

# 2 CFR PART 200, APPENDIX XI

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# COMPLIANCE SUPPLEMENT

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**April 2022**

**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 OMB Circular A-133 (62 FR 35278) to implement the 1996 Amendments, extend the circular’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 OMB 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 the circular on June 26, 2007 (72 FR 35080), to (1) update internal control terminology and related definitions and (2) simplify the auditee reporting package submission requirement.

On December 26, 2013, OMB Circular A-133 was superseded by the issuance of 2 CFR Part 200, Subpart F. Among other things, those changes increased the audit threshold to \$750,000 for auditee fiscal years beginning on or after December 26, 2014 and made changes to the major program determination process.

The Compliance Supplement (Supplement) is based on the requirements of the 1996 Amendments and 2 CFR Part 200, Subpart F, which provide for the issuance of a compliance supplement to assist auditors in performing the required audits.

The Supplement is a document that identifies existing, important compliance requirements that the federal government expects to be considered as part of an audit required by the 1996 Amendments to the Single Audit Act. Without the 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 both a direct and material effect on a program. Providing the Supplement is a more efficient and cost-effective approach to performing this research. For the programs contained herein, the Supplement provides a source of information for auditors to understand the federal program’s objectives, procedures, and compliance requirements subject to the audit as well as audit objectives and suggested audit procedures for determining compliance with these requirements.

The 2 CFR Part 200, Subpart F, provides that federal agencies are responsible for annually informing OMB of any updates needed to the Supplement and working with OMB to ensure that the Supplement focuses the auditor to test the compliance requirements most likely to cause improper payments, fraud, waste, abuse, or generate audit findings for which the federal awarding agency will take sanctions. This responsibility includes ensuring that program objectives, procedures, and the compliance requirements that are to be subject to the audit (including statutory and regulatory citations) are submitted to OMB for inclusion in the Supplement; it also ensures that agencies keep this information current.

### **Performance Focus for Grants**

Federal awarding agencies are encouraged to continue to shift their focus in grants management from one heavy on compliance to a balanced approach that includes establishing measurable program and project goals and analyzing data to improve results. To that end, starting in 2019 and continuing in 2022, the Compliance Supplement reduced the areas for compliance reviews from a maximum of 12 to a maximum of six (allowability and eligibility areas are counted as one). This reduction focused the agencies and the auditors on the areas that are most important for federal awarding agencies to manage programs more efficiently.

In addition, under Part 3 L, Reporting, agencies continued to add the review requirement for Performance reporting for 63 programs (versus 57 in the 2021 Compliance Supplement). This review requirement provides federal awarding agencies with another tool to ascertain that recipients comply with program performance goal reporting requirements. OMB intends to work with federal awarding agencies to identify performance reporting requirements for more federal programs to be added to future Supplements.

Furthermore, in 2021, in addition the regular Compliance Supplement issued in August 2021, OMB and federal awarding agencies provided additional audit guidance for new and existing COVID-19-related programs in Addendum 1 (issued in December 2021) and Addendum 2 (January 2022).

Parts 4 and 5 of the Supplement provide a stand-alone section for each program/cluster included in the Supplement, which contains program objectives, program procedures, and compliance requirements (including any Performance Reporting requirements noted in Part III, section L). 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, the “Other Information” section provides guidance on how those funds are to be treated on the Schedule of Expenditures of Federal Awards and in major program determinations. See Appendix IV to the Supplement for a list of programs that contain this section.

The 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, the Supplement replaces agency audit guides and other audit requirement documents for individual federal programs.

Throughout the Supplement, the word “must,” when used in conjunction with auditor responsibilities, means that the auditor is required to do what the statement indicates. Use of the term “should” when addressing auditor responsibilities indicates a recommended action or approach. See Part 3 of the Supplement for use of terminology in that part, which addresses compliance requirements for auditees as well as auditor responsibilities.

## **PURPOSE AND APPLICABILITY (Part 1)**

### **Purpose**

This 2022 Supplement is effective for audits of fiscal years beginning after June 30, 2021 and supersedes the 2021 Compliance Supplement (dated August 2021) and its Addenda (dated December 2021 and January 2022).

This 2022 Compliance Supplement adds, deletes, and modifies prior Supplement sections as usual. Further, it continues the OMB mandate adopted in the 2019 Compliance Supplement requiring that each federal agency limit the number of compliance requirements subject to the audit to six, with the exception of the Research and Development cluster, which has been permitted to identify seven compliance requirements as subject to the audit. For this purpose, the requirements relating to A. Activities Allowed and Unallowed and B. Allowable Costs and Cost Principles are treated as one requirement. The Part 2 matrix and the related program sections in parts 4 and 5 reflect this OMB mandate. Additionally, this six-requirement mandate does not apply to programs not included in this Supplement.

The 2 CFR Part 200, Subpart F, describes the non-federal entity’s responsibilities for managing federal assistance programs (2 CFR section 200.508) and the auditor’s responsibility with respect to the scope of the audit (2 CFR section 200.514). Auditors are required to follow both the provisions of 2 CFR Part 200, Subpart F, and this Supplement.

### **Applicability**

#### *General*

Auditors must consider the Supplement and the referenced laws, regulations, and OMB Circulars/Uniform Guidance (whether codified by federal agencies in agency regulations or adopted or implemented by other means) in determining the compliance requirements subject to the audit that could have both a direct and material effect on the programs included herein. The use of the Supplement is mandatory. Accordingly, adherence to the Supplement satisfies the requirements of 2 CFR Part 200, Subpart F. For program-specific audits performed in accordance with a federal agency’s program-specific audit guide, the auditor must follow such program-specific audit guide. Finally, for major programs not included in the Supplement, the auditor must follow the guidance in Part 7 and use the types of compliance requirements in Part 3 to identify the applicable compliance requirements that could have both a direct and material effect on the program.

### *Update of Requirements*

The 2 CFR section 200.513(c)(4) provides that federal agencies are responsible for annually informing OMB of any needed updates to the Supplement. However, auditors must recognize that laws and regulations change periodically and that delays will occur between such changes and revisions to the Supplement. Moreover, auditors must recognize that there may be provisions of grant agreements and contracts that are not specified in law or regulation and, therefore, the specifics of such are not included in the Supplement. For example, the grant agreement may specify a certain matching percentage or set a priority for how funds can be spent (e.g., a requirement not to fund certain size projects). Another example is a federal agency imposing additional requirements on a recipient (see 2 CFR section 200.208 regarding use of specific award conditions).

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

For example, if a program entry in the Part 2 matrix indicates that Procurement and Suspension and Debarment compliance requirement is subject to the audit, then the auditor should follow the guidance in the previous paragraph and perform the reasonable procedures described therein. However, if a program entry in the Part 2 matrix indicates that Procurement and Suspension and Debarment compliance requirement is not subject to the audit, then the procedures described in the previous paragraph would not be required by the auditor.

Similarly, as it relates to provisions of grant agreements and contracts, if a program entry in the Part 2 matrix indicates that the Activities Allowed and Unallowed compliance requirement is subject to the audit and that the grant agreement for that program sets a priority for how funds can be spent (e.g., a requirement to not fund certain size projects), then the auditor would be expected to consider the grant agreement provisions. However, if a program entry in the Part 2 matrix indicates that the Matching, Level of Effort, Earmarking compliance requirement is not subject to the audit and that the grant agreement for that program specifies a certain matching percentage requirement for the same program, then the auditor is not expected to consider the grant agreement provisions related to matching in the audit.

### *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 is 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 cannot consider the Supplement to be a “safe harbor” for identifying the audit procedures to apply in a particular engagement.

The matrices included throughout the Supplement indicate with a “Y” which types of compliance requirements are subject to the audit. The auditor can consider the Supplement a “safe harbor” for identification of those compliance requirements for the programs included herein if, as discussed above, the auditor (1) performs reasonable procedures to ensure that the requirements subject to the audit in the Supplement are current and to determine whether there are any additional provisions of federal awards relevant to the compliance requirements subject to the audit that should be covered by an audit under the 1996 Amendments, and (2) updates or augments the requirements contained in the Supplement, as appropriate.

For compliance audit purposes, an “N” in a program matrix indicates that a type of compliance requirement is not subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” However, while a requirement may not be subject to the audit for compliance audit purposes, auditors have a responsibility under GAAS and GAGAS related to noncompliance with provisions of laws, regulations, contracts, and grant agreements that may have a direct and material effect on the financial statements, and also with the requirements related to the auditor’s consideration of fraud and abuse.

## **OVERVIEW OF THE SUPPLEMENT**

### **Matrix of Compliance Requirements (Part 2)**

The Matrix of Compliance Requirements (Matrix) identifies the federal programs and compliance requirements addressed in the Supplement and associates the programs with the applicable compliance requirements. The Matrix also identifies the applicable federal agency and the Assistance Listing (*Catalog of Federal Domestic Assistance* (CFDA)) number for each program included in the Supplement. (Note: The entry for each program/cluster also is included in the program/cluster in Part 4 or Part 5 of the Supplement.)

### **Compliance Requirements (Part 3)**

Part 3 lists and describes the 12 types of compliance requirements and, except for Special Tests and Provisions, the related audit objectives that the auditor must consider, as applicable, in every audit conducted under 2 CFR Part 200, Subpart F, 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 is 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 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 2 CFR Part 200, Subpart F, 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 2 CFR Part 200, Subpart F.

### **Agency Program Requirements (Part 4)**

For each federal program included in the 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 must 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 each program, the specific audit objectives and suggested audit procedures for each program are included in Part 4.

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 must 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. 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 in 2 CFR Part 200, Subpart F (see definition at 2 CFR section 200.1).

The types of clusters included in Part 5 are: Research and Development (R&D), Student Financial Assistance (SFA), and other clusters. “Other clusters” are as identified in the Supplement or designated in a state award document. Part 5 provides compliance requirements, audit objectives, and suggested audit procedures for the R&D and SFA clusters, and lists other clusters included in Part 4.

In planning and performing the audit, the auditor can determine whether programs administered by the non-federal entity are part of a cluster by referring to both the provisions of Part 5 of the 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 grant agreements and contracts, and to also maintain internal control to provide reasonable assurance of compliance within these requirements. The 2 CFR Part 200, Subpart F 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 addresses the objectives, principles, and components of internal control based on the “Standards for Internal Control in the Federal Government,” (“Green Book”), issued by the Government Accountability Office, and the “Internal Control Integrated Framework” (revised 2013), issued by the Committee of Sponsoring Organizations of the Treadway Commission. It also includes appendices that include illustrations of entity-wide internal controls over federal awards (Appendix 1) as well as illustrations of internal controls specific to each type of compliance requirement (Appendix 2).

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

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

## **Federal Programs Excluded from Portions of 2 CFR Part 200 (Part 8, Appendix I)**

Appendix I 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,” which still may be in effect for some awards/funding and specified portions of 2 CFR Part 200.

## **Federal Agency Codification of Governmentwide Requirements and Guidance for Grants and Cooperative Agreements (Part 8, Appendix II)**

Appendix II includes regulatory citations for federal agencies’ codification of the OMB guidance on (1) “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” (in 2 CFR Part 200) and (2) non-procurement suspension and debarment in 2 CFR Part 180.

## **Federal Agency Single Audit, Key Management Liaison, and Program Contacts (Part 8, Appendix III)**

Appendix III identifies federal agency-level contacts—single audit and, separately, management liaisons—from whom auditors can request information about the agency’s programs generally or the audit requirements of 2 CFR Part 200, Subpart F. It also includes, for each program/cluster listed in parts 4 and 5 of the Supplement, the name of a specific individual who can be contacted concerning that program, along with the individual’s contact information.

## **Internal Reference Tables (Part 8, Appendix IV)**

Appendix IV provides a listing of programs in parts 4 and 5 that include 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 2 CFR section 200.519(c)(2).

## **List of Changes for the 2022 Compliance Supplement (Part 8, Appendix V)**

Appendix V provides a list of changes from the 2021 Compliance Supplement.

## **Program-Specific Audit Guides (Part 8, Appendix VI)**

Appendix VI includes a list of program-specific guides maintained by the federal agencies and indicates where to obtain them.



**Other Audit Advisories (Part 8, Appendix VII)**

Appendix VII provides information on (1) Novel Coronavirus (COVID-19); (2) the effect of changes to compliance requirements and other clusters; (3) the due date for submission of audit reports and low-risk auditee criteria; (4) the treatment of National Science Foundation and National Institutes of Health Awards; (5) the exceptions to the Guidance in 2 CFR Part 200; and (6) audit sampling.

**Examinations of EBT Service Organizations (Part 8, Appendix VIII)**

Appendix VIII 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 (Assistance Listing 10.551) in accordance with the American Institute of Certified Public Accountants (AICPA) Statement on Standards for Attestation Engagements (AT-C) section 320, *Reporting on an Examination of Controls at a Service Organization Relevant to User Entities' Internal Control Over Financial Reporting*.

**Compliance Supplement Core Team (Part 8, Appendix IX)**

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

**TECHNICAL INFORMATION****Page Numbering Scheme**

The following page numbering scheme is used in the Supplement:

- a. Each page included in parts 1, 2, 3 (Introduction), 6, and 7 is identified by a label that represents the part number and sequential page number. A hyphen (-) 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.
- b. In the 2022 Supplement, Part 3 is divided into twelve compliance areas 3-A-1, 3-A-2, 3-A-3, and so on.
- c. Each page included in parts 4 and 5 (other than the Introductions to those parts) is identified by a label that represents the part number, section number identifier, and sequential page number. The section number identifier for Part 4 represents the Assistance Listing number of the applicable program. For example, the Department of Labor's Unemployment Insurance program, Assistance Listing 17.225, is numbered 4-17.225-1, 4-17.225-2, 4-17.225-3, and so on.

## Code of Federal Regulations (CFR)

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 Digital System home page (<http://www.gpo.gov/fdsys/>) offers links to both the *Federal Register* and the CFR. An electronic CFR (e-CFR) is available at <http://www.ecfr.gov>. The e-CFR is a 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.

## HOW TO OBTAIN ADDITIONAL GUIDANCE

Guidance to assist auditors in performing audits in accordance with 2 CFR Part 200, Subpart F, can be obtained from the following sources.

### Office of Management and Budget

The following information is located under the grants management heading on the Office of Federal Financial Management's home page (<https://www.whitehouse.gov/omb/office-federal-financial-management/>):

- OMB publications, including 2 CFR Part 200 and the recent Supplements for audits under 2 CFR Part 200, Subpart F. The two 2021 Compliance Supplement Addenda are available at the CFO Council Website: <https://www.cfo.gov/2021-addendum-1and2/>.
- SF-SAC, *Data Collection Form for Reporting on Audits of States, Local Governments, Indian Tribes, Institutions of Higher Education and Non-Profit Organizations*.

## General Services Administration (GSA)

- Assistance Listing (*Catalog of Federal Domestic Assistance* (CFDA))

Assistance Listing replaced the Catalog of Federal Domestic Assistance (CFDA) in 2021. As a result of this terminology change the Supplement has now replaced all references to CFDA with Assistance Listing, including program titles. For example, the CHIP program, previously titled CFDA 93.767 CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP), is now titled ASSISTANCE LISTING 93.767 CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP). A searchable copy of the Assistance Listing and a pdf version are available through the Internet on the GSA home page (<https://sam.gov>). Note that if the Assistance Listing indicates under a program entry (Post Assistance Requirements – Audit) that audit is “Not Applicable” or the program is not subject to 2 CFR Part 200 (Note: Some Assistance Listing entries still may refer to OMB Circular A-133), the auditee should contact the federal agency single audit office/official indicated in Appendix III of the Supplement.

## Government Accountability Office (GAO)

- Government Auditing Standards, July 2018 Revision (GAO-18-568G) (<http://www.gao.gov/yellowbook>)

## Inspectors General

The Council of the Inspectors General on Integrity and Efficiency Home Page (<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 government-wide database of single audit results and related federal award information; (2) serve as the federal repository for single audit reports; and (3) distribute single audit reports to federal agencies.

The Clearinghouse maintains a site on the Internet at <https://harvester.census.gov/facweb>. For Data Collection Form (SF-SAC) and single audit submission questions, contact the Federal Audit Clearinghouse by e-mail ([govs.fac.ides@census.gov](mailto:govs.fac.ides@census.gov)) or telephone (866-306-8779).

## PART 2 – MATRIX OF COMPLIANCE REQUIREMENTS

### INTRODUCTION

This Part identifies the compliance requirements that the federal government has determined are subject to audit for 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 must use this Part 2 to identify the types of compliance requirements that have been identified as subject to the audit. Note that comparable information is included in each program/cluster in parts 4 and 5 of the Supplement. The box for each type of compliance requirement either contains a “Y” (for “Yes” if the type of compliance requirement is subject to audit for the program) or “N” (for “No” if the requirement is not subject to audit for the program). **In addition, those programs with ARRA funding are indicated with bold print (in the program column).**

Even though a “Y” indicates that the compliance requirement is subject to audit, it may not apply to a particular nonfederal entity, either because that entity does not have activity subject to that type of compliance requirement or the activity could not have a direct and material effect on a major program. For example, even though Equipment and Real Property Management may be identified as being subject to audit for a particular program, it would not apply to a nonfederal entity that did not acquire or dispose of equipment or real property. Similarly, a “Y” may be included to identify Procurement and Suspension and Debarment as subject to audit; however, the audit would not be expected to address this type of compliance requirement if the nonfederal entity charges only small amounts of purchases to a major program. The auditor should exercise professional judgment when determining which compliance requirements marked “Y” needs to be tested at a particular nonfederal entity.

When a “Y” is present on the matrix and the auditor determines that the requirement should be tested at a nonfederal entity, the auditor must 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, includes general information concerning internal control.

When a compliance requirement is shown in the matrix as “N,” it has been identified by the federal government as not being subject to audit. Auditors are not expected to test requirements that have been noted with an “N.” However, the auditor is not prohibited from expanding audit procedures if the terms of a grant award document specify that the additional compliance requirements are material to the administration of the program or if the auditor is aware of additional information that would lead the auditor to believe there are increased risks of fraud, waste, or abuse of federal program funds.

**Legend to Matrix**

*Legend:* Y - Yes, this type of compliance requirement is subject to audit for the federal program; N - No, this type of compliance requirement is not subject to audit for the federal program.

**Those requirements that were changed from a “Y” to an “N” or from an “N” to a “Y” since the last Supplement are shown in bold (and highlighted in yellow) in the A-N matrix columns. Programs added through addendums 1 and 2 with requirements that were changed from a “Y” to an “N” and from an “N” to a “Y” since their publication are also shown in bold (and highlighted in yellow) in the A-N matrix columns.** Any changes shown with a blue highlight are corrections to this table only (not a change in the requirements in Part 4). Note: Requirements D and K are reserved and therefore not shown in this chart.

Requirement	A	B	C	E	F	G	H	I	J	L	M	N
	Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment Real Property Management	Matching, Level of Effort, Earmarking	Period of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Program Number												
10.000 (no matrix)												
10.500	Y	Y	N	N	N	Y	Y	N	N	Y	Y	N
10.511	Y	Y	Y	N	Y	Y	N	N	N	Y	N	N
10.512	Y	Y	Y	N	Y	Y	N	N	N	Y	N	N
10.514	Y	Y	Y	N	N	N	N	N	N	Y	Y	N
10.515	Y	Y	Y	N	N	N	N	N	N	Y	Y	N
10.516	Y	Y	Y	N	Y	N	N	N	N	Y	Y	N
10.517	Y	Y	Y	N	Y	N	N	N	N	Y	Y	N
10.520	Y	Y	Y	N	Y	N	N	N	N	Y	Y	N
10.521	Y	Y	Y	N	Y	N	N	N	N	Y	Y	N
10.542**	Y	N	N	Y	N	N	N	Y	N	Y	N	N
10.551/10.561 (SNAP Cluster)	Y	Y	N	N	N	Y	N	Y	N	N	Y	Y
10.553/10.555/10.556/10.559/10.582 (Child Nutrition Cluster)	Y	Y	<b>N</b>	Y	N	N	N	Y	<b>N</b>	<b>Y</b>	N	Y
10.557	Y	Y	Y	Y	N	N	Y	Y	N	N	N	N
10.558	Y	Y	Y	Y	N	N	N	Y	N	N	Y	Y
10.565/10.568/10.569 (Food Distribution Cluster)	Y	Y	Y	Y	Y	N	N	Y	N	N	N	Y
10.566	Y	Y	N	Y	N	N	Y	N	N	Y	N	Y
10.579 (deleted 2022)												
10.582	Y	Y	Y	Y	N	N	N	Y	Y	N	N	N
10.606	Y	Y	Y	N	Y	N	N	N	Y	Y	N	Y
10.607	Y	Y	Y	N	Y	N	N	N	Y	Y	N	Y
10.649**	Y	Y	N	N	N	N	Y	Y	N	Y	N	N

Requirement	A	B	C	E	F	G	H	I	J	L	M	N
Program Number	Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment Real Property Management	Matching, Level of Effort, Earmarking	Period of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
10.665/10.666 (Forest Service Schools and Roads Cluster)	Y	Y	Y	N	N	Y	Y	N	N	Y	N	Y
10.760	Y	Y	N	N	Y	Y	N	Y	N	Y	N	N
10.766/10.780 (Community Facilities Loans and Grants Cluster)	Y	Y	N	N	N	N	Y	N	N	Y	N	Y
11.300/11.307 (Economic Development Cluster)	Y	Y	N	N	N	Y	N	N	Y	Y	Y	Y
11.611	Y	Y	Y	N	N	Y	N	N	Y	Y	Y	N
12.400	Y	Y	Y	N	N	Y	Y	Y	N	Y	N	N
12.401	Y	Y	Y	N	N	Y	Y	N	N	Y	N	N
14.157 Section 202	Y	Y	Y	Y	N	N	N	N	N	Y	N	Y
14.169 (archived for 2022)												
14.181	Y	Y	Y	Y	N	N	N	N	N	N	N	Y
14.182/14.195/14.249/14.856 (Section 8 Project-Based Cluster)	N	N	Y	Y	N	N	N	N	N	Y	N	Y
14.218/14.225 (CDGB-Entitlement Grants Cluster)	Y	Y	N	N	Y	N	Y	N	Y	Y	N	Y
14.228	Y	Y	N	N	Y	N	Y	N	Y	Y	N	Y
14.231	Y	Y	N	N	Y	Y	N	Y	N	N	N	Y
14.235	N	N	N	N	Y	Y	Y	Y	Y	N	N	Y
14.238	N	N	N	N	Y	Y	Y	Y	Y	N	N	Y
14.239	Y	Y	N	Y	N	N	N	N	Y	N	Y	Y
14.241	Y	Y	Y	Y	N	N	N	N	N	Y	Y	Y
14.256	Y	Y	N	N	N	N	Y	N	Y	Y	N	Y
14.267	N	N	N	N	Y	Y	Y	Y	Y	N	N	Y
14.269/14.272 (CDBG-Disaster Recover Grants-Pub. L. No. 113-2 Cluster)	Y	Y	N	N	N	Y	Y	N	Y	Y	N	Y
14.275	Y	Y	N	Y	N	Y	N	N	Y	N	N	Y
14.850	Y	Y	N	Y	N	N	N	Y	N	N	N	Y
14.862	Y	Y	Y	N	Y	N	N	Y	N	Y	N	Y
14.866/14.889 (HOPE VI Cluster)	Y	Y	N	N	N	Y	N	Y	Y	Y	N	Y
14.867	Y	Y	N	Y	N	N	N	Y	N	Y	N	Y
14.871/14.879** (Housing Voucher Cluster)	Y	Y	N	Y	N	N	N	N	N	Y	N	Y
14.872	Y	Y	Y	N	N	N	Y	Y	N	N	N	Y
14.873	Y	Y	N	Y	N	N	Y	Y	N	Y	N	Y
14.881	Y	Y	Y	Y	N	N	N	N	N	Y	N	Y

Requirement	A	B	C	E	F	G	H	I	J	L	M	N
Program Number	Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment Real Property Management	Matching, Level of Effort, Earmarking	Period of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
14.888	Y	Y	Y	N	N	N	Y	Y	N	N	N	Y
15.000		Y					Y					Y
<b>15.021</b>	Y	Y	N	N	N	N	Y	N	N	Y	N	Y
<b>15.022</b>	Y	Y	N	N	Y	N	N	Y	N	Y	N	Y
15.025/15.026/15.113/ 15.114/15.130	Y	Y	N	Y	N	N	N	N	N	Y	N	Y
<b>15.030</b>	Y	Y	N	N	N	N	Y	N	N	Y	N	Y
<b>15.042</b>	Y	Y	N	N	Y	N	Y	Y	N	Y	N	Y
<b>15.047</b>	Y	Y	N	N	N	Y	Y	N	N	Y	N	Y
15.504	Y	Y	N	N	N	Y	N	N	N	Y	N	N
15.507	Y	Y	N	N	N	Y	N	N	N	Y	N	N
15.605/15.611/15.626 (Fish and Wildlife Cluster)	Y	Y	N	N	Y	Y	N	N	Y	N	Y	N
15.614	Y	Y	N	N	Y	Y	N	N	Y	N	Y	N
15.615	Y	Y	N	N	Y	Y	N	Y	N	Y	Y	N
15.623	Y	Y	N	N	Y	Y	N	N	N	Y	N	N
15.635	Y	Y	N	N	N	Y	N	N	N	Y	N	N
16.034	Y	Y	N	N	Y	N	N	Y	Y	Y	Y	N
16.710	Y	Y	Y	N	N	Y	Y	N	N	Y	N	N
16.738	Y	Y	N	N	Y	N	N	Y	Y	Y	Y	N
16.922	Y	Y	N	N	Y	Y	N	Y	N	Y	Y	N
17.207/17.801 (Employment Service Cluster)	Y	N	N	Y	N	Y	N	N	N	Y	N	N
17.225	Y	Y	N	Y	N	Y	Y	N	N	Y	N	Y
17.235	Y	Y	Y	Y	N	Y	N	N	N	Y	Y	N
17.245	Y	Y	Y	Y	N	N	N	N	N	Y	Y	N
17.258/17.259/17.278 (WIOA Cluster)	Y	N	N	Y	N	Y	Y	N	N	Y	Y	N
17.264	Y	Y	N	Y	Y	N	N	N	Y	Y	N	N
17.265	Y	Y	N	Y	Y	N	N	N	Y	Y	N	N
17.804 (retired 2022)												
20.001 (No single matrix; requirement N must be "Y")												Y
<b>20.106</b>	Y	Y	N	N	Y	Y	N	N	N	Y	N	Y
<b>20.205/20.219/20.224/ 23.003</b> (Highway Planning and Construction Cluster)	Y	Y	N	N	Y	N	N	Y	Y	N	Y	Y
20.218	Y	Y	N	N	Y	Y	Y	N	Y	Y	N	N
20.223	Y	Y	N	N	N	N	Y	N	N	N	N	Y
20.315**	Y	Y	N	N	Y	Y	N	Y	N	Y	N	Y
<b>20.319</b>	Y	Y	N	N	N	N	Y	Y	N	Y	Y	Y

Requirement	A	B	C	E	F	G	H	I	J	L	M	N
	Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment Real Property Management	Matching, Level of Effort, Earmarking	Period of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Program Number												
<b>20.500/20.507/20.525 /20.526</b> (Federal Transit Cluster)	Y	Y	Y	N	N	N	Y	Y	N	N	Y	N
<b>20.509</b>	Y	Y	Y	N	Y	N	N	Y	N	N	Y	N
<b>20.513/20.516/20.521</b> (Transit Services Programs Cluster)	Y	Y	Y	N	Y	N	N	Y	N	N	Y	N
<b>20.527</b>	Y	Y	Y	N	Y	N	N	Y	N	N	Y	N
20.600/20.611/20.616 (Highway Safety Cluster)	Y	Y	N	N	N	Y	Y	N	N	Y	Y	N
20.601 (deleted 2022)												
20.602 (deleted 2022)												
20.609 (deleted 2022)												
20.610 (deleted 2022)												
20.612 (deleted 2022)												
20.613 (deleted 2022)												
20.816	Y	Y	N	N	N	Y	N	Y	N	Y	N	N
20.823	Y	Y	N	N	N	Y	N	Y	N	Y	Y	N
21.015	Y	Y	N	N	Y	Y	N	Y	N	N	Y	Y
21.016	Y	Y	N	Y	Y	Y	N	Y	N	Y	N	N
21.019	Y	Y	N	N	N	N	Y	N	N	Y	Y	N
21.020	Y	Y	N	Y	N	Y	N	Y	N	Y	N	N
21.023 (NEW)	Y	Y	N	Y	N	N	Y	N	N	Y	N	Y
21.026 (NEW)	Y	Y	Y	Y	N	N	N	N	N	Y	Y	N
21.027*	Y	Y	N	N	N	N	Y	Y	N	Y	Y	N
21.029 (NEW)	Y	Y	Y	N	N	N	N	Y	N	Y	Y	N
32.006	Y	Y	N	N	N	N	Y	Y	N	Y	N	Y
32.009 (NEW)	Y	Y	N	N	Y	N	Y	Y	N	N	N	Y
45.129	Y	Y	N	N	N	Y	N	Y	N	Y	Y	N
59.075 (NEW)	Y	Y	N	N	N	N	Y	N	N	N	N	N
66.458/66.482 (Clean Water State Revolving Fund Cluster)	Y	Y	Y	N	N	Y	Y	Y	N	N	N	N
66.468/66.483 (Drinking Water State Revolving Fund Cluster)	Y	Y	Y	N	N	Y	Y	Y	N	N	N	N
81.041	Y	Y	Y	N	N	N	N	Y	N	Y	Y	N
81.042	Y	Y	N	Y	N	N	N	Y	N	Y	Y	N
84.000 (No matrix)												
84.002	Y	Y	Y	Y	N	Y	Y	N	N	N	Y	N
84.010	Y	Y	N	Y	N	Y	N	N	N	Y	Y	Y
84.011	Y	Y	N	N	N	Y	Y	N	N	Y	Y	Y



Requirement	A	B	C	E	F	G	H	I	J	L	M	N
Program Number	Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment Real Property Management	Matching, Level of Effort, Earmarking	Period of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
84.027/84.173 (Special Education Cluster (IDEA))	Y	Y	N	N	Y	Y	Y	Y	N	N	Y	N
84.032-G	Y	N	N	N	N	N	N	N	N	Y	N	Y
84.032-L	N	N	N	N	N	Y	N	Y	N	Y	N	Y
84.041	Y	Y	N	N	N	Y	N	N	N	Y	N	Y
84.042/84.044/84.047 /84.066/84.217 (TRIO Cluster)	Y	Y	Y	Y	N	N	N	N	N	Y	N	Y
84.048	Y	Y	Y	Y	N	Y	Y	N	N	N	Y	N
84.126	Y	Y	Y	N	N	N	Y	N	Y	Y	N	N
84.181	Y	Y	Y	N	Y	Y	Y	Y	N	N	N	N
84.282	Y	Y	Y	Y	Y	N	N	Y	N	N	Y	N
84.287	Y	Y	Y	Y	N	N	N	N	Y	Y	Y	N
84.365	Y	Y	N	N	N	Y	Y	N	N	Y	Y	Y
84.367	Y	Y	N	Y	N	Y	N	N	N	Y	Y	Y
84.424	Y	Y	Y	Y	N	Y	Y	N	N	N	N	Y
84.425 Section 1 ESF*	Y	Y	N	N	Y	Y	N	N	N	Y	Y	Y
84.425 Section 2 HEERF*	Y	Y	Y	N	N	Y	Y	Y	N	Y	N	N
84.938	Y	Y	Y	Y	N	Y	N	N	N	N	Y	Y
87.051	Y	Y	N	N	Y	N	Y	Y	N	N	Y	Y
87.052	Y	Y	N	N	Y	N	Y	Y	N	N	Y	Y
93.044/93.045/93.053 (Aging Cluster)	Y	Y	N	N	N	Y	N	N	Y	Y	Y	N
93.090	Y	Y	Y	Y	N	Y	N	N	N	Y	N	N
93.095/93.096 (Hurricane Sandy Relief Cluster)	Y	Y	N	N	Y	Y	Y	N	N	Y	N	N
93.153	Y	Y	Y	N	N	N	N	Y	Y	Y	N	N
93.210	Y	Y	Y	Y	N	N	Y	N	Y	N	N	N
93.217	Y	Y	N	N	N	Y	N	N	N	Y	Y	N
93.224/93.527 (Health Center Program Cluster)	Y	Y	Y	N	N	N	Y	Y	N	Y	N	Y
93.268	Y	Y	Y	N	N	N	Y	N	N	Y	N	Y
93.423	Y	Y	Y	N	N	N	N	Y	N	Y	Y	N
93.461	Y	Y	N	Y	N	N	N	N	N	N	N	Y
93.498	Y	Y	N	N	N	N	N	N	N	Y	N	N
93.499**	Y	Y	N	Y	N	Y	Y	N	N	Y	Y	N
93.545	Y	N	N	N	N	N	N	N	N	Y	N	N
93.556	Y	Y	Y	N	N	Y	Y	N	N	Y	N	N
93.558**	Y	Y	N	Y	N	Y	N	N	N	Y	Y	Y
93.563	Y	Y	Y	N	N	Y	Y	N	N	N	Y	N
93.566	Y	Y	Y	Y	N	N	Y	N	N	Y	Y	N
93.568	N	N	Y	Y	N	Y	Y	N	N	Y	Y	N

Requirement	A	B	C	E	F	G	H	I	J	L	M	N
Program Number	Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment Real Property Management	Matching, Level of Effort, Earmarking	Period of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
93.569	Y	Y	N	Y	N	N	Y	N	N	N	Y	Y
93.575/93.596/93.489 (CCDF Cluster)**	Y	Y	N	Y	N	Y	Y	N	N	Y	Y	Y
93.594 (deleted 2021)												
93.600/93.356 (Head Start Cluster)	Y	Y	N	N	Y	N	N	N	N	Y	Y	Y
93.645	Y	Y	Y	N	N	Y	Y	N	N	Y	N	N
93.658	Y	Y	N	Y	N	N	N	N	N	Y	Y	Y
93.659	Y	Y	Y	Y	N	Y	N	N	N	Y	N	N
93.667	Y	Y	Y	N	N	N	Y	N	N	Y	Y	N
93.671 (NEW)	Y	Y	Y	Y	N	Y	N	N	N	N	Y	N
93.676	Y	Y	Y	N	N	N	Y	Y	N	Y	Y	N
93.686	Y	Y	Y	N	N	N	N	Y	Y	Y	Y	N
93.718 (archived 2021)												
93.767	Y	Y	N	Y	N	Y	Y	N	N	Y	N	Y
93.775/93.777/93.778 (Medicaid Cluster)	Y	Y	N	Y	N	Y	N	N	N	Y	N	Y
93.870	Y	Y	N	N	N	N	N	Y	Y	Y	Y	N
93.914	Y	Y	Y	Y	N	N	N	N	Y	N	Y	N
93.917	Y	Y	Y	Y	N	Y	N	N	Y	N	Y	N
93.918	Y	Y	Y	N	N	N	Y	Y	Y	Y	N	N
93.958	Y	Y	Y	N	N	Y	Y	N	N	Y	Y	N
93.959	Y	Y	Y	N	N	Y	Y	N	N	Y	Y	N
93.994	Y	Y	Y	N	N	Y	Y	N	N	Y	N	N
94.006	Y	Y	N	Y	N	Y	N	N	N	N	Y	Y
94.011/94.016 (Foster Grandparent/Senior Companion Cluster)	Y	Y	N	Y	N	Y	N	N	N	Y	N	Y
96.001/96.006 (Disability Insurance/SSI Cluster)	Y	Y	N	N	Y	N	Y	N	N	Y	N	Y
97.036	Y	Y	N	N	N	Y	Y	N	N	Y	Y	Y
97.039	Y	Y	Y	Y	N	N	Y	N	N	Y	N	N
97.067	Y	Y	N	N	N	N	Y	N	N	Y	Y	Y
98.007/98.008 (Foreign Food Aid Donation Cluster)	Y	Y	Y	N	N	N	Y	N	N	Y	Y	Y
Part 5.2, R&D	Y	Y	Y	N	Y	N	Y	Y	N	N	Y	Y
Part 5.3, 84 SFA	Y	N	Y	Y	N	N	N	N	N	Y	N	Y

\*Note 1. New program added in Addendum 1

\*\*Note 2. New program added in Addendum 2

## **PART 3 – COMPLIANCE REQUIREMENTS**

### **INTRODUCTION**

#### **Overview**

The objectives of most compliance requirements for federal programs administered by states, local governments, Indian tribes, institutions of higher education, and nonprofit organizations (non-federal entities) are generic in nature. For example, many programs have eligibility requirements for individuals or organizations to participate in a particular program. 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 programs.

Rather than repeat the 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 Supplement, Part 4 or Part 5 contains additional information about the program and the statutes and regulations governing its administration, and also specifies the compliance requirements to be tested using the guidance in this part, Part 3.

#### **Performance Focus for Grants**

The 2022 Supplement is a continuation of efforts to maximize the value of grant funding by applying a risk-based, data-driven framework that balances compliance requirements with demonstrating successful results. In 2019, federal awarding agencies were encouraged to make a paradigm shift in grants management from one heavy on compliance to a balanced approach that includes establishing measurable program and project goals and analyzing data to improve results. To that end, the 2019 Supplement focused on this paradigm shift and reduced the areas for compliance reviews from a maximum of 12 to a maximum of 6 (A and B compliance areas are counted as one). This reduction focused the agencies and the auditors on the areas that are most important for Federal awarding agencies to manage programs more efficiently.

In the 2022 Supplement, under Part 3 L, Reporting, agencies include the review for performance reporting for 63 programs. With this requirement, the complete audit provides federal awarding agencies with another tool to ascertain that recipients are accurately reporting their achievements towards program performance goals. OMB intends to work with federal awarding agencies to identify performance reporting requirements for more federal programs to be added to future Supplements, and also to consider requiring audits to review documentation that may support validation of performance reporting. Ultimately, OMB would like to move to a state where the auditors are conducting performance audits as opposed to compliance audits and providing reports to agencies on the extent to which the program is achieving its stated goals.

## Relationship between Frequently Asked Questions and the 2 CFR Part 200, Subpart F, Audit

In addition to the guidance in 2 CFR 200 described above, OMB provides answers to Frequently Asked Questions (FAQs) that are found on the CFO.gov website. These FAQs are meant to provide additional context, background, and clarification of the policies described in 2 CFR Part 200 and should be considered in the single audit work plan and reviews. The FAQs are informal in nature and in the case of any perceived discrepancy between the FAQs and the guidance itself, the guidance at 2 CFR 200 governs. The complete list of FAQs (updated as of May 2021) is [https://www.cfo.gov/assets/files/2CRF-FrequentlyAskedQuestions\\_2021050321.pdf](https://www.cfo.gov/assets/files/2CRF-FrequentlyAskedQuestions_2021050321.pdf).

### Use of Terminology in Part 3

Part 3 presents statements of compliance requirements, related audit objectives, and suggested audit procedures. When restating compliance requirements, Part 3 uses the conventions employed in 2 CFR Part 200. For example, when the word “must” is used it indicates a requirement, whereas use of the word “should” indicates a best practice or recommended approach rather than a requirement (2 CFR 200.101 (b) ). Given that different terminology (e.g., “shall”) was used before the issuance of 2 CFR Part 200, the language of Part 3 continues to reflect the way in which the compliance requirements previously were stated. The limited use of the term “should not” (e.g., with respect to improper payments) refers to an action or activity that is non-compliant.

Similarly, when Part 3 speaks to auditors, the word “must,” which is used in limited instances, means that the auditor is required to do what the statement indicates. However, the suggested audit procedures associated with each compliance requirement, which are specifically directed to auditors, uses the term “should,” which indicates a recommended approach. As stated elsewhere (see Part 1 of the Supplement), auditors must judge whether the suggested audit procedures are sufficient to achieve the stated audit objectives or whether alternative audit procedures are needed.

### REQUIREMENTS UNDER 2 CFR Part 200 FOR FEDERAL AWARDS MADE ON OR AFTER November 12, 2020.

2 CFR section 200.101 describes the applicability of 2 CFR Part 200. The following table, from 2 CFR section 200.101(b)(1), summarizes the applicability of the subparts of 2 CFR Part 200 to different types of federal awards, which includes subawards. Federal contracts and subcontracts under them also are subject to the FAR.

The following portions of 2 CFR Part 200:	Are applicable to the following types of federal awards and Fixed-Price Contracts and Subcontracts (except as noted in 2 CFR sections 200.101(d) and (e)):	Are NOT applicable to the following types of federal awards and Fixed-Price Contracts and Subcontracts:
Subpart A - Acronyms and Definitions	All	

<p><b>The following portions of 2 CFR Part 200:</b></p>	<p><b>Are applicable to the following types of federal awards and Fixed-Price Contracts and Subcontracts (except as noted in 2 CFR sections 200.101(d) and (e)):</b></p>	<p><b>Are NOT applicable to the following types of federal awards and Fixed-Price Contracts and Subcontracts:</b></p>
<p>Subpart B - General Provisions except for 200.111 English language, 200.112 Conflict of interest, 200.113 Mandatory disclosures</p>	<p>All</p>	
<p>200.111 English language, 200.112 Conflict of interest, and 200.113 Mandatory disclosures</p>	<p>Grant agreements and cooperative agreements</p>	<p>Agreements for loans, loan guarantees, interest subsidies, and insurance</p> <p>Procurement contracts awarded by federal agencies under the FAR subcontracts under those contracts</p>
<p>Subparts C–D, except for §§ 200.203 Requirement to provide public notice of federal financial assistance programs, 200.303 Internal controls, 200.331-333 Subrecipient Monitoring and Management</p>	<p>Grant agreements and cooperative agreements</p>	<p>Agreements for loans, loan guarantees, interest subsidies, and insurance</p> <p>Procurement contracts awarded by federal agencies under the FAR and subcontracts under those contracts</p>
<p>200.203 Requirements to provide public notice of financial assistance programs</p>	<p>Grant agreements and cooperative agreements</p> <p>Agreements for loans, loan guarantees, interest subsidies, and insurance</p>	<p>Procurement contracts awarded by federal agencies under the FAR and cost-reimbursement subcontracts under those contracts</p>
<p>200.303, Internal controls, 200.331-0-333 Subrecipient Monitoring and Management</p>	<p>All</p>	
<p>Subpart E - Cost Principles</p>	<p>Grant agreements and cooperative agreements, except those providing food commodities</p> <p>All procurement contracts awarded under the Federal Acquisition Regulations except those that are not negotiated</p>	<p>Grant agreements and cooperative agreements providing food commodities</p> <p>Fixed amount awards</p> <p>Agreements for loans, loan guarantees, interest subsidies, and insurance</p> <p>Federal awards to hospitals (see Appendix IX Hospital Cost Principles)</p>

<b>The following portions of 2 CFR Part 200:</b>	<b>Are applicable to the following types of federal awards and Fixed-Price Contracts and Subcontracts (except as noted in 2 CFR sections 200.101(d) and (e)):</b>	<b>Are NOT applicable to the following types of federal awards and Fixed-Price Contracts and Subcontracts:</b>
Subpart F - Audit Requirements	Grant agreements and cooperative agreements  Contracts and subcontracts, except for fixed price contracts and subcontracts, awarded under the Federal Acquisition Regulations  Agreements for loans, loan guarantees, interest subsidies, and insurance and other forms of federal financial assistance as defined by the Single Audit Act Amendments of 1996	Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulations

Appendix I to the Supplement provides the names and Assistance Listing (CFDA) numbers for programs listed in 2 CFR section 200.101(e) that are excluded from subparts D and E of 2 CFR Part 200. In addition, as described in 2 CFR section 200.102 and with the exception of Subpart F, Audit Requirements of 2 CFR Part 200: (1) OMB may allow exceptions for classes of federal awards or non-federal entities subject to the requirements to 2 CFR Part 200 when exceptions are not prohibited by statute; and (2) federal awarding agencies or the cognizant agency for indirect costs may authorize exceptions on a case-by-case basis for individual non-federal entities, except where otherwise required by statute or where OMB or other approval is expressly required.

## **COMPLIANCE REQUIREMENTS, AUDIT OBJECTIVES, AND SUGGESTED AUDIT PROCEDURES**

Auditors must consider the compliance requirements and related audit objectives in Part 3 and Part 4 or Part 5 (for programs included in this Supplement) in every audit conducted under 2 CFR Part 200, Subpart F, with the exception of program-specific audits performed in accordance with a federal agency's program-specific audit guide (see Appendix VI to the Supplement). 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's major program or that noncompliance with the requirement could not have a direct and 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 generally are a summary of the actual compliance requirements. The auditor must refer to the referenced citations to laws and regulations for the complete statement of the compliance requirements.

Note that starting with the 2019 Compliance Supplement, the agencies are required to reduce the areas for compliance reviews from a maximum of 12 to a maximum of six (A and B compliance areas are counted as one). This reduction focused the agencies and the auditors on the areas that are most important for federal awarding agencies to manage programs more efficiently. Part 2 of the Supplement provides the auditors a matrix with the compliance areas that are selected by the agencies for review for their programs listed in Part 4.

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 2 CFR Part 200, Subpart F, Part 3 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 controls, 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 2 CFR Part 200, Subpart F.

### **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 payments include the following:

1. Any payment that should not have been made or that was made in an incorrect amount, including an overpayment or underpayment, under a statutory, contractual, administrative, or other legally applicable requirement; and includes – (i) any payment to an ineligible recipient;(ii) any payment for an ineligible good or service; (iii) any duplicate payment; (iv) any payment for a good or service not received, except for those payments where authorized by law; and (v) any payment that does not account for credit for applicable discounts.
2. A payment that could be either proper or improper, but the agency is unable to discern whether the payment was proper or improper as a result of insufficient or lack of documentation.

Auditors must 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.”

### **Organization and Use of Part 3 of the Supplement**

The remainder of Part 3 divides the types of compliance requirements into parts A through N.



## **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 federal statutes, regulations, and the terms and conditions of the federal award 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.

### **Source of Governing Requirements**

The requirements for activities allowed or unallowed 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 2 CFR section 200.514(c).
2. Determine whether federal awards were expended only for allowable activities.

### **Suggested Audit Procedures – Internal Control**

1. 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 2 CFR section 200.514(c)(4), including reporting a significant deficiency or material weakness in accordance with 2 CFR section 200.516, 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 remaining 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 federal statutes, regulations, and the terms and conditions of the federal award 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 Cost Principles**

The cost principles in 2 CFR Part 200, Subpart E (Cost Principles), prescribe the cost accounting requirements associated with the administration of federal awards by:

- a. States, local governments, and Indian tribes
- b. Institutions of higher education (IHEs)
- c. Nonprofit organizations

As provided in 2 CFR section 200.101, the cost principles requirements apply to all federal awards with the exception of grant agreements and cooperative agreements providing food commodities; agreements for loans, loan guarantees, interest subsidies, insurance; and programs listed in 2 CFR section 200.101(d) (see Appendix I of this Supplement). Federal awards administered by publicly owned hospitals and other providers of medical care are exempt from 2 CFR Part 200, Subpart E, but are subject to the requirements 45 CFR Part 75, Appendix IX, the Department of Health and Human Services (HHS) implementation of 2 CFR Part 200. 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 awarding agency or indirectly through a pass-through entity. For this purpose, federal awards include cost-reimbursement contracts under the Federal Acquisition Regulation (FAR). The cost principles do not apply to federal awards under which a non-federal entity is not required to account to the federal awarding agency or pass-through entity for actual costs incurred.

### **Source of Governing Requirements**

The requirements for allowable costs/cost principles are contained in 2 CFR Part 200, Subpart E, program legislation, federal awarding agency regulations, and the terms and conditions of the award.

The requirements for the development and submission of indirect (facilities and administration (F&A)) cost rate proposals and cost allocation plans (CAPs) are contained in 2 CFR Part 200, appendices III–VII as follows:

- Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs).
- Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations
- Appendix V to Part 200—State/Local Government-Wide Central Service Cost Allocation Plans
- Appendix VI to Part 200—Public Assistance Cost Allocation Plans

- Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals

Except for the requirements identified below under “Basic Guidelines,” which are applicable to all types of non-federal entities, this compliance requirement is divided into sections based on the type of non-federal entity. The differences that exist are necessary because of the nature of the non-federal entity organizational structures, programs administered, and breadth of services offered by some non-federal entities and not others.

