIX, as amended, (42 USC 1396 *et seq.*) and implementing Federal regulations. Determinations of payment validity are made by individual States in accordance with approved State plans under broad Federal guidelines.

Some States have managed care arrangements under which the State enters into a contract with an entity, such as an insurance company, to arrange for medical services to be available for beneficiaries. The State pays a fixed rate per person (capitation rate) without regard to the actual medical services utilized by each beneficiary.

Medicaid expenditures also include administration and training, the State Survey and Certification Program, and State Medicaid Fraud Control Units.

Medicare Buy-In Program

The Medicare Buy-In Program, also known as QMB (Qualified Medicare Beneficiary) and SLIMB (Specified Low-Income Medicare Beneficiary), is designed to protect low-income Medicare beneficiaries from the significant and growing costs required to receive Medicare coverage, including out-of-pocket cost sharing expenses (deductibles and co-payments). The program connects the two largest public health programs in the country, Medicare and Medicaid, as Medicaid pays for all or part of the Medicare premium and deductible amounts for individuals who are financially eligible.

The QMB (Qualified Medicare Beneficiary) Program serves individuals with modest assets (up to $4,000 per individual or $6,000 per couple) with combined incomes that do not go over 100 percent of the Federal poverty level. The State Medicaid program pays their Medicare Part B premiums and cost-sharing amounts. The SLIMB (Specified Low-Income Medicare Beneficiary) Program pays only the Part B premium for those with incomes between 100 and 120 percent of poverty with assets up to $4,000 per individual or $6,000 per couple.

American Recovery and Reinvestment Act

Section 5001 of ARRA provides eligible States with significant increases in their respective Federal medical assistance percentages (FMAPs), which are used for the purpose of determining the amounts of Federal funds available to States for their medical assistance expenditures under the Medicaid program. These increases are effective for a period of 9 calendar quarters between October 1, 2008, and December 31, 2010. Under the ARRA increased FMAP provision, there are a number of requirements and conditions that States must meet in order to continue to be eligible under ARRA for the increase in their FMAPs or for the increase in the FMAPs to be applicable to certain expenditures in their Medicaid programs during this period.

Maintenance of Effort

ARRA allows States to receive the increased Medicaid funds only if they have not acted since July 1, 2008 to reduce the income limits for Medicaid or otherwise make it more difficult for people to get or keep Medicaid. (The statute gives States until July 1, 2009 to reverse any eligibility cuts that they enacted or implemented after July 1, 2008 and, thus, qualify for the additional funds.)

Section 5001(f)(2) of ARRA provides that the increased FMAP is not available "for any claim received by a State from a practitioner ...for such days during any period in which the State has failed to pay claims in accordance with" the timely processing of claims standards as referenced at Section 1902(a)(37) of the Social Security Act (the Act), and in implementing Federal Medicaid regulations (at 42 CFR section 447.45(d)). Under ARRA, with respect to practitioners the prompt pay provision applies only "to claims made for covered services after the date of enactment." Since ARRA was enacted on February 17, 2009, the increased FMAP is not available for any practitioner claims received by a State on such day(s), beginning with February 18, 2009, that the State is not in compliance with the prompt pay provision. As described below, in accordance with the applicable timely processing standards, claims received prior to February 18, 2009 will be considered in determining compliance with these standards, beginning on February 18, 2009.

ARRA also requires that, beginning after a grace period ending May 31, 2009, the prompt pay standards as applicable to practitioner claims also will apply to hospital and nursing facility provider claims, insofar as such claims are paid on the basis of submission of claims from these providers.

Under title XIX of the Social Security Act and Federal Medicaid regulations at 42 CFR section 447.45(d) in effect prior to the enactment of ARRA, and which continue to be in effect, there are two prompt pay standards referenced by the ARRA prompt pay provisions which are applicable to claims (as specified in the regulation) that are received from practitioners on or after February 18, 2009:

- **90 percent of clean claims received by the State must be paid within 30 days of receipt.**

- **99 percent of clean claims received by the State must be paid within 90 days of receipt.**

Note that, under ARRA, the provider claims that are used to determine compliance with the prompt pay standards are separate and distinct from the provider claims that are received on days of non-compliance with the prompt pay standards. The claims received on the days of non-compliance are not eligible for the increased FMAP. These are not the claims that are reviewed to determine compliance.

Indian Care

Although Medicaid allows States to impose enrollment fees, premiums, and cost-sharing charges on Medicaid and Children's Health Insurance Program participants, Section 5006 of ARRA precludes them from imposing these charges on Indian applicants, according to the guidance released by the Centers for Medicare & Medicaid Services.

Specifically, Section 5006(a) of ARRA:

- **exempts Indians from paying enrollment fees, premiums or similar charges if they are served by an Indian health care provider;**

- **exempts Indians from paying a deductible, coinsurance, copayment or similar charges for Medicaid-covered services if they are served by an Indian health care provider; and**

- **prohibits any reduction in payment due under Medicaid to the Indian health care provider serving an Indian (i.e., a State must pay these providers the full Medicaid payment rate for furnishing the service).**

Statutory Changes Affecting the Future Direction of the Medicaid Program

The Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148 (enacted March 23, 2010) and the Health Care and Education Reconciliation Act (HCERA) of 2010, Pub. L. No. 111-152 (enacted March 30, 2010) include numerous health-related provisions affecting the Medicaid program. A summary of the provisions of these laws is included under IV, "Other Information."

The provisions of these two statutes have varying implementation dates. The statutes allow flexibility in (1) in implementing certain provisions and (2) tailoring the individual State program to comply. A summary of the relevant provisions of these statutes is included in IV, "Other Information." Auditors should be aware of the provisions of these laws in designing their audit procedures.

Control Systems

Utilization Control and Program Integrity

The State plan must provide methods and procedures to safeguard against unnecessary utilization of care and services, including those provided by long-term care institutions. In addition, the State must have: (1) methods of criteria for identifying suspected fraud cases; (2) methods for investigating these cases; and (3) procedures, developed in cooperation with legal authorities, for referring suspected fraud cases to law enforcement officials.

These requirements may be met by the State Medicaid agency assuming direct responsibility for assuring the requirements or by contracting with a quality improvement organization (QIO) (formerly know as peer review organization (PRO)) to perform such reviews. The reviewer must establish and use written criteria for evaluating the appropriateness and quality of Medicaid services.

The State Medicaid agency must have procedures for the ongoing post-payment review, on a sample basis, for the necessity, quality, and timeliness of Medicaid services. The State Medicaid agency may conduct this review directly or may contract with a QIO.

Suspected fraud identified by utilization control and program integrity should be referred to the State Medicaid Fraud Control Units.

Inpatient Hospital and Long-Term Care Facility Audits

States are required to establish as part of the State plan standards and methodology for reimbursing inpatient hospital and long-term care facilities based on payment rates that represent the cost to efficiently and economically operate such facilities and provide Medicaid services. The State Medicaid agency must provide for the filing of uniform cost reports by each participating provider. These cost reports are used by the State Medicaid agency to aid in the establishment of payment rates. The State Medicaid agency must provide for periodic audits of the financial and statistical records of the participating providers. Such audits could include desk audits of cost reports in addition to field audits. These audits are an important control for the State Medicaid agency in ensuring that established payment rates are proper.

ADP Risk Analyses and System Security Reviews

The Medicaid program is highly dependent on extensive and complex computer systems that include controls for ensuring the proper payment of Medicaid benefits. States are required to establish a security plan for ADP systems that include policies and procedures to address: (1) physical security of ADP resources; (2) equipment security to protect equipment from theft and unauthorized use; (3) software and data security; (4) telecommunications security; (5) personnel security; (6) contingency plans to meet critical processing needs in the event of short- or long-term interruption of service; (7) emergency preparedness; and (8) designation of an agency ADP security manager.

State agencies must establish and maintain a program for conducting periodic risk analyses to ensure appropriate, cost effective safeguards are incorporated into new and existing systems. State agencies must perform risk analyses whenever significant system changes occur. On a biennial basis State agencies shall review the ADP system security of installations involved in the administration of HHS programs. At a minimum, the reviews shall include an evaluation of physical and data security operating procedures, and personnel practices.

As part of complying with the above requirement, a State may obtain a Statement on Auditing Standards No. 70, Service Organizations (SAS 70), or Statement on Standards for Attestation Engagements No. 16, Reporting on Controls at a Service Organization (SSAE 16) Type II report from its service organization (if the State has a service organization). A SAS 70 or SSAE 16 Type I report does not address the effectiveness of a service organization's controls and would need to be supplemented by additional testing of controls at the service organization.

The specific areas covered by a SAS 70 or SSAE 16 report differ according to each individual service organization's operations; however, in every instance, the Type II report procedures assess the sufficiency of the design of an organization's controls and test their effectiveness. A number of commonly covered areas include:

- Control Environment
- Systems Development and Maintenance
- Logical Security
- Physical Access
- Computer Operations
- Input Controls
- Output Controls
- Processing Controls

Medicaid Management Information System (MMIS)

The MMIS is the mechanized Medicaid benefit claims processing and information retrieval system that States are required to have, unless this requirement is waived by the Secretary of HHS. HHS provides general systems guidelines (42 CFR sections 433.110 through 433.131) but it does not provide detailed system requirements or specifications for States to use in the development of MMIS systems. As a result, MMIS systems will vary from State to State. The system may be maintained and operated by the State or a contractor.

The MMIS is normally used to process payments for most medical assistance services and normally includes edits and controls that identify unusual items for follow up by the utilization control and program integrity unit. However, the State may use systems other than MMIS to

process medical assistance payments. In many cases the operation of the MMIS is contracted out to a private contractor. The State plan will describe the administration of each State's claims-processing system.

Generally, the MMIS does not process claims from State agencies (e.g., State-operated intermediate care facility for the mentally retarded (ICF/MR)) and certain selected types of claims. The claims payments that are not processed through MMIS may be material to the Medicaid program.

Federal Oversight and Compliance Mechanisms

CMS oversees State operations through its organization consisting of a headquarters and 10 regional offices.

CMS program oversight includes budget review, reviews of financial and program reports, and on-site reviews, which are normally targeted to cover a specific area of concern. CMS conveys areas of national and local concerns to the States through the regions. Technical assistance is used extensively to promote improvements in State operation of the program but enforcement mechanisms are available. CMS considers the single audit as an important internal control in its monitoring of States.

Federal program oversight, because of its targeted nature, should not be used as a substitute for audit evidence gained through transaction testing.

Medicaid Program Payment Error Rate Measurement

On October 5, 2005, an interim final rule, with an opportunity for comment, was published in the Federal Register setting forth the State requirements to provide information to CMS for the purpose of estimating improper payments in the Medicaid program, as required under the Improper Payments Information Act (IPIA) of 2002. The effective date of these regulations is November 4, 2005.

Source of Governing Requirements

The auditor is expected to use the applicable laws and regulations (including the applicable State-approved plan) when auditing this program. The Federal law that authorizes these programs is Title XIX of the Social Security Act (Title XIX), enacted in 1965 and subsequently amended (42 USC 1396 *et seq*.). The Federal regulations applicable to the Medicaid program are found in 42 CFR parts 430 through 456, 1002, and 1007.

Awards under the Medical Assistance Program (CFDA 93.778) are no longer excluded from coverage under the HHS implementation of the A-102 Common Rule, 45 CFR part 92 (Federal Register, September 8, 2003, 68 FR 52843-52844). This change is effective for any grant award under this program made after issuance of the initial awards for the second quarter of Federal fiscal year (FY) 2004. This program also is subject to the requirements of 45 CFR part 95 and the cost principles under Office of Management and Budget Circular A-87 (2 CFR Part 225) (as provided in Cost Principles and Procedures for Developing Cost Allocation Plans and

Indirect Cost Rates for Agreements with the Federal Government, HHS Publication ASMB C-10, available on the Internet at http://rates.psc.gov/fms/dca/asmb%20c-10.pdf).

Availability of Other Program Information

The HHS OIG issues fraud alerts, some of which relate to the Medicaid program. These alerts are available on the Internet from the HHS OIG home page, Special Fraud Alerts section (http://oig.hhs.gov/fraud/fraudalerts.asp).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

General Audit Approach for Medicaid Payments

To be allowable, Medicaid costs for medical services must be: (1) covered by the State plan and waivers; (2) for an allowable service rendered (including supported by medical records or other evidence indicating that the service was actually provided and consistent with the medical diagnosis); (3) properly coded; and (4) paid at the rate allowed by the State plan. Additionally, Medicaid costs must be net of applicable credits (e.g., insurance, recoveries from other third parties who are responsible for covering the Medicaid costs, and drug rebates), paid to eligible providers, and only provided on behalf of eligible individuals.

Due to the complexity of Medicaid program operations, it is unlikely the auditor will be able to support an opinion that Medicaid expenditures are in compliance with applicable laws and regulations (e.g., are allowable under the State plan) without relying upon the systems and internal controls. Examples of complexities include:

- Dependence upon large and complex ADP systems to process the large volume of Medicaid transactions.
- Medical services are provided directly to an eligible beneficiary, normally without prior approval by the State.
- Medical service providers normally determine the scope and medical necessity of the services.
- Notice to the State that service is rendered is after-the-fact when a bill is sent.
- Payments systems do not include a review of original detailed documentation supporting the claim prior to payment.

- Complex billing charge structures and payment rates for medical services, including significance of proper coding of services (e.g., billing by diagnosis related groups (DRG)).

- Different types of Medicaid payments (e.g., inpatient hospital, physicians, prescription drugs and drug rebates).

Medicaid has required control systems that should aid the auditor in obtaining sufficient audit evidence for Medicaid expenditures. These control systems are discussed in the preceding Program Procedures under Control Systems and are: (1) utilization control and program integrity; (2) inpatient hospital and long term care facility audits; (3) ADP risk analyses and system security reviews (e.g., of the MMIS); and (4) the MMIS normally includes edits and controls that identify unusual items for follow up by the utilization control and program integrity function. The first three generally are performed by specialists retained by the State Medicaid agency. The following table indicates the major types of Medicaid payments to which these controls will likely relate:

Type of Medicaid Payment	1	2	3	4
Inpatient Hospital	X	X	X	X
Physicians (including dental)	X		X	X
Prescription Drugs (net of rebates)	X		X	X
Institutional Long-Term Care	X	X	X	X

Each of the above Medicaid payment types is tested for compliance with applicable laws and regulations under either III.A, "Activities Allowed or Unallowed;" III.B, "Allowable Costs/Cost Principles;" or III.E.1, "Eligibility – Eligibility for Individuals." Based upon the assessed level of control risk, the auditor should design appropriate tests of the allowability of Medicaid payments. Testing likely will include tests of medical records, in which case the auditor should consider the need for assistance of specialists. The auditor may consider using the same specialists used by the State.

The auditor should consider the following in planning and performing tests of controls and compliance:

1. III.N, "Special Tests and Provisions" includes required internal controls, which are compliance requirements (i.e., controls (1), (2), and (3) above), and audit objectives and procedures for each. The audit procedures will entail tests of work performed by the State Medicaid agency.

2. Tests of compliance with laws and regulations relating to III.A, B, and E below, and the compliance requirements enumerated in III.N should be coordinated.

A. Activities Allowed or Unallowed

1. Funds can only be used for Medicaid benefit payments (as specified in the State plan, Federal regulations, or an approved waiver), expenditures for administration and training, expenditures for the State Survey and Certification Program, and expenditures for State Medicaid Fraud Control Units (42 CFR sections 435.10, 440.210, 440.220, and 440.180).

2. Case Management Services – The State plan may provide for case management services as an optional medical assistance service. The term "case management services" means services that will assist individuals eligible under the plan in gaining access to needed medical, social, educational, and other services.

   Medicaid case management services are divided into two separate categories:

   Administrative case management – Services must be identifiable with Title XIX benefit (e.g., outreach services provided by public school districts to Medicaid recipients).

   Medical/targeted case management – Services must be provided to an eligible Medicaid recipient. Services do not have to be specifically medical in nature and can include securing shelter, personal needs, etc. (e.g., services provided by community mental health boards, county offices of aging).

   Case management services is an area of risk because of the high growth of expenditures and prior experience that indicates problems with the documentation of case management expenditures.

   With the exception of case management services provided through capitation (a process in which payment is made on a per beneficiary basis) or prepaid health plans, Federal regulations typically require the following documentation for case management services: date of service; name of recipient; name of provider agency and person providing the service; nature, extent, or units of service; and, place of service (Pub. L. No. 99-272, Section 9508; 42 CFR part 434).

3. Managed Care – A State may obtain a waiver of statutory requirements in order to develop a system that more effectively addresses the health care needs of its population. For example, a waiver may involve the use of a program of managed care for selected elements of the client population or allow the use of program funds to serve specified populations that would be otherwise ineligible (Section 1115 of the Social Security Act). Managed care providers must be eligible to participate in the program at the time services are rendered, payments to managed care plans should only be for eligible clients for the proper period, and the capitation payment should be properly calculated. Medicaid medical services payments (e.g., hospital and doctors charges) should not be made for services that

are covered by managed care. States should ensure that capitated payments to providers are discontinued when a beneficiary is no longer enrolled for services.

4. Medicaid Health Insurance Premiums – A State may enroll certain Medicare-eligible recipients under Medicare Part B and pay the premium, deductibles, cost sharing, and other charges (42 CFR section 431.625).

5. Disproportionate Share Hospital – Federal financial participation is available for aggregate payments to hospitals that serve a disproportionate number of low-income patients with special needs. The State plan must specifically define a disproportionate share hospital and the method of calculating the rate for these hospitals. Specific limits for the total disproportionate share hospital payments for the State and the individual hospitals are contained in the legislation (Section 1923 of the Social Security Act and 42 USC 1396(r)).

6. Home and Community-Based Services – A State may obtain a waiver of statutory requirements to provide an array of home and community-based services which may permit an individual to avoid institutionalization (42 CFR part 441, subpart G). The HHS OIG has issued a special fraud alert concerning home health care. Problems noted include cost report frauds, billing for excessive services or services not rendered, and use of unlicensed staff. The full alert was published in the *Federal Register* on August 10, 1995, (page 40847) and is available on the Internet from the HHS OIG home page, Special Fraud Alerts section (http://oig.hhs.gov/fraud/fraudalerts.asp).

7. Medicare Part B Buy-In – 42 CFR section 431.625(d)(1) and CMS Medicaid Manual – State Buy-in (Pub24) Sections 110 and 180 specify that Federal Financial Participation (FFP) is not available for States buy-in for non-cash Medical Assistance Only groups, e.g. the special income level group or the medically needy. FFP is available only for those individuals who are considered as some class of cash recipients or deemed to be a cash recipient or one of the Medicare Savings Program (MSP) groups.

B. Allowable Costs/Cost Principles

Recoveries, Refunds, and Rebates (Costs must be the net of all applicable credits)

1. States must have a system to identify medical services that are the legal obligation of third parties, such as private health or accident insurers. Such third-party resources should be exhausted prior to paying claims with program funds. Where a third-party liability is established after the claim is paid, reimbursement from the third party should be sought (42 CFR sections 433.135 through 433.154).

2. The State is required to credit the Medicaid program for (1) State warrants that are canceled and uncashed checks beyond 180 days of issuance (escheated warrants) and (2) overpayments made to providers of medical services within specified time

frames. In most cases, the State must refund provider overpayments to the Federal Government within 60 days of identification of the overpayment, regardless of whether the overpayment was collected from the provider (42 CFR sections 433.300 through 433.320, and 433.40).

3. Section 1903(w)(1) of the Social Security Act (as amended by Pub. L. No. 102-234) provides that, effective January 1, 1992, before calculating the amount of Federal financial participation, certain revenues received by a State will be deducted from the State's medical assistance expenditures. The revenues to be deducted are (1) donations made by health providers and entities related to providers (except for bona fide donations and, subject to a limitation, donations made by providers for the direct costs of out-stationed eligibility workers); and (2) impermissible health care-related taxes that exceed a specified limit (42 USC 1396(b)(w); 42 CFR section 433.57).

   "Provider-related donations" are any donations or other voluntary payments (in-cash or in-kind) made directly or indirectly to a State or unit of local government by (1) a health care provider, (2) an entity related to a health care provider, or (3) an entity providing goods or services under the State plan and paid as administrative expenses. "Bona fide provider-related donations" are donations that have no direct or indirect relationship to payments made under Title XIX (42 USC 1396 *et seq*.) to (1) that provider, (2) providers furnishing the same class of items and services as that provider, or (3) any related entity (42 CFR sections 433.58(d) and 433.66(b)).

   Permissible health care-related taxes are those taxes which are broad-based taxes, uniformly applied to a class of health care items, services, or providers, and which do not hold a taxpayer harmless for the costs of the tax, or a tax program for which CMS has granted a waiver. Health care-related taxes that do not meet these requirements are impermissible health care-related taxes (42 CFR section 433.68(b)).

   The provisions of Pub. L. No. 102-234 apply to all 50 States and the District of Columbia, except those States whose entire Medicaid program is operated under a waiver granted under section 1115 of the Social Security Act (42 CFR part 433; Federal Register, August 13, 1993, 58 FR 43156-43183).

4. Section 1927 of the Social Security Act allows States to receive rebates for drug purchases the same as other payers receive. Drug manufacturers are required to provide a listing to CMS of all covered outpatient drugs and, on a quarterly basis, are required to provide their average manufacturer's price and their best prices for each covered outpatient drug. Based on these data, CMS calculates a unit rebate amount for each drug, which it then provides to States. No later than 60 days after the end of the quarter, the State Medicaid agency must provide to manufacturers drug utilization data. Within 30 days of receipt of the utilization data from the

State, the manufacturers are required to pay the rebate or provide the State with written notice of disputed items not paid because of discrepancies found.

E. Eligibility

1. Eligibility for Individuals

a. The State Medicaid agency or its designee is required to determine client eligibility in accordance with eligibility requirements defined in the approved State plan (42 CFR section 431.10).

b. There are specific requirements that must be followed to ensure that individuals meet the financial and categorical requirements for Medicaid. These include that the State or its designee shall:

(1) Require a written application signed under penalty of perjury and include in each applicant's case records facts to support the agency's decision on the application (42 USC 1320b-7(d); 42 CFR sections 435.907 and 435.913).

(2) Use the income and eligibility verification system (IEVS) to verify eligibility using wage information available from such sources as the agencies administering State unemployment compensation laws, Social Security Administration (SSA), and the Internal Revenue Service to verify income eligibility and the amount of eligible benefits. With approval from HHS, States may use alternative sources for income information. States also: (a) may target the items of information for each data source that are most likely to be most productive in identifying and preventing ineligibility and incorrect payments, and a State is not required to use such information to verify the eligibility of all recipients; (b) with reasonable justification, may exclude categories of information when follow-up is not cost effective; and (c) can exclude unemployment compensation information from the Internal Revenue Service or earnings information from SSA that duplicates information received from another source (42 USC 1320b-7(a); 42 CFR sections 435.948(e) and 435.953).

(3) Require, as a condition of eligibility objections, refuses to obtain a SSN. In redetermining eligibility, if the case record does not contain the required SSN, the agency must require the recipient to furnish the SSN (42 CFR section 435.920(b)) (42 USC 1320b-7(a)(1); 42 CFR sections 435.910 and 920).

(4) Verify each SSN of each applicant and recipient with SSA to insure that each SSN furnished was issued to that individual and to determine whether any others were issued (42 CFR sections 435.910(g) and 42 CFR section 435.920).

(5) Document qualified alien status if the applicant or recipient is not a U.S. citizen (42 USC 1320b-7d).

(6) Redetermine the eligibility of Medicaid recipients with respect to circumstances that may change (e.g., income eligibility), at least every 12 months. The agency may consider blindness and disability as continuing until the review physician or review team determines that the recipient's blindness or disability no longer meets the definition contained in the plan. There must be procedures designed to ensure that recipients make timely and accurate reports of any changes in circumstances that may affect their eligibility. The State must promptly redetermine eligibility when it receives information about changes in a recipient's circumstances that may affect his or her eligibility (42 CFR section 435.916).

c. Qualified aliens, as defined at 8 USC 1641, who entered the United States on or after August 22, 1996, are not eligible for Medicaid for a period of five years, beginning on the date the alien became a qualified alien, unless the alien is exempt from this five-year bar under the terms of 8 USC 1613. States must provide Medicaid to certain qualified aliens in accordance with the terms of 8 USC 1612(b)(2), provided that they meet all other eligibility requirements. States may provide Medicaid to all other otherwise eligible qualified aliens who are not barred from coverage under 8 USC 1613 (the five-year bar). All aliens who otherwise meet the Medicaid eligibility requirements are eligible for treatment of an emergency medical condition under Medicaid, as defined in 8 USC 1611(b)(1)(A), regardless of immigration status or date of entry.

d. As discussed in the General Audit Approach for Medicaid Payments, the auditor will likely combine III.A, "Activities Allowed or Unallowed," III.B, "Allowable Costs/Cost Principles," and III.E, "Eligibility." Therefore, compliance requirements related to amounts provided to or on behalf of eligibles were combined with III.A, "Activities Allowed or Unallowed."

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching

The State is required to pay part of the costs of providing health care to the poor and part of the costs of administering the program. Different State participation rates apply to medical assistance payments. There are also different Federal financial participation rates for the different types of costs incurred in administering the Medicaid program, such as administration (including administration of family planning services), training, computer, and other costs (42 CFR sections 433.10 and 433.15). The auditor should refer to the State plan for the matching rates.

2. Level of Effort

A State waiver may contain a level-of-effort requirement.

3. Earmarking

A State waiver may contain an earmarking requirement.

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable for the administrative costs of the State MFCUs. Not Applicable for all other components of the cluster.

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable.

e. SF-425, *Federal Financial Report* – Applicable (cash status only)

f. CMS-64, Quarterly Statement of Expenditures for the Medical Assistance Program (OMB No. 0938-0067*)* – Required to be used in lieu of the SF-269, Financial Status Report, and is required to be prepared quarterly and submitted electronically to CMS within 30 days after the end of the quarter.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

1. Utilization Control and Program Integrity

Compliance Requirements – The State plan must provide methods and procedures to safeguard against unnecessary utilization of care and services, including long-term care institutions. In addition, the State must have: (1) methods or criteria for identifying suspected fraud cases; (2) methods for investigating these cases; and (3) procedures, developed in cooperation with legal authorities, for referring suspected fraud cases to law enforcement officials (42 CFR parts 455, 456, and 1002).

Suspected fraud should be referred to the State Medicaid Fraud Control Units (42 CFR part 1007).

The State Medicaid agency must establish and use written criteria for evaluating the appropriateness and quality of Medicaid services. The agency must have procedures for the ongoing post-payment review, on a sample basis, of the need for and the quality and timeliness of Medicaid services. The State Medicaid agency may conduct this review directly or may contract with a QIO.

Audit Objectives – To determine whether the State has established and implemented procedures to: (1) safeguard against unnecessary utilization of care and services, including long term care institutions; (2) identify suspected fraud cases; (3) investigate these cases; and (4) refer those cases with sufficient evidence of suspected fraud cases to law enforcement officials.

Suggested Audit Procedures

a. Obtain and evaluate the adequacy of the procedures used by the State Medicaid agency to conduct utilization reviews and identifying suspected fraud.

   (1) Consider the qualifications of the personnel conducting the reviews and identifying suspected fraud. Ascertain that the individuals possess the necessary skill or knowledge by considering the following: (1) professional certification, license, or specialized training; (2) the reputation and standing of licensed medical professionals in the view of peers; and (3) experience in the type of tasks to be performed.

   (2) Consider if the personnel performing the utilization review and identifying suspected fraud are sufficiently organized outside the control of other Medicaid operations to objectively perform their function.

(3) Ascertain if the sampling plan implemented by the State Medicaid agency or the QIO was properly designed and executed.

b. Test a sample of the cases examined by State Medicaid agency or the QIO and ascertain if such examinations were in accordance with the agency's procedures.

c. Test a sample of the identified suspected cases of fraud and ascertain if the agency took appropriate steps to investigate and, if appropriate, make a referral.

d. Based on the above procedures, consider the degree of reliance that can be placed on the utilization review and identification of suspected fraud in performing tests under III.A, "Activities Allowed or Unallowed," III.B, Allowable Costs/Cost Principles," and III.E.1, "Eligibility – Eligibility for Individuals."

2. Inpatient Hospital and Long-Term Care Facility Audits

Compliance Requirement – The State Medicaid agency pays for inpatient hospital services and long-term care facility services through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers. The State Medicaid agency must provide for the filing of uniform cost reports for each participating provider. These cost reports are used to establish payment rates. The State Medicaid agency must provide for the periodic audits of financial and statistical records of participating providers. The specific audit requirements will be established by the State Plan (42 CFR section 447.253).

Audit Objectives – To determine whether the State Medicaid agency performed inpatient hospital and long-term care facility audits as required.

Suggested Audit Procedures

a. Review the State Plan and State Medicaid agency operating procedures and document the types of audits performed (e.g., desk audits, field audits), the methodology for determining when audits are conducted, and the objectives and procedures of the audits.

b. Through examination of documentation, ascertain that the sampling plan was carried out as planned.

c. Select a sample of audits and ascertain if the audits were in compliance with the State Medicaid agency's audit procedures.

d. Based on the above, consider the degree of reliance that can be placed on the inpatient hospital and long term-care facility audits in performing tests under III.A, "Activities Allowed or Unallowed," III.B, Allowable Costs/Cost Principles," and III.E.1, "Eligibility – Eligibility for Individuals."

3. ADP Risk Analysis and System Security Review

Compliance Requirement – State agencies must establish and maintain a program for conducting periodic risk analyses to ensure that appropriate, cost effective safeguards are incorporated into new and existing systems. State agencies must perform risk analyses whenever significant system changes occur. State agencies shall review the ADP system security installations involved in the administration of HHS programs on a biennial basis. At a minimum, the reviews shall include an evaluation of physical and data security operating procedures, and personnel practices. The State agency shall maintain reports on its biennial ADP system security reviews, together with pertinent supporting documentation, for HHS on-site reviews (45 CFR section 95.621).

Audit Objective – To determine whether the State Medicaid agency has performed the required ADP risk analyses and system security reviews.

Suggested Audit Procedures

a. Review the State Medicaid agency's policies and procedures, and document the frequency, timing, and scope of ADP security reviews. This should include any Type II reviews following Statement on Auditing Standards No. 70 (SAS 70) or Statement on Standards for Attestation Engagements No. 16, Reporting on Controls at a Service Organization (SSAE 16) that may have been performed on outside processors (service organizations).

b. Consider the appropriateness and extent of reliance on such reviews based on the qualifications of the personnel performing the risk analyses and security reviews and their organizational independence from the ADP systems.

c. Review the work performed during the most recent risk analysis and security review.

d. Based on the above, consider the degree of reliance that can be placed on the ADP Risk Analysis and System Security Reviews in performing tests under III.A, III.B, and III.E.1.

4. Provider Eligibility

Compliance Requirement – In order to receive Medicaid payments, providers of medical services furnishing services must be licensed in accordance with Federal, State, and local laws and regulations to participate in the Medicaid program (42 CFR sections 431.107 and 447.10; and section 1902(a)(9) of the Social Security Act) and the providers must make certain disclosures to the State (42 CFR part 455, subpart B (sections 455.100 through 455.106)).

Audit Objective – To determine whether providers of medical services are licensed to participate in the Medicaid program in accordance with Federal, State, and local laws and regulations, and whether the providers have made the required disclosures to the State.

Suggested Audit Procedures

a. Obtain an understanding of the State plan's provisions for licensing and entering into agreements with providers.

b. Select a sample of providers receiving payments and ascertain if:

(1) The provider is licensed in accordance with the State Plan.

(2) The agreement with the provider complies with the requirements of the State Plan, including the disclosure requirements of 42 CFR 455 subpart B.

5. Provider Health and Safety Standards

Compliance Requirement – Providers must meet the prescribed health and safety standards for hospital, nursing facilities, and ICF/MR (42 CFR part 442). The standards may be modified in the State plan.

Audit Objective – To determine whether the State ensures that hospitals, nursing facilities, and ICF/MR that serve Medicaid patients meet the prescribed health and safety standards.

Suggested Audit Procedures

a. Obtain an understanding of the State Plan provisions that ensure that payments are made only to institutions that meet prescribed health and safety standards.

b. Select a sample of payments for each provider type (i.e., hospitals, nursing facilities, and ICF/MR) and ascertain if the State Medicaid agency has documentation that the provider has met the prescribed health and safety standards.

6. Medicaid Fraud Control Unit

Compliance Requirement – States are required as part of their Medicaid State plans to maintain a MFCU, unless the Secretary of HHS determines that certain safeguards are met regarding fraud and abuse.

Audit Objective – To determine whether the State ensures suspected criminal violations are referred to an office with authority to prosecute cases of provider fraud.

Suggested Audit Procedures

a. Obtain an understanding of the States policies and procedures that ensure violations of Medicaid laws and regulations by providers are identified and are referred to an office with authority to prosecute cases of provider fraud.

b. Select a sample of violations of Medicaid laws and regulations by providers and ascertain if the cases were referred to the State MFCU or, if the State does not have a MFCU, to an office with authority to prosecute cases of provider fraud.

IV. OTHER INFORMATION

Transfers into Medicaid (Title XIX)

As described in Part 4, Children's Health Insurance Program (CHIP) (CFDA 93.767), III.A.1, "Activities Allowed or Unallowed," qualifying States ***may apply certain Medicaid program expenditures against their available CHIP allotments***. ***In particular, qualifying States may use such Medicaid expenditures in amounts*** up to 20 percent of their available CHIP allotments ***through 2008 and, beginning April 1, 2009, as authorized by the Children's Health Insurance Program Reauthorization Act (CHIPRA), Public Law 111-3 of 2009, up to 100 percent of their available CHIP allotments for FY 2009 and following fiscal years.*** The qualifying States, determined by CMS using the criteria in Pub. L. No. 108-74 section 1(g)(2) and Pub. L. No. 108-127, section 1, are: Connecticut, Hawaii, Maryland, Minnesota, New Hampshire, New Mexico, Rhode Island, Tennessee, Vermont, Washington, and Wisconsin.

Amounts transferred into the State's Medicaid program are subject to the requirements of the Medicaid program when expended and should be included in the audit universe and total expenditures of this program when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amounts transferred in should be shown as expenditures of this program when such amounts are expended.

Improper Payments

Auditors should be alert to the following which have been identified in audit findings both as non-compliance and material weaknesses.

1. Eligibility Determinations

Findings related to eligibility determinations found internal control deficiencies including:

- eligibility determination and re-determination were not performed timely or performed within the timeliness standards,
- lack of internal controls over obtaining adequate documentation used to support eligibility determinations,
- the data inputted into the eligibility system were not accurate,
- clients information were not verified to the Income Eligibility and Verification System (IEVS), and

- program staff did not have sufficient knowledge of program requirements and policies due to high turnover and lack of training.

2. *Medicaid Claims Processing*

Findings related to Medicaid claims processing found significant weaknesses including:

- inadequate documentation to support the payments claimed in the CMS-64;
- payments reported on the CMS-64 were not readily traceable to the individual claims or information in the sub-system or the financial statements;
- inadequate internal control over utilization, fraud and accuracy of the Medicaid claims;
- lack of understanding of when to report payments in the CMS-64;
- lack of internal control in drawing down ARRA funds;
- inadequate internal control to assure that payments to providers were made in compliance with Federal regulations, e.g. payments for services that were not medically necessary and providers were not eligible Medicaid providers; and
- review of cost report and recoupment of rate adjustments were not timely.

3. *Other areas of weaknesses* identified included--

- inadequate monitoring and oversight of subcontractors;
- inadequate monitoring and oversight to assure provider licensing, agreements or required certification were in effect and up-to-date, and that the related documentation were in file or in the Medicaid Management Information System (MMIS);
- inadequate internal control related to implementation of MMIS replacement system;
- inadequate internal control regarding user access to the MMIS including terminated employees' user access rights; and
- MMIS was not programmed and updated timely and accurately with proper information.

Summary of Statutory Changes Affecting This Cluster Over Time

AFFORDABLE CARE ACT – MEDICAID

(Enacted March 23, 2010) Comprised of the Patient Protection and Affordable Care Act (PPACA), and Pub. L. No. 111-148 and the Health Care and Education Reconciliation Act (HCERA) of 2010, Pub. L. No. 111-152

Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148

Title II – Role of Public Programs

Subtitle A – Improved Access to Medicaid

Section 2001. Medicaid Coverage for the Lowest Income Populations (as amended by Sections 10201(b)-(c) and Sections 1004(b)(1) and 1201 of HCERA)

- **Eligibility Expansion in 2014:** This provision creates a new mandatory Medicaid eligibility group under the State plan. The new eligibility group consists of individuals whose income is under 133 percent of the FPL, who are under 65, not pregnant and not otherwise covered under Medicaid. In addition, income eligibility for children ages 6 to 18 years of age is expanded from 100 percent of the FPL to 133 percent of the FPL. States also have the option to cover individuals over 133 percent of the FPL and are permitted to phase-in the optional extension of eligibility over 133 percent, so long as the State does not extend eligibility to higher-income individuals before covering lower-income individuals. For both the mandatory expansion to 133 percent and for any optional expansion over 133 percent, this provision requires that parents (or caretaker relatives) may not be enrolled under the Medicaid State plan or waiver of the plan unless their child is enrolled under the State plan or waiver of the plan or under other health insurance coverage. States have the option to provide a period of presumptive eligibility for parents and non-pregnant childless adults in the same manner they provide a period of presumptive eligibility for children and pregnant women.

- **Early Expansion Option:** Effective April 1, 2010, this provision grants States the option to expand coverage early to individuals who will be in the new Medicaid expansion group prior to the mandatory eligibility expansion in 2014.

- **Benefit Requirements:** This provision requires the new Medicaid expansion population to receive benchmark or benchmark-equivalent coverage consistent with Section 1937 of the SSA, regardless of whether the State has elected the option to provide benchmark or benchmark-equivalent coverage. This benchmark benefit requirement applies to individuals covered under the early expansion option as well as individuals who will be covered in 2014. Individuals who are currently exempt from the application of benchmark and benchmark-equivalent coverage will continue to remain exempt from this requirement; this includes mandatory pregnant women, blind and disabled individuals, and dual eligible individuals and other individuals as enumerated in Section 1937(a)(2)(B) of the SSA. This provision also adds mental health services and prescription drug coverage to the list of required basic

services in benchmark-equivalent coverage and requires benchmark or benchmark-equivalent plans to comply with mental health parity services requirements. Beginning in 2014, benchmark and benchmark-equivalent plans must provide at least essential health benefits as described in Section 1302(b).

- **Medicaid Maintenance of Effort Requirement:** As a condition of continuing to receive Federal payments under Medicaid, this provision imposes a Medicaid maintenance of effort (MOE) requirement; the MOE requirement prohibits States from imposing eligibility standards, methodologies, or procedures that are more restrictive than those that were in effect as of the date of enactment. For adults, the Medicaid MOE requirement expires when the Exchange in the State is fully operational, but remain in effect for children under age 19 through September 30, 2019. A State is not considered to be in violation of the MOE if it applies the modified adjusted gross income standard (as described in Section 2002) under the early expansion option prior to 2014. States also will not be in violation if they expand eligibility or move waiver populations into coverage under the State plan. However, States must continue comply with the MOE requirements as a condition of receiving increased Federal medical assistance percentage (FMAP) payments as set forth in ARRA. This provision includes an exception to the MOE requirements for non-pregnant, non-disabled adults whose income exceeds 133 percent of the FPL, if during the period between January 1, 2011 and December 31, 2013, a State certifies, with the Secretary, that the State is projected to have a budget deficit.

- **Requirement for Continuation of Political Subdivision Payments:** Effective upon enactment, this provision provides that a State is not eligible for the increased FMAP available for the Medicaid expansion nor the ARRA FMAP increase if a State requires political subdivisions to pay a greater percentage of the non-Federal share of Medicaid expenditures than they were paying on December 31, 2009. Voluntary contributions by a political subdivision are not considered a violation of this provision.

- **Financing the Medicaid Expansion:** This provision establishes that, for the purpose of applying an increased FMAP, the term "newly eligible" includes individuals up to 133 percent of FPL, who are not under 19 years of age and who, as of December 1, 2009, were not eligible under the Medicaid State plan or under a waiver of the plan for full benefits or benchmark or benchmark-equivalent coverage. Individuals who were eligible, but not enrolled, for such benefits under a waiver with an enrollment ceiling are also considered to be "newly eligible." This provision also establishes a uniform FMAP for all 50 States and the District of Columbia for expenditures related to newly eligible Medicaid beneficiaries. The Federal government will match the costs of covering "newly eligible" individuals as follows: 2014-2016: 100 percent; 2017: 95 percent; 2018: 94 percent; 2019: 93 percent; and 2020 and years thereafter: 90 percent. These matching rates do not apply to the early expansion option described above. States that opt to expand coverage between April 1, 2010 and January 1, 2014 will receive the regular Medicaid matching rate for such coverage until January 1, 2014.

- **"Expansion State" Policy:** This provision defines "expansion States" as States that currently offer health coverage statewide to parents and non-pregnant childless adults with income that is at least 100 percent of the FPL. To qualify as an expansion State, the coverage offered to parents and non-pregnant childless adults must include inpatient hospital services, coverage that is not dependent on access to employer coverage, an employer contribution for coverage, and coverage that is not limited to premium assistance, hospital-only benefits, a high deductible plan, or alternative benefits under a Health Opportunity Account. For these expansion States, this provision provides an increased FMAP to reduce the State share of costs attributable to previously eligible, non-pregnant, childless adults under 133 percent of the FPL.

  For previously eligible childless adults with incomes up to 133 percent of the FPL, each expansion State will receive an increase in its FMAP equal to a specified percentage of the gap between its regular Medicaid matching rate and the enhanced match rate provided to other States. The "transition percentage" changes by year as follows: 2014: 50 percent; 2015: 60 percent; 2016: 70 percent; 2017: 80 percent; 2018: 90 percent; 2019 and years thereafter: 100 percent. In 2019 and thereafter, expansion States will be responsible for the same State share of the costs of covering non-pregnant, childless adults as non-expansion States will be (e.g., 7 percent in 2019, 10 percent thereafter). Also, between January 1, 2014 and December 31, 2015, a State that does not have any "newly eligible" individuals and has not been approved to divert its Medicaid disproportionate share hospital payments to fund coverage expansions will receive a 2.2 percentage point increase in the FMAP for the costs of covering non-newly eligible individuals.

- **Reporting Requirements:** Beginning in January 2015 and annually thereafter, this provision requires each State to submit a report to the Secretary that includes: 1) the total number of enrolled and newly enrolled individuals in the State plan or waiver of the plan for the fiscal year ending on September 30 of the preceding calendar year, disaggregated by population; 2) a description of outreach and enrollment processes used by the State; and 3) any other data reporting determined necessary by the Secretary to monitor enrollment and retention. Beginning in April 2015 and annually thereafter, the Secretary is required to submit a Report to Congress on the total enrollment and new enrollment in Medicaid on a national and State-by-State basis and shall include recommendations for administrative or legislative changes to improve enrollment in Medicaid.

Section 2002. Income Eligibility for Nonelderly Determined using Modified Gross Income (as amended by Section 1004 of HCERA)

This provision establishes new rules, effective January 1, 2014, for determining eligibility for Medicaid, CHIP, and the Exchanges. These rules will generally replace the use of disregards in Medicaid and CHIP with the application of a modified adjusted gross income (MAGI) standard. States are required, when determining MAGI eligibility, to utilize as the applicable income of an individual an amount equal to the individual's MAGI reduced by the dollar amount that is determined in accordance with Section 1902(e)(14). This requirement effectively raises the upper income eligibility level for the Medicaid expansion from 133 percent of the FPL to 138 percent.

This provision also generally prohibits the use of income disregards and asset tests in Medicaid, with certain exceptions for specific individuals, including the disabled and elderly, and individuals whose income is determined as a result of eligibility for other Federal or State assistance programs (e.g., SSI, foster care). These individuals are also exempt from the MAGI requirements.

This provision requires States to establish income eligibility thresholds for Medicaid populations using MAGI and household income that are not less than the effective income eligibility levels that are applied under the State plan or waiver on the date of enactment. Such eligibility thresholds are to be submitted to the Secretary for approval and the Secretary must ensure that the thresholds proposed by the State will not result in children losing coverage. This provision also requires States to develop an equivalent income test that ensures that individuals eligible for Medicaid on the date of enactment do not lose coverage during the transition to the MAGI standard, and requires that MAGI and household income be determined based on an individual's income as of the point in time at which the application for Medicaid is processed.

Section 2003. Premium Assistance for Employer-Sponsored Insurance (as amended by Section 10203(b))

Effective as if included in Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), this provision aligns the definition of "cost effective" in Sections 1906(e)(2) and 1906A(a) of the SSA to the definition in Section 2105(c)(3)(A) of this Act and applies the definition to adults as well as to children. CHIPRA requires that premium assistance be cost effective relative to either the amount of expenditures under the State child health plan, including administrative expenditures, that the State would have made to provide comparable coverage to the child or family involved; or the aggregate amount of expenditures a State would have made under the child health plan, including administrative expenditures, for providing coverage under the plan for the child or their family.

Section 2004. Medicaid Coverage for Former Foster Care Children (as amended by Section 10201(a))

Effective January 1, 2014, this provision creates a new mandatory eligibility category for individuals who have aged-out of the foster care system and had previously received Medicaid while in foster care, so that they can remain eligible for Medicaid until they turn 26. Presumptive eligibility rules are amended to apply to this new mandatory eligibility category. This provision also specifies that former foster care children remain eligible for the full scope of Medicaid benefits, rather than benchmark or benchmark-equivalent benefits as mandated for individuals receiving coverage under Section 2001.

Section 2005. Payments to territories (as amended by Section 10201(d) and Section 1204 of HCERA)

This provision specifies the terms and conditions for Territories that choose to establish an Exchange and provides $1 billion to the Territories for this purpose effective for CYs 2014-2019. In addition, it raises the Territories' spending caps by $6.3 billion, beginning on July 1, 2011, through FY 2019. As of July 1, 2011, this provision permanently raises the Territories' FMAP rate from 50 percent to 55 percent.

Section 2006. Special Adjustment to FMAP Determination for Certain States Recovering from a Major Disaster (as amended by Section 10201(c)(5))

Starting January 1, 2011, this provision reduces projected decreases in the FMAP for States that have experienced major, statewide disasters. The criteria listed for a State to qualify for an FMAP adjustment are: 1) the President has declared for the State a major disaster under the Stafford Disaster Relief and Emergency Assistance Act during the preceding seven fiscal years, and determined as a result of such disaster that every county or parish in the State warranted public assistance under that Act; and 2) the State would have a decrease in its FMAP of at least three percentage points from the previous fiscal year, including a decrease in the base FMAP in any covered fiscal year as established by ARRA. Under this provision, a qualifying State would see an initial 50 percent reduction in the FMAP decrease it would otherwise experience under current law, and a 25 percent reduction in the subsequent years the State qualifies for this adjustment.

Subtitle C – Medicaid and CHIP Enrollment Simplification

Section 2201. Enrollment Simplification and Coordination with State Health Insurance Exchanges

The provision requires States, as a condition of participation in Medicaid and receipt of Federal financial participation for calendar quarters beginning after January 1, 2014, to establish procedures for:

- Enabling individuals to apply and renew their Medicaid eligibility through an Internet website;
- Enrolling without any further determination individuals who are identified by an Exchange established by the State as eligible for Medicaid or CHIP;
- Ensuring that individuals who are determined ineligible for Medicaid or CHIP are screened for eligibility for enrollment in qualified health plans offered by an Exchange, including eligibility for any premium credits and cost-sharing reductions;
- Ensuring that the Medicaid agency, CHIP agency, and Exchange utilize a secure electronic interface to allow for Medicaid, CHIP, and premium assistance eligibility determinations;

- Coordinating Medicaid, CHIP, and Exchange coverage including EPSDT services; and

- Conducting outreach to and enrolling vulnerable and underserved populations including children, homeless youth, children and youth with special health care needs, pregnant women, racial and ethnic minorities, rural populations, victims of abuse or trauma, individual with mental health or substance-related disorders, and individuals with HIV/AIDS.

In addition, the provision permits a State Medicaid and State CHIP agency to make eligibility determinations for premium credits and cost-sharing reductions on behalf of the Exchange. By not later than January 1, 2014, the provision requires States to have an Internet website that allows for comparisons of benefits, premiums, and cost-sharing applicable to an individual under Medicaid with those available under a qualified health plan offered through an Exchange. These new requirements are included in a new Section 1943 of the SSA.

Section 2202. Permitting Hospitals to Make Presumptive Eligibility Determinations for All Medicaid Eligible Populations

Effective January 1, 2014, this provision allows hospitals and clinics that are participating Medicaid providers to be a qualified entity for purposes of determining, on the basis of preliminary information, whether any individual is eligible for Medicaid for purposes of providing medical assistance during a presumptive eligibility period. This provision broadens the populations for which presumptive eligibility decisions may be made. The Secretary of HHS shall establish guidance related to this provision.

Subtitle D – Improvements to Medicaid Services

Section 2301. Coverage for Freestanding Birth Center Services

Effective upon enactment, this provision requires States to cover services provided by freestanding birth centers as a mandatory service. A freestanding birth center service is defined as a service provided in a health facility that is not a hospital, where childbirth is planned to occur away from the pregnant woman's residence, is licensed or otherwise approved by the State, and complies with State requirements. A grace period is granted to provide States an opportunity to pass legislation to amend their Medicaid State plans, if necessary under State law.

Section 2302. Concurrent Care for Children

Effective upon enactment, this provision allows children who are enrolled in either Medicaid or CHIP to receive hospice services without foregoing curative treatment related to a terminal illness.

Section 2303. State Eligibility Option for Family Planning Services

Effective upon enactment, this provision allows State Medicaid programs to cover family planning services and supplies without obtaining a waiver for individuals who are not pregnant and do not exceed the highest eligibility level for pregnant women. This provision also allows for such coverage during a presumptive eligibility period and adds family planning services and supplies as a required element of benchmark or benchmark-equivalent plans.

Section 2304. Clarification of Definition of Medicaid Medical Assistance

Effective upon enactment, this provision amends Section 1905 of the SSA to clarify the original intent of Congress that "medical assistance" encompasses both payment for services provided and the services themselves.

Subtitle E – New Options for States to Provide Long-Term Services and Supports

Section 2401. Community First Choice Option (as amended by Section 1205 of HCERA)

The provision establishes a new Medicaid State Plan option effective October 1, 2011 to allow States to cover home and community-based attendant services and supports for individuals with incomes not exceeding 150 percent of the FPL or, if greater, who have been determined to require an institutional level of care. It also requires States to make such services and supports available to individuals under a person-centered plan of care for purposes of assisting them in accomplishing activities of daily living, instrumental activities of daily living, and health-related tasks through hands-on assistance, supervision, or cueing. States are provided an additional six percentage point increase in Federal Medicaid matching funds for services and supports provided to such individuals. The provision requires State compliance with certain requirements, an evaluation, and two Reports to Congress, with an interim report due not later than December 31, 2013 and a final report due by December 31, 2015.

Section 2402. Removal of Barriers to Providing Home and Community-Based Services (HCBS)

Amends Section 1915(i) of the SSA effective October 1, 2010 to permit States to cover individuals who are eligible for home and community-based services under a Section 1915(c), (d), or (e) waiver or Section 1115 demonstration and also establishes a 5-year period to phase-in the enrollment of eligible individuals for States that choose to target services to specific populations with 5-year renewal periods, lifts the prohibition on covering other services, and eliminates a State's option to cap enrollment and disregard statewideness.

Section 2403. Money Follows the Person Rebalancing Demonstration

The provision extends the demonstration, which currently runs through FY 2011, through FY 2017 and, effective April 22, 2010, shortens the length of time from six months to 90 days that an individual is required to reside in a facility prior to transitioning to the community. For purposes of calculating the 90-day period, the provision precludes the counting of any days during which an individual resides in an institution on the basis of receiving short-term

rehabilitative services covered by Medicare. Accordingly, $450 million for each of FYs 2012-2016 is provided for grants, of which not more than $1.1 million may be used each year for research on and a national evaluation of the program.

Section 2404. Protection for Recipients of HCBS Against Spousal Impoverishment

For a 5-year period beginning on January 1, 2014, the provision requires States to extend impoverishment protections to spouses of individuals receiving Medicaid HCBS, as they are currently required to do for spouses of individuals residing in an institutional setting.

Subtitle F – Medicaid Prescription Drug Coverage

Section 2501. Prescription Drug Rebates (as amended by Section 1206 of HCERA)

Effective January 1, 2010, this provision increases the minimum rebate for single source and innovator multiple source outpatient prescription drugs from 15.1 percent to 23.1 percent. Under the provision, the minimum rebate for brand name drugs with clotting factors and drugs with pediatric indications is increased from 15.1 percent of average manufacturer's price (AMP) to 17.1 percent of AMP and the rebate percentage for generic drugs is increased from 11 percent to 13 percent of AMP. This provision allows the Federal government to capture savings from these increases in the minimum rebate percentages.

Effective upon enactment, this provision requires drugs dispensed to Medicaid managed care enrollees to be subject to the same rebate amount required under Section 1927 of the SSA. Capitation rates paid to a managed care organization (MCO) must be based on the actual costs related to the rebates and are subject to regulations requiring actuarially sound rates. MCOs are required to report on a timely basis information on the total number of units of each dosage form and strength and package size by National Drug Code (NDC) of each covered outpatient drug dispensed to Medicaid managed care enrollees.

Effective January 1, 2010, this provision specifies the amount of the rebate for reformulated drugs. With respect to a drug that is a line extension of a single source drug or an innovator multiple source drug that is an oral solid dosage form, the rebate obligation will be the amount computed under Section 1927 of the SSA or, if greater, the product of the AMP for the line extension drug, the highest additional rebate under Section 1927 for any strength of the original single source drug or innovator multiple source drug, and the total number of units of each dosage form and strength of the line extension product paid for under the State plan in the rebate period. These requirements also apply to orphan drugs. In addition, this provision establishes a limit on the rebate amount for brand name drugs at 100 percent of AMP.

Section 2502. Elimination of Exclusion of Coverage of Certain Drugs

Beginning on January 1, 2014, this provision prohibits States from excluding smoking cessation drugs, barbiturates, and benzodiazepines from Medicaid coverage.

Section 2503. Providing Adequate Pharmacy Reimbursement (as amended by Section 1101(c) of HCERA)

Effective October 1, 2010, this provision revises the Federal Upper Limit (FUL) to be no less than 175 percent of the weighted average (determined on the basis of utilization) of the most recently reported monthly AMP for pharmaceutically and therapeutically equivalent multiple source drugs. This section also clarifies the definition of AMP to include sales by: 1) wholesalers for drugs distributed to retail community pharmacies; and 2) retail community pharmacies that purchase drugs directly from manufacturers. This section also excludes from the definition of AMP prompt payments, discounts provided by manufactures, and other discounts, and eliminates the requirement that AMP data be disclosed to the public. This provision also adds a requirement that the weighted average of monthly AMPs and the average retail survey prices be disclosed to the public.

Subtitle G – Medicaid Disproportionate Share Hospital (DSH) Payments

Section 2551. Disproportionate Share Hospital (DSH) Payments (as amended by Sections 10201(e)-(f) and Section 1203 of HCERA)

As amended, this provision reduces States' DSH allotments by an aggregate annual reduction totaling $18.1 billion for FYs 2014-2020 by applying a methodology that imposes the largest reductions on States with the lowest percentage of uninsured or States that do not target their DSH payments to hospitals with a high volume of Medicaid inpatients and high uncompensated care. A smaller reduction is applied to low DSH States. In addition, this provision extends Hawaii's DSH allotment through FY 2012, establishes Hawaii as a low DSH State beginning in FY 2013, and extends Tennessee's DSH allotment through FY 2013.

Subtitle H – Improved Coordination for Dual Eligible Beneficiaries

Section 2602. Providing Federal Coverage and Payment Coordination for Dual Eligible Beneficiaries

No later than March 1, 2010, this provision requires the Secretary to establish a Federal Coordinated Health Care Office within CMS, intended to bring together officials and employees of the Medicare and Medicaid programs to more effectively integrate benefits under those programs, and improve the coordination between the Federal and State governments for individuals eligible for both Medicare and Medicaid benefits ("dual eligibles") to ensure that they have full access to the items and services to which they are entitled. It requires the Secretary, as part of the President's budget, to submit an annual Report to Congress containing recommendations for legislation that would improve care coordination and benefits for dual eligibles.

Subtitle I – Improving the Quality of Medicaid for Patients and Providers

Section 2702. Medicaid Health Care-Acquired Conditions

This provision directs the Secretary to identify State practices that prohibit payment for health care-acquired conditions and incorporate such practices, as appropriate for application to Medicaid, into regulations in effect as of July 1, 2011. The regulations will prohibit Medicaid payment for services related to health care-acquired conditions specified in the regulation. The Secretary shall apply forthcoming Medicare regulations prohibiting payment for health care-acquired conditions as appropriate to the Medicaid program. Further, the Secretary may *exclude certain payment exclusions identified for Medicare if those conditions are inapplicable to Medicaid beneficiaries.*

Section 2703. State Option to Provide Health Homes for Enrollees with Chronic Conditions

Beginning January 1, 2011, this provision creates a new Medicaid State plan option under which States may provide payment for designated providers or teams of health care professionals for furnishing health home services, including care management, transitional care, patient and family support, referrals to community and social support services, and use of HIT, for individuals with at least two chronic conditions, one chronic condition and at-risk of a second chronic condition, or one serious and persistent mental health condition. It allows States to claim a Federal Medicaid matching rate of 90 percent during the first eight fiscal quarters for such health home services and provides $25 million in planning grants that the Secretary may award States for purposes of developing its State plan amendment. As a condition of receiving payment for health home services, designated providers must report to the State on quality measures and when appropriate and feasible, use HIT to provide such information.

This provision requires the Secretary to contract for an independent evaluation of States that have exercised this option on the effects of this option on reducing admission rates to hospitals, emergency rooms, and skilled nursing facilities (SNFs). Further, the Secretary shall provide an interim Report to Congress by January 1,2014 based on State survey data collected by the Secretary, and a final Report to Congress on the results of the independent evaluation by no later than January 1, 2017.

Subtitle K – Protections for American Indians and Alaska Natives

Section 2901. Special Rules Relating to Indians

This provision specifies that Indians with incomes at or below 300 percent of the FPL and enrolled in coverage through a State Exchange are exempt from cost-sharing (as specified in Section 1402(d)). This provision also establishes health programs operated by the Indian Health Service (IHS), Indian tribes, tribal organizations, or Urban Indian Organizations as the payer of last resort for services provided by those entities to eligible individuals. Finally, this section amends the Express Lane Option added by CHIPRA to specify that the IHS, an Indian tribe, tribal organization, or urban Indian organization can make Express Lane determinations.

Section 2902. Elimination of the Sunset for Medicare Part B Services

Effective January 1, 2010, this provision eliminates the five-year sunset of reimbursement (scheduled to take effect for services performed after December 31, 2009) for Part B services furnished by a hospital or skilled nursing facility of the IHS, whether operated by the IHS or by an Indian tribe or tribal organization.

Subtitle L – Maternal and Child Health Services

Section 2951. Maternal, Infant, and Early Childhood Home Visiting Programs

This provision establishes a grant program for States, Territories, and Indian Tribes to create maternal, infant, and early childhood home visitation programs. The provision also requires States to conduct an initial needs assessment within six months of the date of enactment to identify populations who could benefit from these programs. The Secretary, with an independent advisory body, shall develop a plan within one year of enactment to establish the grant program, giving priority to programs that target specific high-risk populations. The Secretary is responsible for setting benchmarks, evaluating applications, and developing procedures and requirements for States, tribal organizations, and non-profit organizations to propose and implement a program that demonstrates quantifiable and measurable improvement on several maternal, child, and infant health benchmarks. This provision also requires a Report to Congress by March 31, 2015 on the Secretary's evaluation of the initial State needs assessments, and a Report to Congress by December 31, 2015 on the status of grants authorized under this program.

Section 2954. Restoration of Funding for Abstinence Education

This provision restores funding for Abstinence Education programs (Section 510 of the SSA) through FY 2014.

Health Care and Education Reconciliation Act (HCERA) of 2010, Pub. L. No. 111-152

Subtitle C – Medicaid

Section 1202. Improving Payments for Primary Care Services

For 2013 and 2014, this provision increases Medicaid fee-for-service and managed care payments for primary care services to equal that of payments under Medicare Part B. The provision defines primary care services as evaluation and management services and services related to immunizations delivered by a physician with a primary care designation of family medicine, general internal medicine, or pediatric medicine. The increase in payment for such services will equal a 100 percent Federal match.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.889 NATIONAL BIOTERRORISM HOSPITAL PREPAREDNESS PROGRAM

I. PROGRAM OBJECTIVES

The purpose of the National Bioterrorism Hospital Preparedness Program (commonly known as HPP) is to enable eligible entities to improve surge capacity and capability and enhance community and hospital preparedness for public health emergencies. The primary focus of the HPP is to build medical surge capability through associated planning, personnel, equipment, training and exercise capabilities at the State and local levels. The goal is a collective vision for National preparedness, and establishes National Priorities to guide preparedness efforts at the Federal, State, local and tribal levels.

II. PROGRAM PROCEDURES

The HPP is administered by the Assistant Secretary for Preparedness and Response (ASPR), a Staff Division of the Department of Health and Human Services. The activities under these programs are coordinated with the Centers for Disease Control and Prevention and other Federal entities that assist in State and local public health and medical preparedness efforts.

The HPP makes cooperative agreement awards to the health departments of all 50 States, the District of Columbia, the nation's three largest municipalities (New York City, Chicago, and Los Angeles County), the Commonwealths of Puerto Rico and the Northern Mariana Islands, the territories of American Samoa, Guam and the U.S. Virgin Islands, the Federated States of Micronesia, and the Republics of Palau and the Marshall Islands. The award instrument is a cooperative agreement.

Source of Governing Requirements

This program is authorized by Section 319C-2 of the Public Health Service Act (42 USC 247d-3b), as amended by the Pandemic and All-Hazards Preparedness Act of 2006 (Pub. L. No. 109-417). There are no program regulations for this program.

Availability of Other Program Information

Additional program can be found at
http://www.phe.gov/Preparedness/planning/hpp/Pages/default.aspx

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Funds may be used to achieve the preparedness activities described in Pub. L. No. 109-417, Sections 2802(b)(1), (3)-(6) (42 USC 300hh-1(b)(1), (3)-(6)), which include, but are not limited to:

1. Setting up Emergency Systems for Advance Registration of Volunteer Health Professionals (ESAR VHP) systems within the State.

2. Developing statewide plans and community-wide plans for responding to public health and medical emergencies coordinated with the capacities of applicable national, State, and local health agencies and health care providers, including poison control centers.

3. Training or workforce development to enhance the operation of public health laboratories

4. Improving methods to enhance the safety of workers and workplaces in the event of any hazard.

5. Enhanced training and planning to protect the health and safety of personnel, including health care professionals, involved in responding to many different planning scenarios.

6. Training of public health and health care personnel to (1) recognize and treat the mental health consequences of all hazards, and (2) assist in providing appropriate health care for large numbers of individuals.

7. Activities to address the health security needs of children and other vulnerable populations.

8. The purchase or upgrade of equipment (including stationary or mobile communications equipment), supplies, pharmaceuticals or other priority countermeasures to enhance preparedness for and response to all hazards.

9. Conducting exercises to test the capability and timeliness of public health and medical emergency response activities.

G. Matching, Level of Effort, Earmarking

1. Matching

Starting in FY 2009, the amount of non-federal matching funds is 5 percent of the award amount. In FY 2010 and each year thereafter, the amount of match is 10 percent of the award amount (73 FR 28471, May 16, 2008; subsequent Funding Opportunity Announcements (FOA) (section 3.2 of FY 10 FOA)).

2.1 Level of Effort – *Maintenance of Effort*

Awardees shall maintain expenditures for health care preparedness at a level that is not less than the average level of such expenditures maintained by the entity for the preceding 2-year period. The MOE requirement refers to the awardee's expenditures (i.e., State (or political subdivision) contributions for healthcare preparedness, not Federal dollars) and may include expenditures for surge capacity investments such as (1) beds; (2) isolation; (3) decontamination; (4) personal protective equipment;
(5) pharmaceuticals; (6) mobile medical assets; (7) interoperable communications equipment; and (8) laboratory equipment and trainings (Section 319C-2(h), PHS Act, as amended; 73 FR 28472, May 16, 2008; subsequent Funding Opportunity Announcements (FOA) (Section 3.3.1 of FY 10 FOA)).

2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting Under the Transparency Act – Applicable

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.914 HIV EMERGENCY RELIEF PROJECT GRANTS

I. PROGRAM OBJECTIVES

The objective of this program is to improve access to a comprehensive continuum of high-quality community-based primary medical care and support services in metropolitan areas that are disproportionately affected by the incidence of Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS). The statute refers to both persons infected with HIV and those who have clinically defined AIDS. These terms are used interchangeably in this compliance supplement but refer to this total universe of eligible individuals.

Emergency financial assistance, in the form of formula-based funding and supplemental project-based funding, is provided to eligible metropolitan areas (EMAs) and transitional grant areas (TGAs) to develop, organize, and operate health and support services programs for infected individuals and their care givers. The supplemental grants are discretionary awards and are awarded, following competition, to EMAs and TGAs that demonstrate need beyond that met through the formula award. They must also demonstrate the ability to use the supplemental amounts quickly and cost-effectively. Other criteria, contained in annual application guidance documents, may also apply. All EMAs and TGAs that are receiving formula assistance are also receiving supplemental assistance.

II. PROGRAM PROCEDURES

Administration

The Health Resources and Services Administration (HRSA), a component of the Department of Health and Human Services, administers the HIV emergency relief programs. HRSA uses data reported to and confirmed by the Centers for Disease Control and Prevention (CDC) to determine eligibility (i.e., any metropolitan area for which there has been reported to and confirmed by the Director of CDC a cumulative total of more than 2,000 cases of AIDS for the most recent 5 calendar-year period for which data are available) and to establish the formula for allocation of funds. A TGA is defined as "... a metropolitan area for which there has been reported to, and confirmed by, the Director of the Centers for Disease Control and Prevention a cumulative total of at least 1000, but fewer than 2000, cases of AIDS during the most recent period of 5 calendar years for which such data is available. "

A metropolitan area is not eligible if it does not have an overall population of 50,000 or more. With respect to an EMA that received funding in fiscal year (FY) 2006, the boundaries for determining eligibility are those that were in effect for the area in FY 1994. For areas becoming eligible for funding after FY 2006, the boundaries are those in effect at the time the area first receives funding under this program.

At least two-thirds (66 2/3 percent) of the appropriated amount is made available for the EMAs' and TGA's formula allocation and the remainder is awarded as supplemental project assistance on the basis of demonstrated need and other factors. EMAs and TGAs are funded for the formula and supplemental allocation and project assistance on the basis of a single application and a combined award.

An extension of TGA status is authorized if it has: (1) a cumulative total between 1,400-1,500 living cases of AIDS as of December 31 of the most recent calendar year for which data is available; and (2) less than 5 percent of an unobligated balance from its total Part A award. Funds previously awarded to TGAs that lose their status due to not meeting the eligibility and continued status requirements will be transferred to the State in which the TGA is located for 3 consecutive years.

Funds are made available to the chief elected official of the EMA or TGA that administers the public health agency that provides outpatient and ambulatory services to the greatest number of individuals with AIDS in the jurisdiction in accordance with statutory requirements and program guidelines. Day-to-day responsibility for the grant is ordinarily delegated to the jurisdiction's public health department, and some administrative functions may be outsourced to a private entity. The chief elected official of the jurisdiction is also required to establish or designate an HIV health services planning council, which carries out a planning process, coordinating with other State, local and private planning and service organizations, and establishes the priorities for allocating funds. Newly eligible areas designated as TGAs in FY 2007 and beyond may be exempt from the requirement to establish and use an HIV health services planning council.