### **Basic Guidelines**

Except where otherwise authorized by statute, cost must meet the following general criteria in order to be allowable under federal awards;

1. Be necessary and reasonable for the performance of the federal award and be allocable thereto under the principles in 2 CFR Part 200, Subpart E.
2. Conform to any limitations or exclusions set forth in 2 CFR Part 200, Subpart E or in the federal award as to types or amount of cost items.
3. Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the non-federal entity.
4. 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.
5. Be determined in accordance with generally accepted accounting principles (GAAP), except for state and local governments and Indian tribes only as otherwise provided for in 2 CFR Part 200.
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.

### **Selected Items of Cost**

The 2 CFR sections 200.420 through 200.476 provide the principles to be applied in establishing the allowability of certain items of cost, in addition to the basic considerations identified above. (For a listing of costs, by type of non-federal entity, refer to Exhibit 1 of this part of the Supplement.) These principles apply whether or not a particular item of cost is treated as a direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment provided for similar or related items of cost and the principles described in 2 CFR sections 200.402 through 200.411.

## List of Selected Items of Cost Contained in 2 CFR Part 200

The following exhibit provides a listing of selected items of cost contained in the cost principles in 2 CFR Part 200, Subpart E. Several cost items are unique to one type of entity (e.g., commencement and convocation costs are applicable only to IHEs).

The exhibit lists the selected items of cost along with a brief description of their allowability. The reader is strongly cautioned not to rely exclusively on the summary but to place primary reliance on the referenced 2 CFR Part 200 text.

### Selected Items of Cost - Exhibit 1

Selected Cost Item	Uniform Guidance General Reference	Items of Cost Requiring Prior Approval	States, Local Governments, Indian Tribes	Institutions of Higher Education	Nonprofit Organizations	Items of Cost not Treated the Same Across Non-Federal Entities
Advertising and public relations costs	§200.421		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Advisory councils	§200.422		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Alcoholic beverages	§200.423		Unallowable	Unallowable	Unallowable	
Alumni/ae activities	§200.424		Not specifically addressed	Unallowable	Not specifically addressed	X
Audit services	§200.425		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Bad debts	§200.426		Unallowable	Unallowable	Unallowable	
Bonding costs	§200.427		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Collection of improper payments	§200.428		Allowable	Allowable	Allowable	
Commencement and convocation costs	§200.429		Not specifically addressed	Unallowable with exceptions	Not specifically addressed	X
Compensation for personal services	§200.430	X (related to the salaries of administrative and clerical staff)	Allowable with restrictions; Special conditions apply (e.g., §200.430(i)(5))	Allowable with restrictions; Special conditions apply (e.g., §200.430(h))	Allowable with restrictions; Special conditions apply (e.g., §200.430(g))	X

Selected Cost Item	Uniform Guidance General Reference	Items of Cost Requiring Prior Approval	States, Local Governments, Indian Tribes	Institutions of Higher Education	Nonprofit Organizations	Items of Cost not Treated the Same Across Non-Federal Entities
Compensation – fringe benefits	§200.431	X (related to costs for IHEs)	Allowable with restrictions	Allowable with restrictions; Special conditions apply	Allowable with restrictions	X
Conferences	§200.432		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Contingency provisions	§200.433		Unallowable with exceptions	Unallowable with exceptions	Unallowable with exceptions	
Contributions and donations	§200.434		Unallowable (made by non-federal entity); not reimbursable but value may be used as cost sharing or matching (made to non-federal entity)	Unallowable (made by non-federal entity); not reimbursable but value may be used as cost sharing or matching (made to non-federal entity)	Unallowable (made by non-federal entity); not reimbursable, but value may be used as cost sharing or matching (made to non-federal entity); with restrictions, the value of services may be considered when determining an entity’s indirect cost rate under certain circumstances	X
Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements	§200.435		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Depreciation	§200.436		Allowable with qualifications	Allowable with qualifications	Allowable with qualifications	
Employee health and welfare costs	§200.437		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	

<b>Selected Cost Item</b>	<b>Uniform Guidance General Reference</b>	<b>Items of Cost Requiring Prior Approval</b>	<b>States, Local Governments, Indian Tribes</b>	<b>Institutions of Higher Education</b>	<b>Nonprofit Organizations</b>	<b>Items of Cost not Treated the Same Across Non-Federal Entities</b>
Entertainment costs	§200.438	X	Unallowable with exceptions	Unallowable with exceptions	Unallowable with exceptions	
Equipment and other capital expenditures	§200.439	X	Allowability based on specific requirements	Allowability based on specific requirements	Allowability based on specific requirements	
Exchange rates	§200.440	X	Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Fines, penalties, damages and other settlements	§200.441	X	Unallowable with exception	Unallowable with exception	Unallowable with exception	
Fund raising and investment management costs	§200.442	X	Unallowable with exceptions	Unallowable with exceptions	Unallowable with exceptions	
Gains and losses on disposition of depreciable assets	§200.443		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
General costs of government	§200.444		Unallowable with exceptions	Not specifically addressed	Not specifically addressed	X
Goods or services for personal use	§200.445	X	Unallowable (goods/ services); allowable (housing) with restrictions	Unallowable (goods/ services); allowable (housing) with restrictions	Unallowable (goods/ services); allowable (housing) with restrictions	
Idle facilities and idle capacity	§200.446		Idle facilities - unallowable with exceptions; idle capacity - allowable with restrictions	Idle facilities - unallowable with exceptions; idle capacity - allowable with restrictions	Idle facilities - unallowable with exceptions; idle - capacity allowable with restrictions	
Insurance and indemnification	§200.447	X	Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	

<b>Selected Cost Item</b>	<b>Uniform Guidance General Reference</b>	<b>Items of Cost Requiring Prior Approval</b>	<b>States, Local Governments, Indian Tribes</b>	<b>Institutions of Higher Education</b>	<b>Nonprofit Organizations</b>	<b>Items of Cost not Treated the Same Across Non-Federal Entities</b>
Intellectual property	§200.448		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Interest	§200.449		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	X
Lobbying	§200.450		Unallowable	Unallowable; Special additional restrictions	Unallowable; Special additional restrictions	X
Losses on other awards or contracts	§200.451		Unallowable (however, they are required to be included in the indirect cost rate base for allocation of indirect costs)	Unallowable (however, they are required to be included in the indirect cost rate base for allocation of indirect costs)	Unallowable (however, they are required to be included in the indirect cost rate base for allocation of indirect costs)	
Maintenance and repair costs	§200.452		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Materials and supplies costs, including computing devices	§200.453		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Memberships, subscriptions, and professional activity costs	§200.454	X	Allowable with restrictions; unallowable for lobbying organizations.	Allowable with restrictions; unallowable for lobbying organizations	Allowable with restrictions; unallowable for lobbying organizations.	
Organization costs	§200.455	X	Unallowable except federal prior approval	Unallowable except federal prior approval	Unallowable except federal prior approval	
Participant support costs	§200.456	X	Allowable with prior approval of the federal awarding agency	Allowable with prior approval of the federal awarding agency	Allowable with prior approval of the federal awarding agency	
Plant and security costs	§200.457		Allowable; capital expenditures are subject to	Allowable; capital expenditures are subject to	Allowable; capital expenditures are subject to	



<b>Selected Cost Item</b>	<b>Uniform Guidance General Reference</b>	<b>Items of Cost Requiring Prior Approval</b>	<b>States, Local Governments, Indian Tribes</b>	<b>Institutions of Higher Education</b>	<b>Nonprofit Organizations</b>	<b>Items of Cost not Treated the Same Across Non-Federal Entities</b>
			§200.439	§200.439	§200.439	
Professional service costs	§200.459		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Proposal costs	§200.460		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Publication and printing costs	§200.461		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Rearrangement and reconversion costs	§200.462	X	Allowable (ordinary and normal)	Allowable (ordinary and normal)	Allowable (ordinary and normal)	
Recruiting costs	§200.463		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Relocation costs of employees	§200.464		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Rental costs of real property and equipment	§200.465		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Scholarships and student aid costs	§200.466		Not specifically addressed	Allowable with restrictions	Not specifically addressed	X
Selling and marketing costs	§200.467	X	Unallowable with exceptions	Unallowable with exceptions	Unallowable with exceptions	
Specialized service facilities	§200.468		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Student activity costs	§200.469		Unallowable unless specifically provided for in the federal award	Unallowable unless specifically provided for in the federal award	Unallowable unless specifically provided for in the federal award	
Taxes (including Value Added Tax)	§200.470		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	X
Telecommunication costs and video surveillance costs	§200.471		Unallowable	Unallowable	Unallowable	

Selected Cost Item	Uniform Guidance General Reference	Items of Cost Requiring Prior Approval	States, Local Governments, Indian Tribes	Institutions of Higher Education	Nonprofit Organizations	Items of Cost not Treated the Same Across Non-Federal Entities
Termination costs	§200.472		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Training and education costs	§200.473		Allowable for employee development	Allowable for employee development	Allowable for employee development	
Transportation costs	§200.474		Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Travel costs	§200.475	X	Allowable with restrictions	Allowable with restrictions	Allowable with restrictions	
Trustees	§200.476		Not specifically addressed	Allowable with restrictions	Allowable with restrictions	X

### Suggested Internal Control Audit Procedures

1. 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 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 2 CFR section 200.514(c)(4), including reporting a significant deficiency or material weakness in accordance with 2 CFR section 200.516, 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 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.

### Indirect Cost Rate

Except for those non-federal entities described in 2 CFR Part 200, Appendix VII, paragraph D.1.b, if a non-federal entity has never received a negotiated indirect cost rate, it may elect to charge a de minimis rate of 10 percent of modified total direct costs (MTDC). Effective on November 12, 2020, any non-federal entity can use the de minimis rate. Such a rate may be used indefinitely or until the non-federal entity chooses to negotiate a rate, which the non-federal entity may do at any time. If a non-federal entity chooses to use the de minimis rate, that rate must be used consistently for all of its federal awards. Also, as described in 2 CFR section 200.403, costs must be consistently charged as either indirect or direct but may not be double charged or inconsistently charged as both. In accordance with 2 CFR section 200.400(g), a non-

federal entity may not earn or keep any profit resulting from federal financial assistance, unless explicitly authorized by the terms and conditions of the award. A non-federal entity can always choose to charge the federal awards less than the negotiated rates or the de minimis rate.

*Audit Objectives – De Minimis Indirect Cost Rate*

1. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).
2. Determine that the de minimis rate is applied to the appropriate base amount.
3. Determine that the de minimis rate is used consistently by a non-federal entity under its federal awards.

*Suggested Compliance Audit Procedures – De Minimis Indirect Cost Rate*

The following suggested audit procedures apply to any non-federal entity using a de minimis indirect cost rate, whether as a recipient or subrecipient. None of the procedures related to indirect costs in the sections organized by type of non-federal entity apply when a de minimis rate is used.

1. Determine that the non-federal entity has not previously claimed indirect costs on the basis of a negotiated rate. Auditors are required to test only for the three fiscal years immediately prior to the current audit period.
2. Test a sample of transactions for conformance with 2 CFR section 200.414(f).
  - a. Select a sample of claims for reimbursement of indirect costs and verify that the de minimis rate was used consistently, the rate was applied to the appropriate base, and the amounts claimed were the product of applying the rate to a modified total direct costs base.
  - b. Verify that the costs included in the base are consistent with the costs that were included in the base year (i.e., verify that current year modified total direct costs do not include costs items that were treated as indirect costs in the base year).
3. For a non-federal entity conducting a single function, which is predominately funded by federal awards, determine whether use of the de minimis indirect cost rate resulted in the non-federal entity double-charging or inconsistently charging costs as both direct and indirect.

## **2 CFR PART 200**

### **COST PRINCIPLES FOR STATES, LOCAL GOVERNMENTS, AND INDIAN TRIBES**

#### **Introduction**

The 2 CFR Part 200, Subpart E and appendices III–VII establish principles and standards for determining allowable direct and indirect costs for federal awards. This section is organized into the following areas of allowable costs: states and local government and Indian tribe costs (direct and indirect); state/local government central service costs; and state public assistance agency costs.

#### **Cognizant Agency for Indirect Costs**

The 2 CFR Part 200, Appendix V, paragraph F, provides the guidelines to use when determining the federal agency that will serve as the cognizant agency for indirect costs for states, local governments, and Indian tribes. References to the “cognizant agency for indirect costs” are not equivalent to the cognizant agency for audit responsibilities, which is defined in 2 CFR section 200.18.

For indirect cost rates and departmental indirect cost allocation plans, the cognizant agency is generally the federal agency with the largest value of *direct* federal awards (excluding pass-through awards) with a governmental unit or component, as appropriate. In general, unless different arrangements are agreed to by the concerned federal agencies or described in 2 CFR Part 200, Appendix V, paragraph F, the cognizant agency for central service cost allocation plans is the federal agency with the largest dollar value of *total* federal awards (including pass-through awards) with a governmental unit.

Once designated as the cognizant agency for indirect costs, the federal agency remains so for a period of five years. In addition, 2 CFR Part 200, Appendix V, paragraph F, lists the cognizant agencies for certain specific types of plans and the cognizant agencies for indirect costs for certain types of governmental entities. For example, HHS is cognizant for all public assistance and state-wide cost allocation plans for all states (including the District of Columbia and Puerto Rico), state and local hospitals, libraries, and health districts, and the Department of the Interior (DOI) is cognizant for all Indian tribal governments, territorial governments, and state and local park and recreational districts.

#### **Allowable Costs—Direct and Indirect Costs**

The individual state/local government/Indian tribe 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 2 CFR Part 200, Subpart E.

The indirect cost rate proposal (ICRP) provides the documentation prepared by a state/local government/Indian tribe 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 of the governmental unit carrying out federal awards, and (2) for states and local governments,

costs of central governmental services distributed through the state/local government-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 2 CFR Part 200, Appendix VII, paragraph B).

### **1. Compliance Requirements – Direct Costs**

- a. Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a federal award or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy.
- b. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs.

### **2. Audit Objectives – Direct Costs**

- a. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).
- b. Determine whether the organization complied with the provisions of 2 CFR Part 200) as follows:
  - (1) Direct charges to federal awards were for allowable costs.
  - (2) Unallowable costs determined to be direct costs were included in the allocation base for the purpose of computing an indirect cost rate.

### **3. Suggested Compliance Audit Procedures – Direct Costs**

Test a sample of transactions for conformance with the following criteria contained in 2 CFR Part 200, 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 the above table (Selected Items of Cost, Exhibit 1) or 2 CFR section 200.407 for selected items of cost that require prior written approval).
- c. Costs did not consist of improper payments, including (1) payments that should not have been made or that were made in incorrect amounts (including overpayments and underpayments) under statutory, contractual, administrative, or

other legally applicable requirements; (2) payments that do not account for credit for applicable discounts; (3) duplicate payments; (4) payments that were made to an ineligible party or for an ineligible good or service; and (5) payments for goods or services not received (except for such payments where authorized by law).

- d. Costs were necessary and reasonable for the performance of the federal award and allocable under the principles of 2 CFR Part 200, Subpart E.
- e. Costs conformed to any limitations or exclusions set forth in 2 CFR Part 200, Subpart E, or in the federal award as to types or amount of cost items.
- f. Costs were consistent with policies and procedures that apply uniformly to both federally financed and other activities of the state/local government/Indian tribe department or agency.
- g. Costs were accorded consistent treatment. Costs were not assigned to a federal award as a direct cost if any other cost incurred for the same purpose in like circumstances was allocated to the federal award as an indirect cost.
- h. Costs were not included as a cost of any other federally financed program in either the current or a prior period.
- i. Costs were not used to meet the cost-sharing or matching requirements of another federal program, except where authorized by federal statute.
- j. Costs were adequately documented.

## **1. Compliance Requirements – Indirect Costs**

- a. *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 2 CFR Part 200, Appendix VII, 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 2 CFR Part 200, Appendix VII, 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 2 CFR Part 200, Appendix VII, paragraph C.4.)
- (d) *Cost Allocation Plans* – In certain cases, the cognizant agency for indirect costs may require a state or local government or 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 either must be submitted to the cognizant agency for indirect cost for review, negotiation, and approval, or retained on file for inspection during audits.

b. *Submission Requirements*

- (1) Submission requirements are identified in 2 CFR Part 200, Appendix VII, 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 or Indian tribe that receives more than \$35 million in direct federal funding must submit its ICRP to its cognizant agency for indirect costs. Other state/local government departments or agencies that are not required to submit a proposal to the cognizant agency for indirect costs must develop an ICRP in accordance with the requirements of 2 CFR Part 200 and maintain the proposal and related supporting documentation for audit.
- (3) Where a government receives funds as a subrecipient only, the pass-through entity will be responsible for the indirect cost rate used (2 CFR section 200.331(a)(4)).
- (4) Each Indian tribe desiring reimbursement of indirect costs must submit its ICRP to the DOI (its cognizant agency for indirect costs).

- (5) ICRPs must be developed (and, when required, submitted) within 6 months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect costs.

c. *Documentation and Certification Requirements*

The documentation and certification requirements for ICRPs are included in 2 CFR Part 200, Appendix VII, 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 2 CFR section 200.333(f).

## 2. **Audit Objectives – Indirect Costs**

- a. Obtain an understanding of internal control over the compliance requirements for state/local government/Indian tribe department or agency costs, assess risk, and test internal control as required by 2 CFR section 200.514(c).
- b. Determine whether the governmental unit complied with the provisions of 2 CFR Part 200 as follows:
  - (1) Charges to cost pools used in calculating indirect cost rates were for allowable costs.
  - (2) The methods for allocating the costs are in accordance with the 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).
  - (3) Indirect cost rates were applied in accordance with negotiated indirect cost rate agreements (ICRA).
  - (4) For state/local departments or agencies that do not have to submit an ICRP to the cognizant agency for indirect costs (those that receive less than \$35 million in direct federal awards), indirect cost rates were applied in accordance with the ICRP maintained on file.

## 3. **Suggested Compliance Audit Procedures – Indirect Costs**

- a. If the state/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* – The following procedures apply to 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 Considerations” section of 2 CFR sections 200.402 through 200.411.
    - (b) The principles to establish allowability or unallowability of certain items of cost (2 CFR sections 200.420 through 200.476).
  - (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 Government, and Indian Tribe ICRPs*
- (1) Verify that the ICRP includes the required documentation in accordance with 2 CFR Part 200, Appendix VII, 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 2 CFR Part 200). If there are 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.

The following procedures are some acceptable options the auditor may use to obtain assurance that the costs collected in the cost pools and the allocation methods used are in compliance with 2 CFR Part 200, Subpart E:

- (a) *Indirect Cost Pool* – Test the indirect cost pool to ascertain if it includes only allowable costs in accordance with 2 CFR Part 200.
  - (i) Test to ensure that unallowable costs are identified and eliminated from the indirect cost pool (e.g., capital expenditures, general costs of government).
  - (ii) 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.

- (iii) Trace the central service costs that are included in the indirect cost pool to the approved state/local government or central service CAP or to plans on file when submission is not required.
  - (b) *Direct Cost Base* – Test the methods of allocating the costs to ascertain if they are in accordance with the applicable provisions of 2 CFR Part 200 and produce an equitable distribution of costs.
    - (i) Determine that the proposed base(s) includes all activities that benefit from the indirect costs being allocated.
    - (ii) 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.
    - (iii) Determine the appropriateness of the allocation base (e.g., salaries and wages, modified total direct costs).
  - (c) *Other Procedures*
    - (i) Examine the records for employee compensation to ascertain if they are accurate, and the costs are allowable and properly allocated to the various functional and programmatic activities to which salary and wage costs are charged. (Refer to 2 CFR section 200.430 for additional information on support of salaries and wages.)
    - (ii) 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 agency for indirect costs, the auditor should determine whether documentation exists to support the costs. When the auditee has documentation, the suggested general audit procedures under paragraph 3.b above 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 for indirect costs, 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/Local Government-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 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 government-wide central service cost allocation plan (CAP) provides that process. (Refer to 2 CFR Part 200, Appendix V, 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 government-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 government-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 Government-Wide Central Service Costs

### a. *Submission Requirements*

- (1) Submission requirements are identified in 2 CFR Part 200, Appendix V, 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 “major local government” is required to submit a central service CAP to its cognizant agency for indirect costs annually. *Major local government* means a local government that receives more than \$100 million in direct federal awards (not including pass-through awards) subject to 2 CFR Part 200, Subpart E. All other local governments claiming central service costs must develop a CAP in accordance with the requirements described in 2 CFR Part 200 and maintain the plan and related supporting documentation for audit. These local governments are not required to submit the plan for federal approval unless they are specifically requested to do so by the cognizant agency for indirect costs.
- (4) All central service CAPs will be prepared and, when required, submitted within the six 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 for indirect costs on a case-by-case basis.

### b. *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 2 CFR Part 200 Appendix V, 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 2 CFR section 200.333(f).

- c. *Required Certification* – No proposal to establish a central service CAP, whether submitted to the cognizant agency for indirect costs or maintained on file by the governmental unit, will 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 2 CFR Part 200, Appendix V, paragraph E.4.

- d. *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 approved plan, or for unallowable costs that must be reimbursed immediately (2 CFR Part 200, Appendix V, paragraph G.3).
- e. *Billed Central Service Costs (Section II Costs)*
- (1) Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss (2 CFR Part 200, Appendix V, paragraph G.1).
  - (2) Internal service funds for central service activities are allowed a working capital reserve of up to 60 calendar days cash expenses for normal operating purposes (2 CFR Part 200, Appendix V, paragraph G.2). A working capital reserve exceeding 60 calendar days may be approved by the cognizant agency for indirect costs in exceptional cases.
  - (3) 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 (2 CFR Part 200, Appendix V, paragraph G.4). A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. The adjustments will be made through one of the following methods, at the option of the cognizant agency:
    - (a) If revenue exceeds costs, a cash refund to the federal government for the federal share of the adjustment, including earned or imputed interest from the date of expenditure and debt interest, if applicable, chargeable in accordance with applicable cognizant agency for indirect costs regulations;
    - (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 (federal share and non-federal share) does not exceed \$500,000.
  - (4) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund), refunds must be made to the federal government for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable cognizant agency for indirect cost claims collection regulations (2 CFR section 200.447(d)(5)).

**2. Audit Objectives – State/Local Government-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 2 CFR section 200.514(c).
- b. Determine whether the governmental unit complied with the provisions of 2 CFR Part 200 as follows:
  - (1) Charges to cost pools allocated to federal awards through the central service CAPs were for allowable costs.
  - (2) The methods of allocating the costs are in accordance with the 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).
  - (3) Cost allocations were in accordance with central service CAPs approved by the cognizant agency for indirect costs or, in cases where such plans are not subject to approval, in accordance with the plan on file.

**3. Suggested Compliance Audit Procedures – State/Local Government-Wide Central Service Costs**

- a. For local governments that are 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 Government-Wide Central Service CAPs* – The following procedures apply to 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 Considerations” section of 2 CFR Part 200, Subpart E (sections 200.402 through 200.411).
    - (b) The principles to establish allowability or unallowability of certain items of cost (2 CFR sections 200.420 through 476).
  - (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 Government-Wide Central Service CAPs*
- (1) Verify that the central service CAP includes the required documentation in accordance with 2 CFR Part 200 Appendix V, paragraph E.
  - (2) *Testing of the State/Local Government-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) Ascertain if the bases used to allocate costs are appropriate (i.e., costs are allocated in accordance with relative benefits received).
    - (d) Ascertain if 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, ascertain if the data included in the bases are current and accurate.
    - (f) Verify that carry-forward adjustments are properly computed in accordance with 2 CFR Part 200, Appendix V, paragraph G.3.
  - (3) *Testing of the State/Local Government-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 cost principles;
  - (ii) Working capital reserves are not excessive in amount (generally not greater than 60 calendar 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.
- (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 the cost principles and federal statutes.
  - (d) Test, where billed central service activities are funded through general revenue appropriations, that the billing rates (or charges) were developed based on actual costs and were adjusted to eliminate profits.
  - (e) For self-insurance and pension funds, ascertain if the fund contributions are appropriate for such activities as indicated in the current actuarial report.
  - (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 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.

The 2 CFR Part 200, Appendix VI, paragraph A, 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 specified in 45 CFR Part 95, Subpart E.

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

## **1. Compliance Requirements – State Public Assistance Agency Costs**

### *a. Submission Requirements*

Unlike most state/local government-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 CAP 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 CAP.
- (3) The CAP 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 CAP invalid.

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

- b. Documentation Requirements* – A state may claim federal financial participation for costs associated with a program only in accordance with its approved CAP. The public assistance CAP requirements are contained in 45 CFR section 95.507.
- c. Implementation of Approved Public Assistance CAPs* – Since public assistance CAPs are of a narrative nature, the federal government needs assurance that the CAP has been implemented as approved. This is accomplished by funding agencies' reviews, single audits, or audits conducted by the cognizant agency for audit (2 CFR Part 200 Appendix VI, 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 2 CFR section 200.514(c).
- b. Determine whether the governmental unit complied with the provisions of 2 CFR Part 200 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 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 cost principles and/or produces an inequitable distribution of costs.
  - (5) The employee compensation reporting systems are implemented and operated in accordance with the methodologies described in the approved public assistance CAP.

**3. Suggested Compliance Audit Procedures – State Public Assistance Agency Costs**

- a. Since a significant amount of the costs in the public assistance CAP are allocated based on employee compensation reporting systems, it is suggested that the auditor consider the risk when designing the nature, timing, and extent of compliance testing.
- b. *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 Considerations” section of 2 CFR Part 200 (sections 200.402 through 200.411).
    - (b) The principles to establish allowability or unallowability of certain items of cost (2 CFR sections 200.420 through 200.476).

- (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 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) Examining the results of the employee compensation system or in addition the records for employee compensation to ascertain if they are accurate, allowable, and properly allocated to the various functional and programmatic activities to which 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, determining whether the time studies are implemented and operated in accordance with the methodologies described in the approved public assistance CAP. For example, verifying the adequacy of the controls governing the conduct and evaluation of the study, and determining that the sampled observations were properly selected and performed, the documentation of the observations was properly completed, and 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) Testing 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 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) Verifying 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) Reconciling the allocation statistics of labor costs to employee compensation records (e.g., random moment sampling observation forms).
  - (c) Reconciling the allocation statistics of non-labor costs to allocation data, (e.g., square footage or case counts).
  - (d) Verifying direct charges to supporting documents (e.g., purchase orders).
  - (e) Reconciling the costs to the federal claims.

## **2 CFR PART 200**

### **COST PRINCIPLES FOR INSTITUTIONS OF HIGHER EDUCATION**

#### **Introduction**

The 2 CFR Part 200 establishes principles for determining the costs applicable to research and development, training, and other sponsored work performed by institutions of higher education (IHEs) under federal awards. These federal awards are referred to as sponsored agreements. This section is organized into the following areas of allowable costs: Direct Costs; Indirect Costs; Cost Accounting Standards (CAS) and Disclosure Statements and Special Requirements – Internal Service, Central Service, Pension, or Similar Activities or Funds.

At IHEs, indirect costs are accounted for through F&A cost proposals. F&A costs, for the purpose of 2 CFR Part 200 and as defined at 2 CFR section 200.1, are synonymous with “indirect costs” and include 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. As described in 2 CFR section 200.414(a), the F&A cost categories include building and equipment depreciation; operations and maintenance expenses; interest expenses; general administrative expenses; departmental administration expenses; sponsored project administration expenses; library expenses; and student administration expenses. F&A costs are referred to as “indirect costs” in this section.

#### **Cognizant Agency for Indirect Costs**

The 2 CFR section 200.1 defines “cognizant agency for indirect costs” as the federal agency responsible for reviewing, negotiating, and approving indirect (F&A) costs rates on behalf of all federal agencies. References to the “cognizant agency for indirect costs” in this section are not equivalent to the cognizant agency for audit responsibilities, which is defined in 2 CFR section 200.1. 2 CFR Part 200, Appendix III, paragraph C.11, assigns indirect cost cognizance to HHS or the Department of Defense (DoD), Office of Naval Research, normally depending on which of the two agencies (HHS or DoD) provides more funds to the educational institution for the most recent three years. Once designated as the cognizant agency for indirect costs, the federal agency remains so for a period of five years.

#### **Allowable Costs – Direct Costs**

##### **1. Compliance Requirements – Direct Costs**

- a. Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy.
- b. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs.

**2. Audit Objectives – Direct Costs**

- a. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).
- b. Determine whether the organization complied with the provisions of 2 CFR Part 200 and CAS (if applicable) as follows:
  - (1) Direct charges to federal awards were for allowable costs.
  - (2) Unallowable costs determined to be direct costs were included in the allocation base for the purpose of computing an indirect cost rate.

**3. Suggested Compliance Audit Procedures – Direct Costs**

Test a sample of transactions for conformance with the following criteria contained in 2 CFR Part 200 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 2 CFR section 200.407 for selected items of cost that require prior written approval and Exhibit 1 in this part of the Supplement for selected items of cost that require cognizant agency for indirect cost approval or federal awarding agency approval when charged to an award as direct costs).
- c. Costs did not include (1) improper payments that should not have been made or that were made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements; (2) overpayments and underpayments that were made to eligible recipients (e.g., payment that does not account for credit for applicable discounts, duplicate payment); and (3) payments that were made to an ineligible recipient or for ineligible goods or services, or payments for goods and services not received (except for such payments where authorized by law).
- d. Costs were necessary and reasonable for the performance of the federal award and allocable under the principles of 2 CFR Part 200, Subpart E.
- e. Costs conformed to any limitations or exclusions set forth in 2 CFR Part 200, Subpart E, or in the federal award as to types or amount of cost items.
- f. Costs were consistent with policies and procedures that apply uniformly to both federally financed and other activities of the IHE.

- g. Costs were accorded consistent treatment. Cost were not assigned to a federal award as a direct cost if any other cost incurred for the same purpose in like circumstances was allocated to the federal award as an indirect cost.
- h. Costs were not 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.
- i. Costs were adequately documented.
- j. 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 2 CFR Part 200 and CAS. Salaries of administrative and clerical staff normally should be treated as indirect costs. Direct charging of these costs may be appropriate only when certain conditions are met (2 CFR section 200.413(c)).
- k. Costs for general-purpose equipment charged as direct costs to institutional activities (i.e., research and development, instruction, other institutional activities) are consistently charged as direct, were approved by the federal awarding agency, and are in accordance with the provisions of 2 CFR Part 200 and CAS.

### **Allowable Costs – Indirect Costs**

Indirect (facilities and administrative(F&A)) 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 (2 CFR section 200.1).

Indirect costs are defined into two broad categories in 2 CFR section 200.414(a).

- “Facilities” is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, operations and maintenance expenses, and library expenses.
- “Administration” is defined as general administration and general expenses such as the director's office, accounting, personnel, and all other types of expenditures not listed specifically under one of the subcategories of “Facilities” (including cross allocations from other pools, where applicable).

**Note: Auditors are reminded that, for educational institutions, the F&A rate in effect at the time of an award is effective for the life of the award and, therefore, even if an award(s) has changed terms and conditions at the time of incremental funding based on 2 CFR Part 200.**

## 1. Compliance Requirements – Indirect Costs

- a. In order to recover indirect costs, IHEs must prepare indirect cost rate proposals (ICRPs) in accordance with the guidelines provided in 2 CFR Part 200, Appendix III, and submit them to the cognizant agency for indirect costs for approval (2 CFR Part 200, Appendix III, paragraph C.11).
- b. ICRPs prepared by IHEs are based on the most current financial data supported by the institution's accounting system and audited financial statements. These ICRPs can be used to establish either predetermined rates, negotiated fixed rates with carry-forward provisions, or provisional rates (2 CFR Part 200, Appendix III, paragraphs C.4, C.5, and C.6). The ICRP to be used to establish indirect cost rates must be certified by the IHE in accordance with 2 CFR Part 200, Appendix III, paragraph F.2.
- c. As described in 2 CFR section 200.414(a), the indirect cost (F&A) categories include: depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, and operation and maintenance 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 (2 CFR Part 200, Appendix III, paragraph C.1.a). Cost categories should be established considering the general guidelines in 2 CFR Part 200, Appendix III, section B.
- d. Each IHE'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 (2 CFR Part 200, Appendix III, paragraph C.1.a.(3)).
- e. Administrative costs charged to sponsored agreements awarded or amended with effective dates beginning on or after the start of the IHE's first fiscal year which begins on or after October 1, 1991, must be limited to 26 percent of modified total direct costs, as defined in 2 CFR Part 200, Appendix III, paragraph C.8.a. IHEs 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 2 CFR Part 200, Appendix III, paragraph C.8.b).
- f. *Submission Requirement for Standard Format for Long-Form Proposals* – IHEs must use the standard format in accordance with 2 CFR 200 Appendix III, Paragraph E 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 IHEs that use the simplified method for calculating indirect cost rates, as described in 2 CFR Part 200, Appendix III, paragraph C.12.



**2. Audit Objectives – Indirect Costs**

- a. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).
- b. *If the institution has a negotiated indirect cost rate agreement*, determine that the rate(s) used to charge indirect costs is consistent with the appropriate ICRP (2 CFR Part 200, Appendix III, paragraph C.11) or agreement with a pass-through entity (2 CFR section 200.331(a)(4)).
- c. *If the institution does not have a negotiated indirect cost rate agreement*, determine whether an ICRP was prepared, certified, and submitted by the educational institution to their cognizant agency for indirect costs. (The cognizant agency for indirect costs is responsible for negotiating and approving indirect cost rates; see 2 CFR Part 200, Appendix III, paragraph C.11.) Verify that billings are based on the ICRP.
- d. *If the institution charges indirect costs to federal awards based on award-specific rate(s) required by a federal awarding agency*, determine that the award-specific rate(s) are the result of special circumstances such as required by law or regulation (2 CFR section 200.414(c)).
- e. Determine that the negotiated (or submitted) 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 awarding agency at the time of the award (2 CFR Part 200, Appendix III, paragraph C.7).
- f. Determine that the negotiated (or submitted) rate(s) was applied to the appropriate distribution base (2 CFR Part 200, Appendix III, paragraph C.2).
- g. Determine that indirect costs billed to sponsored agreements are the result of applying the negotiated (or submitted) rate(s) to the appropriate base amount(s). Note: 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 2 CFR Part 200, the amount not recoverable under a sponsored agreement may not be charged to other sponsored agreements (2 CFR section 200.408).

**3. Suggested Compliance Audit Procedures – Indirect Costs**

- a. Test a sample of transactions for conformance with the following criteria contained in 2 CFR Part 200 and CAS, as applicable.

- b. *For IHEs that charge indirect cost to federal awards based on a federally negotiated 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).
- c. *For IHEs that charge indirect costs to federal awards based on rate(s) which are not negotiated by the cognizant agency for indirect costs:*
- (1) If the ICRP has been certified and submitted to the cognizant agency for indirect costs and is based on costs incurred in the year being audited, then the ICRP should be audited for compliance with the provisions of 2 CFR Part 200.
  - (2) If the IHE has a certified ICRP, which is based on costs incurred in the year being audited, but has not submitted it to their cognizant agency for indirect costs, then the ICRP should be audited using the procedures listed below:
    - (a) Test the indirect cost pool groupings for compliance with 2 CFR section 200.414 and 2 CFR Part 200, Appendix III.
    - (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 may 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 (2 CFR section 200.412).
    - (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 (2 CFR section 200.419).

- (e) Test the *depreciation* cost pool to determine if:
  - (i) Computations of depreciation 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; (C) any portion of the cost of buildings and equipment contributed by or for the educational institution where law or agreement prohibit recovery; and (D) any asset acquired solely for the performance of a non-federal award (2 CFR section 200.436(c)).
  - (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 (2 CFR section 200.436(d)(2)).
  - (iii) 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 (2 CFR section 200.436(d)(2)).
  - (iv) Charges for depreciation are supported by adequate property records and physical inventories, which must be taken at least once every two years (2 CFR section 200.436(e)).
  - (v) The allocation method for the depreciation cost pool complies with 2 CFR Part 200, Appendix III, paragraph B.2.
  - (vi) Gains and losses on the sale, retirement, or other disposition of depreciable property have been appropriately accounted for and complies with 2 CFR section 200.443.
- (f) Test the *interest* cost pool to determine if:
  - (i) Computations for interest comply with the provisions of 2 CFR section 200.449.
  - (ii) The allocation method for the interest cost pool complies with 2 CFR Part 200, Appendix III, paragraph B.3.

- (g) Test the *operations and maintenance* cost pool to determine if:
  - (i) Costs are appropriately classified in this cost pool (2 CFR Part 200, Appendix III, paragraph B.4).
  - (ii) Rental costs comply with the provisions of 2 CFR section 200.465.
  - (iii) The IHE'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 2 CFR Part 200, Appendix III, paragraph B.4.
  - (v) If a utility cost adjustment has been included in the negotiated indirect cost rate, the adjustment complies with the provisions of 2 CFR Part 200, Appendix III, paragraph B.4.c.
  
- (h) Test the *library* cost pool to determine if:
  - (i) Costs are appropriately classified in this cost pool (2 CFR Part 200, Appendix III, paragraph B.8).
  - (ii) The allocation method for the library cost pool complies with 2 CFR Part 200, Appendix III, paragraph B.8.
  - (iii) If the allocation method is based on a cost analysis study in accordance with 2 CFR Part 200, Appendix III, paragraph A.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 agency for indirect costs;
    - (C) Is statistically sound;
    - (D) Is performed specifically at the educational institution;
    - (E) Is reviewed periodically, but not less frequently than rate negotiations, updated if necessary, and used; 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 2 CFR Part 200, Appendix III, paragraphs B.5, B.6, and B.7.
  - (ii) The administrative cost components comply with the limitation on reimbursement of administrative costs in 2 CFR Part 200, Appendix III, paragraph C.8. If the proposal is based on the alternative method for administrative costs in 2 CFR Part 200, Appendix III, paragraph C.9, then the limitation does not apply. If the proposal is based on the alternative method for administrative costs, determine that the educational institution meets the criteria of paragraph C.9 and that this is adequately documented in the proposal.
  - (iii) *Departmental administration expense pool* – Test to determine that this cost pool complies with 2 CFR Part 200, Appendix III, paragraph B.6.
  - (iv) *Academic Deans' Offices* – Test that salaries and operating expenses are limited to those attributable to administrative functions.
  - (v) *Academic Departments* – Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads), and other professional personnel conducting research and/or instruction, are allowed at a rate of 3.6 percent of modified total direct costs. This category must 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 expenses covered by this allowance are excluded from the departmental cost pool (2 CFR Part 200, Appendix III, paragraph B.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 normally are treated as indirect costs.

- (3) If the ICRP has been certified and submitted to the cognizant agency for indirect costs 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 2 CFR section 200.516(a)(5).
  - (5) *Application of an indirect cost rate(s) not negotiated by the cognizant agency for indirect costs* – Even though the rate(s) has not been approved by the cognizant agency for indirect costs, 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 institution.
- d. *For IHEs that also have awards containing award-specific rates used 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, regulation, or other circumstance specified in 2 CFR section 200.414(c)(1).
  - (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**

FAR Appendix, 48 CFR section 9903.201-2(c), Types of CAS Coverage, requires IHEs 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 \$750,000 are CAS-covered, except for CAS-covered contracts awarded to Federally Funded Research and Development Centers (FFRDCs) operated by IHEs, which are subject to 48 CFR Part 9904.

**1. Compliance Requirements – CAS and Disclosure Statements**

- a. The 2 CFR section 200.419 requires IHEs that receive more than \$50 million in federal awards subject to 2 CFR Part 200 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 six 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 also are responsible for filing amendments to the DS-2 with the cognizant agency for indirect costs 6 months in advance of a disclosed practice being changed to comply with a new or modified standard, or when a practice is changed for other reasons. (See COFAR FAQ Q-17 for an exception.) An IHE may proceed with implementing the change only if it has not been notified by the cognizant agency for indirect costs within the six-month period that either a longer period will be needed for review or there are concerns with the potential change.

**2. Audit Objectives – CAS and Disclosure Statements**

- a. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).
- b. Determine whether the IHE's DS-2 is current, accurate, and complete and that it has been approved by the cognizant agency for indirect costs as adequate and compliant with 2 CFR Part 200 and CAS (48 CFR Part 9905).
- c. Determine whether the IHE's actual accounting practices are consistent with its disclosed accounting practices.
- d. Determine whether amendments have been filed with the cognizant agency for indirect costs. Amendments must be approved by the cognizant agency for indirect costs if the IHE has CAS-covered contracts subject to 48 CFR Part 9903.
- e. Determine whether the IHE's accounting practices for direct and indirect costs comply with CAS applicable to educational institutions (2 CFR section 200.419; 48 CFR Part 9905).

**3. Suggested Compliance Audit Procedures – CAS and Disclosure Statements**

- a. Obtain a copy of the IHE's DS-2, amendments, notifications, and, as applicable, approvals from the cognizant agency for indirect costs.
- b. Read the DS-2 and its amendments and ascertain if the disclosure agrees with the policies prescribed in the IHE's current policies and procedures documents.

- c. Test that the disclosed practices agree with actual practices for the period covered by the audit, including whether the practices were consistent throughout the period.
- d. Test direct and indirect charges to federal awards to determine that the IHE's practices used in estimating the costs in the proposal were consistent with the IHE's cost accounting practices used in accumulating and reporting the costs (FAR appendix, 48 CFR section 9905.501).
- e. For those costs which are sometimes charged as direct and sometimes charged as indirect, test for consistent classification of these costs when incurred for the same purpose and under like circumstances (2 CFR section 200.403(d) and FAR appendix, 48 CFR section 9905.502). For example:
  - (1) Salaries of administrative and clerical staff are normally treated as indirect costs; however, direct charging may be appropriate if all of the conditions in 2 CFR section 200.413(c) are met. When charged as direct costs to federal awards, test a sample of these costs to determine whether they are treated consistently with charges to non-federal awards, instructional activity, or other institutional activity (2 CFR Part 200, Appendix III, paragraph B.6).
  - (2) Office supplies, postage, local telephone costs and memberships are normally treated as indirect costs. Sample these costs when they have been charged as direct costs to federal awards to determine whether they are consistently treated for non-federal awards, instructional activity, or other institutional activity (2 CFR Part 200, Appendix III, paragraph B.6).
- f. Test for adequate accounting in the IHE's accounting system of unallowable costs for costs charged directly to federal awards, as well as indirect costs accumulated in cost pools (2 CFR section 200.403(g) and FAR Appendix, 48 CFR section 9905.505).
- g. Determine that the IHE's cost accounting period for accumulating direct and indirect costs charged to federal awards is consistent with the institution's fiscal year. If not, determine whether the institution met the criteria for an exception described in 2 CFR Part 200, Appendix III, paragraph A.2.d. See also FAR Appendix, 48 CFR section 9905.506.

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

#### **1. Compliance Requirements**

Charges made from internal service, central service, pension, or similar activities or funds must follow the cost principles provided in 2 CFR Part 200, Subpart E.



**2. Audit Objectives**

- a. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).
- b. Determine whether charges made from internal service, central service, pension, or similar activities or funds are in accordance with 2 CFR Part 200, Subpart E.

**3. Suggested Compliance Audit Procedures**

- a. For activities accounted for in separate funds, ascertain if (1) retained earnings/fund balances (including reserves) were computed in accordance with 2 CFR Part 200; (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 2 CFR Part 200.
- 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 IHEs 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 two years old.

## **2 CFR PART 200**

### **COST PRINCIPLES FOR NONPROFIT ORGANIZATIONS**

#### **Introduction**

The 2 CFR Part 200 establishes cost principles for determining costs applicable to federal awards with nonprofit organizations (NPOs). The principles are designed to ensure 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 allowable costs of work performed by NPOs under federal awards. Some NPOs must operate under federal cost principles applicable to for-profit entities located at 48 CFR section 31.2. A listing of these organizations is contained in Appendix VIII to 2 CFR Part 200.

In addition to the cost principles established by 2 CFR Part 200, Subpart E, the Cost Accounting Standards Board (CASB) has promulgated certain cost accounting standards (CAS) that must be followed by nonprofit organizations receiving procurement contracts that meet a defined dollar threshold. Generally, organizations are exempt from coverage under CAS unless they receive a single CAS-covered contract or subcontract of at least \$7.5 million. After receipt of this trigger contract, CAS coverage is applied to all negotiated awards that exceed the Truth in Negotiations Act threshold, currently \$700,000, unless they meet certain exemptions. These exemptions and the requirements of CAS can be found in 48 CFR chapter 99.

#### **Cognizant Agency for Indirect Costs**

The 2 CFR section 200.1 defines “cognizant agency for indirect costs” as the federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals on behalf of all federal agencies. References to the “cognizant agency for indirect costs” in this section are not equivalent to the cognizant agency for audit, which is defined in 2 CFR section 200.1. The 2 CFR Part 200, Appendix IV, paragraph C.2 clarifies that the cognizant agency for indirect costs is generally the federal agency with the largest direct dollar value of federal awards with an organization, unless different arrangements are agreed to by federal agencies.

#### **Allowable Costs – General Criteria – Direct Costs**

##### **1. Compliance Requirements – Direct Costs**

Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs.

For nonprofit organizations, 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 an equitable share of indirect costs. Examples can be found in 2 CFR section 200.413(f).

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, then 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 2 CFR section 200.514(c).
- b. Determine whether the organization complied with the provisions of 2 CFR Part 200 and CAS (if applicable) as follows:
  - (1) Direct charges to federal awards were for allowable costs.
  - (2) Unallowable costs determined to be direct costs were included in the allocation base for the purpose of computing an indirect cost rate.

## **3. 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 2 CFR section 200.407 for items of cost that require prior written approval and Exhibit 1, Selected Items of Cost, in this part of the Supplement.)
- b. Costs were necessary and reasonable for the performance of the federal award and allocable under the principles of 2 CFR 200, Subpart E.
- c. Costs conformed to any limitations or exclusions set forth in 2 CFR 200, Subpart E, or in the federal award as to types or amount of cost items.
- d. Costs were consistent with policies and procedures that apply uniformly to both federally financed and other activities of the NPO.
- e. Costs were accorded consistent treatment. Cost were not assigned to a federal award as a direct cost if any other cost incurred for the same purpose in like circumstances was allocated to a federal award as an indirect cost.

- f. Costs were not included as a cost of any other federally financed program in either the current or a prior period.
- g. Costs were not used to meet the cost-sharing or matching requirements of another federal program, except where authorized by federal statute.
- h. Costs were adequately documented.

## **Allowable Costs – Indirect Costs**

### **1. Compliance Requirements – Indirect Costs**

- a. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct costs of minor amounts may be treated as indirect costs under the conditions described in 2 CFR section 200.413(d). After direct costs have been determined and assigned directly to awards or other work, as appropriate, indirect costs are those remaining to be allocated to benefitting cost objectives. A cost may not be allocated to a federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a federal award as a direct cost. If an organization receives more than \$10 million in direct federal funding in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration, as defined in 2 CFR section 200.414(a), is required.
- b. Indirect cost rate proposals (ICRPs) are used to either establish predetermined rates, fixed rates with carry-forward provision, provisional, or final rates (2 CFR Part 200, Appendix IV, paragraph C.1).
  - (1) *Predetermined rate* means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.
  - (2) *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.
  - (3) *Provisional rate or billing rate* means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on federal awards pending the establishment of a final rate for the period.
  - (4) *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

- c. Some federal awards may contain cost limitations on recovery of indirect costs that differ from the federally negotiated indirect cost rates. In these cases, the indirect cost rate will be specified in the award, as described in 2 CFR sections 200.210(a)(15) and 200.331(a)(1)(xiii).
- d. To recover indirect costs, NPOs prepare ICRPs for the cognizant agency for indirect costs. NPOs that have not previously established indirect costs rates and are not using the de minimis indirect cost rate must submit an ICRP immediately upon notification that a federal award has been made and, in no event, later than three months after the effective date of the award. NPOs that have previously established indirect cost rates must submit a new ICRP within six months after the close of each fiscal year. The ICRP is the documentation prepared by an organization to substantiate its claims for the reimbursement of indirect costs. The proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate. NPOs can select one of three different methods to allocate indirect costs and compute the indirect cost rate.
- (1) *Simplified Allocation Method* – 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 (a) separating the organization's total costs for the base period as either direct or indirect, and (b) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. A full discussion of the simplified allocation method can be found in 2 CFR Part 200, Appendix IV, paragraph B.2.
  - (2) *Multiple Allocation Base Method* – Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs must be accumulated into separate cost groupings, as described in 2 CFR Part 200, Appendix IV, paragraph B.3.b. Each grouping must then be allocated individually to benefiting functions by means of a base that best measures the relative benefits. The allocation bases for each grouping are described in 2 CFR Part 200, Appendix IV, paragraph B.3.c. A full discussion of the multiple allocation base method can be found in 2 CFR Part 200, Appendix IV, paragraph B.3.
  - (3) *Direct Allocation Method* – Some NPOs treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (a) general administration and general expenses, (b) fundraising, and (c) 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. A full discussion of the direct allocation base method can be found in 2 CFR Part 200, Appendix IV, paragraph B.4.

**2. Audit Objectives – Indirect Costs**

- a. Obtain an understanding of internal controls, assess risk, and test internal controls as required by 2 CFR section 200.514(c).
- b. Determine whether the NPO charged indirect costs to federal awards in compliance with the cost principles in 2 CFR Part 200, Subpart E, Appendix IV, and CAS (if applicable), and in accordance with any negotiated rate agreements and specific award conditions/limitations.

**3. Suggested Compliance Audit Procedures – Indirect Costs**

- a. Test whether indirect costs comply with the following criteria:
  - (1) Conform to the allowability of cost provisions in 2 CFR Part 200, Subpart E.
  - (2) Are supported by appropriate documentation, such as purchase orders, receiving reports, contractor invoices, canceled checks, and time and attendance records that meet the documentation standards of 2 CFR section 200.430(i), and are correctly charged as to account, amount, and period.
  - (3) Are calculated in conformity with generally accepted accounting principles or CAS, as required.
  - (4) Are not used to meet cost-sharing or matching requirements of other federally supported activities.
  - (5) 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. *For NPOs that charge indirect costs to federal awards based on federally negotiated rates*, obtain the current indirect cost rate agreement, including the proposal used in the negotiation of the agreement, and determine the type of rates (i.e., pre-determined, fixed rate, provisional rate, or final rate as described in 2 CFR Part 200, Appendix IV, section C) and terms in effect for the year being audited.
  - (1) If a fixed rate agreement with carry-forward provisions has been negotiated with the cognizant agency for indirect cost, determine that the difference between the estimated indirect costs and the actual indirect costs of the period was correctly calculated and carried forward to the rate computation in the current year.

- (2) If a provisional rate was used to bill for indirect costs, determine whether a final rate has been negotiated and appropriate billing adjustments have been made based on the final negotiated rate.
- c. *For NPOs that charge indirect costs to federal awards based on rates that are not federally negotiated, review the ICRP or methodology used to allocate indirect costs for the year being audited to ensure it meets the requirements of 2 CFR Part 200, Subpart E, and CAS, when applicable, to verify the following.*
  - (1) Indirect costs are charged uniformly to both federally funded and other activities of the NPO and are consistent with the NPO's policies and procedures.
  - (2) Costs in the indirect costs pool are allowable and the composition of the pool allows allocation over a base that is best suited for assigning the pool of indirect costs to cost objectives in accordance with the benefits received.
  - (3) The allocation base provides for an equitable allocation of indirect costs and include unallowable costs, as appropriate, so that unallowable costs will receive their proportionate share of indirect costs.
  - (4) Costs have been given consistent accounting treatment within and between accounting periods.
  - (5) The cost of activities performed primarily as a service to members, clients, or the general public when significant and necessary to the NPO's mission are treated as direct costs—whether or not allowable—and are allocated an equitable share of indirect costs. See examples in 2 CFR section 200.413(f).
- d. Select a sample of claims for indirect cost reimbursement:

Verify that the rates used were in accordance with the terms and conditions of the award and the amounts claimed were applied to the appropriate base.

## **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. The 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 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.
- c. The 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 and 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 must 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.

## **2. Audit Objectives – CAS and Disclosure Statements**

- a. Determine whether the NPO's Disclosure Statement (including amendments) is current, accurate, complete, and properly filed with the cognizant federal Administrative Contracting Officer in accordance with 48 CFR section 9903.202-5.
- b. Determine whether the NPO's actual accounting practices are consistent with its disclosed practices.



- c. 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).

### **3. Suggested Compliance Audit Procedures – CAS and Disclosure Statements**

- a. Ascertain 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 agency for indirect cost.
- b. If a Disclosure Statement is required, obtain a copy and any amendments:
  - (1) Determine if the cognizant agency for indirect costs has approved the Disclosure Statement and/or 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.
  - (2) Test whether the NPO's actual accounting practices are consistent with the disclosed practices.
  - (3) Test the NPO's actual accounting practices for direct and indirect costs are compliant with applicable CAS.

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

#### **1. Compliance Requirements**

NPOs using internal service, central service, pension, or similar activities or funds must follow the applicable cost principles found in 2 CFR Part 200.

#### **2. Audit Objectives**

- a. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).
- b. Determine whether charges made from internal service, central service, pension, or similar activities or funds are in accordance with 2 CFR Part 200.

#### **3. Suggested Compliance Audit Procedures**

- a. For activities accounted for in separate funds, ascertain if (1) retained earnings/fund balances (including reserves) were computed in accordance with 2 CFR Part 200; (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 2 CFR Part 200.
- 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 NPOs 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 two years old.

## C. CASH MANAGEMENT

### Compliance Requirements

#### *Grants and Cooperative Agreements*

##### *All Non-Federal Entities*

Non-federal entities must establish written procedures to implement the requirements of 2 CFR section 200.305 (2 CFR section 200.302(b)(6)).

##### *States*

US Department of the Treasury (Treasury) regulations at 31 CFR Part 205 implement the Cash Management Improvement Act of 1990 (CMIA), as amended (Pub. L. No. 101-453; 31 USC 6501 et seq.). Subpart A of those regulations requires state recipients to enter into Treasury-State Agreements that prescribe specific methods of drawing down federal funds (funding techniques) for federal programs listed in the Assistance Listing (Catalog of federal Domestic Assistance) that meet the funding threshold for a major federal assistance program under the CMIA. Treasury-State Agreements also specify the terms and conditions under 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), which at 31 CFR section 205.33(a) include the requirement for a state to minimize the time between the drawdown of federal funds and their disbursement for federal program purposes.

##### *Non-Federal Entities Other Than States*

Non-federal entities must minimize the time elapsing between the transfer of funds from the US Treasury or pass-through entity and disbursement by the non-federal entity for direct program or project costs and the proportionate share of allowable indirect costs, whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means (2 CFR section 200.305(b)).

What constitutes minimized elapsed time for funds transfer will depend on what payment system/method a non-federal entity uses. For example:

- The US Department of Health and Human Service (HHS) processes its financial transactions with non-federal entities through HHS's Program Support Center (PCS), which uses the Payment Management System (PMS). Usually, payments from PMS process overnight and the funds would be available in a non-federal entity's account the next business day. HHS also processes payments through same day wires (mostly state governments).
- Federal agencies, such as the US Department of Commerce, and US Department of the Interior, use the US Treasury's Automated Standard Application for Payments (ASAP) system for grant and cooperative agreement payments. Non-federal entities can use the ASAP on-line process to request and receive same-day payment.

Under the advance payment method, federal awarding agency or pass-through entity payment is made to the non-federal entity before the non-federal entity disburses the funds for program purposes (2 CFR section 200.3). A non-federal entity must be paid in advance provided that it maintains, or demonstrates the willingness to maintain, both written procedures that minimize the time elapsing between the transfer of funds from the US Treasury and disbursement by the non-federal entity, as well as a financial management system that meets the specified standards for fund control and accountability (2 CFR section 200.305(b)(1)).

The reimbursement payment method is the preferred payment method if (a) the non-federal entity cannot meet the requirements in 2 CFR section 200.305(b)(1) for advance payment, (b) the federal awarding agency sets a specific condition for use of the reimbursement or (3) if requested by the non-federal entity (2 CFR sections 200.305(b)(3) and 200.207)). The reimbursement payment method also may be used on a federal award for construction or for other construction activity as specified in 2 CFR section 200.305(b)(3), program costs must be paid by non-federal entity funds before submitting a payment request (2 CFR section 200.305(b)(3)) (i.e., the non-federal entity must disburse funds for program purposes before requesting payment from the federal awarding agency or pass-through entity).

To the extent available, the non-federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional federal cash draws (2 CFR section 200.305(b)(5)).

Except for interest exempt under the Indian Self-Determination and Education Assistance Act (23 USC 450), interest earned by non-federal entities other than states on advances of federal funds is required to be remitted annually to the US Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852. Up to \$500 per year may be kept for administrative expenses (2 CFR section 200.305(b)(9)).

### **Cost-Reimbursement Contracts under the Federal Acquisition Regulation**

For cost-reimbursement contracts under the FAR, reimbursement payment is the predominant method of funding. Advance payments under FAR-based contracts are rare. The FAR clause at 48 CFR section 52.216-7 applies to reimbursement payment. Paragraph (b)(1) of that clause requires that the non-federal entity request reimbursement for (a) only allocable, allowable, and reasonable contract costs that have already been paid, or (b) if the non-federal entity is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid. As defined in 48 CFR section 52.216-7(b)(1), with relation to supplies and services purchased for use on the contract, “ordinary course of business” would be in accordance with the terms and conditions of a subcontract or invoice, and ordinarily within 30 days of the request to the federal government for reimbursement.

For cost-reimbursement contracts using advance payment, the requirements are contained in the FAR clause at 48 CFR section 52.232-12. The non-federal entity is required to account for interest earned on advances from the federal government in accordance with paragraph (f) of that clause.

## **Loans, Loan Guarantees, Interest Subsidies, and Insurance**

Non-federal entities must comply with applicable program requirements for payment under loans, loan guarantees, interest subsidies, and insurance.

### **Pass-through Entities**

Pass-through entities must monitor cash drawdowns by their subrecipients to ensure that the time elapsing between the transfer of federal funds to the subrecipient and their disbursement for program purposes is minimized as required by the applicable cash management requirements in the federal award to the recipient (2 CFR section 200.305(b)(1)).

### **Source of Governing Requirements**

The requirements for cash management are contained in 2 CFR sections 200.302(b)(6) and 200.305, 31 CFR Part 205, 48 CFR sections 52.216-7(b) and 52.232-12, program legislation, federal awarding agency regulations, and the terms and conditions of the federal award.

### **Availability of Other Information**

Treasury's Financial Management Service maintains a Cash Management Improvement Act web page (<http://www.fms.treas.gov/cmia/>). Information about the Department of Health and Human Services Payment Management System and the Department of the Treasury' Automated Standard Application for Payments is available at <https://pms.psc.gov/> and <http://fms.treas.gov/asap/index.html>, respectively.

### **Audit Objectives**

1. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).
2. For grants and cooperative agreements to states, determine whether states have complied with the terms and conditions of the Treasury-State Agreement or Subpart B procedures.
3. For grants and cooperative agreements to non-federal entities other than states, determine whether payment methods minimized the time elapsing between transfer of federal funds from the US Treasury or the pass-through entity and the disbursement by the non-federal entity and any interest earned on advances was properly remitted.
4. For grants and cooperative agreements to non-federal entities that are paid on a reimbursement basis, supporting documentation shows that the costs for which reimbursement was requested were paid prior to the date of the reimbursement request.
5. Determine whether non-federal entities that receive reimbursement payments under cost-reimbursement contracts under the FAR and cost-reimbursement subcontracts under these contracts requested payments in compliance with 48 CFR section 52.216-7(b).

6. Determine whether non-federal entities complied with applicable program requirements for loans, loan guarantees, interest subsidies, and insurance.
7. Determine whether pass-through entities implemented procedures to ensure that payments to subrecipients minimized the time elapsing between transfer of federal funds from the pass-through entity to the subrecipient and the disbursement of such funds for program purposes by the subrecipient, as required by applicable cash management requirements in the federal award to the recipient.

### **Suggested Audit Procedures – Internal Control**

1. 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 2 CFR section 200.514(c) 4), including reporting a significant deficiency or material weakness in accordance with 2 CFR section 200.516, 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 remaining 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.

#### *Grants and cooperative agreements to 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 federal 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 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).
4. 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.

*Grants and cooperative agreements to non-federal entities other than states*

5. Review trial balances related to federal funds for unearned revenue. If unearned revenue balances are identified, consider if such balances are consistent with the requirement to minimize the time between drawing and disbursing federal funds.
6. Select a sample of advance payments and verify that the non-federal entity minimized the time elapsing between the transfer of funds from the US Treasury or pass-through entity and disbursement by the non-federal entity.
7. When non-federal entities are funded under the reimbursement method, select a sample of transfers of funds from the US Treasury or pass-through entity and trace to supporting documentation and ascertain if the entity paid for the costs for which reimbursement was requested prior to the date of the reimbursement request (2 CFR section 200.305(b)(3)).
8. When a program receives program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, or interest earned on such funds; perform tests to ascertain if these funds were disbursed before requesting additional federal cash draws (2 CFR section 200.305(b)(5)).
9. Review records to determine if interest in excess of \$500 per year was earned on federal cash draws. If so, determine if it was remitted annually to the Department of Health and Human Services, Payment Management System (2 CFR section 200.305(9)).

*Cost-reimbursement contracts under the Federal Acquisition Regulation*

10. Perform tests to ascertain if the non-federal entity requesting reimbursement (a) disbursed funds prior to the date of the request, or (b) meets the conditions allowing for the request for costs incurred, but not necessarily paid for (i.e., ordinarily within 30 days of the request (48 CFR section 52.216-7(b))).

*Loans, Loan Guarantees, Interest Subsidies, and Insurance*

11. Perform tests to ascertain if the non-federal entity complied with applicable program requirements.

*All Pass-Through Entities*

12. For those programs where a pass-through entity passes federal funds through to subrecipients, select a representative sample of subrecipient payments and ascertain if the pass-through entity implemented procedures to ensure that the time elapsing between the transfer of federal funds to the subrecipient and the disbursement of such funds for program purposes by the subrecipient was minimized (2 CFR section 200.305(b)(1)).



**D. [RESERVED]**

**Note: Wage Rate Determination (Davis-Bacon) Act coverage has been moved to 20.001.**

## **E. ELIGIBILITY**

### **Compliance Requirements**

The specific requirements for eligibility are unique to each federal program and are found in the statutes, regulations, and the terms and conditions of the federal award pertaining to the program. For programs listed in the 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 2 CFR section 200.514(c).
2. Determine whether required eligibility determinations were made (including obtaining any required documentation/verification), 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 eligible participants or groups of participants were calculated in accordance with program requirements.

### **Suggested Audit Procedures – Internal Control**

1. 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 over compliance 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 2 CFR section 200.514(c)(4), including reporting a significant deficiency or material weakness in accordance with 2 CFR section 200.516, 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 remaining 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 that a computer system used for determining 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 databases to verify eligibility (e.g., matches to verify earnings or identify individuals who are deceased)
  - Control who is authorized to approve benefits for eligible individuals (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 affect 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 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 -- Grants and Cooperative Agreements

Equipment means tangible personal property, including information technology systems, having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-federal entity for financial statement purposes or \$5,000 (2 CFR section 200.1). Title to equipment acquired by a non-federal entity under grants and cooperative agreements vests in the non-federal entity subject to certain obligations and conditions (2 CFR section 200.313(a)).

#### *States*

A state must use, manage, and dispose of equipment acquired under a federal award in accordance with state laws and procedures (2 CFR section 200.313(b)).

#### *Non-Federal Entities Other than States*

Non-federal entities other than states must follow 2 CFR sections 200.313(c) through (e) which require that:

1. Equipment, including replacement equipment, be used in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the federal award or, when appropriate, under other federal awards; however, the non-federal entity must not encumber the equipment without prior approval of the federal awarding agency (2 CFR sections 200.313(c) and (e)).
2. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the federal award identification number), who holds title, the acquisition date, cost of the property, percentage of federal participation in the project costs for the federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sales price of the property (2 CFR section 200.313(d)(1)).
3. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years (2 CFR section 200.313(d)(2)).
4. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated (2 CFR section 200.313(d)(3)).
5. Adequate maintenance procedures must be developed to keep the property in good condition (2 CFR section 200.313(d)(4)).

6. If the non-federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return (2 CFR section 200.313(d)(5)).
7. When original or replacement equipment acquired under a federal award is no longer needed for a federal program (whether the original project or program or other activities currently or previously supported by the federal government), the non-federal entity must request disposition instructions from the federal awarding agency if required by the terms and conditions of the award. Items of equipment with a current per-unit fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to the federal awarding agency. If the federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair market value in excess of \$5,000 may be retained or sold. The federal awarding agency is entitled to the federal interest in the equipment, which is the amount calculated by multiplying the current market value or sale proceeds by the federal agency's participation in total project costs (2 CFR section 200.313(e)).

Note: Intangible property that is acquired under a federal award, rather than developed or produced under the award, is subject to the requirements of 2 CFR section 200.313(e) regarding disposition (2 CFR section 200.315(a)).

### **Real Property Management – Grants and Cooperative Agreements**

Title to real property acquired or improved by non-federal entities under grants and cooperative agreements vests in the non-federal entity subject to the obligations and conditions specified in 2 CFR section 200.311 (2 CFR section 200.311(a)). Real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-federal entity must not dispose of or encumber title to or other interests in the real property (2 CFR section 200.311(b)).

When real property is no longer needed for the originally authorized purpose, the non-federal entity must obtain disposition instructions from the federal awarding agency or the pass-through entity, as applicable. When real property is sold, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return. If sold, non-federal entities must compensate the federal awarding agency for the portion of the net sales proceeds that represents the federal agency's interest in the real property, which is the amount calculated by multiplying the current market value or sale proceeds by the federal agency's participation in total project costs. If the property is retained, the non-federal entity must compensate the federal awarding agency for the federal portion of the current fair market value of the property. Disposition instructions may also provide for transfer of title to the federal awarding agency or a designated third party, in which case the non-federal entity is entitled to the non-federal interest in the property, which is calculated by multiplying the current market value or sale proceeds by the non-federal entity's share in total project costs (2 CFR section 200.311(c)(3)).

## **Equipment and Real Property Management – Cost-Reimbursement Contracts under the Federal Acquisition Regulation**

Equipment and real property management requirements for cost-reimbursement contracts are specified in the FAR clause at 48 CFR section 52.245-1. Federal government property as defined in the FAR includes both equipment and real property. Title to federal government property acquired by a non-federal entity normally vests in the federal government, unless otherwise noted in the contract terms and conditions. The FAR requires:

1. A system of internal controls to manage (control, use, preserve, protect, repair, and maintain) federal government property and a process to enable the prompt recognition, investigation, disclosure and reporting of loss of federal government property.
2. Federal government property must be used for performing the contract for which it was acquired unless otherwise provided for in the contract or approved by the federal awarding agency.
3. Property records must be maintained and include the name, part number and description, and other elements as necessary and required in accordance with the terms and conditions of the contract, quantity received, unit acquisition cost, unique-item identifier, accountable contract number, location, disposition, and posting reference and date of transaction.
4. A physical inventory must be periodically performed, recorded, and disclosed. Except as provided for in the contract, the non-federal entity must not dispose of inventory until authorized by the federal awarding agency. The non-federal entity may purchase the property at the unit acquisition cost if desired or make reasonable efforts to return unused property to the appropriate supplier at fair market value.

### **Source of Governing Requirements**

The requirements for equipment and real property are contained in 2 CFR section 200.313 (equipment), 2 CFR section 200.311 (real property), 48 CFR section 52.245-1 (equipment and real property), program legislation, federal awarding agency regulations, and the terms and conditions of the federal award.

### **Audit Objectives**

1. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(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 or improved under federal awards is in accordance with federal requirements and that the federal awarding agency was properly compensated for its portion of any property sold or converted to non-federal use.

### **Suggested Audit Procedures – Internal Control**

1. 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 2 CFR section 200.514(c)(4), including reporting a significant deficiency or material weakness in accordance with 2 CFR section 200.516, 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 remaining 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**

#### *States – Grants and Cooperative Agreements Only*

1. Select a sample of equipment transactions acquired under federal awards and test for compliance with the state's policies and procedures for management and disposition of equipment.

#### *Non-Federal Entities Other than States and States with Cost-Reimbursement Contracts under the FAR*

2. Inventory Management of Equipment Acquired Under Federal Awards
  - a. Identify equipment acquired and trace selected purchases to the property records. Verify that the property records contain the required information.
  - b. Verify that the required physical inventory of equipment was performed. Test whether any differences between the physical inventory and equipment records were resolved.
  - c. Select a sample from all equipment acquired under federal awards from the property records and physically inspect the equipment and determine whether the equipment is appropriately safeguarded and maintained.

3. Disposition of Equipment Acquired Under Federal Awards
  - a. Identify equipment dispositions for the audit period and perform procedures to verify that the dispositions of equipment acquired under federal awards were properly reflected in the property records.
  - b. For dispositions of equipment acquired under grants and cooperative agreements with a current per-unit fair market value of \$5,000 or more, verify whether the federal awarding agency was reimbursed for the federal portion of the current market value or sales proceeds.
  - c. For dispositions of equipment acquired under cost-reimbursement contracts, verify that the non-federal entity followed federal awarding agency disposition instructions.
  
4. Disposition of Real Property Acquired Under Federal Awards
  - a. Identify real property dispositions for the audit period and determine whether such real property was acquired or improved under federal awards.
  - b. For dispositions of real property acquired or improved under federal awards, perform procedures to verify that the non-federal entity followed the instructions of the federal awarding agency or pass-through entity, which normally require reimbursement to the federal awarding agency for the federal portion of net sales proceeds 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 statutes, regulations, and the terms and conditions of awards 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, 2 CFR section 200.306 provides 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 federal award;
- Are necessary and reasonable for accomplishment of project or program objectives;
- Are allowed under 2 CFR Part 200, Subpart E (Cost Principles);
- Are not paid by the federal government under another award, except where the federal statute authorizing a program specifically provides that federal funds made available for such program can be applied to matching or cost sharing requirements of other federal programs;
- Are provided for in the approved budget when required by the federal awarding agency; and
- Conform to other provisions of this part, as applicable.

“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 2 CFR section 200.306, 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 2 CFR section 200.514(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. 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 2 CFR section 200.514(c)(4), including reporting a significant deficiency or material weakness in accordance with 2 CFR section 200.516, 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 remaining 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 2 CFR sections 200.306, 200.434, and 200.414, and the terms and conditions of the award.
- d. Test transactions used to match for compliance with the allowable costs/cost principles requirements. This test may be performed in conjunction with the testing of the requirements related to allowable costs/cost principles.

## 2. Level of Effort

### 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 non-federal 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 non-federal 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 PERFORMANCE**

### **Compliance Requirements**

A non-federal entity may charge only allowable costs incurred during the approved budget period of a federal award's period of performance and any costs incurred before the federal awarding agency or pass-through entity made the federal award that were authorized by the federal awarding agency or pass-through entity (2 CFR sections 200.308 200.309 and 200.403(h)). A period of performance may contain one or more budget periods.

Unless the federal awarding agency or pass-through entity authorizes an extension, a non-federal entity must liquidate all financial obligations incurred under the federal award not later than 120 calendar days after the end date of the period of performance as specified in the terms and conditions of the federal award (2 CFR section 200.344(b)). When used in connection with a non-federal entity's utilization of funds under a federal award, "financial obligations" means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-federal entity during the same or a future period (2 CFR section 200.1).

Period of Performance requirements for cost reimbursement contracts subject to the FAR are contained in the terms and conditions of the contract.

### **Source of Governing Requirements**

The requirements for the period of performance are contained in 2 CFR section 200.1 Definitions for "budget period," "financial obligations," "period of performance," 2 CFR section 200.308 (revision of budget and program plans), 2 CFR section 200.309 (modifications to period of performance), 2 CFR section 200.344 (closeout), 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 2 CFR section 200.514(c).
2. Determine whether the federal award was only charged for: (a) allowable costs incurred during the period of performance; or (b) costs incurred prior to the date the federal award was made that were authorized by the federal awarding agency or pass-through entity.
3. Determine whether financial obligations were liquidated within the required time period.

### **Suggested Audit Procedures – Internal Control**

1. 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 the period of performance 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 2 CFR section 200.514(c)(4), including reporting a significant deficiency or material weakness in accordance with 2 CFR section 200.516, 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 remaining 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 performance.
2. For federal awards with performance period beginning dates during the audit period, test transactions for costs recorded during the beginning of the period of performance and verify that the costs were not incurred prior to the start of the period of performance unless authorized by the federal awarding agency or the pass-through entity.
3. For federal awards with performance period ending dates during the audit period, test transactions for costs recorded during the latter part and after the period of performance and verify that the costs had been incurred within the period of performance.
4. For federal awards with performance period ending dates during the audit period, test transactions for federal award costs for which the obligation had not been liquidated (payment made) as of the end of the period of performance and verify that the liquidation occurred within the allowed time period.
5. Test adjustments (e.g., manual journal entries) for federal award costs and verify that these adjustments were for transactions that occurred during the period of performance.



## I. PROCUREMENT AND SUSPENSION AND DEBARMENT

### Compliance Requirements - Procurement

#### 1. Procurement—Grants and Cooperative Agreements

##### *States*

When procuring property and services, states must use the same policies and procedures they use for procurements from their non-federal funds (2 CFR section 200.317).

##### *Non-Federal Entities Other than States*

Non-federal entities other than states, including those operating federal programs as subrecipients of states, must follow the procurement standards set out at 2 CFR sections 200.318 through 200.326. They must use their own documented procurement procedures, which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal statutes and the procurement requirements identified in 2 CFR Part 200. A non-federal entity must:

1. Meet the general procurement standards in 2 CFR section 200.318, which include oversight of contractors' performance, maintaining written standards of conduct for employees involved in contracting, awarding contracts only to responsible contractors, and maintaining records to document history of procurements.
2. Conduct all procurement transactions in a manner providing full and open competition, in accordance with 2 CFR section 200.319.
3. Use the micro-purchase and small purchase methods only for procurements that meet the applicable criteria under 2 CFR sections 200.320(a) (1) and (2). Under the micro-purchase method, the aggregate dollar amount does not exceed \$10,000 (\$2,000 in the case of acquisition for construction subject to the Wage Rate Requirements (Davis-Bacon Act)). Small purchase procedures are used for purchases that exceed the micro-purchase amount but do not exceed the simplified acquisition threshold (\$250,000). Micro-purchases may be awarded without soliciting competitive quotations if the non-federal entity considers the price to be reasonable (2 CFR section 200.320(a)). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources (2 CFR section 200.320(b)).
4. For acquisitions exceeding the simplified acquisition threshold, the non-federal entity must use one of the following procurement methods: the sealed bid method if the acquisition meets the criteria in 2 CFR section 200.320(b); the competitive proposals method under the conditions specified in 2 CFR section 200.320((b) (2)); or the noncompetitive proposals method (i.e., solicit a proposal from only one source) but only when one or more of four circumstances are met, in accordance with 2 CFR section 200.320(c)).

5. Perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold, including contract modifications (2 CFR section 200.323(a)). The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used (2 CFR section 200.323(b)).
6. Ensure that every purchase order or other contract includes applicable provisions required by 2 CFR section 200.326. These provisions are described in Appendix II to 2 CFR Part 200, "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards."

## **2. Procurement—Cost-Reimbursement Contracts under the Federal Acquisition Regulation**

When awarding subcontracts, non-federal entities receiving cost-reimbursement contracts under the FAR must comply with the clauses at 48 CFR section 52.244-2 (consent to subcontract), 52.244-5 (competition), 52.203-13 (code of business ethics), 52.203-16 (conflicts of interest), and 52.215.12 (cost or pricing data); and the terms and conditions of the contract. The FAR defines "subcontracts" as a contract, i.e., a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

### **Source of Governing Requirements – Procurement**

The requirements that apply to procurement under grants and cooperative agreements are contained in 2 CFR sections 200.317 through 200.326, program legislation, federal awarding agency regulations, and the terms and conditions of the award. The requirements that apply to procurement under cost-reimbursement contracts under the FAR are contained in 48 CFR parts 03, 15, 44 and the clauses at 48 CFR sections 52.244-2, 52.244-5, 52.203-13, 52.203-16, and 52.215-12; agency FAR Supplements; and the terms and conditions of the contract.

### **Compliance Requirements – Suspension and Debarment**

Non-federal entities are prohibited from contracting with or making subawards under covered transactions to parties that are suspended or debarred. "Covered transactions" include contracts for goods and services awarded under a non-procurement transaction (e.g., grant or cooperative agreement) that are expected to equal or exceed \$25,000 or meet certain other criteria as specified in 2 CFR section 180.220. All non-procurement transactions entered into by a pass-through entity (i.e., subawards to subrecipients), irrespective of award amount, are considered covered transactions, unless they are exempt as provided in 2 CFR section 180.215.

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, as defined in 2 CFR section 180.995 and agency adopting regulations, is not suspended or debarred or otherwise excluded from participating in the transaction. This verification may be accomplished by (1) checking the System for Award Management (SAM) Exclusions maintained by the General Services Administration (GSA) and available at [SAM.gov | Home](https://sam.gov) (click on Search Record, then click on Advanced Search-

Exclusions) (Note: The OMB guidance at 2 CFR Part 180 and agency implementing regulations still refer to the SAM Exclusions as the Excluded Parties List System (EPLS)), (2) collecting a certification from the entity, or (3) adding a clause or condition to the covered transaction with that entity (2 CFR section 180.300).

Non-federal entities receiving contracts from the federal government are required to comply with the contract clause at FAR 52.209-6 before entering into a subcontract that will exceed \$30,000, other than a subcontract for a commercially available off-the-shelf item.

### **Source of Governing Requirements – Suspension and Debarment**

The requirements for nonprocurement suspension and debarment are contained in OMB guidance in 2 CFR Part 180, which implements Executive Orders 12549 and 12689, “Debarment and Suspension;” federal awarding agency regulations in Title 2 of the CFR adopting/implementing the OMB guidance in 2 CFR Part 180; program legislation; and the terms and conditions of the award.

Most federal agencies have adopted or implemented 2 CFR Part 180, generally by relocating their associated agency rules in Title 2 of the CFR. Appendix II to the Supplement includes the current CFR citations for all agencies adoption or implementation of the nonprocurement suspension and debarment guidance.

Government-wide requirements related to suspension and debarment and doing business with suspended or debarred subcontractors under cost reimbursement contracts under the FAR are contained in 48 CFR section 9.405-2(b) and the clause at 48 CFR section 52.209-6.

### **Audit Objectives**

1. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).
2. Determine whether procurements under federal awards were made in compliance with applicable federal regulations and other procurement requirements specific to an award or subaward.
3. For covered transactions determine whether the non-federal entity verified that entities are not suspended, debarred, or otherwise excluded.

### **Suggested Audit Procedures – Internal Control**

1. 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 requirements 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

2 CFR section 200.514(c)(4), including reporting a significant deficiency or material weakness in accordance with 2 CFR section 200.516, assessing the control risk at the maximum and considering whether additional compliance tests are required because of ineffective internal control.

3. Consider the results of the testing of internal control in assessing the remaining 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 applies only to states under grants and cooperative agreements.)*

1. 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 (2 CFR section 200.317).

*(Procedures 2 – 5 apply to non-federal entities other than states.)*

2. Obtain the entity’s procurement policies and verify that the policies comply with the compliance requirements highlighted above.
3. Verify that the entity has written standards of conduct that cover conflicts of interest and govern the performance of its employees engaged in the selection, award, and administration of contracts (2 CFR section 200.318(c) and 48 CFR sections 52.203-13 and 52.303-16).
4. 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 (2 CFR section 200.319(c)).
5. Select a sample of procurements and perform the following procedures:
  - a. Examine contract files and verify that they document the history of the procurement, including the rationale for the method of procurement, selection of contract type, basis for contractor selection, and the basis for the contract price (2 CFR section 200.318(i) and 48 CFR Part 44 and section 52.244-2).
  - b. For grants and cooperative agreements, verify that the procurement method used was appropriate based on the dollar amount and conditions specified in 2 CFR section 200.320. Current micro-purchase and simplified acquisition thresholds can be found in the FAR (48 CFR Subpart 2.1, “Definitions”).
  - c. Verify that procurements provide full and open competition (2 CFR section 200.319 and 48 CFR section 52.244-5).

- d. Examine documentation in support of the rationale to limit competition in those cases where competition was limited and ascertain if the limitation was justified (2 CFR sections 200.319 and 200.320(f) and 48 CFR section 52.244-5).
- e. Ascertain if cost or price analysis was performed in connection with all procurement actions exceeding the simplified acquisition threshold, including contract modifications, and that this analysis supported the procurement action (2 CFR section 200.323 and 48 CFR section 15.404-3).

Note: A cost or price analysis is required for each procurement action, including each contract modification, when the total amount of the contract and related modifications is greater than the simplified acquisition threshold.

- f. Verify consent to subcontract was obtained when required by the terms and conditions of a cost reimbursement contract under the FAR (48 CFR section 52.244-2).

Note: If the non-federal entity has an approved purchasing system, consent to subcontract may not be required unless specifically identified by contract terms or conditions. The auditor should verify that the approval of the purchasing system is effective for the audit period being reviewed.

*(Procedures 6 and 7 apply to all non-federal entities.)*

- 6. Review the non-federal entity's procedures for verifying that an entity with which it plans to enter into a covered transaction is not debarred, suspended, or otherwise excluded (2 CFR sections 200.212 and 200.318(h); 2 CFR section 180.300; 48 CFR section 52.209-6).
- 7. Select a sample of procurements and subawards and test whether the non-federal entity followed its procedures before entering into a covered transaction.

## J. PROGRAM INCOME

### Compliance Requirements

Program income is gross income earned by a non-federal entity that is directly generated by a supported activity or earned as a result of the federal award during the period of performance (unless there is a requirement for disposition of program income after the end of the period of performance as provided in 2 CFR section 200.307(f)).

Program income (2 CFR section 200.1) includes, but is not limited to income from:

- Fees for services performed,
- The use or rental of real or personal property acquired under federal awards,
- The sale of commodities or items fabricated under federal awards,
- License fees and royalties on patents and copyrights, except as provided below, and
- Principal and interest on loans made with federal award funds.

Program income does *not* include:

- Interest earned on advances of federal funds.
- Except as otherwise provided in federal statutes, regulations or the terms and conditions of the federal award, rebates, credits, discounts and interest earned on any of them.
- Taxes, special assessments, levies, fines, and other such revenues raised by a non-federal entity, unless the federal award or federal awarding agency regulations specifically identify the revenues as program income (2 CFR section 200.307(c)).
- The proceeds from the sale of equipment or real property acquired in whole or in part under the federal award (2 CFR section 200.307(d)).
- Royalties or income earned by an institution of higher education or a nonprofit organization on inventions conceived or first actually reduced to practice in the performance of work under a funding agreement with a federal agency that is shared with the inventor (2 CFR section 200.307(g); 37 CFR sections 401.2 and 401.14(k); 35 USC 201(i), and 35 USC 202(c)(7)(B)).

If authorized by federal regulations or the federal award, costs incidental to the generation of program income may be deducted from gross income to determine program income, provided those costs have not been charged to the federal award (2 CFR section 200.307(b)).

Program income may be used in any of the following three methods, consistent with 2 CFR section 200.307(e):

1. *Deduction*

Program income is deducted from total allowable costs in order to determine the net allowable costs, rather than to increase the funds committed to the project. This method must be used if the federal awarding agency has given no prior approval for how program income is to be used and its regulations and the terms and conditions of the federal award are silent on this matter. Where this method is used, program income must be applied to current costs unless the federal awarding agency authorizes otherwise (2 CFR section 200.307(e)(1)).

2. *Addition*

With prior approval of the federal awarding agency, program income may be added to the federal award by the federal agency and the non-federal entity. This method must be used for federal awards to institutions of higher education and nonprofit research institutions if the federal awarding agency does not specify in its regulations or the terms and conditions of the federal award how program income is to be used (2 CFR section 200.307(e)(2)).

3. *Cost Sharing or Matching*

With prior approval of the federal awarding agency, program income may be used to meet the cost sharing or matching requirement of the federal award. The amount of the federal award remains the same (2 CFR section 200.307(e)(3)).

Unless federal awarding agency regulations or the terms and conditions of the federal award specify otherwise, non-federal entities have no obligation to the federal government regarding program income earned after the end of the period of performance (2 CFR section 200.307(f)).

### **Source of Governing Requirements**

The requirements that apply to program income are contained in 2 CFR section 200.1 (definition of “program income”), 2 CFR section 200.307 (program income), program legislation, federal awarding agency regulations, and the terms and conditions of the federal award.

### **Audit Objectives**

1. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).
2. Determine whether program income is correctly determined, recorded, and used in accordance with applicable governing requirements.

**Suggested Audit Procedures – Internal Control**

1. 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 2 CFR section 200.514(c)(4), including reporting a significant deficiency or material weakness in accordance with 2 CFR section 200.516, 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 remaining 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 statutes, regulations, and terms and conditions of the federal award 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), 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 amounts collected were classified as program income only if 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 2 CFR section 200.307(e) and the program requirements set by the federal awarding agency in its regulations and the terms and conditions of the award.



**K. [RESERVED]**

## L. REPORTING

### Compliance Requirements

#### *Financial Reporting*

Recipients must 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) when reporting to the federal awarding agency. 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 closed formats or on paper.

Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of available documentation.

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 those for recipients.

The standard financial reporting forms for grants and cooperative agreements are as follows:

- *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.
- *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 they are paid in advance or the SF-270 is used.
- *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 unless otherwise indicated.

Electronic versions of the standard forms are located on agency's home page.

Financial reporting requirements for cost reimbursement contracts subject to the FAR are contained in the terms and conditions of the contract.

### *Performance and Special Reporting*

Non-federal entities may be required to submit performance reports at least annually but not more frequently than quarterly, except in unusual circumstances, using a form or format authorized by OMB (2 CFR section 200.329). They also may be required to submit special reports as required by the terms and conditions of the federal award.

Compliance testing of performance and special reporting is only included in Part 4, “Agency Program Requirements” and Part 5, “Clusters of Programs,” if such reporting has been identified by a federal agency as subject to audit. Further, compliance testing of performance and special reports is only required for data, identified by agencies in parts 4 and 5 as key line items, that are quantifiable and are capable of evaluation against objective criteria stated in the statutes, regulations, contract or grant agreements pertaining to the program.

Performance and special reports in parts 4 and 5 are assumed to meet the above criteria. However, if an agency does not identify key line items for a performance or special report, auditors are only required to test that the report was submitted in a timely manner and no other procedures are required. Similarly, if key line items are identified in parts 4 and 5 that would not be quantifiable and capable of evaluation against objective criteria (e.g., narratives, futuristic information, information that would require verification at the program beneficiary level), auditors are not required to perform testing of such items.

### **Federal Funding Accountability and Transparency Act**

Under the requirements of the Federal Funding Accountability and Transparency Act (Pub. L. No. 109-282), as amended by Section 6202 of Pub. L. No. 110-252, hereafter referred as the “Transparency Act” that are codified in 2 CFR Part 170, recipients (i.e., direct recipients) of grants or cooperative agreements are required to report first-tier subawards of \$30,000 or more to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS). In accordance with OMB Memorandum M-20-21, Implementation Guidance for Supplementing Funding Provided in Response to the Coronavirus Disease 2019 (COVID-19), existing Transparency Act subaward reporting requirements may be leveraged to meet the transparency requirements outlined in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Information input to FSRS is available at USASpending.gov as the publicly available website for viewing this information (<https://www.usaspending.gov/search>).

Where the Reporting type of compliance requirement is marked as a “Y” in the Part 2 Matrix of Compliance Requirements, indicating it is subject to audit, auditors must test the compliance with the reporting requirements of 2 CFR Part 170 using the guidance in this section when the auditor determines Reporting to be direct and material and the recipient makes first tier awards.

### *Federal Funding Accountability and Transparency Act*

Aspects of the Transparency Act that relate to subaward reporting (1) under grants and cooperative agreements were implemented in OMB in 2 CFR Part 170 and (2) under contracts, by the regulatory agencies responsible for the Federal Acquisition Regulation (FAR at 5 FR 39414 et seq., July 8, 2010). 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 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 the subaward reporting requirement applies to all types of first-tier subawards under a grant or cooperative agreement.

As provided in 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.

Consistent with the OMB guidance,

- [2 CFR Part 170](#) “subaward” has the meaning given in 2 CFR 200.1 and means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.
- [FAR 52.204-10\(a\)](#) defines “first-tier subcontract” to mean a subcontract awarded directly by a contractor to acquire supplies or services (including construction) for performance of a prime contract, but excludes the contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts or the costs of which would normally be applied to a contractor's general and administrative expenses or indirect cost.

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: (1) recipient reporting of each first-tier subaward or subaward amendment that results in an obligation of \$30,000 or more in federal funds; and (2) contractor reporting of each first-tier subcontract award of \$30,000 or more in federal funds (this requirement was phased in based on the value of the new prime contract as specified below under “Effective Date of Reporting Requirements”).

### *Reporting Site*

Grant and cooperative agreement recipients and contractors are required to register FSRS and report subaward data through FSRS. To do so, they will first be required to register in the System for Award Management (SAM) (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 SAM. Information input to FSRS is available at USASpending.gov as the publicly available website for viewing this information (<https://www.usaspending.gov/search>).

*Key Data Elements*

Compliance testing of the Transparency Act reporting requirements must include the following key data elements about the first-tier subrecipients and subawards under grants and cooperative agreements.

<b>Subaward Data Element</b>	<b>Definition</b>
Subawardee Name	This is the Sub-Awardee’s Name
Subawardee DUNS #	The subawardee organization’s nine-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 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.
Subaward Project Description	Describes the subaward project.
Subawardee Names and Compensation of Highly Compensated Officers	Names of officers if thresholds are met.

For purposes of programs included in parts 4 and 5 of this 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, whether or not award terms and conditions may require such reporting.

**Source of Governing Requirements**

Reporting requirements are contained in the following:

1. Financial reporting, 2 CFR section 200.328.
2. Monitoring and reporting program performance, 2 CFR section 200.329.
3. Program legislation.
4. Transparency Act, implementing requirements in 2 CFR Part 170 and the FAR, and the previously listed OMB guidance documents.
5. Federal awarding agency regulations.
6. 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 2 CFR section 200.514(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. 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 2 CFR section 200.514(c)(4), including reporting a significant deficiency or material weakness in accordance with 2 CFR section 200.516, 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 remaining 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: For recipients using HHS' Payment Management System (PMS) to draw federal funds, the auditor should consider the following steps numbered 1 through 4 as they pertain to the cash reporting portion of the SF-425A, regardless of the source of the data included in the PMS reports. (During FY 2016, HHS is completing the transition from pooled payment to use of subaccounts.) Although certain data is supplied by the federal awarding agency (e.g., award authorization amounts) and certain amounts are provided by HHS' Payment Management Services, the auditor should ensure that such amounts are in agreement with the recipient's records and are otherwise accurate.

1. Review applicable statutes, regulations, and the terms and conditions of the federal award pertaining to 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. Select a sample of reports and 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.
3. Select a sample of each of the following report types, and test for accuracy and completeness:
- a. *Financial reports*
    - (1) Ascertain if the financial reports were prepared in accordance with the required accounting basis.
    - (2) 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).
    - (3) 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.
    - (4) For any discrepancies noted in SF-425 reports concerning cash status when the advance payment method is used, review subsequent SF-425 reports to ascertain if the discrepancies were appropriately resolved with the applicable payment system.
  - b. *Performance and special reports*
    - (1) Review the supporting records and ascertain if all applicable data elements were included in the sampled reports. 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. *Special reports for FFATA*
    - (1) 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.

- (2) Select a sample of first-tier subawards. Obtain related subaward agreements/amendments/modifications and determine if the subaward/subcontract was subject to reporting under the Transparency Act based on (a) the date of the award and (b) the amount of the obligating action for subawards or face value of the first-tier subcontracts (inclusive of modifications).

If the subaward/subcontract was subject to reporting under the Transparency Act:

- (a) Using the FAIN, find the award in FSRS.

FSRS is the portal where the recipient enters the award information; it is only accessible by the recipient. Therefore, in order for recipients to demonstrate that information has been properly input, they should coordinate with the auditor regarding the auditor's review of the information, physically or virtually (e.g. by logging into its FSRS account either in the auditor's presence or remotely using technology such as screensharing, screenshot evidence, etc.) so that the auditor is able to find the awards in the system as required in this procedure).

- (b) Compare the award information accessed in step 2.a to the subaward/subcontract documents maintained by the recipient to assess if—
- (i) applicable subaward obligations /modifications have been reported,
  - (ii) the key data elements (see above) were accurately reported and are supported by the source documentation, and
  - (iii) the action was reported in FSRS no later than the last day of the month *following* the month in which the subaward/subaward amendment obligation was made or the subcontract award/subcontract modification was made.
- (c) The auditor must provide the following information for non-compliance finding(s) as the results of step 2.b.
- (i) The non-federal entity did not report the subaward information



- (ii) The non-federal entity did not report the subaward information timely
- (iii) The non-federal entity reported incorrect amount
- (iv) The non-federal entity did not report all the key data elements

The following format is recommended to report non-compliance findings and included in the audit report. Data are included for illustration purpose only.

<b>Transactions Tested</b>	<b>Subaward not reported</b>	<b>Report not timely</b>	<b>Subaward amount incorrect</b>	<b>Subaward missing key elements</b>
25	2	10	13	0
<b>Dollar Amount of Tested Transactions</b>	<b>Subaward not reported</b>	<b>Report not timely</b>	<b>Subaward amount incorrect</b>	<b>Subaward missing key elements</b>
\$5,000,000	\$200,000	\$4,000,000	\$800,000	\$0

(d) *For each type of report*

- (i) 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.
  - (ii) Test mathematical accuracy of reports and supporting worksheets.
4. 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, the applicable payment system, or pass-through entity in the case of a subrecipient.

## M. SUBRECIPIENT MONITORING

Note: Transfers of federal awards to another component of the same auditee under 2 CFR Part 200, Subpart F, do not constitute a subrecipient or contractor relationship.

### Compliance Requirements

A pass-through entity (PTE) must:

- *Identify the Award and Applicable Requirements* – Clearly identify to the subrecipient: (1) the award as a subaward at the time of subaward (or subsequent subaward modification) by providing the information described in 2 CFR section 200.331(a)(1); (2) all requirements imposed by the PTE on the subrecipient so that the federal award is used in accordance with federal statutes, regulations, and the terms and conditions of the award (2 CFR section 200.331(a)(2)); and (3) any additional requirements that the PTE imposes on the subrecipient in order for the PTE to meet its own responsibility for the federal award (e.g., financial, performance, and special reports) (2 CFR section 200.331(a)(3)).
- *Evaluate Risk* – Evaluate each subrecipient’s risk of noncompliance for purposes of determining the appropriate subrecipient monitoring related to the subaward (2 CFR section 200.332(b)). This evaluation of risk may include consideration of such factors as the following:
  1. The subrecipient’s prior experience with the same or similar subawards;
  2. The results of previous audits including whether or not the subrecipient receives single audit in accordance with 2 CFR Part 200, Subpart F, and the extent to which the same or similar subaward has been audited as a major program;
  3. Whether the subrecipient has new personnel or new or substantially changed systems; and
  4. The extent and results of federal awarding agency monitoring (e.g., if the subrecipient also receives federal awards directly from a federal awarding agency).
- *Monitor* – Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, complies with the terms and conditions of the subaward, and achieves performance goals (2 CFR sections 200.332(d) through (f)). In addition to procedures identified as necessary based upon the evaluation of subrecipient risk or specifically required by the terms and conditions of the award, subaward monitoring must include the following:
  1. Reviewing financial and programmatic (performance and special reports) required by the PTE.

2. Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the federal award provided to the subrecipient from the PTE detected through audits, on-site reviews, and other means.
  3. Issuing a management decision for audit findings pertaining to the federal award provided to the subrecipient from the PTE as required by 2 CFR section 200.521.
- *Ensure Accountability of For-Profit Subrecipients* – Some federal awards may be passed through to for-profit entities. For-profit subrecipients are accountable to the PTE for the use of the federal funds provided. Because 2 CFR Part 200 does not make Subpart F applicable to for-profit subrecipients, the PTE is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients for the subaward. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits (2 CFR section 200.501(h)).

### **Source of Governing Requirements**

The requirements for subrecipient monitoring for the subaward are contained in 31 USC 7502(f)(2) (Single Audit Act Amendments of 1996 (Pub. L. No. 104-156)), 2 CFR sections 200.330, .331, and .501(h); 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 2 CFR section 200.514(c).
2. Determine whether the PTE identified the subaward and applicable requirements at the time of the subaward (or subsequent subaward modification) in the terms and conditions of the subaward and other award documents sufficient for the PTE to comply with federal statutes, regulations, and the terms and conditions of the federal award.
3. Determine whether the PTE monitored subrecipient activities to provide reasonable assurance that the subrecipient administered the subaward in compliance with the terms and conditions of the subaward.

### **Suggested Audit Procedures – Internal Control**

1. 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 2 CFR section 200.514(c)(4), including reporting a significant deficiency or material weakness in accordance with 2 CFR section 200.516, 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 remaining 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 C, “Cash Management” (tests of cash reporting submitted by subrecipients); E, “Eligibility” (tests that subawards were made only to eligible subrecipients); I, “Procurement and Suspension and Debarment” (tests of ensuring that a subrecipient is not suspended or debarred) ; and L, “Reporting (tests of performance data reported to funding sources) with the testing of “Subrecipient Monitoring

1. Review the PTE’s subrecipient monitoring policies and procedures to gain an understanding of the PTE’s process to identify subawards, evaluate risk of noncompliance, and perform monitoring procedures based upon identified risks.
2. Review subaward documents including the terms and conditions of the subaward to ascertain if, at the time of subaward (or subsequent subaward modification), the PTE made the subrecipient aware of the award information required by 2 CFR section 200.331(a) sufficient for the PTE to comply with federal statutes, regulations, and the terms and conditions of the award.
3. Review the PTE’s documentation of monitoring the subaward and consider if the PTE’s monitoring provided reasonable assurance that the subrecipient used the subaward for authorized purposes in compliance with federal statutes, regulations, and the terms and conditions of the subaward.
4. Ascertain if the PTE verified that subrecipients expected to be audited as required by 2 CFR Part 200, Subpart F, met this requirement (2 CFR section 200.331(f)). This verification may be performed as part of the required monitoring under 2 CFR section 200.331(d)(2) to ensure that the subrecipient takes timely and appropriate action on deficiencies detected through audits.

## 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 statutes, 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 included in this Supplement, the auditor must review the program’s contract and grant agreements and referenced statutes 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, both for programs included and not included in this Supplement, the auditor must identify any additional compliance requirements which are not based in statute 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 effect on compliance with the requirements of that major program must 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 Objectives

Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).

### Suggested Audit Procedures

1. 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 2 CFR section 200.514(c)(4), including reporting a significant deficiency or material weakness in accordance with 2 CFR section 200.516, 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 remaining 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.

## **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.” Part 4 also provides information about compliance requirements specific to a program in III, “Compliance Requirements.” Finally, Part 4 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 provides guidance on how those funds are to 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”) is subject to audit and applicable to a program included in the Supplement, Part 4 always provides additional information specific to the program. The other seven types of compliance requirements, when subject to audit, generally are not specific to a program and, therefore, usually are not listed in Part 4. However, when one of these other seven types of compliance requirements has information specific to a program, that information is provided with the program in Part 4. When a requirement is marked as “Not Applicable” it means either that there are no compliance requirements specific for the program, 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 must first look to the Compliance Requirements section of the program/cluster (summarized for all programs/clusters in Part 2 of the Supplement) to identify which of the 12 types of compliance requirements described in Part 3 have been identified as subject to audit, and then determine which of those requirements is likely to have a direct and material effect on the federal program at the auditee.

For each such compliance requirement, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions, including audit objectives, and suggested audit procedures) and the program supplement in Part 4 (which includes any program-specific requirements) to perform the audit. For N, “Special Tests and Provisions,” Part 3 includes only audit objectives and suggested audit procedures for internal control; all other information is included in Part 4.

The descriptions of the compliance requirements in parts 3 and 4 generally are a summary of the actual compliance requirements. The auditor must review the referenced citations (e.g., laws and regulations) for the complete compliance requirements.

For 2022, only guidance to the compliance requirement areas for A, E, G, L, and N that are designated as “Y” in the Matrix are included in part III, Compliance Requirements of the program. If the auditor is to review compliance requirement areas that are designated as “N,” the auditor must refer to the Part 3 for additional information.

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**FOOD AND NUTRITION SERVICE PROGRAMS**

**ASSISTANCE LISTING 10.542 PANDEMIC ELECTRONIC BENEFIT TRANSFER (P-EBT)  
FOOD BENEFITS**

**ASSISTANCE LISTING 10.551 SUPPLEMENTAL NUTRITION ASSISTANCE  
PROGRAM (SNAP)**

**ASSISTANCE LISTING 10.553 SCHOOL BREAKFAST PROGRAM (SBP)**

**ASSISTANCE LISTING 10.555 NATIONAL SCHOOL LUNCH PROGRAM (NSLP)**

**ASSISTANCE LISTING 10.557 SPECIAL SUPPLEMENTAL NUTRITION PROGRAM  
FOR WOMEN, INFANT, AND CHILDREN (WIC)**

**ASSISTANCE LISTING 10.558 CHILD AND ADULT CARE FOOD PROGRAM**

**ASSISTANCE LISTING 10.559 SUMMER FOOD SERVICE PROGRAM (SFSP)**

**ASSISTANCE LISTING 10.572 FARMER'S MARKET NUTRITION PROGRAM  
(FMNP) – Note**

**ASSISTANCE LISTING 10.649 P-EBT ADMINISTRATIVE COSTS GRANTS**

**Note**

- (1) FMNP is not included in the Compliance Supplement. However, FMNP is listed in this document due to COVID-related waivers and flexibilities impacting FMNP.

**The programs listed above are impacted by the COVID-19 waivers.**

Pursuant to the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. No. 116-136), Families First Coronavirus Response Act (the Act) (Pub. L. No. 116-127), the American Rescue Plan Act of 2021 (Pub. L. No. 117-2), and in light of the exceptional circumstances of the ongoing public health emergency, the Food and Nutrition Service (FNS) granted several waivers for the aforementioned programs to ease program operations at the state and local levels and minimize the potential exposure to the novel coronavirus (COVID-19).

To view a complete portfolio of waivers, their descriptions, and states elected or requested to implement these waivers, please go to <https://www.fns.usda.gov/disaster/pandemic/covid-19>. Each individual waiver contains a link to view the full description along with each state approved to implement the waiver. In addition, copies of individual state waivers are available at the links for each state.

For auditing purposes during this public health emergency, it is recommended that the audit community obtain the list of waivers from the audited state agency and local agency and adapt the audit test steps to reflect these flexibilities. Each waiver offered has reporting requirements that must be adhered to by the state agency. For example, pursuant to section 2202(d) of the Act, each state that elects to be subject to a waiver under section 2202(a)(b)(c) must submit a report to



the secretary not later than one year after the date such state received the waiver. The report must include: (1) a summary of the use of this waiver by the state agency and local program operators; and (2) a description of whether and how this waiver resulted in improved services to program participants. Although there is no requirement for auditors to test reporting requirements for waivers applied by the state agency, auditors should be aware of this reporting requirement for each waiver exercised by the state agency. Documentation must be maintained by the state agency summarizing the use of each waiver and how each waiver improved its services to program participants.

In addition, the 2022 Compliance Supplement for the FNS programs listed in this document contain the procedures that auditors would normally follow during customary program operations. Due to COVID-19 and the subsequent closures, as in the case of the public schools, FNS would expect instances when it is not possible to perform certain audit steps as written in the Compliance Supplement. Such instances should be documented by the auditors.

Questions regarding this document should be directed to FNS's Office of Financial Management, Office of Internal Controls, Audits and Investigations at [SM.FN.FM-SingleAudits@usda.gov](mailto:SM.FN.FM-SingleAudits@usda.gov).

**UNITED STATES DEPARTMENT OF AGRICULTURE****ASSISTANCE LISTING 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, 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, West Virginia State University, and Central State University, which are located in 18 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. 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, EFNEP 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 are required to submit a 5-Year Plan of Work that 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. Information about Plans of Work, including previously approved plans, can be found at [https://www.nifa.usda.gov/search?search\\_api\\_fulltext=Plan+of+Work](https://www.nifa.usda.gov/search?search_api_fulltext=Plan+of+Work).

### **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 at <http://www.nifa.usda.gov>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	Y	N	N	Y	Y	N

**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 EFNEP do not require any matching contributions (7 USC 3175).
- b. *1862 Land-Grant Institution in the District of Columbia* – Effective December 20, 2019, Section 508 of the Agricultural Improvement Act of 2018 (Pub. L. No. 115-334) reinstated the 100 percent match requirement for funds awarded to 1862 land-grant institutions in the District of Columbia. 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 (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* – Recipients must match 100 percent of federal funds from nonfederal sources. 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, West Virginia State University, and Central 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 Performance**

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, West Virginia State University, and Central State University, effective beginning on December 20, 2018, Section 7114 of the Agriculture Improvement Act of 2018 (Pub. L. No. 115-334) removed language in the authorization that had previously limited institutions to carrying over no more than 20 percent of their annual Section 1444 allocation to the following fiscal year. As a result, beginning with the fiscal year (FY) 2019 funding, institutions will be allowed to carry as much as 100 percent of their annual Section 1444 allocation over to the following fiscal year.

**L. Reporting**

**1. Financial Reporting**

a. *SF-270, Request for Advance or Reimbursement* – Not Applicable

b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## UNITED STATES DEPARTMENT OF AGRICULTURE

### ASSISTANCE LISTING 10.511 SMITH-LEVER 3(b) AND 3(c), SMITH-LEVER SPECIAL NEEDS, and UNIVERSITY OF DISTRICT OF COLUMBIA PUBLIC POSTSECONDARY EDUCATION REORGANIZATION ACT PROGRAM

#### I. PROGRAM OBJECTIVES

The National Institute of Food and Agriculture (NIFA) provides capacity and non-capacity grant funds to the 1862 land-grant institutions and the 1890 land-grant institutions for cooperative agricultural extension work. The objective of cooperative extension work is to provide nonformal education and learning activities to people throughout the country—to farmers and other residents of rural communities as well as to people living in urban areas. It emphasizes taking knowledge gained through research and education and bringing it directly to the people to create positive changes.

#### II. PROGRAM PROCEDURES

##### A. Overview

In 1914, the Smith Lever Act formalized cooperative extension by establishing USDA's partnership with land-grant universities (LGUs) to apply research and provide education in agriculture. Since its inception, cooperative extension has broadened its impact from rural communities to having a strong presence in America's urban and suburban areas. Extension agents continue to help farmers and ranchers achieve greater success while assisting families with nutrition and home economics and preparing today's youth to become future leaders. Cooperative extension's activities are funded by many of NIFA's capacity and non-capacity grants. These capacity grants provide support for NIFA's extension activities at land-grant institutions through grants to the states on the basis of statutory formulas. Eligibility for funding is limited to institutions that are identified in both Morrill Acts of 1862 and 1890.

The First Morrill Act of 1862 provided for the establishment of the 1862 land-grant institutions that 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, West Virginia State University, and Central State University, which are located in 18 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. Section 7403 of the Food, Conservation, and Energy Act (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 Expanded Food and Nutrition Education Program (EFNEP) and Children, Youth, and Families At-Risk (CYFAR) funds.

## **B. Subprograms/Program Elements**

### *The Smith-Lever 3(b) and 3(c) and Smith-Lever Special Needs Programs*

The Smith-Lever 3(b) and 3(c) and Smith-Lever Special Needs Programs are authorized under The Smith-Lever Act, sections 3(b) and 3(c). These programs' purpose is to increase the level of agricultural extension activities and extend its reach to new audiences.

## **C. Program Funding**

Funds are allocated to the land-grant institutions based on specified formulas. 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."

## **Source of Governing Requirements**

The laws governing this program are codified at Smith-Lever Act of 1914 7 USC 341-346, 347a-349, Smith Lever Act of 1914 7 USC 343 (d), and Sections 3(b)(1) and 8 of the Smith-Lever Act.

## **Availability of Other Program Information**

Other program information is available from the NIFA website at <http://www.nifa.usda.gov>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.



A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	Y	N	N	N	Y	N	N

**A. Activities Allowed or Unallowed**

1. 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)).
2. 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. No indirect costs or tuition remission may be charged against the formula grant funds authorized under the Smith-Lever Act (7 USC 3319) (Section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977).
2. 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).

**C. Cash Management**

1. *Grants and Cooperative Agreements to States*  
Applicable
2. *Grants and Cooperative Agreements to Nonfederal Entities Other Than States*  
Applicable
3. *Cost-Reimbursement Contracts Under the Federal Acquisition Regulation*  
Not applicable

4. *Loans, Loan Guarantees, Interest Subsidies, and Insurance*

Not applicable

5. *All Pass-Through Entities*

Not applicable

**F. Equipment and Real Property Management**

No portion of federal funds allotted under a Special Needs grant 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, or in college-course teaching, lectures in college, or any other purpose not specified in the Smith-Lever Act (7 USC 345 (Section 5 of the Smith-Lever Act of 1977)) (2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

**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)).
- b. *1862 Land-Grant Institution in the District of Columbia* – Effective December 20, 2019, Section 508 of the Agricultural Improvement Act of 2018 (Pub. L. No. 115-334) reinstated the 100 percent match requirement for funds awarded to 1862 land-grant institutions in the District of Columbia.
- 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 (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).

**2. Level of Effort**

Not Applicable

**3. Earmarking**

Not Applicable

**L. Reporting****1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## UNITED STATES DEPARTMENT OF AGRICULTURE

### ASSISTANCE LISTING 10.512 AGRICULTURE EXTENSION AT 1890 LAND-GRANT INSTITUTIONS PROGRAM

#### I. PROGRAM OBJECTIVES

The National Institute of Food and Agriculture (NIFA) provides capacity grant funds to the 1862 land-grant institutions and the 1890 land-grant institutions for cooperative agricultural extension work. The objective of cooperative extension work is to provide nonformal education and learning activities to people throughout the country—to farmers and other residents of rural communities as well as to people living in urban areas. It emphasizes taking knowledge gained through research and education and bringing it directly to the people to create positive changes.

#### II. PROGRAM PROCEDURES

##### A. History of Cooperative Extension

In 1914, the Smith Lever Act formalized cooperative extension by establishing United States Department of Agriculture's (USDA) partnership with land-grant universities (LGUs) to apply research and provide education in agriculture. Since its inception, cooperative extension has broadened its impact from rural communities to having a strong presence in America's urban and suburban areas. Extension agents continue to help farmers and ranchers achieve greater success while assisting families with nutrition and home economics and preparing today's youth to become future leaders. Cooperative extension's activities are funded by many of NIFA's capacity and non-capacity grants. These capacity grants provide support for NIFA's extension activities at land-grant institutions through grants to the states on the basis of statutory formulas. Eligibility for funding is limited to institutions that are identified in both Morrill Acts of 1862 and 1890.

The First Morrill Act of 1862 provided for the establishment of the 1862 land-grant institutions that 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, West Virginia State University, and Central State University, which are located in 18 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. Section 7403 of the Food, Conservation, and Energy Act (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 Expanded Food and Nutrition Education Program (EFNEP) and Children, Youth, and Families At-Risk (CYFAR) funds.

## **B. Subprograms/Program Elements**

### *The Agricultural Extension at 1890 Land-Grant Institutions*

The Agricultural Extension at 1890 Land-Grant Institutions program is authorized under Section 1444 of NARETPA, enacted as Title XIV of Pub. L. No. 95–113 (The Food and Agriculture Act of 1977) on September 29, 1977, is also known as the Section 1444 Program. The capacity program assists diverse audiences, particularly those who have limited social and economic resources. Funding supports practices and opportunities that respond to the changing needs of stakeholders. It also supports training for farmers and landowners from underrepresented groups, to acquire adequate capital, adopt new technologies, and use estate planning and tax incentive programs to retain operations and increase profitability.

## **C. Program Funding**

The purpose of this funding is to support agricultural and forestry extension activities at 1890 Land-Grant Institutions, including Tuskegee University, West Virginia State University, and Central State University. Funds are allocated to the 1890 land-grant institutions based on specified formulas. 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.”

## **Source of Governing Requirements**

The laws governing this program are codified at Section 1444 of NARETPA.

## **Availability of Other Program Information**

Other program information is available from the NIFA website at <http://www.nifa.usda.gov>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	Y	N	N	N	Y	N	N

**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* – Not allowed (7 USC 3319 (Section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended)).
2. 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).

**C. Cash Management**

1. *Grants and Cooperative Agreements to States*  
Applicable
2. *Grants and Cooperative Agreements to Nonfederal Entities Other Than States*  
Applicable
3. *Cost-reimbursement Contracts Under the Federal Acquisition Regulation*  
Not applicable
4. *Loans, Loan Guarantees, Interest Subsidies, and Insurance*  
Not applicable
5. *All Pass-Through Entities*  
Not applicable

**F. Equipment and Real Property Management**

Per NIFA terms and conditions, prior approval is required for general purpose equipment exceeding \$5,000; and special purpose equipment exceeding \$250,000. See also 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

No portion of federal funds allotted under a Special Needs grant 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, or in college-course teaching, lectures in college, or any other purpose not specified in Section 1444 of NARETPA (7 USC 3221 (e) (Section 1444 of NARETPA)).

**G. Matching, Level of Effort, Earmarking****1. Matching**

*1890 Land-Grant Institutions, including Tuskegee University and West Virginia State University* – Recipients must match 100 percent of federal funds from nonfederal sources. 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, West Virginia State University, and Central State University, may

carryover matching funds from one fiscal year to the following fiscal year (7 USC 3222d and 7 CFR Part 3419).

**2. Level of Effort**

Not Applicable

**3. Earmarking**

Not Applicable

**L. Reporting**

**1. Financial Reporting**

a. *SF-270, Request for Advance or Reimbursement* – Not Applicable

b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

c. *SF-425, Federal Financial Report* – Awardees are required to submit a SF-425, Federal Financial Report annually no later than 90 days after the award anniversary date. The final SF-425 is due no later than 90 days after the termination date of the grant.

**2. Performance Reporting**

The 1890 land-grant institutions that receive funding for the Agricultural Extension at 1890 Land-Grant Institutions Program authorized in Section 1444 of NAREPTA (7 USC 3221) and administered by NIFA beginning with the fiscal year (FY) 2019 funding, will be allowed to carry as much as 100 percent of their annual Section 1444 allocation over to the following fiscal year.

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.



## UNITED STATES DEPARTMENT OF AGRICULTURE

### ASSISTANCE LISTING 10.514 EXPANDED FOOD AND NUTRITION EDUCATION PROGRAM (EFNEP)

#### I. PROGRAM OBJECTIVES

The National Institute of Food and Agriculture (NIFA) provides capacity and non-capacity grant funds to the 1862 land-grant institutions and the 1890 land-grant institutions for cooperative agricultural extension work. The objective of cooperative extension work is to provide nonformal education and learning activities to people throughout the country—to farmers and other residents of rural communities as well as to people living in urban areas. It emphasizes taking knowledge gained through research and education and bringing it directly to the people to create positive changes. The EFNEP 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.

#### II. PROGRAM PROCEDURES

##### A. Overview

In 1914, the Smith Lever Act formalized cooperative extension by establishing United States Department of Agriculture's (USDA) partnership with land-grant universities (LGUs) to apply research and provide education in agriculture. Since its inception, cooperative extension has broadened its impact from rural communities to having a strong presence in America's urban and suburban areas. Extension agents continue to help farmers and ranchers achieve greater success, while assisting families with nutrition and home economics and preparing today's youth to become future leaders. Cooperative extension's activities are funded by many of NIFA's capacity and non-capacity grants. These capacity grants provide support for NIFA's extension activities at land-grant institutions through grants to the states on the basis of statutory formulas. Eligibility for funding is limited to institutions that are identified in both Morrill Acts of 1862 and 1890.

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, West Virginia State University, and Central State University, which are located in 18 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. Section 7403 of the Food, Conservation, and Energy Act (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 Expanded Food and Nutrition Education Program (EFNEP) and Children, Youth, and Families At-Risk (CYFAR) funds.

## **B. Subprograms/Program Elements**

### *Expanded Food and Nutrition Education Program (EFNEP)*

The EFNEP is authorized under Section 3(d) of the Smith-Lever Act provides that the secretary of agriculture may fund extension work in several states, territories, and possessions. Section 1425 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (as amended) (7 USC 3175) is also known as the EFNEP. This law provides the basis for federal funding for extension activities associated with disseminating the results of food and nutrition research performed or funded by the USDA to enable low-income individuals and families to engage in nutritionally sound food purchase and preparation practices. The EFNEP 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.

EFNEP funding extends to state land-grant colleges and universities established under the Morrill Act of July 2, 1862, as amended, and the Morrill Act of August 30, 1890, as amended, including Tuskegee University and West Virginia State University. Further, in accordance with Section 7129 of the Agricultural Act of 2014 (House Conference Report 113-333, to accompany HR 2642), Central State University has the designation as an 1890 Institution and is eligible to receive funds under this program beginning in fiscal year (FY) 2016.

## **C. Program Funding**

Programmatic funds are provided to the 1862 and 1890 land-grant institutions under Section 3(d) of the Smith-Lever Act for 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.

## **Source of Governing Requirements**

The law governing this program is Section 1425 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (as amended) 7 USC 3175.

**Availability of Other Program Information**

Other program information is available from the NIFA website at <http://www.nifa.usda.gov>.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	N	N	N	Y	Y	N

**A. Activities Allowed or Unallowed**

1. EFNEP federal funding must be used on NIFA approved EFNEP projects per 7 USC 3175 (Section 1425 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977) and 7 USC 343(d) (Section 3(d) of the Smith-Lever Act).
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* – Not allowed (7 USC 3319 (Section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended)).

**C. Cash Management**

1. *Grants and Cooperative Agreements to States*  
Applicable
2. *Grants and Cooperative Agreements to Nonfederal Entities Other Than States*  
Applicable
3. *Cost-reimbursement Contracts Under the Federal Acquisition Regulation*  
Not applicable
4. *Loans, Loan Guarantees, Interest Subsidies, and Insurance*  
Not applicable
5. *All Pass-Through Entities*  
Applicable

**L. Reporting****1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**M. Subrecipient Monitoring**

Applicable

**UNITED STATES DEPARTMENT OF AGRICULTURE****ASSISTANCE LISTING 10.515 RENEWABLE RESOURCES EXTENSION ACT (RREA) and NATIONAL FOCUS FUNDS (RREA-NFF)****I. PROGRAM OBJECTIVES**

The National Institute of Food and Agriculture (NIFA) provides capacity and non-capacity grant funds to the 1862 land-grant institutions and the 1890 land-grant institutions for cooperative agricultural extension work. The objective of cooperative extension work is to facilitate the development of practical applications of research knowledge and practical demonstrations of existing or improved practices or technologies in agriculture, home economics, and rural energy, and related subjects to persons not attending or resident in colleges. The purpose of the Renewable Resources Extension Act program funding is to assist states in carrying out an extension program designed to assist forest and range landowners and managers in making resource management decisions based on research findings. Forest and rangeland resources include vegetation, water, fisheries and wildlife, soil, and recreation.

**II. PROGRAM PROCEDURES****A. Overview and Program Elements**

Congress passed the Renewable Resources Extension Act (RREA) on June 30, 1978, and it was signed into law as Pub. L. No. 95-306, 92 Stat. 349, 16 USC 1671 et seq. The RREA is an Act “To provide for an expanded and comprehensive extension program for forest and rangeland renewable resources.” It is intended to provide educational programs dealing with renewable resources on forest and rangeland and to develop and implement extension educational programs that give special attention to the educational needs of small, private, nonindustrial forest landowners and rangeland owners/managers. The Act is also intended to assist in providing continuing education programs for natural resource professionals working in fish and wildlife, forest, range, and watershed management, and related fields. The original Act was effective for the period October 1, 1978, ending September 30, 2000. Since then, RREA has been re-authorized as a Farm Bill program for five-year increments. The original Act authorized funding was \$15,000,000 per fiscal year. Later reauthorizations of the program increased the authorized funding level to \$30,000,000 per fiscal year.

**B. Program Funding**

States are eligible for programmatic funds appropriated under this Act according to the respective capabilities of their private forests and rangelands for yielding renewable resources and relative needs for such resources identified in the periodic Renewable Resource Assessment provided for in Section 3 of the Forest and Rangeland Renewable Resources Planning Act of 1974 and the periodic appraisal of land and water resources provided for in Section 5 of the Soil and Water Resources Conservation Act of 1977.

**Source of Governing Requirements**

The laws governing this program are codified at Renewable Resources Extension Act 16 USC 1671 et seq. and RREA of 1978 16 USC 1671 et seq.

**Availability of Other Program Information**

Other program information is available from the NIFA website at <http://www.nifa.usda.gov>.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	N	N	N	Y	Y	N

**A. Activities Allowed or Unallowed**

RREA federal funding must be used on the strategic issues from the fiscal years (FYs) 2012–2016 RREA Strategic Plan identified in the institution’s approved 5-Year Plan of Work for FYs 2012–2016.

**B. Allowable Costs/Cost Principles**

1. *Indirect Costs*: Not allowed

**C. Cash Management**

1. *Grants and Cooperative Agreements to States*  
Applicable
2. *Grants and Cooperative Agreements to Nonfederal Entities Other Than States*  
Applicable
3. *Cost-reimbursement Contracts Under the Federal Acquisition Regulation*  
Not applicable
4. *Loans, Loan Guarantees, Interest Subsidies, and Insurance*  
Not applicable
5. *All Pass-Through Entities*  
Not applicable

**L. Reporting****1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Recipients have an approved five-year project in REEport.

- a. Institutions must submit a REEport Project Initiation, which includes the project description, project classification, assurance form, and project proposal through the REEport System prior to the initiation of each capacity-funded project. The project must undergo a review process and be approved before it is incorporated into the program of research.
- b. Each institution must submit a REEport Progress Report annually for each eligible project. All progress reports are based on the federal fiscal year and must be submitted by March 1 for the preceding fiscal year.
- c. A Final Report must be submitted to NIFA through REEport for each completed or terminated project. Such reports must be submitted at the



same time as are progress reports on active projects and should include a summary of accomplishments for the entire life of the project.

- d. A Project Financial Report must be submitted to NIFA through REEport annually for all eligible projects from the preceding fiscal year. A Project Financial Report is also required for expenditures on all state projects that are to be included in the nonfederal funds and matching funds computation. Reports shall be made on the federal fiscal year basis.

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**M. Subrecipient Monitoring**

Applicable

## UNITED STATES DEPARTMENT OF AGRICULTURE

### ASSISTANCE LISTING 10.516 RURAL HEALTH AND SAFETY

#### I. PROGRAM OBJECTIVES

The Rural Health and Safety Education (RHSE) program addresses the health and well-being of rural America through supporting the development and/or implementation of projects focused on (1) individual and family health education programs with specified contents; (2) rural health leadership development education programs to assist rural communities in developing health care services and facilities and assist community leaders and public officials in understanding their roles and responsibilities; and (3) farm safety education programs to provide information and training to farm workers, timber harvesters, and farm families.

#### II. PROGRAM PROCEDURES

##### A. Overview

Authorization for the Rural Health and Safety Education (RHSE) program is under Section 502 (i) of Title V of the Rural Development Act of 1972, as amended (7 USC 2662). Title V of the Rural Development Act of 1972 is to foster quality of life in rural communities by providing the essential knowledge necessary for successful programs of rural development, improving coordination among federal agencies, other levels of government, and institutions and private organizations in rural areas, and developing and disseminating information about rural conditions. Section 502(a) of the act authorizes that United States Department of Agriculture (USDA) may support colleges and universities as they implement extension programs.

##### B. Program Funding

The 1862 and 1890 Land Grant colleges and universities that are eligible to receive funds under the Act of July 2, 1862 (7 USC 301 et seq.) and the Act of August 30, 1890 (7 USC 321 et seq.), including Central State University, Tuskegee University, and West Virginia State University are eligible for funding. Applications also may be submitted by any of the tribal colleges and universities designated as 1994 Land Grant Institutions under the Educational Land-Grant Status Act of 1994, as amended.

#### Source of Governing Requirements

The laws governing this program are codified at Section 502 (i) of Title V of the Rural Development Act of 1972, as amended 7 USC 2662.

#### Availability of Other Program Information

Other program information is available from the National Institute of Food and Agriculture (NIFA) website at <http://www.nifa.usda.gov>.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	N	N	N	N	Y	Y	N

#### A. Activities Allowed or Unallowed

Per 7 USC 2662(i) (Section 502(i) of the Rural Development Act of 1972) and 7 USC 3310(a) and (c) (Section 1462(a) and (c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977), NIFA has determined that grant funds awarded under this authority may not be used for:

- General Purpose Equipment – Equipment that does not have a particular scientific, technical, or programmatic purpose. It includes passenger carrying vehicles, typewriters, furniture (e.g., tables, chairs, file cabinets, book cases), copy machines, fax machines, and so forth;
- Entertainment – Banquets, awards ceremonies, and meals for persons not in a travel status, tickets to shows or sporting events, and alcoholic beverages;
- Incentives – Federal funds may not be used to offer targeted program participants incentives (e.g., fast-food coupons, gift certificates) to entice participation. This is prohibited under the OMB Circulars;

- Renovation or refurbishment of research, education, or extension space;
- Purchase or installation of fixed equipment in such space;
- Planning, repair, rehabilitation, acquisition, or construction of buildings or facilities; and
- Any expense that is not directly related to the program or project would be considered unallowable. Costs such as child care services hired so that a person can attend a meeting or kitchen help hired to prepare refreshments for a field day, promotional or thank-you gifts such as T-shirts, coffee mugs, or canvas carry-all bags are unallowable because they are not directly related to the project plan.

## **B. Allowable Costs/Cost Principles**

1. Section 713 of the Consolidated Appropriations Act, 2017 (Pub. L. No. 115-31) limits indirect costs to 30 percent of the total federal funds provided (or 42.857 percent of total direct costs) under each award. Therefore, when preparing budgets, requests for the recovery of indirect costs to the lesser of an institution's official negotiated indirect cost rate or the equivalent of 30 percent of total federal funds awarded. See Part V section 7.9 of the NIFA Grants.gov Application Guide for further indirect cost information. See webpage at <https://nifa.usda.gov/indirect-costs> for indirect cost options.

## **C. Cash Management**

1. *Grants and Cooperative Agreements to States*  
Applicable
2. *Grants and Cooperative Agreements to Nonfederal Entities Other Than States*  
Applicable
3. *Cost-reimbursement Contracts Under the Federal Acquisition Regulation*  
Not applicable
4. *Loans, Loan Guarantees, Interest Subsidies, and Insurance*  
Not applicable
5. *All Pass-Through Entities*  
Applicable

## **F. Equipment and Real Property Management**

NIFA has determined that grant funds awarded under this authority may not be used for:

- General Purpose Equipment – Equipment that does not have a particular scientific, technical, or programmatic purpose. It includes passenger carrying vehicles, typewriters, furniture (e.g., tables, chairs, file cabinets, bookcases), copy machines, fax machines, and so forth (2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (UG). Per NIFA award terms and conditions, prior approval is required for general purpose equipment exceeding \$5,000 and special purpose equipment exceeding \$250,000.).
- Renovation or refurbishment of research, education, or extension space (7 USC 2662(i) (Section 502(i) of the Rural Development Act of 1972));
- Purchase or installation of fixed equipment in such space;
- Planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

Not Applicable

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## **M. Subrecipient Monitoring**

Applicable

## UNITED STATES DEPARTMENT OF AGRICULTURE

### ASSISTANCE LISTING 10.517 TRIBAL COLLEGE EXTENSION PROGRAM (TCEP) and SPECIAL EMPHASIS (TCEP-SE), and FEDERALLY RECOGNIZED TRIBES EXTENSION PROGRAM (FRTEP)

#### I. PROGRAM OBJECTIVES

The National Institute of Food and Agriculture (NIFA) provides capacity and non-capacity grant funds to the 1862 land-grant institutions and the 1890 land-grant institutions for cooperative agricultural extension work. The objective of cooperative extension work is to facilitate the development of practical applications of research knowledge and practical demonstrations of existing or improved practices or technologies in agriculture, home economics, and rural energy, and related subjects to persons not attending or resident in colleges. The purpose of the Tribal Colleges Extension Program (TCEP) is to give reservation communities opportunities for enhanced agricultural productivity, community resilience, economic growth, and youth development by extending the reach of innovations in research and technology and enhancing informal, local educational programming. The purpose of FRTEP is to establish an extension program presence and support extension program outreach on Federally Recognized Indian Reservations and tribal jurisdictions of Federally Recognized Tribes.

#### II. PROGRAM PROCEDURES

##### A. Overview

In 1914, the Smith Lever Act formalized cooperative extension by establishing the United States Department of Agriculture's (USDA) partnership with land-grant universities (LGUs) to apply research and provide education in agriculture. Since its inception, cooperative extension has broadened its impact from rural communities to having a strong presence in America's urban and suburban areas. Extension agents continue to help farmers and ranchers achieve greater success while assisting families with nutrition and home economics and preparing today's youth to become future leaders. Cooperative extension's activities are funded by many of NIFA's capacity and non-capacity grants. These capacity grants provide support for NIFA's extension activities at land-grant institutions through grants to the states on the basis of statutory formulas.

In 1994, twenty-nine tribal colleges received land-grant university (LGU) status, giving them access to federal government resources that would improve the lives of Native students through higher education and help propel American Indians toward self-sufficiency. These resources also support innovative research, education, and extension programs that positively impact agriculture and food production.

##### 1. *Tribal College Extension Program (TCEP) and Special Emphasis (TCEP-SE)*

The TCEP program and TCEP-SE are authorized under Section 534(b) of the Equity in Educational Land-Grant Status Act of 1994 (7 USC 301 note), as amended by the Agricultural Research, Extension, and Education Reform Act of

1998 (AREERA) (7 USC 7601). This section amends Section 3 of the Act of May 8, 1914 (Smith-Lever Act) (7 USC 341 et seq.), as amended. Under this authority, appropriated funds are to be awarded to the 1994 Land-Grant Institutions (hereinafter referred to as 1994 Institutions) for extension program work and funds are to be distributed on the basis of a competitive application process.

2. *Federally Recognized Tribes Extension Program (FRTEP)*

The FRTEP is authorized under Section 3(d) of the Act of May 8, 1914, Smith-Lever Act, ch. 79, 38 Stat. 372, 7 USC 341 et seq. Section 7403 of the Food, Conservation, and Energy Act of 2008 (FCEA) (Pub. L. No. 110-246) amended Section 3(d) of the Smith-Lever Act to require funds to be awarded competitively.

**B. Subprograms/Program Elements**

The purpose of the TCEP and TCEP-SE is to give reservation communities opportunities for enhanced agricultural productivity, to help supplement their existing extension capacity program, community resilience, economic growth, and youth development by extending the reach of innovations in research and technology and enhancing informal, local educational programming.

The purpose and intent of FRTEP is to establish an extension program presence and support extension program outreach on Federally Recognized Indian Reservations and tribal jurisdictions of Federally Recognized Tribes.

**C. Program Funding**

1. *Tribal College Extension Program (TCEP) and Special Emphasis (TCEP-SE)*

The expectation is that each 1994 institution that submits an extension capacity grant will receive funding so long as the application is of sufficient quality. Institutions will compete for the amount of funding they receive.

2. *Federally Recognized Tribes Extension Program (FRTEP)*

Section 3(d) of the Smith-Lever Act provides that the secretary of agriculture may fund extension work in the several states, territories, and possessions.

**Source of Governing Requirements**

The laws governing this program are codified at Section 534(b) of the Equity in Educational Land-Grant Status Act of 1994 and Smith Lever Act of 1914 7 USC 343 (d).

**Availability of Other Program Information**

Other program information is available from the NIFA website at <http://www.nifa.usda.gov>.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	N	N	N	N	Y	Y	N

#### A. Activities Allowed or Unallowed

- Neither equity nor research projects are supported under TCEP (7 USC 301 note (Section 3(b)(3) of the Smith-Lever Act, as added by Section 534(b) of the Equity in Educational Land-Grant Status Act of 1994)).

#### B. Allowable Costs/Cost Principles

*Tribal College Extension Program (TCEP) and Special Emphasis (TCEP-SE) (7 USC 3319 (Section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977))*

- Indirect costs are unallowable.
- The use of grant funds to plan, acquire, or construct a building or facility, or to acquire land, is not allowed under this program. With prior approval, in accordance with the cost principles set forth in 2 CFR 200.403(e), grant funds may be used to purchase equipment, or for improvements, alterations, renovations, or repairs to land, buildings, or equipment, deemed necessary to



retrofit existing spaces and resources in order to carry out a funded project under this grant. However, requests to use grant funds for such purposes must be aligned with the goals and objectives of the project. Any equipment purchased with federal funds is the property of the grantee or the sub-grantee, as appropriate.

*Federally Recognized Tribes Extension Program (FRTEP) (7 USC 343(d) Section 3(d) of the Smith-Lever Act))*

1. Pursuant to Section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (91 Stat. 981), indirect costs are unallowable costs under Section 3(d) of the Smith-Lever Act, and no funds will be approved for this purpose. Costs that are a part of an institution's indirect cost pool may not be reclassified as direct costs for the purpose of making them allowable. Award recipients may sub-contract to organizations not eligible to apply, provided such organizations are necessary for the success of the project.
2. Renovation and refurbishment of research, extension, and education space is not allowable.
3. Tuition remission is not allowable.

### **C. Cash Management**

1. *Grants and Cooperative Agreements to States*  
Applicable
2. *Grants and Cooperative Agreements to Nonfederal Entities Other Than States*  
Applicable
3. *Cost-reimbursement Contracts Under the Federal Acquisition Regulation*  
Not applicable
4. *Loans, Loan Guarantees, Interest Subsidies, and Insurance*  
Not applicable
5. *All Pass-Through Entities*  
Not allowed

### **F. Equipment and Real Property Management**

Grant funds awarded under this authority may not be used to renovate or refurbish research, education, or extension space; purchase or install fixed equipment in such space; or to plan, repair, rehabilitate, acquire, or construct buildings or facilities (7 USC 301 note (Section 3(b)(3) of the Smith-Lever Act, as added by Section 534(b) of the

Equity in Educational Land-Grant Status Act of 1994); 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (UG); and 7 USC 345 (Section 5 of the Smith-Lever Act of 1977)).

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

Not Applicable

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## **M. Subrecipient Monitoring**

Applicable

## UNITED STATES DEPARTMENT OF AGRICULTURE

### ASSISTANCE LISTING 10.520 AGRICULTURE RISK MANAGEMENT EDUCATION PARTNERSHIP GRANTS (ARPA)

#### I. PROGRAM OBJECTIVES

##### **Agriculture Risk Management Education Program**

Section 524(a) of the Federal Crop Insurance Act (7 USC 1524(a)), as amended by section 133 of the Agricultural Risk Protection Act of 2000 and section 11125 of the 2018 Farm Bill (Pub. L. No. 115-334), establishes a competitive grants program for educating agricultural producers and providing technical assistance to agricultural producers on a full range of farm viability and risk management activities. These activities include futures, options, agricultural trade options, crop insurance, business planning, enterprise analysis, transfer and succession planning, management coaching, market assessment, cash flow analysis, cash forward contracting, debt reduction, production diversification, farm resources risk reduction, farm financial benchmarking, conservation activities, and other appropriate risk management strategies. This program brings the existing knowledge base to bear on risk management issues faced by agricultural producers and expands the program throughout the nation on a regional and multi-regional basis.

The Agriculture Risk Management Education Partnership program is a competitive grants program to educate agricultural producers about the full range of risk management activities. These activities include futures, options, agricultural trade options, crop insurance, cash forward contracting, debt reduction, production diversification, marketing plans and tactics, farm resources risk reduction, and other appropriate risk management strategies. The Risk Management Education (RME) program brings the existing knowledge base to bear on risk management issues faced by agricultural producers and expands the program throughout the nation on a regional and multi-regional basis.

The National Institute of Food and Agriculture (NIFA) provides capacity and non-capacity grant funds to the 1862 land-grant institutions and the 1890 land-grant institutions for cooperative agricultural extension work. The objective of cooperative extension work is to facilitate the development of practical applications of research knowledge and practical demonstrations of existing or improved practices or technologies in agriculture, home economics, and rural energy, and related subjects to persons not attending or resident in colleges.

#### II. PROGRAM PROCEDURES

##### A. Overview

The Agriculture Risk Management Education Partnership program is authorized under Section 133 of the Agricultural Risk Protection Act of 2000 (ARPA) (Pub. L. No. 106-224), as amended the Federal Crop Insurance Act to add section 524(a) (3); 7 USC Section 1501, as amended by Section 132(a) and Section 524; and Section 11125 of the 2018 Farm Bill (Pub. L. No. 115-334), which requires the secretary, acting through NIFA, to establish a competitive grants program to educate agricultural producers about the full range of risk management activities.

## **B. Subprograms/Program Elements**

### *Agriculture Risk Management Education Partnership*

As amended section 524(a) of the Federal Crop Insurance Act, 7 USC 1524(a) was further amended by Section 12026 of the Food, Conservation, and Energy Act of 2008, (FCEA) (Pub. L. No. 110-246), which requires that the secretary place special emphasis on risk management strategies, education, and outreach specifically targeted at: (a) beginning farmers or ranchers; (b) legal immigrant farmers or ranchers that are attempting to become established producers in the United States; (c) socially disadvantaged farmers or ranchers; (d) farmers or ranchers who (i) are preparing to retire and (ii) are using transition strategies to help new farmers or ranchers get started; and (e) new or established farmers or ranchers that are converting production and marketing systems to pursue new markets.

## **C. Program Funding**

This program makes five awards, one award to each regional center (Northeast Region, North Central Region, Southern Region, and the Western Region) and one award to the Risk Management Education Electronic Support Center (RMEESC).

The purpose of the four regional RME centers is to conduct regional and multi-regional based competitive grants programs for the purpose of funding agricultural risk management organizations and individuals that are risk management experts. Also, these organizations and individuals have the knowledge and experience in developing various risk management curricula and delivering to agencies, institutions, and professionals involved in risk management serving farmers and their families.

The purpose of the RMEESC is to provide supporting services to the four regional centers. Support to the four regional RME centers will include electronic, on-line submission of proposals to the four regional centers sub-awards competitive grants programs, provision of a results verification system that includes both progress report and final report templates for the sub-awards process, national communications planning and execution for the program, assistance in coordination of events and conferences as directed, and archival support for all materials and curriculum developed through the regional center sub-awards competitive grants programs.

## **Source of Governing Requirements**

The laws governing this program are codified at Section 524(a) of the Federal Crop Insurance Act 7 USC 1524(a).

## **Availability of Other Program Information**

Other program information is available from the NIFA website at <http://www.nifa.usda.gov>.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	N	N	N	N	Y	Y	N

#### A. Activities Allowed or Unallowed

Award recipients may subcontract to organizations necessary for the conduct of the project (7 USC 1524(a)(3) (Section 524(a)(3) of the Federal Crop Insurance Act) and 7 USC 3310(a) and (c) (Section 1462(a) and (c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended)).

#### B. Allowable Costs/Cost Principles

- Section 715 of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. No. 113-235), limits indirect costs to 30 percent of the total federal funds provided under each award. Therefore, when preparing budgets, applicants should limit their requests for recovery of indirect costs to the lesser of their institution’s official negotiated indirect cost rate or the equivalent of 30 percent of total federal funds awarded. See Part V section 7.9 of the NIFA Grants.gov Application Guide for further indirect cost information.
- Grants awarded under this authority may not use funds to renovate or refurbish research, education, or extension space; purchase or install fixed equipment in

such space; or plan, repair; rehabilitate, acquire, or construction (7 USC 1524(a)(3) (Section 524(a)(3) of the Federal Crop Insurance Act) and 7 USC 3310(a) and (c) (Section 1462(a) and (c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended)).

### **C. Cash Management**

1. *Grants and Cooperative Agreements to States*  
Applicable
2. *Grants and Cooperative Agreements to Nonfederal Entities Other Than States*  
Applicable
3. *Cost-reimbursement Contracts Under the Federal Acquisition Regulation*  
Not applicable
4. *Loans, Loan Guarantees, Interest Subsidies, and Insurance*  
Not applicable
5. *All Pass-Through Entities*  
Applicable

### **F. Equipment and Real Property Management**

Grant funds awarded under this authority may not be used to renovate or refurbish research, education, or extension space; purchase or install fixed equipment in such space; or plan, repair; rehabilitate, acquire, or construction of buildings or facilities. Per NIFA's award terms and conditions, prior approval is required for general purpose equipment exceeding \$5,000; and special purpose equipment exceeding \$250,000 (2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (UG) and 7 USC 1524(a)(3) (Section 524(a)(3) of the Federal Crop Insurance Act)).

### **L. Reporting**

#### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**M. Subrecipient Monitoring**

Applicable

## UNITED STATES DEPARTMENT OF AGRICULTURE

### ASSISTANCE LISTING 10.521 CHILDREN, YOUTH, AND FAMILIES AT-RISK (CYFAR)

#### I. PROGRAM OBJECTIVES

The National Institute of Food and Agriculture (NIFA) provides competitive grant funds to the 1862 land-grant institutions and the 1890 land-grant institutions for cooperative agricultural extension work. The objective of cooperative extension work is to provide nonformal education and learning activities to people throughout the country—to farmers and other residents of rural communities as well as to people living in urban areas. It emphasizes taking knowledge gained through research and education and bringing it directly to the people to create positive changes. The Children, Youth, and Families At-Risk (CYFAR) program provides funding to land-grant university extension services for community-based Sustainable Community Projects (SCP) to expand statewide (and territories') capacity to support and sustain programming for at risk or high need vulnerable youth and families.

#### II. PROGRAM PROCEDURES

##### A. Overview

The CYFAR program is authorized under Section 3(d) of the Smith-Lever Act (7 USC 341 et seq.), as amended and other relevant authorizing legislation, which provides jurisdictional basis for the establishment and operation of extension educational work for the benefit of youth and families in communities.

##### B. Subprograms/Program Elements

###### 1. *Children, Youth, and Families At-Risk (CYFAR) Program*

The program's vision is a nation of strong, resilient families and communities in which children and youth lead positive, secure, and happy young lives while developing the skills, knowledge, and competencies necessary for fulfilling, contributing adult lives. The program is based on research on effective programs for at-risk youth and families and on the human ecological principle of working across the lifespan in the context of the family and community. CYFAR integrates resources of the land-grant university system to develop and deliver educational programs that equip limited-resource families and youth who are at risk for not meeting basic human needs to lead positive, productive, and contributing lives.

CYFAR subprograms include:

- Professional Development and Technical Assistance (PDTA)
- CYFAR – Sustainable Community Projects (SCP); and
- 4-H Military Partnership



**C. Program Funding**

Programmatic funds are provided to the 1862 and 1890 land-grant institutions under Section 3(d) of the Smith-Lever Act for CYFAR, which is authorized under Section 1425 of National Agricultural Research, Extension, and Teaching Policy Act (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.

**Source of Governing Requirements**

The laws governing this program are codified at Smith-Lever Act of 1914, 7 USC 343 (d); (7 USC 341, et seq.), and 7 USC 3319 (Section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977).