Consistent with funding and service priorities established through the public planning process, the receiving jurisdiction uses the funds to provide direct assistance to public entities or private non-profit or for-profit entities to deliver or enhance HIV/AIDS-related core and support services; and, within established limits, for associated administrative activities. These administrative activities include EMA or TGA oversight of service provider performance and adherence to their subgrant or contractual obligations. Most of these service providers are non-profit organizations.

Source of Governing Requirements

This program is authorized under the Ryan White HIV/AIDS Treatment Modernization Act of 2006 (Pub. L. No. 109-415), as extended and amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. No. 111-87). This program is codified at 42 USC 300ff-11 through 300ff-17.

There are no program regulations specific to this program.

Availability of Other Program Information

Additional information about this program is available at http://hab.hrsa.gov/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Activities Allowed

1. Funds may be used only for core medical services, support services, and administrative expenses (42 USC 300ff-14(a)).

    a. Core medical services with respect to an individual with HIV/AIDS (including co-occurring conditions, i.e., one or more adverse health conditions of an individual with HIV/AIDS, without regard to whether the individual has AIDS or whether the conditions arise from HIV) means (1) outpatient and ambulatory health services; (2) AIDS Drug Assistance Program treatments; (3) AIDS pharmaceutical assistance; (4) oral health care; (5) early intervention services meeting the requirements of42 USC 300ff-14(e); (6) health insurance premium and cost sharing assistance for low-income individuals; (7) home health care; (8) medical nutrition therapy; (9) hospice services; (10) home and community-based health services; (11) mental health services; (12) substance abuse outpatient care; and (13) medical case management, including treatment adherence services (42 USC 300ff-14(c)(3)).

    b. Support services means services that are needed for individuals with HIV/AIDS to achieve their medical outcomes (those outcomes affecting the HIV-related clinical status of an individual with HIV/AIDS) (for example, respite care for persons caring for individuals with HIV/AIDS, outreach services, medical transportation, linguistic services, referrals for health care and support services, and such other services specified by HRSA) (42 USC 300ff-14(d)).

    c. Administrative expenses at the grantee level include activities related to (1) routine grant administration and monitoring (for example, development of applications, receipt and disbursal of program funds, development and establishment of reimbursement and accounting systems, development of a clinical quality management program, preparation of routine programmatic and financial reports, and compliance with grant conditions and audit requirements); (2) contract development, solicitation review, award, monitoring, and reporting; and (3) activities carried out by the HIV health services planning council (.42 USC 300ff-14(h)(3)(A) and 300ff-12(b)).

d. Subcontractor administrative expenses include usual and recognized overhead activities, management oversight of funded activities, and other types of program support such as quality assurance, quality control, and related activities (42 USC 300ff-14(h)(3)(B)).

Activities Unallowed

1. Funds may not be used to make payment for any item or service if payment has already been made or can reasonably be expected to be made under any State compensation program, under an insurance policy or any Federal or State health benefits program, or by an entity that provides health services on a pre-paid basis except for programs administered by or providing the services of the Indian Health Service (42 USC 300ff-15(a)(6)).

2. Funds may not be used to purchase or improve land or to purchase, construct or make permanent improvement to any building. Minor remodeling is allowed (42 USC 300ff-14(i)).

3. Funds may not be used to provide individuals with hypodermic needles or syringes (42 USC 300ff-1).

4. Funds may not be used for AIDS programs, or to develop materials, designed to promote or encourage, directly, intravenous drug use or sexual activity, whether homosexual or heterosexual (42 USC 300ff-84).

E. Eligibility

1. Eligibility for Individuals

Eligible beneficiaries are individuals or families of individuals with HIV/AIDS. To the maximum extent practicable, services are to be provided to eligible individuals regardless of their ability to pay for the services and their current or past health condition (42 USC 300ff-15(a)(7)(A));.

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility of Subrecipients

The EMA or TGA may make funds available to public or private non-profit entities or to private for-profit entities if they are the only available providers of quality HIV care in the area (42 USC 300ff-14(b)(2)).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort*

Each political subdivision within the metropolitan area is required to maintain its level of expenditures for HIV-related services to individuals with HIV disease (or, effective with FY 2007 awards, core and support services) at a level equal to its level of such expenditures for the preceding fiscal year. Political subdivisions within the EMA or TGA may not use funds received under the HIV grants to maintain the required level of HIV-related services (42 USC 300ff-15(a)(1)(B) and (C)).

2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking

a. Unless waived by the Secretary, HHS (or designee), not less than 75 percent of the amount remaining after reserving amounts for EMA or TGA administration and a clinical quality management program shall be used to provide core medical services to eligible individuals in the eligible area (including services regarding the co-occurring conditions of those individuals) (42 USC 300ff-14(c)(1)).

b. Not more than 10 percent of the amounts awarded to the EMA or TGA may be used for administration at that level (42 USC 300ff-14(h)(1)).

H. Period of Availability of Federal Funds

Funds made available under a grant award for a fiscal year are available for obligation through the end of the one-year period beginning on the date in the fiscal year on which funds first became available, i.e., the beginning date of the budget period shown on the Notice of Grant Award. Funds made available under the formula portion of the award that remain unobligated at the end of this period will be cancelled unless a waiver allowing for carryover of the funds is approved by the Secretary, HHS or designee. If carryover is approved, the funds remain available for a one-year period beginning on the ending date of the budget period under which the funds were awarded. Funds awarded for supplemental grants that remain unobligated at the end of the budget period for which awarded may not be carried over (42 USC 300ff-13(c), as amended by Section 8(b), Pub. L. No. 111-87).

J. Program Income

Providers may impose charges for the provision of services only as follows (42 USC 300ff-15(e)(1) and (2):

INDIVIDUAL'S INCOME LEVEL	PERMISSIBLE AGGREGATE CHARGES
Less than or equal to 100 percent of official poverty line	No charges may be imposed
Greater than 100 percent of the official poverty line	Charges must be imposed according to a publicly available sliding scale fee schedule, BUT
Greater than 100 percent of the official poverty line and not exceeding 200 percent of that poverty line	A provider may not, for any calendar year, impose aggregate charges in an amount exceeding 5 percent of the annual gross income of the individual involved.
Greater than 200 percent of the official poverty line and not exceeding 300 percent of that poverty line	A provider may not, for any calendar year, impose aggregate charges in an amount exceeding 7 percent of the annual gross income of the individual involved.
Greater than 300 percent of the official poverty line	A provider may not, for any calendar year, impose aggregate charges in an amount exceeding 10 percent of the annual gross income of the individual involved.

The poverty guidelines are available on the Internet at http://aspe.hhs.gov/poverty/ and are also published each year in the *Federal Register*.

The term "aggregate" applies to the annual charges imposed for all without regard to whether they are characterized as enrollment fees, premiums, deductibles, cost sharing, co-payments, coinsurance, or other charges for services (42 USC 300ff-15(e)(3)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.917 HIV CARE FORMULA GRANTS

I. PROGRAM OBJECTIVES

The objective of this program is to assist States and territories in improving the quality, availability, and organization of health care and support services for individuals with Human Immunodeficiency Virus (HIV) disease /Acquired Immunodeficiency Syndrome (AIDS) and their families. These objectives may be accomplished through provision of services by the State or HIV/AIDS care consortia in a home or community setting, or by paying health insurance premiums that would not otherwise be available to ensure continuity of care.

II. PROGRAM PROCEDURES

Administration and Services

Grants are awarded annually, on a formula basis, to all 50 States, the District of Columbia, Puerto Rico, and territories of the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands following submission of an application to and approval by the HIV/AIDS Bureau, Health Resources and Services Administration (HRSA), a component of the Department of Health and Human Services. The responsible State agency, usually the State health department, is designated by the Governor.

The application addresses how the State plans to address each of the five specified program components: (1) HIV care consortia; (2) home and community-based care; (3) health insurance continuation program; (4) provision of treatments; and (5) State direct services. This includes the State's plans for the AIDS Drug Assistance Program (ADAP). ADAP is earmarked funding provided to the State as a separate amount in addition to the base formula grant amount, which includes supplemental funding.

States may use a variety of service delivery mechanisms. States may provide some or all services directly, or may enter into agreements with local HIV care consortia, associations of public and non-profit health care and support service providers, and community-based organizations that plan, develop, and deliver services for individuals with HIV/AIDS. The State also may delegate some of its authority to monitor provider agreements to a "lead agency" (fiscal agent) within the consortium, with specific responsibilities contained in a formal agreement between the State and that agency.

Source of Governing Requirements

The HIV CARE formula grant program is authorized under Part B of the Ryan White HIV/AIDS Treatment Modernization Act of 2006, which is codified at 42 USC 300ff-21 through 300ff-38, as extended and amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. No. 111-87). -

There are no regulations specific to this program.

Availability of Other Program Information

Further information about this program is available on the Internet at http://www.hab.hrsa.gov/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should look first to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

Funds may be used for core medical services and support services and administrative expenses (42 USC 300ff-22(a); 42 USC 300ff-28(b)(3)).

a. Core medical services with respect to an individual infected with HIV/AIDS (including co-occurring conditions, i.e., one or more adverse health conditions of an individual with HIV/AIDS, without regard to whether the individual has AIDS or whether the conditions arise from HIV) means (1) outpatient and ambulatory health services; (2) AIDS Drug Assistance Program treatments; (3) AIDS pharmaceutical assistance; (4) oral health care; (5) early intervention services meeting the requirements of 42 USC 300ff-22(d); (6) health insurance premium and cost sharing assistance for low-income individuals; (7) home health care; (8) medical nutrition therapy; (9) hospice services; (10) home and community-based health services; (11) mental health services; (12) substance abuse outpatient care; and (13) medical case management, including treatment adherence services (42 USC 300ff-22(b)(3)).

b. Support services means services that are needed for individuals with HIV/AIDS to achieve their medical outcomes (those outcomes affecting the HIV-related clinical status of an individual with HIV/AIDS) (for example, respite care for persons caring for individuals with HIV/AIDS, outreach services, medical transportation, linguistic services, referrals for health care and support services, and such other services specified by HRSA). Expenditures for or through consortia are considered support services ((42 USC 300ff-22(c); 42 USC 300ff-23(f)).

c. Administrative expenses at the grantee level include activities related to (1) routine grant administration and monitoring (for example, development of applications, receipt and disbursal of program funds, development and establishment of reimbursement and accounting systems, development of a

clinical quality management program, preparation of routine programmatic and financial reports, and compliance with grant conditions and audit requirements); (2) contract development, solicitation review, award, monitoring, and reporting; and (3) activities carried out by the HIV health services planning council (42 USC 300ff-28(b)(3)(C)).

d. Subcontractor administrative expenses include usual and recognized overhead activities, management oversight of funded activities, and other types of program support such as quality assurance, quality control, and related activities (42 USC 300ff-28(b)(3)(D)).

2. *Activities Unallowed*

a. Funds may not be used to purchase or improve land, or to purchase, construct, or permanently improve (other than minor remodeling) any building or other facility (42 USC 300ff-28(b)(6)).

b. Funds may not be used to make payments for any item or service to the extent that payment has been made or can reasonably be expected to be made for that item or service under any State compensation program, under an insurance policy, or under any Federal or State health benefits program (or by an entity that provides health services on a prepaid basis except for a program administered by or providing the services of the Indian Health Service) (42 USC 300ff-27(b)(7)(F)(ii)).

c. Funds may not be used for inpatient hospital services, or nursing home or other long-term care facilities (42 USC 300ff-24(c)(3)).

d. Funds may not be used to pay any costs associated with creation, capitalization, or administration of a liability risk pool (other than those costs paid on behalf of individuals as part of premium contributions to existing liability risk pools) or to pay any amount expended by a State under Title XIX of the Social Security Act (Medicaid) (42 USC 300ff-25(b)).

e. Funds may not be used for AIDS programs, or to develop materials, designed to promote or encourage, directly, intravenous drug use or sexual activity, whether homosexual or heterosexual (42 USC 300ff-84).

f. None of the funds made available under this Act, or an amendment made by this Act, shall be used to provide individuals with hypodermic needles or syringes so that individuals may use illegal drugs (42 USC 300-ff-1).

E. Eligibility

1. Eligibility for Individuals

To be eligible to receive assistance in the form of therapeutics, an individual must have a medical diagnosis of HIV/AIDS and be a low-income individual, as defined by the State (42 USC 300ff-26(b)).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

a. Eligible subrecipients are consortia of one or more public and one or more nonprofit private (or private for-profit providers or organizations if such organizations are the only available providers of quality HIV/AIDS care in the area) health care and support service providers and community-based organizations operating within areas determined by the State to be most affected by HIV/AIDS (42 USC 300ff-23(a)).

b. To receive funding from the State, consortia must agree to provide, directly or through agreements with other service providers, essential health and support services, and must meet specified application and assurance requirements. These include conducting a needs assessment within the geographic area served and developing a plan (consistent with the State's comprehensive plan required by 42 USC 300ff-27(b)(4)) to meet identified service needs following a consultation process (42 USC 300ff-23(b) and (c)).

c. For consortia otherwise meeting these requirements, the State shall give priority first to consortia that are receiving assistance from HRSA for adult and pediatric HIV-related care demonstration projects and then to any other existing HIV care consortia (42 USC 300ff-23(e)).

G. Matching, Level of Effort, Earmarking

1. Matching

a. States and territories (excluding Puerto Rico) with greater than 1 percent of the aggregate number of national cases of HIV/AIDS in the 2-year period preceding the Federal fiscal year in which the State is applying for a grant must, depending on the number of years in which this threshold requirement has been met, provide matching funds as follows (42 USC 300ff-27(d)):

Year(s) in Which Matching Required	Minimum Percentage of Non-Federal Matching	Ratio of Non-Federal to Federal Expenditures
First	16 2/3	$1 non-Federal/$5 Federal
Second	20	$1 non-Federal/$4 Federal
Third	25	$1 non-Federal/$3 Federal
Fourth and subsequent	33 1/3	$1 non-Federal/$2 Federal

b. For entities not subject to the matching requirements in paragraph 1.a. above, non-Federal contributions in an amount equal to $1 for every $4 of Federal funds are required for ADAP funds (42 USC 300ff-28(a)(2)(F)(ii)(III)).

2.1 Level of Effort – *Maintenance of Effort*

The State will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the State for the 1-year period preceding the fiscal year for which the State is applying for Title II/Part B funds (42 USC 300ff-27(b)(7)(E)).

2.2 Level of Effort – *Supplement Not Supplant* **–** Not Applicable

3. Earmarking

a. The State may not use more than 10 percent of the amounts received under the grant for planning and evaluation activities (42 USC 300ff-28(b)(2)).

b. The State may not use more than 10 percent of the funds amounts received under the grant for administration (42 USC 300ff-28(b)(3)).

c. A State may not use more than a total of 15 percent of the amounts received for the combined costs for administration, planning, and evaluation. States and territories that receive a minimum allotment (between $200,000 and $500,000) may expend up to the amount required to support one full-time equivalent employee for any or all of these purposes (42 USC 300ff-28(b)(5)).

d. The aggregate of expenditures for administrative expenses by entities and subcontractors (including consortia) funded directly by the State from grant funds ("first-line entities") may not exceed 10 percent of the total allocation of grant funds to the State (without regard to whether particular entities spend more than 10 percent for such purposes) (42 USC 300ff-28(b)(3)(B)).

e. For the purpose of providing health and support services to women, youth, infants, and children with HIV disease, including treatment measures to prevent the perinatal transmission of HIV, a State shall use for each of these populations not less than the percentage of Title II or Part B funds in a fiscal year constituted by the ratio of the population involved (women, youth, infants, or children) in the State with AIDS to the general population in the State of individuals with AIDS (42 USC 300ff-21(b)). This information is provided to the State by HRSA in the annual application guidance (Appendix II, Estimated Number/Percent of Women, Infants, and Children Living with AIDS in States and Territories).

f. A State shall use a portion of the funds awarded to establish a program to provide therapeutics to treat HIV/AIDS or prevent the serious deterioration of health arising from HIV/AIDS in eligible individuals, including measures for the prevention and treatment of opportunistic infections. The amount of this specific earmark for ADAP will be provided in the grant agreement. Of the amount earmarked in the grant agreement for this purpose, the State may use not more than 5 percent to encourage, support, and enhance adherence to and compliance with treatment regimens (including related medical monitoring) unless the Secretary (or designee) approves a 10 percent limit (42 USC 300ff-26(c)).

g. A State shall establish a quality management program to determine whether the services provided under the grant are consistent with the most recent Public Health Service guidelines for the treatment of HIV disease and related opportunistic infection and, as applicable, to develop strategies for bringing these services into conformity with the guidelines. Funds used for this purpose may not exceed the lesser of 5 percent of the amount received under the grant or $3,000,000, and are not considered administrative expenses for purposes of the limitation under paragraph 3.b above (42 USC 300ff-28(b)(3)(E)).

h. Unless waived by the Secretary, HHS (or designee), not less than 75 percent of the amount remaining after reserving amounts for State administration and a clinical quality management program shall be used to provide core medical services to eligible individuals with HIV/AIDS (including services regarding the co-occurring conditions of those individuals) (42 USC 300ff-22(b)).

H. Period of Availability of Federal Funds

1. Not less than 75 percent of the amounts received by a State shall be obligated to specific programs and projects and made available for expenditure not later than 150 days after receipt by the State (budget period beginning date as shown on the Notice of Grant Award issued by HRSA) in the case of the first fiscal year for

which amounts are received and, in the case of succeeding fiscal years, 120 days after receipt (42 USC 300ff-28(c)).

2. Funds are available for obligation by the State through the end of the one-year period beginning on the date on which funds from the award first became available to the State unless an extension is approved by the Secretary (or designee) for an additional one-year period beginning on the date on which the grant would have expired ((42 USC 300ff-31a(a)).

3. If the State has an unobligated balance at the end of grant year (or extended period, the amount of the balance may be cancelled, requiring the State to return any amounts from such balance that have been disbursed to the State or the amount may be applied to a future-year award, at HRSA's discretion (42 USC 300ff-31a, as amended by Section 8 of Pub. L. No. 111-87). See III.J with respect to use of ADAP rebates.

J. Program Income

1. Providers may impose charges for the provision of services only as follows (42 USC 300ff-27(c)):

INDIVIDUAL'S INCOME LEVEL	PERMISSIBLE AGGREGATE CHARGES
Less than or equal to 100 percent of official poverty line	No charges may be imposed
Greater than 100 percent of the official poverty line	Charges must be imposed according to a publicly available sliding scale fee schedule, BUT
Greater than 100 percent of the official poverty line and not exceeding 200 percent of that poverty line	A provider may not, for any calendar year, impose aggregate charges in an amount exceeding 5 percent of the annual gross income of the individual involved.
Greater than 200 percent of the official poverty line and not exceeding 300 percent of that poverty line	A provider may not, for any calendar year, impose aggregate charges in an amount exceeding 7 percent of the annual gross income of the individual involved.
Greater than 300 percent of the official poverty line	A provider may not, for any calendar year, impose aggregate charges in an amount exceeding 10 percent of the annual gross income of the individual involved.

The poverty guidelines are available on the Internet at http://aspe.hhs.gov/poverty/ and are also published each year in the *Federal Register*.

The term "aggregate" applies to the annual charges imposed for all without regard to whether they are characterized as enrollment fees, premiums, deductibles, cost sharing, co-payments, coinsurance, or other charges for services (42 USC 300ff-27(c)(3)).

These requirements apply to all service providers from which an individual receives Title II/Part B-funded services. The State shall waive this requirement for an individual service provider in those instances when the provider does not impose a charge or accept reimbursement available from any third-party payer, including reimbursement under any insurance policy or any Federal or State health benefits program (42 USC 300ff-27(c)(4)(A)).

2. Any drug rebates received on drugs purchased from funds provided to establish a program of therapeutics must be used to support the types of activities otherwise eligible for funding under this program, with priority given to activities related to providing therapeutics (42 USC 300ff-26(g)).

3. Beginning in fiscal year, 2010, a State may request that its unobligated balance be reduced by the amount of unused ADAP rebate funds if expenditure of those funds would result in the grantee receiving an unobligated funds penalty (42 USC 300ff-31a(d), as amended by Section 10, Pub. L. No. 111-87).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.918 GRANTS TO PROVIDE OUTPATIENT EARLY INTERVENTION SERVICES WITH RESPECT TO HIV DISEASE (Ryan White HIV/AIDS Program Part C)

I. PROGRAM OBJECTIVES

The objective of this program is to provide, on an outpatient basis, high-quality, early intervention services and primary care related to the Human Immunodeficiency Virus (HIV). This is accomplished by increasing the present capacity of eligible ambulatory health service providers to provide a continuum of HIV prevention for at-risk individuals, and care for individuals who are HIV-infected, including when applicable, perinatal care.

II. PROGRAM PROCEDURES

Administration and Services

This program is administered at the Federal level by the HIV/Acquired Immunodeficiency Syndrome (AIDS) Bureau, Health Resources and Services Administration (HRSA), a component of the Department of Health and Human Services.

Grants are awarded to public and non-profit private entities, including federally qualified health centers under section 1905(1)(2)(B) of the Social Security Act. Grants are also awarded to non-State family planning organizations, comprehensive hemophilia diagnostic and treatment centers, rural health clinics, health facilities operated by or pursuant to a contract with the Indian Health Service, community-based organizations, clinics, hospitals, and other health facilities that provide early intervention services to those persons infected with HIV/AIDS through intravenous drug use, or to nonprofit private entities that provide comprehensive primary care services to populations at risk of HIV/AIDS, including faith-based and community-based organizations. Those providers must be qualified Medicaid-participating providers unless an exception is granted by HRSA (42 USC 300ff-52(a)(1)(A) through (G) and 42 USC 300ff-52(b)).

The early intervention services (EIS) program enables primary health care providers to include a range of services from risk assessment, and HIV counseling, testing, and referral services to clinical care for people with HIV. Many of these providers receive other Federal funding, e.g., community and migrant health centers, but this categorical funding allows them to provide adequate funding for these services.

Services may be provided directly by the grantee or through contractual agreements with other service providers.

Source of Governing Requirements

The HIV EIS grant program is authorized under Part C of Title XXVI of the PHS Act, as amended by the Ryan White HIV/AIDS Treatment Modernization Act of 2006 and Ryan White HIV/AIDS Treatment Extension Act of 2009 (Ryan White Program), and is codified at 42 USC 300ff-51 through 300ff-67. The program has no specific program regulations.

Availability of Other Program Information

Further information about this program is available at http://www.hab.hrsa.gov/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should look first to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

   a. Funds may be used for counseling (whether or not associated with testing) and testing for HIV (42 USC 300ff-51(e)(1)(A) and (B) and 42 USC 300ff-62(f)).

   b. Funds may be used to provide diagnostic and therapeutic measures for preventing and treating the deterioration of the immune system and related conditions (including STD, hepatitis C, and tuberculosis). This includes periodic medical evaluations, appropriate treatment of HIV infection, prophylactic, and treatment interventions for complications of HIV infection (including opportunistic infections, opportunistic malignancies, and other AIDS-defining conditions) (42 USC 300ff-51(e)(1)(D) and (E)).

   c. Funds may be used to refer clients to sub-specialty or consultant services, and to related evaluation, diagnostic, and treatment services. This includes, but is not limited to, infectious diseases, oncology, dermatology, ophthalmology, pulmonary and oral health specialists as well as outpatient mental health and substance abuse services and nutrition assessment and counseling related to living with HIV/AIDS (42 USC 300ff-51(e)(2)(A-C)).

   d. Funds may be used for core medical services for an individual with HIV/AIDS, including the co-occurring conditions of the individual, defined as outpatient and ambulatory health services; AIDS Drug Assistance Program treatments defined under 42 USC 300ff-16; AIDS pharmaceutical assistance; oral health care; early intervention services

described in 42 USC 300ff-51(e); health insurance premium and cost sharing assistance for low-income individuals in accordance with 42 USC 300ff-15; home health care; medical nutrition therapy; hospice services; home and community-based health services as defined under 42 USC 300ff-14(c); mental health services, substance abuse outpatient care; and medical case management including treatment adherence services (42 USC 300ff-51(c)(3)).

e. Funds may be used to pay the costs of providing support services that are needed for individuals with HIV/AIDS to achieve their medical outcomes. These services include, but are not limited to, respite care for persons caring for individuals with HIV/AIDS, outreach services, medical transportation, translation, and referrals for health care and support services (42 USC 300ff-51(b)(1)(B)).

f. Funds may be used for the establishment of a clinical quality management program to assess the extent to which medical services are consistent with the most recent Public Health Service guidelines for the treatment of HIV/AIDS and related opportunistic infections, to develop strategies for insuring that such services are consistent with the guidelines and to ensure that improvements in the access to and quality of HIV health services are addressed (42 USC 300ff-64(g)(5)).

g. Funds may be used for administrative expenses. Indirect costs under a federally negotiated indirect cost rate are considered to be administrative expenses (42 USC 300ff-51(b)(1)(C)).

2. *Activities Unallowed*

a. Funds may not be used to make payments for any item or service to the extent that payment has been made or can reasonably be expected to be made for that item or service under any State compensation program, under an insurance policy (except for a program administered by or providing the services of the Indian Health Service), or under any Federal or State health benefits program or by an entity that provides health services on a prepaid basis (42 USC 300ff-64(f)(1)).

b. Funds may not be awarded to for-profit entities to carry out required early intervention services unless they are the only available providers of quality HIV care in the area (42 USC 300ff-51(e)(3)(A)).

c. Grant funds may not be used for AIDS programs, or to develop materials, designed to promote or encourage, directly, intravenous drug abuse or sexual activity, homosexual or heterosexual (42 USC 300ff-84).

d. None of the funds made available under this Act, or an amendment made by this Act, shall be used to provide individuals with hypodermic needles or syringes so that individuals may use illegal drugs (42 USC 300ff-1 (as enacted in Pub. L. No. 101-381, Section 422).

e. Funds received under this grant will not be expended for any purpose other than the purposes for which the grant was awarded (42 USC 300ff-64(g)(1)).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort*

A grantee must maintain its expenditures for early intervention services at a level equal to not less than the level of expenditures for such services for the fiscal year preceding the fiscal year for which the applicant is applying to receive the grant (42 USC 300ff-64(d)).

2.2. Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking

a. A minimum of 50 percent of the funds awarded must be spent on providing the following early intervention services to individuals with HIV disease: testing, referrals, other clinical and diagnostic services, periodic medical evaluations, and therapeutic measures—directly and on-site or at sites where other primary care services are rendered (42 USC 300ff-51(b)(2), (e)(1) and (2), and (e)(3)(A) and (B)).

b. Unless waived, a minimum of 75 percent of the funds remaining after clinical quality management and administration are deducted must be spent on core medical services for an individual with HIV/AIDS, including the co-occurring conditions of the individual. (42 USC 300ff-51(c)(1)).

(1) Core medical services are defined as outpatient and ambulatory health services; AIDS Drug Assistance Program treatments defined under 42 USC 300ff-16; AIDS pharmaceutical assistance; oral health care; early intervention services described in 42 USC 300ff-51(e); health insurance premium and cost sharing assistance for low-income individuals in accordance with 42 USC 300ff-15; home health care; medical nutrition therapy; hospice services; home and community-based health services as defined under 42 USC 300ff-14(c); mental health services; substance abuse outpatient care; and medical case management including treatment adherence services (42 USC 300ff-51(c)(3)).

(2) A grantee may have applied for and received a waiver of the 75 percent requirement for core medical services if it is determined that, within the service area of the grantee, there are no waiting lists for the AIDS Drug Assistance Program and that core medical services are available to all individuals with HIV/AIDS identified and eligible under the Ryan White HIV/AIDS Program (42 USC 300ff-51(c)(2)).

c. Not more than 10 percent of the approved Federal grant funds may be used for administrative expenses, including planning and evaluation, except that the costs of a clinical quality management program may not be considered administrative expenses for purposes of such limitation (42 USC 300ff-64(g)(3)).

J. Program Income

Providers may impose charges for the provision of services only as follows (42 USC 300ff-64(e)):

INDIVIDUAL'S INCOME LEVEL	PERMISSIBLE AGGREGATE CHARGES
Less than or equal to 100 percent of official poverty line	No charges may be imposed
Greater than 100 percent of the official poverty line	Charges must be imposed according to a publicly available sliding scale fee schedule, BUT
Greater than 100 percent of the official poverty line and not exceeding 200 percent of that poverty line	A provider may not, for any calendar year, impose aggregate charges in an amount exceeding 5 percent of the annual gross income of the individual involved.
Greater than 200 percent of the official poverty line and not exceeding 300 percent of that poverty line	A provider may not, for any calendar year, impose aggregate charges in an amount exceeding 7 percent of the annual gross income of the individual involved.
Greater than 300 percent of the official poverty line	A provider may not, for any calendar year, impose aggregate charges in an amount exceeding 10 percent of the annual gross income of the individual involved.

The poverty guidelines are published each year in the *Federal Register*. HHS also maintains this information at http://aspe.hhs.gov/poverty/.

The term "aggregate charges" applies to the annual charges without regard to whether they are characterized as enrollment fees, premiums, deductibles, cost sharing, co-payments, coinsurance, or other charges for services (42 USC 300ff-64 (e)(4)).

The charges shall be made on the basis of a publicly available schedule of charges and may, at the grantee's discretion, be assessed at an alternate lesser amount (42 USC 300ff-64(e)(1) and (3)).

The requirement for an individual service provider to impose a charge will be waived by HRSA in those instances when the provider does not impose a charge or accept reimbursement available from any third-party payer, including reimbursement under any insurance policy or any Federal or State health benefits program and a waiver has been granted by HRSA under 42 USC 300ff-52(b)(2) (42 USC 300ff-64(e)(5)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable only for grantees on restricted drawdown as described on the Notice of Grant Award.

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.958 BLOCK GRANTS FOR COMMUNITY MENTAL HEALTH SERVICES

I. PROGRAM OBJECTIVES

The objective of the Community Mental Health Services (CMHS) Block Grant program is to provide funds to States and territories to enable them to carry out their respective plans for providing comprehensive community-based mental health services for adults with serious mental illness and children with serious emotional disturbances. To insure creative and cost effective delivery of services, States are encouraged to develop solutions to address the specific mental health concerns of their local communities.

II. PROGRAM PROCEDURES

Administration and Services

The Substance Abuse and Mental Health Services Administration (SAMHSA), an operating division of the Department of Health and Human Services (HHS), administers the block grant program. Examples of CMHS Block Grant funded activities include: (1) a comprehensive, community-based system of mental health care for adults who have a serious mental illness and children and youth who have a serious emotional disturbances, including case management, treatment, rehabilitation, employment, housing, education, medical, dental, and other support services that enable individuals to function in the community and reduce the rate of psychiatric hospitalization; (2) outreach for homeless individuals who also suffer from serious mental illness and the development of special services for individuals with serious illness living in rural areas; and (3) systemic integration of social, educational, juvenile justice, and substance abuse services with health and mental health services for children with a serious emotional disturbance to ensure that care is appropriate to their multiple needs (including services provided under the Individuals with Disabilities Act).

CMHS funds are allocated to the States according to a formula legislated by Congress. States may then distribute these funds to cities, counties, or service providers within their jurisdictions. Funds may only be used for carrying out the State plan, evaluating programs and services carried out under the plan, or planning, administration, and education activities relating to providing services under the plan.

State Plan

The State must submit to SAMHSA an annual application that includes a plan to meet the community mental health services objectives described above and signed assurances required by the Act. The State plan addresses how the State intends to comply with the various requirements of Title XIX, Part B, Subparts I and III of the Public Health Service Act (42 USC 300x) and its program objectives by addressing the five criteria listed in the statute.

Source of Governing Requirements

This program is authorized under Title XIX, Part B, Subparts I and III of the Public Health Service Act (42 USC 300x *et seq.*). Criteria for the State plan may be found at 42 USC 300x-1. 45 CFR part 96 provides regulations for the general administrative requirements for the covered block grant programs. These regulations are in lieu of 45 CFR part 92 (the HHS implementation of the A-102 Common Rule). In addition, States are to administer the CMHS program according to the plans that they submitted to SAMHSA.

As discussed in Appendix I of this Supplement, Federal Programs Excluded from the A-102 Common Rule, States are to use the fiscal policies that apply to their own funds in administering CMHS. Procedures must be adequate to assure the proper disbursal of and accounting for Federal funds paid to the grantee, including procedures for monitoring the assistance provided (45 CFR section 96.30).

Under the block grant philosophy, each State is responsible for designing and implementing its own CMHS program, within very broad Federal guidelines. States must administer their CMHS program according to their approved plan and any amendments and in conformance with their own implementing rules and policies.

Availability of Other Program Information

SAMHSA published a notice in the *Federal Register* on July 6, 2001 (66 FR 35658) that details approval requirements for non-recurring expense exclusions from maintenance-of-effort calculations. A second SAMHSA *Federal Register* notice, published on November 23, 2001 (66 FR 58746-58747) addresses retroactive application of the non-recurring expense exclusion.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Services provided with grant funds shall be provided only through appropriate, qualified community programs (which may include community mental health centers, child mental health programs, psychosocial rehabilitation programs, mental health peer support programs and mental health primary consumer-directed programs). Services under the plan will be provided through community mental health centers only if the services are provided as follows:

    a. Services principally to individuals residing in a defined geographic area (service area);

b. Outpatient services, including specialized outpatient services for children, the elderly, individuals with serious mental illness, and residents of the centers who have been discharged from inpatient treatment at a mental health facility;

c. 24-hours-a-day emergency care services;

d. Day treatment and other partial hospitalization services or psychosocial rehabilitation services; or

e. Screening for patients being considered for admission to State mental health facilities to determine the appropriateness of such admission (42 USC 300x-2(b) and (c)).

2. The State shall not use grant funds to:

a. Provide inpatient hospital services. An inpatient is a person who is formally admitted to the inpatient service of a hospital for observation, care, diagnosis, or treatment**;**

b. Make cash payments to intended recipients of health services;

c. Purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or any other facility, or purchase major medical equipment;

d. Satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funding; or

e. Provide financial assistance to any entity other than a public or non-profit entity. A State is not precluded from entering into a procurement contract for services, since payments under such a contract are not financial assistance to the contractor (42 USC 300x-5(a)).

B. Allowable Costs/Cost Principles

As discussed in Appendix I of this Supplement, Federal Programs Excluded from the A-102 Common Rule, CMHS is exempt from the provisions of OMB cost principles circulars. State cost principles requirements apply to CMHS (45 CFR section 96.30).

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort*

a. The State shall for each fiscal year maintain aggregate State expenditures for community mental health centers at a level that is not less than the average level of such expenditures maintained by the State for the two State fiscal years preceding the fiscal year of the grant. Expenditures for the two previous fiscal years are reported in the State plan. The Secretary may exclude from the aggregate State expenditures funds appropriated to the principal agency for authorized activities which are of a non-recurring nature and for a specific purpose (42 USC 300x-4(b); *Federal Register*, July 6, 2001 (66 FR 35658) and November 23, 2001 (66 FR 58746-58747) as specified in II, "Program Procedures – Availability of Other Program Information").

b. The State shall for each fiscal year expend an amount not less than an amount equal to the amount expended in fiscal year 1994 for systems of integrated services for children with serious emotional disturbance (42 USC 300x-2(a)(1)(C)). FY 1994 expenditures are reported in the State plan.

2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking

The State may not expend more than 5 percent of grant funds for administrative expenses with respect to the grant (42 USC 300x-5(b)).

H. Period of Availability of Federal Funds

Any amounts paid to the State for a fiscal year shall be available for obligation and expenditure until the end of the fiscal year following the fiscal year for which the amounts were paid (42 USC 300x-62).

L. Reporting

1. Financial Reporting

a. SF-269A, *Financial Status Report* – Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

Independent Peer Reviews

Compliance Requirement – The State must provide for independent peer reviews that assess the quality, appropriateness, and efficacy of treatment services provided to individuals. At least 5 percent of the entities providing services in the State shall be reviewed annually. The entities reviewed shall be representative of the entities providing the services (42 USC 300x-53(a))

Audit Objectives – Determine whether (1) the required number of entities was peer reviewed, (2) the selection of entities for peer review was representative of entities providing services, and (3) the State ensured that the peer reviewers were independent.

Suggested Audit Procedures

a. Ascertain the number of entities providing treatment services in the State.

b. Ascertain if the number of entities reviewed was at least 5 percent of the entities providing treatment services.

c. Ascertain if the selection of entities for peer review was representative of entities providing services.

d. From a sample of peer reviews performed, ascertain if the State ensured that the peer reviewers were independent.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.959 BLOCK GRANTS FOR PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

I. PROGRAM OBJECTIVES

The objective of the Substance Abuse Prevention and Treatment (SAPT) Block Grant program is to provide funds to States, territories, and one Indian Tribe for the purpose of planning, carrying out and evaluating activities to prevent and treat Substance Abuse (SA) and other related activities as authorized by the statute.

The SAPT Block Grant is the primary tool the Federal government uses to fund State SA prevention and treatment programs. While the SAPT Block Grant provides Federal support to addiction prevention and treatment services nationally, it empowers the States to design solutions to specific addiction problems that are experienced locally.

II. PROGRAM PROCEDURES

Administration and Services

The Substance Abuse and Mental Health Services Administration (SAMHSA), an operating division of the Department of Health and Human Services (HHS), administers the block grant program. For purposes of this guidance, the term "State" includes the 50 States, the District of Columbia, American Samoa, Guam, the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Marianas, Palau, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and the Red Lake Band of Chippewa Indians. The States generally subaward funds for the provision of services to public and non-profit organizations. Service providers may include for-profit organizations but for-profits may not receive financial assistance.

Examples of SAPT activities are:

a. *Alcohol Treatment and Rehabilitation* – Direct services to patients experiencing primary problems for alcohol, such as outreach, detoxification, outpatient counseling, residential rehabilitation, hospital based care (not inpatient hospital services), abuse monitoring, vocational counseling, case management, central intake, and program administration.

b. *Drug Treatment and Rehabilitation* – Direct services to patients experiencing primary problems with illicit and licit drugs, such as outreach, detoxification, methadone maintenance and detoxification, outpatient counseling, residential rehabilitation, including therapeutic communities, hospital based care (not inpatient hospital services), vocational counseling, case management central intake, and program administration.

c. *Primary Prevention Activities* – Education, counseling, and other activities designed to reduce the risk of substance abuse.

The SAPT funds are allocated to the States according to a formula legislated by Congress. States may then distribute these funds to cities, counties, or service providers within their jurisdictions based on need. Of the SAPT funds dispensed to each State annually, Congress has specified that the State will expend not less than 20 percent for programs for individuals who do not require treatment for substance abuse. The programs should (1) educate and counsel the individuals on such abuse and (2) provide for activities to reduce the risk of such abuse by the individuals. SAPT Block Grant statutory "set asides" were established to fund programs targeting special populations, such as services for women, especially pregnant and postpartum women and their children, and, in certain States, for screening for human immunodeficiency virus (HIV).

State Plan

The State must submit to SAMHSA for approval, an annual application which includes a State plan for SA prevention and treatment services objectives described above and signed assurances required by the Act and implementing regulations. The entire application, including the plan, must be reviewed by SAMHSA to ensure that all of the requirements of the law and regulations are met.

The State plan addresses how the State intends to comply with the various requirements of Title XIX, Part B, Subparts II and III of the Public Health Service Act (42 USC 300x) and its program objectives and specific allocations by: (1) conducting State and local demand and need assessments; (2) establishing statewide prevention and treatment improvement plans with specific multi-year goals for narrowing identified service gaps, implementing training efforts, and fostering coordination among SA treatment, primary health care, and human service agencies; and (3) addressing human resource requirements, clinical standards and identified treatment improvement goals, and ensuring coordination of all health and human services for addicted individuals.

The State shall make the plan public within the State in such a manner as to facilitate comment from any person (including any Federal or other public agency) during development of the plan (including any revisions) and after submission of the plan to SAMHSA.

Source of Governing Requirements

This program is authorized under Title XIX, Part B, Subparts II and III of the Public Health Service Act (42 USC 300x). Implementing regulations are published at 45 CFR part 96. Those regulations include general administrative requirements for the covered block grant programs in lieu of 45 CFR part 92 (the HHS implementation of the A-102 Common Rule)). Requirements specific to SAPT are in 45 CFR sections 96.120 through 96.137. In addition, grantees are to administer their SAPT programs according to the plan that they submitted to SAMHSA.

As discussed in Appendix I of this Supplement, Federal Programs Excluded from the A-102 Common Rule, States are to use the fiscal policies that apply to their own funds in administering SAPT. Procedures must be adequate to assure the proper disbursal of and accounting for Federal funds paid to the grantee, including procedures for monitoring the assistance provided (45 CFR section 96.30).

Availability of Other Program Information

SAMHSA published a notice in the *Federal Register* on July 6, 2001 (66 FR 35658) that details approval requirements for non-recurring expense exclusions from maintenance-of-effort calculations. A second SAMHSA *Federal Register* notice, published on November 23, 2001 (66 FR 58746-58747) addresses retroactive application of the non-recurring expense exclusion.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. The State shall not use grant funds to provide inpatient hospital services except when it is determined by a physician that: (a) the primary diagnosis of the individual is SA and the physician certifies this fact; (b) the individual cannot be safely treated in a community based non-hospital, residential treatment program; (c) the service can reasonably be expected to improve an individual's condition or level of functioning; and (d) the hospital based SA program follows national standards of SA professional practice. Additionally, the daily rate of payment provided to the hospital for providing the services to the individual cannot exceed the comparable daily rate provided for community based non-hospital residential programs of treatment for SA and the grant may be expended for such services only to the extent that it is medically necessary (i.e., only for those days that the patient cannot be safely treated in a residential community based program) (42 USC 300x-31(a) and (b); 45 CFR sections 96.135(a)(1) and (c))

2. Grant funds may be used for loans from a revolving loan fund for provision of housing in which individuals recovering from alcohol and drug abuse may reside in groups. Individual loans may not exceed $4000 (45 CFR section 96.129).

3. Grant funds shall not be used to make cash payments to intended recipients of health services (42 USC 300x-31(a); 45 CFR section 96.135(a)(2)).

4. Grant funds shall not be used to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or any other facility, or purchase major medical equipment. The Secretary may provide a waiver of the restriction for the construction of a new facility or rehabilitation of an existing facility, but not for land acquisition (42 USC 300x-31(a); 45 CFR sections 96.135(a)(3) and (d)).

5. The State shall not use grant funds to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funding (42 USC 300x-31(a); 45 CFR section 96.135(a)(4)).

6. Grant funds may not be used to provide financial assistance (i.e., a subgrant) to any entity other than a public or non-profit entity. A State is not precluded from entering into a procurement contract for services, since payments under such a contract are not financial assistance to the contractor (42 USC 300x-31(a); 45 CFR section 96.135 (a)(5)).

7. The State shall not expend grant funds to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs (42 USC 300ee-5; 45 CFR section 96.135 (a)(6) and Pub. L. 106-113, section 505).

8. Grant funds may not be used to enforce State laws regarding sale of tobacco products to individuals under age of 18, except that grant funds may be expended from the primary prevention set-aside of SAPT under 45 CFR section 96.124(b)(1) for carrying out the administrative aspects of the requirements such as the development of the sample design and the conducting of the inspections (45 CFR section 96.130 (j)).

9. No funds provided directly from SAMHSA or the relevant State or local government to organizations participating in applicable programs may be expended for inherently religious activities, such as worship, religious instruction, or proselytization (42 USC 300x-65 and 42 USC 290kk; 42 CFR section 54.4).

B. Allowable Costs/Cost Principles

As discussed in Appendix I of this Supplement, Federal Programs Excluded from the A-102 Common Rule, SAPT is exempt from the provisions of OMB cost principles circulars. State cost principles requirements apply to SAPT.

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort*

a. The State shall for each fiscal year maintain aggregate State expenditures for authorized activities by the principal agency at a level that is not less than the average level of such expenditures maintained by the State for the two State fiscal years preceding the fiscal year for which the State is applying for the grant. The "principal agency" is defined as the single State agency responsible for planning, carrying out and evaluating activities to prevent and treat SA and related activities. The Secretary may exclude from the aggregate State expenditures funds appropriated to the principal agency for authorized activities which are of a non-recurring nature and for a specific purpose (42 USC 300x-30; 45 CFR sections 96.121 and 96.134; and *Federal Register*, July 6, 2001 (66 FR 35658) and November 23, 2001 (66 FR 58746-58747) as specified in II, "Program Procedures – Availability of Other Program Information").

b. The State must maintain expenditures at not less than the calculated fiscal year 1994 base amount for SA treatment services for pregnant women and women with dependent children. The fiscal year 1994 base amount was reported in the State's fiscal year 1995 application (42 USC 300x-27; 45 CFR section 96.124(c)).

c. Designated States shall maintain expenditures of non-Federal amounts for HIV services at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the first fiscal year for which the State receives such a grant. A designated State is any State whose rate of cases of HIV is 10 or more such cases per 100,000 individuals (as indicated by the number of such cases reported to and confirmed by the Director of the Centers for Disease Control and Prevention for the most recent calendar year for which the data are available.) (42 USC 300x-30; 45 CFR sections 96.128 (b) and (f)).

d. The State shall maintain expenditures of non-Federal amounts for tuberculosis services at a level that is not less than an average of such expenditures maintained by the State for the 2 year period preceding the first fiscal year for which the State receives such a grant (42 USC 300x-24; 45 CFR section 96.127).

2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking

a. The State shall expend not less than 20 percent of SAPT for primary prevention programs for individuals who do not require treatment of SA. The programs should educate and counsel the individuals on such abuse and provide for activities to reduce the risk of such abuse by the individuals (42 USC 300x-22; 45 CFR sections 96.124 (b)(1) and 96.125).

b. Designated States shall expend not less than 2 percent and not more than 5 percent of the award amount to carry out one or more projects to make available to individuals early intervention services for HIV disease at the sites where the individuals are undergoing SA treatment. If the State carries out two or more projects, the State will carry out one such project in a rural area of the State unless the Secretary waives the requirement (42 USC 300x-24; 45 CFR section 96.128(a)(1) and (d)).

c. The State may not expend more than 5 percent of the grant to pay the costs of administering the grant (42 USC 300x-31; 45 CFR section 96.135 (b)(1)).

d. The State may not expend grant funds for providing treatment services in penal or correctional institutions in an amount more than that expended for such programs by the State for fiscal year 1991 (42 USC 300x-31; 45 CFR section 96.135(b)(2)).

H. Period of Availability of Federal Funds

Any amounts awarded to the State for a fiscal year shall be available for obligation and expenditure until the end of the fiscal year following the fiscal year for which the amounts were awarded (42 USC 300x-62).

L. Reporting

1. Financial Reporting

a. SF-269A, *Financial Status Report* – Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable.

N. Special Test and Provisions

Independent Peer Reviews

Compliance Requirement – The State must provide for independent peer reviews which access the quality, appropriateness, and efficacy of treatment services provided to individuals. At least 5 percent of the entities providing services in the State shall be reviewed. The entities reviewed shall be representative of the entities providing the services. The State shall ensure that the peer reviewers are independent by ensuring that the peer review does not involve reviewers reviewing their own programs and the peer review is not conducted as part of the licensing or certification process (42 USC 300x-53(a); 45 CFR section 96.136).

Audit Objectives – Determine whether (1) the required number of entities was peer reviewed, (2) the selection of entities for peer review was representative of entities providing services, (3) the State ensured that the peer reviewers were independent.

Suggested Audit Procedures

1. Ascertain the number of entities providing treatment services in the State.

2. Ascertain if the number of entities reviewed was at least 5 percent of the entities providing treatment services.

3. Ascertain if the selection of entities for peer review was representative of entities providing services.

4. Select a sample of peer reviews and ascertain if the State ensured that the peer reviewers were independent.

IV. OTHER INFORMATION

As described in Part 4, Social Services Block Grant (SSBG) program (CFDA 93.667), III.A, "Activities Allowed or Unallowed," a State may transfer up to 10 percent of its annual allotment under SSBG to this and other specified block grant programs.

Amounts transferred into this program are subject to the requirements of this program when expended and should be included in the audit universe and total expenditures of this program when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amounts transferred in should be shown as expenditures of this program when such amounts are expended.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.991 PREVENTIVE HEALTH AND HEALTH SERVICES BLOCK GRANT

I. PROGRAM OBJECTIVES

The purpose of the Preventive Health and Health Services Block Grant (PHHSBG) is to provide States with the resources to improve the health status of the population of each grantee through: (1) preventive health services, comprehensive public health services, emergency medical services, etc; (2) activities leading to the accomplishment of the most current Healthy People Objectives for the nation; (3) rodent control and community-school fluoridation activities; (4) specified emergency medical services excluding most equipment purchases; (5) services for sex offense victims including prevention activities; (6) integrated pest management to reduce asthma related illnesses and (7) for related administration, education, monitoring and evaluation activities.

II. PROGRAM PROCEDURES

Administration and Services

The PHHSBG program is administered by the Centers for Disease Control and Prevention (CDC), a component of the Department of Health and Human Services (HHS). After receiving and reviewing a State's grant application, the CDC awards funds to the State according to a two-part formula prescribed at 42 USC 300w-1(a)(1) and 300w-1(b).

Source of Governing Requirements

The PHHSBG is authorized under Title X of the Public Health Service Act, as amended, and is codified as 42 USC 300 et seq. The implementing regulations for this and other block grant programs authorized by Omnibus Budget Reconciliation Act of 1981 are published at 45 CFR part 96. Those regulations include general administrative requirements in lieu of 45 CFR part 92 (the HHS implementation of the A-102 Common Rule) for the covered block grant programs.

As discussed in Appendix I of this Supplement, Federal Programs Excluded from the A-102 Common Rule, States are to use the fiscal policies that apply to their own funds in administering PHHSBG. Procedures must be adequate to assure the proper disbursal of and accounting for Federal funds paid to the grantee, including procedures for monitoring the assistance provided (45 CFR section 96.30).

Under the block grant philosophy, each grantee is responsible for designing and implementing its own PHHSBG program, within very broad Federal guidelines. Grantees must administer their PHHSBG program according to their approved plan and any amendments and in conformance with the grantee's own implementing rules and policies.

Availability of Other Program Information

The PHHSBG web page provides general information about this program (http://www.cdc.gov/nccdphp/blockgrant/index.htm).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

   a. Activities consistent with making progress towards achieving the objectives established by the Secretary for the health status of the population of the United States (42 USC 300w-3(a)(1)(A)).

   b. Preventive health service programs for the control of rodents and for community and school-based fluoridation programs (42 USC 300w-3(a)(1)(B)).

   c. Feasibility studies and planning for emergency medical services systems and the establishment, expansion, and improvement of such systems. Amounts for such systems may not be used for the costs of the operation of the systems or the purchase of equipment for the systems, except that such amounts may be used for the payment of not more than 50 percent of the costs of purchasing communications equipment for the systems. Amounts may be expended for feasibility studies or planning for the trauma-care components of such systems only if the studies or planning, respectively, is consistent with the requirements of 42 USC 300d-13(a) ((42 USC 300w-3(a)(1)(C)).

   d. Providing services to victims of sex offenses and for prevention of sex offenses (42 USC 300w-3(a)(1)(D)).

   e. Establishment, operation, and coordination of effective and cost-efficient systems to reduce the prevalence of illness due to asthma and asthma-related illnesses, especially among children, by reducing the level of exposure to cockroach allergen or other known asthma triggers through the use of integrated pest management, as applied to cockroaches or other known allergens (42 USC 300w-3(a)(1)(E)

   f. Related planning, administration, educational, monitoring, and evaluation activities (42 USC 300w-3(a)(1)(E) and 3(a)(1)(F)).

g. A State may transfer up to 7 percent of its annual allotment to the following block grants: Block Grants for Community Mental Health Services (CFDA 93.958) and the Maternal and Child Health Services Block Grant to the States (CFDA 93.994). At any time in the first three quarters of the fiscal year a State may transfer not more than 3 percent of the State's allotment and in the last quarter of a fiscal year a State may transfer the remainder (42 USC 300w-3(c)).

2. *Activities Unallowed*

a. Inpatient services (42 USC 300w-3(b)(1)).

b. Cash payments to intended recipients of health services (42 USC 300w-3(b)(2)).

c. Purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment (42 USC 300w-3(b)(3)).

d. Satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds (42 USC 300w-3(b)(4)).

e. Provide financial assistance to any entity other than a public or non-profit entity (42 USC 300w-3(b)(5)).

B. Allowable Costs/Cost Principles

As discussed in Appendix I of this Supplement, Federal Programs Excluded from the A-102 Common Rule, PHHSBG is exempt from the provisions of OMB cost principles circulars. State cost principles requirements apply to PHHSBG.

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort*

The State must maintain State expenditures for activities under 42 USC 300w-3 at a level that is not less than the average level of such expenditures maintained by the State for the proceeding 2-year period (42 USC 300w-4(c)(6)).

2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking

a. The State shall not use more than 10 percent paid from each of its allotments for administering the funds. The State will pay from non-Federal sources the remaining cost of administering such funds (42 USC 300w-3(d)).

b. The notice of Block Grant Awards may provide that specific amounts are earmarked for services to victims of sex offenses (42 USC 300w-3(a)(2)).

H. Period of Availability of Federal Funds

PHHSBG funds must be expended by the State in the fiscal year allotted or in the succeeding fiscal year (42 USC 300w-2(a)(2)).

L. Reporting

1. Financial Reporting

a. SF-269A, *Financial Status Report* – Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program*s – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

IV. OTHER INFORMATION

Transfers into PHHSBG

A State may transfer up to 10 percent of its annual allotment under SSBG to this and other specified block grant programs for support of health services, health promotion and disease prevention activities, low-income home energy assistance, or any combination of these activities.

Amounts transferred into this program are subject to the requirements of this program when expended and should be included in the audit universe and total expenditures of this program when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the

amounts transferred in should be shown as expenditures of this program when such amounts are expended.

Transfers out of PHHSBG

As discussed in III.A, "Activities Allowed or Unallowed," funds may be transferred out of PHHSBG to other Federal programs. The amounts transferred out of PHHSBG are subject to the requirements of the program into which they are transferred and should not be included in the audit universe and total expenditures of PHHSBG when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amount transferred out should not be shown as PHHSBG expenditures but should be shown as expenditures for the program into which they are transferred.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.994 MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT TO THE STATES

I. PROGRAM OBJECTIVES

The objective of the program of grants to States under the Maternal and Child Health (MCH) Block Grant program is to provide funds to the 50 States, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, the Federated States of Micronesia, Palau, the Marshall Islands, and the Northern Marianas (States) for improvement of the health of all mothers and children consistent with applicable health status goals and national health objectives established under the Social Security Act.

Specifically, MCH Block Grants are intended to: (1) provide and assure mothers and children (especially those with low income or limited availability of services) access to quality maternal and child health services; (2) reduce infant mortality and the incidence of preventable diseases and disabling conditions among children; (3) reduce the need for inpatient and long-term care services; (4) increase the number of children appropriately immunized against disease and the number of low-income children receiving health assessments and follow-up diagnostic and treatment services; (5) promote the health of mothers and infants by providing prenatal, delivery, and postpartum care for low-income, at-risk pregnant women; (6) promote the health of children by providing preventive and primary care services for low-income children; (7) provide rehabilitation services for blind and disabled individuals under sixteen years of age receiving benefits under Title XVI of the Social Security Act (Supplemental Security Income) to the extent medical assistance for such services is not provided under Title XIX (Medicaid); and (8) provide and promote family-centered, community-based, coordinated care for children with special health care needs and to facilitate the development of community-based systems of services for those children and their families.

II. PROGRAM PROCEDURES

Administration and Services

The MCH Block Grant program was created by the Omnibus Budget Reconciliation Act (OBRA) of 1981. Under that legislation, a number of categorical grants programs were consolidated into the single MCH Block Grant program. These were maternal and child health services for children with special health care needs; supplemental security income for children with disabilities; lead-based paint poisoning prevention programs; genetic disease programs; sudden infant death syndrome programs; and adolescent pregnancy grants. Extensive amendments to the authorizing statute in 1989 increased State programmatic and fiscal accountability under the program. These include requirements for States to define health status measures and to develop measurable objectives for program efforts as well as to report progress on key maternal and child health indicators.

The program is administered by the Division of State and Community Health, Maternal and Child Health Bureau (MCHB), Health Resources and Services Administration (HRSA), a component of the Department of Health and Human Services (HHS). MCH Block Grant funds are awarded to States in accordance with a preestablished formula after submission to and approval of their applications by HRSA. The application addresses how the State plans to implement prioritized tasks based on a statewide needs assessment (required to be conducted every five years) for all mothers and children, including those with special health care needs. The State health agency is responsible for overall program administration according to its approved plan but services may be carried out by the recipient or by local non-profit agencies that are funded in accordance with an allocation methodology determined by the recipient (and approved by HRSA).

Source of Governing Requirements

The MCH Block Grant program is authorized under the 1981 Omnibus Budget Reconciliation Act, as amended, and is codified at 42 USC 701 through 709. The implementing regulations for this and other HHS block grant programs are published at 45 CFR part 96. Those regulations include both specific requirements and general administrative requirements for the covered block grant programs in lieu of 45 CFR part 92 (the HHS implementation of the A-102 Common Rule).

Availability of Other Program Information

Further information about this program is available on the Internet at http://www.mchb.hrsa.gov/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should look first to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

   a. Funds may be used to provide health services and related activities, including planning, administration, education, and evaluation (42 USC 704(a)).

   b. Funds may be used to purchase technical assistance from public or private entities if required to develop, implement, or administer the MCH Block Grant (42 USC 704(c)).

   c. Funds may be used for salaries and other related expenses of National Health Service Corps personnel assigned to the State (42 USC 704(a)).

d. Funds may be used to continue funding of special projects in the State funded under Title V of the Social Security Act prior to the enactment of the MCH Block Grant program on August 31, 1981 (42 USC 705(a)(5)(C)(i)).

2. *Activities Unallowed*

a. Funds may not be used to purchase or improve land, to purchase, construct, or permanently improve buildings or facilities (other than minor remodeling), or to purchase major medical equipment unless a waiver has been granted by HRSA (42 USC 704(b)(3)).

b. Funds may not be used to make cash payments to intended recipients of services (42 USC 704(b)(2)).

c. Funds may not be provided for research or training to any entity other than a public or non-profit private entity (42 USC 704(b)(5)).

d. Funds may not be used for inpatient services, other than for children with special health care needs or high-risk pregnant women and infants or other inpatient services approved by the Associate Administrator for Maternal and Child Health (42 USC 704(b)(1)). Infants are defined as persons less than one year of age (42 USC 706(a)(2)(E)).

e. Funds may not be used to make payments for any item or service (other than an emergency item or service) furnished by an individual or entity excluded under Titles V, XVIII (Medicare), XIX (Medicaid), or XX (Social Services Block Grant) of the Social Security Act (42 USC 704(b)(6)).

f. MCH Block Grant funds may not be transferred to other block grant programs (42 USC 702(a)(3) and 705(a)(5)(B)).

B. Allowable Costs/Cost Principles

As discussed in Appendix I of this Supplement, Federal Programs Excluded from the A-102 Common Rule, the MCH Block Grant program is exempt from the provisions of the OMB cost principles circulars. State cost principles requirements apply to the MCH Block Grant program.

G. Matching, Level of Effort, Earmarking

1. Matching

Federal funds expended for the program must be matched 75 percent by State funds (42 USC 703(a)).

2.1. Level of Effort – *Maintenance of Effort*

The State must maintain the level of funds provided solely by the State for maternal and child health programs at a level at least equal to the level provided in FY 1989 (42 USC 705(a)(4)).

2.2. Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking

a. Unless a lesser percentage is established in the State's notice of award for a given fiscal year, the State must use at least 30 percent of payment amounts for preventive and primary care services for children (42 USC 705(a)(3)(A)).

b. Unless a lesser percentage is established in the State's notice of award for a given fiscal year, the State must use at least 30 percent of payment amounts for services for children with special health care needs (42 USC 705(a)(3)(B)).

c. A State may not use more than 10 percent of allotted funds for administrative expenses (42 USC 704(d)).

H. Period of Availability of Federal Funds

Funds available to States from their allotment for any fiscal year are available for obligation by the State in that fiscal year or in the succeeding fiscal year. No payment may be made to a State from allotments for a fiscal year for expenditures made after the end of the following fiscal year (42 USC 703(b)).

J. Program Income

Charges imposed by a State for services under this program must be pursuant to a published schedule of charges and adjusted to reflect the income, resources, and family size of the recipients. No charges may be imposed for low-income mothers or children (42 USC 705(a)(5)(D)). The official poverty guideline, as revised annually by HHS, shall be used to determine whether an individual is considered low-income for this purpose. The poverty guidelines are issued each year in the *Federal Register*. HHS maintains a page on the Internet that provides the poverty guidelines (http://aspe.hhs.gov/poverty/).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting

a. *Title V Application/Annual Report* (*OMB No. 0915-0172*) – The State must submit an annual report by July 15 of each year (at the time it submits the annual application). The reporting forms and instructions are contained in a document entitled "Guidance and Forms for the Title V Application/Annual Report." Reports are prepared electronically.

Key Line Items – The following line items contain critical information:

Number of Individuals Served and Proportion with Health Coverage:

Form 6 Number and Percentage of Newborns and Others Screened, Confirmed and Treated

Form 7 *Number of Individuals Served (Unduplicated) Under Title V*

Form 8 *Deliveries and Infants Served by Title V and Entitled to Benefits under Title XIX*

Amounts Spent Under Title V on Each Type of Service by Class of Individuals Served for the current year:

Form 3 *State MCH Funding Profile, "Expended" column*

Form 4 *Budget Details by Types of Individuals Served, Items I.a.-g.*

Form 5 *State Title V Program Budget and Expenditures by Types*

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

IV. OTHER INFORMATION

Federal funds from other block grant programs (e.g., Social Services Block Grant (CFDA 93.667), and Preventive Health and Health Services Block Grant (CFDA 93.991)) may be transferred into the MCH Block Grant program. MCH Block Grant funds, however, may not be transferred to other block grant programs (42 USC 702(a)(3) and 705(a)(5)(B)). Funds transferred into the MCH Block Grant are subject to the requirements of this program when expended and should be included in the audit universe and total expenditures of this program when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the

amounts transferred in should be shown as expenditures of this program when such amounts are expended.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

CFDA 94.006 AMERICORPS

I. PROGRAM OBJECTIVES

The AmeriCorps national service program provides funds to national and locally based organizations to carry out national service programs described in 42 USC 12572(a) and (b)..

II. PROGRAM PROCEDURES

Of the funds available for AmeriCorps programs, the Corporation for National and Community Service (Corporation) allots 35.3 percent to Commissions on National and Community Service in the various States, 1 percent for Indian Tribes, and 1 percent for the U.S. Territories. The State Commissions do not directly operate programs. State Commissions subgrant funds to organizations selected competitively by the State to operate community service programs within their States. After setting aside the aforementioned funds, the remaining funds are distributed competitively through the respective State Commissions or directly by the Corporation to non-profit organization that will operate in two or more States.

In addition to grants to fund AmeriCorps programs, State Commissions also receive grants from the Corporation to finance their administrative operations. These grants are made under a program titled State Commissions (CFDA 94.003), which is not included in Part 4 of this Supplement.

AmeriCorps grantees recruit and train individuals as AmeriCorps members. Full-time AmeriCorps members receive a living allowance and are eligible for health insurance and childcare benefits (if they are not otherwise covered while participating in the program). After satisfactorily and successfully completing the required term of service, the AmeriCorps members receive a voucher crediting them with a post-service educational benefit, which may be used to pay off qualified student loans or pay qualified education costs. The Corporation records the Federal liability for an AmeriCorps member's education benefit at the time the Corporation awards a grant to an entity. Upon application from the AmeriCorps member and verification from the lender or educational institution, the Corporation's National Service Trust transmits the funds to the lender or institution. AmeriCorps members who successfully complete a term of service are also eligible for the payment of interest that accrues on qualified student loans during a period of national service forbearance.

Source of Governing Requirements

The AmeriCorps program is authorized under the National and Community Service Act of 1990 (42 USC 12501 *et seq.*) and the implementing regulations in 45 CFR parts 2510 through 2524. NOTE: The Serve America Act (Pub. L. No. 111-13, enacted April 21, 2009) made substantial changes to the compliance requirements related to AmeriCorps programs, effective October 1, 2009. This program summary distinguishes, as necessary, between the requirements in effect before the Serve America Act amendments and those in effect after the amendments.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Funding is provided to carry out a full- or part-time national service program. Activities allowed include recruiting, training and supervising AmeriCorps members, paying living allowances to AmeriCorps members, paying health insurance premiums and child-care benefits for eligible AmeriCorps members, paying certain employment-related taxes, paying staff and other costs for program management, internal evaluations, and reimbursement of grantee administrative costs (42 USC 12572, 12574, 12581, 12581a, 12583, and 12594; 45 CFR sections 2520 to 2524; 2540 to 2543; and 2545 to 2550).

2. Prior to October 1, 2009, grant funds could not be used to

   a. provide a direct benefit to any (1) business organization organized for profit; (2) labor union; (3) partisan political organization; or (4) organization engaged in religious activities (unless the assistance is not being used to provide religious instruction, conduct worship services, provide instruction as part of a program that includes mandatory religious instruction or worship, construct, operate, or maintain facilities devoted to religious instruction or worship, or proselytize);

   b. assist, promote, or deter union organizing, impair existing contracts for services or collective bargaining agreements, or organize or engage in protests, petitions, boycotts, or strikes;

   c. attempt to influence legislation;

   d. engage in partisan political activities, or other activities designed to influence the outcome of an election to a State or local public office;

   e. participate in, or endorse, activities that are likely to include advocacy for or against political parties, platforms, candidates, proposed legislation, or elected officials;

   f. perform any service or engage in any activity prohibited under the nonduplication, nondisplacement, or nonsupplantation provisions relating to employees and volunteers in 42 U.S.C. 12637 and 45 CFR 2540.100;

   g. conduct a voter registration drive; or

h. finance the outcome of an election to Federal, State or local public office (42 USC 12584 and 12634; 45 CFR section 2520.65).

3. Effective October 1, 2009, in addition to the restrictions listed above, grant funds may not be used to provide abortion services or referrals for receipt of such services (42 USC 12584, 12584a, and 12634; 45 CFR section 2520.65).

E. Eligibility

1. Eligibility for Individuals

a. AmeriCorps members must be citizens, nationals, or lawful permanent resident aliens of the United States, and must be not less than 17 years old at the time of enrollment into the program. The statute does, however, permit certain types of programs to enroll participants who are out of school youths at least 16 years of age (42 USC 12591; 45 CFR section 2522.200). The regulations (45 CFR sections 2522.200(c), (d), and (e)) describe acceptable documentation for determining status as a citizen, national, or lawful permanent resident alien of the United States.

b. *Criminal History Checks*

(1) As of November 23, 2007, grantees must perform criminal history checks for all candidates to become an AmeriCorps member and/or to be employed as grant-funded staff who will have contact on a recurring basis with children, persons age 60 or older, or persons with disabilities. For each covered individual, a grantee must conduct: (a) a State criminal registry check or an FBI fingerprint check; and (b) a National Sex Offender Public Registry (NSOPR) check. For AmeriCorps members and covered grantee staff who are serving as of November 23, 2007, only the NSOPR check is required. An individual who is registered, or required to be registered, on a State sex offender registry, is deemed unsuitable to serve in a covered position. Grantees may adopt other disqualifying offenses. An individual who refuses to consent to a criminal registry check is also ineligible to serve (45 CFR sections 2522.205-207 and 2540.200 through 2540.207).

(2) For each individual selected to serve in a position that will receive a grant-funded living allowance, stipend, education award, salary, or other remuneration **on or after October 1, 2009**, the grantee must conduct both: (1) a State criminal registry check or an FBI fingerprint-based check and (2) a name-based search of the NSOPR. An individual who is required to be registered on a State sex offender registry, who has been convicted of murder, or who refuses to consent to a criminal history check is ineligible to serve.

Grantees may adopt other disqualifying offenses (42 USC 12645d; 45 CFR sections 2522.205-207 and 2540.200-207).

c. Living allowances are paid on the basis of an AmeriCorps member's selection and enrollment as a full-time participant in a program. The living allowance that an AmeriCorps member receives is not to be considered or treated as a wage or a salary. The installment payments of living allowances are not dependent upon the actual number of hours spent on service. Most full-time AmeriCorps members are to receive a living allowance during the installment period of at least 100 percent, but not more than 200 percent, of the total average annual subsistence allowance provided to VISTA volunteers. For particular program years, the limits on the living allowances are as follows (42 USC 4955 and 12594; 45 CFR section 2522.240):

Program Year	**Minimum Allowance**	**Maximum Allowance**
2007-2008	$11,100	$22,200
2008-2009	$11,400	$22,800
2009-2010	$11,400	$22,800
2010-2011	$11,800	$23,600

d. Current information on the minimum and maximum amounts of AmeriCorps living allowances is available from the Office of Grants Management at the Corporation's Headquarters at (202) 606-6966.

e. While most full-time AmeriCorps members cannot receive a living allowance higher than the maximum amount set forth above, the statute permits professional corps members to receive a living allowance in excess of the maximum allowance authorized in the statute. However, in this instance, Corporation funds may not be used to pay for any portion of the living allowance (42 USC 12594(c); 45 CFR section 2522.240).

f. An AmeriCorps member who is authorized to serve a reduced term of service may be provided a prorated living allowance for that authorized reduced term of service (42 USC 12593 and 12594; 45 CFR sections 2522.220 and 2522.240).

g. Living allowance requirements do not apply to Education Award Only programs (42 USC 12581a(c)).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching

a. For grants funded from FY 2006 and earlier appropriations –

(1) *Operational Costs* – Except for living allowances, child-care allowances (if applicable), health insurance premiums (if applicable), and certain employment-related taxes, the Corporation's share of the cost of activities carried out under the grant cannot exceed 75 percent. However, the terms of AmeriCorps program grants often require programs to provide higher operational matching amounts than 25 percent. The program must provide its matching amount in the form of cash, or in kind, fairly evaluated, including facilities, equipment, or services. The program may provide for its operational matching amount through State sources, local sources, or, when authorized, from other Federal sources. The Corporation may waive, in whole or in part, the minimum match requirement (25 percent) in any fiscal year if the Corporation determines that such a waiver would be equitable due to a lack of available financial resources at the local level (42 USC 12571(e); 45 CFR sections 2521.45 and 2521.70).

(2) *Member Support Costs* – The Federal share, including Corporation and other Federal funds, of the living allowance provided to an AmeriCorps member may not exceed 85 percent of the minimum required living allowance. The grantee must provide the remaining funding for living allowances from non-Federal cash sources. The Corporation will pay up to 85 percent of the cost of health care coverage that includes the minimum benefits specified by the Corporation. The Corporation specifies the minimum benefits required as part of its grant provisions (42 USC 12594(a) and (d); 45 CFR sections 2522.240(b)(5) and 2522.250(b)).

b. Beginning in FY 2006, unless the Corporation grants a waiver, the grantee's required share of program costs, including member support and operating costs, will incrementally increase to a 50 percent overall share by the tenth year and any year thereafter that it receives a grant without a break in funding of 5 years or more (45 CFR sections 2521.60 and 2521.80). The timetable is included in 45 CFR section 2521.60(a). Other requirements that govern matching are included in 45 CFR sections 2521.35, 2521.40, 2521.45, and 2521.50.

c. For grants funded from the Corporation's FY 2008, FY 2009, and FY 2010 appropriations, grantees are required to meet an overall minimum share requirement of 24 percent for the first three years that they receive AmeriCorps funding. Grantees in their fourth or subsequent years of funding will be required to meet the overall minimum share requirements specified in 45 CFR section 2521.60. The Corporation coordinates the implementation of this provision for those grantees that were covered under its minimum share requirements implemented by regulation in 2005 (paragraph III.G.1.b, above). These overall matching requirements override the separate member support and operating expense matching requirements specified in paragraphs III.G.1.a.1 and III.G.1.a.2, above. Grantees may apply for and receive a waiver of the overall matching requirements under 45 CFR section 2521.70 (Pub. L. No. 110-161, Division G, Section 407).

d. Matching requirements do not apply to fixed-amount grants and Education Award Only program grants (42 USC 12581(l)(4) and 12581a(c)).

2.1 Level of Effort – *Maintenance of Effort* – Not Applicable.

2.2 Level of Effort – *Supplement Not Supplant*

Funds provided by the Corporation must be used to supplement the level of State and local public funds expended for services of the type being assisted in the previous fiscal year. This requirement is satisfied if the aggregate expenditure for a particular program for the fiscal year in which services are to be provided will not be less than the aggregate expenditure for the program in the previous fiscal year, excluding the amount of Federal assistance provided and any other amounts used to pay the remainder of the costs of AmeriCorps programs (42 USC 12633).

3. Earmarking

No more than five percent of assistance provided by the Corporation can be used for the combined administrative expenses of the grantee and its subgrantees (42 USC 12571(d); 45 CFR sections 2521.30(h) and 2540.110). Limitations on administrative costs do not apply to fixed-amount grants and Education Award Only program grants (42 USC 12581(l)(4) and 12581a(c)).

L. Reporting

1. Financial Reporting

a. SF-269A – *Financial Status Report* (Short Form) – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425**,** *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting

a. The following two forms are submitted to the Corporation for each AmeriCorps member and are used by the Corporation to support the member's eligibility for a post-service education benefit. A roster of members enrolled/completed during the period should be obtained from the Corporation, to assure that the universe of forms submitted, as provided by the entity, is complete. Rosters may be obtained by contacting the Corporation's Director of Trust Operations at (202) 606-7546

(1) *National Service Enrollment Form (OMB No. 3045-0006)* – This form is used by the Corporation to enroll participants in the National Service Trust. Enrollment is the process through which a grantee notifies the Corporation that it has selected an individual to serve as an AmeriCorps member who may be eligible to receive a post-service education benefit upon successful completion of the individual's term of service.

Key Line Items – The following line items contain critical information:

Part 3 – *AmeriCorps member enrollment information*.

(2) *Corporation for National Service End of Term/Exit Form (OMB No. 3045-0015)* – This form is used by grantees to certify to the Corporation the number of service hours that each AmeriCorps member has completed, and whether the AmeriCorps member is eligible for a post-service education benefit (42 USC 12593 and 12603; 45 CFR sections 2522.220 and 2522.230, and 45 CFR part 2525). This form also informs the Corporation whether the member served satisfactorily, making the member eligible to serve a second or additional term of service.

Key Line Items – The following line items contain critical information:

Part 3 – *Service hours completed by an AmeriCorps member, the AmeriCorps member's entitlement to an education benefit, and the member's satisfactory performance during his or her term of service.*

4. **Section 1512 ARRA Reporting** – Applicable

5. **Subaward Reporting under the Transparency Act –** Applicable for non-ARRA funding

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

CFDA 94.011 FOSTER GRANDPARENT PROGRAM
CFDA 94.016 SENIOR COMPANION PROGRAM

I. PROGRAM OBJECTIVES

Foster Grandparent Program grants are awarded to allow participants to serve as mentors, tutors, and caregivers for children and youth with special or exceptional needs or circumstances identified as limiting their academic, social, or emotional development. Foster Grandparents serve in community organizations such as schools, Head Start programs, and youth centers.

Senior Companion Program grants are awarded to allow participants to provide assistance and friendship to older persons with special needs who are homebound and usually living alone. By taking care of simple chores, providing transportation to medical appointments, and offering contact to the outside world, Senior Companions often provide the essential services that keep older persons from having to enter nursing homes. They also assume the duties of informal caretakers for short periods of time to give the caretakers a respite from their duties.

II. PROGRAM PROCEDURES

The Corporation for National and Community Service (Corporation) awards Foster Grandparent and Senior Companion program grants only to State and local public agencies, private nonprofit organizations, and Indian tribes that have the capability to administer such grants. These sponsors are legally responsible for all programmatic and fiscal aspects of the project, and may not delegate or contract this responsibility to another entity. Consequently, the program has no subrecipients (42 USC 5011(a) and 5013(a); 45 CFR sections 2551.22 and 2552.22).

In both programs, participants aged 55 (or 60 prior to October 1, 2009) and older serve from 15 to 40 hours per week and, if they meet income eligibility requirements, receive small non-taxable cash stipends and other direct benefits to help offset the costs of serving. In addition, participants who do not meet the income eligibility requirements may serve as non-stipended Foster Grandparents or Senior Companions. Those participants receive all direct benefits, other than the stipend, to offset the costs of serving (42 USC 5011(a) and (d) and 5013(a) and (b); 45 CFR part 2551, subpart J and 45 CFR part 2552, subpart J).

Prospective sponsors submit applications for Foster Grandparent or Senior Companion grants to the Corporation, which reviews them and makes final funding decisions (45 CFR sections 2551.91 and 2552.91).

Source of Governing Requirements

These programs are authorized under the Domestic Volunteer Service Act of 1973, Title II (42 USC 5000 *et seq.*) and their implementing regulations found in 45 CFR parts 2251 and 2552.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Grant funds may be used for stipends for participants who meet income levels set by the Corporation (42 USC 5011(a) and (d) and 5013(a) and (b); 45 CFR sections 2551.43 and 2551.44 and 2552.43 and 2552.44).

2. Grant funds can also be used for other direct benefits for stipended Foster Grandparents and Senior Companions, such as: transportation costs; physical examinations; accident, liability, and excess automobile insurance covering participants during their volunteer activities; meals; and, costs for recognition of participants' volunteer efforts. Grant funds are also available for budgeted amounts of staff, office space, staff travel, and other administrative costs of the organization sponsoring the program (42 USC 5011(a) and (d) and 5013(a) and (b); 45 CFR sections 2551.46 and 2552.46).

3. No Federal or required non-Federal funds can be used to pay any costs, including direct benefits or administrative costs, associated with non-stipended Foster Grandparents and Senior Companions (42 USC 5011(f)(4) and 5013(b); 45 CFR sections 2551.104 and 2552.104).

4 Foster Grandparent and Senior Companions grant funds may not be used to influence the outcome of any election to public office, to facilitate voter registration, or to provide voters or prospective voters with transportation to the polls. Grant funds may not be used by the non-Federal entity in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except (a) when a legislative body or committee requests a program sponsor or participant to draft, review or testify regarding measures or make representations to the legislative body or committee, or (b) in connection with an authorization or appropriations measure directly affecting the operation of the Foster Grandparent Program and/or Senior Companion Program (42 USC 5043(c); 45 CFR sections 2551.121 and 2552.121).

5. No Foster Grandparent or Senior Companion grant funds shall be directly or indirectly used to finance labor union or anti-labor union organization or related activity (42 USC 5044(d); 45 CFR sections 2551.121(d) and 2552.121(d)).

E. Eligibility

1. Eligibility for Individuals

a. To be eligible to be paid a stipend, Foster Grandparents and Senior Companions must be at least 55 years old (or 60 years old prior to October 1, 2009); meet income guidelines; and be physically, mentally, and emotionally capable of serving on a person-to-person basis. Income eligibility is based on the applicant's total annual income (including the total annual income of the applicant's spouse), less allowable medical expenses. Effective October 1, 2009, to be income-eligible, an applicant's income must fall at or below 200 percent of the poverty level as annually established by the Department of Health and Human Services for the State in which he or she resides.

The annual income eligibility levels for all areas are available at Senior Corps web site (http://www.seniorcorp.gov/) under "Manage Current Grants" and from the Corporation's State Offices or the National Senior Service Corps at the Corporation's headquarters at (202) 606-5000. Stipends for Foster Grandparents and Senior Companions are $2.65 per hour effective April 1, 2002. This may be increased by the Corporation from time to time. Current information on the amount of the hourly stipend is also available from the Corporation's State Offices or from the National Senior Service Corps at the Corporation's headquarters (42 USC 5011 and 5013; 45 CFR sections 2551.41 through 2551.44 and 2552.41 through 2552.44).

Foster Grandparents and Senior Companion programs may enroll persons who are at least 55 years old (or 60 years old prior to October 1, 2009), but who do not meet the income guidelines as non-stipended Foster Grandparents or Senior Companions (45 CFR part 2551, subpart J and 45 CFR part 2552, subpart J).

b. As of November 23, 2007, grantees must perform criminal history checks for all candidates to become Foster Grandparents, Senior Companions and/or to be employed as grant-funded staff who will have contact on a recurring basis with children, persons age 60 or older, or persons with disabilities. For these individuals, grantees must conduct State criminal registry checks and National Sex Offender Public Registry (NSOPR) checks. For Foster Grandparents, Senior Companions and covered grantee staff who are serving as of November 23, 2007, only the NSOPR check is required. An individual who is registered, or required to be registered, on a State sex offender registry, is is deemed unsuitable to serve in a covered position. Grantees may adopt other disqualifying offenses. An individual who refuses to consent to a criminal registry check is also ineligible to

serve (45 CFR sections 2551.26 through 2551.32, 2551.42, 2552.26 through 2552.32, and 2552.42).

c. For each individual selected to serve in a position that will receive a grant-funded living allowance, stipend, education award, salary, or other remuneration on or after October 1, 200**9**, the grantee must conduct both: (1) a State criminal registry check or an FBI fingerprint-based check and (2) a name-based search of the NSOPR. An individual who is required to be registered on a State sex offender registry, who has been convicted of murder, or who refuses to consent to a criminal history check is ineligible to serve. Grantees may adopt other disqualifying offenses. (42 USC 12645d; 45 CFR sections 2522.205-207 and 2540.200-207).

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching

The non-Federal entity is required to contribute at least 10 percent of the total cost of a project from non-Federal sources or authorized Federal sources, unless the Notice of Grant Award specifies a lower percentage (42 USC 5011(a) and 5013(a); 45 CFR sections 2551.92(a) and 2552.92(a)).

2. Level of Effort – Not Applicable

3. Earmarking

An amount equal to 80 percent of the Federal share of a Foster Grandparent or Senior Companion program grant must be used for stipend and other direct benefits for Foster Grandparents or Senior Companions, unless the Notice of Grant Award specifies a different percentage. Direct benefits for Foster Grandparents and Senior Companions include stipends, insurance, transportation, meals, physical examinations, recognition, and uniforms, if necessary (45 CFR sections 2551.92(e) and 2552.92(e)).

L. Reporting

1. Financial Reporting

a. SF-269A, *Financial Status Report* (Short Form) – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. **Performance Reports** – Not Applicable

3. **Special Reports** – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

SOCIAL SECURITY ADMINISTRATION

CFDA 96.001 SOCIAL SECURITY—DISABILITY INSURANCE (DI)
CFDA 96.006 SUPPLEMENTAL SECURITY INCOME (SSI)

I. PROGRAM OBJECTIVES

The Social Security Administration (SSA) is responsible for disability determinations under the Disability Insurance (DI) and the Supplemental Security Income (SSI) programs. The DI program was established in 1954 under Title II of the Social Security Act and provides benefits to disabled wage earners and their families in the event the family wage earner becomes disabled (Section 221 of the Social Security Act). In 1974, Congress enacted Title XVI, the SSI program, which provides benefits to financially needy individuals who are aged, blind or disabled (Section 1633 of Social Security Act).

II. PROGRAM PROCEDURES

The disability process begins when a person, referred to as a claimant, completes a claim for DI or SSI benefits. SSA field office staff verifies the claimant's non-medical eligibility. The claim is then forwarded to the State Disability Determination Services (DDS) for a medical determination of disability. To assist in making proper disability determinations, the DDS is authorized to purchase medical examinations, x-rays and laboratory tests on a consultative basis to supplement evidence obtained from the claimants' physicians or other treating sources.

SSA pays the DDS for 100 percent of the costs incurred in making disability determinations. Each year the State DDS submits a budget request to SSA for review and approval. The DDS is notified of budget approval by Form SSA-872, *State Agency Obligational Authorization for SSA Disability Programs*. Once approved, the DDS is allowed to withdraw Federal funds through the Department of the Treasury's Automated Standard Application for Payment system to meet immediate program expenses. At the end of each quarter of each fiscal year, the DDS submits a Form SSA-4513, *State Agency Report of Obligations for SSA Disability Programs*, to account for program disbursements and obligations and a Form SSA-4514, *Time Report of Personnel Services for Disability Determination Services*, to account for employee time.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

DDSs make disability determinations based on the law and regulations and on written guidelines issued by SSA. Each State making disability determinations is entitled to receive from the Trust funds reimbursement for the cost of making those disability determinations for SSA. Activities shall be in accordance with the budget request approved by SSA. Purchased medical services, such as Medical Evidence of Record (MER) and Consultative Examinations (CE), must be in accordance with the DDS's fee schedule for purchased medical services. Activities allowed under the disability programs include personnel services, purchased medical services, indirect costs and other non-personnel costs (42 USC 421 (e) and (f); 20 CFR sections 404.1626 and 416.1026).

B. Allowable Costs/Cost Principles

1. *Direct Costs* – The SSA Program Operations Manual System (POMS) contains guidance on direct costs for both the DI and SSI programs. Personnel services (POMS DI 39518) include personnel costs and employee benefits. Purchased medical services (POMS DI 39545) include MER and CE. Other non-personnel costs include travel (POMS DI 39524), space (POMS DI 39527), equipment (POMS DI 39530), and contracted services (POMS DI 39542).

2. *Indirect Costs* – Indirect costs which may be charged to the disability program generally arise from three sources: (a) administrative costs of the parent agency related to DDS; (b) business costs associated with the accounting, billing, and procurement services provided by the parent agency for the DDS; and (c) automated services provided to the DDS that are operated by the parent agency. Indirect costs charged to the disability program should be based on the rate approved by the cognizant Federal agency as evidenced by a written agreement.

3. *Non-SSA Work* – Some DDSs make disability determinations for claims not related to SSA benefits. When a DDS performs non-SSA work, a Memorandum of Understanding should exist between the State and the SSA Regional Commissioner that outlines the specifics of the non-SSA work. The SSA should not be charged the costs on the non-SSA program work (POMS DI 39563).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

f. SSA-4513, *State Agency Report of Obligations for SSA Disability Programs (OMB No. 0960-0421)* – This report is due quarterly for each fiscal year still open in order to account for program disbursements and unliquidated obligations (POMS DI 39506.202).

g. SSA-4514, *Time Report of Personnel Services for Disability Determination Services (OMB No. 0960-0421)* – This report is due quarterly to account for employee time (POMS DI 39506.230).

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

IV. OTHER INFORMATION

Disbursements for the DI and SSI programs are not accounted for separately. Expenditures for both programs should be reported on the Schedule of Expenditures of Federal Awards under DI (CFDA 96.001).

DEPARTMENT OF HOMELAND SECURITY

CFDA 97.024 EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM
CFDA 97.114 ARRA EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM

I. PROGRAM OBJECTIVE

The purpose of the program is to supplement and expand ongoing efforts to provide emergency shelter, food, and supportive services for needy families and individuals. The program also conducts minimum rehabilitation of existing mass shelter or mass feeding facilities, but only to make facilities safe and sanitary and bring them into compliance with local building codes.

II. PROGRAM PROCEDURES

The Emergency Food and Shelter National Board Program (EFSP) is administered by the U.S. Department of Homeland Security/Federal Emergency Management Agency (FEMA). The program has been entrusted to FEMA through the McKinney-Vento Homeless Assistance Act (42 USC 11331 et seq.) "to supplement and expand ongoing efforts to provide shelter, food and supportive services" for the nation's hungry and homeless.

The National Board (the recipient) qualifies local jurisdictions for funding using a formula based on current Federal statistics on unemployment, poverty, and population. State Set-Aside Committees are established to receive a portion of funding from the National Board to assist localities experiencing drastic economic changes or that do not qualify for direct funding. The National Board selected United Way Worldwide to serve as its Secretariat and Fiscal Agent.

Local Boards (LBs) must submit a "Local Board Plan" to the National Board which outlines the funding distribution for their jurisdiction. Once the plan is approved by the National Board, the National Board transmits funding, in two equal installments, by electronic funds transfer (EFT), directly to the Local Recipient Organizations (LROs) selected to receive funding by the LBs. LROs that are first-time recipients of EFSP funds receive the payment of their first installment by check.

Source of Governing Requirements

Title III of the McKinney-Vento Homeless Assistance Act, as amended (42 U.S.C. 11331 et seq.) and the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5).

Availability of Other Program Information

Other program information is available through the Fiscal Year 2009 Emergency Food and Shelter Program National Board Phase 28 Responsibilities and Requirements Manual located at www.dhs.gov/xopnbiz/grants/editorial_0565.shtm;

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

   a. Administrative costs

      (1) National Board: up to1 percent of the funding may be used by the National Board to perform administrative duties.

      (2) State Set-Aside Committees: up to 0.5 percent of the award may be used for administrative functions.

      (3) Local Boards: LB administrative costs are restricted to 2 percent of the funds available to the local jurisdiction based on the approved LB plan. The 2 percent allowance may be used by the LB and/or the LRO at the discretion of the LB. No LRO may receive an allowance greater than 2 percent of that LRO's award amount unless the LRO is providing the administrative support for the LB. Any unused administrative allowance must be spent on eligible program services.

   b. LROs may use funding for activities approved by the LB, consistent with the LB's approved plan (42 USC 11343(a)).

2. *Activities Unallowed*

   Unallowable costs are identified in the *Emergency Food and Shelter National Board Program Phase 28 Responsibilities and Requirements Manual.* The manual is located at www.dhs.gov/xopnbiz/grants/editorial_0565.shtm.

E. Eligibility

1. Eligibility for Individuals –Individuals are eligible for assistance based on the criteria set by individual LROs. .

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – LROs must be private non-profit organizations or local governments (42 USC 11343(b)).

G. Matching, Earmarking, Level of Effort

1. Matching – Not Applicable

2.1 Level of Effort – *Maintenance of Effort* – Not Applicable

2.2 Level of Effort – *Supplement Not Supplant*

EFSP funds are to supplement and expand on going efforts of existing local social service organizations, and cannot be used as seed or start-up money for new organizations.

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting –

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable.

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable.

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. **Section 1512 ARRA Reporting** – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funding

IV. OTHER INFORMATION

Expenditures identified under the Homeland Security Emergency Food Shelter cluster in the current audit period may be attributable to awards made under CFDA 97.024, Emergency Food and Shelter National Board Program, which is a non-ARRA EFS program, or to ARRA funding under CFDA 97.114. Subawards issued by the primary grantee are legally binding agreements, and, therefore, the CFDA number(s) cited by the grantee in the subgrant award must be used by the subgrantee as the CFDA reference in the Schedule of Expenditures of Federal Awards (SEFA).

DEPARTMENT OF HOMELAND SECURITY

CFDA 97.036 DISASTER GRANTS – PUBLIC ASSISTANCE (Presidentially Declared Disasters)

I. PROGRAM OBJECTIVE

The objective is to provide assistance to States, local governments, and selected non-profit organizations under the Public Assistance (PA) program.

II. PROGRAM PROCEDURES

Following a Presidential declaration of a major disaster or an emergency, the Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS), awards grants for public assistance to States. The State may use the funds to restore its own disaster-damaged facilities and to provide subgrants to local governments (including Indian tribes, authorized tribal organizations, and Alaskan native villages and organizations) and selected private non-profit facilities.

The PA program is administered by the State (e.g., the State Emergency Agency) in accordance with a FEMA-State Agreement to provide assistance that may be available under an emergency or major disaster declaration. The State acts as the grant administrator for all funds provided under the PA program. The grant administrator's responsibility includes providing technical advice and assistance to eligible subgrantees, providing State support for damage survey activities, ensuring that all potential applicants are aware of assistance available, and submission of documents necessary for grant awards (44 CFR sections 206.200 through 206.349). In certain circumstances an Indian Tribe may be a grantee.

For purposes of the PA program, the following terms will be used:

> *State* – The State Agency that is defined as the grantee under FEMA regulations and acts as the grant administrator for the program.
>
> *Subgrantee* – The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided (44 CFR section 206.201(l)). (For example, in explaining this program, a State Highway Agency is considered a subgrantee of a State Emergency Agency even though both agencies may be included in the same Statewide single audit.)
>
> *RA* – The FEMA Regional Administrator.

PA program awards are made based upon a Project Worksheet (PW) prepared by a project formulation team. The project formulation team normally includes a representative of FEMA, the State, and the subgrantee. The PW documents the project formulation team's determination of the eligible scope of work and cost estimate. The PA program will fund a part of this eligible work in accordance with the FEMA-State Agreement. Each PW has a control number and any supplemental PWs will be referenced to the original PW.

Projects are classified as large or small projects according to the cost of the eligible work for the individual project. FEMA sets a dollar cost threshold annually for distinguishing large from small projects. Projects with costs that equal or exceed this threshold are large projects; projects that cost less than the threshold are small projects. The threshold is adjusted each October to reflect changes in the Consumer Price Index. The threshold $57,500 for the period October 1, 2005 through September 30, 2006; $59,700 for the period October 1, 2006 through September 30, 2007; $60,900 for the period October 1, 2007 through September 30, 2008; $64,200 for the period October 1, 2008 through September 30, 2009; and $63,200 for the period October 1, 2009 through September 30, 2010; and $63,900 for the period October 1, 2010 through September 20, 2011. The date the disaster is declared by the President determines the threshold in use for that project.

Small Projects

Applicants are encouraged to make their own estimates for small projects and prepare PWs to be submitted to FEMA. FEMA will then take a 20 percent sample of the small projects prepared by the applicant and verify that the scope of the work is eligible and the cost estimate reasonable. If the sample passes this validation, FEMA accepts all small project PWs from the applicant and obligates the funds. If the sample fails, a second 20 percent is reviewed. If the second sample also fails, FEMA assigns a specialist to assist the applicant in reformulating and resubmitting all small projects to FEMA. A FEMA specialist is assigned to formulate an applicant's small projects when an applicant elects not to do so.

For small projects, final payment of the Federal share of eligible costs is made upon approval of the project. The amount awarded for small projects based on the PW generally will not change except under unusual circumstances, such as failure to complete the work, an unexpected insurance recovery, or an obvious error in calculation. At closeout of the disaster contract, the State is required to certify that all projects were properly completed and that the State cost-sharing contribution, as specified in the FEMA-State Agreement, was paid. However, this certification does not specify the amount spent by a subgrantee on small projects. If the actual cost for small projects is less than the estimated cost on the PW and the scope of work is completed, FEMA will not ask for a refund. Similarly, FEMA generally will not provide additional funding when actual costs exceed the PW estimate. However, provision is made that, when a subgrantee has significant overruns, an appeal may be made to FEMA for additional funding based upon the total final costs for all small projects (44 CFR sections 206.204(e) and 206.205(a)).

Large Projects

For large projects, the State must make an accounting to FEMA of eligible costs for each approved large project. In submitting the accounting, the State must certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, that the project is in compliance with the FEMA-State Agreement, and that payments for the project have been made in accordance with 44 CFR section 13.21 requirements for payment. The subgrantee is required to make similar accounting and certifications to the State. If actual costs are less than the approved amount, then the FEMA share will be based upon the actual costs.

The subgrantee may request additional funding for eligible cost overruns on large projects. For additional funding, these requests must include a written recommendation from the State and approval of the RA (44 CFR sections 206.204(e) and 206.205).

Improved Projects

If a subgrantee desires to make improvements, but still restore the pre-disaster function of a damaged facility, State approval must be obtained. Federal funding for an improved project is limited to the Federal share of the approved estimate of the eligible costs to repair or replace the disaster-damaged facility. The Federal share will only restore the pre-disaster capacity of the damaged or destroyed facility. For example, if eligible work to restore the pre-disaster capacity is $100,000, and the subgrantee chooses to rebuild an improved facility that costs $200,000, then the FEMA share is only based on the $100,000. However, if the actual cost is less than the eligible work of $100,000 (e.g., construction costs are much lower than expected), then a FEMA adjustment is required (44 CFR section 206.203).

Alternate Projects

In a case where the subgrantee determines that the public welfare would not be best served by restoring a damaged public facility, the State may request that FEMA approve an alternate project. This option is available only for permanent, restorative work. Funds contributed for alternate projects may be used to repair or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures. These funds may not be used to pay the non-Federal share of any project or for any operating expense (44 CFR section 206.203(d)(2)).

Funds approved for an alternate project can be used only for alternate projects specifically approved by FEMA. While the States and subgrantees have flexibility to propose the type and size of alternate projects they wish to construct, FEMA must review such proposed projects to ensure compliance with environmental and other special concerns (44 CFR section 206.203).

Administrative Costs

FEMA also provides funding for costs incurred by States and their subgrantees in administering the PA program. For disaster or emergency declarations prior to November 13, 2007, the State receives a statutory administrative cost allowance determined according to a formula based on percentages of the aggregate Federal share of funding provided to subgrantees for approved PA projects. The State awards administrative cost allowances to subgrantees according to a formula based on percentages of the subgrantees' net eligible project costs. All administrative costs must be supported with source documentation. For disaster or emergency declarations on or after November 13, 2007, the State is eligible for management costs to administer the PA program. Management costs are defined as indirect costs, administrative expenses, and any other expenses not directly chargeable to a specific project. The available funding for management costs is based on a 3.34 percentage rate for disaster declarations and a 3.90 percentage rate for emergency declarations. The rate is applied to the projected Federal share of project funding. The State's request for management costs is subject to FEMA approval. A subgrantee may use management cost funding made available by the State, as prescribed in the State administrative plan, to

administer PA projects (interim final rule, 44 CFR parts 206 and 207, effective November 13, 2007, 72 FR 57876 through 57878, October 11, 2007).

Source of Governing Requirements

This program is authorized by 42 USC 5121 *et seq*. Program regulations issued by FEMA are codified at 44 CFR sections 206.200 through 206.349.

Availability of Other Program Information

Additional program information is available on the FEMA web site at http://www.fema.gov/government/grant/pa/index.shtm.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

The allowed activities for the PA program are for the approved project as described on the PW and supporting documentation. The approved project may be repair or replacement of the damaged facility, an improved project, or an alternate project (44 CFR section 206.203).

B. Allowable Costs/Cost Principles

1. *Equipment Usage* – The PA program restricts eligible direct costs for applicant-owned equipment used to perform eligible work to reasonable rates that were established under State guidelines, or when the hourly rate exceeds $75, rates may be determined on a case-by-case basis by FEMA. When local guidelines are used to establish equipment rates, reimbursement is based on those rates or rates in a Schedule of Equipment Rates published by FEMA, whichever is lower. Provision is also made when no rates are established or the entity wishes to claim an equipment rate that exceeds the FEMA Schedule (44 CFR section 206.228(a)(1)).

2. *Administrative Costs*

   a. *Grantee*

   For major disaster or emergency declarations before November 13, 2007, a State may use funds made available by FEMA under its administrative cost allowance only for extraordinary direct costs of preparing PWs, final inspection reports, project applications, etc., and for making final audits and related field inspections. Specific cost items allowable for such

purposes include overtime pay, per diem and travel expenses for State employees, but not regular (straight time) salaries. Cost items not eligible for funding from the State's administrative cost allowance, but still related to managing the program, may be funded from the grant if prescribed in an approved PW (44 CFR sections 206.228(a)(2) and (a)(3) and interim final rule, 44 CFR section 207.9, effective November 13, 2007 (72 FR 57878, October 11, 2007)).

For major disaster or emergency declarations on or after November 13, 2007, a State may request funds from FEMA for management costs, which include indirect costs, administrative expenses, and any other expenses not directly chargeable to a specific project that are reasonably incurred in administering and managing the program within dollar ceilings and timeframes established by regulation (interim final rule, 44 CFR parts 206 and 207, effective November 13, 2007 (72 FR 57876 through 57878, October 11, 2007)).

b. *Subgrantee* –

For major disaster or emergency declarations prior to November 13, 2007, a subgrantee may use funds made available in its administrative cost allowance for necessary costs to request, obtain, and administer its subgrant. No other direct or indirect costs are allowable at the subgrantee level (44 CFR sections 206.228(a)(2) and (a)(3) and interim final rule, 44 CFR section 207.9, effective November 13, 2007 (72 FR 57878, October 11, 2007)).

For disaster or emergency declarations on or after November 13, 2007, a subgrantee may use management cost funding made available by the State, as prescribed in the State administrative plan, to administer PA projects (interim final rule, 44 CFR parts 206 and 207, effective November 13, 2007, 72 FR 57876 through 57878, October 11, 2007).

3. *Force Account Labor Costs* – The straight- or regular-time salaries and benefits of a subgrantee's permanently employed personnel are not eligible in calculating the cost of eligible work for emergency protective services or debris removal under sections 403 and 407 of the Stafford Act (42 USC 5170b and 5173, respectively). For performance of eligible permanent restoration under section 406 of the Stafford Act (42 USC 5172), straight-time salaries and benefits of a subgrantee's permanently employed personnel are eligible (44 CFR section 206.228(a)(4)).

4. *Insurance and Other Recoveries* – Auditors are advised that there are likely to be amounts from insurance settlements, salvage, or other sources that must be considered in determining allowable costs because allowable costs must be net of applicable credits (42 USC 5155).

E. Eligibility

1. Eligibility for Individuals – Not Applicable

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

A State may award subgrants under this program to the following types of entities:

a. State and local governments;

b. Private non-profit organizations or institutions which own or operate a private non-profit facility, such as (but not limited to) an educational, medical, or custodial care facility, or other facility providing essential governmental type services to the public; and

c. Indian tribes or authorized tribal organizations and Alaskan Native villages or organizations (but not Alaskan Native Corporations, the ownership of which is vested in private individuals) (44 CFR sections 206.221 and 206.222).

G. Matching, Level of Effort, Earmarking

1. Matching

a. Costs must be on a shared basis, as specified in the FEMA-State Agreement. In general, the minimum Federal share is 75 percent of eligible costs (44 CFR section 206.65). The non-Federal share that is split between the State and each subgrantee may vary. The accountability for meeting the matching requirement resides with the State and is determined at the time of project accounting as part of project closeout (i.e., the non-Federal share does not have to be met until the end of the project).

However, matching requirements for alternate projects vary from this general rule and fall into one of two categories:

(1) *Public facilities*. Eligible costs for public facilities are 90 percent of the approved Federal estimate of eligible repair/replacement costs of the damaged facility or the actual fixed cost of completing the alternate project(s), whichever is less. The appropriate Federal share will then be applied to the lesser amount.

Basic Calculation:

$100,000 – Eligible damage

____ × .75 - % Federal Cost Share

$ 75,000 – Subtotal

____ × .90 – of Federal Cost Share

$ 67,500 – Maximum amount subgrantee may receive.

In this example, the subgrantee must spend at least $75,000 on the approved alternate project to receive $67,500. If the subgrantee spends less than the alternate project amount, then the Federal cost share would be 75 percent of the actual amount spent.

(2) *Private non-profit (PNP) facilities.* Eligible costs for PNP facilities are 75 percent of the approved Federal estimate of eligible repair/replacement costs of the damaged facility or the actual fixed cost of completing the alternate project(s), whichever is less. The appropriate Federal share will then be applied to the lesser amount.

Basic Calculation:

$100,000 – Eligible damage

____ × .75 - % Federal Cost Share

$ 75,000 – Subtotal

____ × .75 – of Federal Cost Share

$ 56,250 – Maximum amount subgrantee may receive.

In this example, the subgrantee must spend at least $75,000 on the approved alternate project to receive $56,250. If the subgrantee spends less than the alternate project amount, then the Federal cost share would be 75 percent of the actual amount spent.

b. There is no matching requirement for PA grants made to Louisiana, Mississippi, Florida, Alabama and Texas in connection with Hurricanes Katrina, Wilma, Dennis and Rita (Title IV, Pub. L. No. 110-28).

2. Level of Effort – Not Applicable

3. Earmarking

For disaster or emergency declarations prior to November 13, 2007, the State makes funding available to subgrantees for their direct costs to request, obtain, and administer public assistance projects according to the following formula: (a) three percent of the subgrantee's first $100,000 of net eligible project costs; (b) two percent of the subgrantee's next $900,000 of such costs; (c) one percent of the subgrantee's next $4 million of such costs; and (d) one-half of one percent of the subgrantee's net eligible costs over $5 million (44 CFR section 206.228(a)(2) and interim final rule, 44 CFR section 207.9, effective November 13, 2007, 72 FR 57878, October 11, 2007).

For disaster or emergency declarations on or after November 13, 2007, the State makes management cost funding available to subgrantees, as prescribed in the State administrative plan, to administer PA projects (interim final rule, 44 CFR parts 206 and 207, effective November 13, 2007, 72 FR 57876 through 57878, October 11, 2007).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable only to those non-Federal entities who do not utilize the Department of Health and Human Services, Payment Management System.

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. FEMA 20-10, *Financial Status Report* (*OMB No. 1660-0025)* – This form is generally used in lieu of the SF-269

f. SF-425, *Federal Financial Report* – Applicable (cash status only)

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

Project Accounting

Compliance Requirement – For large projects, the State is required to make an accounting to FEMA of eligible costs. Similarly, the subgrantee must make an accounting to the State. In submitting the accounting, the entity is required to certify that reported costs were incurred in performance of eligible work, that the approved work was completed, that the project is in compliance with the provisions of the FEMA-State Agreement, and that payments for that project were made in accordance with the 44 CFR section 13.21 payment provisions. For improved and alternate projects, if the total cost of the projects does not equal or exceed the approved eligible costs, then the auditor should expect to see an adjustment to reduce eligible costs (44 CFR section 206.205).

Audit Objective – Determine whether ongoing and completed projects were accounted for in accordance with the required certification.

Suggested Audit Procedures

Projects not completed – Select a sample of ongoing large projects and ascertain if costs submitted for reimbursement were in compliance with the requirements for eligible work under the applicable PW. Testing should consider the differences in the requirements and approvals required of improved and alternate projects.

Completed projects – Select a sample of large projects completed during the audit period and ascertain if the entity's files document the total costs as allowable costs and if the costs are for allowable activities under the applicable PW. This testing should consider the differences in the requirements and approvals required of improved and alternate projects.

IV. OTHER INFORMATION

Effective March 1, 2003, FEMA became part of DHS. Since recipients' funding periods may not coincide with the change in CFDA number, recipients should include the CFDA number shown on their notices of award (whether 83.544 and/or 97.036) in completing the Schedule of Expenditures of Federal Awards (SEFA). When awards from both CFDA 97.036 and CFDA 83.544 are present, they should be combined when determining Type A programs. If the program was a major program under the legacy CFDA number in either of the previous two years, the provision in the risk-based approach for prior audits is considered to have been met. On the SEFA, both the DHS CFDA number and the legacy agency's corresponding CFDA number should be presented separately.

See Appendix VI for information related to Hurricane Katrina.

DEPARTMENT OF HOMELAND SECURITY

CFDA 97.039 HAZARD MITIGATION GRANT (HMGP)

I. PROGRAM OBJECTIVES

The Hazard Mitigation Grant Program (HMGP) is a cost-shared program administered by the Federal Emergency Management Agency (FEMA), Department of Homeland Security. The program's purpose is to mitigate the vulnerability of life and property to future disasters during the recovery and reconstruction process following a disaster. HMGP provides funds to implement projects to reduce risk from future hazard events in accordance with priorities identified in State, tribal or local hazard mitigation plans. It also provides funds designed to develop State, tribal, and local mitigation plans that meet the planning requirements outlined in 44 CFR part 201.

II. PROGRAM PROCEDURES

Program Administration

FEMA awards HMGP grants to States, which in turn may award subgrants to other State agencies, local governments, Indian tribal organizations, and other eligible entities. Each State administers the HMGP according to a FEMA-State Agreement, a comprehensive Standard or Enhanced State Mitigation Plan, and a State HMGP Administrative Plan. These plans must be approved by FEMA before funds are awarded to the State. FEMA is responsible for assisting the State, approving or denying project applications, and reviewing the State's quarterly and final reports.

FEMA also provides funding for costs incurred by States and their subgrantees in administering HMGP. For Federal disasters declared prior to November 13, 2007, the State receives a statutory administrative cost allowance determined according to a formula based on percentages of the aggregate Federal share of funding provided to subgrantees for hazard mitigation projects. State management costs not covered by the allowance may be allowed with FEMA prior approval. The State awards statutory administrative cost allowances to subgrantees according to a formula based on percentages of the subgrantee's net eligible project costs. If requested, management costs are awarded as a part of the HMGP ceiling.

For Federal disasters declared on or after November 13, 2007, FEMA makes available funds for costs incurred by States and their subgrantees in administering and managing HMGP. These costs are now termed "management costs" and include any indirect costs, administrative expenses, and any other expenses not directly chargeable to a specific project that are reasonably incurred by a State or local community in the administration and management of HMGP. A flat rate of 4.89 percent of the projected eligible program costs is used to calculate the Management Costs available to States and federally recognized Indian tribal governments. The States must make available a percentage or amount of pass-through funds for management costs to their subgrantees. The basis, criteria, or formula for equitable distribution is determined by the State and must be included in the FEMA-approved State Administrative Plan before funds for

management costs can be awarded. Management costs are not subject to the Federal funding limits for HMGP projects (see III.G.1, "Matching").

Application and Award Process

After determining that disaster relief and recovery needs cannot be met with resources available within the State, the Governor requests a Presidential declaration designating the State a disaster area. States have up to 12 months from the date the disaster is declared to review and submit applications for disasters declared on or after February 26, 2002. Disasters declared before February 26, 2002, have an application period of 18 months. The application must identify the specific mitigation measure(s) for which the State requests funding, and any entities to which the State intends to award subgrants.

In addition to submitting applications and supporting documents to FEMA, the Governor's Authorized Representative appoints a State Hazard Mitigation Officer. This official ensures that all potential applicants are made aware of the assistance available under the HMGP, and provides technical advice and assistance to eligible subgrantees. Indian tribal organizations can receive HMGP assistance as subgrantees of States or apply directly to FEMA. Where FEMA awards a grant directly to an Indian tribal government, the two entities enter into a FEMA-Tribal agreement modeled on the FEMA-State agreement.

Source of Governing Requirements

The HMGP is authorized by section 404 of the Stafford Act (42 USC 5170c). Program regulations are codified at 44 CFR parts 80; 201; 206, subpart N (Hazard Mitigation Grant Program); and 207.

Availability of Other Program Information

Additional program information and the HMGP *Desk Reference* are available at http://www.fema.gov/government/grant/hmgp/index.shtm.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

The activities allowed for an HMGP project are those described in the grant application approved by FEMA and the supporting documentation. All projects funded must also conform to the State's and/or Tribe's (when applying directly to FEMA) comprehensive Hazard Mitigation Plan. Additionally, all subgrant projects funded under HMGP must be in accordance with priorities identified in tribal or local hazard mitigation plans (44 CFR sections 201.6 and 201.7). Eligible projects include, but are not limited to:

1. Structural hazard control or protection projects;

2. Construction activities that will result in protection from hazards;

3. Retrofitting of facilities;

4. Property acquisition or relocation;

5. Development of State or local mitigation standards;

6. Development of comprehensive mitigation programs with implementation as an essential component;

7. Development or improvement of warning systems; and

8. Development of a mitigation plan meeting the requirements of 44 CFR part 201. (44 CFR section 206.436(d)(2))

B. Allowable Costs/Cost Principles

1. *Administrative Costs for Federal disasters declared prior to November 13, 2007*

   a. *Grantee Direct Costs* – A State may use funds made available by FEMA under its administrative cost allowance only for extraordinary direct costs of preparing applications and quarterly reports, and making final audits and related field inspections. Specific cost items allowable as direct administrative costs include overtime pay, per diem and travel expenses for State employees, but not their regular (straight-time) salaries. Cost items not eligible for funding from the State's administrative cost allowance, but still related to managing the program, may be funded from the grant if FEMA gives prior approval. Regular (straight-time) salaries may be funded in this way. In the case of staffing costs for the State's portion of the Joint Field Office, FEMA gives prior approval by approving the State's staffing plan (44 CFR section 207.9(b)(1)).

b. *Subgrantee Administrative costs* – A subgrantee may use funds made available by the grantee in its administrative cost allowance only for direct costs of requesting, obtaining, and administering its subgrants (44 CFR section 207.9(b)(2)).

c. *Indirect Costs* – Grantee indirect costs identified in accordance with the Federal cost principles are allowable. Indirect costs at the subgrantee level are unallowable (44 CFR section 207.9(c)).

2. *Management Costs for Federal disasters declared on or after November 13, 2007*

a. *Grantee* – A State may use funds made available by FEMA under its management cost allowance for any indirect costs, any administrative expenses, and any other expenses not directly chargeable to a specific project that are reasonably incurred in administering and managing the HMGP. All charges must be in accordance with 44 CFR part 207.

b. *Subgrantee* – The State makes funds for management costs available to subgrantees in accordance with the State's FEMA-approved State Administrative Plan. A subgrantee may use funds made available for management costs for any indirect costs, administrative expenses, and other expenses not directly chargeable to a specific project that are reasonably incurred in administering and managing the HMGP subaward (44 CFR section 207.6). See also definition of "Management Costs," 44 CFR section 207.2.)

E. Eligibility

1. Eligibility for Individuals – Not Applicable

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients

The following types of entities are eligible to apply to the State for HMGP subgrants: Additionally, an eligible entity must have a FEMA-approved Local or Tribal Mitigation Plan to be eligible to receive a project subgrant (44 CFR sections 201.6 and 201.7).

a. State and local governments;

b. Private non-profit organizations or institutions that own or operate a private non-profit facility as defined at 44 CFR section 206.221(e); and

c. Tribes or authorized tribal organizations and Alaskan Native villages or organizations (44 CFR section 206.434(a)).

G. Matching, Level of Effort, Earmarking

1. Matching

The Federal and non-Federal shares of a grant's cost are established in the State's FEMA-State Agreement. While the non-Federal share may exceed the Federal share, it may never be less than 25 percent of the cost of a grant approved for disasters declared after June 10, 1993. (That is, the Federal share may never exceed 75 percent.) The Federal share may not exceed 50 percent for grants approved for disasters declared before that date. For Federal disasters declared prior to November 13, 2007, funds made available to a State or subgrantee in its administrative cost allowance are not subject to this limitation, i.e., funding for those costs may exceed 75 percent. Likewise, for Federal disasters declared on or after November 13, 2007, funds made available to a State for management costs or to a subgrantee for management costs that are not directly related to a specific grant are not subject to this limitation (44 CFR section 206.432(c)). The 2010 Supplemental Disaster Relief and Summer Jobs Act (Pub. L. No. 111-212, Section 603) included language that allows the FEMA Administrator to consider the non-Federal cost share satisfied for all Katrina declarations. This language affects DR-1602-FL, DR-1603-LA, DR-1604-MS and DR-1605-AL.

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Applicable, but not required unless the State has a grant for direct construction.

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. FEMA Form 20-10, *Financial Status Report (OMB No. 1660-0025)* – This form may be used in lieu of the SF-269, as determined by the grantee and the FEMA regional office.

f. SF-425, *Federal Financial Report* – Applicable (cash status only)

g. FEMA Form 20-18, *Report of Government Property* (*OMB No. 1660-0025*) – This form is submitted upon completion work under a grant, cooperative agreement, or contract. It provides an inventory of equipment purchased by the grantee or provided by the Federal Government. FEMA and the grantee use this information to determine the disposition of the equipment.

h. FEMA Form 20-19, *Reconciliation of Grants and Cooperative Agreements* (*OMB No. 1660-0025*) – This report captures a State's program transactions and related unobligated balances of Federal funds, cash drawdowns, and undrawn cash balances. It is used to reconcile awards, outlays, and drawdowns during and at the completion of a HMGP grant.

Key Line Items – The following line items contain critical information:

B. History of Transactions:

(1) Column (b) – *Description of Transaction*

(2) Column (d) – *Total Federal Share*

(3) Column (f) – *Amount (of cash drawdown)*

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

IV. OTHER INFORMATION

Subgrants to Other State Agencies

In the administration of this grant, the State may "subgrant" funds to another part of the State (e.g., a State agency). If the other part of the State receiving the subgrant is included in the audit of the State, such as a State-wide audit, then for purposes of determining Type A programs and reporting on the Schedule of Expenditures of Federal Awards, these "subgrants" within the single audit reporting entity should be eliminated. However, all Federal awards expended under this program by the State (including a part of the State receiving a subgrant from the State) should be subject to the State's OMB Circular A-133 audit.

Transfer to Department of Homeland Security

Effective March 1, 2003, FEMA became part of the Department of Homeland Security (DHS). Since recipients' funding periods may not coincide with this change in the CFDA number, recipients should include the CFDA number shown on their notices of award (whether 83.548 and/or 97.039) in completing the Schedule of Expenditures of Federal Awards (SEFA). When awards from both CFDA 97.039 and CFDA 83.548 are present, they should be combined when determining Type A programs. If the program was a major program under the legacy CFDA number in either of the previous two years, the provision in the risk-based approach for prior audits is considered to have been met. On the SEFA, both the DHS CFDA number and the legacy agency's corresponding CFDA number should be presented separately.

Waiver for Disasters Declared for Hurricanes Katrina and Rita

A waiver from prior-approval requirements in OMB Circular A-87 applicable to pre-award costs has been granted for HMGP funding provided to the States of Lousiana and Mississippi for the specific disasters declared for Hurricanes Katrina and Rita.

In addition, FEMA extended regulatory HMGP application deadlines for the Gulf Coast States with major disaster declarations for the 2005 hurricanes, pursuant to Section 301 of the Stafford Act, which allows for a waiver of administrative conditions that cannot be met due to the disaster.

DEPARTMENT OF HOMELAND SECURITY

CFDA 97.067 HOMELAND SECURITY GRANT PROGRAM
CFDA 97.004 STATE DOMESTIC PREPAREDNESS EQUIPMENT SUPPORT PROGRAM (State Homeland Security Grant Program)

I. PROGRAM OBJECTIVES

The Homeland Security Grant Program (HSGP) is intended to improve and significantly enhance the ability of the Nation to prevent, deter, respond to and recover from, threats and incidents of terrorism and to enhance regional preparedness. The HSGP provides financial assistance to the States (and through the States to local governments) to support activities such as planning, equipment, training, and exercises to address critical resource gaps identified in the assessments and priorities outlined within each States' Homeland Security Strategy. States are encouraged to develop regional approaches to planning and preparedness and to adopt, as appropriate, regional response structures.

II. PROGRAM PROCEDURES

HSGP funding is provided to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, U. S. Territories, and select urban areas, by the Federal Emergency Management Agency (FEMA)/Grant Programs Directorate (GPD). The grants are awarded to a State Administrative Agency (SAA) that must pass through a specific percentage of the funds to local governments. GPD, formerly Grants and Training (G&T), is responsible for this program. GPD's Grants Management Division provides fiscal support and oversight of this grant program, however, GPD uses Department of Justice (DOJ)/Office of Justice Programs (OJP) systems for awarding grants and making grant payments under these programs.

Multiple Funding Streams

For awards made in FY 2004, funding for the State Homeland Security Program (SHSP), Citizen Corps Program (CCP), and the Law Enforcement Terrorism Prevention Program (LETPP) were combined in a single award under the HSGP. For awards made in FY 2005, the HSGP included the SHSP, CCP, LETPP, Urban Areas Security Initiative (UASI), Emergency Management Performance Grant (EMPG), Operation Stonegarden (OPSG), and the Metropolitan Medical Response System (MMRS). For awards made in FY 2006 and FY 2007, the HSGP program included SHSP, LETPP, CCP, UASI, and MMRS. EMPG was awarded as a stand-alone program beginning in FY 2006 (CFDA 97.042). Beginning in FY 2008 and continuing in FY 2010, per the *Implementing Recommendations of the 9/11 Commission Act of 2007* (Pub. L. No. 110-53), LETPP was no longer identified as a line item in DHS appropriations; however, 25 percent of SHSP and UASI funds must be set aside by grantees for law enforcement terrorism prevention activities. In FY 2008 and FY 2009, Operation Stonegarden was a separate grant program, but was combined with SHSP, UASI, CCP, and MMRS as part of the HSGP in FY 2010. Under the combined program, although States are advised of their funding allocations using the legacy CFDA numbers for each of the programs (see Section IV, Other Information),

the awards and subawards (and reports based on them) should carry the CFDA number shown on the legal award document for the period in which the funds were awarded.

The several funding streams and their objectives are as follows:

State Homeland Security Program (SHSP) provides funds to enhance the capability of State and local jurisdictions to prepare for and respond to terrorist acts, including events of terrorism involving weapons of mass destruction and biological, nuclear, radiological, incendiary, chemical, and explosive devices.

Citizens Corps Program (CCP) provides support to establish and operate Citizen Corps Councils to play a role in public outreach, education, and training to make States and local communities better prepared to respond in the event of an emergency.

Law Enforcement Terrorism Prevention Program (LETPP) provides funds to law enforcement communities to support critical terrorism prevention activities such as establishing and enhancing fusion centers.

Urban Areas Security Initiative (UASI) provides financial assistance to address the unique multi-discipline planning, operations, equipment, training, and exercise needs of high-threat Urban Areas.

Emergency Management Performance Grants (EMPG) assist States and local jurisdictions in the development, maintenance, and improvement of State and local emergency management capabilities, which are key components of a comprehensive national emergency management system for disasters and emergencies that may result from natural disasters or accidental or man-caused events.

Operation Stonegarden (OPSG) is intended to enhance cooperation and coordination among local, State and Federal law enforcement agencies in a joint mission to secure the United States borders along routes of ingress from international borders to include travel corridors in states bordering Mexico and Canada, as well as States and Territories with international water borders.

Metropolitan Medical Response Systems (MMRS) funding is intended to help U.S. cities prepare for a rapid, coordinated medical response by emergency first responders, public health systems, and hospitals to large-scale public emergencies.

See section IV of this program supplement for additional information (including the CFDA numbers under which awards for the several funding streams were made in FY 2003).

Source of Governing Requirements

These programs are authorized under Section 430 of the Homeland Security Act of 2002, as amended (6 USC 101 *et seq*.); Section 1014 of USA PATRIOT Act of 2001 Pub. L. No. 107-56, 42 USC 3714); Section 101 of the Implementing Recommendations of the 9/11 Commission Act (Pub. L. No. 110-53); Title I, Chapter 6 of Pub. L. No. 108-11, the Wartime Supplemental Appropriations Act of 2003; Title III of the FY 2004 Department of Homeland Security

Appropriations Act (Pub. L. No. 108-90); Title III of the FY 2005 Department of Homeland Security Appropriations Act ((Pub. L. No. 108-334); Title III of the FY 2006 Department of Homeland Security Appropriations Act (Pub. L. No. 109-90); Title III of the FY 2007 Department of Homeland Security Appropriations Act (Pub. L. No. 109-295); Title III of the FY 2008 Consolidated Appropriations Act (Pub. L. No. 110-161, Division E); Title III of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009 (Pub. L. No. 110-329, Division D); and the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 USC 5121-5206) and the FY 2010 Department of Homeland Security Appropriations Act (Pub. L. No. 111-83). There are no program regulations. The applicable program guidance is incorporated by reference into awards and becomes part of the terms and conditions of award.

Availability of Other Program Information

Additional information is available at http://www.fema.gov/government/grant/index.shtm.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed – General.*

   a. Funds may be used to enhance the capability of State and local jurisdictions to prepare for and respond to terrorist acts including events of terrorism involving weapons of mass destruction and biological, nuclear, radiological, incendiary, chemical, and explosive devices. Allowable activities include purchase of needed equipment and provision of training and technical assistance to State and local first responders (42 USC 3714(b)).

   b. Funds may be used for management and administration (42 USC 3714(c)(2); Title III, Pub. L. No. 108-334; Title III, Pub. L. No. 109-90; Pub. L. No. 110-329, Division D; Pub. L. No. 111-83) (see III.G.3.a. for a limitation).

2. *Activities Allowed – FY 2003*

   Funds for critical infrastructure protection under the SHSP are available for operational costs to include personnel overtime as needed (Title I, Chapter 6, Pub. L. No. 108-11, 117 Stat 583).

3. *Activities Allowed – FYs 2004 – 2008*

Funds for SHSP, LETPP (through FY 2007)and UASI and, for FY 2008, funds awarded for law enforcement terrorism prevention under SHSP and UASI may be used for operational costs, including personnel overtime and overtime associated with G&T- or FEMA-certified training (Title III, Pub. L. No. 108-90; Title III, Pub. L. No. 108-334; Title III, Pub. L. No. 109-90; Pub. L. No. 109-295; Pub. L. No. 110-53, Pub. L. No. 110-161).

4. *Activities Allowed – FYs 2009-2010*

At least 25 percent of HSGP funds in FY 2009 were required to be allocated to the Strengthening Preparedness Planning Priority. In addition, as directed by the Personnel Reimbursement for Intelligence Corporation and Enhancement (PRICE) of Homeland Security Act (Pub. L. No. 110-412), all personnel and personnel-related costs, including those of intelligence analysts, are allowed up to 50 percent of SHSP and UASI funding without time limitation placed on the period of time that such personnel can serve. Critical Emergency supplies were also added as an allowable expense in furtherance of DHS' mission. In FY 2010, Operation Stonegarden activities were added to the HSGP portfolio.

5. *Activities Unallowed – FYs 2003* and *2004*

SHSP and LETPP funds may not be used for the construction or renovation of facilities (Title I, Chapter 6, Pub. L. No. 108-11, 117 Stat 583; Title III, Pub. L. No. 109-90).

6. *Activities Unallowed – FY 2005*

SHSP, LETPP, and UASI funds may not be used for construction or renovation other than for a minor perimeter security project not to exceed $1 million (Title III, Pub. L. No. 108-334).

7. *Activities Unallowed – FYs 2006 – 2010*

SHSP, UASI, LETTP (for FYs 2006 and 2007), and, for FYs 2008, 2009 and 2010, funds awarded for law enforcement terrorism prevention activities under SHSP and UASI shall not be used for construction of facilities, except for a minor perimeter security project, not to exceed $1,000,000 (or 15 percent of the grant award for FY 2008 or later awards), as determined necessary by the Secretary of Homeland Security. The erection of communication towers, which are included in a jurisdiction's interoperable communications plan, does not constitute construction (Conference Report 109-241 to the FY 2006 Department of Homeland Security Appropriations Act [Pub. L. No. 109-90], Title III, State and Local Programs; Title III, Pub. L. No. 109-295; Pub. L. No. 110-53; Pub. L. No. 110-161; Pub. L. No. 110-329, Division D).

8. *Activities Unallowed- FYs 2004 – 2010*

HSGP funds may not be used to support the hiring of sworn public safety officers for purposes of fulfilling traditional public safety duties or to supplant traditional public safety positions and responsibilities (6 USC 609(b)(1)(A)).

C. Cash Management

Beginning in FY 2005, HSGP awards to States were exempted from the provisions of 31 USC 6503(a) (the Cash Management Improvement Act (CMIA)) (Sec. 521, Pub. L. No. 108-334). In accordance with Pub .L. No. 109-241, the DHS FY 2006 Appropriations Act, and notwithstanding any other provision of law, this exemption became permanent.

Grantees are permitted to draw down funds up to 120 days prior to expenditure/disbursement, but must place those funds in an interest-bearing account, and the interest earned must be submitted to the U.S. Treasury. All other requirements of OMB Circulars A-102 and A-110 (FY 2006 and previous fiscal years, as implemented by DOJ at 28 CFR section 66.23 and 28 CFR section 70.22, respectively; for FY 2007 grants and thereafter, as implemented by FEMA at 44 CFR sections 13.21 and 13.23, respectively) or the Cash Management Improvement Act (31 USC 6503; 31 CFR part 205), as applicable, related to the retention and payment of interest apply.

G. Matching, Level of Effort, Earmarking

1. Matching – Not Applicable

2. Level of Effort – Not Applicable

3. Earmarking

a. Not more than five percent of the FY 2006 and FY 2007 grant funds (three percent for 2005) made available to a State may be used for costs of management and administration (42 USC 3714(c)(2); Title III, Pub. L. No. 108-334; Conference Report 109-241 to the FY 2006 Department of Homeland Security Appropriations Act (Pub. L. No. 109-90)). For FY 2005, any portion of the three percent retained by the State for this purpose must be included within the maximum 20 percent of total funds retained by the State for the SHSP, LETPP, and UASI programs (Conference Report 108-774 to the FY 2005 Department of Homeland Security Appropriations Act (Pub. L. No. 108-334)). In FYs 2008, 2009 and 2010, not more than three percent of the grant funds may be used for costs of management and administration for SHSP and UASI (6 USC 609(a)(11)). In FY 2010, the amount of HSGP funds (exclusive of OPSG funds, if any) that grantees can allocate towards management and administration costs was increased to five percent.

b. Each State shall obligate not less than 80 percent of grant funds under the SHSP, LETPP, and UASI programs to local units of government within 60 days of receipt of funds for awards from FYs 2004 to FY 2007 (Title III, Pub. L. No. 108-90; Title III, Pub. L. No. 108-334; Title III, Pub. L. No. 109-90; Title III, Pub. L. No. 109-295) or within 45 days of receipt of funds for awards in FYs 2003, 2008, 2009 and 2010. OPSG funds are included in the FY 2010 requirement (Title I, Chapter 6, Pub. L. No. 108-11, 117 Stat 583; 6 USC 605(c)(1)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program* – Not Applicable

d. *SF-272, Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable

N. Special Tests and Provisions

Subgrant Awards

Compliance Requirement – Under the FY 2008-2010 awards for the SHSP and UASI programs, States must obligate funds for subgrants within 45 days after the date of the grant award (6 USC 605(c)(1)). "Obligate" has the same meaning as in Federal appropriations law, i.e., there must be an action by the State to establish a firm commitment; the commitment must be unconditional on the part of the State; there must be documentary evidence of the commitment, and the award terms must be communicated to the subgrantee and, if applicable, accepted by the grantee.

Audit Objectives – To determine if (1) the State complied with the requirement to obligate funds for subgrants within 45 days after the date of the grant award and (2) subgrantees were able to draw down funds immediately following State obligation of funds.

Suggested Audit Procedures

a. Determine if the State has written procedures for making subgrant awards, including any standards for administrative lead-time for obligation of funds and issuance of awards.

b. Review the State's written procedures, if any, for consistency with the compliance requirement.

c. Determine if subgrant amounts were obligated by the State in a timely manner, consistent with HSGP requirements and the State's own procedures.

d. Select a sample of subgrant awards under this program and review the subrecipients' payment requests to determine if funds were disbursed by the State to the local government consistent with the dates of their awards.

IV. OTHER INFORMATION

When completing the Schedule of Expenditures of Federal Awards (SEFA), recipients should record their expenditures using the CFDA number(s) shown on the legal award document for the period in which the funds were awarded. Subawards issued by the primary grantee are legally binding agreements, and, therefore, CFDA numbers cited by the grantee in the subgrant award must be used by the subgrantee as the CFDA reference in the SEFA.

Expenditures identified under the Homeland Security Cluster in the current audit period may be attributable to awards made in both the current or prior years under other CFDA numbers. The current and previous CFDA numbers are shown in the following table. Expenditures under the CFDA numbers shown in the table should be combined when determining Type A programs unless otherwise indicated below. If a program(s) was a major program under the CFDA number shown in the table in either of the previous 2 years, the provision in the risk-based approach for prior audits is considered to have been met.

The following exceptions should be noted:

1. UASI grants, which are part of the Homeland Security Grant Cluster beginning with FY 2005 awards, should be evaluated separately in making the major program determination for years prior to FY 2005.

2. Although activities under CFDA 97.004 were folded into the SHSP and, subsequently, the HSGP, this CFDA number continues to be used in awards other than the SHSP or HSGP. Expenditures for awards under CFDA 97.004, State Domestic Preparedness

Equipment Support Program, should not be included in the audit of this cluster, with the exception of FY2004 funding as identified in the following table.

3. Expenditures under EMPG and CCP awards that predated assignment of DHS numbers for these programs should not be included in the audit of this cluster.

Year of Grant	*SHSP*	*UASI*	*CCP*	*LETPP*	*EMPG*	*MMRS*	*OPSG*
2003	16.007	N/A	97.053	N/A	97.042	N/A	N/A
2004	16.007 (supplemental award)* 97.004	N/A	97.004	97.004	97.042	97.071	N/A
2005	97.067**	97.067	97.067	97.067***	97.067	97.067	N/A
2006 and 2007	97.067	97.067	97.067	97.067	N/A (no longer part of the cluster)	97.067	97.067*****
2008	97.067	97.067	97.067	Program no longer a separate line-item	N/A (no longer part of the cluster)	97.067	97.067*****
2009 2010	97.067	97.067	97.067****	Program no longer a separate line-item	N/A (no longer part of the cluster)	97.067****	97.067

* Pub. L. No. 108-11 (Emergency Wartime Supplemental Appropriations Act, 2003) appropriated supplemental FY 2003 funds. The appropriations legislation made funds available until December 31, 2003 and awards from this supplemental were made under CFDA 16.007.

** At the subgrantee level, this CFDA number may have been listed as 97.073 and should be included in this cluster.

*** At the subgrantee level, this CFDA number may have been listed as 97.074 and should be included in this cluster.

****At the subgrantee level, the CFDA numbers may have been listed as 97.053, and 97.071, and should be included in this cluster.

*****OPSG used CFDA 97.067, but had separately published guidance and separate awards were issued in FY 2008 and FY 2009.

It also should be noted that, except as otherwise provided by statute, DHS awards of property and/or equipment are subject to the requirements of OMB Circular A-133. A DHS policy statement that addresses this requirement is available at http://www.dhs.gov/xopnbiz/grants/gc_1162481125903.shtm.

DEPARTMENT OF HOMELAND SECURITY

CFDA 97.109 DISASTER HOUSING ASSISTANCE GRANT

I. PROGRAM OBJECTIVES

The Disaster Housing Assistance Program (DHAP) is administered by the U.S. Department of Housing and Urban Development (HUD) under an interagency agreement between the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA)/ and HUD. The purpose of this program is to provide temporary housing assistance to low-income families who were displaced by Hurricanes Katrina, Rita, Gustav, and Ike. DHAP provides rental assistance through housing subsidies to families displaced by the hurricanes.

II. PROGRAM PROCEDURES

Program Administration

On July 26, 2007, DHS/FEMA and HUD executed an interagency agreement establishing the DHAP, a temporary housing rental assistance and case management program for identified individuals and households displaced by Hurricanes Katrina, Rita, Gustav, and Ike. The program will be administered through HUD's existing network of Public Housing Agencies (PHAs). The PHAs have the necessary local housing market knowledge and expertise in assisting families through a tenant-based subsidy program. In addition, through their administration of both the Katrina Disaster Housing Assistance Program (KDHAP) and Disaster Voucher Program (DVP), the PHAs are experienced in working with significant numbers of families that have been displaced by disasters.

Application and Award Process

PHAs enter into grant agreements with FEMA to provide rent subsidies to eligible families for a period not to exceed 16 months commencing November 1, 2007 and ending March 1, 2009. To be eligible for DHAP, a family must have been displaced by Hurricane Katrina, Rita, Gustav, or Ike and, consequently, is either receiving or is eligible to receive rental assistance administered by FEMA. FEMA, not the PHA, determines if the family is initially eligible to receive assistance under the DHAP. The PHA verifies that FEMA has determined that a family is eligible for the DHAP through HUD's web-based Disaster Information System (DIS).