**Availability of Other Program Information**

Other program information is available from the NIFA website at <http://www.nifa.usda.gov>.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	N	N	N	N	Y	Y	N

**A. Activities Allowed or Unallowed**

1. Competitive 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).

Plan of Work requirements (7 USC 344 [Section 5 of the Smith-Lever Act of 1977]) for the subprograms are as follows:

- a. CYFAR – PDTA: 5-Year Plan
  - b. CYFAR – SCP: 4-Year Plan
  - c. CYFAR Military: 3-Year Plan
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 – Not allowed (7 USC 3319 [Section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended])

**C. Cash Management**

1. *Grants and Cooperative Agreements to States*  
Applicable
2. *Grants and Cooperative Agreements to Nonfederal Entities Other Than States*  
Applicable
3. *Cost-reimbursement Contracts Under the Federal Acquisition Regulation*  
Not applicable

4. *Loans, Loan Guarantees, Interest Subsidies, and Insurance*

Not applicable

5. *All Pass-Through Entities*

Applicable

**F. Equipment and Real Property Management**

Grant funds awarded under this authority may not be used for the renovation or refurbishment of research, education, or Extension space; the purchase or installation of fixed equipment in such space; or the planning, repair, rehabilitation, acquisition, or construction of buildings or facilities. (7 USC 345 [Section 5 of the Smith-Lever Act of 1977] and 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.)

**L. Reporting**

**1. Financial Reporting**

a. *SF-270, Request for Advance or Reimbursement* – Not Applicable

b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**M. Subrecipient Monitoring**

Applicable

## UNITED STATES DEPARTMENT OF AGRICULTURE

### ASSISTANCE LISTING 10.542 PANDEMIC EBT FOOD BENEFITS (P-EBT)

#### I. PROGRAM OBJECTIVES

The objective of the of the Pandemic Electronic Benefit Transfer (P-EBT) program is to provide nutrition assistance on EBT cards for: (1) school age children who would have received free or reduced price school meals under the National School Lunch Program (NSLP) and School Breakfast Program (SBP) had their schools not been closed or operating with reduced hours for at least five (5) consecutive days due to the COVID-19 public health emergency; and (2) children in child care whose child care facility is closed or has reduced attendance or who live in the area of a school that is closed or has reduced attendance due to the COVID-19 public health emergency.

#### II. PROGRAM PROCEDURES

##### A. Overview

P-EBT was authorized and funded in section 1101 of the Families First Coronavirus Response Act (FFCRA, Pub. L. No. 116-127), and has been amended twice, most recently through the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260). The program is administered at the federal level by the Food and Nutrition Service (FNS) of the US Department of Agriculture (USDA) through grants to state agencies. Each state agency submits an application to operate the program for a given period. If approved, USDA enters into an agreement with the state agency to operate in accordance with their plan.

P-EBT was first authorized in March 2020 and was initially only available to school children. USDA provided guidance on program implementation and state agencies submitted plans detailing how their programs would operate within the guidance. USDA approved all fifty states, the District of Columbia, the US Virgin Islands, and Guam to implement P-EBT in school year (SY) 2019–2020 from the time that schools closed until the end of the school year. Congress amended the statute for SY 2020–2021 to: (1) revise programmatic requirements; (2) add an option for states to serve children in child care; and (3) allow Puerto Rico, the Commonwealth of the Northern Mariana Islands, and American Samoa to operate P-EBT programs. USDA issued updated guidance in January 2021 to reflect statutory changes and worked with state agencies to develop and approve plans to serve school children and children in child care through the end of federal fiscal year 2021.

##### B. Benefits

Through P-EBT, eligible children received benefits on EBT cards that could have been used to purchase food at stores that accepted Supplemental Nutrition Assistance Program (SNAP) benefits. They must have used these program benefits to purchase foods for preparation and consumption at home. The amount of a child's benefit payment depended on the daily rate established by USDA, and the number of days that the child did not

receive school meals due to COVID, or the status of child care or schools in the area. The daily rate for SY 2019–2020 was \$5.70, which is equal to the value of the USDA free reimbursement for one breakfast and one lunch in SY 2019–2020. For SY 2020–2021, the daily rate was \$6.82, which included the value of free reimbursement for one breakfast, one lunch, and one afterschool snack in that school year.

**C. Program Funding**

Since the program’s inception, the federal government has paid 100 percent of the value of P-EBT benefits. Beginning October 1, 2020, 100 percent of administrative costs have also been paid by the federal government. Food benefit funding was provided through an account with the Federal Reserve Bank of Richmond, in the same manner as SNAP food benefits. Administrative funds were provided through a grant to the state agency that administers SNAP. It was the responsibility of the recipient agency to request sufficient funds to cover all program costs, and to distribute funds among program partners (e.g., the agency that administered the school meals programs), as necessary.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	N	N	Y	N	N	N	Y	N	Y	N	N

## A. Activities Allowed or Unallowed

The authorizing statute, Section 1101 of the Families First Coronavirus Response Act (Pub. L. No. 116-127, as amended) is the authority for the administration of P-EBT. In addition, approved **state** agencies must implement the program in accordance with their approved plans. Use of funds made available for P-EBT must also comply with government accounting and record keeping requirements in 2 CFR 200.

### 1. Issuing benefit levels at the appropriate amount

**Compliance Requirements** State agencies determined benefit levels for individual students in a number of ways. Some state agencies counted the number of days that free or reduced price eligible students did not attend school in-person and therefore did not have access to meals at school. Other state agencies set common benefits for all children based on the predominant learning model (in-person, virtual, or mixed) at the school level or school district level. The FFCRA, as amended, provided for state agency use of simplifying assumptions and the use of “best feasibly available data” to identify eligible students and set benefit levels. State agencies used of these flexibilities as outlined in their USDA-approved state plans. Compliance with those plans is the objective of the audit.

**Audit Objectives** Confirm that state agencies set benefit levels consistent with the process outlined in their USDA-approved P-EBT plans.

### Suggested Audit Procedures

- a. Confirm that the state agency instructed schools and school districts appropriately in order to collect the data necessary to set benefit levels consistent with the terms of the state plan.
- b. Confirm that the state agency properly set benefit levels using the data collected from schools and school districts.
- c. Confirm that the state agency collected updated data from schools or school districts throughout the school year consistent with the terms of the state’s approved plan.

## E. Eligibility

### 1. Eligibility for States

All states, the District of Columbia, the US Virgin Islands, and Guam have been eligible to operate P-EBT programs since it was passed into law in March 2020. The October 2020 Continuing Appropriations Act, 2021, and Other Extensions Act (Pub. L. No. 116-159) amended the statute to extend eligibility to Puerto Rico, the Commonwealth of the Northern Mariana Islands, and America Samoa. State agencies and territories must submit an application and be approved by USDA to operate a P-EBT program.

## 2. Eligibility for Participants

The method of determining program eligibility varied based on the population of children, the time frame for which the determination was made, and changes to the statute over time.

For SY 2019–2020, schools were generally closed for in-person learning from early spring through the end of the school year. During this time period, eligible school children were those who would have received free or reduced-price meals, had their schools not been closed or operating with reduced hours for at least five (5) consecutive days due to COVID-19. For SY 2020–2021, many schools taught children at the school site at least part of the time and provide meals to children when they were learning in-person. Therefore, the same eligibility standards apply, but benefits were provided based on the number of days that the child did not receive free or reduced-price meals at the school because the school was closed or operating with reduced attendance or hours.

In accordance with the statute, state agencies could provide P-EBT benefits to children in child care beginning October 1, 2020. To be eligible to participate, a child: (1) must have been a member of a household that received SNAP benefits; (2) must have been enrolled in a covered child care facility (although the statute deems all SNAP-enrolled children under 6 to be enrolled in such a facility); and (3) must have been enrolled in a child care facility that was closed or had reduced attendance or hours, or one or more schools in the area of the child care facility, or in the area of the child’s residence, must have been closed or had reduced attendance or hours.

For SY 2020–2021, the statute allowed state agencies to propose simplified assumptions that made use of the best feasibly available data to determine that the status of a school or covered child care facility was open, closed, or did operate with a reduced number of days or hours; to identify children eligible for benefits; and to establish benefit levels and eligibility periods.

a. Targeting children eligible for free or reduced price school meal benefits

**Compliance Requirements** Eligibility for P-EBT benefits is limited to children who would have received free or reduced price meals at the schools had their schools not been closed or operating with reduced hours for at least five (5) consecutive days due to the COVID health emergency. The FFCRA allows state agencies to make simplifying assumptions and use best feasibly available data to identify eligible children and set benefit levels. The state agencies’ use of these flexibilities is documented in their USDA-approved state plans. The requirement, then, is for states to carry out their plans as approved by USDA. This process may rely on free or reduced price eligibility from the prior school year, a USDA-approved use of “best feasibly available data.” Using SY 2019–2020 free and reduced price eligibility data is a common feature of USDA-approved plans.

Because most school districts served all school meals for free in SY 2020–2021 under the Summer Food Service Program (SFSP) or the NSLP’s Simplified Summer Option (SSO), they did not typically collect or process school meal applications at the start of the school year. As a result, USDA commonly approved the use of SY 2019–2020 free and reduced price eligibility data to identify children eligible for P-EBT in SY 2020–2021.

**Audit Objectives** Confirm that state agencies identified the population of children eligible for free or reduced price school meals by application or direct certification, and that the population includes all children enrolled in Community Eligibility Provision schools and schools in operation under 7 CFR 245.9, provisions 2 or 3.

### **Suggested Audit Procedures**

- (1) Confirm that the state agency is following the process described in its approved state plan.
- (2) Confirm that the state agency instructed its school districts to remove children on SY 2019–2020 free and reduced price lists who are no longer enrolled in school in SY 2020–2021.

### **3. Eligibility for Subrecipients**

Not Applicable

## **L. Reporting**

### **1. Financial Reporting**

Review the Federal Financial Report (FFR) (SF-425/SF-425A) (OMB No. 0348-0061).

See Part 3.L for audit guidance.

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

Not Applicable

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.



**UNITED STATES DEPARTMENT OF AGRICULTURE****ASSISTANCE LISTING 10.551 SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)****ASSISTANCE LISTING 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****A. Administration**

The US 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.

**B. 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, Level of Effort, Earmarking – 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.

States receive federal funds for SNAP nutrition education and obesity prevention (SNAP-Ed) activities based on a formula. The state agency must use these funds for the administrative costs of planning, implementing, and operating a SNAP-Ed program in accordance with its approved SNAP-Ed Plan. The federal government pays 100 percent of the costs. However, the state agency is prohibited from obligating additional federal funds for SNAP-Ed activities.

## C. Certification

Eligibility for SNAP is based primarily on income and resources. Although a number of available state design options can affect benefits for recipients, a key feature of the program is its status as an entitlement program with standardized eligibility and benefits.

### 1. *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. Nonfinancial eligibility criteria include school status, citizenship/legal immigration status, residency, household composition, work requirements, and disability status. Some noncitizens 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.

A total of 42 states have adopted the policy known as broad based categorical eligibility (BBCE). This policy allows a state to base SNAP eligibility determinations on households' receipt of a Temporary Assistance for Needy Families (TANF)-funded noncash benefits or service (Assistance Listing 93.558). Depending on the eligibility criteria of the TANF program used to confer SNAP categorical eligibility, the BBCE may enable a state to (1) use a higher threshold (up to 200 percent of the poverty level) when applying the gross income test, and/or (2) eliminate the asset test altogether.

### 2. *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 and the state employment security agency, to verify the household's identity, income, resources, and other eligibility criteria.

## D. 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 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).

## **E. Benefit Redemption**

Generally, households must use program benefits to purchase foods for preparation and consumption at home. There are, however, very few exceptions to this general policy. For example, there are provisions for seniors, disabled persons, and 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 US 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 US Treasury.

States must obtain an examination report by an independent auditor of the state EBT service providers (service organizations) regarding the issuance, redemption, and settlement of benefits under SNAP in accordance with the American Institute of Certified Public Accountants Statement on Standards for Attestation Engagements (AT) Section 801, *Reporting on Controls at a Service Organization*. Appendix VIII to the Supplement provides additional guidance on these examinations and service auditor reports, referred to as a "service organization control (SOC) 1 type 2 report." In performing audits of SNAP under 2 CFR Part 200, Subpart F, an auditor may use these SOC 1 type 2 reports to gain an understanding of internal controls and obtain evidence about the operating effectiveness of controls.

## **F. 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 regulations at 7 CFR

section 271.2, although states may request approval by FNS to use “management units” instead of project areas for management evaluation reviews. The state must also ensure corrective action in response to the detection of program deficiencies.

## **G. Federal Oversight and Compliance Mechanisms**

FNS oversees state operations through an organization consisting of headquarters and seven regional offices. 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.

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 Retailer Operations 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.

## **H. 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 actions to deny, terminate, or suspend benefits.

### **1. *Measurement***

States are required to select a statistical sample of cases, both active (currently receiving benefits) and negative case actions (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 statistical 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.

## 2. *Corrective Action and Penalties*

Program regulations require corrective action for any of the following reasons: (1) a payment error rate of 6 percent or greater, (2) any negative case error rate that exceeds 1 percent, (3) deficiencies identified from any FNS review, Government Accountability Office (GAO) audit, contract audit, or reports to FNS regarding the implementation of major changes as discussed in 7 CFR 272.15, (4) a result of 5 percent or more of the state's quality control (QC) caseload being coded as incomplete, or (5) any state agency rules or procedures that lead to under issuances, improper denials, improper suspensions, improper terminations, or improper systemic suspension of benefits to eligible households. 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.

## 3. *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. 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 TANF, SNAP, Medicaid) 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 the Agriculture Act of 2014 (Pub. L. No. 113-79, 128 Stat. 649, enacted February 7, 2014). SNAP regulations are found in 7 CFR parts 271 through 285.

## Availability of Other Program Information

Other program information is available from FNS's SNAP site at <https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program>.

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	N	Y	N	N	Y	Y

### 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 (E&T) activities, must be used for such purposes (7 CFR Part 277).

SNAP-Ed funds must be used for the administrative costs of planning, implementing, operating, and evaluating a SNAP-Ed program in accordance with the state's approved SNAP-Ed Plan. However, the state agency is prohibited from obligating additional federal funds for SNAP-Ed activities (7 CFR section 272.2(d)(2)).

## **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 E&T component of the program (7 CFR section 277.4(b)) (Note: States receive a 100 percent grant for the E&T component and must pay 50 percent for E&T costs that exceed that grant); and
- b. Provide SNAP-Ed services. A state's SNAP-Ed costs are 100 percent federally funded, up to the level of its formula-generated federal SNAP-Ed grant. That amount is the maximum level of federal financial participation in a state's SNAP-Ed costs; any SNAP-Ed costs incurred beyond that level must be borne by the state (7 USC 2036a, Section 241 of Pub. L. No. 111-296, 124 Stat. 3183, December 13, 2010).

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

## I. Procurement and Suspension and Debarment

1. *ADP Systems Development* – For competitive acquisitions of ADP equipment and services costing \$6 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. 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 prior written approval (7 CFR section 277.18).
2. For procurement activity covered by the USDA implementation of the A-102 Common Rule (see Part 3 of the Supplement for effective dates), regardless of whether the state elects to follow state or federal rules, 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)).
3. For procurements covered by the USDA adoption of 2 CFR Part 200 and the regulations at 2 CFR section 416.1, the following applies:
  - a. A prospective contractor that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract term and conditions or other documents for use by a state shall be excluded from competing for such procurements. Such prospective contractors are ineligible for contract awards resulting from such procurements regardless of the procurement method used. However, prospective contractors may provide states with specification information related to a state procurement and still compete for the procurement if the state, and not the prospective contractor, develops or drafts the specifications, requirements, statements of work, invitations for bid, and/or requests for proposals used to conduct the procurement (2 CFR section 416.1(a)).
  - b. Procurements by states shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographic



preferences except as provided for in 2 CFR section 200.319(b) (2 CFR section 416.1(b)).

## N. Special Tests and Provisions

### 1. ADP System for SNAP

**Compliance Requirements** 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 that 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 Objectives** 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. (Note: References to the "ADP/CIS Model Plan" are outdated and no longer valid. Examination of 7 CFR section 272.10 should focus only on the functional requirements of SNAP automation and should disregard any references to the "ADP/CIS Model Plan" referenced in 7 CFR sections 272.10(a)(1) and 272.10(a)(2)).

### 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. In addition, FNS has developed a review tool for use by state and federal staff in conducting pre- and post-implementation reviews of states' automated SNAP systems. The review tool can be found at

[http://www.fns.usda.gov/sites/default/files/apd/SNAP\\_System\\_Integrity\\_Review\\_Tool.pdf](http://www.fns.usda.gov/sites/default/files/apd/SNAP_System_Integrity_Review_Tool.pdf). The auditor should test the ADP system to ascertain if the system:

- a. Accurately and completely processes and securely stores all case file information for eligibility determination and benefit calculation.
- b. Automatically cuts off households from receiving SNAP benefits at the end of their certification period unless the household is recertified.

- c. Provides data necessary to meet federal issuance and reconciliation reporting requirements.

## 2. EBT Reconciliation

**Compliance Requirements** States 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 (e.g., electronic point-of-sale 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 274.3(a)(1) and 274.4(a)).

**Audit Objectives** Determine whether the state reconciles retailer credit 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 nonfederal liabilities in the daily EBT reconciliation (i.e., transactions which cannot be charged to the program). If so, verify that the nonfederal liabilities were funded by nonfederal sources (e.g., the state or the contractor).

### 3. EBT Card Security

**Compliance Requirements** The state is required to maintain adequate security over, and documentation/records for, EBT cards, to prevent their theft, embezzlement, loss, damage, destruction, unauthorized transfer, negotiation, or use (7 CFR section 274.8(b)(3)).

**Audit Objectives** 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.

## IV. OTHER INFORMATION

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) the related compliance requirements will apply to the local government.

See Assistance Listing 10.000 for additional information regarding to waivers for this program due to COVID-19.

**UNITED STATES DEPARTMENT OF AGRICULTURE****ASSISTANCE LISTING 10.553 SCHOOL BREAKFAST PROGRAM (SBP)****ASSISTANCE LISTING 10.555 NATIONAL SCHOOL LUNCH PROGRAM (NSLP)****ASSISTANCE LISTING 10.556 SPECIAL MILK PROGRAM FOR CHILDREN (SMP)****ASSISTANCE LISTING 10.559 SUMMER FOOD SERVICE PROGRAM FOR CHILDREN (SFSP)****ASSISTANCE LISTING 10.582 FRESH FRUIT AND VEGETABLE PROGRAM (FFVP)****I. PROGRAM OBJECTIVES**

The objectives of the child nutrition cluster programs are to (1) assist states in administering and overseeing food service program operators that provide healthful, nutritious meals to eligible children in public and non-profit private schools, residential child care institutions, and summer programs; (2) foster healthy eating habits in children by providing fresh fruits and fresh vegetables to children attending elementary schools; and (3) encourage the domestic consumption of nutritious agricultural commodities.

**II. PROGRAM PROCEDURES****A. Overview**

The Child Nutrition Programs are administered at the federal level by the Food and Nutrition Service (FNS) of the US Department of Agriculture (USDA) through grants to state agencies. Each state agency 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.”

USDA makes donated agricultural commodities available for use in the operation of all child nutrition programs (except the SMP and FFVP). FNS enters into agreements with state distributing agencies for the distribution of USDA donated foods. The state distributing agencies 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.

**B. Subprograms/Program Elements****1. *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-only service may be authorized 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.

The nonprofit school food service account is managed by local program operators who offer program and nonprogram foods to children during meal services. Program foods are the foods served in reimbursable meals. Nonprogram foods include any nonreimbursable foods and beverages purchased using the funds from the nonprofit school food service account. Nonprogram foods encompasses all other foods sold in school, including adult meals, foods sold outside of school hours, or any foods used for catering or vending activities. For the majority of local program operators, a la carte foods offered during meal service account for the largest share of nonprogram foods. To the maximum extent practicable, school food authorities must purchase commodities produced in the United States and food products processed in the United States substantially using commodities produced in the United States.

- 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 SFSP.
- 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.”

## 2. *Characteristics of Individual Programs*

The program-specific variants of this basic program model are outlined below.

- a. *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. An 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 an 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. Refer also to the description of the SMP below. These programs must purchase domestic foods and food products processed in the United States substantially using domestic foods.
- b. *SFSP* – The SFSP 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.

Residential camps and migrant sites may receive reimbursement for up to three meals, or two meals and one snack, per child per day, whereas 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 SFSP meal reimbursement only for meals served to eligible children.

Although USDA-donated foods are made available under the SFSP, they are restricted to sponsors that prepare the meals to be served at their sites and those that have entered into an agreement with an 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. An 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. SFAs must also purchase milk that is domestic and processing must occur in the United States.

- d. *FFVP* – The FFVP provides free fresh fruits and vegetables to children enrolled in high need elementary schools during the school day. The program prioritizes schools with the highest percentage of children certified as eligible for free and reduced price meals. The goal is to introduce children to fresh fruits and vegetables, to include new and different varieties, and to increase overall acceptance and consumption of fresh, unprocessed produce among children. The FFVP also encourages healthier school environments by promoting nutrition education.

## C. Program Funding

FNS provides funds to state agencies by letter of credit. The state agencies use meal reimbursement funds to support program operations by SFAs, institutions, and sponsors under their oversight, and administrative funds to fund their own administrative costs.

### 1. *Funding Program Benefits*

FNS provides cash reimbursement to each state agency for each meal served under the NSLP, SBP, and SFSP 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 SFSP is the product obtained by multiplying the number of meals served by maximum rates of reimbursement established by FNS.

The 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. A "severe need" school receives a higher rate and is one in which at least 40 percent of the school lunches served in the second preceding school year were served free or at reduced price. Milk served free under the SMP is funded at the average cost of milk. In addition, performance-based cash reimbursement is currently 7 cents per lunch for eligible schools.

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 SFSP. 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 SFSP 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 is available at <http://www.fns.usda.gov/school-meals/rates-reimbursement> (7 CFR sections 210.4(b), 220.4(b), 215.1) and at <https://www.fns.usda.gov/sfsp-reimbursement-rates> (7 CFR 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 SFSP sponsors receive donated foods to the extent they can use them for program purposes; however, certain types of products are limited by an entitlement.

A state agency’s FFVP grant is determined by FNS using an allocation formula per Section 19 of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1769a. Eligible elementary schools must submit an FFVP application to the state agency. The selected elementary schools receive an amount per student for each school year. The exact amount of per student funding is determined by the state agency based on the total funds allocated to the state agency and the student enrollment at participating schools.

## 2. *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. *SFSP 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 SFSP (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, as amended (NSLA) (42 USC 1751 et seq.) and the Child Nutrition Act of 1966, as



amended (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 (SFSP), 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**

Other program information is available online at USDA's public website. The Child Nutrition Programs site pages are at <http://www.fns.usda.gov/cnd>. The USDA Foods sites pages for the Child Nutrition Programs are at <https://www.fns.usda.gov/usda-foods>.

### **COVID-19 Pandemic Flexibilities**

During the pandemic, waivers to some program requirements were issued and information is available at [Child Nutrition COVID-19 Waivers | Food and Nutrition Service \(usda.gov\)](https://www.usda.gov/child-nutrition/covid-19-waivers). The auditor should consult with the State and/or local agency subject to audit to identify which waiver flexibilities were adopted, to the extent applicable. Please also refer to 4-10.000 of this document, which provides general background information regarding the impact of COVID-19 waivers on FNS programs.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	N	N	Y	N	Y	N	Y

**A. Activities Allowed or Unallowed**

Reimbursement for meals served is not based on costs; it is determined solely by applying the applicable meals times rates formula. For the SFSP, there are separate rates used to calculate reimbursement for operating and administrative costs, however, a sponsor can use its entire reimbursement payment for any combination of allowable operating and administrative costs. For the FFVP, eligible elementary schools may only use the awarded subgrant funds for allowable costs of purchasing, preparing, and serving the fresh fruits and fresh vegetables during school day; these funds may not be used for the service of school meals.

**E. Eligibility**

**1. Eligibility for Individuals**

Any child enrolled in a participating school or summer camp, or attending a SFSP meal service site, who meets the applicable program’s definition of “child,” may receive meals under the applicable program. For 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 participating in a SFSP meal service 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) *SFSP* – 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).
- (4) *FFVP* – Only elementary school-aged children attending eligible elementary schools as defined in section 8101(19) of the Elementary and Secondary Education Act of 1965 (20 USC 7801) per the NSLA section 19 (42 USC 1769a(d)(1)(C)) that also operate the NSLP (42 USC 1769a(d)(1)(A)(i)) are eligible to participate.

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 website at

<http://www.fns.usda.gov/school-meals/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) *SFSP* – While all SFSP 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).
- (2) *Direct Certification* – Annual eligibility determinations may also be based on the child’s household receiving benefits under the Supplemental Nutrition Assistance Program (SNAP), 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 foster, runaway, homeless, and migrant children are categorically eligible for free school lunches and breakfasts (42 USC 1758(b)(5); 7 CFR section 245.6(b)).
  - (3) *Direct Certification for Children Receiving Medicaid Benefits* – Section 103 of the Healthy, Hunger-Free Kids Act (HHFKA) provided for a series of demonstration projects on conducting direct certification for free school meals for students in households

receiving Medicaid benefits. In addition, FNS conducts demonstration projects pursuant to the authority in Section 18(c) of the NSLA, which provides direct certification for free and reduced price meals for students in households receiving Medicaid benefits. These methods use Medicaid data to certify children eligible for free or reduced price school lunches and breakfasts in the states that are currently approved to conduct these demonstration projects. Illinois, Kentucky, New York, and Pennsylvania continue to be approved for Direct Certification Medicaid – Free (DCM-F). California, Florida, Massachusetts, Nebraska, Utah, Virginia, West Virginia, Connecticut, Indiana, Iowa, Michigan, Nevada, Texas, Washington, and Wisconsin are approved for Direct Certification Medicaid – Free/Reduced Price (DCM-F/RP).

For the purpose of these demonstration projects, an eligible child is a child who receives, or lives in the household (as defined in 7 CFR section 245.2) with a child who receives medical assistance under the Medicaid program **and** is a member of a family with an income, as measured by the Medicaid program, before the application of any expense, block, or other income disregard that does not exceed the NSLP family size and income eligibility standards.

- **Free** school meal eligibility, 130 percent of the Federal Poverty Level (FPL) for the family size used by Medicaid (except for four States from the initial demonstration project that continue to participate under the free only eligibility of 133%);
- **Reduced price** school meal eligibility, 185 percent of the FPL for the family size used by Medicaid.

Households with eligible children directly certified for free meals under the demonstration projects are not required to submit applications for school meal benefits and are not subject to the verification requirements at 7 CFR section 245.6a (42 USC 1758(b)(15)).

- (4) *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* - Puerto Rico continues to elect 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, 3, and the Community Eligibility Provision (CEP) are authorized by Section 11(a)(1) of the NSLA (42 USC 1759a(a)(1)) and Section 104 of HHFKA. 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) and (F); 7 CFR section 245.9(a)).

For provisions 2, 3, and the CEP, extended cycles are allowed for eligibility determinations.

- (c) *SFSP Open Sites and Restricted Open Sites* – Determinations of individual household eligibility are not required for meals served free at SFSP “open sites” or at restricted open sites. Refer to 3. “Eligibility for Subrecipients,” for information on area eligibility.

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.

**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, SMP, and FFVP this means the definition of “school food authority” (SFA) as described at 7 CFR sections 210.2, 215.2, and 220.2, respectively. Eligible SFSP organizations are described at 7 CFR section 225.2 under the definition of “sponsor.” Additional organizational eligibility requirements apply to the SFSP, NSLP Afterschool Snacks, and the SBP at the school or site level (see detail below).

- a. *SFSP* – 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 SFSP 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).
- d. *FFVP* – Funding is awarded as a subgrant from the State agency only to eligible elementary schools as defined in section 8101(19) of the Elementary and Secondary Education Act of 1965 (20 USC 7801) per NSLA section 19 (42 USC 1769a(d)(1)(C)) that also operate the NSLP (42 USC 1769a(d)(1)(A)(i)) and are eligible to participate.

## **I. Procurement and Suspension and Debarment**

### *1. Procurement*

- a. A prospective contractor that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract term and conditions, or other documents for use by a state under this program shall be excluded from competing for such procurements. Such prospective contractors are ineligible for contract awards resulting from such procurements regardless of the procurement method used. However, prospective contractors may provide states with specification information related to a state procurement and still compete for the procurement if the state, and not the prospective contractor, develops or drafts the specifications, requirements, statements of work, invitations for bid, and/or requests for proposals used to conduct the procurement (2 CFR 200.319(b) and 416.1(a)).
- b. Procurements by states under this program shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographic preferences except as provided for in 2 CFR section 200.319(b) (2 CFR section 416.1(b)).



- c. Notwithstanding the requirements noted in paragraph 1.b above, an 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 (7 CFR sections 210.21(g), 215.14a(e), 220.16(f), 225.17(e) and 226.22(n)).

2. *Before Award*

Before awarding a contract to a food service management company, or amending such a contract, an SFA operating the NSLP and SBP and sponsors operating the SFSP 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 sponsor 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), 210.19(a)(5), 220.7(d)(1)(ix), and 225.15(m)(4)).

3. SFAs must, to the maximum extent practicable, purchase commodities produced in the United States and food products processed in the United States substantially using commodities produced in the United States 7 CFR section 210.21(d). For SFAs to comply with Section 12(n) of the NSLA, 42 USC 1760(n) and Program regulations at 7 CFR section 210.21(d), all food solicitations should include terms that require contractors to respond with prices and award contracts to responsive bidders and offerors to supply domestic foods and food products that comply with 7 CFR 210.21(d). Food suppliers include distributors, meal vendors, food service management company contracts, and processors of USDA Foods.

4. *Cost-Reimbursable Contracts*

The cost-reimbursable contract provisions below apply to all cost-reimbursable contracts awarded by SFAs. This contract type is often awarded to distributors of perishable and non-perishable foods and food products, produce, milk, bread, food service management companies, processors of USDA Foods, and labor surplus firms.

- a. 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:
  - (1) 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 SFA.

- (2) 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.
  - (3) The contractor's determination of its allowable costs must be made in compliance with applicable departmental and program regulations and the OMB cost principles.
  - (4) 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 SFA may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually.
  - (5) The contractor must identify the method by which it will report discounts, rebates, and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract.
  - (6) The contractor must maintain documentation of costs and discounts, rebates, and other applicable credits, and must furnish such documentation upon request to the SFA, the state agency, or the USDA (7 CFR section 210.21(f)).
- b. Costs resulting from a cost-reimbursable contract may not be paid from the SFA's nonprofit school food service account if (a) the underlying contract does not include the provision in paragraph a.(1) 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)(2), 215.14a(d)(2), and 220.16(e)(2)).

5. *Suspension and Debarment*

Entitlement or mandatory awards required by statute that pass-through entities to subrecipients are excluded from the suspension and debarment rules (2 CFR section 417.215(a)(1)).

**L. Reporting**

**1. Financial Reporting**

a. *Claims for Reimbursement*

SFAs and sponsors must submit monthly claims for reimbursement for meals and snacks served to eligible students within 60 days following the last day of the month covered by the claim (7 CFR sections 210.8, 220.11,

215.10, and 225.15(c)). The **state** agency has an additional 30 days to submit a consolidated report to FNS (7 CFR 210.5(d), 220.13(b)(2), 215.11(c)(2), and 225.8).

b. **Recordkeeping**

Each month's claim for reimbursement and all data used in the claims review process must be maintained on file. Accurate records must be maintained justifying all meals claimed and documenting that all Program funds were spent only on allowable Child Nutrition Program costs. Failure to maintain such records may be grounds for denial of reimbursement for meals served and/or administrative costs claimed during the period covered by the records in question. Records are required to be retained for a period of three years after submission of the final Claim for Reimbursement for the fiscal year. Or, if audit findings have not been resolved, the records must be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit. School food authorities are required to make the information available to the Department and the state agency upon request.

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions**

**1. Verification of Free and Reduced Price Applications (NSLP)**

**Compliance Requirements** By November 15th of each school year, the 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)).

Some LEAs are required to conduct a second review of initial eligibility determinations for free and reduced price school meals and to submit the results of the reviews, including the number of reviewed applications for which the eligibility determinations changed and the type of change made. State agencies are required to submit a report to FNS using the FNS-874, the LEA Second Review of Applications Report (OMB No. 0584-0594). Affected LEAs are those that demonstrated high levels of, or a high risk for, administrative error associated with certification, verification, and other administrative processes (7 CFR section 245.11).

**Audit Objectives** 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 and, if applicable, properly conducted the second review of applications.

### **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, including, if applicable, the second reviews of applications.
  - (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 SFSP sponsors. Auditors making audits of recipient agencies are not required to test compliance with these requirements.

### **Compliance 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 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 Objectives** Determine whether an appropriate accounting was maintained for USDA-donated foods, 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. Non-Profit School Food Service Accounts

#### Compliance Requirements

An SFA is required to account for all revenues and expenditures of its non-profit school food service in accordance with state and federal requirements. An 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 Objectives** Determine whether a separate accounting is made of the school food service, federal reimbursement payments are correctly credited to the school food service account and transfers out of the school food service account are for allowable costs 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 correctly 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.

### 4. Paid Lunch Equity (NSLP)

**Compliance Requirements** In Section 767 of Division A of the Consolidated Appropriations Act 2021 (Pub. L. No. 116-260) (the Appropriations Act), Congress provides that only SFAs that had a negative balance in the nonprofit school food service account as of December 31, 2020, shall be required to establish prices for paid lunches according to the Paid Lunch Equity (PLE) provisions in Section 12(p) of the Richard B. Russell National School Lunch Act, 42 USC 1760(p) and implemented in National School Lunch Program regulations at 7 CFR 210.14(e). Any SFA with a positive or zero balance in its nonprofit school food service account as of December 31, 2020, is exempt from PLE requirements found at 7 CFR 210.14(e) for school year (SY) 2021–2022.

SFAs that had a negative balance are required to ensure that sufficient funds are provided to its nonprofit school food service accounts from lunches served to students not eligible for free or reduced price meals. An SFA currently charging less for a paid lunch than the difference between the federal reimbursement rate for such a lunch and that for a free lunch is required to comply. This difference is known as “equity.” There are two ways to meet this requirement: (a) by raising the prices charged for paid lunches; or (b) through contributions from other non-federal sources.

The calculations performed by the SFA to determine whether its paid lunch price requires adjustment are as follows:

- a. Determine the weighted average price of paid lunches. This is determined based on the total number of paid lunches claimed for federal reimbursement for the month of October in the previous school year, at each different price charged by the SFA (7 CFR section 210.14(e)(1)(i)).
- b. Calculate the paid lunch equity requirement, which is the difference between the per meal federal reimbursement for paid and free lunches received by the SFA in the previous school year (7 CFR paragraph 210.14(e)(1)(ii)).
- c. If the paid lunch equity calculated in step b. is higher than the weighted average price the SFA had been charging, calculated in step a., the SFA must increase the average weighted price charged in the previous school year by the sum of 2 percent and the percentage change in the Consumer Price Index for All Urban Consumers. This is the minimum price the SFA should be currently charging for paid lunches (7 CFR paragraph 210.14(e)(3)).

**Audit Objectives** Determine whether an SFA has correctly calculated its average paid lunch pricing requirement; correctly applied the calculations to the average paid lunch price; implemented the newly calculated paid lunch price; and received the equity contributions from non-federal sources.

#### **Suggested Audit Procedures**

- a. Verify the calculations performed by the SFA to determine whether its paid lunch price requires adjustment.
- b. Verify that the SFA adjusted its average weighted paid lunch price in accordance with the results of the foregoing calculations and is actually charging students the adjusted price.
- c. Ascertain if the SFA met the equity requirement by furnishing additional funds from non-federal sources.
- d. If so, verify that the amount provided was sufficient to cover the difference between the amount calculated by the SFA and the amount actually charged for paid lunches.

#### **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 2 CFR section 200.40 definition of "federal financial assistance" and must be valued in accordance with 2 CFR section 200.502(g). Therefore, recipient agencies must report the value of donated foods used according to the fair market value of donated foods at the time of receipt or the assessed value provided by the federal agency for this purpose.



**UNITED STATES DEPARTMENT OF AGRICULTURE****ASSISTANCE LISTING 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 to provide low-income pregnant, breastfeeding, and postpartum women, infants, and children to age 5 who have been determined to be at nutritional risk, supplemental nutritious foods, nutrition education, and referrals to health and social services at no cost. WIC also promotes and supports breastfeeding as the feeding method of choice for infants, provides substance abuse education, and promotes immunization and other aspects of healthy living.

The USDA's Food and Nutrition Service (FNS) makes funds available to participating state agencies (usually health departments). State agencies distribute the funds to participating local agencies, which operate WIC clinics. State and local agencies use WIC funds to pay the costs of specified supplemental foods provided to WIC participants, and to pay for specified Nutrition Services and Administration (NSA) costs, including the cost of nutrition assessments, blood tests for anemia, nutrition education, breastfeeding promotion and support, and health care referrals.

**II. PROGRAM PROCEDURES****A. Administration**

The USDA's FNS administers the WIC program through grants awarded to state health departments or comparable state agencies, Indian tribal organizations, bands or intertribal councils, or groups recognized by the Bureau of Indian Affairs, US Department of the Interior, or the Indian Health Service (IHS) of the US Department of Health and Human Services (HHS) ("ITOs"). 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.

**B. 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 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:

1. *Reallocations and Recoveries*

The WIC Program’s authorizing statute and regulations require FNS to recover unspent funds and reallocate them to state agencies.

2. *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”).

3. *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 Performance”).

4. *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 for food costs that are reported in the month in which the rebate was received.

5. *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”).

6. *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”).

7. *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.

### **C. 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”).

### **D. Benefits**

The WIC program provides participants with specific nutritious supplemental foods, nutrition education (including breastfeeding promotion and support), 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, breastfeeding 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.

### **E. 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 West Virginia, Delaware, Pennsylvania, Maryland, and in parts of Illinois, for example)

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 parts of Alaska)

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 use them to obtain authorized supplemental foods at retail stores approved as vendors by the state agency. FIs can be either paper checks/vouchers or electronic benefit transfer (EBT) cards and may be processed by a bank and/or processor or the WIC state agency itself. For paper checks, the 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. For EBT cards, the participant must redeem all benefits by the end of 30 days from the first date on which it was issued except for the first month of issuance. The benefit balance

associated with the EBT account cannot be redeemed after the end date specifically authorized by the state agency management information system.

Negotiable paper cash-value vouchers (CVVs) or EBT cash-value benefits (CVBs) are issued directly to participants, who use them to obtain authorized fruits and vegetables from WIC-authorized vendors or farmers or farmers' markets authorized by the state agency (if the state agency elects to authorize farmers or farmers' markets). FIs and CVVs/CVBs share several features. Both are negotiable for stated periods of time. Unlike other FIs, CVVs, and CVBs are issued with face values in standard denominations. Under EBT systems, the CVB is established as a separate food category with a benefit unit of dollars rather than food quantities. No additional EBT card or voucher is issued by the state agency.

Each paper FI or CVV issued to a participant must have a unique serial number. In EBT, the card number represents the unique serial number for off-line benefit tracking, while a unique benefit identification (ID) number is used for on-line tracking. A state agency is required to determine the ultimate disposition of all FIs and CVVs by serial number or ID 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. For EBT, the CVB is accounted for as a unique benefit in the same manner as other items in the food balance.

## **F. 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 ITOs 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 infant cereal, infant meats, infant fruits, and infant vegetables; selection of retail vendors based on competitive prices; setting maximum redemption amounts for FIs or food items for EBT; authorizing the use of store or generic brands of supplemental foods; and using a home delivery or direct distribution food delivery system.

### **1. *Vendor Cost Containment***

Requirements for selecting and paying vendors on the basis of competitive prices are in 7 CFR section 246.12(g)(4). These requirements do not apply to farmers, farmers' markets, or to CVVs transacted by retail vendors. Unless FNS has granted a state agency an exemption, the state agency is required to:

- a. Maintain (and assess and modify, as necessary) 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.
- b. Select and authorize vendors by applying competitive price criteria.
- c. Set limits on payments to vendors within each peer group.
- d. Identify vendors (called “above-50-percent vendors”) that derive more than 50 percent of their annual food sales revenue from WIC FIs.
- e. 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.”)

#### **G. 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 through management evaluations (MEs): 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 issues a WIC ME Target Area Memorandum, which instructs regional offices what to evaluate via MEs the following year. Target Areas are established in order to focus FNS’s oversight efforts on key areas related to WIC program integrity and operations. Usually, the Target Area comprises one functional area and risk-based MEs.

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 embezzlement 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 or EBT balances 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). Program regulations are found at 7 CFR Part 246.

**Availability of Other Program Information**

For other information, contact the applicable FNS regional office. Regional office contact information and the states each regional office serves may be found on FNS’s website (<http://www.fns.usda.gov/wic>). The WIC program regulations can be found at that website as well.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	N	Y	Y	N	N	N	N

## 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 sections 246.14(a) and (b)). 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, breastfeeding 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)).

### 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 for food costs that are reported in the month in which the rebate was received (7 CFR section 246.14(f)).
- 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 WIC 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 (available at <https://www.fns.usda.gov/apd/handbook-and-guidance>).

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. 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 breastfeeding 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 provide proof of identity and residency. An applicant also must meet the state agency's residency requirement. Except in the case of ITOs, the applicant must reside in the jurisdiction of the state. ITOs 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. 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) and 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 also may 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. These WIC income guidelines are issued each year in the *Federal Register* and are available on FNS's WIC website at <http://www.fns.usda.gov/wic>. 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)). 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)).

*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 also are excluded: Family Subsistence Supplemental Allowance (7 CFR section 246.7(d)(2)(iv)(D)(33)); combat pay 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 American Recovery and Reinvestment Act (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 ITO state agency, or a state agency acting on behalf of an ITO, 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. To provide

more consistency and accountability, WIC has encouraged state agencies to define a family's current rate of income as all income received by the household during the month (30 days) prior to the date the application for WIC benefits is made, or, if the income assessment is being done prospectively, all income that will be available to the family in the next 30 days (see WIC Policy Memorandum No. 2013-3, Income Eligibility Guidance, issued April 26, 2013, which is available at <https://www.fns.usda.gov/wic/income-eligibility-guidance> (7 CFR 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. Breastfeeding women may be certified

approximately every six months, or up to one year postpartum or until the woman ceases breastfeeding, whichever occurs first (7 CFR section 246.7(g)(1)). 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 six-month intervals ending with the last day of the month in which the child reaches the fifth birthday. State agencies also have the option to certify children for a period of one year if the state agency ensures that the child receives the required health and nutrition assessments (7 CFR section 246.7(g)(1)). Non-breastfeeding women are certified for up to six months postpartum. 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 nonprofit health agencies, human service agencies that provide health services, IHS health units, and ITOs described in the WIC program regulations (see definition of "local agency" in 7 CFR section 246.2).

**H. Period of Performance**

1. *Spend-Forward Option* – A state agency may spend NSA funds up to an amount equal to 3 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 1 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 1 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 3 percent with prior approval from FNS.
  - b. Spend up to 1 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)).

**IV. OTHER INFORMATION**

See Assistance Listing 10.000 for additional information regarding to waivers for this program due to COVID-19.

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**UNITED STATES DEPARTMENT OF AGRICULTURE****ASSISTANCE LISTING 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 nonprofit food service programs for the provision of nutritious foods that contribute to the wellness, healthy growth, and development of eligible children and elderly or impaired adults receiving care in nonresidential day care facilities and child care homes.

**II. PROGRAM PROCEDURES****A. Overview**

The US 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 receive 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, as defined in 7 CFR 226.2.

Eligible child care centers include public, private nonprofit, and certain for-profit child care centers, Head Start programs, and other entities that are licensed or approved to provide day care services.

Public, private nonprofit, and certain for-profit adult day care facilities that provide structured, comprehensive services to nonresidential adults who are functionally impaired, or aged 60 and older.

Outside-school-hours care centers include public, private nonprofit 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 are structured, supervised programs that are organized primarily to provide care to children through age 18 after school hours and on weekends and holidays during the school year; provide educational or enrichment activities; and located in low-income areas. Examples of organizations that typically offer such programs include the Boys & Girls Clubs, and the YMCA.

Public and private nonprofit emergency shelters that provide temporary shelter and food services to homeless children. Eligible shelters may receive reimbursement for serving up to three meals each day to residents ages 18 and younger.

A family or group day care home is a private home licensed or approved to provide day care services.

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.

## **B. Program Funding**

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 and to support state administrative expenses.

### *1. Types of Assistance and Pricing of Meals*

FNS provides a cash payment (called a “national average payment”) to each state agency for each meal served under the CACFP which is adjusted on July 1 of each year. 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.

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 non-pricing 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 non-pricing 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.

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. Operators of at-risk afterschool programs may claim reimbursement for one meal (typically supper) and one snack 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.

### **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**

Other program information is available from the FNS website at <http://www.fns.usda.gov/cnd/>. Information on USDA Foods available for the CACFP can be found on the USDA Foods in Schools Foods Available List at <https://www.fns.usda.gov/usda-fis/usda-foods-available>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	N	N	Y	N	N	Y	Y

**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)).
- 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).

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 website 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 foster children or 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 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 (Assistance Listing 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. An institution must meet the definition of “independent center” or “sponsoring organization” at 7 CFR 226.2. These definitions are:
  - (1) *Independent center* means a child care center, at-risk afterschool care center, emergency shelter, outside-school-hours care center or adult day care center which enters into an agreement with the state agency to assume final administrative and financial responsibility for program operations.
  - (2) *Sponsoring organization* means a public or nonprofit private organization that is entirely responsible for the administration of the food program in:
    - (a) One or more day care homes;
    - (b) A child care center, emergency shelter, at-risk afterschool care center, outside-school-hours care center, or adult day care center, which is a legally distinct entity from the sponsoring organization;
    - (c) Two or more child care centers, emergency shelters, at-risk afterschool care centers, outside-school-hours care center, or adult day care centers; or
    - (d) Any combination of child care centers, emergency shelters, at-risk afterschool care centers, outside-school-hours care centers, adult day care centers, and day care homes. The term “sponsoring organization” also includes an organization that is entirely responsible for administration of the program in any combination of two or more child care centers, at-risk afterschool care centers, adult day care centers or outside-school-hours care centers, which meet the definition of for-profit center in this section and are part of the same legal entity as the sponsoring organization.

- (3) *For-profit center* means a child care center, outside-school-hours care center, or adult day care center providing nonresidential care to adults or children that does not qualify for tax-exempt status under the Internal Revenue Code of 1986. For-profit centers serving adults must meet the criteria described in paragraph (a) of this definition. For-profit centers serving children must meet the criteria described in paragraphs (b)(1) or (b)(2) of this definition, except that children who only participate in the at-risk afterschool snack and/or meal component of the program must not be considered in determining the percentages under paragraphs (b)(1) or (b)(2) of this definition.
- (a) A for-profit center serving adults must meet the definition of adult day care center as defined in this section and, during the calendar month preceding initial application or reapplication, the center receives compensation from amounts granted to the states under title XIX or title XX and 25 percent of the adults enrolled in care are beneficiaries of title XIX, title XX, or a combination of titles XIX and XX of the Social Security Act.
- (b) A for-profit center serving children must meet the definition of child care center or outside-school-hours care center as defined in this section and one of the following conditions during the calendar month preceding initial application or reapplication:
- (i) Twenty-five percent of the children in care (enrolled or licensed capacity, whichever is less) are eligible for free or reduced-price meals; or
- (ii) Twenty-five percent of the children in care (enrolled or licensed capacity, whichever is less) receive benefits from title XX of the Social Security Act and the center receives compensation from amounts granted to the states under title XX.

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)).

- b. All institutions must meet the eligibility requirements stated in 7 CFR section 226.15 and 42 USC 1766(a)(6) and (d)(1). In addition, as applicable, institutions must meet the type definitions in 7 CFR section 226.2 and applicable additional requirements.

- Sponsoring organizations: 7 CFR section 226.16;
- Child care centers (whether independent or sponsored): 7 CFR section 226.17;
- Day care homes (which must be sponsored): 7 CFR section 226.18;
- Outside-school-hours centers: 7 CFR section 226.19;
- Adult day care centers (whether independent or sponsored): 7 CFR section 226.19a;
- At-risk afterschool programs: 7 CFR section 226.17a;
- Emergency shelters: 42 USC 1766(t).