Source of Governing Requirements

DHAP is based on DHS's general grant authority under section 102(b)(2) of the Homeland Security Act (6 USC 112) and Sections 408 (b)(1), 426 and 306(a) of the Robert T. Stafford Act (42 USC 5174(B)(1), 5189d and 5149(a), respectively).

Availability of Other Program Information

Additional program information is available from the FEMA web site at: www.fema.gov and www.hud.gov

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

DHAP funding is for the purpose of rental subsidies to eligible families for a period not to exceed 16 months commencing November 1, 2007 and ending March 1, 2009. DHAP funding may not be used for other activities or costs, and remains separate and distinct from the PHA's regular voucher program and the DVP in terms of the source and use of the funding. PHAs must ensure that these funds are used for eligible purposes.

1. Funds may be used for administering DHAP up to 15 percent of the initial DHAP rent subsidy payment.

2. *Monthly Rent*. The monthly rent specified in the lease is the total monthly rent payable to the owner under the lease for the unit. The monthly rent specified under the lease covers payment for any housing services, maintenance, and utilities that the owner is required to provide and pay for.

   a. *FEMA Rental Assistance Family Transitioning to DHAP In-Place*: the monthly rent subsidy for that unit equals the lesser of: the monthly rent specified in the lease or the greater of:

      (1) The applicable Fair Market Rents (FMR) published for the area where the unit is located.

      (2) The applicable payment standard for the PHA's HCV program.

      (3) The amount of monthly assistance the family received under the FEMA

   b. *All Other Families*: the monthly rent subsidy equals the lesser of: the monthly rent specified in the lease; or the greater of:

      (1) The applicable FMR published for the area where the unit is located.

      (2) The applicable payment standard for the PHA's HCV program.

   c. *Incremental Rent Transition*: On March 1, 2008, families participating in the DHAP will be required to pay a portion of the rent (in addition to any existing family share in cases where the monthly rent already exceeds the monthly rent subsidy) in preparation towards self- sufficiency when the

DHAP ends on March 1, 2009. PHAs will implement the incremental rent transition by reducing the rental subsidy payment by $50 for the March 2008 rent subsidy payment. This reduction will be incrementally increased by an additional $50 each month thereafter until the family's participation in DHAP ends or March 1, 2009, whichever is earlier.

B. Allowable Costs/Cost Principles

DHAP has been granted a waiver from OMB for the cost principles and administrative requirements outlined in OMB Circular A-87 and the A-102 common rule; however, these funds are governed by financial management compliance requirements contained in HUD's authorizing law and regulations. DHAP will be governed using the financial management requirements of HUD's Section 8 program; therefore, the program supplement for CFDA 14.871 should be used when determining compliance.

E. Eligibility

1. Eligibility for Individuals

PHAs may provide assistance only to families determined to be eligible by FEMA.

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Not Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

Identification of Expenditures under the DHAP Program

Compliance Requirement – The PHA is required to maintain records that allow for the easy identification of families assisted under DHAP, and must report actual monthly leasing and expenditure for such families separately from housing choice voucher and DVP families under the Voucher Management System (VMS). The PHA must maintain a separate DHAP register to record and control assistance payments for DHAP rent subsidies.

Audit Objective – Determine whether PHAs are maintaining separately identifiable records of payments under DHAP.

Suggested Audit Procedures

1. Review PHA procedures related to creation and maintenance of records for individuals assisted under DHAP.

2. Select a sample of DHAP payments and determine whether records related to those payments are separately identified from other PHA-administered programs.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

CFDA 98.007 FOOD FOR PEACE DEVELOPMENT ASSISTANCE PROGRAM
CFDA 98.008 FOOD FOR PEACE EMERGENCY PROGRAM

I. PROGRAM OBJECTIVES

The United States Agency for International Development (USAID) donates agricultural commodities to foreign countries under Title II of the Food for Peace Act (formerly the Agricultural Trade Development and Assistance Act of 1954) (Pub. L. No. 480) (7 USC 1691 through 1738r). These programs include donated commodities, monetization proceeds from the sale of commodities, and cash assistance (referred to as Section 202(e) funding (7 USC 1722(e)), and International Transportation, Storage and Handing (ITSH) funding (7 USC 1736 and 1736a).

II. PROGRAM PROCEDURES

General Overview

As the primary conduit of humanitarian assistance for USAID, the Bureau for Democracy, Conflict and Humanitarian Assistance (DCHA) is charged with the overall responsibility for USAID's response to humanitarian crises, both natural and complex. The Office of Food for Peace (FFP) manages Pub. L. No. 480, Title II (7 USC 1721 through 1726b) provision of agricultural commodities channeled to foreign countries as food assistance. Food assistance is also authorized and delivered under Titles I and III of Pub. L. No. 480, as well as under other legislation. This supplement covers only food assistance authorized and delivered under Title II.

USAID may transfer agricultural commodities to address famine or other urgent or extraordinary relief requirements; combat malnutrition, especially in children and mothers; carry out activities that attempt to alleviate the causes of hunger, mortality and morbidity; promote economic and community development; promote sound environmental practices; and carry out feeding programs. Agricultural commodities may be provided to meet emergency food needs through foreign governments and private or public organizations, including intergovernmental organizations. Agricultural commodities also may be provided for non-emergency assistance through private voluntary organizations or cooperatives which are, to the extent practicable, registered with USAID, and through intergovernmental organizations.

"Cooperating Sponsor" is the term used to define the organization entering into an agreement with USAID for the use of agricultural commodities or funds. Cooperating Sponsors may include governments and public or private agencies, including intergovernmental organizations such as the World Food Program, and non-governmental organizations. Non-governmental Cooperating Sponsors include private voluntary organizations and cooperatives. Title II assistance is provided to Cooperating Sponsors for emergency and non-emergency programs. Activities include direct distribution as well as food assistance for programs that support smallholder agriculture, market liberalization through policy change, nutrition and other child survival programs, community development, such as water and sanitation and environmental restoration, and small-scale infrastructure development. A portion of Title II commodities can be

monetized (sold to obtain cash for use in US assistance programs) by Cooperating Sponsors to fund complementary interventions to enhance the impact of food programs and contribute to food security. Monetization of food aid under emergency programs occurs to fund complementary activities such as distribution, repackaging, and wet feeding in refugee camps.

Program Operation

General

Each Cooperating Sponsor is required to submit for USAID approval an application that typically include a program description, along with purposes and goals; criteria for measuring program effectiveness; a description of the activities for which commodities, monetized proceeds, or program income will be provided or used; and other specific provisions as required by USAID. If a Cooperating Sponsor submits a multi-year Operational Plan that is approved by USAID, the Operational Plan provided with an Annual Estimate of Requirements (AER) each subsequent year will only cover those components which require updating or the Cooperating Sponsor proposes to change. Operational Plans are required for all non-governmental Cooperating Sponsors' emergency programs along with the AER; however, emergency situations may not permit the same degree of detail and certainty of analysis that is expected in planning Title II development programs (22 CFR section 211.5).

USAID uses Transfer Authorization to make an award for commodities and supporting costs.

Host Country Food for Peace Program Agreement (HCFFPA)

Each non-governmental Cooperating Sponsor is required to enter into a separate, written agreement with the foreign government of each country for which Title II commodities are transferred to the Cooperating Sponsor. The agreement must establish terms and condition needed by the non-governmental Cooperating Sponsor to conduct a Title II program in accordance with 22 CFR part 211. When this is not appropriate or feasible, the USAID mission or diplomatic post may instead provide assurance to FFP that the program can be effectively implemented in compliance with 22 CFR part 211 without a HCFFPA (22 CFR section 211.3(b)).

Recipient Agencies

A Cooperating Sponsor may enter into agreements with Recipient Agencies (e.g., schools, institutions, welfare agencies, disaster relief organizations, and public or private agencies) for the delivery of program services. Such an agreement must be in place prior to the transfer of any commodities, monetized proceeds, or program income to the recipient agency. The agreement must require the recipient agency to compensate the Cooperating Sponsor for any assets generated by the foregoing sources that are not used for purposes expressly provided for in the agreement, or that are lost, damaged, or misused as the result of the recipient agency's failure to exercise reasonable care (22 CFR sections 211.2(s) and 211.3(c)).

Monetization

Monetization is a critical resource for Cooperating Sponsors. The Cooperating Sponsor remains responsible for the commodities, monetized proceeds, and program income in accordance with the Operational Plan or Transfer Authorization (22 CFR section 211.3(c)(3)).

Other Resources

In addition to commodities (including ocean and inland freight costs) and monetization proceeds, cash resources, from either Section 202(e) funds or ITSH funds, are made available to Cooperating Sponsors for establishing new programs and meeting the specific administrative, management, and personnel costs of programs (7 USC 1722 (e)), as well as in support of commodity transportation within the host country, warehousing, fumigation, and more ITSH-related costs of the program (7 USC 1736(b) and 1736a(c)).

Source of Governing Requirements

This program is authorized under Title II of the Food for Peace Act (formerly the Agricultural Trade Development and Assistance Act of 1954) (Pub. L. 480) (7 USC 1691 through 1738r). Implementing regulations are found at 22 CFR part 211.

Availability of Other Program Information

USAID maintains on the Internet a page with information on the "Food for Peace" program, including laws, regulation and other information at (http://www.usaid.gov/our_work/humanitarian_assistance/ffp/).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Use of Funds*

   a. *General* – The Operational Plan and Transfer Authorization set forth the description of the activities for which commodities, monetized proceeds, or program income shall be used.

   b. *Program Management (Section 202(e) Funds)* – Cash resources provided by USAID under this provision of Title II may be used for activities including: (1) direct program costs of a Title II program—administrative, management, distribution, and other program implementation costs; (2) improving the impact of food aid—feasibility assessments, baseline

studies and technical assistance; and (3) costs of implementing audit and evaluation recommendations (7 USC 1722 (e) and (f)).

c. *Internal Transportation, Storage and Handling* – Emergency and eligible non-emergency programs to cover ITSH costs (7 USC 1736 and 1736a(c)).

2. *Use of Commodities and Monetization Proceeds*

a. Except as USAID may otherwise agree in writing, agricultural commodities donated by USAID shall not be distributed, handled, or allocated by any military forces (22 CFR section 211.5(e)).

b. Within the limits of the total amount of commodities, monetized proceeds, and program income as approved by USAID in the Operational Plan or Transfer Authorization, the Cooperating Sponsor may increase or decrease by not to exceed 10 percent the amount of commodities, monetized proceeds, or program income allocated to approved program categories or components of the Operational Plan (22 CFR section 211.5(a)).

c. A Cooperating Sponsor is required to provide proper storage, care, and handling of commodities. In determining whether there was a proper exercise of the Cooperating Sponsor's responsibility, USAID considers normal commercial practices in the country of distribution and the problems associated with carrying out programs in developing countries (22 CFR section 211.9(d)).

d. Cooperating Sponsors are not required to monitor, manage, report on, or account for the distribution or use of commodities after title to the commodities has passed to buyers or other third parties pursuant to a sale under a monetization program and all sales proceeds have been fully deposited in the special interest-bearing account established by the Cooperating Sponsor for monetized proceeds (22 CFR section 211.5 (j)).

e. Monetized proceeds may not be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions (22 CFR section 211.5 (k)(4)).

J. Program Income

Program income means gross income earned by the Cooperating Sponsor from activities supported under the approved program during the program period, including, but not limited to, interest earned on deposits of monetized proceeds, revenue from income generating activities, funds accruing from the sale of containers and nominal voluntary contributions by recipients made on the basis of ability to pay. Monetized proceeds are not considered program income (22 CFR section211.2(s)).

Program income may be used by Cooperating Sponsors for activities specified in 22 CFR section 211.5 (k), including the transport and distribution of the donated commodities; implementing income-generating community development, health, nutrition, and other developmental activities; making investments with USAID approval; and improving their financial and other management systems (22 CFR section 211.5 (k)).

Program income may not be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions (22 CFR section 211.5 (k)(4)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. SF-270, *Request for Advance or Reimbursement* – Applicable

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

Recipient Agencies

Compliance Requirement – Cooperating Sponsors are responsible for determining that Recipient Agencies to whom they distribute commodities are eligible in accordance with the Operational Plan or Transfer Authorization and 22 CFR section 211.

Prior to the transfer of commodities, monetized proceeds or program income to a Recipient Agency, the Cooperating Sponsor is required to enter into a written agreement that (a) describes the approved uses of resources provided, (b) requires the Recipient Agency to pay the Cooperating Sponsor the value of any resources that are used for purposes not permitted under the agreement or that are lost, damaged or misused as a result of the Recipient Agency's failure to exercise reasonable care of transferred

resources, and (c) incorporate by reference or otherwise the terms and conditions set forth in 22 CFR part 211 (22 CFR section 211.3(c)).

In entering into agreements with Recipient Agencies for the transfer of commodities, monetized proceeds, or program income, the Cooperating Sponsor remains responsible for such resources transferred in accordance with the Operational Plan or Transfer Authorization and 22 CFR part 211 (22 CFR section 211.3(c)(3)). In monitoring Recipient Agencies, the Cooperating Sponsor is required to provide adequate supervisory personnel for the efficient operation of the program, including personnel to (a) plan, organize, implement, control, and evaluate programs involving distribution of commodities or use of monetized proceeds and program income; (b) make warehouse inspections, physical inventories, and end-use checks of food or funds, and (c) review books and records maintained by Recipient Agencies that receive monetized proceeds and/or program income (22 CFR section 211.5(b)).

Audit Objective – Determine whether: (1) the Cooperating Sponsor entered into written agreements with the Recipient Agencies; (2) the use of the Recipient Agencies was consistent with the Operational Plan and Transfer Authorization; and (3) the Cooperating Sponsor monitored the activities of Recipient Agencies to ensure proper performance of assigned activities and use of commodities, monetized proceeds, and program income.

Suggested Audit Procedures

Select a sample of Recipient Agencies and ascertain if:

a. The Cooperating Sponsor entered into a written agreement with the Recipient Agency.

b. The Cooperating Sponsor's use of the Recipient Agency was consistent with the Operational Plan and Transfer Authorization.

c. The Cooperating Sponsor appropriately monitored the activities of the Recipient Agency to ensure proper performance of assigned activities and use of commodities, monetized proceeds, and program income.

IV. OTHER INFORMATION

USAID began issuing awards using CFDA 98.007 and CFDA 98.008 in mid-2005. Prior to that time, USAID did not have an assigned CFDA number. Therefore, for awards prior to 2005 and during the 2005 transition year, awards under the programs in this cluster may be shown as Foreign Food Donation Program without an associated CFDA number. When completing the Schedule of Expenditures of Federal Awards, recipients should record their expenditures using the CFDA number or program name shown on the notice of award for the period in which the funds were awarded.

PART 5 – CLUSTERS OF PROGRAMS

INTRODUCTION

Part 5 identifies those programs that are considered to be clusters of programs as defined by OMB Circular A-133 (§___.105). A cluster of programs means Federal programs with different CFDA numbers that are defined as a cluster of programs because they are closely related programs that share common compliance requirements. This Part identifies research and development (R&D) and Student Financial Assistance (SFA) as clusters, as well as certain other programs included in Part 4, Agency Program Requirements that are deemed to be clusters. For R&D and SFA, the following sections of this Part are the equivalent of Part 4.

This Part also defines other clusters of programs that are **not** included in this Compliance Supplement. If a cluster is defined in this Part, but not included in Part 4, the auditor will have to determine the compliance requirements to test in accordance with Part 7, Guidance for Auditing Programs Not Included in This Compliance Supplement.

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 5 for the details of the requirements. The descriptions of the compliance requirements in Parts 3 and 5 are generally a summary of the actual compliance requirements. The auditor should refer to the referenced citations (e.g., laws and regulations) for the complete compliance requirements.

RESEARCH AND DEVELOPMENT PROGRAMS

I. PROGRAM OBJECTIVES

The Federal Government sponsors research and development (R&D) activities under a variety of types of funding agreements, most commonly grants, cooperative agreements, and contracts, to achieve objectives agreed upon between the sponsoring agency and the institution. The types of R&D conducted under these agreements also vary widely. The objective of individual projects is explained in the Federal award document.

II. PROGRAM PROCEDURES

Research is 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 R&D activities and where such activities are not included in the instruction function. The absence of the words "research" and/or "development" in the title of the agreement does not indicate it should be excluded from the R&D cluster. The substance of the agreement should be evaluated to determine the proper inclusion/exclusion.

Grants, cooperative agreements, and contracts for R&D are awarded to non-Federal entities on the basis of applications/proposals submitted to Federal agencies or pass-through entities. These proposals are sometimes unsolicited. An agreement is then negotiated in which the purpose of the project is specified, the amount of the award is indicated, and terms of administration are delineated.

The administrative requirements that apply to R&D grants and cooperative agreements arise from OMB Circular A-110 and the Federal agencies' codification of that circular. The administrative requirements that govern contracts are contained in the Federal Acquisition Regulation (FAR) and agency FAR supplements, e.g. the Defense Federal Acquisition Regulations Supplement (DFARS).

III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 5 for the details of the requirements.

When selecting a sample for testing of compliance requirements, the auditor should choose a sample from the universe of R&D awards appropriate to the objective being tested. The selected items should incorporate a variety of award sizes, award types as defined in OMB Circular A-133 (grants, cooperative agreements, and cost-type contracts), funding sources, and Federal awarding offices.

When reporting award-specific findings (e.g. questioned costs) in the Schedule of Findings and Questioned Costs, the auditor should include the specific award number in the audit finding detail. Findings that apply to the entire R&D cluster (i.e., systemic findings) and identify related questioned costs on individual Federal awards should identify the finding to the entire R&D cluster and include the specific award number and related questioned costs in the audit finding detail. When questioned costs are identified for multiple awards, the auditor should provide a breakdown of questioned costs applicable to each award number. This information is needed in order for the auditee to prepare the corrective action plan and for Federal agencies and pass-through entities to issue a management decision on the audit findings in a timely manner.

A. Activities Allowed or Unallowed

The objective(s) of individual R&D projects are explained in the applicable award documents. Testing of compliance with this requirement should ensure that funds were used only for activities for the furtherance of such objective(s).

B. Allowable Costs/Cost Principles

Individual employee compensation and related benefits generally comprise a significant portion of total costs charged to R&D projects. The auditor should give particular attention to individual employee compensation and related benefits costs. The auditor should be familiar with the payroll distribution methods outlined in the applicable OMB cost circulars.

Generally the payroll distribution method used should recognize the principle of after-the-fact confirmation or determination of the activities used to support the distribution of salaries and wages. The distribution of these costs to federally sponsored research projects and the method and timing of the confirmation/determination must be done in accordance with the applicable Federal cost principles and the Federal award document. The auditor's testing should include tests of the time and effort reporting system to support the distribution of salaries and wages.

In addition, the auditor should test the following:

1. The confirmation of salaries is performed by a person with first-hand knowledge of the effort (OMB Circular A-122, Attachment B.8) or the principal investigator or responsible official(s) using suitable means of verification that the work was performed (Circular A-21, J.10).

2. The compensation rate conforms to the established policy of the organization and is consistently applied to both Federal and non-Federal activities. The auditor also should determine if the awards contain any restrictions on salaries and wages, such as the NIH restriction on the amount that may be charged for individual salaries (http://grants.nih.gov/grants/guide/notice-files/NOT-OD-10-041.html). If so, a sample of these should be included as a part of allowable costs testing.

3. Indirect or facilities and administrative (F&A) costs is a second major category of cost charged to R&D projects. (See the extensive guidance in Part 3 relating to the review of Indirect Costs.) The third most prevalent type of cost charged is supplies and equipment.

4. Transfers of costs between cost centers or research projects are often used to correct the financial records (such as transfers of costs between projects when costs were initially charged to the wrong project and the institutions control system found the error) and for other valid reasons.

   a. Cost transfers should be reviewed for allowability. A cost transfer from one project to another project may appear to be an unallowable charge to the second project. However, these costs may be allowable costs of the second project because of the closely linked nature of the research, and the costs would be allowable charges to either project. Alternatively, the transfers would not be allowable under the second project if the costs are not allowable under the terms and conditions of that project.

   b. The auditor should determine if journal entries and transfers of costs were made to Federal R&D projects. If so, the auditor should select a separate sample of these R&D cost transfers and test the sampled items to determine the allowability of the costs transferred using the applicable Federal regulations and award requirements for the project to which the costs were transferred. If the number of cost transfers between unrelated projects is significant, this could be an indication of poor internal control and might result in a noncompliance finding.

D. Davis-Bacon Act

For ARRA-funded construction awards, contractors and subcontractors are required to pay prevailing wages to laborers and mechanics in compliance with the Davis-Bacon Act (Section 1606 of ARRA).

G. Matching, Level of Effort, Earmarking

1. Matching

Non-Federal entities may be required to share in the cost of research either on an overall entity or individual award basis. The specific program regulations or individual Federal award will specify matching requirements, if applicable.

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

The specific program regulations or the Federal award will specify the required financial reports. Reporting requirements for cost-type contracts are generally listed in the Contract Data Requirements Listing (CDRL) section of the contracts. The auditor is responsible for testing the standard Federal financial reports or alternate forms (e.g., reimbursement requests submitted to the Government) that report the same or similar information.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable (for ARRA-funded awards)

5. Subaward Reporting under the Transparency Act – Applicable (for non-ARRA funded grants or cooperative agreements with subawards and contracts with subcontracts)

M. Subrecipient Monitoring

When determining whether the subrecipient monitoring compliance requirement applies in an R&D environment, the auditor should first assess whether the pass-through entity made the proper classification between subrecipients and vendors. Funds provided to a subrecipient may take a variety of forms, including subcontracts, subawards, subgrants, and subagreements in deciding whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement and it is not expected that all of the characteristics of a subrecipient described in OMB Circular A-133 §__.210 will be present. A subrecipient relationship exists when funding from a pass-through entity is provided to perform a portion of the scope of work or objectives of the pass-through entity's award agreement with the Federal awarding agency. A subrecipient performs part of the project activities. A vendor, on the other hand, is generally a dealer, distributor or other seller that provides, for example, supplies, expendable materials, or data processing services in support of the project activities.

N. Special Tests and Provisions

R&D awards may contain special terms and conditions that could have a direct and material effect on the R&D cluster. The auditor should make inquiries of the non-Federal entity's management and review a sample of the R&D awards to ascertain if such special terms and conditions exist. Entities should have (1) internal controls to ensure that Federal awards are reviewed to identify special award terms and conditions and (2) internal controls to ensure compliance with the special terms and conditions identified. When special terms and conditions exist which could have a direct and material effect on the R&D cluster, the auditor should determine the audit objectives and

develop and perform procedures for internal control and compliance as required under OMB Circular A-133 §§___.500(c) and (d). Examples of two specific cross-cutting special terms and conditions follow—one which affects multiple agency awards and one which affects multiple Department of Defense (DoD) awards.

1. Key Personnel

Applications/proposals include staffing proposals that specify who will work on the project and the extent of the planned involvement of personnel. The institution may change the staffing mix and level of involvement within limits specified by agency policy or in the agreement, but is required to obtain Federal awarding office approval of changes in key personnel (as identified in the agreement, which may differ from the institution's designation in the application/proposal).

Audit Objectives – To determine whether the institution adhered to key personnel commitments specified in the application/proposal or award document and obtained Federal awarding office approval for changes as required by Federal regulations or the award document.

Suggested Audit Procedures

a. Review the institution's procedures for determining if key personnel specified in the application/proposal were involved in the project as required or approval for changes was obtained from the Federal awarding agency.

b. Review a sample of completed projects and determine if key personnel identified in the application/proposal and award were involved in the project as required.

c. Determine if the institution complied with award requirements to obtain approval of changes of key personnel or changes in time commitments.

2. Indirect Cost Limitation

Compliance Requirement – Indirect costs are limited to 35 percent of total costs under contracts, grants, cooperative agreements (and similar arrangements) using DoD Basic Research funds, whether awarded by DoD or another federal agency to which DoD has transferred DoD Basic Research Funds. Recipient compliance is required if the limitation is specified in the terms and conditions of the award. The requirement does not flow down to subcontractors or subrecipients. Auditors rely on the terms and conditions to identify awards to which the limitation applies, which include each-

- New award made on or after November 14, 2007, using FY 2008, FY 2009, or FY 2010 DoD Basic Research funds.

- Funding modification (e.g., incremental funding action or exercise of an option) of an award covered by the previous bullet, if the modification uses FY 2008, FY 2009, or FY 2010 DoD Basic Research funds.

(Pub. L. No. 110-116, Division A, Section 8115, Department of Defense Appropriations Act, 2008; Pub. L. No. 110-329, Division C, Section 8109, Department of Defense Appropriations Act, 2009; Pub. L. No. 111-118, Section 8101, Department of Defense Appropriations Act, 2010).

Auditors also must rely on the terms and conditions of each new award or funding modification made using FY 2011 DoD Basic Research funds to ascertain whether the limitation applies to the award or modification. The limitation in section 8101 of the Department of Defense Appropriations Act, 2010, continues to be in effect for FY 2011 funds made available under continuing resolutions enacted through December 31, 2010 (Pub. L. Nos. 111-242, 111-290, 111-317, and 111-322). The continued effect through the entirety of FY 2011 depends upon the provisions of subsequent continuing resolutions or appropriations acts.

"Total cost" has the meaning given in the government-wide cost principles (2 CFR parts 220, 225, or 230 [OMB Circulars A-21, A-87, and A-122, respectively] or 48 CFR part 31).

"Indirect costs" are all costs of a recipient that are:

- Facilities and administrative costs for recipient subject to 2 CFR part 220, or
- Indirect costs, as defined in 2 CFR part 225 or 230 or 48 CFR part 31.2, for recipients subject to those cost principles.

Audit Objectives – Determine whether the recipient (1) has a process in place for identifying awards/actions that specify the indirect cost limitation and (2) is complying with the award term.

Suggested Audit Procedures

a. Determine if the recipient has a process for identifying awards that have an award term or condition specifying the indirect cost limitation.

b. Test a sample of DoD awards and funding modifications made on or after November 14, 2007 to determine if the recipient appropriately identified those awards/actions that include an award term or condition specifying the indirect cost limitation.

c. Review a sample of completed DoD awards, i.e., awards with project period end dates during the period covered by the audit, that include the indirect cost limitation and determine if reimbursement of indirect costs (inclusive of any required cost sharing) complied with the limitation.

d. If another agency's award is selected for sampling under the R&D cluster and it includes an award term specifying this indirect cost limitation, determine if

reimbursement of indirect costs (inclusive of any required cost sharing) complied with the limitation.

IV. OTHER INFORMATION

Schedule of Expenditures of Federal Awards

Quality control reviews have identified the lack of documented audit procedures to ensure that the presentation of awards in the Schedule of Expenditures of Federal Awards (SEFA) is accurate and complete. Under OMB Circular A-133, the auditor should determine and provide an opinion on whether the SEFA is presented fairly in all material respects in relation to the auditee's financial statements taken as a whole. Further compliance audit procedures should be performed to obtain sufficient and appropriate audit evidence supporting the accuracy and completeness of the SEFA, including the identification of Federal programs in the schedule.

Equipment and Real Property Management

Entities are required to appropriately safeguard and maintain all equipment purchased with Federal funds. Quality control reviews have identified that, in many cases, auditors are only considering equipment purchased under Federal awards during the current audit period to assess whether the requirement is direct and material. For the R&D cluster, this approach may not properly address requirements for the continued use of equipment on federally sponsored projects or programs and the safeguarding of equipment that is maintained by entities over multiple years. In their assessment of whether the compliance requirement is direct and material, auditors should consider the significance, both qualitative and quantitative factors, of all equipment purchased with Federal awards that are part of the R&D cluster. Based on their assessment, auditors should design appropriate procedures to determine internal control over and compliance with equipment management requirements.

Period of Availability of Federal Funds

Funding periods for R&D awards may span multiple fiscal years. Quality control reviews have noted that samples used do not allow the auditor to test the requirements for the objectives of the period of availability compliance requirement. As specified in Part 3 of the Supplement, when designing audit procedures to test that transactions are appropriately charged to the period of availability, the sample should include transactions charged to the Federal award after the end of the period of availability, as well as during the period of availability, to verify that the underlying obligations occurred within the period of availability and that the liquidation (payment) was made within the allowed time period. As a result, the sample should include transactions from ongoing awards and awards that begin or end in the subject audit period.

STUDENT FINANCIAL ASSISTANCE PROGRAMS

Department of Education

Department of Health and Human Services

CFDA 84.007 FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANTS (FSEOG)
CFDA 84.032 FEDERAL FAMILY EDUCATION LOANS (FFEL)
CFDA 84.033 FEDERAL WORK-STUDY PROGRAM (FWS)
CFDA 84.037 PERKINS LOAN CANCELLATIONS
CFDA 84.038 FEDERAL PERKINS LOAN (FPL)—FEDERAL CAPITAL CONTRIBUTIONS
CFDA 84.063 FEDERAL PELL GRANT PROGRAM (PELL)
CFDA 84.268 FEDERAL DIRECT STUDENT LOANS (DIRECT LOAN)
CFDA 84.375 ACADEMIC COMPETITIVENESS GRANTS (ACG)
CFDA 84.376 NATIONAL SCIENCE AND MATHEMATICS ACCESS TO RETAIN TALENT (SMART) GRANTS (SMART Grants)
CFDA 84.379 TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION GRANTS (TEACH Grants)
CFDA 84.408 POSTSECONDARY EDUCATION SCHOLARSHIPS FOR VETERAN'S DEPENDENTS (Iraq and Afghanistan Service Grants (IASG))
CFDA 93.264 NURSE FACULTY LOAN PROGRAM (NFLP)
CFDA 93.342 HEALTH PROFESSIONS STUDENT LOANS, INCLUDING PRIMARY CARE LOANS AND LOANS FOR DISADVANTAGED STUDENTS (HPSL/PCL/LDS)
CFDA 93.364 NURSING STUDENT LOANS (NSL)
CFDA 93.407 ARRA – SCHOLARSHIPS FOR DISADVANTAGED STUDENTS (ARRA-SDS)
CFDA 93.408 ARRA – NURSE FACULTY LOAN PROGRAM (ARRA-NFLP)
CFDA 93.925 SCHOLARSHIPS FOR DISADVANTAGED STUDENTS (SDS)

I. PROGRAM OBJECTIVES

The objective of the student financial assistance programs is to provide financial assistance to eligible students attending institutions of postsecondary education.

II. PROGRAM PROCEDURES

Institutions must apply to either the Secretary of Education or Secretary of Health and Human Services to participate in their particular SFA programs. Some applications must be filed annually, others upon initial entry and once approved, periodically thereafter. Institutions may be approved to participate in only one program or a combination of programs. Institutions are responsible for (1) determining student eligibility; (2) verifying student data (when required); (3) calculating, as required, the amount of financial aid a student can receive; (4) completing

and/or certifying parts of various loan applications and/or promissory notes; (5) drawing funds from the Federal government and disbursing or delivering SFA funds to students directly or by crediting students' accounts; (6) making borrowers aware of loan repayment responsibilities; (7) submitting, as requested, data on borrowers listed on National Student Loan Data System (NSLDS) roster; (8) returning funds to students, lenders and programs, as appropriate, if students withdraw, drop out or are expelled from their course of study; (9) collecting SFA overpayments; (10) establishing, maintaining and managing (including collecting loan repayments) a revolving loan fund for applicable programs; and (11) reporting the use of funds. Institutions may contract with third-party servicers to perform many of these functions.

Title IV Programs – General

The Title IV programs cited in this cluster that are administered by the Department of Education (ED) (those with CFDAs beginning with 84) are authorized by Title IV of the Higher Education Act of 1965, as amended (HEA), and collectively are referred to as the "Title IV programs." Because they are administered at the institutional level, the Federal Perkins Loan Program, Federal Work-Study Program and Federal Supplemental Educational Opportunity Grant Program are referred to collectively as the "campus-based programs."

For Title IV programs, students complete a paper or electronic application (Free Application for Federal Student Aid (FAFSA) (*OMB No. 1845-0001*) and send it to a central processor (a contractor of ED that administers the Central Processing System). The central processor provides Student Aid Reports (SARs) to applicants and provides Institutional Student Information Records (ISIRs) to institutions. Among other things, the SAR contains the applicant's Expected Family Contribution (EFC). Students take their SARs to the institution (or the institution uses the ISIR) to help determine student eligibility, award amounts and disbursements. (Note: The central processor is a service organization of ED, not of the schools. Therefore, Statement on Auditing Standards No. 70 does not apply when auditing the schools.)

Federal Pell Grant (Pell) (CFDA 84.063)

The Federal Pell Grant program provides grants to students enrolled in eligible undergraduate programs and certain eligible post-baccalaureate teacher certificate programs, and is intended to provide a foundation of financial aid. The program is administered by ED and postsecondary educational institutions. Maximum and minimum Pell grant awards are established by statute. ED provides funds to the institution based on actual and estimated Pell expenditures.

Postsecondary Education Scholarships for Veteran's Dependents (Iraq and Afghanistan Service Grants (IASG)) (CFDA 84.408)

The Higher Educational Technical Corrections, Pub. L. No. 111-39, amended the HEA to allow an eligible student whose parent or guardian died as a result of U.S. military service in Iraq or Afghanistan after September 11, 2001, to receive this non-needs-based grant if he or she was not receiving a Pell grant. The student is eligible if he or she was less than 24 years old when the parent or guardian died, or if 24 years old and over, was enrolled at an institution of higher

education at the time of the parent or guardian's death. The applicant must meet all the Pell requirements except for need-based requirements.

Perkins Loan Cancellations (CFDA 84.037)
Federal Perkins Loan (FPL) (CFDA 84.038)
Health Professions Student Loans (HPSL)/Primary Care Loans (PCL)/Loans for Disadvantaged Students (LDS) (CFDA 93.342)
Nursing Student Loans (NSL) (CFDA 93.364)

The FPL, HPSL/PCL/LDS and NSL programs provide long-term low-interest loans to students who demonstrate the need for financial aid to pursue their course of study at postsecondary educational institutions. Revolving loan funds are established and maintained at institutions through applications to participate in the programs. The funds are started with the Federal Capital Contribution (FCC) and a matching Institutional Capital Contribution (ICC). Repayments of principal and interest, new FCC, and new ICC are deposited in the revolving funds. The institution is fully responsible for administering the program (i.e., approving, disbursing and collecting the loans). Primary Care Loans are a segment of HPSL/PCL/LDS loan funds that impose certain restrictions on new borrowers as of July 1, 1993. First-time recipients of these funds after July 1, 1993 must agree to enter and complete a residency training program in primary health care, not later than 4 years after the date on which the student graduates from medical school, and, for new loans issued after March 23, 2010, must practice in such care for 10 years (including residency training in primary health care) or through the date on which the loan is paid in full, whichever occurs first. Students who received their first HPSL/PCL/LDS before July 1, 1993 are exempt from this requirement, and may continue to borrow HPSL/PCL/LDS loans under their applicable health-related course of study.

Nurse Faculty Loan Program (NFLP) (CFDA 93.264)
ARRA – Nurse Faculty Loan Program (NFLP) (CFDA 93.408)

The purpose of the Nurse Faculty Loan Program (NFLP), as authorized by Title VIII of the Public Health Service Act (PHS Act), Section 846A, as amended by the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, Section 5311, is to increase the number of qualified nursing faculty. **The American Recovery and Reinvestment Act (ARRA) (Pub. L. No. 111-5) made funds available for FY 2009 and FY 2010 to augment the regularly appropriated NFLP funding. ARRA-NFLP (CFDA 93.408) has the same objectives and purpose as the regular NFLP (CFDA 93.264). Schools may not award ARRA-NFLP and regular NFLP funds to the same student during the same grant budget/project period.**

The NFLP provides funding to schools of nursing to support the establishment and operation of a distinct, revolving NFLP loan fund at the institution. The award to the school, the Federal Capital Contribution (FCC) award, must be deposited into the NFLP loan fund. The school is required to deposit the Institutional Capital Contribution (ICC) that is equal to no less than one-ninth of the FCC award. The institution is fully responsible for administering the program (i.e., approving, disbursing and collecting the loans). Participating schools make loans from the regular NFLP or ARRA-NFLP loan fund to eligible graduate (master's and doctoral) nursing students to complete the nursing education program. Students may receive NFLP loans up to

$35,500 per year academic year for a maximum of 5 years to support the cost of tuition, fees, books, laboratory expenses and other reasonable education expenses. Following graduation from the nursing program, loan recipients may cancel up to 85 percent of the loan principal and interest in exchange for service as a full-time nursing faculty at a school of nursing for up to 4 years. Accredited collegiate schools of nursing are eligible to apply for funding. Eligible schools must offer an advanced education nursing degree program(s) that will prepare the graduate student to teach. The institution is fully responsible for administering the program (i.e., approving, disbursing and collecting the loans).

Program guidance is available at http://www.hrsa.gov/grants/nflp/

Federal Work-Study (FWS) (CFDA 84.033)

The FWS program provides part-time employment to eligible undergraduate and graduate students who need the earnings to help meet costs of postsecondary education. This program also authorizes the establishment of the Job Location and Development (JLD) program, the purpose of which is to expand off-campus part-time or full-time employment opportunities for all students, regardless of their financial need, who are enrolled in eligible institutions and to encourage students to participate in community service activities. FWS recipients may also use their funds for the Work-Colleges program, whose purpose is to recognize, encourage, and promote the use of comprehensive work-learning programs as a valuable educational approach when it is an integral part of the institution's educational program and a part of a financial plan that decreases reliance on grants and loans and to encourage students to participate in community service activities (34 CFR section 675.43).

Funds are provided to institutions upon submission of an annual application, *Fiscal Operations Report and Application to Participate* (FISAP) (*OMB No*. 1845-0030) (this application covers all campus-based programs), and in accordance with statutory formulae. Institutions must provide matching funds unless they are an eligible Title III or Title V institution, or unless the student is employed in a position which is authorized for payment with 100 percent of Federal funds (34 CFR section 675.26(d)). The institution determines the award amount, places the student in a job, and pays the student or arranges to have the student paid by an off-campus employer. The institution may use a portion of FWS funds for a JLD program.

Federal Supplemental Educational Opportunity Grants (FSEOG) (CFDA 84.007)

The FSEOG program provides grants to eligible undergraduate students. Priority is given to Pell recipients who have the lowest expected family contributions. The institution determines the amount of the grant, which can be up to $4,000 but not less than $100, for an academic year. The maximum amount may be increased to $4,400 for a student participating in a study abroad program that is approved for credit by the student's home institution. Federal funds are matched with institutional funds (34 CFR section 676.21).

Academic Competitiveness Grants (ACG) (CFDA 84.375)
National Science and Mathematics Access to Retain Talent (SMART) Grants (SMART Grants) (CFDA 84.376)

The ACG provides eligible first- and second-year at least half-time undergraduates, who have completed a rigorous course of study in high school, with need-based grant assistance to help meet educational expenses (34 CFR section 691.1(a)).

SMART Grants provide eligible third- and fourth-year (and in some cases fifth-year) undergraduates, who major in certain designated technical fields, foreign languages, or enroll in a qualifying liberal arts curriculum (34 CFR sections 691.17(a) and (b)), with need-based grant assistance to help meet educational expenses (34 CFR section 691.1(b)). Students must be at least half-time regular students in an eligible program at an eligible institution of higher education and making satisfactory academic progress (34 CFR sections 691.15(a), (b), and (c)). For each award year, the Secretary will identify the eligible majors and qualifying liberal arts curricula (34 CFR section 691.17). To be eligible for both an ACG and a SMART Grant, a student must have received a Federal Pell Grant Disbursement in the same award year and, for a second year award and beyond, obtained a grade-point average of 3.0 or higher on a 4.0 scale.

Teacher Education Assistance for College and Higher Education Grants (TEACH Grants) (CFDA 84.379)

The TEACH Grant program is a non-need-based grant program that provides up to $4,000 per year to students who are enrolled in an eligible program and who agree to teach in a high-need field, at a elementary or secondary school that serves low-income students for at least 4 years within 8 years of completing the program for which the TEACH Grant was awarded (34 CFR section 686.1). If the grant recipient fails to complete the required teaching service, the TEACH Grant is treated as a Federal Direct Unsubsidized Stafford Loan (Federal Direct Unsubsidized Loan) (34 CFR section 686.43).

Federal Family Education Loans (FFEL) (CFDA 84.032)
Federal Direct Student Loans (Direct Loan) (CFDA 84.268)
(Both programs include subsidized Stafford, unsubsidized Stafford, and PLUS loans)

The FFEL and Direct Loan programs make interest subsidized or unsubsidized Stafford loans available to students, or PLUS loans to graduate or professional students or to parents of dependent students, to pay for the cost of attending postsecondary educational institutions. FFEL loans are made by eligible lenders (e.g., banks, savings and loan institutions, etc.) and insured by State or not-for-profit guaranty agencies. In some cases, institutions of higher education are approved as eligible lenders. The Federal Government reinsures loans guaranteed by the guaranty agencies. Direct Loans are made by the Secretary of Education. The student's SAR or ISIR, along with other information, is used by the institution to certify (for FFEL) or originate (for Direct Loan) a student's loan. The financial aid administrator is also required to provide and confirm certain information. No new FFEL Loans will be approved after July 1, 2010, but institutions may continue to release disbursements on previously certified loans.

Under the Direct Loan program, institutions participate in loan origination Option 1, Option 2, or Standard origination. Functions performed by loan origination option vary and are described in the *Direct Loan School Guide*. Direct Loan is an electronic program, except that borrowers have the option of signing paper promissory notes or electronically signing the promissory note completed online. Except for electronically signed promissory notes, electronic records are created, batched, transmitted (exported) through Common Origination and Disbursement (COD) and acknowledged by (imported from) COD, on a cycle approach. A cycle is not complete until the last activity in it is finished, i.e., an action has been accepted by COD and the school's system reflects the acceptance. Direct Loan has four types of cycles: Loan Origination Records (one for each loan), Promissory Notes, Disbursement Records, and Change Records. For a loan to be "booked" the institution must have electronically transmitted to COD, and COD must have accepted these records: (1) the loan origination record; (2) the Promissory Note; and (3) the first disbursement of loan proceeds. The borrower's original accepted promissory note is maintained at COD; the institution is not required to keep a copy.

The FFEL program compliance requirements applicable to Guaranty Agencies and Lenders (CFDA 84.032) are not included as part of the Student Financial Assistance Cluster and are included in Part 4, Agency Program Requirements, of this Supplement. When auditing institutions of higher education, tests of the compliance requirements are not expected to be made at the FFEL lending institutions (e.g., banks, credit unions, etc.) or the COD. Rather, if the institution is participating in FFEL as an eligible lender, the FFEL Lender program supplement (CFDA 84.032-L) of the Supplement in Part 4, Agency Program Requirements, will be used to perform the annual compliance audit required by HEA section 435(d)(2) in accordance with the requirements of 34 CFR section 682.305(c)(2) (34 CFR section 682.601(a)(7). See IV, Other Information, below.

Scholarships for Disadvantaged Students (SDS) (CFDA 93.925)

The SDS program provides grants to eligible health professions and nursing schools to award scholarships to financially needy full-time students from disadvantaged backgrounds who are attending schools of medicine, osteopathic medicine, dentistry, nursing, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, chiropractic or allied health; schools offering graduate programs in behavioral and mental health practice; or entities providing programs for the training of physician assistants. For purposes of this program, HHS defines disadvantaged as a student who (a) comes from an environment that has inhibited the individual from obtaining the knowledge, skills, and abilities required to enroll in and graduate from a health professions school, or from a program providing education or training in an allied health profession; or (b) comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary of HHS for use in health professions and nursing programs.

The ARRA – SDS program (CFDA 93.407) has the same objectives and purpose as the SDS program (CFDA 93.925). Schools may not award ARRA-SDS and SDS funds to the same student during the same grant budget/project period.

Submission of Financial Statement Information to ED

All institutions receiving grants or loans from ED under the specified Title IV programs are required to input annual financial statement information to ED using *eZ-Audit (OMB No. 1845-0072).* The eZ-Audit is the methodology used for reporting an institution's financial statement information. Registration instructions are available at: https://ezaudit.ed.gov/EZWebApp/common/login.jsp . Once an institution has registered, additional guidance on how to input financial statement information is provided.

Source of Governing Requirements

The ED programs are authorized by Title IV of the Higher Education Act (HEA) of 1965, as amended (20 USC 1001 *et seq*.). The regulations are found in 34 CFR parts 600 and 668-691.

The HHS programs in this cluster are authorized by the Public Health Service Act (PHS Act). The PHS Act was amended by the Health Professions Education Partnership Act of 1998, Pub. L. No. 105-392 and, for the NFLP, further amended by the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act), Pub. L. No. 111-148, Section 5311. **The American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5), 123 Stat. 183, authorized additional funds for the Pell program (CFDA 84.063), the FWS program (CFDA 84.033)(see http://www2.ed.gov/policy/gen/leg/recovery/section-1512.html for the ED programs),the NFLP (CFDA 93.264 and CFDA 93.408), and the SDS program (CFDA 93.925 and CFDA 93.407).**

Availability of Other Program Information

ED annually publishes the Federal Student Aid Handbook (*FSA Handbook)*, which provides detailed guidance on administering the Title IV programs. This handbook and other guidance material are available on the Internet (http://ifap.ed.gov/). Printed copies can also be ordered from ED by calling 1-877 4EDPUBS (1-877-433-7827) or by e-mailing a request to edpuborders@edpubs.org.

HHS publishes the Student Financial Aid Guidelines, which provide detailed guidance on administering the Title VII and VIII programs. This and other materials are available on the Internet (http://bhpr.hrsa.gov/).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 5 for the details of the requirements.

Note: While the programs included in this cluster are generally similar in their intent, administration and documentation, etc., there are differences among them. Because of space considerations, we could not list all of the differences, exceptions to general rules or nuances

pertaining to specific programs. Auditors should utilize regulations and guidance applicable to the year(s) being audited when auditing the SFA programs.

A. Activities Allowed or Unallowed

SFA funds can be awarded only to students enrolled in eligible programs. Eligible programs are listed on an institution's Eligibility and Certification Approval Report (ECAR). Other programs can be added after the school's most recent certification without obtaining ED's approval if they lead to an associate, baccalaureate, professional, or graduate degree or are at least 8 semester hours, 12 quarter hours, or 600 clock hours, and they prepare students for gainful employment in the same or a related occupation of a previously ED-designated eligible program (34 CFR section 600.10(c)(2)).

SFA funds can be used for making awards to students, for administration of the programs, and other allowable uses for specific programs as follows:

Federal Perkins Loan (CFDA 84.037, CFDA 84.038)

Certain billing, collection, and litigation costs must first be charged to the borrower and cannot be charged to the loan fund. If amounts recovered from the borrowers are not sufficient to pay these collection costs, program funds can be used to pay these costs with certain limits (34 CFR sections 674.8 and 674.47).

A school may transfer up to a total of 25 percent of its Federal Capital Contribution for an award year to either or both the FSEOG and FWS programs (34 CFR section 674.18(b)(1)). A school may transfer up to 100 percent of its initial and supplemental allocations to an approved Work Colleges program (34 CFR section 675.18(b)(2)). Transferred funds must be used according to the requirements of the program to which they are transferred. A school that transfers funds to the FWS, FSEOG, or Work Colleges programs must transfer any unexpended funds back to the Federal Perkins Loan program at the end of the award year (34 CFR section 674.18(b)(5)).

Federal Work-Study (FWS) (CFDA 84.033)

The institution may use FWS funds only for awards to students, a Job Location and Development (JLD) Program, Work-Colleges Program (as defined in 34 CFR section 675.41(a)), administrative costs, and transfers to FSEOG (34 CFR sections 675.18 and 675.33).

Federal Supplemental Educational Opportunity Grant (CFDA 84.007)

Effective August 14, 2008, an institution may transfer up to 25 percent of its FSEOG financial allotment to the institution's FWS (Section 488 of HEA (20 USC 1095)).

Health Professions Student Loans/Primary Care Loans /Loans for Disadvantaged Students (CFDA 93.342) Nursing Student Loans (NSL) (CFDA 93.364)

Funds from both programs may also be used for capital distribution in Sections 728 and 839, or, as agreed to by the Secretary for costs of litigation; costs associated with membership in credit bureaus and, to the extent specifically approved by the Secretary, for other collection costs that exceed the usual expenses incurred in the collection of loan funds (HPSL/PCL/LDS, 42 CFR section 57.205(a); NSL, 42 CFR section 57.305(a)).

Nurse Faculty Loan Program (NFLP) (CFDA 93.264)
ARRA – Nurse Faculty Loan Program (NFLP) (CFDA 93.408)

Funds may be used for capital distribution in Section 846A of the PHS Act, Title VIII, as further amended by the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, Section 5311or, as agreed to by the Secretary of HHS for costs of litigation; costs associated with membership in credit bureaus and, to the extent specifically approved by the Secretary, for other collection costs that exceed the usual expenses incurred in the collection of NFLP or ARRA-NFLP loan funds.

C. Cash Management

ED provides funds to an institution under the advance, reimbursement, or cash monitoring payment methods.

The *advance* payment method is the most widely used payment method. It permits institutions to draw down Title IV funds prior to disbursing funds to eligible students and parents. The institution's request must not exceed the amount immediately needed to disburse funds to students or parents. A disbursement of funds occurs on the date an institution credits a student's account or pays a student or parent directly with either SFA funds or its own funds. The institution must make the disbursements as soon as administratively feasible, but no later than 3 business days following the receipt of funds. Any amounts not disbursed by the end of the third business day are considered to be excess cash and generally are required to be promptly returned to ED (34 CFR section 668.166(a)(1)). Excess cash includes any funds received from ED that are deposited or transferred to the institution's Federal account as a result of an award adjustment, cancellation, or recovery. However, an excess cash balance tolerance is allowed if that balance: (1) is less than one percent of its prior-year drawdowns; and (2) is eliminated within the next 7 calendar days (34 CFR sections 668.166(a) and (b)). Except for FPL program earnings, interest earnings greater than $250 must be returned to ED (34 CFR section 668.163(c)(4)). FPL earnings are reinvested in the FPL fund (34 CFR section 668.163(c)(1)).

Under the *reimbursement* payment method, the institution must disburse funds to the students before requesting funds from ED. Under the *cash monitoring* payment method, the institution must disburse funds to students before requesting funds from ED under either the advance payment method (limited to the actual disbursement amount) or a process similar to the reimbursement method (known as "cash monitoring 2"). (See Chapter 2, "Requesting and Managing Federal Student Aid Funds" in Volume 4, of the *FSA Handbook*, for the years being audited for guidance on the funding methods. The handbook may be accessed from links at: http://ifap.ed.gov/ifap/).

Institutions request funds from ED by: (1) creating a payment request using the G5 System through the Internet; or (2) if the grantee is placed on the reimbursement or cash monitoring 2 payment method, submitting a PMS-270, *Request for Title IV Reimbursement* to an ED program or regional office. When creating a payment request in G5, the grantee enters the drawdown amounts, by award, directly into G5. Direct Loan schools and grantees can redistribute drawn amounts between grant awards by making adjustments in G5 to reflect actual disbursements for each award as long as the net amount of the adjustments is zero. When requesting funds using the other two methods, institutions provide drawdown information to the hotline operator or on the PMS-270, as applicable.

To assist institutions in reconciling their internal accounting records with the G5 System, using their DUNS (Data Universal Numbering System) number, institutions can obtain a G5 External Award Activity Report (https://www.g5.gov/) showing cumulative and detail information for each award. The External Award Activity Report can be created with date parameters (Start and End Dates) and viewed on-line. To view each draw per award, the G5 user may click on the award number to view a display of individual draws for that award.

For the HHS programs, requests for new FCC must only be made when needed. Any idle cash must be deposited in an income-producing account and all excess cash, including any interest earned, must be returned to HHS. For HPSL/PCL/LDS, and NSL, the school must maintain all monies relating to each individual fund in interest bearing accounts. If the school integrates the funds with other school resources for investment purpose, the school must maintain separate accountability and reimburse the funds for any losses that occur (HPSL/PCL/LDS 42 CFR sections 57.203 and 57.205; NSL, 42 CFR sections 57.303 and 57.305). For NFLP (CFDA 93.294) and ARRA-NFLP (CFDA 93.408), the school must maintain all monies relating to each individual fund in interest-bearing accounts. Any idle NFLP or ARRA-NFLP cash must be deposited in an income-producing account and all excess cash, including any interest earned. Unused loan funds should be retained in the loan fund for making additional loans. The unused accumulation (cash balance) in the NFLP or ARRA-NFLP fund must be reported annually. The NFLP and ARRA-NFLP loan fund may be voluntarily or involuntarily terminated if the unused accumulation is deemed excessive. If a school is determined to have an excessive unused accumulation, future awards will be affected (Program Guidance, Overview of Institutional Management of NFLP Funds).

E. Eligibility

1. Eligibility for Individuals

Most of the requirements for student eligibility are contained in Appendix A.

In the process of a student applying for ED Federal financial aid, an Institutional Student Information Record (ISIR) normally is sent electronically to the institution and a Student Aid Report (SAR) may be sent to the student. The original ISIR or SAR for an award year may contain codes that relate to student eligibility requirements numbers 2, 4, 5, 7, 8, and 12 in Appendix A. If the original ISIR or SAR does not contain codes relating to those eligibility requirements, and the institution has no information indicating otherwise, the student can be considered to have met them. The *ISIR Guide* contains all the ISIR and SAR codes and is available on the Internet at http://www.ifap.ed.gov/ifap/byAwardYear.jsp?type=isirguide. The ISIR Guide changes annually and should be obtained and reviewed for the period under audit.

Calculation of Benefits

In addition to the requirements and limits described below, awards must be coordinated among the various programs and with other Federal and non-Federal aid (need and non-need based aid) to ensure that total aid is not awarded in excess of the student's financial need (34 CFR section 668.42, FPL, FWS, and FSEOG, 34 CFR sections 673.5 and 673.6; FFEL, 34 CFR section 682.603; Direct Loan, 34 CFR section 685.301; HPSL, PCL, and LDS, 42 CFR section 57.206; NSL, 42 CFR section 57.306(b)); NFLP and ARRA-NFLP, Affordable Care Act, Section 5311 and Program Guidance). The TEACH Grant is a non-need based grant and may replace a student's EFC, but the amount of the grant that exceeds the student's EFC is considered estimated financial assistance (34 CFR section 686.21(d)).

Effective July 1, 2009, a Pell recipient whose parent or guardian died as a result of military service in Iraq or Afghanistan after September 11, 2001, can receive the maximum amount of a Pell award available. The student must be under 24 years of age or, if 24 years old or older, enrolled at least part-time in college at the time of the parent's or guardian's death. Effective July 1, 2010, if a student falls into this category, but does not meet the needs-based criteria for a Pell grant, then the student would be eligible for a non-need based IASG, and can receive the maximum amount of a Pell award available (20 USC 1070h).

The determination of SFA award amounts is based on financial need. Financial need is generally defined as the student's cost of attendance (COA) minus financial resources reasonably available. In determining the financial resources available for the HHS programs, the school must use one of the need analysis systems or any other procedures approved by the Secretary of Education. The

school must also take into account other information that it has regarding the student's financial status. For Title IV programs, the financial resources available is generally the Expected Family Contribution (EFC) that is computed by the central processor and included on the student's SAR and the ISIR provided to the institution.

An institution may (1) exclude, from both estimated financial assistance and the COA, financial assistance provided by a State if that assistance is designated by the State to offset a specific component of the COA; (2) include the one-time cost of a student obtaining his or her first professional license or certificate; and (3) include room and board in a student's COA for students who are less than half-time students (Sections 480(j)(3), 472(13), and 472(4)(C) of HEA; (20 USC 1087vv(j)(3), 20 USC 1087ll(13) and (4)(C))).

For Title IV programs, the COA is generally the sum of the following: tuition and fees; an allowance for books, supplies, transportation and miscellaneous personal expenses; an allowance for room and board; where applicable, allowances for costs for dependent care; costs associated with study abroad and cooperative education; costs related to disabilities; and fees charged for student loans. There are exceptions for students attending less than half-time, correspondence students, and incarcerated students. The financial aid administrator also has authority to use professional judgment to adjust the COA or alter the data elements used to calculate the EFC on a case-by-case basis to allow for special circumstances

For the HHS programs, the costs reasonably necessary for the student's attendance include any special needs and obligations which directly affect the student's ability to attend the school. The school must document the criteria used for determining these costs.

(20 USC 1087ll-1087mm; FPL, 34 CFR section 674.9; FWS, 34 CFR section 675.9; FSEOG, 34 CFR section 676.9; FFEL, 34 CFR section 682.603; Direct Loan 34 CFR sections 685.200 and 301; Pell 34 CFR section 690.75; HPSL/PCL/LDS, 42 CFR section 57.206(b); NSL, 42 CFR section 57.306(b)); NFLP and ARRA-NFLP, Affordable Care Act, Section 5311 and Program Guidance).

Health Professions Student Loans/Primary Care Loans)/Loans for Disadvantaged Students (CFDA 93.342), Nursing Student Loans (CFDA 93.364)

For periods prior to November 13, 1998, the total amount of HPSL/PCL/LDS loans made to a student for a school year may not exceed $2,500 plus the cost of tuition (42 CFR section 57.207). For students who are applying for a HPSL/PCL/LDS loan, the school must make its selection based on the order of greatest financial need, taking into consideration the other resources available to the student. The resources may include summer earnings, educational loans, veteran (G.I.) Benefits, and earnings during the school year (HPSL/PCL/LDS,

42 CFR section 57.206(c)). For periods after November 13, 1998, the total amounts of HPSL/PCL/LDS loans to a student for a school year may not exceed the cost of attendance (including tuition, other reasonable educational expenses, and reasonable living expenses). The amount of the loan may, in the case of the third or fourth year of a student at a school of medicine or osteopathic medicine, be increased to pay balances of loans that were made to the individual for attendance at the school (42 USC 722(a)(1) (section 722(a)(1) of PHS Act); Pub. L. No. 105-392, sections 134 (1) and (2)). The total amount of NSL loans made to a student for an academic year may not exceed $3,300 except that for each of the final two academic years of the program the total must not exceed $5,200. The total of all NSL loans may not exceed $17,000 (Section 5202 (a) of the Affordable Care Act).

Nurse Faculty Loan Program (NFLP) (CFDA 93.264)
ARRA – Nurse Faculty Loan Program (NFLP) (CFDA 93.408)

The total amount of NFLP or ARRA-NFLP loans made to a student for a school year may not exceed $35,500 for a maximum of 5 years to support the cost of tuition, fees, books, laboratory expenses and other reasonable education expenses. NFLP or ARRA-NFLP loans do not include stipend support (*i.e.*, living expenses, student transportation cost, room/board, personal expenses). For students who are applying for a NFLP or ARRA-NFLP loan, the student must be enrolled full-time or part-time in an eligible graduate (master's and doctoral) nursing education program at the school. The school must make its selection of NFLP or ARRA-NFLP student applicants to receive loan funds by taking into consideration the other resources available to the student. Section 847(f) added a funding priority for sections 847 and 846A of the PHS Act. This funding priority is awarded to school of nursing student loan funds that support doctoral nursing students. Schools that receive the doctoral funding priority should fund new doctoral student applicants ahead of new master's student applicants (Title VIII, Section 846A, PHS Act, as amended by the Patient Protection and Affordable Care Act of 2010, Pub. L. No.111-148, Section 5311).

Scholarships for Disadvantaged Students (CFDA 93.925)

Scholarships will be awarded by schools to any full-time student who is from a disadvantaged background; has a financial need for a scholarship; and is enrolled (or accepted for enrollment) in a program leading to a degree in a health profession or nursing. Such scholarships may be expended only for tuition expenses, other reasonable educational expenses, and reasonable living expenses incurred in the attendance of such school (42 USC 293a; section 737 of PHS Act).

Federal Pell Grant (CFDA 84.063)

Each year, based on the maximum Pell grant established by Congress, ED provides to institutions Payment and Disbursement Schedules for determining Pell awards. The Payment or Disbursement Schedule provides the maximum annual amount a student would receive for a full academic year for a given enrollment status, EFC and COA. The Payment Schedule is used to determine the annual award for a full-time student. There are separate Disbursement Schedules for three-quarter time, half-time, and less-than-half-time students. All of the Schedules, however, are based on the COA of a full-time student for a full academic year (see the reference to Pell Grant in Volume 3, Calculating Awards & Packaging, of the *FSA Handbook* for the year(s) being audited for guidance on selecting formulas for calculating cost of attendance, prorating costs for programs less or greater than an academic year, and determining payment periods).

The Higher Education Opportunity Act modified the Higher Education Act to provide that, beginning with the 2009-2010 Award Year, a student meeting certain requirements shall receive up to two Pell Grant Scheduled Awards during a single award year. To receive second Scheduled Award funds, the student must be enrolled as at least a half-time student in an eligible program leading to a bachelor's or associates degree or other recognized educational credential (except as provided for students with intellectual disabilities). The student's Pell Grant award for the payment period is calculated the same way as an award that would be paid from the student's first Scheduled Award (i.e., based on the total credit or clock hours and weeks of instructional time in the payment period). If the student is otherwise eligible and has received (or will receive) 100% of the first Scheduled Award, the calculated award for the payment period must be paid from the student's second Scheduled Award. A student may be awarded second Scheduled Award funds when the student is also receiving the balance of the first Scheduled Award in the payment period. (2010-2011 *FSA Handbook*, Volume 3, Chapter 3.)

Starting with the 2010-2011 Award Year, in addition to the requirements of the HEA as discussed above, for any payment period where the student will be receiving second Scheduled Award funds, the student must be enrolled for at least one credit or clock hour attributable to the student's second academic year in the award year. Also, beginning with the 2010-2011 Award Year, the institution must assign a crossover payment period (one that includes both June 30 and July 1) to the Award Year in which the student receives the greater payment for the payment period (34 CFR sections 690.63(h) and 690.67).

For students that receive their first Federal Pell grant on or after July 1, 2008, may not receive more than nine Scheduled Awards (18 semesters, or the equivalent) (34 CFR section 690.6(e)).

The steps to determine Pell awards are as follows:

(1) Determine the student's enrollment status (full-time, three-quarter time, half-time, or less than-half-time).

(2) Calculate the cost of attendance. This is always based on the cost for a full-time enrollment status for a full academic year. If the student is enrolled in a program or enrollment period that is longer or shorter than an academic year, the costs must be prorated so that they apply to one full academic year. There are two allowable proration methods. Costs can be on an actual cost-per-student basis or an average cost for groups of similar students. If the student is enrolled less than half-time, the only allowable cost components are tuition and fees, allowance for books and supplies, transportation allowance, allowance for dependent care, and room and board.

(3) Determine the annual award, based on the cost of attendance calculated above and the EFC, from the Payment or Disbursement Schedule for the student's enrollment status (i.e., full-time, three quarter-time, half-time, or less than half-time).

(4) Determine the payment period. For term programs (semester, trimester, quarter), the payment period is the term.

(5) Calculate the payment for the payment periods. The calculation of the payment for the payment period may vary depending on the formula used, the length of the program compared to the academic year, and whether the institution uses an alternative calculation for students who attend summer terms (34 CFR sections 690.61 through 690.67. Also see the Chapter on "Calculating Awards & Packaging" in Volume 3, of the *FSA Handbook*.

(6) Disburse funds at prescribed times (This is tested under III.N, Special Tests and Provisions) (34 CFR sections 690.61 through 690.67, and 690.75 through 690.76; Pell Grant Payment Schedules; General Provisions regulations, part 668, subpart K, and *FSA Handbook*).

(7) If a student has used all their first Scheduled Pell Award and is still enrolled at least half-time within a single award year, determine if they are eligible for a second Scheduled Pell Award during the same award year and calculate the payment.

Postsecondary Education Scholarships for Veteran's Dependents (Iraq and Afghanistan Service Grants (IASG)) (CFDA 84.408)

Effective July 1, 2010, a non-Pell eligible student whose parent or guardian died as a result of U.S. military service in Iraq or Afghanistan after September 11, 2001, can receive a IASG grant. The student must have been less than 24 years old or, if 24 years old or older, enrolled in college when the parent or guardian died. The amount of the grant is the same as the Pell Grant the student would be eligible for if they had a zero EFC. All other Pell requirements apply but, unlike Pell Grants, these non-need-based grants do not count as estimated financial assistance (20 USC 1070h, 2010-2011 *Federal Student Aid Handbook*, Volume 1, Chapter 7, and electronic announcement dated November 6, 2009 (http://ifap.ed.gov/eannouncements/110609DODMatch.html))

Campus-Based Programs (FPL, FWS, FSEOG) (CFDA 84.038, CFDA 84.033, CFDA 84.007)

The maximum amount that can be awarded under the campus-based programs is equal to the student's financial need (COA minus EFC) minus aid from other SFA programs and other resources. For programs of study or enrollment periods less than or greater than an academic year, the COA for loans and campus-based aid is based on the student's actual costs for the period for which need is being analyzed, rather than being prorated to the costs for a full-time student for a full academic year. The financial aid administrator has discretion in awarding amounts from each program, subject to certain limitations.

Federal Supplemental Educational Opportunity Grants (CFDA 84.007)

The FSEOG program provides grants to eligible undergraduate students. Priority is given to Federal Pell recipients who have the lowest expected family contributions. The institution decides the amount of the grant, which can be up to $4,000 but not less than $100, for an academic year. The maximum amount may be increased to $4,400 for a student participating in a study abroad program that is approved for credit by the student's home institution (34 CFR sections 676.10 and 676.20).

Academic Competitiveness Grants (CFDA 84.375)

The ACG program provides grants to eligible at least half-time regular undergraduate students enrolled in their first and second academic years in an ACG-eligible program at a 2- or 4-year degree granting institution. Grants are for up to $750 for first-year students and up to $1,300 for second-year students (34 CFR sections 691.2(d), 691.6, 691.15, and 691.62).

An eligible student must have successfully completed a rigorous secondary school program of study recognized by the Secretary. The school must document a student's completion of such a program of study. Information about rigorous course of study and requirements for the ACG Program is available at the following Web site: http://www.ed.gov/admins/finaid/about/ac-smart/state-programs.html or http://www.ed.gov/about/offices/list/ope/ac-smart-families.html, or for questions and answers at: http://www.ifap.ed.gov/HERA/RigorDefforACG.html.

SMART Grants (CFDA 84.376)

The SMART Grants program provides grants to eligible third- and fourth-year (and in some cases fifth-year) at least half-time undergraduates enrolled in their third, fourth, or fifth academic years in a SMART Grants-eligible program at a 4-year degree granting institution who major in certain designated technical fields, foreign languages, or enroll in a qualifying liberal arts curriculum (34 CFR sections 691.17(a) and (b)). Students are required to pursue a major in physical, life, or computer sciences, mathematics, technology, engineering, a critical foreign language, or a qualifying liberal arts curriculum. (The liberal arts program must have been designated per and meet the requirements of 34 CFR section 691.17(b).). For each award year, the Secretary will identify the eligible majors and qualifying liberal arts curricula. The student must also maintain a cumulative grade-point average (GPA) of 3.0 in the student's eligible program (e.g., bachelor's program). Grants are for up to $4,000 for each student (34 CFR sections 691.2(d), 691.6, 691.17, and 691.62).

Information about Eligible Majors and Programs of Study for the SMART Grants program is available at: http://www.ifap.ed.gov/HERA/MajorEligibility.html or http://studentaid.ed.gov/PORTALSWebApp/students/english/SmartGrants.jsp?tab=funding.

TEACH Grants (CFDA 84.379)

The TEACH Grant is a non-need-based grant that provides annual grants of up to $4,000 to eligible undergraduate and graduate students who agree to teach specified high-need subjects at schools serving primarily disadvantaged populations for 4 years within 8 years of graduation. The aggregate amount of TEACH Grants that a candidate may receive for undergraduate or post-baccalaureate study may not exceed $16,000. The aggregate amount that a graduate student may receive may not exceed $8,000. If the student is enrolled less than full-time, including less than half-time, the amount of the annual TEACH Grant that he or she may receive must be reduced in accordance with 34 CFR section 686.21. The amount of the TEACH Grant, in combination with other assistance the student may receive, may not exceed the cost of attendance. If the TEACH Grant and other aid exceeds the cost of attendance for an academic year, the student's aid package must be reduced. The TEACH Grant may replace

a student's EFC, but the amount of the grant that exceeds the student's EFC is considered estimated financial assistance. (34 CFR section 686.21)

Federal Perkins Loan (CFDA 84.037, CFDA 84.038)

Annual loan maximums for the FPL program are: $5,500 for a student who has not successfully completed a program of undergraduate education; and $8,000 for a graduate or professional student. The aggregate loan maximums for the FPL program are: $11,000 cumulative for a student who has not successfully completed 2 years of a program leading to a bachelor's degree; $27,500 cumulative for a student who has successfully completed 2 years of a program leading to a bachelor's degree, but who has not completed the work necessary for the degree; and $60,000 cumulative for a graduate or professional student, including loans borrowed as an undergraduate student (34 CFR section 674.12 and the *FSA Handbook* and Pub. L. No. 110-315, Sec. 464(a) (20 U.S.C. 1087dd(a))).

Federal Family Education Loans (CFDA 84.032)
Federal Direct Student Loans (CFDA 84.268)

In determining loan amounts for subsidized Stafford loans, the financial aid administrator subtracts from the COA, the EFC and the estimated financial assistance for the period of enrollment that the student (or parent on behalf of the student) will receive from Federal, State, institutional or other sources. Unsubsidized Stafford loans, PLUS loans, loans made by a school to assist the student, and state-sponsored loans may be used to substitute for EFC (34 CFR sections 682.200, 682.603, 685.102, and 685.200(d)). A financial aid administrator may use discretion to offer an unsubsidized Stafford loan to a dependent student whose parents do not support the student and who refuse to complete a FAFSA (20 USC 1087tt(a)).

The annual loan limits apply to the length of the school's academic year. Except for PLUS loans and for graduate or professional students, proration of a loan is required when a program is less than an academic year as measured in either clock hours or credit hours or number of weeks; or when a program exceeds an academic year but the remaining portion of the program is less than an academic year in length. For the purpose of determining loan limits for a borrower who received an Associate or Bachelor degree and has re-enrolled in another eligible program for which the prior degree is a prerequisite, the number of years that a student has completed in a program of undergraduate study includes any prior enrollment. The loan limits described below apply to both the FFEL and Direct Loan programs and are cumulative. For example, a dependent undergraduate student who has borrowed $10,000 in subsidized FFEL and $13,000 in subsidized direct loans has reached the aggregate undergraduate limit of $23,000 for both programs (34 CFR sections 682.204 and 685.203).

Annual Limits for Subsidized Loans

For an undergraduate student who has not yet successfully completed the first year of study the annual loan limit is $3,500 for a program of study at least an academic year in length. For a program less than an academic year, the loan must be prorated. Programs less than one-third of an academic year are not eligible for these loans.

For an undergraduate student who has successfully completed the first year but has not successfully completed the second year of an undergraduate program: (1) up to $4,500 for a program of study at least an academic year in length, and (2) for programs with less than an academic year remaining, the loan must be prorated. Programs less than one-third of an academic year are not eligible for these loans.

For an undergraduate student who has successfully completed the first and second year of study but has not successfully completed the remainder of the program or for a student in a program who has an associate or baccalaureate degree which is required for admission into the program: (1) up to $5,500 for a program of study at least an academic year in length, and (2) for programs with less than an academic year remaining, the loan must be prorated.

Graduate or professional students may borrow up to $8,500 per academic year.

Annual Limits for Unsubsidized Loans

A student may receive an unsubsidized loan for the amount that is the difference between the subsidized amount for which he or she was eligible and the subsidized amount that he or she received. For dependent undergraduate students, the unsubsidized loan is the difference between the student's cost of attendance and the student's estimated financial assistance (including a subsidized loan if the student qualifies for one).

Additional eligibility for unsubsidized loans, beyond the base subsidized/unsubsidized amount, is available to all independent students and to dependent students whose parents are likely to be precluded by exceptional circumstances from receiving a PLUS loan, as determined by the financial aid administrator.

An undergraduate dependent student, in any year of study, may receive an additional $2,000 in unsubsidized loans for each year of study (except for dependent students whose parents are unable to obtain a PLUS loan; which should be noted in the student file). (Dear Colleague Letter GEN 08-08 which is located at http://ifap.ed.gov/dpcletters/061908GEN0808.html (Section 2 of Pub. L. No. 110-227, which amended Section 428H(d) of HEA (20 USC 1078-8(d))).

For a student who has not successfully completed the first 2 years of undergraduate study: (1) up to $6,000 for a program of study at least an academic year in length, and (2) for programs with less than a full academic year remaining, the loan must be prorated.

For a student who has successfully completed the first and second years of an undergraduate program but who has not successfully completed the remainder of the program: (1) up to $7,000 for a program of study at least an academic year in length, and (2) for programs with less than a full academic year remaining, the loan must be prorated.

Graduate or professional students may borrow up to $12,000 per academic year.

Exceptions: Annual increased unsubsidized loan limits for certain health professions students who previously borrowed under the HEAL program are authorized. (See Volume 3, Chapter 6, of the *FSA Handbook*. The *FSA Handbook* is available on the Internet at: http://ifap.ed.gov).

Aggregate Loan Limits for Subsidized and Unsubsidized Loans

Aggregate loan limits for subsidized and unsubsidized loans is $31,000 for a dependent undergraduate student; $57,500 for an independent student (subsidized loan portion may not exceed $23,000 of the aggregate limit amount); and $138,500 for a graduate or professional student (subsidized portion limited to $65,500). This $138,500 limit includes loans for undergraduate study.

Federal and Direct PLUS (PLUS)

PLUS loans are limited to parent borrowers of dependent undergraduate students and graduate and professional students. A parent must meet the same citizenship and residency requirements as a student. Similarly, a parent who owes a refund on an SFA grant or is in default on an SFA loan is ineligible for a PLUS loan unless satisfactory arrangements have been made to repay the grant or loan. A PLUS loan may not exceed the student's estimated cost of attendance minus other financial aid awarded during the period of enrollment for that student (FFEL, 34 CFR sections 682.201 and 682.204; Direct Loan, 34 CFR sections 682.101(c), 685.101(b), 685.200, and 685.203).

2. **Eligibility for Group of Individuals or Area of Service Delivery –** Not Applicable

3. **Eligibility for Subrecipients** – Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching

Federal Perkins Loan (CFDA 84.037, CFDA 84.038)

The institution's matching share (Institutional Capital Contribution (ICC)) is one third of the Federal Capital Contribution (FCC) (34 CFR section 674.8).

Federal Supplemental Educational Opportunity Grants (CFDA 84.007)

The Federal share of awards may not exceed 75 percent of the total FSEOG awards made by the school. The Secretary of Education may authorize 100 percent Federal funding if certain conditions are met (34 CFR section 676.21).

Federal Work-Study (CFDA 84.033)

Generally, the Federal share of FWS compensation paid a student employed other than by a private for-profit organization may not exceed 75 percent of the total FWS awards made by the school. However, the Federal share may exceed 75 percent, but not exceed 90 percent, for up to ten percent of the students compensated by FWS during the academic year, if, consistent with regulations of the Secretary, the student is employed at a non-profit private organization or a government agency that (1) is not a part of, and is not owned, operated, or controlled by, or under common ownership, operation, or control with, the institution, (2) is selected by the institution on an individual case-by-case basis for such student, and (3) would otherwise be unable to afford the costs of such employment (42 USC 2753(b)(5); 34 CFR section 675.26(a)).

The Federal share of FWS for work at private-for-profit organizations is limited to 50 percent (34 CFR section 675.26(a)(3)).

However, a Federal share of 100 percent is allowable when the work is performed by the student for the institution, a public agency, or a private non-profit organization and either (1) the institution is designated an eligible institution under the Developing Hispanic Serving Institution Program, Strengthening Institutions Program, the American Indian Tribally Controlled Colleges and Universities Program, the Alaskan Native and Native Hawaiian-Serving Institutions Program, the Strengthening Historically Black Colleges and Universities Program, or the Historically Black Graduate Institutions Program, or (2) the student is employed as a reading tutor for preschool-age children or elementary school children, is employed as a mathematics tutor for children in elementary school through ninth grade, or is performing family literacy activities in a family literacy project that provides services to families with preschool-age children or elementary school children (34 CFR section 675.26(d)).

Health Professions Student Loan/Primary Care Loans/Loans for Disadvantaged Students (CFDA 93.342), Nursing Student Loan (CFDA 93.364)

The institution's ICC is one-ninth of the FCC and must be deposited in a health professions student loan fund (42 CFR sections 57.202 and 57.302).

Nurse Faculty Loan Program (NFLP) (CFDA 93.264)
ARRA – Nurse Faculty Loan Program (NFLP) (CFDA 93.408)

Schools that receive a FCC grant award must contribute an Institutional Capital Contribution (ICC) amount equal to not less than one-ninth of the total FCC grant award. The institution's ICC must be deposited in a NFLP or ARRA-NFLP loan fund at the school (Section 5311 of the Affordable Care Act and Program Guidance, Section III.2).

2. Level of Effort – Not Applicable

3. Earmarking

Federal Work-Study (CFDA 84.033)

An institution must use at least seven percent of the sum of its initial and supplemental FWS allocations for an award year to compensate students employed in community service activities unless waived by the Secretary of Education. The institution can only use up to 10 percent of its FWS or $75,000 whichever is less for a JLD program (34 CFR sections 675.18 and 675.32).

J. Program Income

Federal Perkins Loan (CFDA 84.037, CFDA 84.038)

Principal and interest repayments made by students and reimbursements for canceled loans are reinvested in the FPL revolving fund (34 CFR section 674.8).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

b. PMS-270, *Request for Title IV Reimbursement* – Applicable only to institutions placed on reimbursement payment method by ED

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. SF-425, *Federal Financial Report* – Not Applicable for ED programs; Applicable for HHS programs

f. *Common Origination and Disbursement (COD) System (OMB No. 1845-0039)* – All schools receiving Pell grants submit Pell payment data to the Department through the Common Origination and Disbursement (COD) System.

Schools submit Pell origination records and disbursement records to the COD. Origination records can be sent well in advance of any disbursements, as early as the school chooses to submit them for any student the school reasonably believes will be eligible for a payment. A school follows up with a disbursement record for that student no more than 30 days before a disbursement is to be paid (7 days in the case of a school using the just-in-time method). The disbursement record reports the actual disbursement date and the amount of the disbursement. ED processes origination and/or disbursement records and returns acknowledgments to the school. The acknowledgments identify the processing status of each record: Rejected, Accepted with Corrections, and Accepted. In testing the Pell Payment origination and disbursement data, the auditor should be most concerned with the data ED has categorized as accepted or accepted with corrections. Institutions must report student payment data within 30 calendar days after the school makes a payment; or becomes aware of the need to make an adjustment to previously reported student payment data or expected student payment data. Schools may do this by reporting once every 30 calendar days, bi-weekly, weekly or may set up their own system to ensure that changes are reported in a timely manner.

Key items to test on origination records are: Social Security Number, award amount, enrollment date, verification status code, transaction number, cost of attendance, and academic calendar. Key items to test on disbursement records are disbursement date and amount. The information may be accessed by the institution for the auditor at http://www.cod.ed.gov/ (34 CFR section 690.83; *FSA Handbook*, technical references on obtaining reports for each award year are located at: https://www.fsadownload.ed.gov/docsStudentAidGateway.htm, Volume VI, Appendices, Section 8).

2. Performance Reporting – Not Applicable

3. Special Reporting

a. ED Form 646-1, *Fiscal Operations Report and Application to Participate (FISAP) (OMB No. 1845-0030)* – This electronic report is submitted annually to receive funds for the campus-based programs. The school uses the *Fiscal Operations Report* portion to report its expenditures in the previous award year and the *Application to Participate* portion to apply for the following year. FISAPs are required to be submitted by October 1 following the end of the award year (which is always June 30). For example, by October 1, 2010, the institution should submit its FISAP that includes the *Fiscal Operations Report* for the award year ended June 30, 2010 and the *Application to Participate* for the 2011-2012 award year (FPL, FWS, FSEOG 34 CFR section 673.3; *Instruction Booklet for Fiscal Operations Report and Application to Participate*).

Key Line Items – The following line items contain critical information:

Part I, Identifying Information

Part II, Application

– *Information on enrollment*

– *Assessments and expenditures*

– *Information on eligible aid applicants*

Part III, Federal Perkins Loan Program

– *Fiscal Report (Trace material line items)*

– *Fund Activity (Annual) During the XXXX-XX Award Year*

– *Cumulative Repayment Information*

– *Cohort Default Rate*

Part IV, Federal Supplemental Educational Opportunity Grant Program

– *All sections*

Part V, Federal Work-Study (FWS) Program

– *All sections*

Part VI, Program Summary for Award Year

– *Distribution of Program Recipients and Expenditures by Type of Student (Trace a sample of line items)*

b. FPL and Grant Overpayment Reporting to the *National Student Loan Data System (NSLDS) (OMB No. 1845-0035)* – The NSLDS is a national database of information about loans and other financial aid awarded to students under Title IV. Educational and financial institutions, as well as other lending entities may enter data in NSLDS pertaining to FPL, FFEL, and Direct Loans and Title IV grant program overpayments. Individual loan histories (loan history) and grant overpayment summaries (overpayment history) are accessible from the NSLDS Financial Aid Professional's web site within the AID Tab. The individual student identifier is the social security number (20 USC 1092b).

4. Section 1512 ARRA Reporting – Applicable

Department of Education Recovery Reporting guidance is located at: http://www2.ed.gov/policy/gen/leg/recovery/section-1512.html. On this webpage, under the Section *ED Clarifying Guidance on Recovery Act Section 1512 Quarterly Reporting,* see item 3, ED Information for Section 1512 Recipient Reporting for Federal Work-Study (FWS) Program Funds under the Recovery Act where there are links to memoranda issued by ED regarding FWS and reporting under Section 1512.

5. Subaward Reporting under the Transparency Act – Not Applicable

N. Special Tests and Provisions

1. Separate Funds (HPSL/PCL/LDS, NSL, FPL)

Compliance Requirement – The institution must maintain a separate fund account for each program (HPSL/PCL/LDS, 42 CFR section 57.205; NSL, 42 CFR section 57.305; and FPL, 34 CFR sections 674.8 and 674.19).

Audit Objective – Determine whether separate fund account(s) were established.

Suggested Audit Procedures

Review accounting records to verify that a separate fund was established for each program.

2. Verification

Compliance Requirements – An institution may participate under an ED-approved Quality Assurance Program (QAP) that exempts it from verifying those applicants selected by the central processor, provided that the applicants do not meet the institution's own verification selection criteria. (20 USC 1094a; HEA section 487A) (*FSA Handbook 2010-2011* Application and Verification Guide, page AVG-82 http://ifap.ed.gov/fsahandbook/attachments/1011AVG.pdf) An institution not participating under an ED-approved QAP is required to establish written policies and procedures that incorporate the provisions of 34 CFR sections 668.51 through 668.61 for verifying applicant information. Such an institution shall require each applicant whose application is selected by the central processor, based on edits specified by ED, to verify the information specified in 34 CFR section 668.56. However, certain applicants are excluded from the verification process as listed in 34 CFR section 668.54(b). The institution is not required to verify the applications of more than 30 percent of its total number of applicants selected by ED (34 CFR section 668.54(a)(2)). The institution shall also require applicants to verify any information used to calculate an applicant's EFC that the institution has reason to believe is inaccurate. Generally, the information that must be updated is the number of family members, number of family members attending postsecondary educational institutions, and the applicant's dependency status (34 CFR section 668.55). Information that must be verified or updated is adjusted gross income, U.S. income tax paid, aggregate number of family members in the household, number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions if that number is greater than one, and untaxed income and benefits including:

- Social security benefits if the institution has reason to believe that those benefits were received and were not reported or were not correctly reported;
- Child support if the institution has reason to believe child support was received;
- U.S. income tax deductions for a payment made to an individual retirement account or Keogh account;
- Interest on tax-free bonds;
- Foreign income excluded from U.S. income taxation if the institution has reason to believe that foreign income was received;
- Earned income credit taken on the applicant's tax return; and
- All other untaxed income subject to U.S. income tax reporting requirements in the base year included on the tax return form, excluding information contained on schedules appended to such forms (34 CFR section 668.56)

Acceptable documentation for the verification is listed in 34 CFR section 668.57.

Audit Objectives – Determine whether the institution established policies and procedures to verify information in student aid applications, and verified all required information of selected applications in accordance with the requirements.

Suggested Audit Procedures

a. Review the institution's policies and procedures for verifying student applications and verify that they meet the requirements either of 34 CFR section 668.53 or, if applicable, the institution's QAP.

b. If the institution has a QAP, select a sample of applications and review records to ensure that the processes required under the approved QAP were applied.

c. If the institution does not have a QAP, select a sample of applications that were selected for verification and review student aid files to ascertain whether the institution obtained acceptable documentation to verify the information required, matched information on the documentation to the student aid application, and, if necessary, submitted data corrections to the central processor and recalculated awards.

d. Verify that the institution performed verifications of the students (recipients) selected by ED for verification, and verify that the total number of such verifications performed met the regulatory requirement.

3. Disbursements To or On Behalf of Students

Compliance Requirements

Title IV Programs – General

a. The payment period for a student enrolled in an eligible program that measures progress in credit hours and has standard academic terms (semesters, trimesters, or quarters), or has non-standard terms that are substantially equal in length is the academic term(34 CFR section 668.4(a)). (Non-standard terms are substantially equal in length if no term is more than 2 weeks of instructional time longer than any other term (34 CFR section 668.4(h)).

b. The payment period for a student enrolled in an eligible program that measures progress in credit hours and uses non-standard terms that are not substantially equal in length is as follows (34 CFR section 668.4(b)):

   (1) For Pell Grant, IASG, ACG, SMART Grants, FSEOG, Perkins, and TEACH Grants, the payment period is the academic term.

   (2) For FFEL and Direct Loans,

(a) If the program is one academic year or less in length, (i) the first payment period is the period of time in which the student successfully completes half the number of credit hours in the program and half the number of weeks of instructional time in the program, and (ii) the second payment period is the period of time in which the student completes the program.

(b) If the program is more than one academic year in length–

(i) For the first academic year and any subsequent full academic year:

(A) The first payment period is the period of time in which the student successfully completes half the number of credit hours in the academic year and half the number of weeks of instructional time in the academic year; and

(B) The second payment period is the period of time in which the student completes the academic year.

(ii) For any remaining portion of an eligible program that is more than half, but less than a full, academic year in length:

(A) The first payment period is the period of time in which the student successfully completes half the number of credit hours in the remaining portion of the program and half the number of weeks of instructional time in the remaining portion of the program; and

(B) The second payment period is the period of time in which the student successfully completes the remainder of the program.

(iii) For any remaining portion of an eligible program that is not more than half an academic year, the payment period is the remainder of the program.

c. The payment period for a student enrolled in an eligible program that measures progress in credit hours and does not have academic terms or for a program that measures progress in clock hours (34 CFR section 668.4(c)):

(1) If the program is one academic year or less in length, the first payment period is the period of time in which the student successfully completes half the number of credit or clock hours in the program and half the number of weeks instructional time in the program; the second payment

period is the period of time in which the student successfully completes the program.

(2) If the program is more than one academic year in length –

(a) For the first academic year and any subsequent full academic year (i), the first payment period is the period of time in which the student successfully completes half the number of credit or clock hours in the academic year and half the number of weeks of instructional time in the academic year, and (ii) the second payment period is the period of time in which the student successfully completes the academic year.

(b) For any remaining portion of an eligible program that is – (i) more than half but less than a full academic year in length, the first payment period is the period of time in which the student successfully completes half the number of credit or clock hours in the remaining portion of the program and half the number of weeks of instructional time in the remaining portion of the program, and (ii) the second payment period is the period of time in which the student successfully completes the remainder of the program.

(c) For any remaining portion of an eligible program that is not more than half an academic year, the payment period is the remainder of the program.

d. If an institution is unable to determine when a student has successfully completed half of the credit hours in a program, academic year, or remainder of a program, the student is considered to begin the second payment period of the program, academic year, or remainder of a program at the later of – (i) the date the institution determines the student has completed half of the academic coursework in the program, academic year, or remainder of the program; or (ii) half the number of weeks of instructional time in the program, academic year, or remainder of the program (34 CFR section 668.4(c)(3)).

If a student withdraws from a credit-hour program that does not have academic terms, or a clock-hour program during a payment period and reenters the same program within 180 days, the student remains in that same payment period upon reentry and is eligible to receive, subject to conditions established by ED, a FFEL lender or a guaranty agency, any Title IV funds for which they were eligible prior to withdrawal, including funds returned as a result of a return of funds calculation (34 CFR section 668.4(f)).

If a student withdraws from a credit-hour program that does not have academic terms, or a clock-hour program during a payment period and reenters the same program after 180 days or transfers into another program (either at the same institution or at a different institution) at any time, the student generally starts a new payment period (34 CFR section 668.4(g)). (See exception to this general rule in 34 CFR section 668.4(g)(3)).

e. The institution may not make a disbursement to a student for a payment period until the student is enrolled in classes for that payment period, unless the student is registered and the loans are disbursed by electronic funds transfer (EFT) to an account of the school or by master check. In those situations, the school must obtain the student's (or in the case of parent a PLUS loan, the parent borrower's) written authorization for the release of the initial and any subsequent disbursement of each FFEL loan, unless authorization was provided in the loan application or Master Promissory Note. The institution must deliver the proceeds to the student or borrower or credit the student's account, notifying the student or parent borrower in writing (34 CFR section 682.604(c)). The earliest an institution may disburse SFA funds (other than FWS) (either by paying the student directly or crediting the student's account) is 10 days before the first day of classes of the payment period for which the disbursement is intended (34 CFR section 668.164(f)). (If an institution uses its own funds, i.e., funds not drawn down from ED, earlier than 10 days before the first day of classes, ED considers that the institution made that disbursement on the 10th day before the first day of classes (34 CFR section 668.164(a)(2)). There are two exceptions to this rule. First, institutions may not disburse or deliver the first installment of FFEL or Direct Loans to first-year undergraduates who are first time borrowers until 30 days after the student's first day of classes (34 CFR section 668.164(f)(3)), unless the institution has low default rates as discussed in the next paragraph. The second exception applies to a student who is enrolled in a clock hour educational program or a credit hour program that is not offered in standard academic terms. The earliest the institution may disburse funds is the later of 10 days before the first day of classes for the payment period or, except for certain circumstances under the FFEL and Direct Loan programs, the day the student completed the previous payment period (34 CFR section 668.164(f)(2)). The excepted circumstances for the FFEL and Direct Loan programs are described in 34 CFR sections 682.604(c)(6)(ii), (c)(7), and (c)(8); and 685.303(b)(3)(ii), (b)(5), and (b)(6), respectively (34 CFR section 668.164(f)).

f. The exceptions for institutions to disburse loans for first-year undergraduates who are first-time borrowers are (1) an institution with cohort default rates of less than 10 percent for each of the three most recent fiscal years for which data are available does not have to wait the 30 days; and (2) an institution that is an eligible home institution that certifies a loan to cover the student's cost of attendance in a study-abroad program and has a cohort default rate of less than 5 percent for the single most recent fiscal year for which data are available does

not have to wait the 30 days. (34 CFR sections 682.604(c)(5), 682.301(b)(8), and 685.303(b)(4)).

g. The institution must notify the student, or parent in writing of (1) the date and amount of the disbursement, and (2) the student's right, or parent's right to cancel all or a portion of that loan or loan disbursement and have the loan proceeds returned to the holder of that loan or the TEACH Grant payments returned to ED; and (3) the procedure and time by which the student or parent must notify the institution that he or she wishes to cancel the loan, TEACH Grant, or TEACH Grant disbursement. The notification requirement for FFEL funds applies only if the funds are disbursed by EFT payment or master check (34 CFR section 668.165). Institutions that implement an affirmative confirmation process (as described in 34 CFR section 668.165 (a)(6)(i)) must make this notification to the student or parent no earlier than 30 days before, and no later than 30 days after, crediting the student's account at the institution with Direct Loan, FPL, FFEL funds, or TEACH Grants. Institutions that do not implement an affirmative confirmation process must notify a student no earlier than 30 days before, but no later than 7 days after, crediting the student's account and must give the student 30 days (instead of 14) to cancel all or part of the loan.

h. An institution must return to ED, a lender, or a guaranty agency (notwithstanding any State law, such as a law that allows funds to escheat to the State) any Title IV funds, except FWS program funds, that it attempts to disburse directly to a student or parent but they do not receive or negotiate those funds. For FWS program funds, the institution is required to return only the Federal portion of the payroll disbursements. If the institution attempted to disburse the funds by check and the check is not cashed, the funds must be returned no later than 240 days after the date it issued the check. If a check is returned, or an EFT is rejected, the institution may make additional attempts to disburse the funds, provided that the attempts are made no later than 45 days after the funds were returned or rejected. If the institution does not make an additional attempt to disburse the funds, the funds must be returned before the end of the 45-day period and no later than 240 days from the date of the initial attempt to disburse the funds (34 CFR section 668.164(h)).

i. If a student received financial aid while attending one or more other institutions, schools are required to request financial aid history using the NSLDS Student Transfer Monitoring Process. Under this process, a school informs NSLDS about its transfer students. NSLDS will "monitor" those students on the school's "inform" list and "alert" the school of any relevant financial aid history changes. A school must wait 7 days after it "informs" NSLDS about a transfer student before disbursing Title IV aid to that student. However, a school does not have to wait if it receives an alert from NSLDS during the seven-day period or if it obtains the student's financial aid history by accessing the NSLDS Financial Aid Professional web site. When a school receives an alert from NSLDS, before making a disbursement of Title IV aid, it must determine if the change to the

student's financial aid history affects the student's eligibility. (34 CFR section 668.19).

j. For students whose applications were selected for verification, if the institution has reason to believe that information included in the application is inaccurate, the institution may not: (1) disburse any Pell or campus-based aid; (2) employ the applicant in its FWS program; or (3) certify FFEL loans or originate Direct Loans (or process proceeds of previously certified or originated loans) until the applicant verifies or corrects the information. If the institution does not have any reason to believe that the information is inaccurate, the institution may withhold payment of Pell or Campus-based aid and loan certification, or may make one interim disbursement of Pell or Campus-based aid, employ or allow an employer to employ an eligible student under FWS for the first 60 consecutive days after the student's enrollment and may certify the FFEL loan or originate the Direct Loan, but cannot process the proceeds. If the verification process is not complete after 45 days, the institution shall return loan proceeds to the lender. In addition, the institution is liable for an interim disbursement if verification shows that a student received an overpayment or if the student fails to complete verification (34 CFR section 668.58).

Pell

To disburse Pell funds, the institution must have received a valid ISIR from the central processor or a valid SAR from the student by the earlier of the student's last date of enrollment or the deadline date established by the Secretary in a notice published in the *Federal Register* (normally in the month of September following the end of the award year). Late disbursements of Pell for ineligible students are allowed if, before the date the student became ineligible, an ISIR or SAR was processed that contained an official expected family contribution. The institution has discretion in disbursing funds within a payment period, but generally must disburse the full amount before the end of the payment period.

The institution must review and document the student's eligibility before it disburses funds each payment period (34 CFR sections 690.61, 690.75, 690.76, and 668.164(g)). (Requirements for student eligibility are found in Appendix A.)

IASG

IASG disbursements follow Federal Pell grant regulations (20 USC 1070h). (Requirements for student eligibility are found in Appendix A.)

ACG and SMART Grants

ACG and SMART Grants disbursements follow Federal Pell Grant Regulations. Institutions must assign the payment period for both the ACG or SMART Grants and the Federal Pell Grant to the same award year when payment periods apply in two academic years (34 CFR section 691.64(a)(6)). (Requirements for student eligibility are found in Appendix A.)

TEACH Grant

To disburse TEACH Grant funds, the institution must ensure that the student (a) is eligible (per 34 CFR section 686.11), (b) has completed the initial or subsequent counseling (required by 34 CFR section 686.32), (c) has signed an agreement to serve (required by 34 CFR section 686.12), (d) is enrolled in a TEACH grant-eligible program, and (e) if enrolled in a credit-hour program without terms or a clock-hour program, has completed the payment period, as defined in 34 CFR section 668.4, for which he or she will be paid a grant (34 CFR section 686.31). (Requirements for student eligibility are found in Appendix A.)

FPL

If the institution is making a loan for a full academic year and uses standard academic terms, the institution must advance a portion of the loan during each payment period. If standard academic terms are not used, it must advance funds at least twice during the academic year - once at the beginning and once at the midpoint. Loan payments must be supported by a signed promissory note (34 CFR section 674.16). (Requirements for student eligibility are found in Appendix A.)

FFEL

The institution must determine that the student has maintained eligibility for the FFEL loan before each disbursement of loan proceeds. Disbursements are required on a payment period basis, and the institution is required to provide the lender with a disbursement schedule. In addition, an institution under the reimbursement payment method must receive the Department's approval prior to disbursing loan funds. Loan funds provided by electronic fund transfer or master check may not be requested earlier than: 27 days after the first day of classes of the first payment period for a first-year, first-time Stafford Loan borrower; or 13 days before the first day of classes for any subsequent payment period for a first-year, first-time Stafford Loan borrower or for any payment period for all other FFEL borrowers. Loan funds must be disbursed within 3 business days of receipt if the lender provided the funds by EFT or master check or 30 days if the lender provided the funds by check payable to the borrower or copayable to the borrower and the institution (34 CFR sections 668.162, 668.164, 668.167(b), 682.603, and 682.604(d)). (Requirements for student eligibility are found in Appendix A.)

If the institution does not disburse FFEL loan proceeds to a student or parent in accordance with the time frames required in 34 CFR section 668.167(b), the institution must return the funds to the lender within 10 business days after the date the funds were required to be disbursed. Exceptions are described in 34 CFR sections 668.167(b)(3) and (c) (34 CFR section 668.167(b)(2)).

Direct Loan

Except in the case of an allowable late disbursement (34 CFR section 685.303(d)), before disbursing the loan proceeds, the institution must determine that the student maintained continuous eligibility from the beginning of the loan period. An institution under the advance payment method may not disburse loan proceeds until they have obtained a legally enforceable promissory note. An institution under reimbursement or cash monitoring payment method must have obtained a legally enforceable promissory note and may only request funds for those that they have already disbursed funds to students (34 CFR sections 685.301 and 685.303). (See III. C. Cash Management for discussion of payment methods.) (Requirements for student eligibility are found in Appendix A.)

HPSL/PCL/LDS and NSL

Student loans may be paid to or on behalf of student borrowers in installments considered appropriate by the school, except that a school may not pay to or on behalf of any borrowers more than the school determines the student needs for any given installment period (e.g., semester, term, or quarter). However, effective November 13, 1998, the amount of the loan may be increased, in the case of the third or fourth year of a student at a school of medicine or osteopathic medicine, to pay balances of loans that were made to the individual for attendance at the school (42 USC 292r(a)(2); section 722r(a)(2) of PHS Act; Pub. L. No. 105-392, section 134(a)(2)). At the time of payment a HPSL/PCL/LDS borrower must be a full-time student, a NSL borrower must be at least a half-time student (HPSL/PCL/LDS, 42 CFR section 57.209; NSL, 42 CFR section 57.309). Each student loan must be evidenced by a properly executed promissory note (HPSL/PCL/LDS, 42 CFR section 57.208; NSL, 42 CFR section 57.308).

Nurse Faculty Loan Program (NFLP) (CFDA 93.264)
ARRA – Nurse Faculty Loan Program (NFLP) (CFDA 93.408)

NFLP and ARRA-NFLP loans may be paid to or on behalf of student borrowers in installments considered appropriate by the school, except that a school may not pay to or on behalf of any borrowers more than the school determines the student needs for any given installment period (e.g., semester, term, or quarter). At the time of payment, a NFLP or ARRA-NFLP borrower must be enrolled full-time or part-time. Each student loan must be evidenced by a properly executed promissory note (Program Guidance, Repayment Provision).

FWS

The student's wages are earned when the work is performed. The institution shall pay the student at least once per month. The Federal share must be paid by check or similar instrument the student can cash on his or her endorsement, or as authorized by the student, by crediting FWS funds to a student's account or by EFT to a bank account designated by the student. The institution may only credit the account for tuition, fees, institutional room and board, and other school-provided goods and services (34 CFR section 675.16). (Requirements for student eligibility are found in Appendix A.)

Audit Objectives – Determine whether disbursements to students were made or returned to the funds provider in accordance with required time frames; and, whether required reviews were made and required documents and approvals were obtained before disbursing SFA funds.

Suggested Audit Procedures

a. Review a sample of disbursements to students and verify that they were made or returned in accordance with required time frames, and for Direct Loan schools that are on reimbursement or cash monitoring payment method, that they only disbursed funds to students after the funds had been received from ED.

b. Review loan or other files to verify that the institution performed required procedures and obtained required documents prior to disbursing funds. For institutions under the reimbursement method of payment, verify that FFEL proceeds were not disbursed until approval from the Department was obtained.

c. For a sample of Pell and Direct Loan disbursements, match the disbursement date and amount in Common Origination and Disbursement files to the disbursement date and amount in students' accounts or to the amount and date the funds were otherwise made available to students.

4. Return of Title IV Funds

Compliance Requirements – Applicable After a Student Begins Attendance

When a recipient of Title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of Title IV aid earned by the student as of the student's withdrawal date. If the total amount of Title IV assistance earned by the student is less than the amount that was disbursed to the student or on his or her behalf as of the date of the institution's determination that the student withdrew, the difference must be returned to the Title IV programs as outlined in this section and no additional disbursements may be made to the student for the payment period or period of enrollment. If the amount the student earned is greater than the amount disbursed, the difference between the amounts must be treated as a post-withdrawal disbursement (34 CFR sections 668.22(a)(1) through (a)(4)).

Post-withdrawal Disbursements

Post-withdrawal disbursements must be made from available grant funds before available loan funds (34 CFR section 668.22(a)(5)). Post-withdrawal disbursements of grant funds may be credited to the student's account, without the student's authorization, for current-year outstanding charges for tuition, fees, and room and board (if contracted with the institution) on the student's account, up to the amount of those outstanding charges. For current-year outstanding charges other than tuition, fees, and room and board (if contracted with the institution), the institution must have the student's authorization to credit the student's account with grant funds. Any grant funds not disbursed to the student's account must be disbursed to the student no later than 45 days after the date of the institution's determination that the student withdrew (34 CFR section 668.22(a)(5)(ii)(B)(1)).

Post-withdrawal disbursements of loan funds may be credited to the student's account if current-year outstanding charges exist on the student's account, up to the amount of the current-year outstanding charges only after obtaining confirmation from the student, or parent in the case of a parent PLUS loan, that he or she still wishes to have some or all of the loan funds disbursed.

If the institution wishes to credit the student's account with a post-withdrawal disbursement of loan funds or wishes to pay a post-withdrawal disbursement of loan funds directly to the student, or parent in the case of a parent PLUS loan, the institution must, within 30 days of the date the institution determines that the student withdrew, send a written notification to the student, or parent in the case of a parent PLUS loan, that:

- Asks the student or parent if he or she wants a post-withdrawal disbursement of some or all of the loan funds credited to the student's account, or a post-withdrawal disbursement of some or all of the loan funds as a direct disbursement;

- Explains that, if the borrower does not want the loan funds credited to the student's account, it is up to the school to decide whether it will disburse the loan funds as a direct disbursement to the borrower;

- Explains the obligation of the borrower to repay any loan funds disbursed; and

- Explains that no post-withdrawal disbursement will be made (other than a credit of grant funds to the student's account for tuition and fees and room and board, if contracted for with the institution, or a credit of grant funds for other institutional charges for which the institution has the student's authorization or a direct disbursement of grant funds) unless the student or parent responds within 14 days (or a later time frame set by the institution), or the institution chooses to make a post-withdrawal disbursement based on a late response (34 CFR sections 668.22(a)(5) and 668.164(d)).

If a student or parent accepts a post-withdrawal disbursement of loan funds, the institution must make the disbursement within 180 days of the date of the institution's determination that the student withdrew and in accordance with the request of the recipient (34 CFR sections 668.22(a)(5)(iii)(C) and 668.164(d)(1), (d)(2), (d)(3), and (g)).

Subject to the above, an institution may credit a student's account for minor prior-award-year charges, if not more than $200 or the payment of minor prior-year charges (in excess of $100) will not prevent the payment of current-year charges (34 CFR section 668.164(d)(2)).

Withdrawal Date

If an institution is required to take attendance the withdrawal date is the last date of academic attendance, as determined by the institution from its attendance records. An institution is required to take attendance if the institution is required to take attendance for some or all of its students by an entity outside of the institution (such as the institution's accrediting agency or State agency) (34 CFR section 668.22(b)(3)).

If an institution is not required to take attendance, the withdrawal date is: (1) the date that the student began the withdrawal process prescribed by the school; (2) the date that the student otherwise provided official notification to the school, in writing or orally, of his or her intent to withdraw; (3) if the student ceases attendance without providing official notification to the institution of his or her withdrawal, the midpoint of the payment period or, if applicable, the period of enrollment; (4) if the institution determines that a student did not begin the withdrawal process or otherwise notify the school of the intent to withdraw due to illness, accident, grievous personal loss or other circumstances beyond the student's control, the date the institution determines is related to that circumstance; (5) if a student does not return from an approved leave of absence, the date that the institution determines the student began the leave of absence; or (6) if the student takes an unapproved leave of absence, the date that the student began the leave of absence. Notwithstanding the above, an institution that is not required to take attendance may use as the withdrawal date, the last date of attendance at an academically related activity as documented by the institution (34 CFR sections 668.22(c) and (d)).

Calculation of the Amount of Title IV Assistance Earned

The amount of earned Title IV grant or loan assistance is calculated by determining the percentage of Title IV grant or loan assistance that has been earned by the student and applying that percentage to the total amount of Title IV grant or loan assistance that was or could have been disbursed to the student for the payment period or period of enrollment as of the student's withdrawal date. A student earns 100 percent if his or her withdrawal date is after the completion of more than 60 percent of (1) the calendar days in the payment period or period of enrollment for a program measured in credit hours; or (2) the clock hours scheduled to be completed for the payment period or period of enrollment for a program measured in clock hours (34 CFR section 668.22(e)(2)). Otherwise, the percentage earned by the student is equal to the percentage (60 percent or

less) of the payment period or period of enrollment that was completed as of the student's withdrawal date. The percentage of Title IV grant or loan assistance that has not been earned by the student is the complement of one of these calculations. Standard term-based institutions must always use the payment period as the basis for the determination.

The unearned amount of Title IV assistance to be returned is calculated by subtracting the amount of Title IV assistance earned by the student from the amount of Title IV aid that was disbursed to the student as of the date of the institution's determination that the student withdrew (34 CFR section 668.22(e)).

Use of Payment Period or Period of Enrollment

The treatment of Title IV grant or loan funds if a student withdraws must be determined on a payment period basis for a student who attended a standard term-based (semester, trimester or quarter) educational program. The treatment of Title IV grant or loan funds if a student withdraws may be determined on either a payment period basis or a period of enrollment basis for a student who attended a non-term based or a nonstandard term-based educational program. The institution must use the chosen period consistently for all students in the program, except that an institution may make a separate selection of payment period or period of enrollment for students that transfer to the institution or reenter the institution for students who attend a non-term-based or nonstandard term-based program (34 CFR section 668.22(e)(5)). An institution must use the payment period that ends later to calculate a "Return of Title IV Funds' when a student withdraws from a non-standard term credit hour program with terms that are not substantially equal in length, and the student was disbursed or could have been disbursed Title IV aid under more than one payment period definition (34 CFR section 668.22(e)(5)(iii)).

Percentage of Payment Period or Period of Enrollment Completed

The percentage of the payment period completed or period of enrollment completed is determined in the case of a program that is measured in: (1) credit hours, by dividing the total number of calendar days in the payment period or period of enrollment into the number of calendar days completed in that period as of the student's withdrawal date; (2) clock hours, by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed as of the student's withdrawal date. The total number of calendar days in a payment or enrollment period includes all days within the period, except that institutionally scheduled breaks of at least 5 consecutive calendar days and days in which the student was on an approved leave of absence are excluded from the total number of calendar days in a payment period or period of enrollment and the number of calendar days completed in that period (34 CFR section 668.22(f)).

Institution's Return of Unearned Aid

The institution must return the lesser of: (1) the total amount of unearned Title IV assistance to be returned as described above; or (2) an amount equal to the total institutional charges incurred by the student for the payment period or period of enrollment multiplied by the percentage of Title IV grant or loan assistance that has not been earned by the student. If, for a non-term program an institution chooses to calculate the treatment of Title IV assistance on a payment period basis, but the institution charges for a period that is longer than the payment period, "total institutional charges incurred by the student for the payment period" is the greater of: (1) the prorated amount of institutional charges for the longer period, or (2) the amount of Title IV assistance retained for institutional charges as of the student's withdrawal date (34 CFR section 668.22(g)).

Student's Return of Unearned Aid

The amount a student is responsible for returning is calculated by subtracting the amount of unearned aid that the institution is required to return from the total amount of unearned Title IV assistance to be returned. However, the student need only return 50 percent of the total grant assistance that was disbursed (and that could have been disbursed) for the payment period or period of enrollment. After the 50 percent rule is applied, a student does not have to return an overpayment amount of $50 or less.

In addition, the Secretary may waive grant overpayments that students are required to return if the students who withdrew were residing in, employed in, or attending an institution located in an area where the President has declared that a major disaster exists (34 CFR sections 668.22(g), 668.22(h)(3), and 668.22(h)(5)).

Allocation of Return of Title IV Funds

Returns of Title IV funds must be distributed in the order prescribed below. The prescribed order must be followed regardless of the school's agreements with other State agencies or private agencies (34 CFR section 668.22(i)).

- Unsubsidized Federal Stafford Loans
- Subsidized Federal Stafford Loans
- Unsubsidized Federal Direct Stafford Loans
- Subsidized Federal Direct Stafford Loans
- Federal Perkins Loan
- Federal PLUS
- Federal Direct PLUS

- Federal Pell Grant
- Academic Competitiveness Grants
- SMART Grants
- Federal Supplemental Educational Opportunity Grants
- Teacher Education Assistance for College and Higher Education Grants
- Iran and Afghanistan Service Grants

Timing of Return of Title IV Funds

Returns of Title IV funds are required to be deposited or transferred into the SFA account or electronic fund transfers initiated to ED or the appropriate FFEL lender as soon as possible, but no later than 45 days after the date the institution determines that the student withdrew. Returns by check are late if the check is issued more than 45 days after the institution determined the student withdrew or the date on the canceled check shows the check was endorsed more than 60 days after the date the institution determined that the student withdrew (34 CFR section 668.173(b)).

An institution must determine the withdrawal date for a student who withdraws without providing notification to the institution no later than 30 days after the end of the earlier of the: (1) payment period or period of enrollment, (2) academic year in which the student withdrew, or (3) educational program from which the student withdrew (34 CFR section 668.22(j)).

Compliance Requirements – Applicable for a Student Who Does Not Begin Attendance

When a recipient of Title IV grant or loan assistance does not begin attendance at an institution during a payment period or period of enrollment, all disbursed Title IV grant and loan funds must be returned. The institution must determine which Title IV funds it must return or if it has to notify the lender or the Secretary to issue a final demand letter (34 CFR section 668.21).

Not beginning attendance

A student is considered to have not begun attendance in a payment period or period of enrollment if the institution is unable to document the student's attendance at any class during the payment period or period of enrollment (34 CFR section 668.21(c)).

FPL, FSEOG, TEACH Grants, Pell Grant, IASG, ACG, and SMART Grants program funds

The institution must return all FPL, FSEOG, *TEACH Grants,* Pell Grant, IASG, ACG, and SMART Grants program funds that were credited to the student's account or disbursed directly to the student for that payment period or period of enrollment (34 CFR section 668.21(a)(1)).

FFEL and Direct Loan Funds

The institution must return all FFEL and Direct Loan funds that were:

- Credited to the student's account for that payment period or period of enrollment;
- Payments made directly by or on behalf of the student to the institution for that payment period or period of enrollment, up to the total amount of the loan funds disbursed; or
- Disbursed directly to the student if the institution knew that a student would not begin attendance prior to disbursing the funds directly to the student for that payment period or period of enrollment (e.g., the student notified the institution that he or she would not attend, or the institution expelled the student).

For remaining amounts of FFEL and Direct Loan funds disbursed directly to the student for the payment period or period of enrollment (including funds disbursed directly to the student by the lender for a study-abroad program or for a student enrolled in a foreign school), the institution must immediately notify the lender or the Secretary, as appropriate, when it becomes aware that the student will not or has not begun attendance so that the lender or the Secretary will issue a final demand letter to the borrower in accordance with 34 CFR section 682.412 or 34 CFR section 685.211 (34 CFR section 668.21(a)(2)).

Deadline for return of funds by the institution

The institution must return those funds for which it is responsible as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance (34 CFR section 668.21(b)).

Timely return of funds by the institution

An institution returns Title IV funds timely if:

- The institution deposits or transfers the funds into the bank account it maintains under 34 CFR section 668.163 as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance;

- The institution initiates an EFT as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance;

- The institution initiates an electronic transaction, as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance, that informs an FFEL lender to adjust the borrower's loan account for the amount returned; or

- The institution issues a check as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance. An institution does not satisfy this requirement if—

  – The institution's records show that the check was issued more than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance; or

  – The date on the cancelled check shows that the bank used by the Secretary or FFEL Program lender endorsed that check more than 45 days after the date that the institution becomes aware that the student will not or has not begun attendance (34 CFR section 668.21(d)).

Audit Objectives – Determine whether the institution is making returns of Title IV funds in the proper amount and in a timely manner and is applying the return of Title IV funds to Federal programs as required.

Suggested Audit Procedures

a. Identify a sample of students who received Title IV assistance who withdrew, dropped out, or never began attendance during the audit period. Review return of Title IV funds determinations/calculations for conformity with Title IV requirements and recalculate.

b. Trace the return of Title IV funds to disbursement and accounting records (including canceled checks to ED, lenders, and students) to verify that returned Title IV funds were applied to programs in the required order and were timely. Ascertain that within 45 days (or within 30 days for students that never began attendance) of becoming aware that the student had dropped, deposits or transfers were made into the Federal funds account, electronic transfers were initiated, or checks were issued. For returns made by check, examine canceled check endorsements and determine if the check was endorsed within the prescribed 60 days (or within 45 days for students that never began attendance).

c. For a sample of students who received Title IV assistance, for which no return of Title IV funds were made: review academic and enrollment records (including class attendance records if they are kept) to ascertain whether the students

sufficiently completed the payment or enrollment period to earn the Title IV funds received. When doing this, for students who received all failing and/or all incomplete grades, review records to ascertain whether the students had attended the institution, or had attended but dropped out.

5. Enrollment Reporting (FFEL and Direct Loan)

Compliance Requirement – Under the FFEL and Direct Loan programs, schools must complete and return within 30 days the Enrollment Reporting roster file [formerly the Student Status Confirmation Report (SSCR)] placed in their Student Aid Internet Gateway (SAIG) mailboxes sent by ED via NSLDS (*OMB No. 1845-0035*). The institution determines how often it receives the Enrollment Reporting roster file with the default set at every two months, but the minimum is twice a year. Once received, the institution must update for changes in student status, report the date the enrollment status was effective, enter the new anticipated completion date, and submit the changes electronically through the batch method or the NSLDS web site. Institutions are responsible for timely reporting, whether they report directly or via a third-party servicer.

Unless the school expects to complete its next roster within 60 days, the school must notify the lender or the guaranty agency within 30 days, if it discovers that a student who received a loan either did not enroll or ceased to be enrolled on at least a half-time basis (FFEL, 34 CFR section 682.610; Direct Loan, 34 CFR section 685.309). (Note: The automated processes are described in the *NSLDS Enrollment Reporting Guide*, (July 8, 2008) which is available on the Internet at http://ifap.ed.gov/nsldsmaterials/attachments/NSLDSEnrollmentReportingGuide2.pdf . Auditors may request copies of schools' Enrollment Reporting history by contacting the NSLDS Customer Service Center at 1-800-999-8219).

Audit Objective – Determine whether the institution is promptly notifying ED, guaranty agencies, or lenders, as appropriate, and NSLDS of changes in student status in a timely and accurate manner.

Suggested Audit Procedures

a. Review, evaluate, and document procedures for updating student status for FFEL and Direct Loan recipients, including how often the institution performs the updates.

b. Determine if the school is meeting reporting requirements by having the school access the NSLDS website and create the Enrollment Reporting Summary Report (SCHER1). This report shows the dates the roster files were sent and returned, the number of errors, date and number of online updates, and the number of letters sent for overdue enrollment reporting rosters.

c. Test the accuracy of the roster file by selecting a sample of students that graduated, withdrew, dropped out, or enrolled but never attended during the audit

period. Compare the data in the NSLDS Enrollment Detail to the students' academic files, and report discrepancies in the Enrollment Timeline data.

6. Student Loan Repayments (FPL, HPSL/PCL/LDS and NSL, NFLP, and ARRA-NFLP)

Compliance Requirement – FPL loans, and HPSL/PCL/LDS and NSL loans made prior to November 13, 1998, including accrued interest, are repayable in equal or graduated periodic installments in amounts calculated on the basis of a 10-year repayment period. For HPSL/PCL/LDS loans the repayment period is not less than 10 and not more than 25 years, at the discretion of the institution. For NSL loans after November 13, 1998, the 10-year repayment period may be extended for 10 years for any student borrower who, during the repayment period failed to make consecutive payments and who, during the last 12 months of the repayment period, has made at least 12 consecutive payments (42 USC 292r(c) and 297b(b)(8) (sections 722(c) and 836(b)(8) of PHS Act); Pub. L. No. 105-392, sections 133(a)(2) and 134(a)(3)). Except as required in 42 CFR section 57.210(a), a repayment of a HPSL/PCL/LDS loan must begin one year after the student ceases to be a full-time student. For a NSL loan, repayment must begin 9 months after the student ceases to be a full-time or half-time student, except as required in 42 CFR section 57.310(a). For a FPL loan, the institution must establish a repayment plan. The repayment period begins after an initial grace period of either 6 months or 9 months after the student ceases to be at least a half-time student at an institution of higher education, depending on when the loan was made (34 CFR section 674.31(b)(2)).)).

For NFLP and ARRA-NFLP, loans are repayable in equal or graduated periodic installments in amounts calculated on the basis of a 10-year repayment period. Following graduation from the nursing program, the nursing school will cancel up to 85 percent of the loan principal and interest in exchange for the loan recipient's service as a full-time nursing faculty at a school of nursing with a certain percentage cancelled each year for up to 4 years. The loan cancellation over the 4-year period is as follows: 20 percent of the principal and interest may be canceled upon completion of each of the first, second, and third years of full time employment, which, after the 3-year period, totals 60 percent, followed by the cancellation of 25 percent of the principal and interest upon completion of the fourth year of full-time employment as a faculty member in an accredited school of nursing. Repayment on the remaining 15 percent of the loan balance is postponed during the cancellation period. NFLP loans are repayable and/or cancelled over a 10-year repayment period. NFLP loans accrue interest at a rate of three percent per annum for loan recipients who establish employment as nurse faculty (Program Guidance, Repayment Provision).

Borrowers may be eligible for loan deferments or cancellations under certain circumstances. Examples of when loan payments may be deferred are when the borrower is in certain student statuses at other eligible institutions, employed as a full-time teacher at certain schools, employed full-time in other specified occupations, or serving in the military or as a volunteer in the Peace Corps, ACTION programs (AmeriCorps*VISTA), or other programs deemed to be comparable. FPL loans may be canceled based on full-

time employment as a teacher at certain schools or specified fields, other qualifying employment, military or other volunteer service, and death or disability. Cancellation rates (amount of loan that is canceled for each year of qualifying service) for FPL loans vary, depending on the criteria. Specific requirements for deferment and cancellation vary, depending on when the loan was made. To qualify for a deferment or cancellation of an FPL loan, the borrower is required to submit to the institution to which the loan is owed a written request for the deferment or cancellation, with documentation required by the institution, by the date established by the institution, unless it is an in-school deferment. For an in-school deferment, the institution may grant the deferment based on student enrollment information showing that a borrower is enrolled as a regular student on at least a half-time basis, if the institution notifies the borrower of the deferment and of the borrower's option to cancel the deferment and continue paying on the loan. Loans under the HPSL/PCL/LDS, NSL, NFLP, and ARRA-NFLP programs may be cancelled only in the event that the borrower dies or becomes disabled.

(FPL, 34 CFR sections 674.33 through 674.40, and 674.51 through 674.62; HPSL/PCL/LDS; 42 CFR sections 57.211 and 57.213a; NSL; 42 CFR sections 57.311 and 313a; NFLP and ARRA-NFLP Program Guidance, Death and Disability).

Institutions must exercise due care and diligence in the collection of loans (HPSL/PCL/LDS, NSL, NFLP, and ARRA-NFLP, 42 CFR sections 57.210(b) and 57.310(b), and NFLP/ARRA-NFLP Program Guidance, Institutional Responsibility in Repayment Process, respectively). For the FPL, such due diligence procedures include the following:

a. A requirement to conduct an exit interview with the borrower before he or she leaves the institution and to contact the borrower a minimum of three times during the initial grace period for loans with 9-month grace periods or two times for loans with 6-month grace periods (34 CFR section 674.42).

b. Specific billing procedures to notify borrowers of overdue payments and to demand overdue amounts (34 CFR section 674.43).

c. Specific collection procedures to recover amounts from defaulted borrowers who do not respond satisfactorily to demands routinely made as part of the institution's billing procedures, including litigation procedures (34 CFR section 674.45).

Audit Objective – Determine whether institutions are processing deferment and cancellation requests and servicing loans as required.

Suggested Audit Procedures

a. Select a sample of loans that entered repayment during the audit period and review loan records to verify that the conversion to repayment was timely, and that a repayment plan was established.

b. Review the institution's requirements for applying for and documenting eligibility for loan deferments and cancellations. Select a sample of loan deferments and loan cancellations and review documentation to ascertain whether the deferments or cancellations were adequately supported.

c. Select a sample of defaulted loans and review loan records to ascertain if the required interviews, contacts, billing procedures and collection procedures were carried out.

7. Federal Work-Study Agreements

Compliance Requirement – FWS students may be employed by the institution, a Federal, State or local agency, a private not-for-profit organization or a private for-profit organization but the employment must not: (1) impair existing service contracts; (2) displace employees; (3) fill jobs that are vacant because the employer's regular employees are on strike; or (4) involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction. The institution must enter into a written agreement with any agency or organization providing employment under the FWS program (34 CFR sections 675.20 through 675.23).

Audit Objective – Determine whether written agreements with non-institutional employers are made as required.

Suggested Audit Procedure

Select a sample of participating students and ascertain if written agreements with the non-institutional employers were executed.

8. Borrower Data Transmission and Reconciliation (Direct Loan)

Compliance Requirement – Institutions must report all loan disbursements and submit required records to the Direct Loan Servicing System (DLSS) via the Common Origination and Disbursement (COD) within 30 days of disbursement (*OMB No. 1845-0021*). Each month, the COD provides institutions with a School Account Statement (SAS) data file which consists of a Cash Summary, Cash Detail, and (optional at the request of the school) Loan Detail records. The school is required to reconcile these files to the institution's financial records. Since up to three Direct Loan program years may be open at any given time, schools may receive three SAS data files each month (34 CFR sections 685.102(b), 685.301, and 303). (Note: The *Direct Loan School Guide* and yearly training documents describe the reconciliation process.)

Audit Objectives – Determine whether institutions are reconciling SAS data files to institution records each month. Determine whether dates and amounts of disbursements to borrowers recorded in the DLSS are supported by the institution's records on individual borrowers.

Suggested Audit Procedures

a. Test a sample of the SAS and ascertain that reconciliations are being performed. Instructions for obtaining specific borrower information are available on the Internet at http://www.ed.gov/about/offices/list/oig/nonfed/sfa.html.

b. Test a sample of borrowers to verify that disbursement dates and amounts in the DLSS are supported by the institution's records.

9. Institutional Eligibility

Compliance Requirements

a. An institution is not eligible to participate in Title IV programs if for the *award year* (year ending June 30) that ended during the institution's fiscal year (34 CFR section 600.7):

(1) More than 50 percent of its courses were correspondence courses;

(2) 50 percent or more of its regular students (i.e., students enrolled for the purpose of obtaining a degree, certificate or diploma) were enrolled in correspondence courses;

(3) 25 percent or more of its regular students were incarcerated;

(4) More than 50 percent of its regular students were enrolled as "ability-to benefit students," i.e., without a high school diploma, the recognized equivalent *and* the institution did not provide a 4- or 2-year program for which it awards a bachelor's or associate degree, respectively.

(Note: "Correspondence programs" are defined in 34 CFR section 600.2.)

b. The institution is prohibited for paying any commission, bonus, or other incentive payment—based directly or indirectly upon success in securing enrollments or financial aid—to any person or entity engaged in any student recruiting or admission activities or in making decisions regarding the awarding of Title IV, HEA program funds, except that this limitation does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Title IV, HEA program funds (34 CFR section 668.14(b)(22)(i)). Title 34 CFR section 668.14(b)(22)(ii) describes specific activities and arrangements that an institution may carry out without violating this regulatory prohibition. It also contains a provision applying this same prohibition to third parties engaged by the institution to deliver services to it (34 CFR section 668.14(b)(22)(ii)(L)). The auditor should refer to the specific text of these regulations when auditing this compliance requirement.

c. Institutions must establish and publish reasonable standards for measuring whether eligible students are maintaining satisfactory progress in their educational program. The institution's standards are reasonable if the standards (34 CFR section 668.16(e))—

(1) Are the same as or stricter than the standards for a student enrolled in the same program that is not receiving Title IV student financial aid;

(2) Include a qualitative component, which generally consists of grades that are measurable against a norm, and a quantitative component that consists of a maximum time frame for completion of the educational program. That time frame must: for an undergraduate program, be no longer than 150 percent of the published length of the educational program; be divided into increments not to exceed the lesser of one academic year or one-half the published length of the educational program; include a schedule designating the minimum percentage or amount of work a student must successfully complete at the end of each increment to complete his or her educational program within the maximum time frame; and include specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress;

(3) Provide for consistent application of standards to all students within categories of students and educational programs;

(4) Provide specific procedures under which a student may appeal a determination that the student is not making satisfactory progress; and

(5) Provide specific procedures for a student to re-establish that he or she is maintaining satisfactory progress.

d. Each institution's most recent Eligibility and Certification Approval Report (ECAR) lists the institution's main campus and any additional approved locations. For any other locations at which a school offers 50 percent or more of an eligible program during the audit period, the institution must either submit an application for approval of that location or notify ED of that location (34 CFR sections 600.20(c) and 600.21(a)(3)).

Audit Objective – Determine whether the institution meets the above institutional eligibility requirements as applicable.

Suggested Audit Procedures

a. For the award year that ended during the fiscal year, obtain from the institution its calculation of its award year institutional eligibility ratios of correspondence courses, students enrolled in correspondence courses, and incarcerated and "ability-to-benefit students." Ascertain the proper classification and completeness of data and accuracy of the calculations.

b. Ascertain the methodologies used to recruit, admit, and enroll students, and award Federal financial aid, e.g., using employees, employment contracts, contracting with third parties or Internet providers, or combinations of these or other methods.

(1) For institutional employees who recruit, admit, and enroll students, and award federal financial aid, evaluate the compensation plans and all forms of compensation to the employees, to ensure that the institution is in compliance with the regulatory requirements.

(2) For contracts with third parties who recruit, admit, and enroll students, and award financial aid for the institution, read the contracts to identify any provisions indicating that third parties were to act in a manner contrary to regulations pertaining to paying commissions, bonuses or other incentive payments. Also, review payments made to third parties to determine if payments were made in excess of contractual provisions. Determine if excess payments were made to cover commissions, bonuses, or other incentive payments, made by the third-party servicer contrary to the regulations.

c. Ascertain from a review of the institution's published satisfactory progress standards that all required elements are included in the standards.

d. Obtain the ECAR that was in effect for the audit period and identify the main campus and any additional locations. Ascertain if the institution is offering more than 50 percent of an eligible program at any locations not on the ECAR. If so, determine if the institution notified ED of the additional location or submitted an application for approval of the additional location.

10. Zone Alternative (Not applicable to public entities)

Compliance Requirements – For an institution to participate in any Title IV, HEA program, the institution must be financially responsible (34 CFR section 668.171(a)). (Note: Institutions become ineligible to participate in the Federal student aid programs if they have filed bankruptcy (34 CFR section 600.7(a)(2)) Limited participation under provisional certification from ED may be available to institutions that do not meet the financial responsibility standards, which also imposed the "zone alternative" requirement (34 CFR section 668.175(f)).

Under the zone alternative, an institution is required to make disbursements to students and parents under either the cash monitoring or reimbursement payment method (34 CFR section 668.175(d)(2)(i)). (See III.C, Cash Management, above.) The institution must also notify the Secretary by certified mail, electronic, or facsimile transmission no later than 10 days after one of the following events occurs (34 CFR section 668.175(d)(3)(i)):

(1) Any adverse action, including a probation or similar action, taken against the institution by its accrediting agency;

(2) Any event that causes the institution, or related entity as defined in the Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 850 (previously Statement of Financial Accounting Standards (SFAS) 57), to realize any liability that was noted as a contingent liability in the institution's or related entity's most recent audited financial statement;

(3) Any violation by the institution of any loan agreement;

(4) Any failure of the institution to make a payment in accordance with its debt obligations that results in a creditor filing suit to recover funds under those obligations or includes the institution filing for bankruptcy;

(5) Any withdrawal of owner's equity from the institution by any means, including by declaring a dividend; or

(6) Any extraordinary losses, as defined in accordance with FASB, ASC 225-20 (previously Accounting Principles Board (APB) Opinion No. 30) (34 CFR sections 600.7(h) and 668.175(d)(2)(ii)).

Audit Objective – Determine whether, for the non-profit institution participating in Title IV, HEA programs under the zone alternative, ED was timely notified if any of the events identified in 34 CFR section 668.175(d)(2)(ii) occurred, and disbursements to students and parents, complied with the requirements of the cash monitoring or reimbursement payment methods.

Suggested Audit Procedures

a. Obtain a written representation from management as to whether the institution is participating under the "zone alternative." (If it is not, no further procedures relating to this section must be performed. If it is, additional procedures must be performed – see suggested procedures below.)

b. Review the institution's disbursement methods and assess whether the institution complied with the cash monitoring or reimbursement method when making disbursements to students and parents.

c. Obtain a written representation from management as to whether any of the events specified at 34 CFR section 668.175(d)(2)(ii) occurred and, if so, whether they notified ED within 10 days in the required manner.

d. Review copies of correspondence received by accrediting agencies for evidence of the occurrence of any of the events specified at 34 CFR section 668.175(d)(2)(ii), including probation or similar action.

e. Obtain a representation from management as to whether to their knowledge, any legal proceedings have been initiated against the institution for any violation of any loan agreements or any failure to pay creditors.

f. Include in your inquiry to the lawyer regarding litigation, claims and assessments, a request for any information relating to any legal proceedings against the institution for any violation of any loan agreements or any failure to pay creditors.

g. Ascertain whether any contingent liabilities for the prior fiscal year have been realized.

h. Review accounting records for evidence of withdrawal of owner's equity, by any means, including declaring a dividend.

i. Review accounting records for evidence of extraordinary losses.

11. Written Arrangements with Another Institution, Consortium, or Organization to Provide Educational Programs

Compliance Requirements – An eligible institution may enter into a written arrangement with another eligible institution (or a consortium of eligible institutions) under which the other institution (or consortium) provides all or part of the educational program, if the program(s) provided by the other eligible institution (or consortium members) is (are) otherwise eligible.

If an eligible institution enters into a written arrangement with an institution or organization that is not an eligible institution under which the ineligible institution or organization provides part of the educational program of students enrolled in the eligible institution, that educational program is considered to be an eligible program if it otherwise satisfies the requirements for an eligible program *and* if the ineligible institution or organization has not:

– Had its eligibility to participate in the SFA programs terminated by ED; or

– Voluntarily withdrawn from participation in the SFA programs under a termination, show-cause, suspension, or similar type of proceeding initiated by the institution's State licensing agency, accrediting agency, guarantor, or ED.

If an institution enters into a written agreement with an ineligible institution or organization, the ineligible institution or organization may not provide more than 25 percent of the educational program. However, the ineligible institution or organization may provide more than 25 percent, but not more than 50 percent, of the educational program, if:

-- the eligible institution and the ineligible institution or organization are not owned or controlled by the same individual, partnership or corporation; *and*

-- the eligible institution's accrediting agency [or if the institution is a public postsecondary vocational educational institution, the regulating State agency designated per 34 CFR part 603] has specifically determined that the institution's

arrangements meet the agency's standards for contracting for educational services (34 CFR section 668.5(c)).

Audit Objectives – Determine whether educational programs that are contracted out to ineligible institutions, consortiums, or organizations to provide educational programs to its students do not exceed regulatory limits.

Suggested Audit Procedures:

a. Ascertain if the institution has entered into an agreement for its students to complete part of their educational program at another institution, consortium, or organization.

b. If so, ascertain that the institution determined whether or not the contracted institution, consortium, or organization was an eligible institution.

c. If an agreement was entered into with an ineligible institution or organization, verify the percentage of the educational program provided by the contracted institution, consortium or organization.

d. If an ineligible institution or organization is providing more than 25 percent but not more than 50 percent of the program, ascertain that the eligible and ineligible institution or organization are not owned or controlled by the same individual, partnership, or corporation; and that the eligible institution's accrediting agency, or, if the institution is a public postsecondary vocational educational institution, the appropriate State agency specifically determined that the institution's arrangements meet the agency's standards for contracting for educational services.

12. Denying Students' Access to Lenders of Their Choice

Compliance Requirements – A school may not engage in any pattern or practice that results in denial of a borrower's access to FFEL loans because of the borrower's selection of a particular lender (34 CFR section 682.603(f)(4)).

Audit Objectives – Determine whether schools are denying students the right to select a loan issued by a particular lender.

Suggested Audit Procedures

a. Obtain and review the school's policies, web sites, and communications with students related to the FFEL Program for statements on a student's choice of loans by a particular FFEL lender, and processes for certifying applications for loans chosen by a student. Interview school personnel responsible for processing FFEL applications to determine the school's pattern and practice, and whether there have been any complaints related to a student's choice of loans. Review any record of such complaints.

b. Determine if the school has one or more preferred lenders. If so, determine if the school has certified and disbursed loans from lenders that are not preferred lenders. Obtain and review any listings and/or information provided to students about any preferred lender and determine and review the school's procedures for making loans to students who choose a lender that is not a preferred lender.

c. When examining records relating to auditing of other compliance requirements, identify any evidence of the school's refusal to certify a loan based on a student's selection of a particular lender or on a student's failure to select a preferred lender.