## **I. Procurement and Suspension and Debarment**

### *1. Procurement*

- a. A prospective contractor that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract term and conditions, or other documents for use by a state under this program shall be excluded from competing for such procurements. Such prospective contractors are ineligible for contract awards resulting from such procurements regardless of the procurement method used. However, prospective contractors may provide states with specification information related to a state procurement and still compete for the procurement if the state, and not the prospective contractor, develops or drafts the specifications, requirements, statements of work, invitations for bid, and/or requests for proposals used to conduct the procurement (2 CFR section 416.1(a)).
- b. Procurements by states under this program shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographic preferences except as provided for in 2 CFR section 200.319(b) (2 CFR section 416.1(b)).
- c. Notwithstanding the requirements in paragraph 1.b above, an institution operating the CACFP may use a geographical preference for the procurement of unprocessed agricultural products, both locally grown and locally raised (7 CFR section 226.22(n) and 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 (2 CFR section 417.215(a)(1)).

**N. Special Tests and Provisions**

**1. Accountability for USDA-Donated Foods**

**Compliance 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)).

The 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.

**Audit Objectives** Determine whether an appropriate accounting was maintained for USDA-donated foods, 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. 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**

- 1. The value of donated foods used during a state or recipient agency’s fiscal year is considered federal awards expended in accordance with 2 CFR section 200.40, definition of “federal financial assistance,” and should be valued in accordance with 2 CFR section 200.502. 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 fiscal year being audited for this purpose.
- 2. See Assistance Listing 10.000 for additional information regarding to waivers for this program due to COVID-19.

**UNITED STATES DEPARTMENT OF AGRICULTURE****ASSISTANCE LISTING 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****A. Administration**

Funds for the NAP are appropriated annually. The Food and Nutrition Service (FNS) of the US Department of Agriculture (USDA) provides an annual block grant to the Puerto Rico (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 funding 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), 285.2(b), and 285.3).

**B. Benefits**

Under the NAP, participating households receive nutritional benefits. 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. All of the benefits (100 percent) are issued for food purchases.

**C. 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. Beginning in 2001, NAP program rules provided that 75 percent of NAP benefits were redeemable for eligible food items at certified NAP retailers through EBT; the remaining 25 percent of benefits were available as cash and intended food purchases. Section 4025 of the Agricultural Act of 2014 requires the secretary to review cash nutrition assistance

benefits in Puerto Rico by studying the history of cash benefits, barriers to redemption with non-cash benefits, usage of cash benefits for the purchase of nonfood items, and other factors. The provision also restricts the secretary from approving any nutrition assistance plan for FY 2017 that provides more than 20 percent of benefits in cash. Due to disasters, there was a temporary hold at 20 percent into FY 2018, which ended on December 31, 2017. In FY 2018, cash was limited to 15 percent of benefits; in FY 2019, cash is limited to 10 percent of benefits; in FY 2020, cash is limited to 5 percent; and in FY 2021, no benefits shall be in the form of cash. The secretary may make exemptions if discontinuation of cash benefits will have significant adverse effects.

ATM transactions generate charges against the client's cash account. Purchases at authorized retailers generate on-line charges against the client's noncash 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 Banco Popular. Cash drawn from PR's letter-of-credit is used to settle accounts with Banco Popular. 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 Standards for Attestation Engagements (AT) Section 801, Reporting on Controls at a Service Organization. Appendix VIII to the Supplement provides additional guidance on these examinations. In testing compliance under the NAP, an auditor may use these SOC 1 type 2 reports to gain an understanding of internal controls and obtain evidence about their operating effectiveness.

### **Source of Governing Requirements**

The NAP is authorized by Section 19 of the Food and Nutrition Act of 2008. 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**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not

being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	N	Y	N	N	Y	N	Y

**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). In FY 2021, no benefits shall be in the form of cash. The secretary may make exemptions if discontinuation of cash benefits will have significant adverse effects.

**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

**H. Period of Performance**

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)).

PR may carry forward not more than 2 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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable
- d. *FNS-778, Financial Status Report – PR* – This report captures PR’s cumulative outlays (expenditures) and unliquidated obligations of federal funds for NAP as a whole, for the administrative and benefits components of PR’s NAP grant, and for the cost of key functions supported by the NAP grant’s administrative cost component. FNS uses the data captured by this report to monitor PR’s NAP costs and cash draws. The FNS-778 also functions as a work paper that feeds the SF-425 (Government of Puerto Rico State Plan of Operation for FY 2019, pages 48 and 50).

*Key Line Items* – The following line items contain critical information:

1. Line 10.b. – *Total outlays this report period*
2. Line 10.c. – *Less: Program income credits*
3. Line 10.j. – *Total federal share of unliquidated obligations*

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

Not Applicable

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions****1. EBT Reconciliation**

**Compliance Requirements** 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 Objectives** 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****ASSISTANCE LISTING 10.565 COMMODITY SUPPLEMENTAL FOOD PROGRAM****ASSISTANCE LISTING 10.568 EMERGENCY FOOD ASSISTANCE PROGRAM  
(ADMINISTRATIVE COSTS)****ASSISTANCE LISTING 10.569 EMERGENCY FOOD ASSISTANCE PROGRAM  
(FOOD COMMODITIES)****I. PROGRAM OBJECTIVES**

The objective of the Food Distribution Cluster is to strengthen the nutrition safety net through the provision of US Department of Agriculture (USDA)-donated foods (USDA Foods) to low-income persons. Included in the cluster are the Commodity Supplemental Food Program (CSFP) and the Emergency Food Assistance Program (TEFAP).

CSFP provides a package of USDA Foods to low-income elderly people at least 60 years of age. CSFP food packages are not intended to provide a complete diet, but rather provide the nutrients that are typically lacking in the diets of the target population.

TEFAP provides USDA Foods to low-income households for home consumption or for use in prepared meals at emergency feeding sites for low-income persons.

**II. PROGRAM PROCEDURES**

The Food and Nutrition Service (FNS) of the USDA enters into agreements with state distributing agencies for the distribution of USDA Foods and provides funding for the administrative costs these organizations incur in performing this function. State agencies may administer both CSFP and TEFAP or either, as well as other USDA nutrition assistance programs. These agencies are often the state departments of agriculture, health, social services, or education.

State agencies may further enter into agreements with one or more subrecipients for local program operations. In food distribution program regulations and in the sections of this Food Distribution Cluster that refer to both TEFAP and CSFP, subrecipients are referred to as “recipient agencies.” The TEFAP specific term for subrecipients is “Eligible Recipient Agencies” (ERA). The CSFP specific term is “local agencies.” The types of organizations that may operate Food Distribution Cluster programs locally are described below under “Program Descriptions.” State agencies pass most administrative funding down to these recipient agencies.

**Program Descriptions***Common Characteristics*

CSFP and TEFAP are variants of a basic program design having the following characteristics:



- a. USDA purchases and provides food and administrative funds to state agencies, which in turn provide the USDA Foods and a portion of the administrative funds to recipient agencies.
- b. State agencies must submit a plan of operation to the applicable FNS Regional Office and have a federal-state agreement on file. In CSFP, the plan of operation is referred to as the state plan. In TEFAP, it is referred to as the distribution plan.
- c. Public agencies and private nonprofit organizations possessing tax-exempt status under the Internal Revenue Code can participate in the programs as recipient agencies. Examples include food banks, food pantries, and community action organizations.
- d. Program participants must meet income eligibility requirements to qualify for household distribution of USDA Foods. Determinations are generally made by recipient agencies in accordance with the criteria and procedures established by the state agencies.
- e. The program benefits generally consist of USDA Foods issued to program participants for use in meal preparation at home. The one exception is that some TEFAP ERAs operate emergency feeding sites where USDA Foods are used in preparing meals for service to low-income persons.

#### *Characteristics of Individual Programs*

- a. *CSFP* – Elderly people at least 60 years of age may be eligible for CSFP if they meet all eligibility criteria. Prior to passage of the Agriculture Act of 2014 (2014 Farm Bill) (Pub. L. No. 113-79), pregnant and breastfeeding women, women up to one year postpartum, infants, and children up to age 6 also were eligible to participate in CSFP on the same basis as elderly persons. However, Section 4102 of the 2014 Farm Bill amended CSFP eligibility requirements to phase out the participation of this population and transition it to a seniors-only program. The phase-out was completed in 2020.

Program participation is limited each year based upon available resources and appropriated funding. Each participating state agency receives an authorized caseload level. Caseload is the number of people each state agency is permitted to serve on an average monthly basis over the course of the caseload cycle (January through December).

Administrative funding is provided each fiscal year per each caseload slot assigned to the state agency and is adjusted annually for inflation. State agencies may retain a percentage of administrative funding but must provide the remainder to local agencies unless FNS approves the state agency to retain a larger amount.

To gain access to its USDA Foods and administrative funds, a state agency must have a state plan and a federal-state agreement on file with the applicable FNS regional office. The state plan must include the criteria listed at 7 CFR section 247.6(c), including a plan for the storage and distribution of USDA Foods.

State agencies may enter into an agreement with a subdistributing agency, such as another state agency, a local governmental agency, or a nonprofit organization, to

perform most functions that are normally performed by the state agency, such as entering into agreements with local agencies, ordering USDA Foods, or making arrangements for the storage and transportation of USDA Foods to local agencies. Ultimately, however, the state agency is responsible for all aspects of CSFP administration. CSFP currently operates in 50 states, six Indian tribal organizations, the District of Columbia, and Puerto Rico.

- b. *TEFAP* – USDA Foods are distributed through TEFAP either for household use or for use at feeding sites that serve prepared meals to needy persons.

At the local level, the program is operated by ERAs. ERAs include Emergency Feeding Organizations (EFOs), charitable institutions (such as hospitals and retirement homes), summer camps for children, child nutrition programs that provide food service, nutrition programs under the Older Americans Act of 1965 (Nutrition Program for the Elderly) (Pub. L. No. 89-73), and disaster relief programs. EFOs include public and private nonprofit 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, and soup kitchens.

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 USDA Foods to all EFOs within its distribution network before providing USDA Foods 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 USDA Foods 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)). 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 USDA Foods 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 USDA Foods in addition to the formula-generated entitlement USDA Foods. Bonus foods are foods purchased by USDA under its market support authorities and donated to FNS.

To gain access to USDA Foods 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. State agencies may also, on an annual basis, submit an amendment to their distribution plan to receive Farm to Food Bank Project funding, which can be used to harvest, process, package, or transport

commodities donated by agricultural producers, processors, or distributors for use by EFOs.

The ERAs that conduct household issuance and/or prepared meal activities are known as “distribution sites.” Some distribution sites use mostly paid employees to carry out their missions, while others rely heavily on the services of volunteers.

### **Source of Governing Requirements**

CSFP is authorized by sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 (7 USC 612c note; Pub. L. No. 93-86), as amended. Program regulations are found at 7 CFR parts 247 and 250; if these conflict, 7 CFR Part 247 prevails.

TEFAP is authorized by the Emergency Food Assistance Act of 1983 (Pub. L. No. 98-8) (7 USC 7501-7516), as amended. Program regulations are found at 7 CFR parts 250 and 251; if these conflict, 7 CFR Part 251 prevails.

### **Availability of Other Program Information**

More information on the Food Distribution Cluster programs can be found on the FNS Food Distribution Programs website. The web link for CSFP information is <http://www.fns.usda.gov/csfp/commodity-supplemental-food-program-csfp>. The web link for TEFAP information is <http://www.fns.usda.gov/tefap/emergency-food-assistance-program-tefap>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	Y	N	N	Y	N	N	N	Y

**A. Activities Allowed or Unallowed**

*Administrative Activities* – For both CSFP and TEFAP, a state agency or recipient agency must use its administrative funds for activities for the administration of the programs. Such activities include but are not limited to transporting and storing USDA Foods within the state or within a recipient agency’s service area, determining the eligibility of program applicants, publishing the times and locations of food distribution, and issuing USDA Foods to eligible persons (7 CFR sections 247.25 and 251.8(e)).

1. *CSFP* – In addition to the activities listed above, examples of activities for which CSFP administrative funds can be used include nutrition education, program outreach, and monitoring and review of program operations (7 CFR section 247.25(a)).
2. *TEFAP* – In addition to the activities listed above, allowable activities include processing USDA Foods. Under certain circumstances, a state agency may also use these funds for transporting USDA Foods to other states and transporting non-USDA Foods in from other states (7 CFR section 251.8(e)(1)).

An ERA that receives USDA Foods from programs other than TEFAP may not use its administrative funds for the distribution of these foods, unless these foods were re-donated to TEFAP (see Food Distribution National Policy Memorandum FD-095, which is available at <http://www.fns.usda.gov/use-tefap-administrative-funds-expenses-associated-foods-secured-other-sources-0>). 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)).

**E. Eligibility****1. Eligibility for Individuals****a. CSFP**

*Receipt of USDA Foods for Household Use* – A local agency certifies households as eligible to receive a CSFP food package by applying categorical and income eligibility criteria as follows:

- (1) **Categorical Eligibility.** Eligibility is limited to the elderly (persons at least 60 years of age) (7 CFR section 247.9(a)).
- (2) **Income Eligibility.** State agencies determine income eligibility guidelines for program participants, within the parameters of the income eligibility guidelines provided in program regulations. The state agency must set income eligibility limits that are at or below 130 percent of the federal poverty income guidelines (7 CFR sections 247.9(b) through (e)). The income guidelines must be approved in advance by FNS as part of the state agency's state plan.
- (3) **Eligibility Criteria at State's Discretion** – In addition to categorical and income eligibility, the state agency may also require that applicants (a) be at nutritional risk, as determined by a physician or by local agency health staff; and/or (b) reside within the service area of a local agency when applying for benefits (7 CFR section 247.9(e)).

**b. TEFAP**

- (1) **Receipt of USDA Foods for Household Use** – An ERA certifies households eligible to receive USDA Foods 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)).
- (2) **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 USDA Foods from TEFAP and use them in prepared meals (7 CFR section 251.5(a)(2)).

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

Not Applicable

### 3. Eligibility for Subrecipients

- a. A recipient agency must be either a public agency or a private entity possessing tax-exempt status under the Internal Revenue Code and must enter into a written agreement with the state agency, or with another recipient agency where permitted, binding it to perform the duties of a recipient agency (7 CFR sections 247.4, 247.7(a), 251.3(d), and 251.5(a)).
- b. For TEFAP, the state agency's distribution plan identifies the classes of organizations with which it will enter into such agreements (7 CFR section 251.6).
- c. For TEFAP, recipient agencies providing prepared meals must have demonstrated, to the satisfaction of the state agency, or ERA to which they have applied for USDA Foods or administrative funds, that they serve predominantly needy persons (7 CFR section 251.5(a)(2)).

## N. Special Tests and Provisions

### 1. Accountability for USDA Foods

**Compliance Requirements** Accurate and complete records must be maintained with respect to the receipt, distribution/use, and inventory of USDA Foods, including end products processed from USDA Foods in TEFAP. Failure to maintain records required by 7 CFR section 250.19 is considered prima facie evidence of improper distribution or loss of USDA 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 and 250.19(a)).

State distributing agencies must conduct an annual physical inventory of all storage facilities used by the distributing agency or by a subdistributing agency. Such inventory must 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 must be taken immediately on all deficiencies and inventory discrepancies and the results of the corrective action forwarded to the distributing agency (7 CFR section 250.12(b)). In CSFP, a physical inventory also must be conducted annually at all storage and distribution sites where USDA Foods are stored (7 CFR section 247.28).

**Audit Objectives** Determine whether an appropriate accounting was maintained for USDA Foods, 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 USDA Foods, including end products processed from donated foods. Determine the USDA Foods 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, usage/distribution, losses, and ending inventory of USDA 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 in TEFAP, compare relationship of usage of USDA 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 USDA Foods items.
  - (2) If the annual inventory process is not observed, select a sample of significant USDA Foods on hand as of the physical inventory date and, using the USDA Foods 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 USDA Foods records. Investigate any large adjustments between the physical inventory and the USDA Foods records.
- d. On a sample basis, test the mathematical accuracy of the USDA Foods records and related summarizations. From the USDA Foods records, vouch a sample of receipts, usage/distributions, and losses to supporting documentation. Ascertain that activity is properly recorded, including the correct quantity, proper period, and, if applicable, correct ERA.

## UNITED STATES DEPARTMENT OF AGRICULTURE

### ASSISTANCE LISTING 10.606 FOOD FOR PROGRESS PROGRAM

#### I. PROGRAM OBJECTIVES

The US 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

The Food for Progress Program is a Commodity Credit Corporation (CCC) program. CCC implements this program 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 nonprofit organizations located in the United States but operating programs overseas that are registered with the United States Agency for International Development (7 CFR section 1499.3).

The criteria for determining what qualifies as an eligible foreign country is as follows.

*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:

- a. Have economic and social indicators that demonstrate the need for assistance, including indicators related to income, undernourishment, movement toward freedom, and food imports; or
- b. 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.



## **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 is authorized by the Food for Progress Act of 1985 (7 USC 1736o) (Food for Progress 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](mailto:info@fas.usda.gov) (E-mail).

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	N	N	N	Y	Y	N	Y

### 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 US 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)).

**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).

**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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271 – Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *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* – The following line items contain critical information:

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 losses/damages*
  2. *Freight Charges* – The dollar amount of claims for a reduction or recovery of freight charges in both local currency and US dollar (USD) 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 attaché or

minister for foreign agricultural affairs in the host country. The FAS home page provides agricultural attaché contact information [https://apps.fas.usda.gov/overseas\\_post\\_directory/printable\\_directory.asp](https://apps.fas.usda.gov/overseas_post_directory/printable_directory.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.

*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 US 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 USD, 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 USD.

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## N. Special Tests and Provisions

### 1. Recipient Agencies

**Compliance Requirements** The Plan of Operation is required to describe the recipient agencies that will be involved in the program and to provide 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 Objectives** 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

### ASSISTANCE LISTING 10.607 SECTION 416(b) PROGRAM

#### I. PROGRAM OBJECTIVES

The US 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

The 416(b) Program (Foreign Food Aid Donation programs) is a Commodity Credit Corporation (CCC) program. CCC implements this program 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 nonprofit organizations located in the United States but operating programs overseas that are registered with the United States Agency for International Development (7 CFR section 1499.3).

The criteria for determining what qualifies as an eligible foreign country is as follows.

*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 is authorized by the 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](mailto:info@fas.usda.gov) (E-mail).

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have

been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

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Y	Y	Y	N	Y	N	N	N	Y	Y	N	Y

**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 US 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).

## **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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271 – Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *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* – The following line items contain critical information:

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 subcategories 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 US dollar (USD) 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 attaché or minister for foreign agricultural affairs in the host country. The FAS home page provides agricultural attaché contact information [https://apps.fas.usda.gov/overseas\\_post\\_directory/printable\\_directory.asp](https://apps.fas.usda.gov/overseas_post_directory/printable_directory.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.

### 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 USD: sales of commodities, interest, other program income.

### Part IV – *Disbursements from Special Funds Account*

The amount of each disbursement in both local currency and USD, 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 USD.

## 3. **Special Reporting**

Not Applicable

## 4. **Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## N. **Special Tests and Provisions**

### 1. **Recipient Agencies**

**Compliance Requirements** The Plan of Operation is required to describe the recipient agencies that will be involved in the program and to provide 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 Objectives** 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

### ASSISTANCE LISTING 10.649 STATE PANDEMIC ELECTRONIC BENEFIT TRANSFER (P-EBT) ADMINISTRATIVE COSTS GRANTS

#### I. PROGRAM OBJECTIVES

The objective of the state Pandemic Electronic Benefit Transfer (P-EBT) Administrative Costs Grants is to help defray state costs associated with administering the P-EBT Initiative.

#### II. PROGRAM PROCEDURES

##### A. Administration

P-EBT is part of the US government response to the COVID-19 pandemic. The Families First Coronavirus Response Act of 2020 (Pub. L. No. 116–127), as amended by the Continuing Appropriations Act, 2021, and Other Extensions Act (Pub. L. No. 116-159), provides the secretary of agriculture authority to approve state agency plans to administer P-EBT. Through P-EBT, eligible school children receive temporary emergency nutrition benefits loaded on EBT cards that are used to purchase food. Children are eligible to receive P-EBT benefits if they were enrolled at a school that participated in the federal School Breakfast Program or National School Lunch Program; were eligible to get free or reduced-price meals for school year 2021–22; and the school was closed or operating with reduced hours or attendance for at least five consecutive days. Recent changes in legislation extended the initiative to cover children in child care as well.

##### B. Federal Grants to SNAP State Agencies for State P-EBT Administrative Costs

Authorization and funding for P-EBT was extended into fiscal year (FY) 2022 by Section 4601 of the Continuing Appropriations Act, 2021 and Other Extensions Act (Pub. L. No. 116-159). In addition to other changes to P-EBT, this legislation provides 100 percent reimbursement for costs incurred by state Supplemental Nutrition Assistance Program (SNAP) and Child Nutrition (CN) agencies for the implementation and administration of P-EBT in FY 2022.

Under this authority, the Food and Nutrition Service (FNS) Agency directed regional offices to extend new FY 2022 P-EBT Administrative Cost Grant Awards to their respective SNAP state agencies as quickly as possible once a state's PEBT operational plan and the required FNS-366(a) - Administrative Cost Spending Plan Template, as modified, is approved. The period of performance for the FY 2022 P-EBT State Administrative Cost Grants is October 1, 2021, through September 30, 2022.

In contrast to FY 2021 where P-EBT Administrative Cost Grant Awards were provided to the SNAP state agency, who in turn entered into an agreement with the Child Nutrition state agency to ensure their administrative costs were reimbursed, in FY 2022 FNS provided two options.

**Option 1:** Option 1 replicates the grant award approach used in FY 2021 and permits that a



total grant award amount be provided to each state SNAP Agency, which will, in turn, work with the CN state agency to capture their costs as well. As a condition of the grant award, each SNAP state agency will be required to enter into the applicable funding arrangement, (e.g., a subgrant or MOU, with the CN state agency(ies) within their state that operates P-EBT). These agreements will ensure that the SNAP and CN state agencies receive funding for all allowable administrative costs associated with the FY 2022 P-EBT Initiative. Under Option 1, the SNAP state agency is required to enter into the FNS-529, Grant Award document, but submit the financial reports and one FNS-366(a) that reflects FY 2022 administrative costs from both the SNAP and CN state agency.

**Option 2:** Option 2 provides a new award approach for FY 2022 and permits the awarding of separate grants to the SNAP and CN State agencies. If this option is chosen, the SNAP and CN State agencies will be required to submit individual FNS-366(a) – Administrative Spending Plans, reflecting the administrative costs each agency anticipates incurring in FY 2022. Each Agency will also be required to enter into a separate FNS-529, Grant Award Document and financial reports. Financial reports are addressed below.

Regardless of which award option is chosen, the total grant award amounts to be provided to each state CN and/or SNAP Agency will be reflected on a fully executed FNS-529, Grant Award Document, respectively.

The total grant award amounts provided to each state SNAP or CN agency are based on the approved state P-EBT plan, reflecting input from both SNAP and CN state agencies and a more detailed FNS-366(a), Program and Budget Summary, conveying the state agencies' administrative cost plan. These grant awards were provided to cover P-EBT administrative costs with a performance period from **October 1, 2021 to September 30, 2022**.

Also, of note is that the 2022 State P-EBT State Administrative Grant funding has two stages of release:

*First stage:* Initial allocations were released to regional offices for the SNAP state agencies in anticipation of Option 1. These funds were allowed to the regional offices for state and territories on October 7, 2021 prior to the two options being made available. In FY 2022, we advised that initial allocation **grant awards could be** released to a state or territory prior to the receipt of an approved P-EBT Implementation/Operational Plan and FNS-366(a) – Administrative Spending Plan, as long as they operated a P-EBT initiative in FY 2021. Additional funds will require approval of both the plan and FNS 366(a) - Administrative Spending Plan.

If SNAP and CN state agencies opt to move forward with Option 2 and believe that initial funds are also needed for the CN state agency the regional office is to reach out to the national office.

*Second stage:* Funds needed beyond the initial allocation, as requested by states and territories, will be considered and approved based on the option selected and will require that the state's P-EBT Implementation Plan is approved, along with a FNS-366(a)-Administrative Cost Spending Plan.

Further, the enacted FY 2021 Omnibus and COVID Relief and Response Act clarified that these funds may have been sub-awarded to local agencies and cooperators such as local educational agencies and school food authorities. Separate FY 2022 P-EBT Local Administrative Cost Grants were awarded to Child Nutrition State agencies to address local level costs.

The FY 2022 P-EBT Local Level Grants allow for optional strategies with the intent of simplifying the administration of this grant. The flexibilities outlined below were made available upon State request and could be adopted individually or in whole.

#### *Simplification to Provide Funding for Local Costs*

**Flexibility 1** provides an alternative to collecting local cost information and submitting the costs on the Excel Template provided by FNS, by proposing a simplified methodology to determine the amount of administrative funding to support local level activities associated with P-EBT. These activities include but are not limited to reporting student-level or school level learning models to their States, fielding questions from the community, and collecting and processing applications solely for P-EBT.

The simplified method utilizes FNS's research into the cost structure of school meal programs in order to provide an estimate of the costs of these local activities to determine the amount of administrative funds to request in lieu of collecting itemized cost information

Due to the wide variation in the number of P-EBT eligible children across local entities, FNS has developed the three simplified payment amounts, provided below, which are scaled utilizing the distribution of P-EBT eligible children in School Food Authorities (SFA).

Number of P-EBT Eligible Children in Local Entity	Streamlined Funding Amount per Local Entity
Less than 1,000	\$628
1,001–5,000	\$3,135
5,001–1,000,000+	\$5,950

*Note.* The table reflects 2020 levels inflated by the BLS State and local government total compensation series 2020 to 2021 annual change for the first two quarters (2.4 percent).

While we anticipate that the majority of the local entities served by this grant will be school food authorities (SFAs), for any eligible local entity seeking reimbursement, the State agency will need to determine which streamlined funding tier the local entity falls within. To make this determination, the state agency must know the number of National School Lunch and Breakfast Program free and reduced price eligible children served by the local entity. State agencies may allow local entities to use any reference month within FY 2021 that reflects the highest count of free and reduced price eligible students. State agencies should ensure that documentation remains on file to support the highest count level.

**Under Flexibility 2**, grant awards will be provided by FNS regional offices to their respective CN State agencies based on identified reimbursable costs. State agencies will in turn reimburse schools, local agencies of the state, and other local units, for allowable P-

EBT expenses. This flexibility permits state agencies the option of awarding eligible local entities the specified dollar amount by cost category outlined on the template spreadsheet.

Whether CN State agencies opt for Flexibility 1 or 2 they may use the attached Excel template to collect and submit local expenses to their respective regional offices by August 1, 2022. Templates submitted in August should include estimated total reimbursement needs for costs incurred by September 30, 2022. States must obligate all reimbursable funds by no later than September 30, 2022, with the subsequent close-out period allowing for any expenditures or adjustments.

As a condition of the grant award, each CN state agency will be required to enter into an applicable reimbursable funding arrangement with the appropriate entities within their state that have incurred local P-EBT administrative costs during FY 2022. Such entities may include, schools, local agencies of state, and other local units (i.e., subdivision of local government below the state level that have assisted with local P-EBT program delivery). Funds cannot be reimbursed directly to nonprofit or for-profit organizations, however, should one of these organizations enter a contract, grant, or other legal funding arrangement with a school, local agency of the state, or other local unit, funding may be provided.

To receive funding under either Flexibility outlined above, a state must have an approved FY 2022 P-EBT Plan on file. Local level administrative grant funds will be extended to CN state agencies using a FNS-529, Grant/Cooperative Award. Signature on this form indicates agreement to comply with the terms and conditions that will accompany the FNS-529, Grant Award.

State agencies must complete the following steps to receive a *Local Level P-EBT Administrative Cost grant award*:

- Have an approved P-EBT Plan on file with FNS.
- Agree to return the suggested template, or something tantamount, which will capture local level costs to be reimbursed to the CN State agency. State agencies may collect these costs in the manner that works for the State agency, however, these costs must be reported in the categories outlined in the Excel template.
- Sign a FNS-529, Grant and Cooperative Agreement Award Document, with accompanying terms and conditions.

Funding will be provided via a FNS-529 award issued. It is important to note that should a local entity choose Flexibility 1 they will only have one submission **as Flexibility 1 provides a proxy for annualized costs.**

Additionally, CN State agencies are expected to report quarterly on a separate CN Financial Report Form, FNS-425, via the Food Programs Reporting System (FPRS). As the first interval for reimbursement occurs in March, grantees will only report for quarters 3 and 4 of federal fiscal year 2022. Grantees should report under the name "PAN-CN-CRRSAA." These reports must be submitted within 30 days after the close of

each quarter for FY 2021, Q3 and Q4. Quarters 1 and 2 will be posted as blank. The Final Financial Report must be submitted within 120 days of the termination date of the grant agreement.

### **C. Background**

On August 26, 2021, FNS' SNAP and CN programs released a joint memo providing guidance to SNAP and CN state agencies to facilitate the development of state Implementation plans for school year (SY) 2020–2021. The jointly signed memo, along with the Q&As, advised SNAP and CN state agencies that “prior to USDA releasing the grant for administrative funding, each SNAP state agency will be required to submit a P-EBT Spending Plan using the FNS-366(a) Program and Budget Summary statement. The release of funds cannot be released to the SNAP state agency’s letter-of-credit until this plan is submitted and approved.”

On October 25, 2021, FNS regional offices were directed to make the FY 2021 P-EBT Administrative Cost Grant Awards directly to their respective SNAP state agencies. This guidance was superseded on January 11, 2022 advising of the new award options (i.e., SNAP and CN agencies can submit a combined grant request or they can submit separately). The 100 percent administrative grant funds were available for all allowable P-EBT administrative costs incurred by the agencies within each state agency that operated the SNAP and the CN NSLP. Under Option 1, as a condition of the grant award, each SNAP state agency was required to enter into the applicable funding arrangement (e.g., a subgrant or MOU) with the state agency(ies) within their state that operated the CN NSLP. Under Option 2, the awards may be separated.

The total grant award amounts provided to each state SNAP agency or, if Option 2 chosen, each SNAP and CN agency, were based on the approved state P-EBT plan, reflecting input from both SNAP and CN state agencies and a more detailed FNS-366(a), Program and Budget Summary, Excel template conveying the state agencies administrative cost plan. These agreements ensured that the CN state agencies also received funding for all allowable administrative costs associated with the FY 2021 P-EBT Initiative. The instructions for the state P-EBT plan outlined the need for a FNS-366(a), Administrative Costs Spending Plan, Budget and Program Summary, submission, and provided additional guidance on the FNS-366(a), Excel template, used in connection with the FY 2022 P-EBT Administrative Cost Grant Awards.

### **D. State Responsibilities**

FY 2022 Administrative Cost Grant Award funding was provided to SNAP and CN state agencies using the FNS-529, Grant/Cooperative Agreement Award Document, with an accompanying terms and conditions document. In FY 2022, initial allocations were provided to SNAP state agencies prior to moving to the new flexibilities (i.e., options 1 and 2). In contrast to FY 2021, in FY 2022 SNAP state agencies did not need to have:

1. An approved state P-EBT implementation plan on file with FNS. FNS recognizes that the administrative cost portion of the P-EBT implementation plan will be an iterative process and that states might need initial funding to continue the operations

of P-EBT in FY 2022. Thus, initial funds were released in October 2021 prior to approved P-EBT Implementation Plans, but any remaining funds will not be released until an approved state P-EBT approved plan, with remaining total funds not being released until a more detailed FNS-366(a), Excel template spending plan submission was approved under the Administrative Grant.

2. A signed a FNS-529, Grant and Cooperative Agreement Award document, with accompanying terms and conditions.

Upon return of the FNS-529, the document was fully executed by obtaining the signature of the regional administrator, or as delegated to the GMASDs. Once executed, funds were provided to the SNAP state agency, at FNS discretion, through the SNAP state agency's letter-of-credit.

### **E. Federal Oversight and Compliance Mechanisms**

FNS oversees state operations through an organization consisting of headquarters and seven (7) regional offices. FNS program oversight of these grants included a review of the state agencies detailed FNS-366a, Program and Budget Summary template. Review of the FNS-366(a) was conducted at both the regional and national office level. This review included a general reasonableness check of the state submission and identified any questions to be asked or revisions to be requested.

The period of performance period associated with these grant awards was October 1, 2021 through September 30, 2022. Funds provided under this award were available for all necessary, allowable, and reasonable costs of implementing and administering P-EBT **incurred** during FY 2022. This includes both costs associated with the issuance of FY 2022 benefits and costs associated with the issuance of retroactive FY 2021 benefits in FY 2021. Costs for work performed during FY 2021 could not be charged to this grant and must have been charged to the 50 percent administrative funding made available in FY 2021. Grant funds are only available for allowable costs incurred during the performance period of the award. The performance period of an award cannot begin before its authorization and supporting appropriation are enacted. Consistent with these principles the 100 percent P-EBT administrative grant were limited to costs incurred during FY 2022.

Unallowable costs were those expenses that were (1) not necessary or reasonable for the administration of the FY 2022 P-EBT program; and (2) expenses already covered under another federal award.

Regular SNAP and CN State Administrative Expense (SAE) funds may not have been used to cover the costs of administering the FY 2022 P-EBT program.

### **Source of Governing Requirements**

These grants were authorized under The Families First Coronavirus Response Act of 2020 (Pub. L. No. 116-127), as amended by the Continuing Appropriations Act, 2021 and Other Extensions Act (Pub. L. No. 116-159). This legislation provided the secretary of agriculture authority to approve state agency plans to administer P-EBT.

**Availability of Other Program Information**

Other program information is available from FNS’s site at <https://www.fns.usda.gov/snap/state-guidance-coronavirus-pandemic-ebt-pebt>.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	Y	Y	N	Y	N	N

**A. Activities Allowed or Unallowed**

Funds provided under this award were available for all necessary, allowable and reasonable costs of implementing and administering P-EBT **incurred** during FY 2022. This included both costs associated with the issuance of FY 2022 benefits as well as costs associated with the issuance of retroactive FY 2021 benefits incurred in FY 2022.

Examples of allowable costs under this grant include, salaries of personnel, outreach, equipment, supplies, support services (to include contracts for staffing or system related work that show clear allocation to the FY 2022 P-EBT program), or other expenses associated with the administration of the FY 2022 P-EBT program. These examples are not meant to be exhaustive, and other items may be approved, provided they are designed to administer the FY 2022 SNAP P-EBT program.

Unallowable costs are those expenses that are: (1) are not necessary or reasonable for the

administration of the FY 2022 P-EBT program; and (2) expenses already covered under another federal award.

## H. Period of Performance

1. Funds provided under the P-EBT State Administrative Cost Grants and the P-EBT Local Level Administrative Costs grants were available for all necessary, allowable and reasonable costs of implementing and administering P-EBT incurred during FY 2022. This included both costs associated with the issuance of FY 2022 benefits as well as costs associated with the issuance of retroactive FY 2020 benefits incurred in FY 2022.

## I. Procurement and Suspension and Debarment

1. *Systems Development* – States could incur costs related to competitive acquisitions of system changes and/or equipment and services to implement P-EBT. Costs must have been allocable to the administration of P-EBT.

## L. Reporting

### 1. Financial Reporting

For the FY 2022 state P-EBT Administrative Cost Grants, if **Option 1** is chosen, SNAP state agencies will be responsible for including all administrative costs incurred by the SNAP and CN state agencies for reporting purposes. During the period of performance of the grant, the SNAP state agency will be expected to aggregate obligation and outlay data from all state agencies utilizing the award and report quarterly to USDA using the P-EBT specific instance of the FNS-778. Further guidance on the use of the FNS-778, including specific reporting timeframes, are also included in the terms and conditions to accompany the award. SNAP state agencies will be expected to report quarterly on a separate SNAP Financial Report Form, FNS-778, via the Food Programs Reporting System (FPRS). Grantees should report under the name “*PAN- SNAP P-EBT Admin-SNAP PEBT Administration Grant.*” These reports must be submitted within 30 days after the close of each quarter. The Final Financial Report must be submitted within 90 days of the expiration of the grant agreement.

If **Option 2** is chosen, each state agency will need to submit a financial report form as follows:

CN state agencies will be expected to report quarterly on the SF-425, Financial Status Report. These reports will be submitted within FPRS under the report name “*PAN-CN-PEBT-Admin-CN PEBT Administration Grant.*” These reports must be submitted within 30 days after the close of each quarter. The Final Financial Report must be submitted within 90 days of the expiration of the grant agreement.

For the FY 2022 P-EBT Local Level Administrative Cost Grants, CN state

agencies are expected to report quarterly on a separate CN Financial Report Form, FNS-425, via the Food Programs Reporting System (FPRS). As the first interval for reimbursement occurs in March, grantees will only report for quarters 3 and 4 of federal fiscal year 2022. Grantees should report under the name “PAN-CN-CRRSAA.” These reports must be submitted within 30 days after the close of each quarter for FY2021, Q3, and Q4. Quarters 1 and 2 will be posted as blank. The Final Financial Report must be submitted within 120 days of the termination date of the grant agreement.

During the period of performance of the grant, the CN state agency will aggregate obligation and outlay data from all state agencies utilizing the award and report quarterly to USDA.

See Part 3.L for audit guidance.

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.



**UNITED STATES DEPARTMENT OF AGRICULTURE****ASSISTANCE LISTING 10.665 SCHOOLS AND ROADS – GRANTS TO STATES****ASSISTANCE LISTING 10.666 SCHOOLS AND ROADS – GRANTS TO COUNTIES****I. PROGRAM OBJECTIVES**

The objectives of these programs are to (1) share federal receipts from the national forests with the states in which the national forests are situated (Assistance Listing 10.665), and (2) share federal receipts from the national grassland with the counties in which the national grasslands are situated (Assistance Listing 10.666). 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****A. 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 US Treasury.

**B. Program Operation****1. *Assistance Listing 10.665 – Schools and Roads – Grants to States***

*25-Percent Payment* – An amount equal to the annual average of 25 percent of all amounts received for the applicable federal fiscal year (FY) and each of the preceding six FYs from each national forest is paid 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. The Forest Service calculates the 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 US Treasury of the amounts to be paid, and the funds are electronically transmitted to the states. Payments are made around January following the close of the FY for which receipts were received. Payments are always made the year after the receipt year, which is used to calculate those payments made in the following payment year. The states verify the amount of each deposit with information received from the Forest Service, and then distribute the funds to the counties in which the national forests are situated.

*State Payment (Secure Rural Schools and Community Self-Determination Act Payment)* – Each eligible county elects to receive either its share of the 25-Percent

Payment, as described above, or its share of the state payment. State payments are authorized through FY 2015 receipt year (FY 2016 payment year).

*Quinault Special Payment* – Forty-five 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. These funds are separate from the 45 percent of gross receipts generated by the Quinault Special Management Area transferred to the secretary of the interior for use by the Quinault Indian Nation.

*Arkansas Quartz Payment* – Fifty 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 national 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 payment.

*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.

2. *Assistance Listing 10.666 – Schools and Roads – Grants to Counties*

*National Grasslands Payment* – Twenty-five 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 Department of the Interior, Office of Natural Resource Revenue, 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 Payment* – 16 USC 500

*State Payment (Secure Rural Schools and Community Self-Determination Act Payment)* – 16 USC 7101 to 7153, as amended and reauthorized in Section 524 of Pub. L. No. 114-10, 129 Stat. 178, April 16, 2015.

*Quinault Special Payment* – Pub. L. No. 100-638, Section 4(b)(2)

*Arkansas 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 for the Secure Rural Schools and Community Self-Determination Act may be found at [Secure Rural Schools Program | US Forest Service \(usda.gov\)](https://www.usda.gov/secure-rural-schools-program).

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	Y	N	N	Y	N	Y

**A. Activities Allowed or Unallowed**

1. The *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).
2. *State Payment* funds must be used for:
  - a. Title I – Public roads and public schools of the county or counties in which the national forest is situated (16 USC 500);

- b. Title II – Special projects on federal land as defined in 16 USC 7102(7) and on nonfederal land where projects would benefit the resources on federal land. This portion of the state payment allocated to Title II is not paid to states or counties. It is reserved for special projects recommended by a Secure Rural Schools Act resource advisory committee and approved by the secretary of agriculture or authorized designee (16 USC 7101, 7112, and 7121-7128); or
- c. Title III – This portion is paid to the state and then distributed by the state to the participating county. These are referred to in the authorizing legislation as “county funds” (16 USC 7141). A participating county shall use Title III county funds only to:
  - (1) Carry out activities under the Firewise Communities program to provide to homeowners in fire-sensitive ecosystems education on, and assistance with implementing, techniques in home siting, home construction, and home landscaping that can increase the protection of people and property from wildfires;
  - (2) Reimburse the participating county for search and rescue and other emergency services, including firefighting, that are
    - (a) performed on federal land, as defined in 16 USC 7102(7), after the 45-day public comment period (see III.N, “Special Tests and Provisions – Public Comment,” below); and
    - (b) paid for by the participating county; and
  - (3) Develop community wildfire protection plans in coordination with the appropriate secretary concerned (16 USC 7142).
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 Quartz Payment* funds must be used for public roads and public schools in the counties in Arkansas 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. Section 524 of Pub. L. No. 114-10 locked-in the Title II and Title III elections by counties for FY 2014 and FY 2015 to the payment made for FY 2013. For the payments for FY 2014 and for FY 2015:

- (1) a county election to receive a formula payment;
- (2) the county election to receive a share of the state's 25-Percent Payment or a share of the state (formula) payment; and
- (3) the county election to allocate the share of the formula payment for titles II and III, will be the same elections made by the county for FY 2013 (16 USC 7112(b)(1).

A county may opt to return its allocation, in whole or part, to the US Treasury. Similar information is posted on the Forest Service website ([Secure Rural Schools Program | US Forest Service \(usda.gov\)](https://www.usda.gov/secure-rural-schools-program)).

b. County Allocations of State Payments (16 USC 7112)

- (1) For \$100,000 or less. For payments for FY 2013 and prior years, an eligible county that receives \$100,000 or less, could allocate 100 percent of its share to benefit public schools and roads under Title I. The total percentage allocated for the benefit of public schools and roads must be no less than 80 percent and no more than 85 percent. For the payments for FY 2014 and FY 2015, the county election will be the same as the elections made by the county in payment for FY 2013.
- (2) For \$100,001 but less than \$350,000. For payments for FY 2013 and prior years, if the county share of the state payment was more than \$100,000 but less than \$350,000, the county was required to allocate 15 percent to 20 percent of its share to Title II, Title III, or a combination of the two titles, or return this portion of the state payment to the US Treasury. For the payments for FY 2014 and

FY 2015, the county election will be the same as the election made by the county in payment for FY 2013.

- (3) For \$350,000 or greater. For payments for FY 2013 and prior years, if the county share of the state payment was \$350,000 or greater, the county was required to allocate 15 percent to 20 percent of its share to Title II, Title III, or a combination of the two titles, or return this portion of the state payment to the US Treasury. For these counties, the allocation for Title III projects could not exceed 7 percent. For the payments for FY 2014 and FY 2015, the county election will be the same as the election made by the county in payment for FY 2013.

## **H. Period of Performance**

The authority to initiate Title III projects terminates on September 30, 2017. Any county funds not obligated by September 30, 2018, shall be returned to the US Treasury (16 USC 7144).

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *County's Certification of Title III Expenditures and Unobligated Funds (OMB No. 0596-0220)* – Not later than February 1 of the year after the year in which any Title III county funds were expended by a participating county, the participating county must submit a certification that the county funds expended in the applicable year have been used for the uses authorized under this title, including a description of the amounts expended and their uses. The participating county certification also must include the amount of Title III funds not obligated by September 30 of the previous year. Additional information about the annual certification of Title III expenditures is available at <http://www.fs.usda.gov/main/pts/countyfunds>.

*Key Line Items* – The following sections contain critical information:

1. *Expenditures*
2. *Funds Not Obligated*

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions****1. Public Notice and Comment Period**

**Compliance Requirements** A participating county can use Title III county funds only after a 45-day public comment period, at the beginning of which the participating county must:

- a. Publish in any publications of local record a proposal that describes the proposed use of the county funds; and
- b. Submit the proposal to any resource advisory committee established under 16 USC 7125 for the participating county (16 USC 7142(b)).

**Audit Objectives** Determine whether the county has provided the required public notice.

**Suggested Audit Procedures**

- a. Verify that the county provided public notice 45 days prior to using Title III funds.
- b. Verify that the county submitted its proposal to use Title III county funds to the resource advisory committee, if any, 45 days prior to using the funds.

**UNITED STATES DEPARTMENT OF AGRICULTURE****ASSISTANCE LISTING 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 disposal 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 Clean Water Act. This program is instrumental in providing the financing to build or upgrade rural water and waste disposal facilities.

**II. PROGRAM PROCEDURES****A. Overview**

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 disposal 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 incorporated areas up to 10,000 people. Eligible applicants include (1) a public body, such as a municipality, district, county, authority, or other political subdivision of a state, territory, or commonwealth; (2) an organization operated on a not-for-profit basis, such as a cooperative, association, or private corporation; or (3) Indian tribes on state and federal reservations and other federally recognized tribes (7 CFR 1780, section 1780.7(a)(3)).

**B. 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 1780, section 1780.7). A loan is repayable based on the useful life of the facility, state statute, or 40 years from the date of the note, whichever is sooner. Interest is charged at a poverty rate, intermediate rate, or market rate depending on the circumstances (7 CFR 1780, section 1780.13).

**C. Project Grants for Water and Waste Disposal Systems**

RUS makes grants in conjunction with direct loans for water and waste disposal projects serving the most financially needy communities in order to reduce user costs to a reasonable level. Maximum 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 RUS eligible project 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 (7 CFR 1780, section 1780.10). Grant monies are not necessarily awarded at the grant caps. The grant, if any, awarded represents the amount of subsidy needed to maintain reasonable rates for its users. As each system has unique costs associated with the delivery of safe and potable water, MHI is not the sole driver of grant contributions. Rather, the award amount is dependent upon financial review and determined on a case-by-case basis.

#### **D. Guaranteed Loans for Water and Waste Disposal Systems**

RUS provides guaranteed loans and will guarantee up to 90 percent of eligible loan loss. The interest rate and term for guaranteed loans are negotiated between the recipient and the lender (7 CFR 1779, sections 1779.30 and 1779.33).

#### **Source of Governing Requirements**

The program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 USC 1926). Implementing regulations are at 7 CFR parts 1779 and 1780.

#### **Availability of Other Program Information**

RUS maintains a home page that provides general information about this program at <http://www.rd.usda.gov/programs-services/water-waste-disposal-loan-grant-program>.

### **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	Y	N	Y	N	N

**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 1780, section 1780.9).
2. Loan and grant funds may not be used for the following (7 CFR 1780, section 1780.10):
  - a. Facilities that 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.
  - h. The payment of a judgement which would disqualify an applicant for a loan under 1780.7.

**B. Allowable Costs/Cost Principles**

The auditor should test costs for allowable/unallowable activities when agency funds are used or when interim financing is used during construction.

**G. Matching, Level of Effort, Earmarking****1. Matching**

Under the direct loan and grant programs, 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, or security instruments, such as the grant agreement or loan documentation 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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *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 and signed and dated by the organization's official to certify the correctness of the information. Also, an annual audit may be submitted in lieu of this form (7 CFR 1780, section 1780.47).

*Key Line Items* – Page 1 only. Supplemental data is not tested by the auditor.

- e. *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 and signed and dated by the organization's official to certify the correctness of the information. Also, an annual audit may be submitted in lieu of this form (7 CFR 1780, section 1780.47).

*Key Line Items* – All the sections, line items, and data elements in the report contain critical information.

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**IV. OTHER INFORMATION**

*Interim Financing*

After RUS has made a commitment on a loan, the borrower may be required to obtain interim financing from commercial sources (e.g., a bank loan) for the construction period (7 CFR 1780, section 1780.39(d)). Interim financing is required for all loans over \$500,000, except in documented instances where financing cannot be obtained at reasonable rates. 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 2 CFR 200, section 200.502(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 2 CFR Part 200, Subpart F.