13. Short Term Programs at Postsecondary Vocational Institutions

Compliance Requirements – For FFEL and Direct Loan Programs, short-term eligible programs at a postsecondary vocational institution (as defined at 34 CFR section 600.6(a)) must be between 300 - 599 clock hours. They must have been provided for at least one year and must have a substantiated completion and placement rate of at least 70 percent for the most recently completed award year (34 CFR sections 668.8(d)(2)(ii), 668.8(d)(3)(ii), and 668.8(e)). Completion and placement rates must be calculated in accordance with 34 CFR sections 668.8(f) and (g).

An institution must have documentation supporting its placement rates for each student showing that the student obtained gainful employment in the recognized occupation for which he or she was trained or in a related comparable recognized occupation. Examples of satisfactory documentation of a student's gainful employment include, but are not limited to: (1) a written statement from the student's employer; (2) signed copies of State or Federal income tax forms; or (3) written evidence of payments of Social Security taxes (34 CFR section 668.8(g)(2)).

Audit Objectives – If there are eligible short-term programs for which students received loans under the FFEL or Direct Loan programs, determine whether the institution's calculation of its completion and placement rates was in accordance with ED requirements.

Suggested Audit Procedures

a. Review the completion and placement calculation to determine that the calculations were computed as specified in 34 CFR sections 668.8(f) and (g).

b. Trace the students used in each of the calculations to records that support the numbers indicated.

c. Randomly select samples of students counted in the completion and placement components of the calculations and trace to records that support their inclusion in that component of the calculation, including records supporting students' gainful employment.

IV. OTHER INFORMATION

All Pell Payment Data for an award year must be submitted by September 30 after the award year. Adjustments for Pell grants not claimed by September 30 can be made if the first audit report for the period in which the unclaimed Pell grants were made contains a finding that the institution made proper Pell awards for which it has not received either reimbursement or credit. Dear Colleague Letter (P-97-2) provides instructions to institutions for reporting the Pell adjustments and describes the auditor's responsibilities. (This information is provided to alert auditors that their clients may request them to perform such additional audit work in conjunction with the single audit, in order to claim Pell adjustments. Unless engaged by a client to do this additional work, it is not otherwise required.)

Part 4 of the Compliance Supplement includes requirements for use by auditors when auditing Guaranty Agencies and Lenders under the Federal Family Education Loan (FFEL) Program (CFDA 84.032). Part 4 requirements, rather than this section, should be used when auditing the FFEL program at guaranty agencies and lenders that are not schools. See below for requirements for schools that are lenders.

Some "statewide" entities are defined to include a guaranty agency and/or governmental lender under the FFEL Program (CFDA 84.032). For such entities, Part 4 should be used to identify pertinent compliance requirements. Auditors for such entities with large loan and loan guarantee programs must consider the provision of OMB Circular A-133, paragraph __.520(b)(3) in determining major programs. When those programs are determined to be major programs, coverage of the FFEL program for a guaranty agency and/or a lender should be identified and reported on separately and listed as a major program in the Summary of Auditor's Results section of the Schedule of Findings and Questioned Costs. In such cases, refer to the program as "CFDA 84.032 - FFEL - Guaranty Agencies" and/or "CFDA 84.032- FFEL - Lenders".

Some schools make or originate loans under the FFEL Program. Under 34 CFR section 682.601(a)(7), for any fiscal year beginning on or after July 1, 2006 in which a school engages in activities as an eligible lender, the school must submit a compliance audit of itself as a lender. The Part 4 section, CFDA 84.032 for Lenders, contains the pertinent compliance requirements.

If the SFA Cluster was selected as a major Federal program for a school that is also a lender under the FFEL program, the auditor must also include in the audit coverage work sufficient to render an opinion, as part of the opinion on the SFA Cluster, on the school's compliance with the lender compliance requirements set forth in the Part 4 section for CFDA 84.032 for Lenders. Audit documentation must demonstrate sufficient coverage of those compliance requirements to support that requirement, as well as the compliance requirements set forth in the SFA cluster. When the SFA Cluster is audited for a school that is a lender, the major program should be listed as a major program in the Summary of Auditor's Results section of the Schedule of Findings and Questioned Costs as "SFA Cluster (including CFDA 84.032 FFEL - Lenders)."

For schools that are lenders, if the SFA Cluster is not selected as a major program, CFDA 84.032 must be covered as a separate major program using the Part 4 section for CFDA 84.032 for Lenders. In such cases, the major program should be listed in the Summary of Auditor's Results section of the Schedule of Findings and Questioned Costs as "CFDA 84.032 - FFEL - Lenders."

ARRA Considerations

Reports posted at the Department of Education website show obligations and outlays of ARRA funds for both the Federal Pell Grant Program (CFDA 84.063) and the Federal Work-Study Program (CFDA 84.033). ARRA funds for these two programs are being accounted for within the Federal government, but disbursements to auditees have been made together with funds from the Federal Pell Grant Program (CFDA 84.063) and the Federal Work-Study Program (CFDA 84.033), without a separate identification of the ARRA portions. Consequently, it is not possible for auditees to separately report ARRA expenditures based on accounting records for these programs in their SEFA. All expenditures for the Federal Pell Grant and Federal Work-Study Programs are covered in single audits as part of the SFA cluster. However, auditors should note that, if the SFA Cluster is selected as a major program, the audit must cover Section 1512 Reporting for the Federal Work-Study Program (CFDA 84.033). For the award year 2010-2011 there are no ARRA funds for the Federal Work-Study Program, so there will not be a separate reporting for ARRA-Federal Work-Study Program on the SEFA.

ARRA-SDS funds (CFDA 93.407) are requested by eligible health professions and nursing schools at the same time as SDS funds (CFDA 93.925); however, ARRA-SDS funds are disbursed and reported separately with separate identification numbers. Consequently, it is possible for auditees to separately report ARRA expenditures for the ARRA-SDS program.

ARRA-NFLP funds (CFDA 93.408) are requested by eligible schools of nursing at the same time as regular NFLP funds (CFDA 93.264); however, ARRA-NFLP funds are disbursed and reported separately with separate identification numbers. Consequently, it is possible for auditees to separately report Recovery Act expenditures for the ARRA-NFLP program.

APPENDIX A

STUDENT FINANCIAL ASSISTANCE PROGRAMS

STUDENT ELIGIBILITY COMPLIANCE REQUIREMENTS

	Requirements	PELL	IASG	ACG	SMART	FWS	FSEOG	TEACH	FPL	FFEL	DIRECT LOAN	HPSL/PCL/LDS	NSL/NFLP/ARRA-NFLP	SDS
1.	A regular student enrolled or accepted for enrollment in an eligible program (34 CFR sections 600.2, 668.32, 690.75, 675.9, 676.9, 674.9, 682.201, 685.200, 691.2(d), 691.75, 20 USC 1070h; 42 CFR sections 57.206(a) and 57.306(a), 42 USC 293a(d)(2))	X	X	X	X	X	X	X	X	X	X	X	X	X
2.	U.S. Citizen or National (34 CFR sections 668.32, 690.75, 675.9, 676.9, 674.9, 682.201, 685.200, 691.15, and 20 USC 1070h) AND for HPL/PCL/LDS, an alien lawfully admitted for permanent residence in the U.S. or a citizen of the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Republic of the Marshall Islands, or of the Federated States of Micronesia (42 CFR sections 57.206(a) and 57.306(a))	X	X	X	X	X	X	X	X	X	X	X	X	
3.	Has financial need and total awards do not exceed need (34 CFR 675.9, 676.9, 674.9, 682.201, 685.200, 691.62(c); 42 CFR sections 57.206 and 57.306 (b); 42 USC 293a(d)(2))	X		X	X	X	X		X	X [8]	X 1	X	X	X
4.	Does not owe a refund on a grant awarded under the Federal Pell Grant, ACG, SMART Grants, or FSEOG programs (34 CFR sections 668.32, 690.75, 691.15, 675.9, 676.9, 674.9, 682.201, 685.200, 20 USC 1070h; 42	X	X	X	X	X	X	X	X	X	X			

[8] Does not always apply to unsubsidized loans and parent loans.

	Requirements	PELL	IASG	ACG	SMART	FWS	FSEOG	TEACH	FPL	FFEL	DIRECT LOAN	HPSL/PCL/LDS	NSL/NFLP/ARRA-NFLP	SDS
	CFR sections 57.206 and 57.306)													
5.	Not in default on any student loans (34 CFR sections 668.32, 690.75, 691.15, 675.9, 676.9, 674.9, 682.201, 685.200, 20 USC 1070h; 42 CFR sections 57.206 and 57.306)	X	X	X	X	X	X	X	X	X	X	X	X	
6.	Must maintain good standing, or satisfactory progress (34 CFR sections 668.32, 690.75, 691.15, 675.9, 676.9, 674.9, 682.201, 685.200, 20 USC 1070h; 42 CFR section 57.306; 42 USC 293a(d)(2))	X	X	X	X	X	X	X	X	X	X	X	X	X
7.	Has registered under Section 3 of the Military Selective Service Act (34 CFR sections 668.32, 668.37, 690.75, 691.15, 675.9, 676.9, 674.9, 682.201, 685.200,20 USC 1070h; 42 CFR section, 57.206(a)(1)(iv))	X	X	X	X	X	X	X	X	X	X	X		
8.	Has a valid social security number (34 CFR sections 668.32, 690.75, 691.15, 675.9, 676.9, 674.9, 682.201, 685.200, 20 USC 1070h)	X	X	X	X	X	X	X	X	X	X			
9.	High School Diploma or its recognized equivalent (34 CFR sections 668.32, 690.75, 691.15, 675.9, 676.9, 674.9, 682.201, 685.200, 20 USC 1070h)	X	X	X	X	X	X	X	X	X	X			
10.	Above the age of compulsory school attendance in the State in which the institution he or she is attending is located (34 CFR sections 600.2, 600.4, 600.6, 690.75, 691.15, 675.9, 676.9, 674.9, 682.201, 685.200, 20 USC 1070h)	X	X	X	X	X	X		X	X	X			
11.	Ability to Benefit (34 CFR section 668.32, 668 Subpart J, sections 690.75, 675.9, 676.9, 674.9, 682.201, 685.200, 20 USC 1070h)	X	X			X	X		X	X	X			
12.	Not been convicted of an offense involving the possession or sale of illegal drugs (34 CFR sections 668.32(l), 668.40, 20 USC 1070h)	X	X	X	X	X	X	X	X	X	X			

	Requirements	PELL	IASG	ACG	SMART	FWS	FSEOG	TEACH	FPL	FFEL	DIRECT LOAN	HPSL/PCL/LDS	NSL/NFLP/ARRA-NFLP	SDS
13.	In need of a loan (scholarship) to pursue a course of study at the school (42 CFR sections 57.206(a) and 57.306(a))											X	X	X
14.	An undergraduate student has received for award year, a SAR or determination of eligibility or ineligibility for a Federal Pell Grant (34 CFR sections 674.9, 682.201, 690.75, 691.15, 20 USC 1070h)	X	X	X	X				X	X				
15.	Is not incarcerated (34 CFR section 668.32)								X	X	X			
16.	Enrolled, as at least a half-time student, in a course of study necessary for enrollment in an eligible program for not longer than one 12-month period (34 CFR section 668.32)									X	X			
17.	Parents can receive a PLUS loan if items 2, 4, and 5 above are met (34 CFR sections 682.201, 685.200)									X	X			
18.	Is not incarcerated in a Federal or State penal institution (34 CFR section 668.32, 20 USC 1070h)	X	X	X	X									
19.	Student is willing to repay the loan (34 CFR section 674.9); student is required to repay (42 CFR sections 57.210 and 57.310)								X					
20.	Students met FSEOG selection criteria (34 CFR section 676.10)						X				X			
21.	Reserved													
22.	Received a Federal Pell Grant disbursement in for the same award year (34 CFR section 691.15(a)(2))			X	X									
23.	Reserved													
24.	For the first academic year; has successfully completed a rigorous secondary school program of study			X										

	Requirements	PELL	IASG	ACG	SMART	FWS	FSEOG	TEACH	FPL	FFEL	DIRECT LOAN	HPSL/PCL/LDS	NSL/NFLP/ARRA-NFLP	SDS
	under 34 CFR section 691.16 (34 CFR section 691.15(b)(ii)(B))													
25.	Has not previously been enrolled as a regular student in an eligible program while enrolled in high school and being at or below the age of compulsory school attendance (34 CFR section 691.15(b)(ii)(C)))			X										
26.	For the second award year; has successfully completed a rigorous secondary school program of study under 34 CFR section 691.16 (34 CFR section 691.15(b)(iii)(B))			X										
27.	Reserved													
28	Has obtained a grade-point average of 3.0 or higher on a 4.0 scale (34 CFR sections 691.15(b)(iii)(C), 691.15(c)(3))			X	X									
29	For the third, fourth, or fifth award year has formally declared an eligible major or is at an institution that offers a qualifying liberal arts curriculum. (34 CFR sections 691.15(c)(2)(i) and 691.15(c)(2)(iii))				X									
30.	Demonstrates intended eligible major by signing a self-certification kept on file at the institution, except for a liberal arts curriculum (34 CFR sections 691.15(c)(2)(ii and 691.15(d))				X									
31.	Documentation maintained on the student's progress in taking courses necessary to complete the program of the intended or declared major program (34 CFR sections 691.15(e))				X									
32	For a fifth year grant, must be enrolled in an eligible program that requires 5 years to complete (34 CFR 691.6(b)(1))				X									

	Requirements	PELL	IASG	ACG	SMART	FWS	FSEOG	TEACH	FPL	FFEL	DIRECT LOAN	HPSL/PCL/LDS	NSL/NFLP/ARRA-NFLP	SDS
33.	May not receive more than one grant per award year of study (34 CFR section 691.6)			X	X									
34.	Has submitted a completed application (34 CFR section 686.11)							X						
35.	Has signed an agreement to serve (34 CFR sections 686.11 and 668.12)							X						
36.	Is enrolled in a TEACH Grant-eligible institution in a TEACH Grant-eligible program (34 CFR section 686.11)							X						
37	Is completing coursework and other requirements necessary to begin a career in teaching or plans to complete such coursework and requirements prior to graduating (34 CFR section 686.11(a))							X						
38.	For an undergraduate student, has not completed coursework for a first baccalaureate (34 CFR section 668.32(c))	X	X	X	X		X	X						
39	For the purposes of a student in a first post-baccalaureate program, has not completed the requirements for a post-baccalaureate program as described in 34 CFR section 686.2(d) (34 CFR section 668.32(c))							X						
40.	If first year of an undergraduate program, has a final cumulative secondary school GPA upon graduation of at least a 3.25; a cumulative GPA of at least 3.25 based on courses taken at the institution through the most-recently completed payment period; or a score above the 75th percentile (for that period the test was taken) on at least one of the nationally-normed standardized undergraduate admissions test, which may not include a placement test							X						

	Requirements	PELL	IASG	ACG	SMART	FWS	FSEOG	TEACH	FPL	FFEL	DIRECT LOAN	HPSL/PCL/LDS	NSL/NFLP/ARRA-NFLP	SDS
	(34 CFR section 686.11(a)(1)(v))													
41.	If beyond the first year of an undergraduate program, or a graduate program, a cumulative GPA of at least 3.25 based on courses taken at the institution through the most-recently completed payment period; or a score above the 75th percentile (for that period the test was taken) on at least one of the nationally-normed standardized undergraduate, graduate, or post-baccalaureate admissions test, which may not include a placement test (34 CFR section 686.11(a)(1)(v))							X						
42.	Is a current or former teacher or a retiree obtaining a master's degree or pursuing certification (34 CFR section 686.11(b))							X						
43.	The student is eligible if he or she was less than 24 years old when the covered parent or guardian died, or if 24 years old and over, was enrolled at an institution of higher education at the time of the covered parent or guardian's death (20 USC 1070h).		X											

OTHER CLUSTERS

Programs Included in this Supplement Deemed to Be Other Clusters

Agency	CFDA No.	Name of Other Cluster/Program
		Foreign Food Aid Donation Cluster
USDA	None	Food for Progress Program
	None	Section 416(b) Program
		SNAP Cluster
USDA	10.551	Supplemental Nutrition Assistance Program (SNAP)
	10.561	State Administrative Matching Grants for Supplemental Nutrition Assistance Program
		Child Nutrition Cluster
USDA	10.553	School Breakfast Program (SBP)
	10.555	National School Lunch Program (NSLP)
	10.556	Special Milk Program for Children (SMP)
	10.559	Summer Food Service Program for Children (SFSPC)
		Emergency Food Assistance Cluster
USDA	10.568	Emergency Food Assistance Program (Administrative Costs)
	10.569	Emergency Food Assistance Program (Food Commodities)
		Schools and Roads Cluster
USDA	10.665	Secure Payments for States and Counties Containing Federal Lands
	10.666	Schools and Roads--Grants to Counties
		Economic Development Cluster
DOC	11.010	Community Trade Adjustment Assistance
	11.300	Investments for Public Works and Economic Development Facilities
	11.307	Economic Adjustment Assistance

Section 8 Project-Based Cluster

HUD	14.182	Section 8 New Construction and Substantial Rehabilitation
	14.195	Section 8 Housing Assistance Payments Program--Special Allocations
	14.856	Lower Income Housing Assistance Program – Section 8 Moderate Rehabilitation
	14.249	Section 8 Moderate Rehabilitation Single Room Occupancy

CDBG – Entitlement Grants Cluster

HUD	14.218	Community Development Block Grants/Entitlement Grants
	14.253	Community Development Block Grant ARRA Entitlement Grants (CDBG-R) – (Recovery Act Funded)
	14.254	Community Development Block Grants/Special Purpose Grants/Insular Areas – (Recovery Act Funded)

CDBG – State-Administered CDBG Cluster

HUD	14.228	Community Development Block Grants/State's Program and Non-Entitlement Grants in Hawaii (State-Administered Small Cities Program)
	14.255	Community Development Block Grants/State's Program and Non-Entitlement Grants in Hawaii – (Recovery Act Funded) (State-Administered Small Cities Program)

Indian CDBG Program Cluster

HUD	14.862	Indian Community Development Block Grant Program
	14.886	Indian Community Development Block Grant Program (Recovery Act Funded)

Indian Housing Block Grants Cluster

HUD	14.867	Indian Housing Block Grants
	14.882	Native American Housing Block Grants (Formula) Recovery Act Funded
	14.887	Native American Housing Block Grants (Competitive) Recovery Act Funded

Housing Voucher Cluster

HUD	14.871	Section 8 Housing Choice Vouchers
	14.880	Family Unification Program (FUP)

CFP Cluster

HUD	14.872	Public Housing Capital Fund (CFP)
	14.884	Public Housing Capital Fund Competitive (Recovery Act Funded)
	14.885	Public Housing Capital Fund Stimulus (Formula) (Recovery Act Funded)

Native Hawaiian Housing Cluster

HUD	14.873	Native Hawaiian Housing Block Grants
	14.883	Native Hawaiian Housing Block Grants (Recovery Act Funded)

Lead Hazard Control Cluster

HUD	14.907	Lead-Based Paint Hazard Control in Privately-Owned Housing (Recovery Act Funded)
	14.908	Healthy Homes Demonstration Grants (Recovery Act Funded)
	14.909	Lead Hazard Reduction Demonstration Grant Program (Recovery Act Funded)
	14.910	Healthy Homes Technical Studies Grants (Recovery Act Funded)

Fish and Wildlife Cluster

DOI	15.605	Sport Fish Restoration Program
	15.611	Wildlife Restoration

JAG Program Cluster

DOJ	16.738	Edward Byrne Memorial Justice Assistance Grant Program
	16.803	Recovery Act – Edward Byrne Memorial Justice Assistance Grant (JAG) Program / Grants to States and Territories
	16.804	Recovery Act – Edward Byrne Memorial Justice Assistance Grant (JAG) Program / Grants to Units of Local Government

Employment Service Cluster

DOL	17.207	Employment Service
	17.801	Disabled Veterans' Outreach Program (DVOP)
	17.804	Local Veterans' Employment Representative Program (LVER)

WIA Cluster

DOL	17.258	WIA Adult Program
	17.259	WIA Youth Activities
	17.260	WIA Dislocated Workers

Highway Planning and Construction Cluster

DOT	20.205	Highway Planning and Construction
	20.219	Recreational Trails Program
	20.933	Surface Transportation Infrastructure-Discretionary Grants for Capital Investments II
	23.003	Appalachian Development Highway System

Federal Transit Cluster

DOT	20.500	Federal Transit--Capital Investment Grants
	20.507	Federal Transit--Formula Grants

Transit Services Programs Cluster

DOT	20.513	Capital Assistance Program for Elderly Persons and Persons with Disabilities
	20.516	Job Access – Reverse Commute Program
	20.521	New Freedom Program

Highway Safety Cluster

DOT	20.600	State and Community Highway Safety
	20.601	Alcohol Traffic Safety and Drunk Driving Prevention Incentive Grants
	20.602	Occupant Protection
	20.603	Federal Highway Safety Data Improvements Incentive Grants
	20.604	Safety Incentive Grants for Use of Seatbelts
	20.605	Safety Incentives to Prevent Operation of Motor Vehicles by Intoxicated Persons
	20.609	Safety Belt Performance Grants
	20.610	State Traffic Safety Information System Improvements Grants
	20.611	Incentive Grant Program to Prohibit Racial Profiling
	20.612	Incentive Grant Program to Increase Motorcyclist Safety
	20.613	Child Safety and Child Booster Seat Incentive Grants

CDFI Cluster

Treasury	21.020	Community Development Financial Institutions Program
	21.012	Native Initiatives

Title I, Part A Cluster

ED	84.010	Title I Grants to Local Educational Agencies (Title I, Part A of the ESEA)
	84.389	Title I Grants to Local Educational Agencies, Recovery Act

Special Education Cluster (IDEA)

ED	84.027	Special Education—Grants to States (IDEA, Part B)
	84.173	Special Education—Preschool Grants (IDEA Preschool)
	84.391	Special Education—Grants to States (Idea, Part B), Recovery Act
	84.392	Special Education—Preschool Grants (Idea Preschool), Recovery Act

Impact Aid Cluster

ED	84.041	Impact Aid (Title VIII of ESEA)
	84.401	Impact Aid – School Construction, Recovery Act
	84.404	Impact Aid – School Construction Formula Grant, Recovery Act

TRIO Cluster

ED	84.042	TRIO--Student Support Services
	84.044	TRIO--Talent Search
	84.047	TRIO--Upward Bound
	84.066	TRIO--Educational Opportunity Centers
	84.217	TRIO--McNair Post-Baccalaureate Achievement

Vocational Rehabilitation Cluster

ED	84.126	Rehabilitation Services—Vocational Rehabilitation Grants to States
	84.390	Rehabilitation Services—Vocational Rehabilitation Grants to States, Recovery Act

Early Intervention Services (IDEA) Cluster

ED	84.181	Special Education—Grants for Infants and Families
	84.393	Special Education—Grants for Infants and Families, Recovery Act

Educational Technology State Grants Cluster

ED	84.318	Education Technology State Grants (Enhancing Education through Technology Program)
	84.386	Education Technology State Grants, Recovery Act (Enhancing Education through Technology Program)

School Improvement Grants Cluster

ED	84.377	School Improvement Grants
	84.388	School Improvement Grants, Recovery Act

State Fiscal Stabilization Fund Cluster

ED	84.394	State Fiscal Stabilization Fund (SFSF) – Education State Grants, Recovery Act (Education Stabilization Fund)
	84.397	State Fiscal Stabilization Fund (SFSF) – Government Services, Recovery Act

Aging Cluster

HHS	93.044	Special Programs for the Aging–Title III, Part B--Grants for Supportive Services and Senior Centers
	93.045	Special Programs for the Aging–Title III, Part C--Nutrition Services
	93.053	Nutrition Services Incentive Program
	93.705	ARRA – Aging Home-Delivered Nutrition Services for States
	93.707	ARRA – Aging Congregate Nutrition Services for States

Immunization Cluster

HHS	93.268	Immunization
	93.712	ARRA – Immunization

TANF Cluster

HHS	93.558	Temporary Assistance for Needy Families (TANF) State Programs
	93.714	ARRA – Emergency Contingency Fund for Temporary Assistance for Needy Families (TANF) State Programs
	93.716	ARRA – Temporary Assistance for Needy Families (TANF) Supplemental Grants

CSBG Cluster

HHS	93.569	Community Services Block Grants
	93.710	ARRA – Community Services Block Grants

CCDF Cluster

HHS	93.575	Child Care and Development Block Grant
	93.596	Child Care Mandatory and Matching Funds of the Child Care and Development Fund
	93.713	ARRA – Child Care and Development Block Grant

Head Start Cluster

HHS	93.600	Head Start
	93.708	ARRA – Head Start
	93.709	ARRA – Early Head Start

Medicaid Cluster

HHS	93.776	Hurricane Katrina Relief Program
	93.778	Medical Assistance Program (Medicaid)
	93.775	State Medicaid Fraud Control Units
	93.777	State Survey and Certification of Health Care Providers and Suppliers
	93.720	State Survey and Certification Ambulatory Surgical Center Healthcare Associated Infection (ASC-HAI) Prevention Initiative

Foster Grandparent/Senior Companion Cluster

CNS	94.011	Foster Grandparent Program
	94.016	Senior Companion Program

Disability Insurance/SSI Cluster

SSA	96.001	Social Security--Disability Insurance (DI)
	96.006	Supplemental Security Income (SSI)

Homeland Security Cluster

DHS	97.004	State Domestic Preparedness Equipment Support Program (State Homeland Security Grant Program)
	97.067	Homeland Security Grant Program

Note: CFDA 97.004 is part of the cluster only for expenditures attributable to FY 2004 awards. See IV, "Other Information," in the program supplement for this cluster in Part 4 for an explanation of the composition of this cluster.

Emergency Food and Shelter Program Cluster

DHS	97.024	Emergency Food and Shelter National Board Program
	97.114	ARRA Emergency Food and Shelter National Board Program

Foreign Food Aid Donation Cluster

USAID	98.007	Food for Peace Development Assistance Program
	98.008	Food for Peace Emergency Program

Programs Not Included in this Supplement Deemed to Be Other Clusters

Agency	CFDA No.	Name of Other Cluster/Program

`Independent Living State Grants Cluster

ED	84.169	Independent Living State Grants
	84.398	**Independent Living State Grants, Recovery Act**

Centers for Independent Living Cluster

ED	84.132	Centers for Independent Living
	84.400	**Centers for Independent Living, Recovery Act**

Independent Living Services for Older Individuals Who Are Blind Cluster

ED	84.177	Independent Living Services for Older Individuals Who Are Blind
	84.399	**Independent Living Services for Older Individuals Who Are Blind, Recovery Act**

Education of Homeless Children and Youth Cluster

ED	84.196	Education of Homeless Children and Youth
	84.387	**Education of Homeless Children and Youth, Recovery Act**

Teacher Quality Partnership Grants Cluster

ED	84.336 Teacher Quality Partnership Grants	
	84.405	**Teacher Quality Partnerships, Recovery Act**

Statewide Data Systems Cluster

ED	84.372	Statewide Data Systems
	84.384	**Statewide Data Systems, Recovery Act**

Teacher Incentive Fund Cluster

ED	84.374 Teacher Incentive Fund	
	84.385	**Teacher Incentive Fund, Recovery Act**

PART 6 – INTERNAL CONTROL

INTRODUCTION

The A-102 Common Rule and OMB Circular A-110 (2 CFR part 215) require that non-Federal entities receiving Federal awards (i.e., auditee management) establish and maintain internal control designed to reasonably ensure compliance with Federal laws, regulations, and program compliance requirements. OMB Circular A-133 requires auditors to obtain an understanding of the non-Federal entity's internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk for major programs, 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, unless internal control is likely to be ineffective, perform testing of internal control as planned.

This Part 6 is intended to assist non-Federal entities and their auditors in complying with these requirements by describing, for each type of compliance requirement, the objectives of internal control, and certain characteristics of internal control that, when present and operating effectively, may ensure compliance with program requirements. However, the categorizations reflected in this Part 6 may not necessarily reflect how an entity considers and implements internal control. Also, this part is not a checklist of required internal control characteristics. Non-Federal entities could have adequate internal control even though some or all of the characteristics included in Part 6 are not present. Further, non-Federal entities could have other appropriate internal controls operating effectively that have not been included in this Part 6. Non-Federal entities and their auditors will need to exercise judgment in determining the most appropriate and cost effective internal control in a given environment or circumstance to provide reasonable assurance for compliance with Federal program requirements.

The objectives of internal control pertaining to the compliance requirements for Federal programs (Internal Control Over Federal Programs), as found in §____.105 of OMB Circular A-133, are as follows:

(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 supplements; and

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

The characteristics of internal control are presented in the context of the components of internal control discussed in *Internal Control-Integrated Framework* (COSO Report), published by the Committee of Sponsoring Organizations of the Treadway Commission. The COSO Report provides a framework for organizations to design, implement, and evaluate control that will facilitate compliance with the requirements of Federal laws, regulations, and program compliance requirements. COSO also has published *Guidance on Monitoring Internal Control Systems* (January 2009), which is available at www.coso.org/GuidanceonMonitoring.htm. Statement on Auditing Standards No. 109 (SAS 109), *Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement*, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA) and a related AICPA audit guide, *Audit Guide, Assessing and Responding to Audit Risk in a Financial Statement Audit*, incorporate the components of internal control presented in the COSO Report.

This Part 6 describes characteristics of internal control relating to each of the five components of internal control that should reasonably assure compliance with the requirements of Federal laws, regulations, and program compliance requirements. A description of the components of internal control and examples of characteristics common to the 14 types of compliance requirements are listed below. Objectives of internal control and examples of characteristics specific to each of 13 of the 14 types of compliance requirements follow this introduction. (Because Special Tests and Provisions (with the exception of cross-cutting ARRA requirements) are unique for each program, we could not provide specific control objectives and characteristics for this type of compliance requirement.)

Control Environment sets the tone of an organization influencing the control consciousness of its people. It is the foundation for all other components of internal control, providing discipline and structure.

- Sense of conducting operations ethically, as evidenced by a code of conduct or other verbal or written directive.
- If there is a governing Board, the Board has established an Audit Committee or equivalent that is responsible for engaging the auditor, receiving all reports and communications from the auditor, and ensuring that audit findings and recommendations are adequately addressed.
- Management's positive responsiveness to prior questioned costs and control recommendation.
- Management's respect for and adherence to program compliance requirements.
- Key managers' responsibilities clearly defined.
- Key managers have adequate knowledge and experience to discharge their responsibilities.
- Staff knowledgeable about compliance requirements and being given responsibility to communicate all instances of noncompliance to management.
- Management's commitment to competence ensures that staff receive adequate training to perform their duties.
- Management's support of adequate information and reporting system.

Risk Assessment is the entity's identification and analysis of risks relevant to achievement of its objectives, forming a basis for determining how the risks should be managed.

- Program managers and staff understand and have identified key compliance objectives.
- Organizational structure provides identification of risks of noncompliance:
  - Key managers have been given responsibility to identify and communicate changes.
  - Employees who require close supervision (e.g. inexperienced) are identified.
  - Management has identified and assessed complex operations, programs, or projects.
  - Management is aware of results of monitoring, audits, and reviews and considers related risk of noncompliance.
- Process established to implement changes in program objectives and procedures.

Control Activities are the policies and procedures that help ensure that management's directives are carried out.

- Operating policies and procedures clearly written and communicated.
- Procedures in place to implement changes in laws, regulations, guidance, and funding agreements affecting Federal awards.
- Management prohibition against intervention or overriding established controls.
- Adequate segregation of duties provided between performance, review, and recordkeeping of a task.
- Computer and program controls should include:
  - Data entry controls, e.g., edit checks.
  - Exception reporting.
  - Access controls.
  - Reviews of input and output data.
  - Computer general controls and security controls.
- Supervision of employees commensurate with their level of competence.
- Personnel with adequate knowledge and experience to discharge responsibilities.
- Equipment, inventories, cash, and other assets secured physically and periodically counted and compared to recorded amounts.
- If there is a governing Board, the Board conducts regular meetings where financial information is reviewed and the results of program activities and accomplishments are discussed. Written documentation is maintained of the matters addressed at such meetings.

Information and Communication are the identification, capture, and exchange of information in a form and time frame that enable people to carry out their responsibilities.

- Accounting system provides for separate identification of Federal and non-Federal transactions and allocation of transactions applicable to both.
- Adequate source documentation exists to support amounts and items reported.

- Recordkeeping system is established to ensure that accounting records and documentation retained for the time period required by applicable requirements; such as the A-102 Common Rule (§____.42), OMB Circular A-110 (2 CFR 215.53), and the provisions of laws, regulations, contracts or grant agreements applicable to the program.
- Reports provided timely to managers for review and appropriate action.
- Accurate information is accessible to those who need it.
- Reconciliations and reviews ensure accuracy of reports.
- Established internal and external communication channels.
  - Staff meetings.
  - Bulletin boards.
  - Memos, circulation files, e-mail.
  - Surveys, suggestion box.
- Employees' duties and control responsibilities effectively communicated.
- Channels of communication for people to report suspected improprieties established.
- Actions taken as a result of communications received.
- Established channels of communication between the pass-through entity and subrecipients.

Monitoring is a process that assesses the quality of internal control performance over time.

- Ongoing monitoring built-in through independent reconciliations, staff meeting feedback, rotating staff, supervisory review, and management review of reports.
- Periodic site visits performed at decentralized locations (including subrecipients) and checks performed to determine whether procedures are being followed as intended.
- Follow up on irregularities and deficiencies to determine the cause.
- Internal quality control reviews performed.
- Management meets with program monitors, auditors, and reviewers to evaluate the condition of the program and controls.
- Internal audit routinely tests for compliance with Federal requirements.
- If there is a governing Board, the Board reviews the results of all monitoring or audit reports and periodically assesses the adequacy of corrective action.

General Guidance – Internal Control Over Compliance For Major Programs With Expenditures of ARRA Awards

1. It is essential that auditee management establish and maintain internal control designed to reasonably ensure compliance with Federal laws, regulations, and program compliance requirements, including internal control designed to ensure compliance with ARRA requirements. The auditor then performs and documents testwork relating to internal control as required by OMB Circular A-133.

2. It is imperative that deficiencies in internal control (i.e., material weaknesses and significant deficiencies) be corrected by management as soon as possible to ensure proper accountability and transparency for expenditures of ARRA awards. Early

communication by auditors to management, and those charged with governance, of identified control deficiencies related to ARRA funding that are, or likely to be, significant deficiencies or material weaknesses in internal control will allow management to expedite corrective action and mitigate the risk of improper expenditure of ARRA awards. Therefore, auditors are encouraged to promptly inform auditee management and those charged with governance during the audit engagement about control deficiencies related to ARRA funding that are, or likely to be, significant deficiencies or material weaknesses in internal control. The auditor should use professional judgment regarding the form of such interim communications. Factors to consider in determining whether to make communications orally and/or in writing include the relative significance of the identified control deficiencies and the urgency for corrective action. However, regardless of how interim communications are made, the auditor should also communicate ARRA-related significant deficiencies or material weakness via the normal reporting process at the end of the audit (i.e., in the reporting on internal control over compliance and the schedule of findings and questioned costs).

3. **At many entities, awards funded by ARRA funds will result in material increases in funding, which may result in a material increase in the level of resources needed by management to properly manage, monitor, and account for Federal awards and effectively operate internal control. As part of the consideration of internal control over compliance, auditors should consider "capacity" issues as follows:**

   - **One of the components of internal control as described in this part of the Supplement, "Risk Assessment," relates to an entity's risk assessment process including its identification, analysis, and management of risks relevant to its compliance. When gaining an understanding of the internal control over the "Activities Allowed or Unallowed/Allowable Costs and Cost Principles" and "Eligibility" types of compliance requirements for major programs with ARRA funding, the auditor should consider the entity's internal control environment and internal control established to address the risks arising from ARRA funding (e.g., risks due to rapid growth of a program, new and/or increased activities under a program, changes in the regulatory environment, or new personnel).**

   - **When evaluating whether identified control deficiencies, individually or in combination, are significant deficiencies or material weaknesses, the auditor should consider the likelihood and magnitude of noncompliance. One of the factors that affects the magnitude is the volume of activity exposed to the deficiency in the current period or expected in the future.**

A. ACTIVITIES ALLOWED OR UNALLOWED
and
B. ALLOWABLE COSTS/COST PRINCIPLES

Control Objectives

To provide reasonable assurance that Federal awards are expended only for allowable activities and that the costs of goods and services charged to Federal awards are allowable and in accordance with the applicable cost principles.

Control Environment

- Management sets reasonable budgets for Federal and non-Federal programs so that no incentive exists to miscode expenditures.
- Management enforces appropriate penalties for misappropriation or misuse of funds.
- Organization-wide cognizance of need for separate identification of allowable Federal costs.
- Management provides personnel approving and pre-auditing expenditures with a list of allowable and unallowable expenditures.

Risk Assessment

- Process for assessing risks resulting from changes to cost accounting systems.
- Key manager has a sufficient understanding of staff, processes, and controls to identify where unallowable activities or costs could be charged to a Federal program and not be detected.

Control Activities

- Accountability provided for charges and costs between Federal and non-Federal activities.
- Process in place for timely updating of procedures for changes in activities allowed and cost principles.
- Computations checked for accuracy.
- Supporting documentation compared to list of allowable and unallowable expenditures.
- Adjustments to unallowable costs made where appropriate and follow-up action taken to determine the cause.
- Adequate segregation of duties in review and authorization of costs.
- Accountability for authorization is fixed in an individual who is knowledgeable of the requirements for determining activities allowed and allowable costs.

Information and Communication

- Reports, such as a comparison of budget to actual provided to appropriate management for review on a timely basis.
- Establishment of internal and external communication channels on activities and costs allowed.
- Training programs, both formal and informal, provide knowledge and skills necessary to determine activities and costs allowed.
- Interaction between management and staff regarding questionable costs.
- Grant agreements (including referenced program laws, regulations, handbooks, etc.) and cost principles circulars available to staff responsible for determining activities allowed and allowable costs under Federal awards.

Monitoring

- Management reviews supporting documentation of allowable cost information.
- Flow of information from Federal agency to appropriate management personnel.
- Comparisons made with budget and expectations of allowable costs.
- Analytic reviews (e.g., comparison of budget to actual or prior year to current year) and audits performed.

C. CASH MANAGEMENT

Control Objectives

To provide reasonable assurance that the (1) drawdown of Federal cash is only for immediate needs, (2) reimbursement is requested only after costs have been incurred, (3) States comply with applicable Treasury agreements, and (4) recipients limit payments to subrecipients to immediate cash needs.

Control Environment

- Appropriate assignment of responsibility for approval of cash drawdowns, requests for reimbursement, and payments to subrecipients.
- Budgets for drawdowns are consistent with realistic cash needs.
- Reimbursement is requested only have costs have been incurred.

Risk Assessment

- Mechanisms exist to anticipate, identify, and react to routine events that affect cash needs.
- Routine assessment of adequacy of subrecipient cash needs.
- Management has identified programs that receive cash advances and/or reimbursements and is aware of cash management requirements.

Control Activities

- Cash flow statements by program are prepared to determine essential cash flow needs.
- Accounting system is capable of scheduling payments for accounts payable and requests for funds from Treasury to avoid time lapse between draw down of funds and actual disbursements of funds.
- Appropriate level of supervisory review of cash management activities.
- Written policy that provides:
  - Procedures for requesting cash advances as close as is administratively possible to actual cash outlays and reimbursement only after costs have been incurred;
  - Monitoring of cash management activities; and
  - Repayment of excess interest earnings where required.
- For State programs subject to a Treasury-State agreement, a written policy exists which includes:
  - Programs covered by the agreement;
  - Methods of funding to be used;
  - Method used to calculate interest; and
  - Procedures for determining check clearing patterns (if applicable for the funding method).

Information and Communication

- Variance reporting of expected versus actual cash disbursements of Federal awards and drawdowns of Federal funds.
- Established channel of communication between pass-through entity and subrecipients regarding cash needs.

Monitoring

- Periodic independent evaluation (e.g. by internal audit, top management) of entity cash management, budget and actual results, repayment of excess interest earnings, and Federal drawdown activities.

- Subrecipients' requests for Federal funds are evaluated.

- Review of compliance with Treasury-State agreements.

D. DAVIS-BACON ACT

Control Objectives

To provide reasonable assurance that contractors and subcontractors were properly notified of the Davis-Bacon Act requirements and the required certified payrolls were submitted to the non-Federal entity.

Control Environment

- Management understands and communicates to staff, contractors, and subcontractors the requirements to pay wages in accordance with the Davis-Bacon Act.
- Management understands its responsibility for monitoring compliance.

Risk Assessment

- Mechanisms in place to identify contractors and subcontractors most at risk of non-compliance.
- Management identified how compliance will be monitored and the related risks of failure to monitor for compliance with Davis-Bacon Act.

Control Activities

- Contractors informed in the procurement documents of the requirements for prevailing wage rates.
- Contractors and subcontractors are required by contract to submit certifications and copies of payrolls.
- Contractors' and subcontractors' payrolls monitored to ensure certified payrolls are submitted.

Information and Communication

- Prevailing wage rates requirements are appropriately communicated.
- Reports provide sufficient information to determine if requirements are being met.
- Channels are established for staff to report non-compliance.

Monitoring

- Management reviews to ensure that contractors and subcontractors are properly notified of the Davis-Bacon Act requirements.
- Management reviews to ensure that certified payrolls are properly received.

E. ELIGIBILITY

Control Objectives

To provide reasonable assurance that only eligible individuals and organizations receive assistance under Federal award programs, that subawards are made only to eligible subrecipients, and that amounts provided to or on behalf of eligible individuals or groups of individuals were calculated in accordance with program requirements.

Control Environment

- Staff size and competence provides for proper making of eligibility determinations.
- Realistic caseload/performance targets established for eligibility determinations.
- Lines of authority clear for determining eligibility.
- Adequate knowledge of and access to computer system and/or database used for eligibility assessment and recording.

Risk Assessment

- Identification of risk that eligibility information prepared internally or received from external sources could be incorrect.
- Conflict-of-interest statements are maintained for individuals who determine and review eligibility.
- Process for assessing risks resulting from changes to eligibility determination systems.

Control Activities

- Written policies provide direction for making and documenting eligibility determinations.
- Procedures to calculate eligibility amounts consistent with program requirements.
- Eligibility objectives and procedures clearly communicated to employees.
- Authorized signatures (manual or electronic) on eligibility documents periodically reviewed.
- Adequate safeguards in place to ensure access to eligibility records (manual or electronic) limited to appropriate persons.
- Manual criteria checklists or automated process used in making eligibility determinations.
- Process for periodic eligibility re-determinations in accordance with program requirements.
- Verification of accuracy of information used in eligibility determinations.
- Procedures to ensure the accuracy and completeness of data used to determine eligibility requirements.
- Process in place to ensure benefits were discontinued when eligibility requirements no longer met or period of eligibility expired.

Information and Communication

- Information system meets needs of eligibility decision-makers and program management.
- Processing of eligibility information subject to edit checks and balancing procedures.
- Training programs inform employees of eligibility requirements.
- Channels of communication exist for people to report suspected eligibility improprieties.
- Management receptive to suggestions to strengthen eligibility determination process.
- Documentation of eligibility determinations in accordance with program requirements.

Monitoring

- Periodic analytical reviews of eligibility determinations performed by management.
- Monitoring by reviewers of changes in eligibility determinations to ensure that overrides in determination process are appropriate.
- Program quality control procedures performed for eligibility determination process.
- Periodic audits of detailed transactions.

F. EQUIPMENT AND REAL PROPERTY MANAGEMENT

Control Objectives

To provide reasonable assurance that proper records are maintained for equipment acquired with Federal awards, equipment is adequately safeguarded and maintained, disposition or encumbrance of any equipment or real property is in accordance with Federal requirements, and the Federal awarding agency is appropriately compensated for its share of any property sold or converted to non-Federal use.

Control Environment

- Management committed to providing proper stewardship for property acquired with Federal awards.
- No incentives exist to under-value assets at time of disposition.
- Sufficient accountability exists to discourage temptation of misuse of Federal assets.

Risk Assessment

- Procedures to identify risk of misappropriation or improper disposition of property acquired with Federal awards.
- Management understands requirements and operations sufficiently to identify potential areas of noncompliance (e.g., decentralized locations, departments with budget constraints, transfers of assets between departments).

Control Activities

- Accurate records maintained on all acquisitions and dispositions of property acquired with Federal awards.
- Property tags are placed on equipment.
- A physical inventory of equipment is periodically taken and compared to property records.
- Property records contain description (including serial number or other identification number), source, who holds title, acquisition date and cost, percentage of Federal participation in the cost, location, condition, and disposition data.
- Procedures established to ensure that the Federal awarding agency is appropriately reimbursed for dispositions of property acquired with Federal awards.
- Policies and procedures in place for responsibilities of recordkeeping and authorities for disposition.

Information and Communication

- Accounting system provides for separate identification of property acquired wholly or partly with Federal funds and with non-Federal funds.
- A channel of communication exists for people to report suspected improprieties in the use or disposition of equipment.
- Program managers are provided with applicable requirements and guidelines.

Monitoring

- Management reviews the results of periodic inventories and follows up on inventory discrepancies.
- Management reviews dispositions of property to ensure appropriate valuation and reimbursement to Federal awarding agencies.

G. MATCHING, LEVEL OF EFFORT, EARMARKING

Control Objectives

To provide reasonable assurance that matching, level of effort, or earmarking requirements are met using only allowable funds or costs which are properly calculated and valued.

Control Environment

- Commitment from management to meet matching, level of effort, and earmarking requirements (e.g., adequate budget resources to meet a specified matching requirement or maintain a required level of effort).
- Budgeting process addresses/provides adequate resources to meet matching, level of effort, or earmarking goals.
- Official written policy exists outlining:
  - Responsibilities for determining required amounts or limits for matching, level of effort, or earmarking;
  - Methods of valuing matching requirements, e.g., "in-kind" contributions of property and services, calculations of levels of effort;
  - Allowable costs that may be claimed for matching, level of effort, or earmarking; and
  - Methods of accounting for and documenting amounts used to calculate amounts claimed for matching, level of effort, or earmarking.

Risk Assessment

- Identification of areas where estimated values will be used for matching, level of effort, or earmarking.
- Management has sufficient understanding of the accounting system to identify potential recording problems.

Control Activities

- Evidence obtained such as a certification from the donor, or other procedures performed to identify whether matching contributions:
  - Are from non-Federal sources;
  - Involve Federal funding, directly or indirectly; and
  - Were used for another federally-assisted program.
    Note: Generally, matching contributions must be from a non-Federal source and may not involve Federal funding or be used for another federally assisted program.

- Adequate review of monthly cost reports and adjusting entries.

Information and Communication

- Accounting system capable of:
  - Separately accounting for data used to support matching, level of effort, or earmarking amounts or limits or calculations;
  - Ensuring that expenditures or expenses, refunds, and cash receipts or revenues are properly classified and recorded only once as to their effect on matching, level of effort, or earmarking; and
  - Documenting the value of "in-kind" contributions of property or services, including:
    -- Basis for local labor market rates for valuing volunteer services.

    -- Payroll records or confirmation from other organizations for services provided by their employees.

    -- Quotes, published prices, or independent appraisals used as the basis for donated equipment, supplies, land, buildings, or use of space.

Monitoring

- Supervisory review of matching, level of effort, or earmarking activities performed to assess the accuracy and allowability of transactions and determinations, e.g., at the time reports on Federal awards are prepared.

H. PERIOD OF AVAILABILITY OF FEDERAL FUNDS

Control Objectives

To provide reasonable assurance that Federal funds are used only during the authorized period of availability.

Control Environment

- Management understands and is committed to complying with period of availability requirements.
- Entity's operations are such that it is unlikely there will be Federal funds remaining at the end of the period of availability.

Risk Assessment

- The budgetary process considers period of availability of Federal funds as to both obligation and disbursement.
- Identification and communication of period of availability cut-off requirements as to both obligation and disbursement.

Control Activities

- Accounting system prevents obligation or expenditure of Federal funds outside of the period of availability.
- Review of disbursements by person knowledgeable of period of availability of funds.
- End of grant period cut-offs are met by such mechanisms as advising program managers of impending cut-off dates and review of expenditures just before and after cut-off date.
- Cancellation of unliquidated commitments at the end of the period of availability.

Information and Communication

- Timely communication of period of availability requirements and expenditure deadlines to individuals responsible for program expenditure, including automated notifications of pending deadlines.
- Periodic reporting of unliquidated balances to appropriate levels of management and follow up.

Monitoring

- Periodic review of expenditures before and after cut-off date to ensure compliance with period of availability requirements.
- Review by management of reports showing budget and actual for period.

I. PROCUREMENT AND SUSPENSION AND DEBARMENT

Control Objectives

To provide reasonable assurance that procurement of goods and services are made in compliance with the provisions of the A-102 Common Rule or OMB Circular A-110, as applicable, and that covered transactions (as defined in the suspension and debarment common rule) are not made with a debarred or suspended party.

Control Environment

- Existence and implementation of codes of conduct and other policies regarding acceptable practice, conflicts-of-interest, or expected standards of ethical and moral behavior for making procurements.
- Procurement manual that incorporated Federal requirements.
- Absence of pressure to meet unrealistic procurement performance targets.
- Management's prohibition against intervention or overriding established procurement controls.
- Board or governing body oversight required for high dollar, lengthy, or other sensitive procurement contracts.
- Adequate knowledge and experience of key procurement managers in light of responsibilities for procurements for Federal awards.
- Clear assignment of authority for issuing purchasing orders and contracting for goods and services.

Risk Assessment

- Procedures to identify risks arising from vendor inadequacy, e.g., quality of goods and services, delivery schedules, warranty assurances, user support.
- Procedures established to identify risks arising from conflicts-of-interest, e.g., kickbacks, related party transactions, bribery.
- Management understands the requirements for procurement and suspension and debarment, and, given the organization's staff, departments, and processes, has identified where noncompliance could likely occur.
- Conflict-of-interest statements are maintained for individuals with responsibility for procurement of goods or services.

Control Activities

- Job descriptions or other means of defining tasks that comprise particular procurement jobs.
- Contractor's performance with the terms, conditions, and specifications of the contract is monitored and documented.
- Establish segregation of duties between employees responsible for contracting and accounts payable and cash disbursing.
- Procurement actions appropriately documented in the procurement files.

- Supervisors review procurement and contracting decisions for compliance with Federal procurement policies.
- Procedures established to verify that vendors providing goods and services under the award have not been suspended or debarred by the Federal Government.
- Official written policy for procurement and contracts establishing:
  - Contract files that document significant procurement history;
  - Methods of procurement, authorized including selection of contract type, contractor selection or rejection, and the basis of contract price;
  - Verification that procurements provide full and open competition;
  - Requirements for cost or price analysis, including for contract modifications;
  - Obtaining and reacting to suspension and debarment certifications; and
  - Other applicable requirements for procurements under Federal awards are followed.
- Official written policy for suspension and debarment that:
  - Contains or references the Federal requirements;
  - Prohibits the award of a subaward, covered contract, or any other covered agreement for program administration, goods, services, or any other program purpose with any suspended or debarred party; and
  - Requires staff to determine that entities receiving subawards of any value and procurement contracts equal to or exceeding $25,000 and their principals are not suspended or debarred, and specifies the means that will be used to make that determination, i.e., checking the *Excluded Parties List System* (EPLS), which is maintained by the General Services Administration; obtaining a certification; or inserting a clause in the agreement.

Information and Communication

- A system in place to assure that procurement documentation is retained for the time period required by the A-102 Common Rule, OMB Circular A-110 (2 CFR part 215), award agreements, contracts, and program regulations. Documentation includes:
  - The basis for contractor selection;
  - Justification for lack of competition when competitive bids or offers are not obtained; and
  - The basis for award cost or price.
- Employees' procurement duties and control responsibilities are effectively communicated.
- Procurement staff are provided a current hard-copy *EPLS* or have on-line access.
- Channels of communication are provided for people to report suspected procurement and contracting improprieties.

Monitoring

- Management periodically conducts independent reviews of procurements and contracting activities to determine whether policies and procedures are being followed as intended.

J. PROGRAM INCOME

Control Objectives

To provide reasonable assurance that program income is correctly earned, recorded, and used in accordance with the program requirements.

Control Environment

- Management recognizes its responsibilities for program income.
- Management's prohibition against intervention or overriding controls over program income.
- Realistic performance targets for the generation of program income.

Risk Assessment

- Mechanisms in place to identify the risk of unrecorded or miscoded program income.
- Variances between expected and actual income analyzed.

Control Activities

- Pricing and collection policies procedures clearly communicated to personnel responsible for program income.
- Mechanism in place to ensure that program income is properly recorded as earned and deposited in the bank as collected.
- Policies and procedures provide for correct use of program income in accordance with Federal program requirements.

Information and Communication

- Information systems identify program income collections and usage.
- A channel of communication for people to report suspected improprieties in the collection or use of program income.

Monitoring

- Internal audit of program income.
- Management compares program income to budget and investigates significant differences.

K. REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE

Control Objectives

To provide reasonable assurance of compliance with the real property acquisition, appraisal, negotiation, and relocation requirements.

Control Environment

- Management committed to ensuring compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA).
- Written policies exist for handling relocation assistance and real property acquisition.

Risk Assessment

- Identification of risk that relocation will not be conducted in accordance with the URA, e.g., improper payments will be made to individuals or businesses that relocate.

Control Activities

- Employees handling relocation assistance and real property acquisition have been trained in the requirements of the URA.
- Review of expenditures pertaining to real property acquisition and relocation assistance by employees knowledgeable in the URA.

Information and Communication

- A system is in place to adequately document relocation assistance and real property acquisition.

Monitoring

- Management monitors relocation assistance and real property acquisition for compliance with the URA.

L. REPORTING

Control Objectives

To provide reasonable assurance that reports of Federal awards submitted to the Federal awarding agency or pass-through entity include all activity of the reporting period, are supported by underlying accounting or performance records, and are fairly presented in accordance with program requirements.

Control Environment

- Persons preparing, reviewing, and approving the reports possess the required knowledge, skills, and abilities.
- Management's attitude toward reporting promotes accurate and fair presentation.
- Appropriate assignment of responsibility and delegation of authority for reporting decisions.

Risk Management

- Mechanisms exist to identify risks of faulty reporting caused by such items as lack of current knowledge of, inconsistent application of, or carelessness or disregard for standards and reporting requirements of Federal awards.
- Identification of underlying source data or analysis for performance or special reporting that may not be reliable.

Control Activities

- Written policy exists that establishes responsibility and provides the procedures for periodic monitoring, verification, and reporting of program progress and accomplishments.
- Tracking system which reminds staff when reports are due.
- The general ledger or other reliable records are the basis for the reports.
- Supervisory review of reports performed to assure accuracy and completeness of data and information included in the reports.
- The required accounting method is used (e.g., cash or accrual).

Information and Communication

- An accounting or information system that provides for the reliable processing of financial and performance information for Federal awards.

Monitoring

- Communications from external parties corroborate information included in the reports for Federal awards.
- Periodic comparison of reports to supporting records.

M. SUBRECIPIENT MONITORING

Control Objectives

To provide reasonable assurance that Federal award information and compliance requirements are identified to subrecipients, subrecipient activities are monitored, subrecipient audit findings are resolved, and the impact of any subrecipient noncompliance on the pass-through entity is evaluated. Also, the pass-through entity should perform procedures to provide reasonable assurance that the subrecipient obtained required audits and takes appropriate corrective action on audit findings.

Control Environment

- Establishment of "tone at the top" of management's commitment to monitoring subrecipients.
- Management's intolerance of overriding established procedures to monitor subrecipients.
- Entity's organizational structure and its ability to provide the necessary information flow to monitor subrecipients are adequate.
- Sufficient resources dedicated to subrecipient monitoring.
- Knowledge, skills, and abilities needed to accomplish subrecipient monitoring tasks defined.
- Individuals performing subrecipient monitoring possess knowledge, skills, and abilities required.
- Subrecipients demonstrate that:
  - They are willing and able to comply with the requirements of the award, and
  - They have accounting systems, including the use of applicable cost principles, and internal control systems adequate to administer the award.
- Appropriate sanctions taken for subrecipient noncompliance.

Risk Assessment

- Key managers understand the subrecipient's environment, systems, and controls sufficient to identify the level and methods of monitoring required.
- Mechanisms exist to identify risks arising from external sources affecting subrecipients, such as risks related to:
  - Economic conditions.
  - Political conditions.
  - Regulatory changes.
  - Unreliable information.
- Mechanisms exist to identify and react to changes in subrecipients, such as:
  - Financial problems that could lead to diversion of grant funds,
  - Loss of essential personnel,
  - Loss of license or accreditation to operate program,
  - Rapid growth,
  - New activities, products, or services, and

- Organizational restructuring.

Control Activities

- Identify to subrecipients the Federal award information (e.g., CFDA title and number, award name, name of Federal agency, amount of award) and applicable compliance requirements.
- Include in agreements with subrecipients the requirement to comply with the compliance requirements applicable to the Federal program, including the audit requirements of OMB Circular A-133.
- Subrecipients' compliance with audit requirements monitored using techniques such as the following:
  - Determining by inquiry and discussions whether subrecipient met thresholds requiring an audit under OMB Circular A-133;
  - If an audit is required, assuring that the subrecipient submits the report, report package or the documents required by OMB circulars and/or recipient's requirements; and
  - If a subrecipient was required to obtain an audit in accordance with OMB Circular A-133 but did not do so, following up with the subrecipient until the audit is completed. Taking appropriate actions such as withholding further funding until the subrecipient meets the audit requirements.
- Subrecipient's compliance with Federal program requirements monitored using such techniques as the following:
  - Issuing timely management decisions for audit and monitoring findings to inform the subrecipient whether the corrective action planned is acceptable,
  - Maintaining a system to track and follow-up on reported deficiencies related to programs funded by the recipient and ensure that timely corrective action is taken,
  - Regular contacts with subrecipients and appropriate inquiries concerning the Federal program,
  - Reviewing subrecipient reports and following-up on areas of concern,
  - Monitoring subrecipient budgets,
  - Performing site visits to subrecipients to review financial and programmatic records and observe operations, and
  - Offering subrecipients technical assistance where needed.
- Official written policies and procedures exist establishing:
  - Communication of Federal award requirements to subrecipients;
  - Responsibilities for monitoring subrecipients;
  - Process and procedures for monitoring;
  - Methodology for resolving findings of subrecipient noncompliance or weaknesses in internal control; and
  - Requirements for and processing of subrecipient audits, including appropriate adjustment of pass-through entity's accounts.

Information and Communication

- Standard award documents used by the non-Federal entity contain:
  - A listing of Federal requirements that the subrecipient must follow. Items can be specifically listed in the award document, attached as an exhibit to the document, or incorporated by reference to specific criteria.
  - The description and program number for each program as stated in the CFDA. If the program funds include pass-through funds from another recipient, the pass-through program information should also be identified.
  - A statement signed by an official of the subrecipient, stating that the subrecipient was informed of, understands, and agrees to comply with the applicable compliance requirements.
- A recordkeeping system is in place to assure that documentation is retained for the time period required by the recipient.
- Procedures are in place to provide channels for subrecipients to communicate concerns to the pass-through entity.

Monitoring

- Establish a tracking system to assure timely submission of required reporting, such as: financial reports, performance reports, audit reports, onsite monitoring reviews of subrecipients, and timely resolution of audit findings.
- Supervisory reviews performed to determine the adequacy of subrecipient monitoring.

PART 7 – GUIDANCE FOR AUDITING PROGRAMS NOT INCLUDED IN THIS COMPLIANCE SUPPLEMENT

Purpose – OMB Circular A-133 (§__.500(d)(3)) states that for those Federal programs not covered in the compliance supplement, the auditor should use the types of compliance requirements (see 14 types of compliance requirements described in Part 3) contained in the compliance supplement (this 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 contract and grant agreements and the laws and regulations referred in such contract and grant agreements.

The purpose of this Part is to provide the auditor with guidance on how to identify the applicable compliance requirements for programs not included in this Supplement for single audits and for program-specific audits when a program-specific audit guide is not available. This Supplement includes only the largest and/or riskiest Federal programs. However, there are more than 600 assistance programs currently funded by the Federal Government. Therefore, it is likely that the auditor will encounter programs that the auditor is required to test as major programs that are not included in this Supplement. For this reason, the following guidance is provided for the auditor to identify those compliance requirements that should be tested.

Organization of this Supplement – First, a review of how this Supplement is organized will be helpful, since the auditor must consider several parts of the Supplement in identifying compliance requirements to be tested. This Supplement is comprised of the following parts:

Part 1 – Background, Purpose, and Applicability
Part 2 – Matrix of Compliance Requirements
Part 3 – Compliance Requirements
Part 4 – Agency Program Requirements
Part 5 – Clusters of Programs
Part 6 – Internal Control
Part 7 – Guidance for Auditing Programs Not Included in This Compliance Supplement

In determining the compliance requirements to test for programs not included in this Supplement, the auditor shall to refer to Parts 3 and 5. Part 3 identifies and describes the 14 types of compliance requirements where noncompliance may have a direct and material effect on a Federal program and provides audit objectives and suggested audit procedures. The 14 types of compliance requirements are:

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

Part 5 enumerates those programs that are considered to be clusters of programs as defined by OMB Circular A-133 (§__.105). A cluster of programs means Federal programs with different *Catalog of Federal Domestic Assistance* (CFDA) numbers that are defined as a cluster of programs because they are closely related programs and share compliance requirements. Part 5 identifies research and development (R&D) and Student Financial Assistance (SFA) as clusters, as well as certain other clusters. Also, Part 5 identifies other clusters of programs that are not included in this Supplement.

For programs not included in this Supplement, **including those ARRA programs listed in Appendix VII**, the auditor must determine the applicable compliance requirements. While a Federal program may have many compliance requirements, normally there are only a few key compliance requirements that could have a direct and material effect on the program. Since the single audit process is not intended to cover every compliance requirement, this Supplement and the auditor's focus should be on the 14 types of compliance requirements enumerated in Part 3. The following are suggested procedures to assist the auditor in making this determination.

Although the focus of this Supplement is on compliance requirements that could have a direct and material effect on a major program, auditors also have responsibility under *Generally Accepted Government Auditing Standards* (GAGAS) for other requirements when specific information comes to the auditors' attention that provides evidence concerning the existence of possible noncompliance that could have a material indirect effect on a major program.

Steps for Identifying Compliance Requirements

Determining what compliance requirements to test involves several steps. The auditor should address the following questions:

1. What are the program objectives, program procedures, and compliance requirements for a specific program?

2. Which of the compliance requirements could have a direct and material effect on the program?

3. Which of the compliance requirements are susceptible to testing by the auditor?

4. Into which of the 14 types of compliance requirements does each compliance requirement fall?

5. For Special Tests and Provisions, what are the applicable audit objectives and audit procedures?

1. *What are the program objectives, program procedures, and compliance requirements for a specific program?*

   The first step is to gain an understanding of how the program works (e.g., the program objectives and procedures) and determine what laws, regulations, and provisions of contract or grant agreements (compliance requirements) apply to the program. The auditor should consider the following steps:

   a. Discuss the program with the non-Federal entity and, if necessary, the Federal agency or, in the case of a subrecipient, the pass-through entity.

   b. Review the contract and grant agreements and referenced laws and regulations applicable to the program, including any amendments or closeout agreements. The documents or agreements may identify the name and telephone number of a Federal contact person or, if a subaward, the contact person for the pass-through entity whom the auditor may wish to contact for additional information.

      Note: The auditor should be aware that a particular non-Federal entity or Federal award may be subject to provisions that are unique to that entity or award. For example, previous noncompliance by a non-Federal entity may result in additional requirements to which the non-Federal entity must adhere, in order to continue its participation in the Federal program. Such provisions would generally not be based on laws and regulations applicable to all awards under the Federal program. Reasonable procedures to identify such compliance requirements would be inquiry of non-Federal entity management and review of the contract and grant agreements pertaining to the program. Any such requirements identified which could have a direct and material effect on a major program should be included in the audit.

   c. Review the CFDA. The CFDA provides summary information about each program and includes the name and telephone number of a Federal contact person. A searchable copy of the CFDA is available through the Internet at http://www.cfda.gov .

   d. If there is a program-specific audit guide or other audit guidance issued by the Federal agency's Office of the Inspector General (OIG), the auditor may wish to consider this guidance in identifying the program objectives, program procedures, and compliance requirements. The availability of program audit guides can be determined by contacting the appropriate Regional OIG.

   e. Consider other audit guidance, including previously issued guidance, pertaining to the program that has continuing relevance.

2. *Which of the compliance requirements could have a direct and material effect on the program?*

   Generally Accepted Government Auditing Standards require that the auditor plan the audit to provide reasonable assurance that the financial statements are free of material misstatement resulting from violations of laws and regulations that have a direct and material effect on the determination of financial statement amounts. OMB Circular A-133 requires the auditor to perform procedures to determine whether the non-Federal entity has complied with laws, regulations, and the provisions of contract or grant agreements that could have a direct and material effect on each major program. Therefore, the auditor must determine which compliance requirements could have a direct and material effect on each major program.

   In assessing materiality, the auditor should consider that materiality is based on qualitative as well as quantitative aspects. Also, the auditor should consider whether to set materiality at lower levels in audits of Federal programs than private sector audits of financial statements due to the visibility and sensitivity of such programs. Examples of characteristics indicative of compliance requirements that could have a direct and material effect on a major program include:

   - Noncompliance could likely result in questioned costs.
   - The requirement affects a large part of the Federal program (e.g., a material amount of program dollars).
   - Noncompliance could cause the Federal agency, or pass-through entity, in the case of a subrecipient, to take action, such as seeking reimbursement of all or a part of the award and suspending the recipient's or subrecipient's participation in the program.

3. *Which of the compliance requirements are susceptible to testing by the auditor?*

   The auditor is only expected to test compliance for those requirements that are susceptible to testing by the auditor (i.e., the requirements can be evaluated against objective criteria, and the auditor can reasonably be expected to have sufficient basis for recognizing noncompliance). Further, the auditor would not be expected to test for compliance with requirements that the Federal agency should have the ability to verify in the normal course of administering the program (e.g., if the requirement is that the non-Federal entity must file a report by a certain date, the Federal agency should know whether it received the report on time). Characteristics of compliance requirements that auditors are typically expected to test include those:

   - That are practical to test.
   - With objective criteria available for the auditor to assess compliance.
   - Where an audit objective can be written that supports an opinion on compliance.
   - When testing adds value, for example:

- It is likely that the auditor could document the noncompliance in a manner that (1) permits the Federal or pass-through entity to take action, or (2) gives the Federal or pass-through entity an early warning to initiate a monitoring visit or other contact with the non-Federal entity.

- The Federal or pass-through entity does not otherwise have information that verifies compliance.

4. *Into which of the 14 types of compliance requirements does each compliance requirement fall?*

Note: In performing this step, the auditor may find it helpful to prepare a matrix similar to the matrix included in Part 2 for programs included in this Supplement.

The auditor shall use the 14 types of compliance requirements listed for identifying which requirements applicable to the program are subject to testing. Not all compliance requirements apply to all programs. Conversely, certain types almost always apply.

A. **Activities Allowed or Unallowed** almost always applies to Federal programs. The auditor should look at the program requirements and Federal award documents for what constitutes allowable or unallowable activities.

B. **Allowable Costs/Cost Principles** almost always applies since most Federal programs have charges for goods or services. However, if a program only involves benefits to eligible recipients, with no administrative costs, purchases of goods or services (including salaries and overhead), or allocated costs, then allowable costs may not apply.

C. **Cash Management** almost always applies to Federal programs.

D. **Davis-Bacon Act** only applies as required by the Act itself, the Department of Labor's (DOL) governmentwide implementation of the Davis-Bacon Act, or by Federal program legislation, for construction contracts in excess of $2000 financed by Federal funds. The auditor should review award documents to determine whether the Davis-Bacon Act applies.

E. **Eligibility** applies to most Federal programs which provide benefits to individuals, groups of individuals, or make subawards. For programs with eligibility requirements, the auditor should review the program laws, regulations, and provisions of contract or grant agreements to determine the specific eligibility requirements. Eligibility involves not only individuals but also possibly groups of individuals, geographical areas, or subrecipients. Additionally, the auditor should consider whether continuing, as well as initial, eligibility requirements apply. Furthermore, eligibility involves both who is eligible and the amount of benefits provided to the eligible.

F. **Equipment and Real Property Management** requirements applies to Federal programs which purchase equipment or real property.

G. **Matching, Level of Effort, Earmarking** is not universal, and, if applicable, would be specific to the Federal program and often the non-Federal entity. Therefore, the auditor will have to review the laws, regulations, contract or grant agreements applicable to the program to determine specific requirements for matching, level of effort, and/or earmarking.

H. **Period of Availability of Federal Funds** almost always applies to Federal programs. The contract or grant agreement applicable to the program often indicates the period during which the funds are available for obligation under the program. The auditor should also look for program requirements regarding carry-over of unused funds to future funding periods, and whether pre-award costs are allowable, to what extent, and under what circumstances.

I. **Procurement and Suspension and Debarment** applies, in the case of procurement, any time the entity procures goods or services. Suspension and debarment applies to certain procurements and to all subawards.

J. **Program Income** applies to any program that generates program income (primarily related to the disposition of the income). Program regulations or the contract or grant agreements applicable to the program may specify additional criteria.

K. **Real Property Acquisition and Relocation Assistance** only applies as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) for payments to persons displaced from their homes, businesses, or farms by federally-assisted programs. While this requirement only applies to a few programs, when it does apply, it is generally a significant aspect of the program. For example, the U.S. Department of Transportation (DOT) funds many programs to construct highways in which real property acquisition and relocation assistance is a significant part of the program activities. The U.S. Department of Housing and Urban Development has the most transactions subject to the URA and DOT has the most Federal dollars affected.

L. **Reporting** almost always applies to Federal programs. The standard financial reports are described in Part 3; however, the Federal agency or the pass-through entity may have developed its own forms for financial reporting. These forms may be in addition to or in lieu of the standard Federal financial reports and may include electronic submissions. The auditor should determine whether the standard reports are used, and if not, whether other forms are used to report the same or similar information. Information collections (which, as defined in 5 CFR section 1320.3(c), involves 10 or more respondents) by Federal agencies must be approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 USC 3501-3520) and assigned an OMB control number. A Federal agency may

not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number

For performance reporting and special reporting, if there is a program in this Supplement funded by the same Federal agency that requires the same performance or special reporting required by the program for which the auditor is seeking to identify compliance requirements, and this Supplement requires testing of those data, then the auditor should use such guidance in identifying compliance requirements to test. Otherwise, the auditor is only required to test financial reporting and, as applicable, Section 1512 American Recovery and Reinvestment Act (ARRA) reporting.

M. **Subrecipient Monitoring** applies when Federal awards are passed through to a subrecipient. If the entity is not a pass-through entity, this requirement does not apply.

N. **Special Tests and Provisions** includes those compliance requirements that do not fit the description of the types of compliance requirements discussed above. These will generally be the most difficult type of compliance requirement to identify because, by definition, with the exception of cross-cutting ARRA provisions, they are unique to each program. In addition to reviewing the program's contract and grant agreements and referenced laws and regulations, the auditor should also make inquiries of the non-Federal entity to help identify and understand Special Tests and Provisions.

For each of the types of compliance requirements listed above, except for program-specific Special Tests and Provisions, the auditor shall consider the compliance requirements and related audit objectives in Part 3. In making a determination not to test a compliance requirement, the auditor must conclude that the requirement either does not apply to the particular non-Federal entity or that noncompliance with the requirement could not have a material effect on a major program (e.g., the auditor would not be expected to test Procurement if the non-Federal entity charges only small amounts of purchases to a major program). The suggested audit procedures in Part 3 are provided to assist auditors in planning and performing tests of non-Federal entity compliance with the requirements of Federal programs. Auditor judgment will be necessary to determine whether the suggested audit procedures are sufficient to achieve the stated audit objective and whether additional or alternative audit procedures are needed.

Internal Control – Consistent with the requirements of OMB Circular A-133, Part 3 includes audit objectives and suggested audit procedures to test internal control. However, the auditor must determine the specific procedures to test internal control on a case by case basis considering factors such as the non-Federal entity's internal control, the compliance requirements, the audit objectives for compliance, the auditor's assessment of control risk, and the audit requirement to test internal control as prescribed in OMB Circular A-133.

5. *For Special Tests and Provisions, what are the applicable audit objectives and audit procedures?*

For each of the types of compliance requirements discussed above, Part 3 includes audit objectives and suggested audit procedures, except for Special Tests and Provisions other than those related to the cross-cutting provisions of ARRA. As noted above, these Special Tests and Provisions are sufficiently unique to every program that including audit objectives and suggested audit procedures is not practicable. Therefore, the auditor will have to develop audit objectives and audit procedures for each identified Special Test and Provision (other than those related to the cross-cutting provisions of ARRA) using the guidance described in Part 3 under Special Tests and Provisions.

APPENDIX I
FEDERAL PROGRAMS EXCLUDED FROM THE A-102 COMMON RULE

Note: §___ references are to the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (A-102 Common Rule).

Background

Certain grant programs (block grant programs enacted under the Omnibus Budget Reconciliation Act of 1981, one special program, open-ended entitlement programs, and other specified programs) were originally exempted from the provisions of the A-102 Common Rule. On September 8, 2003 (68 FR 52843-52844), the Department of Health and Human Services (HHS) amended its implementation of the A-102 Common Rule at 45 CFR part 92 to eliminate the exemption for all of its programs other than the HHS block grants under the Omnibus Budget Reconciliation Act of 1981. The Department of Agriculture previously included its entitlement grants in its implementation of the A-102 Common Rule. The programs that remain exempt from the A-102 Common Rule are listed below. Consult Part 4 – Agency Program Requirements, II, "Program Procedures – Source of Governing Requirements" for the governing requirements for these programs.

The listed block grant programs and Impact Aid (CFDA 84.041) (excluding payments for children with disabilities and payments for construction) are also exempt from the provisions of the OMB cost principles circulars. State cost principles requirements apply to these programs (including their subrecipients). The entitlement programs and the other programs are subject to the provisions of the OMB cost principles circulars. The HHS September 8, 2003 rulemaking did not affect the applicability of the cost principles for the HHS entitlement programs.

Note that, in some cases, the administrative requirements for entitlement programs in Federal agency regulations are not identical to those in the A-102 Common Rule. Rather than identify for testing each instance where the requirements differ, this Compliance Supplement only addresses differences that warrant special attention. One difference is in the area of procurement. With respect to all other administrative requirements, the auditor should be guided by the provisions of the A-102 Common Rule and agency program requirements (see Part 4).

Differences pertaining to procurement

Subpart F of 45 CFR part 95, ADP equipment and services, applies to certain HHS programs as specified in Part 4 of this Supplement. Subpart F requires prior Federal written approval for the acquisition of ADP equipment and services of $5 million or more when the Federal Government funds at regular matching rates and prior written approval for all ADP acquisitions when the Federal Government funds at enhanced matching rates. In addition, the rules require prior Federal written approval for sole-source contracts between $1 million and $5 million when the Federal Government funds at regular matching rates and for certain requests for proposals (RFPs), contracts, and amendments.

Programs Excluded from the Requirements of the A-102 Common Rule

Since many of the programs excluded from the A-102 Common Rule were reauthorized or amended, the following list provides the CFDA number and name as listed in the current CFDA. It also includes, as applicable, the associated CFDA number(s) for programs that received funding under the American Recovery and Reinvestment Act. A notation is included with the program name to indicate when only part of the awards under a CFDA number are excluded from the A-102 Common Rule or to provide other clarifications.

§___.4(a)(2) Block grant programs authorized by:

The Omnibus Budget Reconciliation Act of 1981 (§___.4(a)(2))

93.568	Low-Income Home Energy Assistance
93.569	Community Services Block Grant and 93.710 ARRA – Community Services Block Grant
93.667	Social Services Block Grant
93.958	Block Grants for Community Mental Health Services
93.959	Block Grants for Prevention and Treatment of Substance Abuse
93.991	Preventive Health and Health Services Block Grant
93.994	Maternal and Child Health Services Block Grant to the States
14.228	Community Development Block Grants/State's Program and Non-Entitlement Grants in Hawaii (NOTE: Awards to non-entitlement counties in Hawaii are not considered "block grants" for this purpose)

Other programs

§___.4(a)(9) *Grants to local education agencies under the following sections of the Impact Aid program (CFDA 84.041)*:

Section 8002; 20 USC 7702 (Federal property payments)
Section 8003(b); 20 USC 7703(b) (Basic support payments).

§___.4(a)(10) *Payments under the Veterans Administration's State Home Per Diem Program*:

64.014	Veterans State Domiciliary Care
64.015	Veterans State Nursing Home Care
64.016	Veterans State Hospital Care

Grants authorized under the Child Care and Development Block Grant Act of 1990, as amended

93.575	Child Care and Development Block Grant
93.596	Child Care Mandatory and Matching Funds of the Child Care and Development Fund
93.713	ARRA – Child Care And Development Block Grant

APPENDIX II
FEDERAL AGENCY CODIFICATION OF CERTAIN GOVERNMENTWIDE GRANTS REQUIREMENTS

Agency (departments then agencies[1])	A-102 Common Rule (State & local governments)	OMB Circular A-110 (2 CFR part 215) (universities & non-profit organizations)[2]	Nonprocurement Suspension & Debarment[3] (2 CFR part 180 or predecessor common rule)
Agriculture	7 CFR 3016	7 CFR 3019	2 CFR 417
Commerce	15 CFR 24	15 CFR 14	2 CFR 1326
Defense	32 CFR 33	32 CFR 32	2 CFR 1125
Education	34 CFR 80	34 CFR 74	34 CFR 85
Energy	10 CFR 600	10 CFR 600	2 CFR 901
Health & Human Services	45 CFR 92	45 CFR 74	2 CFR 376
Homeland Security	Currently using the implementation of the agency from which the program was transferred, e.g., the Federal Emergency Management Agency	----	2 CFR 3000
Housing & Urban Development	24 CFR 85	24 CFR 84	2 CFR 2424
Interior	43 CFR 12	43 CFR 12	2 CFR 1400
Justice	28 CFR 66	28 CFR 70	2 CFR 2867
Labor	29 CFR 97	29 CFR 95	29 CFR 98
State	22 CFR 135	22 CFR 145	2 CFR 601
Transportation	49 CFR 18	49 CFR 19	2 CFR 1200
Treasury	-----	----	31 CFR 19
Veterans Affairs	38 CFR 43	38 CFR 49	2 CFR 801
ADF	----	----	22 CFR 1508
AID	----	22 CFR 226	22 CFR 208
BBG	----	22 CFR 518	22 CFR 513
CNCS	45 CFR 2541	45 CFR 2543	2 CFR 2200

Agency (departments then agencies[1])	A-102 Common Rule (State & local governments)	OMB Circular A-110 (2 CFR part 215) (universities & non-profit organizations)[2]	Nonprocurement Suspension & Debarment[3] (2 CFR part 180 or predecessor common rule)
EPA	40 CFR 31	40 CFR 30	2 CFR 1532
EX-IM	-----	-----	2 CFR 3513
FEMA (now part of DHS)	44 CFR 13	----	2 CFR 3000
FMCS	29 CFR 1470	----	29 CFR 1471
GSA	41 CFR 105-71	41 CFR 105-72	41 CFR 105-68
IMLS	45 CFR 1183	----	2 CFR 3185
IAF	----	----	22 CFR 1006
NASA	14 CFR 1273	14 CFR 1260	2 CFR 1880
NARA	36 CFR 1207	36 CFR 1210	2 CFR 2600
NEA	45 CFR 1157	----	2 CFR 3254
NEH	45 CFR 1174	----	2 CFR 3369
NSF	45 CFR 602	----	2 CFR 2520
ONDCP	21 CFR 1403	----	21 CFR 1404
OPM	----	----	5 CFR 919
Peace Corps	----	----	2 CFR 3700
SBA	13 CFR 143	----	2 CFR 2700
SSA	20 CFR 437	20 CFR 435	2 CFR 2336

NOTES:

1. Abbreviations used for the following independent agencies: African Development Foundation (ADF), Agency for International Development (AID), Broadcasting Board of Governors (BBG), Corporation for National and Community Service (CNCS), Environmental Protection Agency (EPA), Export-Import Bank of the United States (EX-IM), Federal Emergency Management Agency (FEMA) (now part of the Department of Homeland Security), Federal Mediation and Conciliation Service (FMCS), General Services Administration (GSA), Institute of Museum and Library Services (IMLS), Inter-American Foundation (IAF), National Aeronautics and Space Administration (NASA), National Archives and Records Administration (NARA), National Endowment for the Arts (NEA), National Endowment for the Humanities (NEH), National Science Foundation (NSF), Office of National Drug Control Policy (ONDCP), Office of

Personnel Management (OPM), Small Business Administration (SBA), and Social Security Administration (SSA).

2. If an agency implements OMB Circular A-110 (2 CFR part 215) other than through codified rules; the Circular's requirements apply equally to the agency and its awards.

3. The OMB guidance on nonprocurement suspension and debarment is found at 2 CFR part 180. Agencies are expected to adopt the OMB guidance in their individual chapters in 2 CFR.

APPENDIX III
FEDERAL AGENCY SINGLE AUDIT AND PROGRAM CONTACTS FOR A-133 AUDITS

This appendix lists Federal agency audit contacts for A-133 information, as program-specific contacts for each program/cluster included in the Supplement.

Fur the single audit contacts, a separate table is provided for each Federal agency. The left side of the table lists the addresses, phone numbers, and, where available, e-mail and website addresses, for each contact. The right side lists the geographical area each Federal contact is responsible for overseeing. The program contacts and their contact information are listed by agency and CFDA number.

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Federal Agency Single Audit Contacts	
United States Department of Agriculture	
Regional Inspector General U.S. Department of Agriculture Attn: Marbie Baugh, National Single Audit Coordinator 401 West Peachtree St NW, Suite 2328 Atlanta, GA 30308 Phone: Voice: (404) 730-3763 or 730-3210 FAX: (404) 730-3221 E-Mail: Marbie.Baugh@oig.usda.gov	All audits

Department of Commerce	
Regional Inspector General U. S. Department of Commerce 401 West Peachtree Street NW Suite 2742 Atlanta, GA 30308 Phone: Voice (404) 730-2780 FAX (404) 730-2788	All audits

Department of Defense	
Office of the Assistant Inspector General for Audit Policy and Oversight Office of Inspector General U.S. Department of Defense 400 Army Navy Drive, Room 1016 Arlington, VA 22202-4704 Phone: Voice (703) 604-8760 FAX (703) 604-9808 E-Mail: aponet@dodig.mil	All audits

Department of Education	
Non-Federal Audit Team Office of Inspector General U.S. Department of Education Wanamaker Building 100 Penn Square East, Suite 502 Philadelphia, PA 19107-3323 Phone: Voice: (215) 656-6900 Fax: (215) 656-6397 E-Mail: OIGNon-FederalAudit@ed.gov	NATIONAL OFFICE CONTACT and audits in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Puerto Rico, and the Virgin Islands

Department of Education	
Non-Federal Audit Team Office of Inspector General U.S. Department of Education 1999 Bryan St., Suite 1440 Dallas, TX 75201-6817 Phone: Voice: (214) 661-9530 Fax: (214) 661-9531 E-Mail: OIGNon-FederalAudit@ed.gov	For audits in Alabama, Arkansas, Colorado, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wyoming.
Non-Federal Audit Team Office of Inspector General U.S. Department of Education 8930 Ward parkway, Suite 2401 Kansas City, MO 74114-3302 Phone: Voice: (816) 268-0500 Fax: (816) 823-1398 E-Mail: OIGNon-FederalAudit@ed.gov	For audits in Alaska, Arizona, California, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, Ohio, Oregon, Washington, Wisconsin, and the Pacific Islands.

Department of Energy	
U.S. Department of Energy Office of Inspector General ATTN: Single Audit Contact 1000 Independence Ave. SW IG-33, Room 5A-193 Washington, DC 20585 Phone: Voice (202) 586-1947 FAX (202) 586-0099 Website: www.ig.doe.gov	All audits

Department of Health and Human Services	
National Audit Managers - Non-Federal Audits HHS National External Audit Resources 1100 Walnut St, Suite 850 Kansas City, MO 64106 Phone: Voice (816) 426-7720 (800) 732-0679 FAX (816) 426-7745 Website: www.os.dhhs.gov	All audits

Department of Homeland Security	
Office of Inspector General Attn: Single Audit Coordinator 245 Murray Drive, S.W., Bldg.410 Washington, DC 20528 Phone: Voice (202) 254-4142 FAX (202) 254-4294	All audits

Department of Housing and Urban Development	
US Department of HUD Office of Inspector General Mid-Atlantic Audit District Single Audit Coordinator George Datto 100 Penn Square East Wanamaker Bldg., Suite 1005 Philadelphia, PA 19107 Phone: Voice (215) 430-6733 FAX (215) 656-3409 Website: www.hud.gov/oig/oigindex.html	All audits

Department of the Interior	
U.S. Department of Interior Office of Inspector General 12030 Sunrise Valley Drive, Suite 230 Reston, VA 20191 Phone: Voice (703) 487-5345 FAX (703) 487-5214	All audits

Department of Justice	
U. S. Department of Justice Washington Regional Audit Office 1425 New York Ave, NW Suite 6001 Washington, DC 20005 (Mailing Address: P.O. Box 34190 Washington, DC 20043-4190) Phone: Voice (202) 616-4688 FAX (202) 616-4581	District of Columbia, Maryland, Virginia, and West Virginia

Department of Justice	
U.S. Department of Justice Philadelphia Regional Audit Office 701 Market Street, Suite 201 Philadelphia, PA 19106 Phone: Voice (215) 580-2111 FAX (215) 597-1348	For audits in Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont
U.S. Department of Justice Atlanta Regional Audit Office 75 Spring Street Suite 1130 Atlanta, GA 30303 Phone: Voice (404) 331-5928 FAX (404) 331-5046	For audits in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands
U.S. Department of Justice Chicago Regional Audit Office CitiCorp Center, 500 West Madison Suite 3510 Chicago, IL 60661 Phone: Voice (312) 353-1203 FAX (312) 886-0513	For audits in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin
U.S. Department of Justice Dallas Regional Audit Office 207 South Houston Street Box 4 (Room 575) Dallas, TX 75202 Phone: Voice (214) 655-5000 FAX (214) 655-5025	For audits in Arkansas, Louisiana, New Mexico, Oklahoma, and Texas,
U.S. Department of Justice Denver Regional Audit Office 1120 Lincoln Street, Suite 1500 Denver, CO 80203 Phone: Voice (303) 864-2000 FAX (303) 864-2004	For audits in Alaska, Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming
U.S. Department of Justice San Francisco Regional Audit Office 1200 Bayhill Drive, Suite 201 San Bruno, CA 94066 Phone: Voice (650) 876-9220 FAX (650) 876-0902	For audits in American Samoa, Arizona, California, Guam, Hawaii, Nevada, Trust Territories of the Pacific Islands, and the Commonwealth of Northern Mariana Islands

Department of Justice	
U.S. Department of Justice Assistant Inspector General for Audit 1425 New York Avenue, NW Suite 5001 Washington, DC 20005 (Mailing Address: P.O. Box 34190 Washington, DC 20043-4190) Phone: Voice (202) 616-4633 FAX (202) 616-1697	NATIONAL OFFICE CONTACT

Department of Labor	
National Single Audit Coordinator U.S. Department of Labor Office of Inspector General Francis Perkins Building Room N-4633 200 Constitution Avenue, N.W. Washington, DC 20210 Phone: Voice (202) 693-6993 E-mail: Reid.Melvin@oig.dol.gov Website: http://www.oig.dol.gov	All audits

Department of State	
U.S. Department of State Office of Inspector General OIG/AUD/CG 1700 North Moore Street Arlington, VA 22209 Phone: Voice (703) 284-2600 FAX (703) 284-2622	All audits

Department of Transportation	
U.S. Department of Transportation Office of Inspector General City Crescent Building Attn: National Single Audit Coordinator 10 South Howard Street, Suite 4500 Baltimore, MD 21201 Phone: Voice (410) 962-2630 FAX (410) 962-7469	All audits **For ALL Single Audit Report Due Date Requests:** Phone: Voice (202) 493-0223 FAX (202) 366-3530

Department of the Treasury	
Department of the Treasury Office of Inspector General Director, Banking and Fiscal Services 740 15th Street NW, Suite 600 Washington, DC 20220 Phone: Voice (202) 927-6512 FAX (202) 927-5379	All audits

Department of Veterans Affairs	
Director Office of Inspector General Financial Statement Audit Division (52CF) Department of Veterans Affairs 810 Vermont Ave. NW Washington, DC 20420 Phone: Voice (202) 565-7013 FAX (202) 565-7771	All audits

Agency for International Development	
USAID Attn: OIG/A/FA Room 8.10-10 1300 Pennsylvania Avenue, NW Washington, DC 20523-7802 Phone: Voice (202) 712-4902 FAX (202) 216-3598 E-Mail: faudit@usaid.gov Website: www.info.usaid.gov	For audits of all U. S. based not-for-profit organizations

Appalachian Regional Commission	
Appalachian Regional Commission Office of Inspector General 1666 Connecticut Ave. NW, Suite 215 Washington, DC 20009-1068 Phone: Voice (202) 884-7675 FAX (202) 884-7696 E-Mail: IG@ARC.GOV	All audits

Corporation for National and Community Service	
Office of the Inspector General Corporation for National and Community Service 1201 New York Avenue, NW Suite 830 Washington, DC 20525 Phone: Voice (202) 606-9360 FAX (202) 606-9397 E-Mail: s.axenfeld@cncsoig.gov Website : http://www.cncsig.gov	All audits

Environmental Protection Agency	
National Single Audit Coordinator Office of Inspector General Eastern Resource Center U.S. Environmental Protection Agency 3AI00 1650 Arch Street, 3rd Floor Philadelphia, PA 19103-2029 Phone: Voice (513) 487-2365 FAX (513) 487-2359 E-Mail: single.audit@epa.gov Website: www.epa.gov/oigearth	All audits

General Services Administration	
Deputy Inspector General for Finance and Administrative Audits Single Audit Coordinator: Anthony Mitchell General Services Administration 1800 F Street, Room 6046 Washington, DC 20405 Phone: Voice (202) 708-5340 FAX (202) 708-7494 E-Mail: anthony.mitchell@gsa.gov	All audits

National Aeronautics and Space Administration	
Director, Financial Statement Audits NASA Office of Inspector General 300 E Street, SW , Room 8V79 Washington, DC 20546-0001 Phone: Voice (202) 358-0629 FAX (202) 358-3241	All audits

National Archives and Records Administration	
Office of Inspector General National Archives at College Park 8601 Adelphi Road - Room 1300 College Park, MD 20740-6001 Phone: Voice (301) 837-3000 FAX (301) 837-3197	All audits

National Endowment for the Arts	
Office of Inspector General National Endowment for the Arts 1100 Pennsylvania Ave. NW, Room 601 Washington, DC 20506 Phone: Voice (202) 682-5402 FAX (202) 682-5649 E-Mail: shawd@arts.endow.gov Website: www.arts.endow.gov/learn/OIG/Contents.html	All audits

National Endowment for the Humanities	
Office of Inspector General National Endowment for the Humanities 1100 Pennsylvania Ave. NW, Room 419 Washington, DC 20506 Phone: Voice (202) 606-8350 FAX (202) 606-8329 E-Mail: oig@neh.gov	All audits

National Science Foundation	
Office of Inspector General National Science Foundation Associate Inspector General for Audit 4201 Wilson Boulevard, Suite 1135 Arlington, VA 22230 Phone: Voice (703) 292-7100 FAX (703) 292-9158	All audits

Nuclear Regulatory Commission	
Nuclear Regulatory Commission Office of Inspector General Mail Stop T5D28 Washington, DC 20555 ATTN: Anthony C. Lipuma, Team Leader Phone: Voice (301) 415-5915 FAX (301) 415-5091 E-Mail: acl@nrc.gov	All audits

Small Business Administration	
Assistant Inspector General for Auditing Operational Support Services Small Business Administration Office of Inspector General 409 Third Street SW, Suite 5600 Washington, DC 20416 Phone: Voice (202) 205-7203 FAX (202) 205-7874	All audits

Social Security Administration	
Social Security Administration Office of Inspector General City Center Square 1100 Main St. Suite 1101 Kansas City, MO 64105 Phone: Voice (816) 221-0315 E-Mail: Shannon.Agee@SSA.GOV	All audits

Tennessee Valley Authority	
Assistant Inspector General Audit Operations Tennessee Valley Authority Office of Inspector General 400 West Summit Hill Drive Knoxville, TN 37902-1499 Phone: Voice (865) 632-3437 FAX (865) 632-4130 Website: www.oig.tva.gov	All audits

Federal Agency Program Contacts			
CFDA	***Agency Contact(s)***	***E-Mail Address***	***Telephone Number***
10 – United States Department of Agriculture (USDA)			
10.001	James Gartner	James.Gartner@fas.usda.gov	202-720-0517
10.500	Jon Kavalauskus	jkavalauskas@nifa.usda.gov	202-401-4313
10.551 10.561	Jeff Cohen Deputy Associate Administrator Supplemental Nutrition Assistance Program Food & Nutrition Service	Jeff.cohen@fns.usda.gov	703-305-2022
10.553 10.555 10.556 10.559	Jon Garcia Head, Monitoring Section Program Analysis & Monitoring Branch Child Nutrition Division Food & Nutrition Service Belva Brennan Program Analyst Program Analysis & Monitoring Branch Child Nutrition Division Food & Nutrition Service	Jon.garcia@fns.usda.gov Belva.brennan@fns.usda.gov	703-305-2590 703-305-2590
10.557	Linda Clarke Program Analyst Funding, Reporting, Analysis & Monitoring Branch Supplemental Food Programs Division Food and Nutrition Service Joan Carroll Branch Chief Funding, Reporting, Analysis & Monitoring Branch Supplemental Food Programs Division Food and Nutrition Service	Linda.Clarke@fns.usda.gov Joan.Carroll@fns.usda.gov	703-305-2727 703-305-2729

Federal Agency Program Contacts			
CFDA	***Agency Contact(s)***	***E-Mail Address***	***Telephone Number***
10.558	Jon Garcia Head, Monitoring Section Program Analysis & Monitoring Branch Child Nutrition Division Food & Nutrition Service Belva Brennan Program Analyst Program Analysis & Monitoring Branch Child Nutrition Division Food & Nutrition Service	Jon.garcia@fns.usda.gov Belva.brennan@fns.usda.gov	703-305-2590 703-305-2590
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APPENDIX IV
INTERNAL REFERENCE TABLES

Programs (including cross-cutting sections) with section IV, "Other Information" descriptions in Parts 4 and 5:

CFDA Number	Title	Type A/B Program	Schedule of Expenditures of Federal Awards	Other
10.551	Supplemental Nutrition Assistance Program (SNAP)		X	
10.561	State Administrative Matching Grants for the Supplemental Nutrition Assistance Program			
10.553	School Breakfast Program (SBP)	X	X	
10.555	National School Lunch Program (NSLP)			
10.556	Special Milk Program (SMP)			
10.559	Summer Food Service Program for Children (SFSPC)			
10.558	Child and Adult Food Care Program (CACFP)	X	X	
10.760	Water and Waste Disposal Systems for Rural Communities	X	X	X
10.766	Community Facilities Loans and Grants	X	X	X
11.010	Community Adjustment Trade Assistance			
11.300	Investments for Public Works and Economic Development Facilities		X	
11.307	Economic Adjustment Assistance			
11.555	Public Safety Interoperable Communications Grant Program			X
14.157	Supportive Housing for the Elderly	X	X	
14.181	Supportive Housing for Persons with Disabilities (Section 811)	X	X	

CFDA Number	Title	Type A/B Program	Schedule of Expenditures of Federal Awards	Other
14.218	Community Development Block Grants/Entitlement Grants			X
14.253	Community Development Block Grant ARRA Entitlement Grants (CDBG-R) (Recovery Act Funded)			
14.254	Community Development Block Grants/Special Purpose Grants/Insular Areas - (Recovery Act Funded)			
14.228	Community Development Block Grants/State's Program and Non-Entitlement Grants in Hawaii			X
14.255	Community Development Block Grants/State's Program And Non-Entitlement Grants In Hawaii – (Recovery Act Funded)			
14.231	Emergency Shelter Grants Program			X
14.239	HOME Investment Partnerships Program			X
14.256	Neighborhood Stabilization Program (Recovery Act Funded)			X
14.257	Homelessness Prevention And Rapid Re-Housing Program (HPRP) (Recovery Act Funded)			X
14.318	Assisted Housing Stability and Energy and Green Retrofit Investments Program (Recovery Act Funded)			X
14.850	Public and Indian Housing	X	X	
14.862	Indian Community Development Block Grant Program			X
14.886	Indian Community Development Block Grant Program (Recovery Act Funded)			

CFDA Number	Title	Type A/B Program	Schedule of Expenditures of Federal Awards	Other
14.867	Indian Housing Block Grants			X
14.882	Native American Housing Block Grants (Formula) Recovery Act Funded			
14.887	Native American Housing Block Grants (Competitive) Recovery Act Funded			
14.871	Section 8 Housing Choice Vouchers	X	X	
14.880	Family Unification Program (FUP)			
14.872	Public Housing Capital Fund (CFP)	X	X	X
14.884	Public Housing Capital Fund Competitive (Recovery Act Funded)			
14.885	Public Housing Capital Fund Stimulus (Formula) Recovery Act Funded			
14.873	Native Hawaiian Housing Block Grants			X
14.883	Native Hawaiian Housing Block Grants (Recovery Act Funded)			
14.881	Moving to Work Demonstration Program	X	X	
14.907	Lead-Based Paint Hazard Control In Privately-Owned Housing (Recovery Act Funded)			X
14.908	Healthy Homes Demonstration Grants (Recovery Act Funded)			
14.909	Lead Hazard Reduction Demonstration Grant Program (Recovery Act Funded)			
14.910	Healthy Homes Technical Studies Grants (Recovery Act Funded)			
15.000	Bureau of Indian Affairs (BIA) Cross-Cutting Section		X	X
17.207	Employment Service/Wagner-Peyser Funded Activities		X	X
17.801	Disabled Veterans' Outreach Program (DVOP)			
17.804	Local Veterans' Employment Representative (LVER) Program			

CFDA Number	Title	Type A/B Program	Schedule of Expenditures of Federal Awards	Other
17.225	Unemployment Insurance	X	X	
20.106	Airport Improvement Program			X
21.012	Native Initiatives			
21.020	Community Development Financial Institutions Program	X	X	
66.458	Capitalization Grants for Clean Water State Revolving Funds			X
66.468	Capitalization Grants for Drinking Water State Revolving Fund			X
84.000	Cross-Cutting Section	X	X	X
84.032-G	Federal Family Education Loans - (Guaranty Agencies)		X	X
84.032-L	Federal Family Education Loans - (Lenders)		X	X
93.044	Special Programs for the Aging—Title III, Part B—Grants for Supportive Services and Senior Centers	X	X	
93.045	Special Programs for the Aging—Title III, Part C—Nutrition Services			
93.053	Nutrition Services Incentive Program			
93.705	ARRA – Aging Home-Delivered Nutrition Services for States			
93.707	ARRA – Aging Congregate Nutrition Services for States			
93.210	Tribal Self-Governance Program - IHS Compacts/Funding Agreements			X
93.268	Immunization Grants		X	X
93.712	ARRA - Immunization			

CFDA Number	Title	Type A/B Program	Schedule of Expenditures of Federal Awards	Other
93.558	Temporary Assistance for Needy Families	X	X	X
93.714	ARRA –Emergency Contingency Fund for Temporary Assistance for Needy Families (TANF) State Programs.			
93.716	ARRA – Temporary Assistance for Needy Families (TANF) Supplemental Grants			
93.568	Low-Income Home Energy Assistance	X	X	
93.569	Community Services Block Grant	X	X	
93.710	ARRA - Community Services Block Grant			
93.575	Child Care and Development Block Grant	X	X	X
93.596	Child Care Mandatory and Matching Funds of the Child Care and Development Fund			
93.713	ARRA – Child Care and Development Block Grant Program			
93.667	Social Services Block Grant	X	X	X
93.720	ARRA-Survey and Certification Ambulatory Surgical Center Healthcare-Associated Infection ((ASC-HAI) Prevention Initiative	X	X	X
93.775	State Medicaid Fraud Control Units			
93.776	Hurricane Katrina Relief			
93.777	State Survey and Certification of Health Care Providers and Suppliers			
93.778	Medical Assistance Program			
93.959	Block Grants for Prevention and Treatment of Substance Abuse	X	X	
93.991	Preventive Health and Health Services Block Grant	X	X	
93.994	Maternal and Child Health Services Block Grant to the States	X	X	
96.001	Social Security—Disability Insurance (DI)		X	
96.006	Supplemental Security Income (SSI)			

CFDA Number	Title	Type A/B Program	Schedule of Expenditures of Federal Awards	Other
97.004	State Domestic Preparedness Equipment Support Program (State Homeland Security Grant Program)	X	X	X
97.067	Homeland Security Grant Program			
97.024	Emergency Food And Shelter National Board Program		X	X
97.114	ARRA Emergency Food And Shelter National Board Program			
97.036	Disaster Grants - Public Assistance (Presidentially Declared Disasters)	X	X	X
97.039	Hazard Mitigation Grant (HMGP)	X	X	X
98.007	Food for Peace Development Assistance Program		X	X
98.008	Food for Peace Emergency Program			
84.007	Federal Supplemental Educational Opportunity Grants (FSEOG)		X	X
84.032	Federal Family Education Loans (FFEL)			
84.033	Federal Work-Study Program (FWS)			
84.037	Perkins Loan Cancellations			
84.038	Federal Perkins Loan (FPL)—Federal Capital Contributions			
84.063	Federal Pell Grant Program (PELL)			
84.268	Federal Direct Student Loans (Direct Loan)			
84.375	Academic Competitiveness Grants (ACG)			
84.376	National Science and Mathematics Access to Retain Talent (SMART) Grants (SMART Grants)			
84.379	Teacher Education Assistance for College and Higher Education Grants (TEACH Grants)			
84.408	Postsecondary Education Scholarships for Veteran's Dependents (Iraq and Afghanistan Service Grants (IASG)			

CFDA Number	Title	Type A/B Program	Schedule of Expenditures of Federal Awards	Other
93.264	Nurse Faculty Loan Program		X	
93.407	ARRA-Scholarships for Disadvantage Students		X	
93.408	ARRA-Nurse Faculty Loan Program		X	
93.425	Scholarships for Health Proofessions Students from Disadvantage Backgrounds (SDS)		X	
Multiple	R&D Cluster		X	X

The section IV, "Other Information," for the following BIA/DOI programs is located in 15.000, the BIA Cross-Cutting Section

CFDA Number	Title	Type A/B Program	Schedule Federal Awards	Other
15.021	Consolidated Tribal Government Program		X	X
15.022	Tribal Self-Governance		X	X

The section IV, "Other Information," for the following ED programs is located in 84.000, the ED Cross-Cutting Section

CFDA Number	Title	Type A/B Program	Schedule Federal Awards	Other
84.000	All applicable ED programs			X
84.010	Title I Grants to Local Educational Agencies	X	X	
84.389	Title I Grants to Local Educational Agencies, Recovery Act			
84.011	Migrant Education—State Grant Program	X	X	
84.027	Special Education—Grants to States (IDEA, Part B)	X	X	
84.173	Special Education—Preschool Grants (IDEA Preschool)			
84.391	Special Education—Grants to States (IDEA, Part B), Recovery Act			
84.392	Special Education—Preschool Grants (IDEA Preschool), Recovery Act			
84.048	Career and Technical Education - Basic Grants to States (Perkins IV)	X	X	
84.186	Safe and Drug-Free Schools and Communities—State Grants	X	X	
84.282	Charter Schools	X	X	
84.287	Twenty-First Century Community Learning Centers	X	X	
84.298	State Grants for Innovative Programs	X	X	

CFDA Number	Title	Type A/B Program	Schedule Federal Awards	Other
84.318	Education Technology State Grants	X	X	
84.386	Education Technology State Grants, Recovery Act			
84.357	Reading First State Grants	X	X	
84.365	English Language Acquisition Grants	X	X	
84.366	Mathematics and Science Partnerships	X	X	
84.367	Improving Teacher Quality State Grants	X	X	
84.377	School Improvement Grants	X	X	
84.388	School Improvement Grants, Recovery Act			

Program currently designated as "Higher Risk" by OMB pursuant to Circular A-133, §___.525(c)(2):

CFDA Number	Title
93.778	Medicaid Cluster

APPENDIX V
LIST OF CHANGES FOR THE 2011 COMPLIANCE SUPPLEMENT

This Appendix provides a list of changes from the 2010 OMB Circular A-133 Compliance Supplement, dated June 2010.

Table of Contents

- The Table of Contents has been changed to:
    - Modify the program title for the following programs in Parts 4 and 5 to make them consistent with the names as they appear in the *Catalog of Federal Domestic Assistance* (CFDA):

      CFDA 14.228, Community Development Block Grants/State's Program and Non-Entitlement Grants in Hawaii

      CFDA 14.255, Community Development Block Grants/State's Program and Non-Entitlement Grants in Hawaii – (Recovery Act Funded)

      CFDA 84.379, Teacher Education Assistance for College and Higher Education Grants (TEACH) Grants

      CFDA 93.889, National Bioterrorism Hospital Preparedness Program

    - Add to Part 4 CFDA 11.010, Community Trade Adjustment Assistance
    - Add to Part 4 CFDA 12.400, Military Construction, National Guard
    - Add to Part 4 CFDA 15.236, Environmental Quality and Protection Resource Management
    - Add to Part 4 CFDA 15.504, Water Reclamation and Reuse Program
    - Add to Part 4 CFDA 16.803, Recovery Act – Edward Byrne Memorial Justice Assistance Grant (JAG) Program / Grants to States and Territories
    - Add to Part 4 CFDA 16.804, Recovery Act – Edward Byrne Memorial Justice Assistance Grant (JAG) Program / Grants to Units of Local Government
    - Add to Part 4 CFDA 20.223, Transportation Infrastructure Finance and Innovation Act (TIFIA) Program
    - Add to Part 4 CFDA 20.933, Surface Transportation Infrastructure-Discretionary Grants for Capital Investments II
    - Add to Part 4 CFDA 21.012, Native Initiatives

- Add to Part 4 CFDA 81.041, State Energy Program
- Add to Part 4 CFDA 81.128, Energy Efficiency and Conservation Block Grant Program (EECBG)
- Add to Part 4 CFDA 84.377, School Improvement Grants
- Add to Part 4 CFDA 84.388, School Improvement Grants, Recovery Act
- Add to Part 4 CFDA 84.395 – State Fiscal Stabilization Fund (SFSF) – Race-to-the-Top Incentive Grants, Recovery Act
- Add to Part 4 CFDA 84.410, Education Jobs Fund
- Add to Part 4 CFDA 93.508, Affordable Care Act (ACA) Tribal Maternal, Infant, and Early Childhood Home Visiting Program
- Add to Part 4 CFDA 93.718, Health Information Technology Regional Extension Centers Program
- Add to Part 4 CFDA 93.719, ARRA – State Grants to Promote Health Information Technology
- Add to Part 4 CFDA 93.720 –ARRA – Survey and Certification Ambulatory Surgical Center Healthcare-Associated Infection (ASC-HAI) Prevention Initiative
- Delete from Part 4 CFDA 84.357, Reading First State Grants, which is no longer an active program.
- Delete from Part 4 CFDA 84.938, Hurricane Education Recovery, which is no longer an active program.
- Add to Part 5 CFDA 84.037, Perkins Loan Cancellations
- Add to Part 5 CFDA 84.408, Postsecondary Education Scholarships for Veteran's Dependents
- Add to Part 5 CFDA 93.264, Nurse Faculty Loan Program (NFLP)
- Add to Part 5 CFDA 93.407, ARRA – Scholarships For Disadvantaged Students
- Add to Part 5 CFDA 93.408, ARRA – Nurse Faculty Loan Program

Part 1 – Background, Purpose, and Applicability

- This section has been updated throughout for the effective date of this Supplement.

Part 2 – Matrix of Compliance Requirements

- Updated matrix to add and remove programs to make it consistent with the Table of Contents and Parts 4 and 5.
- Show in bold font all programs in the Supplement affected by ARRA
- For existing programs that added or removed compliance requirements, the matrix was updated or corrected based on the program supplement in Part 4 and as follows.
    - Added M, "Subrecipient Monitoring," for CFDA 11.557, Broadband Technologies Opportunity Program
    - Added L, "Reporting," for CFDA 15.022, Tribal Self-Governance
    - Added N, "Special Tests and Provisions," for CFDA 15.047, Indian Education Facilities, Operation, and Maintenance (due to ARRA funding)
    - Deleted M, "Subrecipient Monitoring," for CFDA 16.710, Public Safety Partnership and Community Policing Grants
    - Added K, "Real Property Acquisition and Relocation Assistance," for CFDA 97.039, Hazard Mitigation Grant Program (HMGP).

Global Requirements Affecting Parts 3, 4, and 5

Several global requirements affect Part 3 and the individual program supplements/clusters in Parts 4 and 5the 2011 OMB Circular A-133 Compliance Supplement.

First, agencies were required to transition from the use of the SF-269, *Financial Status Report*, and SF-272, *Federal Cash Transactions Report*, to use of the SF-425, *Federal Financial Report*, by October 1, 2009. While most agencies, programs, or awards have fully transitioned to the new form, for the 2011 Supplement, references to the SF-269 and SF-272 have been retained to inform the auditor if for some part of the audit period the prior form may have been submitted. For those programs that have completed the transition since the 2010 Supplement, changes have been made to reflect that; however, they are not called out separately in this Appendix. Therefore, in most cases, the superseded reports are shown as "Not Applicable." If there is a distinction between the use of the SF-425 for cash reporting and expenditure reporting, it is noted.

Second, in order to assist the auditor to determine whether reporting under the Transparency Act applies, a new "**III.L.5, Subaward Reporting under the Transparency Act,**" has been added to each program supplement/cluster to indicate whether this reporting is "Applicable" or "Not Applicable." Note that, at the current time, this reporting at the program level may be "Not Applicable" for several different reasons: (1) there are no subawards under the program; (2) the program is exempt from this requirement because it is ARRA-funded; or (3) the program is other than a grant or cooperative agreement program. In the latter case, this designation may change once additional types of financial assistance are made subject to the Transparency Act's reporting requirements.

Because programs/awards with ARRA funding are exempt from the Transparency Act subaward reporting requirements, we have noted that for those programs or clusters with ARRA and non-ARRA funding, that the Transparency Act reporting only applies to non-ARRA funds.

Part 3 – Compliance Requirements

- Updated "Introduction."
- Updated, I, "Procurement and Suspension and Debarment" by including additional information related to international agreements and the Buy-American Act.
- Updated L, "Reporting," to clarify the use of "best available data" for ARRA quarterly reporting.
- Updated L, "Reporting," and M, "Subrecipient Reporting," to add requirements related to subaward reporting under the Transparency Act and, as appropriate, compare them with ARRA requirements.
- Updated M, "Subrecipient Monitoring," to add the requirement that non-ARRA first-tier subrecipients must obtain DUNS numbers as part of eligibility for a subaward and to clarify that, for ARRA awards, a subrecipient is not required to be registered in CCR at the time of the subaward.
- Removed statement in each section of Part 3 related to dual-purpose testing because this is covered in the AICPA Audit Guide-Government Auditing standards and Circular A-133 Audits and inclusion in the Supplement is redundant.

Part 4 – Agency Program Requirements

In addition to any changes noted in the Table of Contents (program additions, deletions, or name changes or corrections) or above under "global requirements," the following changes have been made in Part 4:

- **CFDA 10.500** – Updated II, "Program Procedures" and III.L.1, "Reporting – Financial Reporting."

- **CFDA 10.551, 10.561** – Updated II, "Program Procedures;" III.G.1, "Matching, Level of Effort, Earmarking – Matching;" and IV, "Other Information." Added III.H, "Period of Availability of Federal Funds."

- **CFDA 10.553, 10.555, 10.556, and 10.559** – Updated III.E.1.c, "Eligibility – Eligibility for Individuals;" III.I.1.c, "Procurement and Suspension and Debarment; and III.L.1, "Reporting – Financial Reporting." Deleted III.L.1.h, "Reporting – Financial Reporting – Subrecipient Financial Reporting," because it repeated general requirements in Part 3 of the Supplement.

- **CFDA 10.557** – Updated II, "Program Procedures;" III.A.1.c, "Activities Allowed or Unallowed;" III.B.2.b, "Allowable Costs/Cost Principles;" III.E.1.b. and c, "Eligibility – Eligibility for Individuals;" and III.J, "Program Income."

- **CFDA 10.558** – Updated the entire program supplement to change "administering agency(ies)" to "State agency(ies)." Updated II, "Program Procedures;" and III.L.1, "Reporting – Financial Reporting." Deleted III.L.1.h, "Reporting – Financial Reporting – Subrecipient Financial Reporting," because it repeated general requirements in Part 3 of the Supplement.

- **CFDA 10.582** – Updated III.E.3.c, "Eligibility – Eligibility for Subrecipients."

- **CFDA 10.760** – III.G.1, "Matching, Level of Effort, Earmarking – Matching;" and III.L.1, "Reporting – Financial Reporting."

- **CFDA 10.766** – Updated II, "Program Procedures."

- **CFDA 11.300** – Added CFDA 11.010 to this cluster and changed name of cluster to Economic Development Cluster; made additional changes to reflect inclusion of new program or other updates, including I, "Program Objectives;" II, "Program Procedures;" III.A.1, Activities Allowed or Unallowed – Activities Allowed:" III.C, "Cash Management;" III.D, "Davis-Bacon Act;" III.F, "Equipment and Real Property Management;" III.G.1, "Matching, Level of Effort, Earmarking – Matching;" III.L.1, "Reporting – Financial Reporting;" and III.L.3, "Reporting – Special Reporting." III.N.2, "Special Tests and Provisions – Loan Requirements" was revised to remove the certification requirement.

- **CFDA 11.557** – Updated throughout to reflect additional initiatives, rounds of funding, and lessons learned. This includes changes to I, "Program Objectives;" II, "Program Procedures," III.A, "Activities Allowed or Unallowed;" III.D, "Davis-Bacon-Act;" III.G.1, "Matching, Level of Effort, Earmarking – Matching;" III.H, "Period of Availability of Federal Funds;" III.L.2, "Reporting – Performance Reporting;" and III.N. 2, "Special Tests and Provisions – Nondiscrimination and Interconnection Obligations" (renumbered as III.N.1). Deleted III.N.1, "Special Tests and Provisions – Broadband Data Collection." Added III.F, "Equipment and Real Property Management," III.J, "Program

Income;" and III.N.2, "Special Tests and Provisions – Duplicate Federal Funding for Broadband Projects."

- **CFDA 11.558** – Updated I, "Program Objectives;" II, "Program Procedures," III.A, "Activities Allowed or Unallowed;" and III.H, "Period of Availability of Federal Funds."

- **CFDA 14.157** – Updated II, "Program Procedures."

- **CFDA 14.169** – Updated II. "Program Procedures," and III.A, "Activities Allowed or Unallowed."

- **CFDA 14.181** – Updated II, "Program Procedures."

- **CFDA 14.218, 14.253, 14.254** – Updated II, "Program Procedures."

- **CFDA 14.228, 14.255** – Updated program names (see changes to Table of Contents above); I, "Program Objectives;" II, "Program Procedures;" III.A, "Activities Allowed or Unallowed;" III.G.3, "Matching, Level of Effort, Earmarking – Earmarking;" III.H, "Period of Availability of Federal Funds;" III.J, "Program Income;" III.L.1, "Reporting – Financial Reporting;" III.N.3, "Special Tests and Provisions – Citizen Participation;" and IV, "Other Information."

- **CFDA 14.257 -**Updated II, "Program Procedures – Availability of Other Program Information," and III.L.1, "Reporting – Financial Reporting."

- **CFDA 14.850** – Updated II, "Program Procedures," and III.A.1, "Activities Allowed or Unallowed." In III.N, "Special Tests and Provisions," updated N.4, "Classification of Costs;" N.5, "Balance Sheet Allocations;" N.6, "Fees Charged for Centralized Services;" N.7, "Asset Management Fee;" and N.8, "Management Fees." Added III.N.9, "Allocated Overhead" and renumbered N.9, "Funding Central Office with Capital Fund Program Funds," to N.10; and renumbered and updated III.N.10, "Recording of Declarations of Trust Against Public Housing Property," and III. N.11, "Depository Agreement," to N.11 and N.12, respectively.

- **CFDA 14.871, 14.880** – Updated III.A.1.b, "Activities Allowed or Unallowed."

- **CFDA 14.872, 14.884, 14.885** – Updated II, "Program Procedures;" III.A.1.b, "Activities Allowed or Unallowed;" III.G.3, "Matching, Level of Effort, Earmarking – Earmarking;" III.I, "Procurement and Suspension and Debarment;" and III.N.8, "Special Tests and Provisions – Environmental Review."

- **CFDA 15.231** – Updated I, "Program Objectives."

- **CFDA 15.426** – Updated I, "Program Objectives," and II, "Program Procedures."

- **CFDA 15.504** – Updated II, "Program Procedures;" III.A.1.b, "Activities Allowed or Unallowed;" III.D, "Davis-Bacon Act;" and III.G.1, "Matching, Level of Effort, Earmarking – Matching."

- **CFDA 15.518** – Updated II, "Program Procedures;" III.C, "Cash Management;" and III.D, "Davis-Bacon Act."

- **CFDA 15.605** – Updated II, "Program Procedures;" III.A.1, "Activities Allowed or Unallowed;" and III.G.1.a, "Matching, Level of Effort, Earmarking – Matching."

- **CFDA 16.710** – Updated II, "Program Procedures;" III.A, "Activities Allowed or Unallowed;" III.B.1, "Allowable Costs/Cost Principles;" III.G.1.a, "Matching, Level of Effort, Earmarking – Matching;" III.L.1, "Reporting – Financial Reporting;" and III.L.2, "Reporting – Performance Reporting."

- **CFDA 16.738** – Added two ARRA programs to make this a cluster. Updated I, "Program Objectives;" II, "Program Procedures;" and III.A, "Activities Allowed or Unallowed." Added III.D, "Davis-Bacon Act." Updated III.L.1, "Reporting – Financial Reporting."

- **CFDA 17.225** – Updated for changes in availability of unemployment compensation and to add Emergency Unemployment Compensation 2008 (EUC08). Changes made under I, "Program Objectives;" II, "Program Procedures;" III.E.1, "Eligibility – Eligibility for Individuals;" III.G.1, "Matching, Level of Effort, Earmarking – Matching;" III.H, "Period of Availability of Federal Funds;" and III.N.4, "Special Tests and Provisions – FAC Benefit Payments." Added a new III.N.5, "Special Tests and Provisions – EUC Benefit Payments."

- **CFDA 20.000** – Updated III.I, "Procurement and Suspension and Debarment," and III.N.1, "Special Tests and Provisions – Charter Service."

- **CFDA 20.205, 20.219, 23.003, 20.933** – Updated II, "Program Procedures."

- **CFDA 20.500, 20.507** – Updated II, "Program Procedures," and III.L.1, "Reporting – Financial Reporting."

- **CFDA 20.509** – Updated III.G.1, "Matching, Level of Effort, Earmarking – Matching;" and III.L.1, "Reporting – Financial Reporting."

- **CFDA 21.020** – To reflect inclusion of the Native American portion of the program, updated I, "Program Objectives;" II, "Program Procedures;" III.A, "Activities Allowed or Unallowed;" III.E.3, "Eligibility – Eligibility for Subrecipients;" and III.G.1, "Matching, Level of Effort, Earmarking – Matching;" Also, removed III.B, "Allowable Costs/Cost Principles," because it does not

contain program-specific information; and updated III.L.1, "Reporting – Financial Reporting," and IV, "Other Information."

- **CFDA 66.458** –Updated language in IV, "Other Information," to clarify the nature of subawards and the effect on completing the Schedule of Expenditures of Federal Awards (SEFA).

- **CFDA 66.468** – Updated language in IV, Other Information, to clarify the nature of subawards and the effect on completing the SEFA.

- **CFDA 84.000** – Added programs CFDA 84.377, CFDA 84.388, CFDA 84.394, CFDA 84.395, CFDA 84.397, and CDFA 84.410 throughout the section. Deleted programs CFDA 84.357 and CFDA 84.938. Updated Introduction; II, "Program Procedures;" III.B.1, "Allowable Costs/Cost Principles;" III.C, "Cash Management;" III.G.2 and 3, "Matching, Level of Effort, Earmarking – Level of Effort" and "Matching, Level of Effort, Earmarking – Earmarking;" III.H, "Period of Availability of Federal Funds;" III.L.1, "Reporting – Financial Reporting;" III.N.2, "Special Tests and Provisions – Schoolwide Programs (SEAs/LEAs);" and III.N.3, "Special Tests and Provisions – Comparability (SEAs/LEAs)." III.L.1, "Reporting – Financial Reporting." Deleted III.L.1.f, "Reporting – Financial Reporting," because it repeated general requirements in Part 3 of the Supplement.

- **CFDA 84.010, 84.389** – Updated II, "Program Procedures;" III.A.2, "Activities Allowed or Unallowed;" and III.G.3, "Matching, Level of Effort, Earmarking – Earmarking." Added III.L.2, "Reporting – Performance Reporting."

- **CFDA 84.011** – Updated III.E.1, "Eligibility – Eligibility for Individuals," and III.L.3, "Reporting – Special Reporting." In III.N, "Special Tests and Provisions," updated the following sections: N.4, "Priority for Services;" N.5, "Subgrant Process (SEAs);" and N.6, "Child Counts – Quality Control Process."

- **CFDA 84.027, 84.173, 84.391, 84.392** – Updated III.B, "Allowable Costs/Cost Principles;" III.G.2 and 3, "Matching, Level of Effort, Earmarking – Level of Effort," and "Matching, Level of Effort, Earmarking – Earmarking;" and III.L.3, "Reporting – Special Reporting."

- **CFDA 84.032-G** – Updated II, "Program Procedures."

- **CFDA 84.032-L** – Updated I, "Program Objectives;" II, "Program Procedures;" and III.L.1.f, "Reporting – Financial Reporting." In III.N, "Special Tests and Provisions," deleted N.2, "Loan Origination and Lender Loan Fees;" renumbered and updated from N.3 to N.2, "Interest Benefits;" renumbered and updated from N.4 to N.3, "Special Allowance Payments;" renumbered N.5 through N.10, to N.4 through N.9, respectively; deleted N.11, "Consolidation Loans," and N.12, "Prohibited Inducements;" updated and renumbered N.13, "Making or Holding

Loans as a Trustee for an Institution of Higher Education or an Affiliated Organization;" to N. 10; and deleted N.14, "School as Lender Eligibility (Applicable only to schools that are Lenders)."

- **CFDA 84.042, 84.044, 84.047, 84.066, 84.217** – Updated I, "Program Objectives;" II, "Program Procedures;" III.A.1.b, "Activities Allowed or Unallowed;" III.E.1.a, "Eligibility – Eligibility for Individuals;" and III.G.3, "Matching, Level of Effort, Earmarking – Earmarking."

- **CFDA 84.181, 84.393** – Updated I, "Program Objectives;" II, "Program Procedures;" III.A, "Activities Allowed or Unallowed;" and III.B, "Allowable Costs/Cost Principles."

- **CFDA 84.282** – Updated II, "Program Procedures;" III.A, "Activities Allowed or Unallowed;" and III.G.3, "Matching, Level of Effort, Earmarking – Earmarking."

- **CFDA 84.394, 84.397** – Added references to the ED Cross-Cutting Section in III.A, "Activities Allowed or Unallowed;" III.C, "Cash Management;" III.G.2.2, "Matching, Level of Effort, Earmarking – Level of Effort – Supplement Not Supplant;" and III.H, "Period of Availability of Federal Funds."

- **CFDA 93.210** – Updated citation under III.E.1, "Eligibility – Eligibility for Individuals," and updated III.J, "Program Income."

- **CFDA 93.268, 93.712** – Updated II, "Program Procedures;" III.N.1, "Special Tests and Provisions – Control, Accountability, and Safeguarding of Vaccine;" and IV, "Other Information."

- **CFDA 93.556** – Updated I, "Program Objectives;" III.A, "Activities Allowed or Unallowed;" and III. G.1, 2.2 and 3, "Matching, Level of Effort, Earmarking – Level of Effort – Matching, Level of Effort – Supplement Not Supplant, and Earmarking," respectively.

- **CFDA 93.558** – Updated II, "Program Procedures;" III.L.1, "Reporting – Financial Reporting;" and III.N.6, "Special Tests and Provisions – TANF Emergency Fund Grants."

- **CFDA 93.563** – Updated to III.L, "Reporting" to address effect of ARRA. Updated III.N.3 and N.4, "Special Tests and Provisions – Securing and Enforcing Medical Support Obligations – State Programs" and "Provision of Child Support Services for Interstate Cases – State Programs," respectively.

- **CFDA 93.568** – Updated I, "Program Procedures;" II, "Program Objectives;" III.E.1, "Eligibility – Eligibility for Individuals;" III.H, "Period of Availability of Federal Funds; and III.L, Reporting."

- **CFDA 93.575, 93.596, 93.713** – Updated I, "Program Objectives;" II, "Program Procedures;" III.A, "Activities Allowed or Unallowed;" III.E.1, "Eligibility – Eligibility for Individuals;" and III.H, "Period of Availability of Federal Funds." Added III.E.2, "Eligibility – Eligibility for Groups of Individuals or Area of Service Delivery" (by moving coverage from III.E.1); III.M, "Subrecipient Monitoring;" and III.N, "Special Tests and Provisions."

- **CFDA 93.600, 93.708, 93.709** – Updated III.E.1, "Eligibility – Eligibility for Individuals." Added III.F, "Equipment and Real Property Management." Deleted III,N, "Special Tests and Provisions" as no longer necessary since the information is collected in another way.

- **CFDA 93.645** – Updated I, "Program Objectives;" II., "Program Procedures;" III.G.1, Matching, Level of Effort, Earmarking – Matching;" and III.G.3, "Matching, Level of Effort, Earmarking – Earmarking."

- **CFDA 93.658** – Updated II, "Program Procedures;" III.A, "Activities Allowed or Unallowed;" III.E. 1, "Eligibility – Eligibility for Individuals;" III.G.1, Matching, Level of Effort, Earmarking – Matching; III.H, "Period of Availability of Federal Funds;" and III.L.1, "Reporting Reporting – Financial Reporting." Many of the changes were due extension of eligibility to Tribes and tribal entities and to a temporary increase in the FMAP rates.

- **CFDA 93.659** – Updated II, "Program Procedures;" III.A, "Activities Allowed or Unallowed;" III.E. 1, "Eligibility – Eligibility for Individuals;" III.G.1, "Matching, Level of Effort, Earmarking – Matching;" III.H, "Period of Availability of Federal Funds;" and III.L.1, "Reporting Reporting – Financial Reporting." Added III.G.2.1, "Matching, Level of Effort, Earmarking – Level of Effort – Maintenance of Effort." Most of the changes were due extension of eligibility to Tribes and to a temporary increase in the FMAP rates.

- **CFDA 93.767** – Updated II, "Program Procedures."

- **CFDA 93.775, 93.776, 93.777, 93.778** – Added CFDA 93.720 to the cluster. Updated Introduction, I, "Program Objectives," II, "Program Procedures;" III.A., "Activities Allowed or Unallowed;" III.N.3, "Special Tests and Provisions – ADP Risk Analysis and System Security Review;" and IV, "Other Information," to, among other things, address health care reform changes affecting (or with future effect) for this program. Deleted outdated information in III.E.1, "Eligibility – Eligibility for Individuals;" and, in its entirety, deleted III.N. 6, "Special Tests and Provisions – Managed Care" (and reference under III.A.3, "Activities Allowed or Unallowed"). Added a new III.N.6, "Special Tests and Provisions – Medicaid Fraud Control Unit."

- **CFDA 93.889** – Updated name of program and II, "Program Procedures." Added III.G. 1 and III.G.2.1, "Matching, Level of Effort, Earmarking – Matching," and

"Matching, Level of Effort, Earmarking – Level of Effort – Maintenance of Effort," respectively.

- **CFDA 93.959** – Changed III.L.3, "Reporting – Special Reporting" to "Not Applicable" by deleting outdated requirement.

- **CFDA 93.991** – Updated I, "Program Objectives," and III.A.1, "Activities Allowed or Unallowed."

- **CFDA 94.006** –Updated I, "Program Objectives;" II, "Program Procedures;" III.A.1, "Activities Allowed or Unallowed;" III.E.1, "Eligibility – Eligibility for Individuals;" III.G.1, "Matching, Level of Effort, Earmarking – Matching;" and III.G.3, "Matching, Level of Effort, Earmarking – Earmarking." Added III.G.2.2, "Matching, Level of Effort, Earmarking – Level of Effort – Maintenance of Effort."

- **CFDA 94.011, 94.016** – Updated II, "Program Procedures," and III.E.1, "Eligibility – Eligibility for Individuals."

- **CFDA 97.024, 97.114** – Updated II, "Program Procedures."

- **CFDA 97.036** – Updated II, "Program Procedures."

- **CFDA 97.039** – Updated III.G.1, "Matching, Level of Effort, Earmarking – Matching," and IV, "Other Information."

- **CFDA 97.067, 97.004** – Updated II, "Program Procedures;" III.A., "Activities Allowed or Unallowed;" III.G.3, "Matching, Level of Effort, Earmarking – Earmarking;" and IV, "Other Information." Date references were changed in these and other sections, as appropriate, to include FY 2010 requirements.

- **CFDA 97.109** – Updated I, "Program Objectives," and II, "Program Procedures."

- **CFDA 98.007** – Updated I, "Program Objectives," and II, "Program Procedures."

Part 5 – Clusters of Programs

- **Student Financial Assistance Cluster**

  - Added CFDA 84.037 and CFDA 84.408. Updated the title of CFDA 84.376 (throughout where applicable).

  - Added CFDA 93.264, CFDA 93.407, and CFDA 93.408

  - Updated II, "Program Procedures;" III.A, "Activities Allowed or Unallowed;" III.C, "Cash Management;" III.E.1, "Eligibility – Eligibility for Individuals;" III.G.1, "Matching, Level of Effort, Earmarking –

Matching" and G.3., Matching, Level of Effort, Earmarking – Earmarking;" III.J, "Program Income;" and III.L.1, "Reporting – Financial Reporting." In III.N, "Special Tests and Provisions," updated the following: N.2, "Verification;" N.3, "Disbursements To or On Behalf of Students;" N.4.a, "Return of Title IV Funds – Applicable After a Student Begins Attendance;" N.4.b, "Return of Title IV Funds – Applicable for a Student Who Does Not Begin Attendance;" N.7, "Federal Work-Study Agreements;" and N.9, "Institutional Eligibility." Also in III.N, "Special Tests and Provisions," changed the name and updated N.5, "Enrollment Reporting (FFEL and Direct Loan)," and N.12, "Denying Students' Access to Lenders of Their Choice." Updated IV, "Other Information." Updated Appendix A, "Student Eligibility Compliance Requirements."

- **Research and Development Cluster**
  - Updated III.L.1, "Reporting – Financial Reporting;" III.N.2, "Special Tests and Provisions – Indirect Cost Limitation;" and IV, "Other Information."
- **Other Clusters**
  - Updated list of other clusters to reflect two new clusters, remove one cluster from "Programs Not Included in this Supplement Deemed to Be Other Clusters", and add programs added to existing clusters. The Rural Rental Housing Cluster was deleted because CFDA 10.427, Rural Rental Assistance Payments, only provides direct assistance to individual and is

Part 6 – Internal Control

- No changes.

Part 7 – Guidance for Auditing Programs Not Included in This Compliance Supplement

- Added cross reference to list of ARRA programs in Appendix VII.

Appendix I – Federal Programs Excluded from the A-102 Common Rule

- No changes.

Appendix II – Federal Agency Codification of Certain Governmentwide Grant Requirements

- Updated to reflect agency implementation of 2 CFR part 180.

Appendix III – Federal Agency Contacts for A-133 Audits

- Modified to update responsible offices and related information, as appropriate.

- Added table to include program contacts for each program/cluster listed in Parts 4 and 5 of the Supplement

Appendix IV – Internal Reference Tables

- Updated tables for changes in this Supplement.

Appendix V – List of Changes for the 2011 Compliance Supplement

- Updated to provide a list of changes from the OMB Circular A-133 Compliance Supplement, issued in June 2010, to this 2011 Supplement.

Appendix VI – Disaster Waivers and Special Provisions Affecting Single Audits

- Deleted coverage for programs for which waivers or special provisions are no longer applicable.

Appendix VII – Other OMB Circular A-133 Advisories

- Updated to include a list of ARRA programs not covered in Parts 4 or 5 of the Supplement, but potentially subject to an A-133 audit.

- Updated to include ARRA-funded programs not subject to an A-133 audit.

Appendix VIII – SSAE 16 Examinations of EBT Service Organizations

- Updated to reflect current requirements.

Appendix IX – Compliance Supplement Core Team

- Updated to recognize contributions of current interagency team responsible for the production of this Supplement.

APPENDIX VI
DISASTER WAIVERS AND SPECIAL PROVISIONS AFFECTING SINGLE AUDITS

Changes to Compliance Requirements

Recipients affected by Hurricanes Katrina and Rita in 2005, either directly or indirectly, may be covered by waivers and/or special provisions that modify the terms and conditions of their awards, including the types of compliance requirements described in this Compliance Supplement. In some cases, the waiver or special provision may apply to Hurricane Wilma as well. This Appendix provides updated information on the waivers and special provisions granted by Federal agencies. A "waiver," for purposes of this Appendix, is elimination of or change in a substantive compliance requirement. A "special provision," for purposes of this Appendix, is extension of a due date or deadline for an action that is otherwise unchanged.

This Appendix includes information to assist the auditor in determining what, if any, changes they need to be aware of when performing an audit that covers the period during which requirements may have been lifted or modified. Auditors engaged to perform single audits should consult the resources described here to determine if a particular recipient or program is covered by a waiver. While most of the Hurricane Katrina and Rita waivers affect entities in Louisiana, Mississippi, Alabama, and Florida, they also affect numerous other States and entities that provided services to displaced individuals. However, because this Appendix is a resource that provides generally applicable information only, auditors also should inquire of auditee officials whether they are aware of any special provisions or waivers affecting their awards. Because some State or local governments may have issued waivers (i.e., a waiver of out-of-state tuition for hurricane victims that might impact student financial needs calculations), the auditor also should inquire of auditee officials whether they are aware of any State or local waiver that might impact Federal requirements. In most cases, copies of waivers and special provisions issued by the Federal Government also are available on Federal agency websites. Unless modified by waivers or special provisions, compliance requirements of law and regulation are applicable to grantees affected by disasters.

Availability of Other Information

Auditors also should refer to http://www.gao.gov/govaud/hurricanedocument.pdf for temporary exemptions and guidance issued by the Government Accountability Office related to the governmental auditing standards.