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****ASSISTANCE LISTING 10.766 COMMUNITY FACILITIES LOANS AND GRANTS****ASSISTANCE LISTING 10.780 COMMUNITY FACILITIES LOANS AND GRANTS  
(Community Programs)****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, nonprofit 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****A. Overview**

These programs are administered at the headquarters level by the United States Department of Agriculture (USDA) Rural Housing Service, and Community Facilities Programs and in the field by USDA Rural Development field offices. The Rural Housing Service authorizes, monitors, and provides funding for administration of CF loans and grants. Funds are made available directly to local governments, nonprofit 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. For guaranteed loans rural area is defined as any area of a state not in a city or town that has a population of more than 50,000 inhabitants and which excludes certain populations pursuant to 7 USC 1991 (a) (13) (H), according to the latest decennial census of the United States and not in the urbanized area contiguous and adjacent to a city or town that has a population or more than 50,000 inhabitants. The USDA Rural Development state, area, and local, offices monitor and evaluate the progress of the CF financed projects.

Applicant eligibility for CF direct and guaranteed loan and grant assistance is based on (1) the type of organization applying for the loan (public body, nonprofit organization, or federally recognized Indian tribe); (2) 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; (3) whether the applicant has authority to develop, own, and operate the proposed facility; and (4) 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.

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.

## **B. Subprograms/Program Elements**

### *1. Direct Loans*

The purpose of the CF direct loan program is to provide affordable funding to develop essential community facilities for health care, public safety, education, and community and public services in rural areas. Funds may be used to construct, purchase, or improve essential community facilities. Under the provision of re-lending found at 7 CFR section 1942.30, the Agency may also make CF direct loans to eligible re-lenders who then in turn re-lend the funds to eligible applicants for eligible projects.

### *2. 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.

### *3. CF Grants*

Grant funds may be used to assist in the development of essential community facilities for health care, public safety, education, 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 nonmetropolitan 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.

## **Source of Governing Requirements**

The program is authorized under the Consolidated Farm and Rural Development Act of 1972 (7 USC 1926).

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            OneRD Guaranteed Loan Staff Instruction 7CFR Part 5001
- 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 website at <https://www.rd.usda.gov/resources>.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	Y	N	N	Y	N	Y

**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; educational 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 the Letter of Conditions for direct loans and grants or Conditional Commitment for guarantees as prepared by USDA Rural Development (7 CFR sections 1942.17(d), 3570.61(b), and section 5001.451).

## 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), 3570.63, and section 5001.116).

## L. **Reporting**

### 1. **Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *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. Borrowers expending less than the threshold established in 2 CFR 200, Subpart F, "Audit Requirements" during its fiscal year should submit this report. If a borrower's Agency indebtedness is \$1,000,000 or more, an audited financial statement must be completed.
- e. *RD 442-3, Balance Sheet (OMB No. 0575-0015)* – This report presents the financial status of the borrower's CF project. Borrowers expending less than the threshold established in 2 CFR 200, Subpart F, "Audit Requirements" during its fiscal year should submit this report. If a borrower's Agency indebtedness is \$1,000,000 or more, an audited financial statement must be completed.



**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions****1. Protection and Disposition of Funds**

**Compliance Requirements** Borrowers shall establish accounts into which borrower funds, Agency loan proceeds, the revenues of the facility financed, and any other income shall be deposited in accordance with the loan resolution(s) authorizing the incurrence of indebtedness related to the Agency loan proceeds. The accounts will be maintained in accordance with the loan resolution(s) as long as the authorized indebtedness to the Agency is outstanding. Accounts may include but are not limited to the following: (a) construction account, (b) general account, (c) debt service account, and (d) reserve account.

**Audit Objectives** Determine whether the accounts were properly established, required deposits were made, and disbursements were only made for purposes authorized in the loan resolution(s).

**Suggested Audit Procedures**

- a. Ascertain if the appropriate accounts have been established either as bookkeeping accounts or as separate bank accounts.
- b. Ascertain if the funds have been deposited in institutions insured by the state or federal government or invested in readily marketable securities backed by the full faith and credit of the United States.
- c. Test a sample of deposits in each required account and ascertain the proper amount has been made to the appropriate account except when the reserve account has been fully funded.
- d. Test a sample of disbursements from the reserve account and ascertain if they were approved by the Agency and were made for the approved purpose.

## 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 that 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 – Continuing Compliance*

For CF direct loans, the Agency requires a promissory note or bond and security that will adequately protect the interest of the Agency during the repayment period of the loan. In the case of a CF guaranteed loan, the borrower executes a promissory note or bond with the lender and the lender is responsible for obtaining adequate security to protect the interest of the lender, any holder, and the government. Loan terms cannot exceed 40 years, the useful life of the facility or state statute, whichever is less. The borrower is required to repay the principal and interest according to the term of the note or bond. The full outstanding balance on the note or bond should be considered federal awards expended, included in determining Type A programs, and reported as loans on the Schedule of Expenditures of Federal Awards in accordance with 2 CFR Part 200 Subpart F. Auditors should perform test to ascertain if the nonfederal entity complied with applicable program requirements.

In accordance with RD Instruction 1942-A, 1942.17 (q)(5), borrowers and grantees not meeting the threshold for an audit under 2 CFR 200, Subpart F, must provide financial information utilizing Form RD 442-2, Statement of Budget, Income, and Equity and RD 442-3, Balance Sheet. This ensures the verification of their balance sheet and statement of income and expenses. CF borrowers and grantees submitting financial information are also required to meet the continuing compliance requirements.

Note: Prior to this year's supplement, this compliance supplement section instructed that CF loans did not have continuing compliance requirements and thus were not required to be audited under 2 CFR Part 200, Subpart F in years after project completion. However, USDA has now changed this position and determined that CF loans have continuing compliance requirements because CF borrowers are required to fund reserves, maintain insurance, deposit funds in Federally insured banks, meet financial covenants and debt service ratios, comply with civil rights requirements, and in some cases comply with additional requirements established as part of the loan approval process.

Therefore, for borrowers that have expended no other federal funding but have an outstanding CF loan balance of \$750,000 or more, an audit under 2 CFR Subpart F will now be required. For borrowers that have expended other federal funding and that are otherwise subject to a single audit under 2 CFR Subpart F, any outstanding CF loan balance must be included on the borrower's Schedule of Expenditures of Federal Awards and included in the scope of the single audit. USDA plans to inform all borrowers of this change through an Administrative Notice, which will be posted on the USDA website. USDA will also determine another method of

communicating to borrowers informing them of the Administrative Notice and the related audit implications. This change is to be applied prospectively and will be effective for borrowers' with outstanding CF loan balances for fiscal years ending on or after June 30, 2022. There is no expectation that borrowers that had existing outstanding loan balances in years prior to June 30, 2022, go back and have single audits performed of prior periods.

## **DEPARTMENT OF COMMERCE**

### **ASSISTANCE LISTING 11.300 INVESTMENTS FOR PUBLIC WORKS AND ECONOMIC DEVELOPMENT FACILITIES**

#### **ASSISTANCE LISTING 11.307 ECONOMIC ADJUSTMENT ASSISTANCE**

##### **I. PROGRAM OBJECTIVES**

The Public Works and Economic Development Facilities (Public Works) program assists communities to revitalize and expand their physical and economic infrastructure and also supports the creation and retention of jobs for area residents by helping eligible recipients with their efforts to promote the economic development of their local economies. The Economic Adjustment Assistance program assists communities experiencing actual or threatened severe unemployment or 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.

Supplementary funds appropriated to the Economic Development Administration (EDA) pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the American Rescue Plan (ARP) Act are administered under the Economic Adjustment Assistance program (Assistance Listing 11.307). To award CARES Act funds, EDA published the Addendum to the FY 2020 Public Works and Economic Adjustment Assistance Notice of Funding Opportunity (NOFO) for EDA's CARES Act Recovery Assistance, and EDA separately invited some existing recipients to apply for non-competitive awards. To award ARP Act funds, EDA published six NOFOs: Build Back Better Regional Challenge; Good Jobs Challenge; Economic Adjustment Assistance; Indigenous Communities; Travel, Tourism and Outdoor Recreation; and Statewide Planning, Research and Networks. All awards made under the six ARP Act NOFOs fall under the Economic Adjustment Assistance program (Assistance Listing 11.307).

##### **II. PROGRAM PROCEDURES**

Public Works grants may fund construction and related activities, such as design, engineering, and acquisition of related property, machinery, and equipment. Economic Adjustment Assistance grants 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. Economic Adjustment Assistance grants may also fund a project implementing a CEDS or other strategy, including grants for construction and Revolving Loan Funds (RLFs). Like Public Works grants, Economic Adjustment Assistance grants for construction may include related activities, such as design, engineering, and acquisition of related property, machinery, and equipment.

Section 302 of the Public Works and Economic Development Act of 1965 (PWEDA) (42 USC section 3162) requires that Public Works and Economic Adjustment Assistance grants be consistent with a CEDS or equivalent EDA-accepted regional economic development strategy, except for planning projects (i.e., strategy grants) under the Economic Adjustment Assistance program. Pursuant to section 214 of PWEDA (42 USC section 3154), EDA may waive the

CEDS requirements for Public Works and Economic Adjustment Assistance 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.

Economic Adjustment Assistance grants to capitalize or recapitalize RLFs are most commonly made for the purpose of business lending but may also fund public infrastructure or other authorized lending purposes if specifically allowed for in the terms of the award. RLF recipients must administer RLFs in accordance with an RLF plan approved by EDA. RLF recipients must update the RLF plan as necessary in accordance with changing economic conditions in the region; at a minimum, RLF recipients must update their RLF plans at least once every five years. 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 (42 USC sections 3121–3234).

EDA’s regulations are codified at 13 CFR chapter III, including program regulations for Public Works (Assistance Listing 11.300) at 13 CFR Part 305 and Economic Adjustment Assistance (Assistance Listing 11.307) at 13 CFR Part 307.

### **Availability of Other Program Information**

Other program information is available at <http://www.eda.gov/>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/ Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	N	N	Y	Y	Y	Y

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

The grant award documents, which include the grant budget, specify the purpose, and use of funds, which include the following:

- a. Construction: Construction grants made under the Public Works (Assistance Listing 11.300) or Economic Adjustment Assistance (Assistance Listing 11.307) programs 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 section 3141(a); 42 USC section 3149(a); and 13 CFR sections 305.2(a) and 307.3). For awards involving construction, recipients must seek EDA’s prior written approval to use alternate construction procurement methods to the traditional design/bid/build procedures (including lump sum or unit price-type construction contracts). These alternate methods may include design/build, construction management at risk, and force account (13 CFR section 305.6(a); 13 CFR section 307.4(c)(2)).
- b. Non-Construction, RLF: Economic Adjustment Assistance grants (Assistance Listing 11.307) to capitalize or recapitalize RLFs most commonly fund business lending but may also fund public infrastructure or other authorized lending activities if specifically allowed for in the terms of an award (42 USC section 3149(a) and 13 CFR section 307.6).
- c. Non-Construction, Other: Other activities that can be funded under the Economic Adjustment Assistance program (Assistance Listing 11.307) (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 may include, among other things, 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 section 3149(a) and 13 CFR section 307.3).

- d. Subaward, Public Works: A recipient of a Public Works grant (Assistance Listing 11.300) may directly expend the grant funds or, with prior EDA approval, may redistribute such grant funds in the form of a subaward to another eligible recipient to fund required components of the scope of work approved for the project (42 USC section 3154c and 13 CFR section 309.1).
- e. Subaward, Economic Adjustment Assistance: A recipient of an Economic Adjustment Assistance grant (Assistance Listing 11.307) may directly expend the grant funds or, with prior EDA approval, may redistribute such grant assistance in the form of (1) a subaward to another eligible recipient or (2) a loan or other appropriate assistance to nonprofit and private for-profit entities (42 USC section 3154c and 13 CFR section 309.2).
- f. Participant Support Costs: Awards made under the Public Works (Assistance Listing 11.300) and Economic Adjustment Assistance (Assistance Listing 11.307) typically do not allow funds to be used for participant support costs as provided at 2 CFR section 200.456. However, some awards made with ARP Act funds, in particular awards under the Good Jobs Challenge, may allow participant support costs.

## 2. *Activities Unallowed*

- a. Restrictions on use of RLF Cash Available for Lending: RLF Cash Available for Lending (as defined at 13 CFR section 307.8) **may not** be used to:
  - (1) Acquire an equity position in a private business (13 CFR section 307.17(c)(1)).
  - (2) Subsidize interest payments on an existing RLF loan (13 CFR section 307.17(c)(2)).
  - (3) Provide a loan to a borrower for the purpose of meeting the requirements of equity contributions under another federal agency's loan programs (13 CFR section 307.17(c)(3)).
  - (4) Enable borrowers to acquire an interest in a business either through the purchase of stock or through the acquisition of assets unless sufficient justification is provided in the loan documentation.

Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF (13 CFR section 307.17(c)(4)).

- (5) Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit, or any investment unrelated to the RLF (13 CFR section 307.17(c)(5)).
  - (6) Refinance existing debt, unless (1) 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 (2) RLF cash available for lending 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. RLF funds may be used for this purpose, only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF's costs plus a reasonable portion of the outstanding RLF loan within a reasonable time frame approved by EDA following the date of refinancing (13 CFR section 307.17(c)(6)).
  - (7) Serve as collateral to obtain credit or any other type of financing without EDAs prior written approval (13 CFR section 307.17(c)(7)).
  - (8) Support operations or administration of the RLF recipient (13 CFR section 307.17(c)(8)).
  - (9) Undertake any activity that would violate the requirements found at 13 CFR Part 314, including sections 314.3 ("Authorized Use of Property") and 314.4 ("Unauthorized Use of Property") (13 CFR section 307.17(c)(9)).
  - (10) Finance gambling activity, performances or products of a prurient sexual nature, or any illegal activity, including the cultivation, distribution, or sale of marijuana that is illegal under federal law (RLF Standard Terms and Conditions, Part II, section D) 4) a) (x)).
- b. Subaward, Ineligible Entities: A recipient of a Public Works grant (Assistance Listing 11.300), or Economic Adjustment Assistance grant



(Assistance Listing 11.307) may not redistribute award funds (e.g., subaward) to entities ineligible for award under the applicable Notice of Funding Opportunity (NOFO) (e.g., for-profit organizations) except in accordance with the procurement standards at 2 CFR sections 200.317 through 200.327.

- c. Conflicts of Interest: In addition to the general conflicts of interest provisions at 2 CFR section 200.112, recipients of Public Works and Economic Adjustment Assistance awards must also comply with the conflicts of interest provisions at 13 CFR section 302.17. Special conflicts of interest provisions apply to recipients of RLF awards (13 CFR section 302.17(c)):
- (1) An interested party of an RLF recipient may not receive, directly or indirectly, any personal or financial benefits resulting from the disbursement of RLF loans;
  - (2) An RLF recipient may not lend RLF funds to an Interested Party; and
  - (3) Former board members of an RLF recipient and members of his or her immediate family may not receive a loan from the RLF for a period of two years from the date that the board member last served on the board of directors.

### 3. *Internal Controls*

Pursuant to 2 CFR section 200.303(a), the nonfederal entity must establish and maintain effective internal control over the federal award that provides reasonable assurance that the nonfederal entity is managing the federal award in compliance with federal statutes, regulations, and the terms and conditions of the federal award.

#### Suggested Audit Procedures – Internal Control

The auditor is to test that the nonfederal entity has adequate internal controls in place, as defined at 2 CFR section 200.1, and adequate internal control over compliance requirements for federal awards, as defined at 2 CFR section 200.1. This must include testing the internal controls documented in the nonfederal entity's written procedures governing its federal awards.

## **B. Allowable Costs/Cost Principles**

Cost Principles: The Cost Principles at 2 CFR Part 200, Subpart E, 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 cost-type contracts and may be in the form of grants, contracts, and other agreements.

Unallowable Costs, RLF Awards: For RLF awards, costs incurred for ineligible loans, including loans made for one of the unallowed activities described in Section A.2. or made outside of the RLF lending area as discussed in Section N.2., are unallowable. The RLF capital base is always maintained in two forms: as RLF cash available for lending **or** as outstanding loan principal. An RLF recipient is allowed to use RLF income to pay for allowable administrative costs, provided such RLF income is earned and the administrative costs are accrued in the same fiscal year of the RLF recipient. It is unallowable to use RLF funds for administrative costs in excess of the RLF income generated during the same recipient fiscal year without prior written approval from EDA.

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

The amount of required matching share varies on a grant-by-grant basis and is set forth in the grant award. In nearly all cases, a recipient of a Public Works or Economic Adjustment Assistance grant is required to provide a matching share. In some instances, including grants to Indian tribes and to respond to natural disasters, EDA may award grants at investment rates up to and including one hundred percent (100 percent) (13 CFR section 301.4(b)). Prior to EDA approving the matching share at time of application, 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 (13 CFR section 301.5). The source of a recipient's matching share may change during the term of the grant award if EDA is notified and approves of the change in source.

Matching share may take a variety of forms. It may be in the form of allowable costs incurred by the recipient, but not charged to the federal award, third party cash contributions, or third party in-kind (non-cash) contributions. Additionally, with prior EDA approval, unrecovered indirect costs or program income may be used to meet the required matching share.

For reporting purposes, unrecovered indirect costs allowed by EDA for match are reported with recovered indirect costs using Form SF-425, lines 11.a–11.e and 11.g, and then are added to other Recipient Share of Expenditures on Line 10.j. Program income allowed for match is entered directly in Recipient Share of Expenditures on Line 10.j but is **not** included in any of the entries on Lines 10.l, 10.m, and 10.o within the program income section of Form SF-425. The use of unrecovered indirect costs or program income for matching funds does not increase the amount of the federal award (2 CFR sections 200.306(c) and 200.307(e)(3)).

Matching funds must comply with the provisions of 2 CFR section 200.306, 13 CFR section 301.5, and the applicable NOFO, which provides detailed criteria for acceptable costs and contributions. The following is a list of the basic criteria for acceptable matching:

- a. Are verifiable from the nonfederal entity's records.
- b. Are not included as contributions for any other federal award.
- c. Are necessary, allocable, and reasonable for accomplishment of project objectives.
- d. Are allowed under the applicable cost principles.
- e. Are not paid by the federal government under another federal award, except where the federal statute authorizing a program specifically provides for such use, which may sometimes include a letter from the federal agency authorizing the funds as match in the subject project, and EDA approves the use of the federal funds as match.
- f. Are provided for in the approved budget when required by the EDA.
- g. Conform to other applicable provisions of 2 CFR section 200.306 and any applicable laws, regulations, and provisions of grant or cooperative agreements.

The following are the items which require a review/test in the area of applying match. Note that these items apply to the disbursement phase of the RLF award, but not RLF awards in the revolving phase (as defined at 13 CFR section 307.8) where all funds have been previously disbursed by EDA:

- a. Perform tests to verify that required matching funds were expended, and that they were expended consistently with what was reported to EDA.
- 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 third party contributions (including third party in-kind (non-cash contributions) are valued in accordance with 2 CFR section 200.306.
- d. Ensure that the application of match is in compliance with the program regulations and the terms of the award.
- e. Test costs incurred as 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. Level of Effort**

Not Applicable

**3. Earmarking**

Not Applicable

**J. Program Income**

Program income means gross income earned by the nonfederal entity that is directly generated by a supported activity or earned as a result of the federal award during the period of performance except as provided at 2 CFR section 200.307(f). Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under federal awards, the sale of commodities or items fabricated under a federal award, license fees and royalties on patents and copyrights, and interest on loans made with federal award funds. Program income may be earned pursuant to some Public Works (Assistance Listing 11.300) and Economic Adjustment Assistance (Assistance Listing 11.307) awards, but it is most prevalent in RLF awards.

Program income is a key feature of RLF awards. Known as “RLF income,” it is used to increase the RLF capital base and to pay eligible administrative costs that stem from operating the RLF. RLF income (as defined at 13 CFR section 307.8) includes interest earned on loan principal and accounts holding RLF funds, all fees received by the RLF, and other income generated from RLF operations. RLF income excludes repayments of loan principal and any interest earned on accounts holding RLF funds.

During the revolving phase (as defined at 13 CFR section 307.8), RLF income must either be used to pay allowable administrative costs or added to the RLF capital base. RLF income may be used to pay administrative costs only if the RLF income is accrued and the administrative costs are incurred in the same fiscal year of recipient. If the RLF income is not used for such costs, it must be added to the RLF capital base (13 CFR section 307.12(a)). A recipient may not withdraw funds from the RLF capital base in a subsequent fiscal year to pay administrative costs without the prior written consent of EDA (13 CFR section 307.12(a)(3)). RLF recipients must keep administrative costs to a minimum to maintain the RLF capital base (13 CFR section 307.12(a)(4)). When charging costs against RLF income, RLF recipients must comply with the cost principles at 2 CFR Part 200, Subpart E.

## Suggested Audit Procedures – Compliance

1. Identify Program Income:  
Inquire of management and review accounting records to ascertain the amount of program income earned.
2. Determining or Assessing Program Income:  
Perform tests to verify that program income was properly identified, calculated, and collected only from allowable sources.
3. Recording and Reporting of Program Income:  
Perform tests to verify that all program income was properly recorded in the accounting records.
4. Use and Reporting of Program Income:  
Perform tests to ascertain whether program income was used in accordance with the program requirements and 2 CFR section 200.307. Ensure that forms SF-425 and ED-209 (for RLF awards) reflect the proper management of the program income.

RLF income received before disbursement phase (as defined at 13 CFR section 307.8) closeout is retained by the RLF recipient, added to the RLF capital base, and reported as unexpended in the final Financial Report (Form SF-425) and continues to be reported in the RLF Financial Report (Form ED-209). The RLF recipient may use program income only as an “addition” to the federal award pursuant to 2 CFR section 307(e)(2); the recipient may not use program income as a “deduction” to the federal award.

## L. Reporting

### 1. Financial Reporting

- a. *Form SF-425, Federal Financial Report* – Applicable (required on a quarterly or bi-annual basis, until the end of the period of performance when a final closeout Form SF-425 is submitted)
- b. *Form SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Applicable (required for construction awards until the award is fully disbursed)
- c. *Form SF-270, Request for Advance or Reimbursement for Non-Construction Programs* – Applicable (required for non-construction awards until the award is fully disbursed)
- d. *Form ED-209, RLF Financial Report* – Applicable only for RLF awards (required to be submitted in a format and at a frequency determined by

EDA for the duration of the RLF's operation, generally on a semiannual or annual basis). See also special reporting section below for further explanation of the Form ED-209 reporting requirements.

## **2. Performance Reporting**

EDA collects and reports on performance measures in compliance with Government Performance and Results Act of 1993, as amended by the GPRA Modernization Act of 2010.

These reports may include, but are not limited to:

- a. GPRA Data Collection forms required under the terms of the award (e.g. Forms ED-915, ED-916, ED-917, and ED-918).
- b. Periodic performance reports required under the terms of the award. As required under 2 CFR section 200.329, such reports must include:
  - Performance reports must be submitted at the interval required by the grant to best inform improvements in program outcomes and productivity.
  - Performance reports must contain brief information regarding: 1) a comparison of actual accomplishments to the objectives of the federal award established for the period; and 2) the reasons why any established goals were not met, and/or resulted in an explanation of cost overruns or high unit costs' and significant developments, that impacted not meeting established goals, including problems, delays, or adverse conditions which materially impaired the ability to meet the objective of the federal award, and a statement of any actions which were taken to resolve the situation.
- c. Performance Technical Reports required under the terms of the award, including Form SF-429 (Real Property Status Report) as required under 2 CFR sections 200.330 and 200.334(c), including the completed Cover Page and all applicable Attachments A, B, and/or C.

### **Source of Governing Requirements**

Program legislation; federal awarding agency regulations; the applicable NOFO; and the Government Performance and Results Act of 1993 (GPRA) (Pub. L. No. 103-62), which is one of a series of laws designed to improve government performance management.

## **Audit Objectives**

The auditor is to test for compliance with the requirements for the accurate, correctly developed, and timely submittal and reliability of the subject reports as required by the award's terms and conditions and 2 CFR sections 200.328 and 200.329, and then determine the auditee's compliance with the subject performance reporting requirements.

## **Suggested Audit Procedures – Performance Reporting Compliance**

The auditor shall perform a review and an analysis of the subject performance reports, to obtain an understanding of whether the auditee's performance report practices are sufficient to meet the requirements of their performance reporting in order to successfully fulfill the governing requirements. The auditor shall consider the results of the testing of their performance reporting in assessing the risk of noncompliance.

### **3. Special Reporting**

Special reporting includes any reports required by an award's terms and conditions, special award conditions, or as otherwise detailed in the grant award.

#### **a. Subaward Reporting under the Transparency Act**

Prime recipients awarded a new federal grant greater than or equal to \$30,000 are subject to FFATA sub-award reporting requirements as outlined in the Office of Management and Budgets guidance issued August 13, 2020. The prime recipient is required to file a FFATA sub-award report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to \$30,000 (Pub. L. No. 109-282 [FFATA] and Pub. L. No. 113-101 [DATA Act]). This requirement applies to all Public Works (Assistance Listing 11.300) and Economic Adjustment Assistance (Assistance Listing 11.307) awards, including RLF awards.

#### **b. The following reporting requirement pertains to RLF recipients only:**

Form ED-209, *Revolving Loan Fund Financial Report* (OMB No. 0610-0095) – All EDA RLF recipients must submit Form ED-209 at a frequency as directed by EDA (13 CFR section 307.14(a)). The frequency is based on the results of the rating each RLF receives under the Risk Analysis System. Generally, Form ED-209 must be submitted corresponding to the RLF recipient's fiscal year on an annual basis for RLF awards that are highly rated under the Risk Analysis System, while it must be submitted on a semi-annual basis for RLF awards that are not highly rated under the Risk Analysis System.

*Key Line Items* – The following line items contain critical information, which should reconcile with the RLF recipient’s financial documents and account balances:

1. *Current RLF capital base (Line II.C.6.)*
2. *RLF Cash Available for Lending, Net of Committed RLF \$ (Line II.D.4.)*
3. *Total Active Loans (Line III.A.4., Number, RLF \$ Loaned, and RLF Principal Outstanding)*
4. *Written Off Loans (Line III.A.5., Number, RLF \$ Loaned, and Loan Losses)*
5. *Total Loans (Line III.A.7., Number, RLF \$ Loaned, RLF Principal Outstanding, and Loan Losses)*
6. *RLF income used for Admin. Expenses, Fiscal Year (Line IV.C.2.)*
7. *RLF income earned during Fiscal Year (Line IV.C.3.)*
8. *Administrative Expenses % of Income, Fiscal Year (Line IV.C.2.)*
9. *Total \$ Leveraged (Line IV.E.1., Active Loans and Total Loans)*
10. *Loan Leverage Ratio (Line IV.E.2., Active Loans and Total Loans)*

#### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

#### **M. Subrecipient Monitoring**

**Note:** Transfers of federal awards to another component of the same auditee do not constitute a subrecipient or contractor relationship for purposes of 2 CFR Part 200, Subpart F. Each subaward must be pre-approved by EDA, as further described in Section A.1.d-e.

#### **Compliance Requirements**

*Responsibilities of a Pass-Through Agency* – A comprehensive description of the requirements applicable to pass-through entities can be found at 2 CFR section 200.332; this section highlights some key requirements. At the time of the subaward, identify that the subrecipient is aware of the federal award information and obtain the subrecipient’s unique entity identifier. Monitor the subrecipient’s use of federal awards to provide



reasonable assurance of full compliance. Ensure that subrecipients expending \$750,000 or more in federal awards during the subrecipient's fiscal year met the audit requirements of 2 CFR Part 200, Subpart F, including the issuance of a management decision on audit findings within six months, and ensure that the subrecipient takes timely and appropriate corrective action on all audit findings. Evaluate factors that affect the nature, timing, and extent of during-the-award monitoring, which includes the program complexity, the percentage of the total award passed through to subrecipient, the funding level of subawards, and the risk posed by the subrecipients. Assess monitoring activities occurring throughout the year, include reporting, site visits, and regular contact. A pass-through entity must arrange for agreed-upon procedures engagements for certain aspects of subrecipient activities.

### **Source of Governing Requirements**

The requirements for subrecipient monitoring are at 31 USC section 7502(f)(2)(B) (Single Audit Act Amendments of 1996 [Pub. L. No. 104-156]); 2 CFR sections 200.505, 200.521, and 200.332; program legislation; federal awarding agency regulations; and the terms and conditions of the award.

### **Audit Objectives**

The auditor is to test for compliance with 2 CFR section 200.332. This includes but is not limited to: obtaining an understanding of internal controls and risk assessment as required by 2 CFR section 200.332; affirming any first-tier subawards have a valid unique entity identifier before entity issues the subaward; ascertaining that the pass-through entity monitors subrecipient activities; determining whether the pass-through entity ensured required audits are performed and managed by the subrecipient per 2 CFR Part 200, Subpart F; determining whether the pass-through entity evaluated the impact of subrecipient activities on the pass-through entity; and determining whether the pass-through entity identified in the SEFA the total amount provided to subrecipients from each federal program.

### **Suggested Audit Procedures – Internal Control**

The auditor shall 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; 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 (see alternative procedures in 2 CFR section 200.514(c)(4)); and consider the results of the testing of internal control in assessing the risk of noncompliance.

### **Suggested Audit Procedures – Compliance**

(Note: The auditor may consider coordinating the tests related to subrecipients performed during testing of cash reporting submitted by subrecipients, with the testing of "Subrecipient Monitoring.")

After gaining an understanding of the pass-through entity's subrecipient procedures through a review of the pass-through entity's subrecipient monitoring policies and procedures, the auditor then performs tests, reviews, and verifications as follows:

1. Test the pass-through entity's subaward review and approval documents, such as a possessing a valid DUNS number; test subaward documents and agreements to ascertain if at the time of subaward the pass-through entity made subrecipients aware of the award information, has a unique entity identifier, and that the activities approved in the subaward documents were allowable.
2. Review the pass-through entity's documentation of subaward monitoring to ascertain if the monitoring provided reasonable assurance that the subaward was for authorized purposes, complied with all legal and grant requirements, while achieving performance goals, including that corrective action was implemented to correct any deficiencies.
3. Verify that required audits were completed, applicable management decisions (when necessary) were issued and ensure corrective action was taken on any findings. Verify if, for any reason, required audits did not occur, the pass-through entity took appropriate action using sanctions and such noncompliance has been recorded. Finally, to determine that there are procedures that allow the pass-through entity to identify the total amount provided to subrecipients from each federal program.

## **N. Special Tests and Provisions**

### **1. RLF Awards: Priority of Payments on Defaulted and Written Off RLF Loans**

**Compliance Requirements** When an RLF recipient receives proceeds on a defaulted RLF loan or written off RLF loan, such proceeds must be applied in the following order of priority: (1) towards any costs of collection; (2) towards outstanding penalties and fees; (3) towards any accrued interest to the extent due and payable; and (4) towards any outstanding principal balance (13 CFR section 307.12(c)).

**Audit Objectives** Determine whether proceeds from defaulted RLF loans were correctly applied in the order of priority.

#### **Suggested Audit Procedures**

Test a sample of defaulted **and** written off RLF loan files to ascertain whether:

- a. Documentation is available that supports that proceeds from defaulted and written off RLF loan files were correctly applied in the order of

priority.

- b. Any variance from this procedure is recorded, by loan number, total amount of proceeds, and which priority area relating to each noncompliance of not following the order of priority.

## 2. **RLF Awards: 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 or appropriate substitute documentation if board approval is not required, (4) promissory note, (5) security agreement(s) (if applicable), (6) deed of trust or mortgage (if applicable), (7) agreement of prior lien holder (if applicable), and (8) evidence demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed (13 CFR section 307.11(a)(1)(ii)). (Note, however, that EDA temporarily waived the requirement to collect evidence demonstrating that credit is not otherwise available; for more information, see <https://eda.gov/cares/rlf/faq.htm>.)
- b. An RLF recipient must make loans to implement and assist economic activity only within its EDA-approved lending area, as defined in the terms and conditions of the award (as amended) and the EDA-approved RLF Plan (13 CFR section 307.18(a)(1)).
- c. RLFs shall operate in accordance with generally accepted accounting principles ("GAAP") in effect in the United States and the provisions outlined in the audit requirements set out as Subpart F to 2 CFR Part 200 and this Compliance Supplement, which is Appendix XI to 2 CFR Part 200, as applicable.
- d. In accordance with GAAP, a loan loss reserve may be recorded in the RLF recipient's financial statements to show the adjusted current value of an RLF's loan portfolio, provided this loan loss reserve is non-funded and is represented by a noncash entry. However, loan loss reserves may not be used to reduce the value of the RLF in the Schedule of Expenditures of Federal Awards ("SEFA") required as part of the RLF recipient's audit requirements under 2 CFR Part 200 (13 CFR section 307.15(a)(2)).

**Audit Objectives** Determine whether: (1) the required documentation is complete for all RLF loans, including evidence that credit was not otherwise available to the borrower; (2) the RLF recipient's financed activity is located in

the EDA-approved lending area; (3) the recipient is accounting for its operations in accordance with GAAP; and (4) properly recording a loan loss reserve in accordance with GAAP and with section 307.15(a)(2).

### **Suggested Audit Procedures**

Test a sample of RLF loan files to ascertain if:

- a. All required standard loan documents are complete for each loan, including documentation that credit was not otherwise available to the borrower. This can take the form of a market analysis of local credit conditions; the documentation does not have to be unique to the borrower.
- b. The financed activity is located in the EDA-approved lending area.

## **3. RLF Awards: Loan Portfolio Sales and Securitizations**

**Compliance Requirements** With prior written 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 that EDA subordinate its interest in all or a portion of any RLF loan portfolio sold or securitized (13 CFR section 307.19).

**Audit Objectives** In the event an RLF recipient has sold or securitized RLF loans, verify whether the RLF recipient: (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. Determine whether RLF recipient has entered into sale or securitization of all or a portion of its RLF loan portfolio.
- b. Verify that the RLF recipient has evidence of EDA's prior written approval to sell or securitize all or a portion of its RLF loan portfolio.
- c. Ascertain that all the proceeds from the sale or securitization (net of reasonable transactions costs) were used to make additional RLF loans.

## **4. Wage Rate Requirements**

See Part 4, 20.001 Wage Rate Requirements of the Department of Transportation Cross-Cutting Section of this Compliance Supplement.

**Compliance Requirements** All laborers and mechanics employed by contractors or subcontractors to work on construction contracts in excess of \$2,000 with EDA assistance funds must be paid wages not less than those established for the locality of the project (prevailing wage rates) by the Department of Labor (DOL) (40 USC sections 31413144, 3146, and 3147-3148).

Nonfederal entities shall include in their construction contracts subject to the Wage Rate Requirements (which still may be referenced as the Davis-Bacon Act) a provision that the contractor or subcontractor comply with those requirements and the DOL regulations (29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction) (2 CFR section 200.327; Appendix II.D. to 2 CFR Part 200). This includes a requirement for the contractor or subcontractor to submit to the nonfederal 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; the A-102 Common Rule (section 36(i)(5)); OMB Circular A-110 (2 CFR Part 215, Appendix A, Contract Provisions); 2 CFR Part 176, Subpart C; and 2 CFR section 200.327).

This reporting is often done using Optional Form WH-347, which includes the required statement of compliance (*OMB No. 1235-0008*). The DOL, Employment Standards Administration, maintains a Davis-Bacon and Related Acts web page <https://www.dol.gov/agencies/whd/government-contracts/construction/forms>. Optional Form WH-347 and instructions are available on this web page.

**Audit Objectives** Determine whether the nonfederal entity notified contractors and subcontractors of the requirements to comply with the Wage Rate Requirements and obtained copies of certified payrolls.

### **Suggested Audit Procedures**

Select a sample of construction contracts and subcontracts greater than \$2,000 that are covered by the Wage Rate Requirements and perform the following procedures:

- a. Verify that the required prevailing wage rate clauses were included in the contract or subcontract.
- b. For each week in which work was performed under the contract or subcontract, verify that the contractor or subcontractor submitted the required certified payrolls.

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

## IV. OTHER INFORMATION

### *Suggested Audit Procedures*

Review the procedures for preparing the audit report and evaluate for completeness and accuracy to reconcile with financial statements and account balances. Review the RLF income used for administrative expenses according to terms of the award and cost principles.

### *RLF Awards: Schedule of Expenditures of Federal Awards*

For purposes of completing the SEFA, each EDA RLF award (Assistance Listing 11.307) must be shown as a separate line item, separate from any other Economic Adjustment Assistance award received by the RLF recipient. Each RLF award must be identified as a loan program. (RLF awards are unique among Public Works and Economic Adjustment Assistance awards in this respect; all other Public Works and Economic Adjustment Assistance awards are not loan programs.) The SEFA for RLF awards must be calculated as follows:

1. Balance of RLF principal outstanding on loans 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 using RLF income during the recipient's fiscal year, *plus*
4. Administrative expenses paid using award funds designated for administrative expenses during the recipient's fiscal year, *plus*
5. The unpaid principal of all loans written off during the recipient's fiscal year.
6. *Multiply* this sum (1+2+3+4+5) by the federal share of the RLF award. The federal share is defined as the federal participation rate (or the federal grant rate) as specified in the grant award (or as may be amended by EDA).

Note: Consolidated or merged RLF awards must be shown as a single line item on the SEFA (see III.N.3, "Special Tests and Provisions - Addition of Lending Areas and Consolidation and Merger of RLFs"). In this case, the federal share will be specified in the amendment consolidating the RLF awards.

The federal grant rates for each EDA RLF can be found in the grant award documents; specifically, Form CD-450 or Form CD-451.

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 must accompany the SEFA.

*RLF Awards: Continuing Compliance Requirements for RLFs*

EDA retains a federal interest in RLF award funds until the RLF award is terminated or EDA releases its federal interest in the RLF award funds. As such, required reporting and EDA oversight of the RLF also continue until the award is terminated or EDA releases its federal interest in the RLF award funds.

In the event EDA releases its federal interest in the RLF award funds, the RLF award must appear in the SEFA in the fiscal year of release, and audited as appropriate, but the RLF must not be included in the SEFA in the fiscal years following release. In the fiscal year of release the SEFA must be calculated as the date of release, not as of the end of the recipient's fiscal year.

*Equipment and Real Property Management*

Except as otherwise authorized by EDA, property acquired or improved under Public Works (Assistance Listing 11.300) and Economic Adjustment Assistance (Assistance Listing 11.307) 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 section 314.6(a)). For all projects involving the acquisition, construction, or improvement of a building, as determined by EDA, the recipient must execute a lien, covenant, or other statement of the federal interest in such project real property. The statement must specify the estimated useful life of the project and shall include, but not be limited to, the disposition, encumbrance, and federal share requirements. The statement must be satisfactory in form and substance to EDA (13 CFR section 314.8). In extraordinary circumstances and at EDA's sole discretion, EDA may choose to accept another instrument to protect the federal interest in project real property, such as an escrow agreement or letter of credit, provided that EDA determines such instrument is adequate and a recorded statement in accord 13 CFR section 314.8(a) is not reasonably available. The terms and provisions of the relevant instrument must be satisfactory to EDA in EDA's sole judgment. The costs and fees for escrow services and letters of credit must be paid by the recipient (13 CFR section 314.8(d)).

## DEPARTMENT OF COMMERCE

### ASSISTANCE LISTING 11.611 HOLLINGS MANUFACTURING EXTENSION PARTNERSHIP

#### I. PROGRAM OBJECTIVES

Under the Hollings Manufacturing Extension Partnership (MEP) program, the National Institute of Standards and Technology (NIST) awards cooperative agreements to eligible entities—which include US states and territories, local/tribal governments, institutions of higher education, and nonprofit organizations or consortia of nonprofit organizations—for the purpose of creating and supporting manufacturing extension centers for the transfer of manufacturing technology and best business practices (hereafter referred to as “Centers”). The objective of the MEP program is to enhance competitiveness, productivity, and technological performance in US manufacturing. See 15 USC 278k(c). Centers accomplish this objective through activities that include: (1) the establishment of automated manufacturing systems and other advanced production technologies, based on institute-supported research, for the purpose of demonstrations and technology transfer; (2) the active transfer and dissemination of research findings and center expertise to a wide range of companies and enterprises, particularly small and medium-sized manufacturers; and (3) the facilitation of collaborations and partnerships between small and medium-sized manufacturing companies, community colleges, and area career and technical education schools, to help those entities better understand the specific needs of manufacturers and to help manufacturers better understand the skill sets that students learn in the programs offered by such colleges and schools (15 USC 278k(d)).

While the majority of program funds are used to create and support these centers (referenced hereafter as “base cooperative agreements”), NIST also disburses additional program funds to existing Centers, or consortia of centers, in the form of cooperative agreements for projects to solve new or emerging manufacturing problems (referred to in the authorizing statute as “competitive awards”). The problems to be addressed under competitive awards will be determined by the NIST director, in consultation with the director of the MEP program (hereafter “Director”), the MEP Advisory Board, other federal agencies, and small and medium-sized manufacturers, and specified in the applicable Notice of Funding Opportunity (NOFO) or funding from the Competitive Awards Program (CAP) established under 15 USC 278k-1.

#### II. PROGRAM PROCEDURES

##### A. Cooperative Agreements to Create and Support Centers

Base cooperative agreements to create and support Centers are subject to, and administered in accordance with, 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; the Department of Commerce Standard Financial Assistance Terms and Conditions (dated November 12, 2020, as may be periodically amended); the Hollings Manufacturing Extension Partnership General Terms and Conditions (dated August 2017 as may be periodically



amended) (“MEP General Terms and Conditions”) ([https://www.nist.gov/system/files/documents/2018/05/08/fy17-18\\_nist\\_mep\\_general\\_terms\\_conditions\\_final\\_july2017.pdf](https://www.nist.gov/system/files/documents/2018/05/08/fy17-18_nist_mep_general_terms_conditions_final_july2017.pdf)); any specific award conditions imposed by NIST on a case-by-case basis; and the center’s approved plans (approved funding proposal/scope of work and multi-year budgets for the audit period). These documents are incorporated by reference into the nonfederal entity’s Financial Assistance Form CD-450 (*US Department of Commerce Financial Assistance Award*), which functions as the cooperative agreement. If NIST approves any amendments to the award, including any changes to these documents incorporated by reference, NIST will document this amendment with a CD-451 form (*US Department of Commerce Amendment to Financial Assistance Award*) or an administrative change letter. It is important to note that a nonfederal entity may be involved in manufacturing extension services beyond the scope of its cooperative agreement with NIST. These base cooperative agreements are typically for a five-year period, with the possibility of a noncompetitive renewal for another five-year award. However, these multi-year awards are funded in yearly allotments, with annual funding contingent upon the continued availability of funds, satisfactory performance, and the continued relevance of the base cooperative agreement to program objectives and is at the sole discretion of the Department of Commerce. At the time that NIST approves a nonfederal entity for a noncompetitive annual renewal of funding, NIST will approve any revisions to the nonfederal entity’s plans, and budget for the upcoming annual funding period. This approved budget, subject to any budget modifications approved by NIST, is binding on the nonfederal entity and should be used in conjunction with this compliance supplement to determine the allowability of costs, as documented in the center’s Single-Year Budget Workbook and Five-Year Budget Summary Table for the audit period.

Except as otherwise provided in the applicable award documentation, base cooperative agreements to create and support Centers require nonfederal matching funds. See 15 USC 278k(e)(2). The center’s approved Single-Year Budget Workbook and Five-Year Budget Summary Table indicate the total amount of nonfederal cost share required for the funding period, as well as the source, amount, and nature of each contribution. Typically, nonfederal cost share contributions comprise a mix of cash and in-kind contributions from the nonfederal entity, subawardees, and third parties such as state agencies and municipalities as well as program income. Program income is primarily generated from fees collected from manufacturers to partially offset the cost of providing manufacturing extension services under the program. Program income may also include revenue, such as but not limited to, registration fees for training programs offered by the center, fees for equipment rentals, and licensing fees or royalties on patents.

These base cooperative agreements permit the nonfederal entity to make subawards to accomplish all or part of the approved plans. Any permissible subawards will be shown in the center’s approved Single-Year Budget Workbook. The terms and conditions of each base cooperative agreement flow down to subawards as well unless a particular section of 2 CFR Part 200 or the terms and conditions of the base cooperative agreement specifically indicate otherwise. Each center that issues subawards must ensure that every subaward is clearly identified to the subrecipient as a subaward and includes all the required information at the time of the subaward per 2 CFR section 200.332(a). In

addition, each center that issues subawards must comply with the subrecipient monitoring and management standards for pass-through entities as described in 2 CFR sections 200.331–200.333 (see also MEP General Terms and Conditions, #11).

### **B. Cooperative Agreements to Solve New or Emerging Manufacturing Problems**

In addition to base cooperative agreements to create and support centers, NIST disburses additional program funds or funding from the CAP, per 15 USC 278k-1, to existing Centers, or consortia of Centers, in the form of cooperative agreements for projects to solve new or emerging manufacturing problems as determined by the NIST director, in consultation with the director, the MEP Advisory Board, other federal agencies, and small and medium-sized manufacturers (“competitive awards”) and specified in the applicable NOFO. These cooperative agreements are subject to, and administered in accordance with, 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, the Department of Commerce Financial Assistance Terms and Conditions, any specific award conditions imposed by NIST on a case-by-case basis, and all requirements listed in the NOFO that governs the project for which the center or consortium of centers was selected. These cooperative agreements are *not* subject to the MEP General Terms and Conditions; there is no expectation that program income will be generated under these awards. However, if program income is generated, it is subject to all the provisions of 2 CFR Part 200 and must be used to further the purposes of the project from which it was generated. There is also no requirement to provide matching contributions. The period of performance varies for each award but may not exceed three years. Any permissible subawards will be shown in the approved project budget, which shall be attached to, or incorporated by reference in, the CD-450 (*US Department of Commerce Financial Assistance Award*), which functions as the cooperative agreement. The terms and conditions of each cooperative agreement apply (i.e., flow down) to subawards as well, unless a particular section of 2 CFR Part 200 or the terms and conditions of the cooperative agreement specifically indicate otherwise.

### **C. Cooperative Agreements for Emergency Assistance**

In response to the COVID-19 pandemic, the NIST MEP Program awarded non-competitive cooperative agreements to existing NIST MEP Centers’ pursuant to the authorities provided by 15 USC 278k and the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act (Pub. L. No. 116-136 [Div. B.], March 27, 2020). These cooperative agreements are subject to, and administered in accordance with, 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, the MEP General Terms and Conditions (with allowances for sections 6, 10, 12, 13, 14, and 15 outlined in the CD-450), the Department of Commerce Financial Assistance Terms and Conditions, any specific award conditions imposed by NIST on a case-by-case basis, and all requirements listed in the RFA that governs the project for which the center or consortium of Centers was selected. There is no expectation that program income will be generated under these awards. However, if program income is generated, it is subject to all the provisions of 2 CFR Part 200 and must be used to further the purposes of the project from which it was generated. There is also no requirement to

provide matching contributions. The period of performance varies for each award but have a performance period ending on or before September 30, 2021, unless otherwise extended in writing by the NIST Grants Officer during the term of a project. Any permissible subawards will be shown in the approved project budget, which shall be attached to, or incorporated by reference in, the CD-450 (*US Department of Commerce Financial Assistance Award*), which functions as the cooperative agreement. The terms and conditions of each cooperative agreement apply (i.e., flow down) to subawards as well, unless a particular section of 2 CFR Part 200 or the terms and conditions of the cooperative agreement specifically indicate otherwise.

### **Source of Governing Requirements**

The Hollings Manufacturing Extension Partnership Program is authorized by 15 USC 278k. Implementing regulations are set forth in 15 CFR Part 290. The MEP CAP to solve new or emerging manufacturing problems is authorized by 15 USC 278k-1. The NIST MEP Emergency Assistance Program is authorized by 15 USC 278k and the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act (Pub. L. No. 116-136 (Div. B.), March 27, 2020).