Suggested Audit Procedures

For grantees affected by Hurricanes Katrina, Rita, or Wilma, as applicable, auditors should perform the following procedures to determine if modifying provisions or waivers apply:

1. Inquire of the auditee whether it is aware of any disaster-related special provisions, including any specific waivers available as a result of Hurricane Katrina or Rita or, where applicable, Wilma. Obtain and examine these provisions/waivers.

2. Consult Parts 4 and 5 of this Compliance Supplement for information about any additional special disaster-related provisions affecting individual programs.

3. Also, for each major Federal program, consult the home page for the department/agency and/or program for information about waivers and special provisions.

4. In performing the audit, the auditor will use Parts 4, 5, or 7 as appropriate. For any modifying provision or waiver, whether explained or referenced in this Appendix or made known to the auditor by the auditee, the auditor should review and evaluate the content, validity, scope, and applicability of the provision or waiver, with particular attention to when it was in effect, and determine whether it excuses the grantee from complying with the compliance requirement(s) at issue.

5. If there are no valid disaster-related special provisions or waivers that modify a compliance requirement, and the requirement has not been adhered to, the auditor must report a finding of non-compliance in accordance with the requirements of OMB Circular A-133, Paragraph __.510. However, if the auditee and/or auditor are of the opinion that circumstances resulting from the cited natural disasters caused or contributed to the non-compliance, such circumstances should be explained in the description of the audit finding and/or the views of responsible officials included with the audit findings. Audit resolution officials will consider such causes in their resolution action, in accordance with the applicable statute and regulations.

PART 4 – AGENCY PROGRAM REQUIREMENTS

Following is a table that indicates which programs are affected by waivers and special provisions and whether they are ones included in Parts 4 or 5 of this Compliance Supplement.

CFDA Number	Waiver/Special Provision	Part 4 or 5
14.218	Waiver	Part 4
14.228	Waivers	Part 4
14.231	Waivers	Part 4
14.239	Waivers	Part 4
97.036	Emergency Declarations	Part 4

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

CFDA 14.218 COMMUNITY DEVELOPMENT BLOCK GRANTS/ENTITLEMENT GRANTS

WAIVER – On September 5, 2005, HUD issued a statutory suspension of the 15 percent public service expenditure cap applicable to Community Development Block Grant (CDBG) funds for purposes related to Hurricane Katrina assistance efforts. This suspension was extended to Hurricane Rita recovery efforts on October 13, 2005.

HUD Waivers for the City of Moss Point, Mississippi

On December 21, 2005, HUD issued a series of regulatory waivers and statutory suspensions to the City of Moss Point, Mississippi, to help the City recover from the effects of Hurricane Katrina. The waivers and suspensions are as follows:

WAIVER – HUD waived the 15 percent public service cap for Moss Point contained at 24 CFR section 570.201, and acknowledges that the City will utilize the statutory suspension of the 15 percent cap contained in Section 105(a)(8) of the Housing and Community Development Act of 1974, as amended, that was suspended on September 5, 2005.

WAIVER – HUD waived 24 CFR section 570.207(b)(1) to allow the City to purchase generators for sanitary and water systems and similar public purposes.

WAIVER – HUD suspended Section 105 of the Housing and Community Development Act of 1974, as amended, to permit the City to use CDBG funds for new housing construction. HUD also has waived 24 CFR section 570.207(b)(3) to permit the city to utilize CDBG funds for new construction activities. This waiver and suspension are effective through September 30, 2007.

HUD Waivers for the City of Gulfport, Mississippi

On December 21, 2005, HUD issued a series of regulatory waivers and statutory suspensions to the City of Gulfport, Mississippi, to help the City recover from the effects of Hurricane Katrina. The waivers and suspensions are as follows:

WAIVER – HUD waived the 15 percent public service cap for Gulfport contained at 24 CFR section 570.201, and acknowledges that the city will utilize the statutory suspension of the 15 percent cap contained in Section 105(a)(8) of the Housing and Community Development Act of 1974, as amended, that was suspended on September 5, 2005.

WAIVER – HUD waived 24 CFR section 570.208(a)(4)(ii) to remove the requirement that to retain jobs the recipient must document that jobs would actually be lost without CDBG assistance.

WAIVER – HUD waived 24 CFR sections 570.208(a)(4)(iv)(A)(1) and (B) and (a)(4)(v) to allow the City to presume that any census tract meets the criteria of paragraph (a)(4)(v) if at least 51 percent of the residents of the tract are of low- and moderate-income, according to either the latest low- and moderate-income summary data or a more recent survey.

WAIVER – HUD has suspended the provisions of Section 106 of National Affordable Housing Act and waives 24 CFR section 91.225(a)(6) and 24 CFR section 570.903 through December 31, 2006 to give the City relief from the consolidated plan requirement that housing activities undertaken with CDBG funds be consistent with the City's consolidated plan for the most recent program year and that such performance be reviewed by HUD annually.

WAIVER –HUD has suspended Section 105(a) of the Housing and Community Development Act of 1974, as amended, to permit the City to use CDBG funds for new housing construction. HUD also has waived 24 CFR section 570.207(b)(3) to permit the city to utilize CDBG funds for new construction activities. This waiver and suspension are effective through December 31, 2006.

HUD Waivers for the City of Biloxi, Mississippi

On December 21, 2005, HUD issued regulatory waivers and statutory suspensions to the City of Biloxi, Mississippi, to help the City recover from the effects of Hurricane Katrina. The waivers and suspensions are as follows:

WAIVER – HUD waived the 15 percent public service cap for Gulfport contained at 24 CFR section 570.201, and acknowledges that the city will utilize the statutory suspension of the 15 percent cap contained in Section 105(a)(8) of the Housing and Community Development Act of 1974, as amended, that was suspended on September 5, 2005.

HUD Waiver for Hattiesburg, Jackson, and Pascagoula, Mississippi, and Mobile, and Mobile County, Alabama

On February 10, 2006, HUD issued a regulatory waiver to the aforementioned jurisdictions to help them recover from the effects of Hurricanes Katrina and Rita. The waiver is as follows:

WAIVER – HUD has waived the 30-day public comment requirements of 24 CFR section 91.105(c)(2) and will permit grantees to provide a 10-day minimum public comment period for substantial amendments to the consolidated plan. The waiver will remain in effect through the end of each grantee's 2006 CDBG program year.

HUD Waivers for the City of Baton Rouge – Parish of East Baton Rouge, Louisiana

On February 14, 2006, HUD issued a series of regulatory waivers and statutory suspensions to the City of Baton Rouge- Parish of East Baton Rouge, Louisiana, to help the City recover from the effects of Hurricane Katrina. The waivers and suspensions are as follows:

WAIVER – HUD has suspended 42 USC 5305(a)(24)(D) to allow the City and Parish to provide up to 100 percent of the down payment required for low- and moderate-income homebuyers. In support of this suspension, HUD has waived 24 CFR section 570.201(n). The relief granted by this suspension and waiver shall remain in effect through the end of the grantee's 2007 program year and may be utilized solely for the benefit of low- and moderate-income homebuyers in support of Hurricane Katrina relief efforts.

WAIVER –HUD has suspended 42 USC 5305(a) to permit the City and Parish to use CDBG funds for new housing construction. HUD has waived 24 CFR section 570.207(b)(3) to permit the City to utilize CDBG funds for new housing construction activities. The waiver and suspension are effective through the end of the grantee's 2007 program year and may be utilized solely for the benefit of low- and moderate-income homebuyers in support of Hurricane Katrina relief efforts.

Compliance Requirements Affected – III.A, "Activities Allowed or Unallowed," and III.G.3.c, "Matching, Level of Effort, Earmarking – Earmarking"

Additional Information – The waivers can be found on the Internet at http://www.hud.gov/offices/cpd/library/katrina/revkatpswaive.pdf, and http://www.hud.gov/offices/cpd/library/katrina/CDBGwaiver_ext.pdf.

CFDA 14.228 COMMUNITY DEVELOPMENT BLOCK GRANTS/STATE'S PROGRAM AND NON-ENTITLEMENT GRANTS IN HAWAII

WAIVER – On September 5, 2005, HUD issued a statutory suspension of the 15 percent public service expenditure cap applicable to CDBG funds for purposes related to Hurricane Katrina assistance efforts. This suspension was extended to Hurricane Rita recovery efforts on October 13, 2005.

HUD Waivers for the States of Louisiana and Mississippi.

On October 13, 2005 and November 9, 2005, HUD issued a series of statutory suspensions and regulatory waivers to the States of Louisiana and Mississippi, respectively, to help the States' recovery from the effects of Hurricane Katrina. The waivers are as follows:

WAIVER – HUD suspended 42 USC 5305(a) to permit new construction of housing (see III.A.1, "Activities Allowed or Unallowed")

WAIVER – HUD has granted a waiver modifying the provisions of 24 CFR sections 570.483(b)(4)(iv)(A)(1) and (b)(4)(v) regarding the criteria for locations in which a person may be presumed to be of low or moderate income. For job-retention activities, in addition to the presumptions currently allowed, the State may accept any census tract as meeting the criteria of paragraph (b)(4)(v), if at least 51 percent of the residents of the tract are of low and moderate income, according to either the latest Low/Moderate Income Survey Data or a more recent survey; and the tract is located in a parish eligible for both Individual and Public Assistance under disaster declaration FEMA-1603-DR or any comparable declaration issued pursuant to Hurricane Rita (see III.A.2, "Activities Allowed or Unallowed").

WAIVER – HUD waived the provisions of 24 CFR sections 570.483(b)(1)(v)(D) and (e)(5)(i) regarding job retention activities meeting the low- and moderate-income benefit criteria on an area benefit basis when undertaken pursuant to a community revitalization strategy. This waiver lifted the requirement that a unit of general local government have an approved community revitalization strategy for purposes of paragraph (e)(5)(i). For job-retention activities, this waiver lifted the requirement for units of general local government to obtain prior HUD case-by-case

approval under paragraph (b)(1)(v)(D), if at least 51 percent of the residents of the unit of general local government are of low and moderate income, according to either the latest Low/Moderate Income Survey Data or a more recent survey; and the unit of general local government is located in a parish eligible for both Individual and Public Assistance under disaster declaration FEMA-1603-DR or any comparable declaration issued pursuant to Hurricane Rita (see III.A.2, "Activities Allowed or Unallowed").

WAIVER – HUD suspended 42 USC 5306(d)(3)(A), (d)(5), and (d)(6) (as revised and renumbered by Pub. L. No. 108-199, Section 423 and formerly codified as 42 USC 5306(d)(3)(A) and (d)(5)), and waived 24 CFR sections 570.489(a)(1)(i) and (iii), which cap State administration expenditures and require a dollar-for-dollar match of State funds for administrative costs exceeding $100,000 (see III.G.3.b, "Matching, Level of Effort, Earmarking – Earmarking"). The suspension and waiver regarding State administrative costs and cost matching applies to any State administrative expenses incurred between the date of disaster declaration FEMA-1603-DR (August 29, 2005) and the end of Louisiana's 2006 program year (March 31, 2007). The suspension regarding the limit on Technical Assistance activities applies to Federal fiscal year 2005 and 2006 funding, as well as to any prior fiscal years for which the State has funds remaining that are not under contract to units of general local government.

WAIVER – HUD suspended the provision of 42 USC 5304(j) that prohibits the State from requiring certain program income to be returned to the State, and waived the same provision in 24 CFR section 570.489(e)(3) (see III.G.3.b, "Matching, Level of Effort, Earmarking – Earmarking"). For any activities funded with Federal fiscal year 2006 or prior year funding that is not under contract to units of general local government as of the date of this letter, the State may require all program income to be returned to the State.

WAIVER – HUD suspended 42 USC 5304(d)(2) and (d)(3) to remove the one-for-one replacement requirements for occupied and vacant occupiable lower-income dwelling units that may be demolished or converted to a use other than for housing; and to remove the relocation benefits requirements contained in Section 104(d) of the Housing and Community Development Act (42 USC 5304(d)) to the extent they differ from those of the Uniform Relocation Act. HUD waived 24 CFR section 42.375 to remove the requirements implementing the aforementioned statutory requirements regarding replacement of housing and 24 CFR section 42.350 to remove the requirements implementing the aforementioned Housing and Community Development Act relocation benefits requirements, to the extent these regulations differ from the Uniform Relocation Assistance Act regulations contained in 49 CFR part 24 (see III.K, "Real Property Acquisition and Relocation Assistance").

WAIVER – For the State of Louisiana, HUD suspended 42 USC 5305(a)(24)(D) to remove the 50 percent downpayment assistance cap for direct homeownership assistance to low-and moderate-income homebuyers (see III.A.1, "Activities Allowed or Unallowed").

WAIVER – For the State of Louisiana, HUD waived the provisions of 24 CFR sections 91.325(b)(4)(ii) and 570.484 to allow the State of Louisiana to change its certification of compliance with the 70 percent overall low-and moderate-income benefit requirement (42 USC 5304(b)(3)(A)) retroactively, if the State so chooses, to a 2- or 3-year period (see III.G.3.a,

"Matching, Level of Effort, Earmarking – Earmarking"). Thus, if the State of Louisiana wishes to change its existing certifications to cover Federal fiscal years 2003-2005, 2004-2006 or 2005-2007 funding, it may do so, as long as it informs HUD of the new certification period. (The period must cover consecutive years.)

WAIVER – For the State of Mississippi, HUD suspended 42 USC 5305(a) to permit use of funds to purchase generators (see III.A.1, "Activities Allowed or Unallowed").

HUD Waivers for the State of Louisiana

On January 20, 2006, HUD issued a series of regulatory waivers and statutory suspensions to the State of Louisiana to help the State recover from the effects of Hurricane Katrina. The waivers and suspensions are as follows:

WAIVER – For the purposes of the Louisiana Bridge Loan Program, HUD has suspended the provisions of (1) 42 USC 5304(a)(1) requiring that the State's method of distribution may only provide that funds be distributed to units of general local government; (2) 42 USC 5306(d)(1) requiring that the State's CDBG funds shall be for use in non-entitlement areas; (3) 42 USC 5306(d)(2) requiring that State CDBG funds are to be distributed only to units of general local government located in non-entitlement areas of the State; and (4) 42 USC 5306(d)(2)(D), to remove the requirement that the State certify that each unit of general local government to which funds are to be distributed will identify its housing and community development needs. To implement the aforementioned suspensions, HUD has waived the provisions of (1) 24 CFR section 91.320(c) and (g)(1) requiring that the State's method of distribution only provide funds that will be distributed to units of general local government; (2) 24 CFR section 91.325(b)(2)(v), to eliminate the certification under 42 USC 5306(d)(2)(D), (see above); and (3) 24 CFR section 570.486(b) regarding the requirement that units of general local government determine that the activity is meeting its needs in accordance with 42 USC 5306(d)(2)(D).

WAIVER – For the purposes of the Louisiana Bridge Loan Program, HUD has suspended the provisions of 42 USC 5305(e)(3), which require the State to demonstrate that the public benefit provided by the activity is appropriate relative to the amount of assistance provided with the grant. To implement this suspension, HUD has waived 24 CFR section 570.482(f)(6), which requires the State and its grant recipients to demonstrate the level of public benefit.

WAIVER – For the purposes of the Louisiana Bridge Loan Program, HUD has waived the provisions of 24 CFR section 570.483(d) regarding required certifications by the unit of general local government to support the classification of activities as meeting the urgent need national objective.

Compliance Requirements Affected – The following compliance requirements have been affected by the waivers listed above:

III.A, "Activities Allowed or Unallowed;" III.G.3.a, b, and d, "Matching, Level of Effort, Earmarking – Earmarking;" III.K, "Real Property Acquisition and Relocation Assistance"

Additional Information – Information on these and other waivers issued by HUD can be found on the Internet at: http://www.hud.gov/offices/cpd/library/katrina/, http://www.hud.gov/offices/cpd/library/katrina/revkatpswaive.pdf, http://www.hud.gov/offices/cpd/library/katrina/modCPwaiver.pdf, and http://www.hud.gov/offices/cpd/library/katrina/CDBGwaiver_ext.pdf.

CFDA 14.231 EMERGENCY SHELTER GRANTS PROGRAM

WAIVER – The definition of "emergency shelter" has been waived so that it is not limited to "facilities." The current definition prevents the use of conventional housing owned by private-sector landlords from being used as short-term emergency and transitional shelter resources. Because of the scope of this disaster, HUD provided maximum flexibility to grantees to meet their emergency housing needs (24 CFR section 576.3).

WAIVER – The obligation and expenditure requirements listed in 24 CFR sections 576.35(a) and (b) are waived for a period of up to one year (subject to any applicable statutory limitations). Within 24 CFR section 576.35, (a) refers to States and (b) refers to Formula cities and counties, territories, and Indian tribes. States must currently make the funds available for use within 65 days, obligate them within 180 days, and spend them within 24 months. Entitlement communities must spend funds within 24 months. This waiver will enable grantees to retain their funds while homeless providers and their communities seek to rebuild service-delivery systems in the wake of the Katrina and Rita disasters (24 CFR section 575.35).

Compliance Requirements Affected – III.A, "Activities Allowed or Unallowed," III.H, "Period of Availability of Federal Funds," and III.N.2, "Special Tests and Provisions – Funding"

Additional Information – The waivers cited in this section are listed at the following website: http://www.hud.gov/offices/cpd/library/katrina/ESGWaiver.pdf.

CFDA 14.239 HOME INVESTMENT PARTNERSHIPS PROGRAM

WAIVER – The requirements in 24 CFR section 92.207 that limit the amount of HOME funds that a PJ may use for administrative and planning costs to 10 percent of allocation plus program income received are waived. This waiver is intended to enable the PJ to expend up to 20 percent of its Federal fiscal year 2004, 2005, and 2006 allocations and program income received for administrative and planning costs (See III.G.3.d, "Matching, Level of Effort, Earmarking – Earmarking").

WAIVER – The requirements in 24 CFR sections 92.209(b), (c), (h), (i), (j) and (k) that govern the operation of a HOME Tenant-Based Rental Assistance (TBRA) program have been waived in the provisions of: (b) General requirement (certification); (c) Tenant selection; (h) Maximum subsidy; (i) Housing quality standards; (j) Definition of Security deposit; and (k) Program operation. (HUD cannot suspend requirements with respect to low-income status of beneficiaries.) (See III.A.1, "Activities Allowed or Unallowed;" III.E.1.b and c, "Eligibility – Eligibility for Individuals;" and III.N.1 and 2, "Special Tests and Provisions – Maximum Per Unit Subsidy and Drawdown of HOME Funds.")

WAIVER – The requirements in 24 CFR section 92.209(h)(3) of the HOME final rule provide two options for PJs in establishing rent standards for their TBRA programs. The TBRA payment may not exceed the difference between the rent standard and 30 percent of the families' adjusted income. In many housing markets there is a limited stock of vacant units that charge rents within the rent standards and evacuees receiving TBRA would be required to pay more than 30 percent of their income toward rent. This waives the HOME rent standard requirement and permits PJs to establish rent standards, by unit size, that are reasonable based upon rents being charged for comparable unassisted units in the area, taking into account the location, size, type, quality, amenities, facilities, management, and maintenance of each unit. This rent standard is to be used in calculating the TBRA subsidy for persons displaced by Hurricane Katrina or Rita. PJs are required to determine rent reasonableness in accordance with 24 CFR section 92.209(f). This waiver expires on October 4, 2007. This waiver also applies to any "receiving community" for persons displaced by Hurricane Katrina or Rita (see III.E.1.a and b, "Eligibility – Eligibility for Individuals").

WAIVER – The matching requirements in 24 CFR section 92.222(b) are reduced for the PJ by 100 percent with respect to any HOME funds expended during Federal fiscal years 2006 and 2007. The requirement that the PJ must submit a copy of the disaster declaration is waived (see III.G.1, "Matching, Level of Effort, Earmarking – Matching").

WAIVER – The requirements in 24 CFR sections 92.250(a) and 92.612(a) regarding the maximum subsidy amount of HOME and ADDI funds that the PJ may invest per unit have been waived. For the State of Texas, this waiver is limited to counties declared disaster areas under the Stafford Act. (See III.G.3.a, "Matching, Level of Effort, Earmarking – Earmarking.")

WAIVER – The requirements in 24 CFR sections 92.251 and 92.612(b) that require that housing assisted with HOME or ADDI funds meet property standards based on the activity undertaken, i.e., HUD housing quality standards (HQS) in 24 CFR section 982.109 for tenant-based rental assistance and homebuyer assistance and state and local standards and codes or model codes for rehabilitation and new construction, are waived. Property standard requirements are waived for repair of properties damaged by Hurricane Katrina or Rita and for units occupied by tenant-based rental assistance recipients that were displaced by Katrina or Rita. Units must meet State and local health and safety codes. The lead housing safety regulations established in 24 CFR part 35 are not waived. For the State of Texas, this waiver is limited to counties declared disaster areas under the Stafford Act. (See III.N.3, "Special Tests and Provisions – Housing Quality Standards.")

WAIVER – The requirements in 24 CFR sections 92.209(i) and 92.251(d) provide that units occupied by recipients of HOME TBRA meet the Housing Quality Standards (HQS) established at 24 CFR section 982.401. This property standard requirement is waived for units occupied by TBRA recipients who were displaced by Hurricane Katrina or Rita and are registered with FEMA. PJs must ensure that these units, at a minimum, meet state and local health and safety codes within 30 days of occupancy. The lead hazard safety regulations at 24 CFR part 35, subpart M, which require the PJ to perform a visual assessment for deteriorated paint surfaces when a child under age 6 will occupy a unit using a TBRA subsidy, remain in effect. This waiver

also applies to any "receiving community" for persons displaced by Hurricane Katrina or Rita. (See III.N.3, "Special Tests and Provisions – Housing Quality Standards.")

WAIVER – The requirements in 24 CFR section 92.253(d) requiring an owner of rental housing assisted with HOME funds to adopt written tenant selection policies and procedures are waived. For the State of Texas, this waiver is limited to counties declared disaster areas under the Stafford Act. (See III.E.1, "Eligibility – Eligibility for Individuals.")

WAIVER – The requirements in 24 CFR section 92.300(a)(1) establish a set-aside for Community Housing Development Organizations (CHDOs). The requirement that the PJ use 15 percent of its allocation for housing owned, developed, or sponsored by CHDOs is suspended for the PJ's Federal fiscal year 2005 and 2006 allocations (see III.G.3.c, "Matching, Level of Effort, Earmarking – Earmarking").

WAIVER – The requirements in 24 CFR sections 92.353(e) and 42.375 requiring a PJ to replace occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income dwelling units in connection with a development project assisted with HOME are waived. For the State of Texas, this waiver is limited to counties declared disaster areas under the Stafford Act. (See III.A.1, "Activities Allowed or Unallowed.")

WAIVER – The requirement in 24 CFR section 92.602(e) that limits the amount of ADDI assistance that may be provided to an assisted homebuyer to the greater of: (1) 6 percent of the sales price; or 2) $10,000 have been waived. The waiver will relieve the PJ of the burden of finding other sources of financing for families affected by Hurricane Katrina or Rita. The waiver is limited to households affected by the disaster. (See III.A.1, "Activities Allowed or Unallowed.")

WAIVER – The requirement in 24 CFR section 92.254(a)(2) that the sales price or maximum after-rehabilitation value of HOME-assisted housing may not exceed 95 percent of the area median sales price has been waived. The waiver will provide PJs with flexibility to assist low-income homebuyers to purchase available, standard housing in the local market area. The waiver is limited to households affected by Hurricane Katrina or Rita. (See III.N.1, "Special Tests and Provisions – Maximum Per Unit Subsidy.")

Compliance Requirements Affected – III.A.1, "Activities Allowed or Unallowed;" III.E.1.a, b. and c, "Eligibility;" III.G.1 and G.3.a, c, and d, "Matching, Level of Effort, Earmarking;" and III.N.1, 2, and 3, "Special Tests and Provisions"

Additional Information – The waivers cited in this section are HOME statutory requirements that were suspended and HOME regulatory requirements that were waived by HUD on September 9, September 14, and October 14, 2005, for Participating Jurisdictions (PJ) affected by Hurricane Katrina or Rita. A copy of the waivers can be found on the Internet at http://www.hud.gov/offices/cpd/library/katrina/.

DEPARTMENT OF HOMELAND SECURITY

97.036 DISASTER GRANTS – PUBLIC ASSISTANCE (PRESIDENTIALLY DECLARED DISASTERS)

As a result of Hurricane Katrina, 42 States received Emergency Declarations. The policies in "Emergency Declarations for Sheltering," "Debris Removal on Private Property in Specific Counties," and "Warehousing of Donations" include Katrina-specific information on allowable activities. The full text of the policies is located at http://www.fema.gov/government/grant/pa/policy.shtm

Compliance Requirements Affected: III.A, "Activities Allowed or Unallowed"

APPENDIX VII
OTHER OMB CIRCULAR A-133 ADVISORIES

I. American Recovery and Reinvestment Act

Background

The American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (ARRA) and the related OMB Guidance (i.e., *Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009* (February 18, 2009); *Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009* (April 3, 2009); and *Updated Guidance on the American Recovery and Reinvestment Act* (March 22, 2010)) located at the OMB Management website (http://www.whitehouse.gov/omb/management) have significant implications for audits performed under OMB Circular A-133. The ARRA imposes new transparency and accountability requirements on Federal awarding agencies and their recipients. The single audit process will be a key factor in the achievement of the following accountability objectives in the OMB Guidance: (1) the recipients and uses of all funds are transparent to the public, and the public benefits of these funds are reported clearly, accurately, and in a timely manner; and (2) funds are used for authorized purposes and instances of fraud, waste, error, and abuse are mitigated. Additional information on ARRA is available at www.recovery.gov.

Catalog of Federal Domestic Assistance (CFDA) Number

Federal agencies are required to specifically identify ARRA awards, regardless of whether the funding is provided under a new or existing CFDA number. The CFDA number should be included in the grant award documents.

New programs—Federal agencies will use new CFDA numbers for new ARRA programs or for existing programs for which the ARRA provides for compliance requirements that are significantly different for the ARRA funding.

Existing programs—Federal agencies may or may not use a new CFDA number for ARRA awards to existing Federal programs.

Effect of Expenditures of ARRA Awards on Major Program Determination

Clusters of Programs (Clusters) (SFA & R&D Excluded)

Clusters other than SFA and R&D, as listed in Part 5 of this Supplement, to which a new ARRA CFDA number(s) has been added in 2010 that has current-year expenditures should be considered a new program and would not qualify as a low-risk Type A program under §___.520(c) of OMB Circular A-133 (i.e., the cluster will not meet the requirement of having been audited as a major program in at least one of the two most recent audit periods as the Federal program funded under ARRA was-not previously included in the cluster).

Other clusters listed in Part 5 of this Supplement to which a Federal program with a new ARRA CFDA number has been added during the current year that also has current-year expenditures should be considered a new program and would not qualify as a low-risk Type A program under §___.520(c) of OMB Circular A-133 (i.e., the cluster will not meet the requirement of having been audited as a major program in at least one of the two most recent audit periods as the Federal program funded under ARRA did not previously exist). The provisions of this paragraph do not apply to the SFA cluster as described in Part 5-3 Student Financial Assistance (Section IV, Other Information). The provisions of this paragraph also do not apply to the Research and Development cluster (R&D) (e.g., CFDA numbers are not listed in this Supplement for R&D and in some cases R&D is not assigned a CFDA number).

Type A Programs With ARRA Expenditures (SFA Excluded)

Even though a Type A program otherwise meets the criteria as low-risk under §___.520(c) of OMB Circular A-133, due to the inherent risk associated with the transparency and accountability requirements governing expenditures of ARRA awards, any program or cluster with expenditures of ARRA awards would not qualify as a low-risk Type A. Even a *de minimus* amount of ARRA expenditures would not support identifying the program as low risk. The provisions of this paragraph do not apply to SFA as described in Part 5-3 Student Financial Assistance (Section IV, Other Information).

Exception

However, the auditor may consider a Type A program or cluster to be low-risk if **all** of the following conditions are met:

(1) the program or cluster had ARRA expenditures in the prior audit period;

(2) the program or cluster was audited as a major program in the prior audit period;

(3) the ARRA expenditures in the current audit period are less than 20 percent of the total program or cluster expenditures; and

(4) the auditor has followed §___.520(c) and §___.525 of OMB Circular A-133 and determined that the program or cluster is otherwise low-risk.

Type B Programs (SFA Excluded)

The auditor should consider all Type B programs and clusters with expenditures of ARRA awards to be programs of higher risk in accordance with §___.525(d) of OMB Circular A-133. The presumption is that Type B programs or clusters with ARRA expenditures would be audited as major when applying the provisions of §___.520(e)(2). However, the auditor, when applying §___.520(e)(2), is not precluded from selecting an especially risky Type B program that does not contain ARRA expenditures to audit as a major program in lieu of a Type B program or cluster with ARRA expenditures. The provisions of this paragraph do not apply to SFA as described in Part 5-3 Student Financial Assistance (Section IV, Other Information).

Schedule of Expenditures of Federal Awards (SEFA)

As described in §___.310(b)(3) of OMB Circular A-133, auditees must complete the SEFA and include CFDA numbers provided in Federal awards/subawards and associated expenditures. Many Federal agencies began including requirements similar to the following in their terms and conditions for ARRA awards to ensure separate identification of ARRA awards. This separate identification should also include the R&D cluster regardless of the accommodation made in §___.310(b)(1) of OMB Circular A-133. OMB specified in interim final guidance the use of the award term at 2 CFR 176.210 for this purpose (74 FR 18449, April 23, 2009), effective April 23, 2009.

Schedule of Expenditures of Federal Awards

To maximize the transparency and accountability of the American Recovery and Reinvestment Act spending required by Congress and in accordance with 2 CFR 215, section___. 21 "Uniform Administrative Requirements for Grants and Agreements" and the A-102 Common Rule provisions, recipients agree to maintain records that identify adequately the source and application of ARRA funds.

For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, recipients agree to separately identify the expenditures for Federal awards under the ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This shall be accomplished by identifying expenditures for Federal awards made under the ARRA separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

Responsibilities for Informing Subrecipients

Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of ARRA funds. When ARRA funds are subawarded for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental ARRA funds from regular subawards under the existing program.

Recipients agree to require their subrecipients to include on their SEFA information to specifically identify ARRA funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditures of ARRA funds, as well as for oversight by the Federal awarding agencies, Federal Offices of Inspector General, and the Government Accountability Office.

These responsibilities apply to recipients informing "first-tier" subrecipients, i.e., subrecipients who receive an award directly from the recipient. These responsibilities to separately identify and require separate presentation on the SEFA may not have been included in the terms and conditions in grant agreements for awards made by first-tier subrecipients and below. However, where the funding was through an ARRA specific CFDA number or where a subrecipient chose

to separately identify the grant as having ARRA funding, the subrecipient should separately present the information described above on their SEFA.

Auditors should consider these requirements when performing procedures for the purpose of providing the in-relation-to reporting on the SEFA, as well as when performing other procedures on the SEFA in conjunction with the compliance testing.

Auditor Identification of ARRA Findings

The audit finding detail as described in §___.510(b)(1) of OMB Circular A-133 is required to include Federal program and specific Federal award identification including the CFDA title and number. The auditor should include in the audit finding detail explicit identification of applicable ARRA programs.

ARRA-Funded Programs Subject to A-133 Audit

There are several ways in which programs with ARRA funding are identified in this Supplement for purposes of the A-133 audit. Part 2 shows those programs included in parts 4 and 5 of the Supplement that are ARRA funded, in whole or in part, or have compliance requirements affected by ARRA. The following table provides for easy reference by agency the CFDA number for, and names of, programs not included in the Supplement (Source: Recovery Accountability and Transparency Board) (NOTE: All Department of Housing and Urban Development ARRA programs are included in the Supplement and, therefore, there is no HUD listing in the following table.). Programs that fall under the research and development (R&D) cluster are also separately identified.

CFDA Number	**Program**
Department of Agriculture	
10.086	Aquaculture Grants Program (AGP)
10.315	Trade Adjustment Assistance for Farmers Training Coordination Program (TAAF)
10.578	WIC Grants to States (WGS)
10.579	Child Nutrition Discretionary Grants Limited Availability
10.687	Recovery Act of 2009: Capital Improvement and Maintenance
10.688	Recovery Act of 2009: Wildland Fire Management
10.761	Technical Assistance and Training Grants, USDA Rural Development
10.780	Community Facilities Loans and Grants
10.781	Water and Waste Disposal Systems for Rural Communities-ARRA
10.783	Rural Business Enterprise Grants
10.787	Broadband Initiatives Program
10.904	Watershed Protection and Flood Prevention

10.916	Watershed Rehabilitation Program
10.923	Emergency Watershed Protection Program
Department of Commerce	
11.463	Habitat Conservation
11.553	Special Projects
11.609	NIST Measurement and Engineering Research and Standards
11.618	NIST Construction Grant Program
Department of Defense/Corps of Engineers	
12.117	ARRA Cooperative Agreements, New Mexico
12.118	North Dakota Environmental Infrastructure (Section 594)-ARRA
12.119	Northern Wisconsin Environmental Infrastructure (Section 154)-ARRA
12.120	Northeastern Minnesota Environmental Infrastructure (Section 569)-ARRA
12.121	Montana, Nevada, New Mexico, Utah, Idaho & Wyoming Environmental Infrastructure Section 595)-ARRA
12.122	Title VI, Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, and Terrestrial Wildlife Habitat Restoration, South Dakota-ARRA
12.123	South Central Pennsylvania Environmental Infrastructure (Section 313)-ARRA
12.124	Mississippi Environmental Infrastructure (Section 592)-ARRA
12.125	Southern West Virginia Environmental Infrastructure (Section 340)-ARRA
12.126	Central West Virginia Environmental Infrastructure (Section 571)-ARRA
12.127	Sec. 531, Southern and Eastern Kentucky
12.128	Florida Keys Water Quality Improvement Program (Section 109)- ARRA
Department of the Interior	
15.028	Tribally Controlled Community College Endowments
15.033	Road Maintenance-Indian Roads
15.048	Bureau of Indian Affairs Facilities _ Operations and Maintenance
15.062	Replacement and Repair of Indian Schools
15.108	Indian Employment assistance
15.141	Indian Housing Assistance
15.233	Forests and Woodlands
15.507	Water 2025
15.509	Colorado River Basin Salinity Control Program
15.510	Colorado Ute Indian Water Rights Settlement Act
15.512	Central Valley Project Improvement Act, Title XXIV

15.514	Reclamation States Emergency Drought Relief
15.516	Fort Peck Reservation Rural Water System
15.517	Fish and Wildlife Coordination Act
15.522	Mni Wiconi Rural Water Supply Project
15.523	Perkins County Rural Water System
15.524	Recreation Resources Management
15.525	Rocky Boy's/North Central Montana Regional Water System
15.531	Yakima River Basin Water Enhancement Project (YRBWEP)
15.534	Miscellaneous Public Law 93-638 Contracts, Grants, and Cooperative Agreements
15.535	Upper Colorado River Basin Fish and Wildlife Mitigation Program
15.536	Deschutes Basin Ecosystem Restoration
15.538	Lower Colorado River Multi-Species Conservation Program
15.656	Habitat Enhancement, Restoration and Improvement
15.807	Earthquake Hazards Program External Research and Monitoring Support
15.817	National Geospatial Program: Building the National Map
15.818	Volcano Hazards Program Research and Monitoring
15.931	Conservation Activities by Youth Service Organizations
15.932	Preservation of Historic Structures on the Campuses of Historically Black Colleges and Universities (HBCUs)
15.934	Abandoned Mine Hazard Mitigation
15.935	National Trails System Projects
15.937	Redwood National Park Cooperative Management with the State of California
Department of Justice	
16.526	OVW Technical Assistance Initiative
16.556	State Domestic Violence and Sexual Assault Coalitions Grant Program
16.557	Tribal Domestic Violence and Sexual Assault Coalitions Grant Program
16.588	STOP (Services♦Training♦Officers♦Prosecutors) Violence Against Women Formula Grant Program
16.800	Recovery Act-Internet Crimes Against Children Task Force program (ICAC)
16.801	Recovery Act-State Victim Assistance Formula Grant Program
16.802	Recovery Act-State Victim Compensation Formula Grant program
16.805	Transitional Housing assistance Grants for Victims of Domestic Violence, Stalking, or Sexual Assault Program
16.806	Grants to Indian Tribal Governments Program

16.807	Recovery Act VOCA Crime Victim Assistance Discretionary Grant Program
16.808	Recovery Act-Edward Byrne Memorial Competitive Grant Program
16.809	Recovery Act-State and Local Law Enforcement Assistance Program: Combating Criminal Narcotics Activity Stemming from the Southern Border of the United States Competitive Grant Program
16.810	Recovery Act-Assistance to Rural Law Enforcement to Combat Crime and Drugs Competitive Grant Program
16.811	Recovery Act-Correctional Facilities Tribal Lands
Department of Labor	
17.274	Youth Build
17.275	Competitive Grants for Worker Training and Placement in High Growth and Emerging Industry Sectors
17.276	National Emergency Grants-Health Coverage Assistance
17.503	Occupational Safety and Health State Program
Department of Transportation	
20.315	Capital Grants to the National Railroad Passenger Corporation
20.523	Capital Assistance Program for Reducing Energy Consumption and Greenhouse Gas Emissions
20.814	Assistance to Small Shipyards
20.904	Bonding Assistance Program
20.932	Supplemental Discretionary Grants for a National Surface Transportation System
National Aeronautics and Space Administration	
43.004	Aeronautics, Recovery Act
43.005	Exploration, Recovery Act
43.006	Science, Recovery Act
National Endowment for the Arts	
45.024	Promotion of the Arts-Grants to Organizations and individuals
45.025	Promotion of the Arts-Partnership Agreements
National Science Foundation	
47.082	Trans-NSF Recovery Act Research Group
Small Business Administration	
59.046	Microloan Program
Department of Veterans Affairs	
64.005	Grants for Construction of State Home Facilities

Environmental Protection Agency	
66.039	National Clean Diesel Emissions Reduction program
66.040	State Clean Diesel Grant Program
66.418	Construction Grants for Wastewater Treatment works
66.454	Water Quality Management Planning (Sections 205(j)(1) and 604(b))
66.508	Senior Environmental Employment Program
66.802	Superfund State, Political Subdivision and Indian Tribe Site-Specific Cooperative Agreements
66.805	Leaking Underground Storage Trust Fund Corrective Action Program
66.815	Brownfields Job Training Cooperative Agreements
66.818	Brownfields Assessment and Cleanup Cooperative Agreements
Department of Energy	
81.049	Office of Science Financial Assistance Program
81.086	Conservation Research and Development
81.087	Renewable Energy Research and Development
81.089	Fossil Energy Research and Development
81.117	Energy Efficiency and Renewable Energy Information Dissemination, Outreach, Training and Technical Analysis/Assistance
81.119	State Energy Program Special Projects
81.122	Electricity Delivery and Energy Reliability Research, Development and Analysis
81.126	Loan Guarantee
81.127	Energy Efficient Appliance Rebate Program
81.129	Energy Efficiency and Renewable Energy Technology Deployment, Demonstration and Commercialization
81.131	Stimulus Expand and Extend Clean Coal Power Initiative (Round III Funding Opportunity Announcement)
81.132	Stimulus Geologic Sequestration Site Characterization
81.133	Stimulus Geologic Sequestration Training and Research Grant Program
81.134	Stimulus Industrial Carbon Capture and Storage (CCS) Application
81.135	Advance Research and Projects Agency—Energy Financial Assistance Program (ARPA-E)
Department of Education	
84.384	Statewide Data Systems, Recovery Act
84.385	Teacher Incentive Fund, Recovery Act
84.387	Education of Homeless Children and Youth, Recovery Act
84.396	State Fiscal Stabilization Fund – Innovation Fund, Recovery Act
84.398	Independent Living – State Grants, Recovery Act

84.399	Independent Living – Services for Older Blind Individuals, Recovery Act
84.400	Independent Living – Centers, Recovery Act
84.402	Consolidated Grants for Outlying Areas, Recovery Act
84.405	Teacher Quality Enhancement Partnerships, Recovery Act
84.406	Capacity Building for Traditionally Underserved Populations – Vocational Rehabilitation Services
Department of Health and Human Services	
93.048	Special Programs for the Aging _ Title IV_ and Title II _ Discretionary Grants
93.135	Centers for Research and Demonstration for Health Promotion and Disease Prevention
93.402	National Health Service Corps State Loan Repayment Program
93.403	Health Professions: Primary Care Medicine and Dentistry
93.404	Health Professions: Dental Public Health
93.405	Health Professions: Public Health Traineeships
93.410	Health Professions: Licensing Portability Special Initiative
93.411	Health Professions: Equipment
93.412	Health Professions: Preventive Medicine Residency Program
93.414	Health Professions: State Primary Care Offices
93.415	Health Professions: Centers of Excellence
93.416	Health Professions: Health Careers Opportunity Program
93.417	Health Professions: Nursing Workforce Diversity
93.418	ARRA-Emergency Medical Services for Children
93.419	ARRA-Maternal and Child Heath (MCH) Pediatric Research Network Program
93.420	ARRA-Community Health Applied Research Network
93.701	Trans-NIH Recovery Act research Support
93.702	NCRR Recovery Act Construction Support
93.703	ARRA-Grants to Health Center Programs
93.706	Again Nutrition Services for Native Americans
93.711	Strengthening Communities Fund
93.715	Recovery Act – Comparative Effectiveness Research – AHRQ
93.717	Preventing Healthcare-Associated Infections
93.721	ARRA Health Information Technology Professionals in Health Care
93.722	ARA IHS Tribal Agreements
93.723	ARRA Prevention and Wellness – States, Territories and Pacific Islands
93.724	ARRA Prevention and Wellness – Communities Putting Prevention to Work Funding Opportunities Announcement

93.725	ARRA Communities Putting Prevention to Work: Chronic Disease Self-Management Program
93.727	ARRA-Health Information Technology-Beacon Communities
93.728	ARRA-Strategic Health IT Advanced Research Projects (SHARP)
93.729	ARRA-Health Information Technology and Public Health
93.730	ARRA-Prevention Research Centers Comparative Effectiveness Research Program
93.731	ARRA-Prevention and Wellness National Organizations
Corporation for National and Community Service	
94.007	Planning and Program Development Grants
Department of Homeland Security	
97.113	Rail and Transit Security Grant Program
97.115	Assistance to Firefighters (AFG)
97.116	Port Security Grant Program
97.117	TSA Airport Checked Baggage Inspection System Program
97.118	TSA Advanced Surveillance Program

ARRA-Funded Programs Not Subject to A-133 Audit

The following ARRA-funded programs are not covered by the single audit requirements and are not required to be included in the Schedule of Expenditures of Federal Awards or in the determination of major programs.

Department of the Treasury

- ARRA section 1602: Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Tax Credit (no CFDA number)
- ARRA section 1603: Payments for Specified Energy Property in Lieu of Tax Credits (no CFDA number)
- Build America Bonds (no CFDA number)

Department of the Treasury and the Department of Health and Human Services

- Qualified Therapeutic Discovery Project – CFDA 21.103 and R&D cluster

Department of Education

- Qualified School Construction Bonds (no CFDA number)

II. Granting of Extensions Eliminated

The single audit is a key tool used to drive accountability for Federal awards under ARRA. Due to the importance of single audits and the reliance of Federal agencies on the audit results to monitor accountability for all Federal programs, OMB has advised Federal agencies in *Updated Guidance on the American Recovery and Reinvestment Act*, dated March 22, 2010 (M-10-14), that they should not grant any extension requests to grantees for fiscal years 2009 through 2011. Federal agencies have either already adopted or are in the process of adopting this policy.

III. Clarification of Low-Risk Auditee Criteria

Background

Because Federal agencies rely greatly on the results of OMB Circular A-133 audits to monitor the accountability of Federal awards, Federal program and grantee risk increases when audits are not filed or are filed late with the Federal Audit Clearinghouse (FAC). Beginning with audits covered by this Supplement, auditors should be alert to the clarification provided by OMB Memorandum (M-10-14) which states: "In order to meet the criteria for a low-risk auditee (OMB Circular A-133 §___.530) in the current year, the prior two years audits must have met the requirements of OMB Circular A-133, including report submission to the FAC by the due date (OMB Circular A-133 §___.320). For example, an auditee would not meet the criteria for a low-risk auditee for the fiscal year ended June 30, 2010, if the audits for either of the prior two years audits (fiscal years June 30, 2008 or 2009) were not filed with the FAC by the due date (March 31, 2009 and 2010, respectively, assuming no approved extensions). The auditor may consider using the following steps to identify FAC submissions that do not meet the due date.

Suggested Steps

1. Inquire of entity management and review available prior-year financial reports and audits to ascertain if the entity had Federal awards expended of $500,000 or more in the prior two audit periods and, therefore, was required to have an OMB Circular A-133 audit and file with the FAC.

2. If the entity was below the $500,000 threshold in either of the prior two audit periods, and an OMB Circular A-133 audit was not required, obtain written representation from management to this fact and no further audit procedures are necessary as the entity does not qualify as a low risk auditee.

3. If a prior year OMB Circular A-133 audit was conducted, obtain a copy of the data collection form (form SF-SAC) and the reporting package.

    a. Calculate the "Nine Month Due Date" to file with the FAC as the date 9 months after the end of the audit period. For example, for audit periods ending June 30, 2009, the audit report would be due March 31, 2010.

    b. Access the FAC webpage at http://harvester.census.gov/sac/.

c. Select the "Search the Single Audit Database" option and using the "Search for Complete Records Only – Entity Search" option, locate the FAC record for the entity. Verify correct record by comparing both entity name and EIN number from the entity's copy of the SF-SAC to the FAC webpage.

d. For this record located on the FAC webpage compare the "Initial Received Date" (or "FAC Accepted Date" when available) to the Nine Month Due Date to determine if the due date was met. (The FAC is working to add to the FAC webpage the date FAC received the report submission that first passed the FAC screening and was accepted as a valid OMB Circular A-133 report submission (FAC Accepted Date)). This FAC Accepted Date will be more accurate in determining whether the Nine Month Due Date was met as the Initial Received Date gives credit to partial submissions).

e. If the Nine Month Due Date was not met, inquire of entity management whether they received an extension from the cognizant or oversight agency for audit. If an extension was received, review documentation from the Federal agency supporting the extension and determine a "Revised Due Date" considering the extension (Note discussion in section III of this Appendix that Federal agencies have been advised by OMB to not grant any extension requests to grantees for fiscal years 2009 through 2011).

4. If the entity was not in compliance with the Nine Month Due Date or Revised Due Date (if applicable) or did not submit the required OMB Circular A-133 audit to the FAC for either of the prior two audit periods, then the entity does not qualify as a low-risk auditee.

5. Contact the FAC at govs.fac@census.gov, (301) 763-1551 (voice), (800) 253-0696 (toll free), (301) 763-6792 (fax), if additional information is needed on using the FAC website or determining the date the FAC accepted the OMB Circular A-133 report submission as complete.

IV. Safe Harbor for Treatment of a Large Loan and Loan Guarantee Programs in Type A Program Determination

When applying the risk-based approach to determine which Federal programs are major programs, § _.520(b)(3) of OMB Circular A-133 states: "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."

To promote consistency of practice, auditors may consider the following as a "safe harbor" for treatment of large loan and loan guarantee programs in determining Type A programs when planning audits.

(1) Each individual program that includes loans or loan guarantees (as described in §___.205(b) of OMB Circular A-133) that does not exceed four times the largest non-loan program is not considered to be large. A cluster of programs is treated as one program. The presumption is that only changes in the number or size of Type A programs that result from the exclusion of individual loan and loan guarantee programs that are in excess of four times that of the largest non-loan program are significant.

(2) Auditors are only required to perform the recalculation of the Type A threshold described in §___.520(b)(3) of OMB Circular A-133 when the expenditures for a loan or loan guarantee program is more than four times that of the largest non-loan program (a cluster of programs is treated as one program).

(3) The recalculation is performed after removing the total of all large loan and loan guarantee programs.

Following are the examples for the Safe Harbor computation

Example No.1

Loan Program	**Expenditures**
Student Financial Aid Cluster	
84.032 Federal Family Education Loans	299,000,000
84.038 Federal Perkins Loan Program	5,000,000
84.063 Federal Grant Program	859,000
84.033 Federal Work-Study Program	290,000
Loan Program Total	305,149,000

Note: The loan program expenditures include the loans beginning balance, current year loans, and any other loan program or cluster expenditures.

Non-Loan Programs	
R&D Cluster (multiple CFDA #'s)	20,000,000
Department of Health and Human Services	
93.044 Special Programs for the Aging	650,000
93.015 HIV Prevention Programs	200,000
Department of Education	
84.002 Adult Education	400,000
Non-Loan Programs Total	21,250,000
Total Federal Expenditures (Loans and Non-Loans)	326,399,000

Type A Threshold Calculation Including Loans	
Total Federal Expenditures (Loans and Non-Loans)	326,399,000
3/10 % for Threshold Calculation	3/10%
Type A Threshold Calculated including loans	979,197
Default Threshold per A-133	3,000,000

Safe Harbor Calculation	
Largest Non-Loan Program	
R&D	20,000,000
Multiply by 4	x4
Total of four times the largest Non-Loan program or cluster (Safe Harbor Threshold)	80,000,000

Which loan program(s) exceed the Safe Harbor Threshold and should be classified as "Large" and removed from the Type A threshold recalculation?

SFA Cluster	305,149,000

Type A Threshold Calculation without "Large" Loans	
Total Federal Expenditures (Loans and Non-Loans)	326,399,000
"Large" Loan Programs:	305,149,000
Difference between lines 1 and 2 (recalculated total Federal Awards):	21,250,000
3% for Threshold Calculation	3%
Recalculated Type A Threshold	637,500

Type A Programs for FY 20XX	**Expenditures**
SFA Cluster	305,149,000
R&D Cluster	20,000,000
93.044 Special Programs for Aging	650,000

Example No. 2

Loan Programs	**Expenditures**
Student Financial Aid Cluster	
84.032 Federal Family Education Loans	299,000,000
84.038 Federal Perkins Loan Program	5,000,000
84.063 Federal Grant Program	859,000
84.033 Federal Work-Study Program	290,000
SFA Total	305,149,000
10.415 Rural Rental Housing Loans Program	1,500,000
Loan Program Total	306,649,000

Note: The loan program expenditures include the loans beginning Balance, current year loans and any other loan program or cluster expenditures.

Non-Loan Programs	
R&D Cluster (multiple CFDA #'s)	20,000,000
Department of Health and Human Services	
93.044 Special Programs for the Aging	2,650,000
93.015 HIV Prevention Programs	200,000
Department of Education	
84.001Grant for Schools	400,000
Non-Loan Program Totals	23,250,000
Total Federal Expenditures (Loans and Non-Loans)	329,899,000

Type A Threshold Calculation Including Loans	
Total Federal Expenditures (Loans and Non-Loans)	329,899,000
3/10 % for Threshold Calculation	3/10%
Type A Threshold Calculated including loans	989,697
Default Threshold per A-133	3,000,000

Safe Harbor Calculation	
Largest Non-Loan Program	
R&D	20,000,000
Multiply by 4	x4
Total of four times largest Non-Loan	80,000,000

Which loan program(s) exceed the Safe Harbor Threshold and should be classified as "Large" and removed from the Type A threshold recalculation?

SFA Cluster	305,149,000

Type A Threshold Calculation without "Large" Loans	
Total Expenditures with all Programs:	329,899,000
"Large" Loan Programs:	305,149,000
Difference between lines 1 and 2:	24,750,000
3% for Threshold Calculation	3%
Recalculated Type A Threshold	742,500

Type A Programs for FY 20XX	**Expenditures**
SFA Cluster	305,149,000
R&D Cluster	20,000,000
10.415 Rural Rental Housing Loans	1,500,000
93.044 Special Programs for Aging	2,650,000

Example No. 3

Loan Programs	**Expenditures**
10.415 Rural Rental Housing Loans Program	104,679,000
14.248 CDBG_Section 108 Loan Guarantees Program	200,470,000
Loan Program Total	305,149,000

Note: The loan program expenditures include the loans beginning Balance, current year loans and any other loan program or cluster expenditures.

Non-Loan Programs	
R&D Cluster (multiple CFDA #'s)	20,000,000
Department of Health and Human Services	
93.044 Special Programs for the Aging	650,000
93.015 HIV Prevention Programs	300,000
Department of Education	
84.001Grant for Schools	1,932,300
Non-Loan Program Total	22,882,300
Total Federal Expenditures (Loans and Non-Loans)	328,031,300

Type A Threshold Calculation Including Loans		
Total Federal Expenditures (Loans and Non-Loans.)	328,031,300	
3/10 % for Threshold Calculation		3/10%
Type A Threshold Calculated including loans	984,094	
Default Threshold per A-133	3,000,000	

Safe Harbor Calculation		
Largest Non-Loan Program		
R&D	20,000,000	
Multiply by 4		x4
Total of four times largest Non-Loan	80,000,000	

Which loan program(s) exceed the Safe Harbor Threshold and should be classified as "Large" and removed from the Type A threshold recalculation?

10.415 Rural Rental Housing Loans	104,679,000
14.248 CDBG_Section 108 Loan Guarantees	200,470,000

Type A Threshold Calculation without "Large" Loans		
Total Federal Expenditures (Loans and Non-Loan Programs)	328,031,300	
"Large" Loan Programs:	305,149,000	
Difference between lines 1 and 2:	22,882,300	
3 % Threshold Calculation		3%
Recalculated Type A Threshold	686,469	

Type A Programs for FY 20XX	**Expenditures**
10.415 Rural Rental Housing Loans	104,679,000
14.248 CDBG_Section 108 Loan Guarantees	200,470,000
R&D Cluster	20,000,000
84.001 Grant for Schools	1,932,100

V. Report on the National Single Audit Sampling Project

In June 2007 the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) provided OMB with a report titled *Report on the National Single Audit Sampling Project* (Report). The full report is available at http://www.ignet.gov/pande/audit/NatSamProjRptFINAL2.pdf.

This report disclosed significant percentages of unacceptable audits and audits of limited reliability including failure to adequately document and test internal controls and compliance as required by OMB Circular A-133. Auditors are encouraged to review this report and related updates issued by the American Institute of Certified Public Accountants to ensure compliance with OMB Circular A-133 and this Supplement.

Common Deficiencies Identified in the PCIE Report

The most commonly occurring deficiencies cited in the Report are the following:

Material Reporting Errors (No. 1 on Page 17). Auditors misreported coverage of major programs. This occurred when the Summary of Auditor Results section of the Schedule of Findings and Questioned Costs identified that one or more major programs were audited as a major program when the audit documentation did not include support for all of the programs listed. Though inadvertent, this is a very consequential error because it results in the auditor opining on one or more programs that were not audited and report users relying on the erroneous opinions.

Apparent Audit Findings Not Reported (No. 2 on Page 18). The audit documentation or management letter content included matters that appeared to be audit findings. However, they were not reported as audit findings and there was no audit documentation explaining why.

Compliance (No. 3 on Page 20). In some audits, auditors are not documenting compliance testing of at least some compliance requirements. For most audits considered unacceptable, the lack of documentary evidence for compliance testing was substantial. The audit documentation did not always include evidence that the auditor tested major program compliance requirements or explain why certain generally applicable requirements identified in this Supplement were not applicable to the audit.

Also, in some cases the auditor documented that types of compliance requirements identified as generally applicable to the major program in Part 2 of this Supplement were not applicable (e.g., by marking "N/A" next to the item in an audit program), but did not explain why.

Internal Control (No. 4 on Page 22). In many single audits, auditors are not documenting their understanding of internal control over compliance as required by A-133 §.500(c)(1) in a manner that addresses the five elements of internal control. Further, the report stated that auditors did not document testing internal control of at least some compliance requirements as required by A-133 §.500(c)(2).

Risk Assessments of Federal Programs (No. 5 on Page 24). The following kinds of deficiencies in risk assessments of federal programs were identified:

- Required risk analyses not documented at all;
- Basis for the assessments of risk not documented;
- Documentation indicated the risk assessment not performed or not properly performed for reasons including: not considering all programs, improperly clustering programs, not clustering programs, or mistakenly categorizing a program as a Type A program (i.e., a program with large expenditures) or as a Type B program (i.e., a program with smaller expenditures); and
- Risk assessment decision not consistent with information in the audit documentation.

Audit Finding Elements (No. 6 on Page 25). A significant percentage of the audits reviewed did not include all of the required reporting elements in the audit findings.

Schedule of Expenditures of Federal Awards (SEFA) Problems (No. 7 on Page 26). While SEFA preparation is a client responsibility, the auditor reports on the SEFA in relation to the financial statements and the information in the SEFA are key to major program determination. For many audits reviewed, one or more of the following required SEFA content items were omitted:

- Subgrant awards numbers assigned by pass-through entities not included
- Names of pass-through entities missing
- Grantor Federal agency names missing
- Grantor Federal agency subdivision names missing
- Multiple lines for Catalog of Federal Domestic Assistance (CFDA) numbers shown – total expenditures for CFDA number not shown
- Programs that are parts of a cluster not shown as such
- Notes to SEFA missing
- Correct CFDA number; and
- Research and Development (R&D) programs not identified as such.

Management Representations (No. 8 on Page 28). For several audits, some or all of the management representations (identified in the AICPA Audit Guide, *Government Auditing Standards and Circular A-133 Audits*), were not obtained. In a few other cases, the management representations were obtained several days prior to the dates of the auditor's reports.

Materiality (*No. 9 on Report Page 29).* In single audits, the auditor must consider his or her findings in relation to each major program, which is a significantly lower materiality level than all programs combined. In some of the audits reviewed, the auditor did not document whether he or she considered materiality at the individual major program level.

Sampling (Other Matters -Page 36). In the audits reviewed, inconsistent numbers of transactions were selected for testing of internal control and compliance testing for the allowable costs/cost principles compliance requirement. Also, many single audits did not document the number of transactions and the associated dollars of the universe from which the transactions were drawn.

Other Findings (No. 10 on Page 29). Numerous other findings were noted, primarily attributed by the reviewers as being caused by a lack of due professional care. They included the following:

- Low-risk auditee determination not documented or incorrect,
- Minimum percentage of coverage requirement not met,
- Audit programs missing or inadequate for part of the single audit,
- Part of a major program or a major program cluster not tested,
- The Summary of Auditor's Results section of the Schedule of Findings and Questioned Costs missing some information or including erroneous information,
- Error in threshold for distinguishing Type A and Type B programs, and
- Indications that current compliance requirements not considered.

APPENDIX VIII
SSAE 16 EXAMINATIONS OF EBT SERVICE ORGANIZATIONS

Background

States must obtain an examination by an independent auditor of the State electronic benefits transfer (EBT) service providers (service organizations) regarding the issuance, redemption, and settlement of benefits under the Supplemental Nutrition Assistance Program (SNAP) (CFDA 10.551) in accordance with the American Institute of Certified Public Accountants (AICPA) Statement on Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization. Also, States are required to ensure that the service organization has these examinations performed at least annually, that the examinations cover the entire period since the previous examination period, and that the examination reports are submitted to the State within 90 days after the end of the examination period. The examination report must include a list of all States whose systems operate under the same control environment. The auditor of the service organization is required to issue a report on controls placed in operation and tests of operating effectiveness of controls, which is commonly referred to as a "type 2 report" (7 CFR section 274.1(i)).

In performing audits of SNAP under OMB Circular A-133, an auditor may use these SSAE 16 reports to gain an understanding of internal controls and obtain evidence about the operating effectiveness of controls.

An SSAE 16 type 2 report includes: (1) a description by the service organization's management of its system of policies and procedures for providing services to user entities (including control objectives and related controls as they relate to the services provided) throughout the specified period of time; (2) a written assertion by the service organization's management about whether: (a) the aforementioned description fairly presents the system in all material respects, (b) the controls were suitably designed to achieve the control objectives stated in that description, and (c) the controls operated effectively throughout the specified period to achieve those control objectives; and (3) the report of the service organization's auditor, which: (a) expresses an opinion on the matters covered in management's written assertion, and (b) includes a description of the auditor's tests of operating effectiveness of controls and the results of those tests.

This appendix is intended to assist service organizations and their auditors by describing illustrative control objectives and controls that service organizations may have in place. When such controls are present and operating effectively, they may enable auditors of user organizations to assess control risk below the maximum for financial statement assertions related to EBT transactions. The illustrative control objectives and controls in this appendix may not necessarily reflect how a specific service organization considers and implements internal control. Also, this appendix is not a checklist of required controls. Service organizations' controls may be properly designed and operating effectively even though some of the controls included in this appendix are not present. Further, service organizations could have other controls operating effectively that have not been included in this appendix. Service organizations and their auditors will need to professional exercise judgment in determining the most appropriate and cost effective controls in a given environment or circumstance.

Many of the illustrative controls are stated in relation to the kinds of policies and procedures that are "established" or "in place" at an organization. It would be insufficient for such policies and procedures to merely exist on paper and not be implemented. To meet the criteria of an SSAE 16-type 2 examination, the policies and procedures would need to be suitably designed, placed in operation, and operating effectively.

1. Control Environment

Illustrative Control Objective:

Controls provide reasonable assurance that the EBT system functions in a manner consistent with its policies, and complies with applicable laws and regulations (Food and Nutrition Act of 2008, as amended (7 USC 2011 *et seq.*) and 7 CFR section 277.18(p)).

Illustrative Controls:

- The service organization has written policies and procedures for the system processing EBT transactions.
- The organization identifies and analyzes relevant risks to the EBT process.
- Policies and procedures regarding acceptable employee practices, conflicts of interests, and codes of conduct have been established and communicated to employees with EBT responsibilities.
- Policies and procedures are established for performing background investigations of employees prior to employment.
- Policies and procedures have been established to segregate incompatible functions (e.g., application programming, systems and operation, financial duties, data storage, government reimbursement payment requests, transaction processing, and reconciliation) so no individual interacting with the system can exercise unilateral control over EBT transactions.
- Policies and procedures are in place for management to monitor the effectiveness of EBT controls and correct deficiencies or weaknesses when found.
- Policies and procedures are in place to prevent management or staff from overriding controls.

2. Systems Development and Maintenance

Illustrative Control Objective:

Controls provide reasonable assurance that changes (including emergency procedures) to EBT applications and system software are authorized, tested, approved, implemented, and documented.

Illustrative Controls:

- The service organization follows a system development methodology.
- System documentation for new and existing applications are current and complete in accordance with programming and documentation standards used by the service organization.

3. Access Controls

Illustrative Control Objective:

Controls provide reasonable assurance that the EBT system is protected against unauthorized physical and logical access.

Illustrative Controls:

- The responsibility for the development and enforcement of a security policy is at an organizational level that facilitates compliance by service organization personnel and enables enforcement of policies and procedures.
- Security policy and procedures are in place and are communicated to appropriate employees and contractors.
- Policies and procedures are in place for reporting security incidents or observed irregularities to an organizational level where such matters can be investigated and resolved.
- Policies and procedures are established for the security over filing, retention, and destruction of EBT system files.
- Policies and procedures are in place for conducting security system training.
- Policies and procedures are in place for discontinuing an employee or contractor's ability to access EBT hardware, software, and data when the employee is terminated or the employee's duties are changed.
- Access to EBT files or processes is limited based upon users' needs.
- Passwords control access to EBT files, personal identification numbers (PIN), and privacy data.
- Firewalls or other procedures prevent unauthorized access to data from an external network.
- Policies and procedures are in place to prevent a State from reviewing or altering data for another State.

4. Computer Operations – Processing

Illustrative Control Objective:

Controls provide reasonable assurance that processing is scheduled and deviations from scheduling are identified and resolved.

5. Computer Operations – Data Transmission

Illustrative Control Objective:

Controls provide reasonable assurance that data transmissions are complete, accurate and secure.

Illustrative Controls:

- Policies and procedures require that PINs and data are encrypted throughout processing.
- Encryption keys are stored in a secure manner.
- Maintenance of encryption keys is performed by authorized service center staff.
- Policies and procedures of the service organization require proper identification, validation, and acceptance of EBT transactions processed.

6. Computer Operations – Output

Illustrative Control Objective:

Controls provide reasonable assurance that output data and documents are complete, accurate, and distributed to authorized recipients on a timely basis.

7. EBT Controls – Transactions Received from Authorized Sources

Illustrative Control Objective:

Controls provide reasonable assurance that transactions are received from authorized sources.

Illustrative Controls:

- Policies and procedures are in place to ensure that updates of point of sale (POS) device parameters are restricted to authorized personnel.
- Policies and procedures require that POS transactions be properly validated.

- Policies and procedures for direct data entry, such as adjustments, require proper review and approval.

- Policies and procedures are in place to approve voucher transactions.

- Policies and procedures for voucher transactions prevent unauthorized access to recipient or retailer accounts.

8. EBT Controls – Transaction Amounts and Recording

Illustrative Control Objective:

Controls provide reasonable assurance that transactions are for authorized amounts and are recorded completely and accurately.

Illustrative Controls:

- Records identify the activity and events in client accounts (e.g., deposits, withdrawals, charges, and type of transactions).

- Records identify client accounts for which benefits have not been withdrawn or used beyond pre-established periods (i.e., identify inactive accounts for which deposits are still made).

- System edits prevent individual client accounts from being credited with benefits in excess of authorized amounts.

9. EBT Controls – Processing

Illustrative Control Objective:

Controls provide reasonable assurance that transactions are processed completely and accurately.

Illustrative Controls:

- Policies and procedures of the service organization include controls to:

  - monitor and investigate any unsuccessful file transfers;
  - recover or reproduce lost or damaged data;
  - examine edit checks for unusual conditions;
  - reconcile input and output of transactions processed;
  - log and store transactions; and
  - monitor rejected transactions and account adjustment actions.

10. EBT Controls – Settlement

Illustrative Control Objective:

Controls provide reasonable assurance that settlement of funds received from benefit providers and distributed to benefits acquirers for SNAP benefit purchases and withdrawals is performed timely and accurately.

Illustrative Controls:

- Policies and procedures are in place to perform daily reconciliations of:
  - account balances;
  - net settlements; and
  - government funds.
- Policies and procedures are established for resolution of disputed transactions.
- Policies and procedures are established for requesting Federal and State reimbursements.

11. Physical Environment

Illustrative Control Objective:

Controls exist to provide reasonable assurance that physical assets are protected.

Illustrative Controls:

- Policies and procedures are established for environmental controls (e.g., maintenance schedules, fire suppression equipment, water detection and protection considerations, and the availability of an uninterruptable power system designed to protect and ensure continued operations).
- Policies and procedures call for periodic facility inspections.
- Policies and procedures for proper maintenance of hardware have been established.

12. Contingency Planning

Illustrative Control Objective:

Controls exist within the data center to provide reasonable assurance of continuity of operations.

Illustrative Controls:

- Disaster recovery and business continuity plans exist for the system processing EBT transactions.
- The business continuity plan provides for periodic testing at the backup facility and the service organization has performed such testing.
- The service organization has a contractually protected access right to the backup facility.
- Backup arrangements for key applications, processes and files are in place.

13. Card Controls

Illustrative Control Objective:

Controls are established to provide reasonable assurance that users of EBT benefit cards are authorized.

Illustrative Controls:

- Each transaction is validated with a unique account number and PIN.
- For benefit card issuance services provided by the EBT service organization policies and procedures are in place to:
  - prevent unauthorized assignment and replacement of PINs;
  - properly deliver benefit cards to participants;
  - activate cards by only authorized users;
  - deactivate damaged, lost, or stolen cards;
  - record and destroy active cards returned to the service organization; and
  - control access to and inventory levels of pre-printed unused card stock.

APPENDIX IX
COMPLIANCE SUPPLEMENT CORE TEAM

The Compliance Supplement Core Team is responsible for the annual production of the Office of Management and Budget (OMB) Circular A-133 Compliance Supplement with the assistance of a support contractor. The Core Team is composed of audit and program representatives from the Federal grant-making agencies and OMB. The support contractor is LMI.

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