### **Availability of Other Program Information**

Other program information is available on NIST's MEP webpage at <https://www.nist.gov/mep>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	N	N	Y	Y	Y	N

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

a. For base cooperative agreements to create and support centers, the center’s approved plans will specify the type of activities permitted under the award. Each subaward will specify the types of activities permitted under the subaward, which must be consistent with the center’s approved plans but may be only a subset of those activities outlined in the center’s approved plans. In any case, all activities will fit broadly into the following types of activities:

- (1) The establishment of automated manufacturing systems and other advanced production technologies, based on NIST-supported research, for the purpose of demonstrations and technology transfer (15 USC 278k(d)(1));
- (2) The active transfer and dissemination of research findings and center expertise to a wide range of companies and enterprises (15 USC 278k(d)(2)), particularly small and medium-sized manufacturers; and
- (3) The facilitation of collaborations and partnerships between small and medium-sized manufacturing companies, community colleges, and area career and technical education schools, to help those entities better understand the specific needs of manufacturers and to help manufacturers better understand the skill sets that students learn in the programs offered by such colleges and schools (15 USC 278k(d)(3)).

b. Cooperative Agreements to Solve New or Emerging Manufacturing Problems

The types of activities permitted under the award will be specified in the applicable NOFO and in the terms and conditions of each cooperative agreement.

c. Cooperative Agreements for Emergency Assistance

The center's approved plan will specify the type of activities permitted under the award. Each subaward will specify the types of activities permitted under the subaward, which must be consistent with the center's approved plans but may be only a subset of those activities outlined in the center's approved plan. In any case, projects funded must assist manufacturers to prevent, prepare for, and respond to coronavirus, with a focus upon assistance to small- and medium-sized manufacturers (SMEs) and rural manufacturers, and will not require matching funds. Such assistance will include:

- (1) Services that directly support manufacturers' ability to respond to the coronavirus through, for example, accelerated production of Personal Protective Equipment, and
- (2) Services that support manufacturers' ability to improve their competitiveness as the marketplace adapts to the coronavirus disruption. This scoping of eligible activities constitutes a narrowing of focus relative to the eligible scope of activities in the base awards to MEP Centers.

**B. Allowable Costs/Cost Principles**

1. For base and cooperative agreements to create and support Centers, allowable costs, including prior approval requirements for certain costs, are determined in accordance with 2 CFR Part 200, the Department of Commerce Standard Financial Assistance Terms and Conditions; the MEP General Terms and Conditions; and any specific award conditions imposed by NIST on a case-by-case basis and must be consistent with the approved project budget.
2. For cooperative agreements to solve new or emerging manufacturing problems, allowable costs, including prior approval requirements for certain costs, are determined in accordance with 2 CFR Part 200, the Department of Commerce Standard Financial Assistance Terms and Conditions; any specific award conditions imposed by NIST on a case-by-case basis and must be consistent with the approved project budget.

3. For cooperative agreements to provide emergency assistance to support NIST MEP Centers' efforts to support US manufacturers to prevent, prepare, and respond to the COVID-19 pandemic, allowable costs, including prior approval requirements for certain costs, are determined in accordance with 2 CFR Part 200, the Department of Commerce Standard Financial Assistance Terms and Conditions; the MEP General Terms and Conditions (with allowances for sections 6, 10, 12, 13, 14, and 15 outlined in the CD-450); and any specific award conditions imposed by NIST on a case-by-case basis and must be consistent with the approved project budget.

## **C. Cash Management**

1. *Grants and Cooperative Agreements to States*  
Applicable
2. *Grants and Cooperative Agreements to non-Federal Entities Other Than States*  
Applicable
3. *Cost-reimbursement Contracts under the Federal Acquisition Regulation*  
Applicable
4. *Loans, Loans Guarantees, Interest Subsidies, and Insurance*  
Not applicable
5. *All Pass-Through Entities*  
Applicable

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

- a. Base Cooperative Agreements to Create and Support Centers

Amounts provided by the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260) for the Hollings Manufacturing Extension Partnership under the heading "National Institute of Standards and Technology--Industrial Technology Services" shall not be subject to cost share requirements under 15 USC 278k(e)(2): Provided, that the authority made available pursuant to this section shall be elective for any Manufacturing Extension Partnership Center that also receives funding from a state that is conditioned upon the application of a federal cost sharing requirement. However, any nonfederal matching share pledged as voluntary cost share that is shown in the center's approved budget for the audit period

supersedes the cost share relief provided by Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260) and is binding on the nonfederal entity (see MEP General Terms and Conditions, #10).

Contractors and MEP center clients may not provide any form of the center's cost share without the prior written approval of the NIST grants officer (see MEP General Terms and Conditions, #10A).

The time spent by the center's manufacturing clients on technical assistance projects may not be considered in-kind cost share without the prior written approval of the NIST grants officer (see MEP General Terms and Conditions, #10A).

Nonfederal cost share contributions by subrecipients must comply with the allowability and documentation requirements set forth in 2 CFR section 200.306 and with the record access and record retention requirements set forth in 2 CFR sections 200.337(a) and 200.334. At a minimum, the following documents should be maintained by the center and made available in the event of an audit: Subaward Agreement with detailed budget; documentation to support valuation of nonfederal cost share being contributed by the subrecipient; and Subrecipient Financial Reporting to the Non-Federal Entity (see MEP General Terms and Conditions, #10D).

b. **Cooperative Agreements to Solve New or Emerging Manufacturing Problems**

Nonfederal entities are not required to provide matching contributions – unless otherwise required by the terms and conditions of a specific award.

c. **Cooperative Agreements for Emergency Assistance**

Not applicable to this award, unless the recipient pledged “voluntary committed cost sharing” (as defined in 2 CFR section 200.1) for this project, which is reflected in the approved budget for this award.

**2. Level of Effort**

Not Applicable

**3. Earmarking**

Not Applicable

**J. Program Income****1. Base Cooperative Agreements to Create and Support Centers**

- a. In accordance with 2 CFR section 200.307 and the below referenced MEP general terms and conditions. Program income earned by the nonfederal entity during the project period shall be retained by the nonfederal entity and shall be used by the nonfederal entity in the following order of priority during the funding period:
- (1) First, to finance the nonfederal share of the project (MEP General Terms and Conditions, #12.B.1). This amount is not included on the Schedule of Expenditures for Federal Awards (SEFA);
  - (2) Second, all program income earned in excess of that required to meet the minimum nonfederal share shall be added to the funds committed to the project by MEP and the nonfederal entity and must be used for the purposes and under the conditions of the MEP award (commonly referred to as the “additive approach”). Program income to be expended under the additive approach must be explained in detail in the center’s approved plans or in a separate written communication to the NIST grants officer and is subject to the prior written approval of the NIST grants officer (MEP General Terms and Conditions, #12.B.2). This amount is included on the SEFA; and
  - (3) Third, any remaining unexpended program income shall be deducted from the total allowable project costs to determine the net allowable program costs upon which the federal share of project costs is based, in accordance with written instructions from the NIST grants officer (commonly referred to as the “deductive approach”) (MEP General Terms and Conditions, #12.B.3). This amount is not included on the SEFA.
- b. Program income earned by a subrecipient during the project period shall be retained by the subrecipient and shall be used by the subrecipient in the following order of priority during the funding period:
- (1) First, to finance the nonfederal share of the subaward (MEP General Terms and Conditions, #12.C.1). This amount is not included on the SEFA;
  - (2) Second, all program income earned in excess of that required to meet the minimum nonfederal share shall be added to the federal and nonfederal funds committed to the subaward and must be used for the purposes and under the conditions of the MEP award as set forth in the terms of the subaward (commonly referred to as the



“additive approach”). Program income to be expended under the additive approach must be explained in detail in the center’s approved plans or in a separate written communication to the NIST grants officer and is subject to the prior written approval of the NIST grants officer (MEP General Terms and Conditions, #12.C.2). This amount is included on the SEFA; and

(3) Third, any remaining program income generated by a subrecipient must be remitted to the nonfederal entity by the subrecipient and shall be deducted from the total allowable project costs to determine the net allowable program costs upon which the federal share of project costs is based, in accordance with written instructions from the NIST grants officer (commonly referred to as the “deductive approach”) (see MEP General Terms and Conditions, #12.C.3). This amount is not included on the SEFA.

- c. Program income in excess of what is required annually to meet the nonfederal portion of the annual operating budget, and that cannot be expended during the operating period using either the additive and/or deductive approaches during the operating period, may be carried over by the center to the subsequent funding period if approved in writing by the NIST grants officer. Upon close-out of a MEP award, the NIST grants officer will provide the nonfederal entity with closeout instructions, including instructions regarding the disposition of program income (*see* MEP General Terms and Conditions, #12.H).
- d. Costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award (MEP General Terms and Conditions, #12.E).

2. *Cooperative Agreements to Solve New or Emerging Manufacturing Problems*

There is no expectation that program income will be generated under these awards. If program income is generated, in accordance with 2 CFR section 200.307, it must be expended for the purposes and under the conditions of the subject award (commonly referred to as the “additive approach”), with any remaining unexpended program income being deducted from the total allowable project costs to determine the net allowable program costs upon which the federal share of project costs is based.

3. *Cooperative Agreements for Emergency Assistance*

There is no expectation that program income will be generated under these awards. If program income is generated, in accordance with 2 CFR section 200.307, it must be expended for the purposed and under conditions of the subject award (commonly referred to as the “additive approach”), with any excess

program income to be disposed of pursuant to the “deductive method” (see 2 CFR section 200.307).

## **L. Reporting**

The following reporting requirements described in Section A.01 Reporting Requirements of the Department of Commerce Financial Assistance Standard Terms and Conditions, apply to awards in this program.

### **1. Base Cooperative Agreements to Create and Support Centers**

#### **a. Financial Reporting**

*SF-425, Federal Financial Report – Applicable*

The recipient shall submit an SF-425, Federal Financial Report, into the MEP’s Enterprise Information System (MEIS) on a semi-annual basis after the sixth and twelfth month of each operating year, unless other reporting intervals and/or due dates are identified by the NIST grants officer pursuant to a specific award condition. Reports will be due within 30 days after the end of each semi-annual reporting period. The recipient shall submit a final SF-425 within 90 days after the expiration date of the award. Recipients of new awards and funded award amendments issued by NIST after November 12, 2020, shall submit a final SF-425 within 120 days after the expiration date of the award.

#### **b. Performance Reporting**

Not Applicable

### **2. Cooperative Agreements to Solve New or Emerging Manufacturing Problems**

#### **a. Financial Reporting**

*SF-425, Federal Financial Report – Applicable*

The recipient shall submit an SF-425, Federal Financial Report, into the MEIS on a semi-annual basis after the sixth and twelfth month of each operating year, unless other reporting intervals and/or due dates are identified by the NIST grants officer pursuant to a specific award condition. Reports will be due within 30 days after the end of each semi-annual reporting period. The recipient shall submit a final SF-425 within 90 days after the expiration date of the award. Recipients of new awards and funded award amendments issued by NIST after November 12, 2020, shall submit a final SF-425 within 120 days after the expiration date of the award.

- b. Performance Reporting  
Not Applicable

**3. Cooperative Agreements for Emergency Assistance**

- a. Financial Reporting

*SF-425, Federal Financial Report – Applicable*

The recipient shall submit an SF-425, Federal Financial Report, into the MEIS on a quarterly basis, unless other reporting intervals and/or due dates are identified by the NIST grants officer pursuant to a specific award condition. Reports will be due within 30 days after the end of each reporting period. The recipient shall submit a final SF-425 within 90 days after the expiration date of the award. Recipients of new awards and funded award amendments issued by NIST after November 12, 2020, shall submit a final SF-425 within 120 days after the expiration date of the award.

- b. Performance Reporting  
Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**5. Special Reporting**

Not applicable, unless otherwise specified in the terms and conditions of an award.

## DEPARTMENT OF DEFENSE

### ASSISTANCE LISTING 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 to be performed by the grantees and the NGB.

#### II. PROGRAM PROCEDURES

The Adjutant General (TAG) of the state military department and the United States Property & Fiscal Officer (USPFO) 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, National Guard Grants and Cooperative Agreements, chapters 1 and 3.

An MCCA consists of four parts: the articles of agreement and three technical appendices. Articles I–XIII include 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 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.

#### Source of Governing Requirements

The NGB is authorized to enter into MCCAs under (1) 32 USC National Guard, Chapter 1, Organization; (2) 32 USC 101 (19); (3) 32 USC 106 and 107, which authorize the NGB to contribute funds for the support of the operations and training of the ARNG/ANG; and (4) NGR 5-1, National Guard Grants and Cooperative Agreements. Federal contribution is authorized by 10 USC 18233 and 18236, and DoD Instruction (DoDI) 1225.08 (10 May 2016) Enclosure 5.

**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.e.miller.civ@mail.mil](mailto:derrick.e.miller.civ@mail.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 this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	Y	Y	N	Y	N	N

**A. Activities Allowed or Unallowed**

Allowable activities are those designated as authorized in the appendices of the MCCA.

**B. Allowable Costs/Cost Principles**

1. Allowable costs under MCCAs are stated in NGR 5-1, Chapter 5, Paragraph 5-3 and the terms and conditions of the MCCA.

2. Indirect costs are unallowable except as stated in NGR 5-1, Chapter 5, Paragraph 5-3b.

## **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 is still 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 9-2).

### **2. Level of Effort**

Not Applicable

### **3. Earmarking**

Not Applicable

## **H. Period of Performance**

1. Federal MCCA design and construction funds are available for a period of up to five years and must be obligated within five years from the execution date of the MCCA or within the period of funds availability specified in the agreement.
2. 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 acting through its grants officer—the USPFO—may extend the 90-day limit for good cause (NGR 5-1, Chapter 11, Paragraph 11-10).
3. 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-270, Request for Advance or Reimbursement* – Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## DEPARTMENT OF DEFENSE

### ASSISTANCE LISTING 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 (ARNG/ANG) 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). 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) of the state military department and the United States Property & Fiscal Officer (USPFO) are responsible for the execution of the MCA and appendices.

#### 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 101(19); (5) 32 USC 106 and 107, which authorize NGB to contribute funds for the support of the operation/training of the ARNG/ANG. 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, Construction and Facilities Management Office Procedures (July 18, 2003), which is available at <https://www.ngbpmc.ng.mil/Portals/27/Publications/NGPAM/ngpam%20420-10.pdf?ver=2018-09-07-082536-157>.



**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, NGB Headquarters Internal Review Office, at (703) 607-0755, DSN 327-0755, or email to [derrick.e.miller.civ@mail.mil](mailto:derrick.e.miller.civ@mail.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 this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	Y	N	N	Y	N	N

**A. Activities Allowed or Unallowed**

1. Allowable activities for each appendix are those designated as authorized in the template for that appendix 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 III of the MCA).
2. Unallowable activities are those listed in the unauthorized activities/charges section of each individual appendix.

**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 of the MCA and in each particular appendix. 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. States bill directly for the cost of premiums or self-insurance (e.g., unemployment, workers compensation). The amount billed for "insurance" is based on the proportion of state employees who work under NGB-funded appendices. The amount billed for retirement benefits is based on the wages of each employee working under NGB-funded appendices. In each case, those costs are adjusted by the federal-state share of federal support (e.g., training areas are 100 percent federally supported, armories are 50-50 federal-state shared).

However, for these costs to be reimbursable, all 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 Central Service Cost Allocation Plan (CSCAP) approved by the Department of Health and Human Services (HHS), are not reimbursable.

**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 for real property, 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 generated for facilities 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 5).

- 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. The federal share of program income may not be used to meet a matching requirement (NGR 5-1, Chapter 6).

## **2. Level of Effort**

Not Applicable

## **3. Earmarking**

Not Applicable

## **H. Period of Performance**

1. NGB O&M CAs are funded with one-year appropriations. By policy, only state costs obligated during the period of the federal fiscal year or period of performance identified in the CA are reimbursable. Allowable state costs obligated after 30 September (e.g., 2018) are reimbursable with federal funds appropriated for the following fiscal year’s CA (e.g., fiscal year 2019). Whether and when state funds are properly obligated is determined by state law or procedure (NGR 5-1, chapters 3 and 11).
2. 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 expenditure 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, the parties may also agree on a specific start or effective date (NGR 5-1, Chapter 11).
3. 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).
4. 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).

5. 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 that 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).

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

Not Applicable

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****ASSISTANCE LISTING 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****A. Overview**

Section 202 funds are awarded to private nonprofit groups (sponsors) and, in some cases, for-profit limited partnerships, provided that the sole general partner is either an otherwise qualifying nonprofit or a corporation wholly owned and controlled by the nonprofit. Only a sponsor may obtain a Section 202 capital advance fund reservation, which will be transferred to an owner entity to be organized by the sponsor after award. Capital advances (direct payments) are provided to finance the construction, reconstruction, moderate or substantial 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/rehabilitation 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. The initial PRAC term is one year. Subsequent contracts are renewable annually for up to a one-year term subject to the availability of funds.

This program is exempt from 2 CFR Part 200, except Subpart F and 2 CFR section 200.425, based on the 24 CFR section 84.2 definition of "Award," and 2 CFR section 200.40 definition of "federal financial assistance."

**B. 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 two months after the owner's fiscal year-end and the

audited financial statement is due nine months after its fiscal year-end (24 CFR section 5.801). The financial statement must include the financial activities of this program.

### **C. 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**

Other 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), HUD Notice H96-102, and HUD Notice 2011-18, Updated Processing Guidance for the Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities Programs. These are available at HUD's Client Information Policy Systems (HUDCLIPS) [https://www.hud.gov/program\\_offices/administration/hudclips](https://www.hud.gov/program_offices/administration/hudclips) 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 this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	N	N	N	N	Y	N	Y

**A. Activities Allowed or Unallowed**

1. The project shall provide the necessary services for the occupants, which may include, but not limited to, health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services as well as transportation where necessary to facilitate access to these 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).

**E. Eligibility**

**1. Eligibility for Individuals**

Section 202 (Assistance Listing 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-270, Request for Advance or Reimbursement* – Not Applicable

b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

c. *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)* – Recipients under the 202 NOFA are subject to Section 3 reporting requirements under 24 CFR 75.25 and will submit HUD 60002 information using the automated Section 3 Performance Evaluation and Registry System (SPEARS) (24 CFR sections 135.3(a)(1) and 135.90) or successor form or system.

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions**

**1. Wage Rate Requirements**

**Compliance Requirements** 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 Wage Rate Requirements. A group home for persons with disabilities is not covered by these labor standards (24 CFR section 891.155(d)).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

## 2. Use of Project Funds

**Compliance Requirements** 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 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.

## 3. Replacement Reserve

**Compliance Requirements** 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.

**4. Residual Receipts Account**

**Compliance Requirements** Any Surplus Cash 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****1. Capital Advance**

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 2 CFR Part 200, Subpart F.

## 2. *CARES Act Funding*

Housing Notice 2020-08 announced the availability of supplemental operating funds for Section 8, Section 202, and Section 811 properties to prevent, prepare for, and respond to coronavirus disease discovered in 2019 (COVID-19) and establishes an application process for owners of properties assisted under these programs to request funds for one or more of these purposes.

The first funding round due date was August 5, 2020, with payments sent to owners in September and November 2020. The second funding round was covered under Housing Notice 2020-11, applications were due 12/11/2021, with payments to owners in February and March 2021. HUD announced a third round of funding and revised Housing Notice 2020-11 to include the new due date for submissions and is including the following information regarding the financial reporting requirements. The revised Notice 2021-01 was published in 4/13/2021 applications were due by 4/26/2021 and payments were sent to owners in June and July 2021.

Amounts received from COVID-19 Supplemental Payments (CSP) shall be treated as project funds and must be managed consistent with other rental assistance provided by HUD under the applicable HAP, PRAC, SPRAC, or PAC contract. CSP funds should be deposited into the project's general operating account (account 1120 on the Balance Sheet) and recorded as Special Claims Revenue (account 5193). The owner should ensure that a footnote in the *Notes to the unaudited and audited Annual Financial Statements* states how much was received and how it was used. These award amounts must be included in the Schedule of Expenditures of Federal Awards (SEFA) for the year. Any deposit of surplus cash in the project residual receipts account or retention of amounts in the project operating account that is done in accordance with Section VI of Housing Notice 20-08, 20-11, 21-1, or subsequent guidance must also be clearly denoted in the Notes to the Financial Statement. As with other project funds, the expenditure of CSP funds must be done in a manner that is consistent with all applicable civil rights laws, including the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. See 24 CFR section 5.105(a).

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****ASSISTANCE LISTING 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****A. Overview**

Section 811 are awarded to private nonprofit groups (sponsors) and, in some cases, for-profit limited partnerships, provided that one or more private nonprofit organizations hold all general partner interests. Only a sponsor may obtain a Section 811 capital advance fund reservation, which will be transferred to an owner entity to be organized by the sponsor after award. Capital advances (direct payments) are provided to finance the construction, reconstruction, moderate, or substantial rehabilitation, or acquisition (with or without rehabilitation) 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 2.4(b)) for the first 60 days of vacancy, given certain conditions are met (24 CFR section 891.445).

**This program is exempt from 2 CFR Part 200 except Subpart F and 2 CFR section 200.425 based on the 24 CFR section 84.2 definition of “Award” and 2 CFR section 200.40 definition of “federal financial assistance.”**

## **B. 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. For newly occupied properties, owners are required to submit an unaudited financial statement, which is due 90 days after the owner’s fiscal year-end, and an audited financial statement is due nine months after its fiscal year-end (24 CFR section 5.801) in the year the property is first occupied. The financial statement must include the financial activities of this program.

## **C. 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 this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	N	N	N	N	N	N	Y

**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 PRAC (24 CFR section 891.120).

**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). Eligibility is only determined at move-in or at initial certification except in circumstances whereas family composition changes after initial occupancy a determination must be made as to whether the remaining member of the household will be eligible to receive assistance. Eligibility requirements are found in HUD's regulations at 24 CFR Part 5.

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

**N. Special Tests and Provisions**

**1. Wage Rate Requirements**

**Compliance Requirements** 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 Wage Rate Requirements.

A group home for persons with disabilities is not covered by these labor standards (24 CFR section 891.155(d)).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

**2. Use of Project Funds**

**Compliance Requirements** 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.

### **3. Replacement Reserve**

**Compliance Requirements** 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.

### **4. Residual Receipts Account**

**Compliance Requirements** Any surplus 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 section 891.400(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**

### **1. *Capital Advance***

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 2 CFR Part 200, Subpart F.

### **2. *CARES Act Funding***

Housing Notice 2020-08 announced the availability of supplemental operating funds for Section 8, Section 202, and Section 811 properties to prevent, prepare for, and respond to coronavirus disease discovered in 2019 (COVID-19) and establishes an application process for owners of properties assisted under these programs to request funds for one or more of these purposes.

The first funding round due date was August 5, 2020, with payments sent to owners in September and November 2020. HUD is in the process of announcing a second round of funding and is revising this Housing Notice 2020-08 to include the new due date for submissions and is including the following information regarding the financial reporting requirements. The revised Notice 2020-11, *Continued Availability of Funds for COVID-19 Supplemental Payments for Properties Receiving Project-Based Rental Assistance under the Section 8, Section 202, or Section 811 Program*, was published on 11/24/2020.

Amounts received from COVID-19 Supplemental Payments (CSP) shall be treated as project funds and must be managed consistent with other rental assistance provided by HUD under the applicable HAP, PRAC, SPRAC, or PAC contract. CSP funds should be deposited into the project's general operating account (account 1120 on the Balance Sheet) and recorded as Special Claims Revenue (account 5193). The owner should also

include a footnote in the Notes to the Annual Financial Statements that states how much was received and how it was used. These amounts must be included in the Schedule of Expenditures of Federal Awards (SEFA) for the year. Any deposit of surplus cash in the project residual receipts account or retention of amounts in the project operating account that is done in accordance with Section VI of Notice 2020-11 must also be clearly denoted within the Notes to the Annual Financial Statements. As with other project funds, the expenditure of CSP funds must be done in a manner that is consistent with all applicable civil rights laws, including the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. See 24 CFR 5.105(a).

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****ASSISTANCE LISTING 14.182 SECTION 8 NEW CONSTRUCTION AND  
SUBSTANTIAL REHABILITATION****ASSISTANCE LISTING 14.195 SECTION 8 HOUSING ASSISTANCE PAYMENTS  
PROGRAM****ASSISTANCE LISTING 14.249 SECTION 8 MODERATE REHABILITATION SINGLE  
ROOM OCCUPANCY****ASSISTANCE LISTING 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****A. Overview**

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. 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). When a PHA is the contract administrator, HUD enters into annual contributions contracts with PHAs that 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 provides 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 also provides 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 HAP 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.

## **B. Subprograms/Program Elements**

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 nonprofit 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).

## **C. Other**

### **1. *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 two months after the PHA’s fiscal year-end and the audited financial statement is due nine 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.

### **2. *Annual Adjustments***

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 Mod Rehab 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://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/mfhsec8](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhsec8) that provides general information about these programs. HUD notices are available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips).

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
N	N	Y	Y	N	N	N	N	N	Y	N	Y

**E. Eligibility**

**1. Eligibility for Individuals**

The PHA or owner, as applicable, must:

- a. 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, 883.701, 884.214, 886.119, and 886.318).
- b. Determine the total tenant rent payment in accordance with 24 CFR section 5.613.
- c. 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).

- d. 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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. 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.

#### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

### **N. Special Tests and Provisions**

#### **1. Contract Rent Adjustments**

**Compliance Requirements** 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 Objectives** 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 Requirements** 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 Objectives** 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 Requirements** 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 ensure 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 Objectives** Determine whether the PHA or owner performs the required inspections to ensure 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 ensures 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 Requirements** 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 Objectives** 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 Requirements** 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 Requirements** 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****ASSISTANCE LISTING 14.218 COMMUNITY DEVELOPMENT BLOCK GRANTS/ENTITLEMENT GRANTS****ASSISTANCE LISTING 14.225 COMMUNITY DEVELOPMENT BLOCK GRANTS/SPECIAL PURPOSE GRANTS/INSULAR AREAS****I. PROGRAM OBJECTIVES**

The primary objective of the Community Development Block Grant (CDBG) Entitlement Program (metropolitan 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 expanding economic opportunities, principally for persons of low- and moderate-income (24 CFR sections 570.1, 570.200, 570.420, and 570.429).

The program is authorized under Title I of the Housing and Community Development Act (HCDA) of 1974, as amended. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act provided an emergency supplemental appropriation of CDBG funding for states, entitlement communities, and insular areas. This appropriation, referred to as CDBG-CV program funds, to distinguish it from the annual formula CDBG program, is to be used similarly as annual formula grants, but specifically to prevent, prepare for, and respond to coronavirus.

The Community Development Block Grant disaster recovery (CDBG-DR) and Community Development Block Grant mitigation (CDBG-MIT) funding is authorized under Title I of the Housing and Community Development Act of 1974, as amended. Public Laws are the appropriation acts that provide funding for each disaster: Pub. L. No. 116-20, Pub. L. No. 115-254, Pub. L. No. 115-123, Pub. L. No. 115-72, Pub. L. No. 115-56 (Division B), Pub. L. No. 115-31 (Sec 421), Pub. L. No. 114-254, Pub. L. No. 114-223, Pub. L. No. 114-113, Pub. L. No. 113-2, Pub. L. No. 112-55, Pub. L. No. 111-212, Pub. L. No. 110-329, Pub. L. No. 110-252, Pub. L. No. 110-116, Pub. L. No. 109-234, Pub. L. No. 109-148, Pub. L. No. 108-324, Pub. L. No. 107-206, Pub. L. No. 107-117, Pub. L. No. 107-73, and Pub. L. No. 107-38. The auditor must consult the relevant public law for the CDBG-DR award. In addition to CDBG-DR, HUD is now authorized to administer CDBG-MIT funds under Title I of the Housing and Community Development Act of 1974, as amended. The Public Laws that appropriated funds for this purpose include Pub. L. No. 115-123 (Division B) and Pub. L. No. 116-20 (Division B). The rules and regulations governing CDBG funds apply to CDBG-DR and CDBG-MIT funds unless otherwise waived or altered in a *Federal Register* notice.

All of the above-referenced programs, appropriations, and funding have as their core statutory basis Title I of the Housing Community Development Act (HCDA) of 1974, as amended. Unless amended by statute, regulation, or notice, specific to the particular CDBG award, recipients of any and all CDBG funds must ensure that CDBG funds are used in accordance with all program requirements as promulgated in the HCDA and in the program regulations in Part 570.

## II. PROGRAM PROCEDURES

### A. Overview

The program objective is to be achieved in two ways. First, a grantee can only use funds to assist eligible activities that meet one or more of the following three national objectives of the program: benefit low- and moderate-income persons, aid in the prevention of slums and blight or meet community development needs having a particular urgency. Every CDBG-CV funding recipient must document how each CDBG-CV funded activity prevents, prepares for, and responds to coronavirus. Second, the grantee must spend at least 70 percent of its funds, over a period of one, two, or three years as specified by the grantee in its certification, for activities that address the national objective of benefitting low- and moderate-income persons. For CDBG-CV, this 70 percent overall benefit test applies to total expenditures over the life of the grant, regardless of program year of expenditure and compliance is determined separately from the annual formula CDBG program.

Metropolitan cities and urban counties must submit certain certifications and a three- to five-year Consolidated Housing and Community Development Strategy and Plan (the “Consolidated Plan” or “Con Plan”) describing how they propose to use the funds for housing and community development activities. They also must submit annually the certifications identified at 24 CFR section 91.225 and a one-year Action Plan indicating how they propose to use the funds to further their three- to five-year goals and objectives. 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)). Insular areas, including American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the US Virgin Islands, may submit an abbreviated consolidated plan pursuant to 24 CFR 91.235.

Except for the following differences, non-entitlement counties in Hawaii (see Assistance Listing 14.228, II, “Program Procedures”) must follow the requirements of CDBG Entitlement Grants (Assistance Listing 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); (3) 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)); (4) non-entitlement counties are not eligible to use the exception criteria in 24 CFR section 570.208(a)(1)(ii); and (5) 24 CFR section 570.307 (Urban Counties) and 24 CFR section 570.308 (Joint Requests) would not apply to non-entitlement counties in Hawaii.

### B. Subprograms/Program Elements

#### 1. *Disaster Recovery and Mitigation – CDBG-DR and CDBG-MIT*

HUD’s Disaster Recovery and Special Issues Division administers CDBG-DR and CDBG-MIT funding. Foundationally, these programs are governed by the same CDBG regulations, but HUD issues waivers and alternative requirements to

allow additional flexibilities to allow grantees to use the funds for the purpose of disaster recovery or mitigation. For disaster recovery, HUD provides flexible grants to help cities, counties, and states recover from Presidentially declared disasters, especially in low-income areas, subject to availability of supplemental appropriations. In response to presidentially declared disasters, Congress may appropriate additional funding for the Community Development Block Grant (CDBG) program as Disaster Recovery grants to rebuild the affected areas and provide crucial seed money to start the recovery process. Since CDBG Disaster Recovery (CDBG-DR) assistance may fund a broad range of recovery activities, HUD can help communities and neighborhoods that otherwise might not recover due to limited resources.

HUD also provides CDBG-MIT grants to help presidentially declared disaster cities, counties and states alleviate risk and reduce future losses. Through this grant, HUD can help grantees support data-driven project design, build grantees' capacity to analyze risks and update its hazard mitigation plans, and support community risk reduction policy development.

The *Federal Register* notices that govern the use of CDBG-DR and CDBG-MIT funds are available at <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices>. Auditors should consult the applicable *Federal Register* notices for the specific CDBG-DR and CDBG-MIT awards allocated to the state. Please note, American Samoa, the Commonwealth of the Northern Mariana Islands, the US Virgin Islands, and Puerto Rico are considered as states under Disaster Recovery and Mitigation allocations.

2. *Declared Disaster Recovery Fund (DDRF)*

Pursuant to 42 USC 5306(c)(4), in the event of a major disaster declared by the President, HUD may make available to metropolitan cities and urban counties located or partially located in areas affected by the disaster, any amounts that become available as a result of actions under 42 USC 5304(e) or 5311. These funds shall give priority to providing emergency assistance and recovery from the disaster and grant agreements or amendments for such funds may include special conditions governing their use. In all other respects, these reallocated funds shall follow the requirements of CDBG Entitlement Grants.

3. *Neighborhood Stabilization Program (NSP)*

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 of HERA is referred to as the Neighborhood Stabilization Program (NSP). The NSP funding covered in this cluster is the funding provided under HERA. These HERA funds are also referred to as NSP1. Additional funding for NSP was authorized by Section 1497

of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. No. 111-203, July 21, 2010), and is referred to as NSP3. **NSP funding provided under the American Recovery and Reinvestment Act of 2009 (ARRA) is referred to as NSP2 and NSP-TA, which are covered by the Neighborhood Stabilization Program (Recovery Act Funded) (Assistance Listing 14.256) and audited separately.**

The NSP1 and NSP3 grants are special CDBG allocations to address the problem of abandoned and foreclosed homes. HERA and the Dodd-Frank Act established the need, targets the geographic areas, and limits the eligible uses of NSP funds. NSP3 requirements are in the NSP notice published on October 19, 2010 (75 FR 64322-64348), which lists allocations, requirements, and waivers. The NSP3 Notice incorporates the NSP1 Bridge Notice, changes made by ARRA, and additional changes and clarification. The notices are available at <https://www.hudexchange.info/nsp/nsp-laws-regulations-and-federal-register-notices/>.

4. *FY 2020 Emergency, Supplemental Appropriation – CDBG-CV*

The Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. No. 116-136, March 27, 2020) provided an emergency supplemental appropriation of CDBG funding for states, entitlement communities, and insular areas. Recipients may undertake a wide range of activities directed toward assisting their community to prevent, prepare for, and respond to coronavirus. Examples include, but are not limited to, public services designed to increase the capacity of the local health system to address the pandemic; emergency income payment programs to assist low- and moderate-income individuals and families with items such as food, clothing, housing, or utilities for a period of up to six consecutive months; interim assistance activities to address the public health emergency, such as “pop-up,” temporary coronavirus testing sites; grants or loans to businesses to avoid or mitigate job losses caused by business loss due to social distancing guidelines; assistance to microenterprises or other for-profit entities when the recipient determines that the provision of such assistance is appropriate to carry out critical medical, food delivery, cleaning, and other services to support home health and quarantine; assistance for the acquisition, rehabilitation, or construction of facilities for coronavirus testing, diagnosis, or treatment; and coronavirus planning and capacity building activities.

Additional activities that address coronavirus were identified in the April 30, 2021, Quick Guide, CDBG-CV PPR Tieback Flexibilities. These include but are not limited to: providing technical assistance, grants, loans, and other financial assistance to establish, stabilize, and expand microenterprises to revitalize communities and local economies affected by coronavirus or to prepare for and prevent future outbreaks; providing working capital assistance to small businesses or entrepreneurs to enable creation and retention of jobs held by low- and moderate-income persons caused by business closures related to community mitigation measures or other job loss and economic disruption resulting from

coronavirus; increasing the capacity and availability of daycare or after-school services serving low/mod areas in which parents have dropped out of the workforce since January 2020 to enable workers to rejoin the workforce as a public service; rehabilitation of single unit and multifamily housing units to respond to living conditions (such as mold, lead-based paint, and poor ventilation) associated with more severe coronavirus disease or poorer post-COVID health advice; conversion of public/commercial buildings into affordable housing and acquisition of property for housing to respond to residential over-crowding associated with coronavirus spread and with more severe coronavirus disease and poorer post-COVID health outcomes; new housing construction carried out by a qualified Community Based Development Organization (CBDO) to respond to residential over-crowding associated with coronavirus spread and with more severe coronavirus disease and poorer post-COVID health outcomes; constructing a public facility such as a park serving a low and moderate income area to provide suitable outdoor fitness, and social space where insufficient facilities are available to support social distancing guidance; preventing or addressing the spread of coronavirus in a vulnerable population by acquiring and rehabilitating, or constructing, a group living facility for persons recovering from substance abuse disorder; and constructing a public improvement, such as extending broadband infrastructure in an underserved area or reconstructing degraded water lines, to support tele-school and telemedicine and to ensure potable water to homes, schools, and health providers.

Entitlement communities develop their own programs and funding priorities so long as programs/activities conform to the statutory standards and program regulations. Specific statutory provisions of CDBG-CV funds include the suspension of the Housing and Community Development Act provision that caps expenditures for public services activities; the submission of an amended Consolidated Plan, 2019 Action Plan, or 2020 Action Plan for use of CDBG-CV funds no later than August 16, 2021; the ability of a grantee to adopt and use expedited procedures to prepare, propose, modify, or amend its annual statement of activities (Annual Action Plan) to provide citizens with notice and a reasonable opportunity to comment of no less than five days; the suspension of in-person public hearings and the adoption of virtual public hearings to fulfill public hearing requirements for the use of all funds made available under the CARES Act as long as national or local health authorities recommend social distancing and limiting public gatherings for public health reasons; and the requirement that adequate procedures are in place to prevent duplication of benefits as required by the Stafford Act and in accordance with Disaster Recovery Reform Act of 2018.

Recipients may contract with other local agencies or nonprofit organizations to carry out part or all of their programs. CBDOs may carry out neighborhood revitalization, community economic development or energy conservation projects to further achieve the national objectives of the CDBG program. CDBG-CV funds may be used to cover or reimburse allowable costs consistent with preventing, preparing for, and responding to coronavirus incurred by a locality for costs incurred on or after January 21, 2020. All eligible activities must either benefit



low-and moderate-income persons, aid in the prevention or elimination of slums or blight or meet other community development needs having a particular urgency that the grantee is unable to finance on its own.

### **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). Implementing regulations are located at 24 CFR Part 570.

The *Federal Register* notices that govern the use of CDBG-DR and CDBG-MIT funds are located at <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices>. Auditors should consult the applicable *Federal Register* notices for the specific CDBG-DR and CDBG-MIT awards allocated to the state or unit of general local government.

NSP1 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). NSP3 is authorized by Title XII of ARRA (123 Stat. 217). 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 (NSP3 Notice) on October 19, 2010 (75 FR 64322-64348) to incorporate the bridge notice, the changes made by ARRA, and additional changes and clarifications. Most of these requirements were incorporated into the NSP3 Notice.

CDBG-CV is authorized in title 12 of Division B of the CARES Act. HUD published a “*Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for CDBG-CV Grants, FY 2019 and 2020 CDBG Grants, and for Other Formula Programs*” (CDBG-CV Notice) that advises the public of the program rules, alternative requirements, and the waivers of regulations provided to grantees (August 20, 2020, *Federal Register*, 85 FR 51457-51475).

### **Availability of Other Program Information**

Further, additional information about the CDBG-DR and CDBG-MIT is available at the HUD CDBG-DR website at <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/>.

Additional information about the NSP laws, regulations, and notices are available at <https://www.hudexchange.info/programs/nsp/nsp-laws-regulations-and-federal-register-notices/>.

Specific NSP notices are available at:

NSP Notice (Docket No. FR-5255-N-01) at  
<https://www.govinfo.gov/content/pkg/FR-2008-10-06/pdf/E8-23476.pdf>

NSP1 Bridge Notice (Docket No. FR-5255-N-02) at  
<https://www.govinfo.gov/content/pkg/FR-2009-06-19/pdf/E9-14360.pdf>

NSP “Definition and Modification” Notice (Docket No. 5321-N-03) at  
<https://www.govinfo.gov/content/pkg/FR-2010-04-09/pdf/2010-8131.pdf>

NSP3 Notice (Unified NSP1 and NSP3 Notice) (Docket No. FR-5447-N-01) at  
<https://www.govinfo.gov/content/pkg/FR-2010-10-19/pdf/2010-26292.pdf>

NSP Closeout Notice (November 27, 2012) at  
<https://www.govinfo.gov/content/pkg/FR-2012-11-27/pdf/2012-28642.pdf>

Notice of Formula Allocations and Program Requirements for NSP1 and NSP3 Formula Grants;  
Amendment: Updated Foreclosure Data (May 21, 2013) at  
<https://www.govinfo.gov/content/pkg/FR-2013-05-21/pdf/2013-11999.pdf>

Notice of Changes to NSP Closeout Requirements Related to Program Income (June 14, 2016) at  
<https://www.govinfo.gov/content/pkg/FR-2016-06-14/pdf/2016-14062.pdf>

Notice of Changes to NSP Closeout Requirements Related to Program Income Amendment  
(September 12, 2019) at  
<https://www.govinfo.gov/content/pkg/FR-2019-09-12/pdf/2019-19708.pdf>

Additional information about CDBG-CV, including the latest grantee guidance and any  
additional waivers or program flexibilities available to grantees are available at  
[https://www.hud.gov/program\\_offices/comm\\_planning/cdbg\\_programs\\_covid-19](https://www.hud.gov/program_offices/comm_planning/cdbg_programs_covid-19)

### **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	N	Y	N	Y	Y	N	Y

**A. Activities Allowed or Unallowed**

- 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, 570.208, and 570.420). Section III.B.5.(f) of the CDBG-CV Notice, *Eligible Activities*, further specifies that a grantee may use CDBG–CV funds only for those activities carried out to prevent, prepare for, and respond to coronavirus. By law, use of funds for any other purpose is unallowable. Some funded activities may respond to the direct effects of the virus, others to the indirect effects. Some CDBG-eligible activities, such as public services, economic development and microenterprise assistance, and public facilities and improvements clearly tie back to the purposes of the CARES Act. HUD is not prohibiting grantees, however, from carrying out any particular CDBG eligible activity described in the HCD and 24 CFR 570, because other CDBG eligible activities, such as acquisition of real property, can justifiably be used to fulfill the CARES Act purposes depending upon the circumstances.
- CDBG 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 nonfederal 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 and program administrative costs,

subject to the limitations at 24 CFR section 570.200(g); (l) acquisition, construction, reconstruction, rehabilitation, or installation of commercial or industrial buildings; (m) assistance to community-based development organizations; (n) activities related to privately owned utilities; (o) assistance to private, for-profit businesses, when appropriate to carry out an economic development project; (p) construction of housing assisted under Section 17 of the United States Housing Act of 1937; (q) reconstruction of properties; (r) direct homeownership assistance to facilitate and expand homeownership; (s) technical assistance to public or private nonprofit entities for capacity building; (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) residential housing rehabilitation; (y) code enforcement in deteriorated or deteriorating areas, (z) lead-based paint hazard evaluation and removal; (aa) 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(a); 24 CFR sections 570.201 through 570.206, as well as 570.207 for ineligible activities).

3. Entitlement grantees and Insular Area grantees 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 nonprofit organizations for home ownership under Section 17(d) of the US 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).

Under the Section 108 Loan Guarantee Program, CDBG grantees can borrow up to five times their most recent CDBG grant by issuing federally guaranteed notes. To ensure that CDBG–CV funds are used for the purposes authorized by the CARES Act, HUD issued the following alternative requirement to sections 108(b) and (c) of the HCD Act (42 USC 5308(c)): CDBG–CV funds shall not be factored

into a grantee's Section 108 borrowing authority. Regarding the use of CDBG-CV funds, A grantee may use CDBG-CV funds to make a direct payment of principal, interest, or any fees due under a Section 108 note only if the use of funds is to prevent, prepare for, and respond to coronavirus. The necessity of such use shall be documented by the grantee or the subrecipient that provided the assistance (e.g., if Section 108 funds were used by the grantee to provide assistance to a for-profit business in the form of a loan and the business is unable to make a payment due to the reduction in revenue caused by coronavirus, any restructuring of that loan must be supported by modification to loan documents that document the relationship to coronavirus). When CDBG-CV funds are used to subsidize or replace principal, interest, or fees due under a loan previously made with guaranteed loan funds as part of an activity to assist a for-profit or a subrecipient, and the CDBG-CV assistance is necessary to respond to the impact of coronavirus (e.g., a third-party business borrower whose loan is the intended source for repayment of a Section 108 loan is not collecting sufficient revenue due to local public health conditions), the documentation that the original assisted activity satisfies national objective criteria shall be sufficient to demonstrate that the use of the guaranteed loan funds and the additional CDBG-CV assistance meet a CDBG national objective.

4. All activities that a grantee undertakes during its CDBG program year must be identified in an annual action plan or an amended action plan. Plan amendments are required to reflect changes in activities or funding decisions (24 CFR Part 91, Subpart C, and 24 CFR section 91.505). A grantee was required to apply for CDBG-CV funds by submitting a substantial amendment to its most recently approved annual action plan (either the 2019 or 2020 Action Plan). As part of the application submission, HUD temporarily waived the requirements (found at 42 USC 12706 and 91.225(a)(5)) that grantees certify that the housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan portion of the consolidated plan. HUD imposed a related alternative requirement that allowed grantees to submit those certifications when the grantees submit their next full (three–five year) consolidated plan due after the 2020 program year. Grantees may not have considered the needs associated with CDBG-CV funds when developing their current consolidated plan strategic plan and needs assessment. In conjunction, HUD temporarily waived 42 USC 5304(e) to the extent that it requires HUD to annually review grantee performance under the consistency criteria. This waiver also only applies until the grantee submits its next full (three–five year) consolidated plan due after the 2020 program year.

When the CDBG-CV application was submitted as a substantial amendment to either the 2019 or 2020 Action Plan, the substantial amendment must have included the CDBG-CV allocation as an available resource for the year. The amendment must have identified the proposed use of all funds and how the funds would be used to prevent, prepare for, and respond to coronavirus. To permit an expedited application process, HUD waived statutory provisions at 42 USC 12705(a)(2) to the extent they require updates to the housing and homeless needs

assessment, (24 CFR 91.205 and 91.405), housing market analysis (24 CFR 91.210 and 91.410), and strategic plan (24 CFR 91.215 and 91.415. HUD also waived 24 CFR 91.220 (entitlements), to the extent those regulations limit the action plan to a specific program year, to permit grantees to prepare substantial amendments to either the 2019 or 2020 annual action plan).

HUD also issued a waiver and alternative requirement to 24 CFR 91.505 to facilitate the use of the CDBG-CV funds to the extent necessary to require submission of the substantial amendment to HUD for review in accordance with 24 CFR 91.500, and required that, to receive a CDBG-CV grant, a grantee must also submit a SF-424, SF-424D, and the certifications at 24 CFR 91.225(a) and (b).

When CDBG-CV funds were included in a substantial amendment to either the 2019 or 2020 Action Plan, existing cooperation agreements between a local government and an urban county governing other CDBG funds in the most recently submitted annual action plan (for purposes of either an urban county or a joint program) automatically covered CDBG-CV funding as well. These cooperation agreements will continue to apply to the use of CDBG-CV funds for the duration of the CDBG-CV grant.

The action plan submission procedures in 24 CFR Part 91 (including consultation and a public hearing) apply to grantees that choose to submit CDBG-CV applications by including CDBG-CV funds in a new annual action plan submission (2020 Action Plan). Content of action plans is described at 24 CFR 91.220.

The waivers and alternative requirements apply to all allocations of CDBG-CV funds. HUD encourages grantees to apply for additional allocations of CDBG-CV funds as they are announced by submitting substantial amendments to the same annual Action Plan that they used to apply for the first CDBG-CV allocation.

An application submitted as a substantial amendment must include the CDBG-CV allocation as an available resource for the year and include the proposed use of all funds and how the funds will be used to prevent, prepare for, and respond to coronavirus.

HUD strongly encouraged grantees to apply for allocations through substantial amendments as they were announced. However, grantees that had not submitted applications for CDBG-CV funds when additional allocations were announced may submit a single application for all allocations as a substantial amendment to either the 2019 or 2020 annual Action Plan.

The CARES Act and the CDBG-CV Notice amend the submission deadline for the Consolidated Housing and Community Development Strategy and Plan (Consolidated Plan) or annual action plan amendment for the use of CDBG-CV

funds and 2019 and 2020 federal fiscal year annual formula CDBG funds to no later than August 16, 2021. Please see III.N. “Special Tests and Provisions” of the Compliance Requirements below for additional waivers and alternative requirements regarding citizen participation prior to plan or plan amendment submission.

5. In compliance with the HCDA, CDBG funds are not to be used to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance. HUD has concluded, however, that when CDBG funding is used for purposes of the CARES Act, it is not considered to substantially replace the amount of local financial support previously provided to community development activities.

All CDBG-CV grantees are required to establish and maintain adequate procedures to prevent any duplication of benefits for assisted activities (as discussed in Section III.B.9. of the CDBG-CV Notice). To demonstrate that no financial assistance has been received or is available to pay costs charged to a CDBG-CV grant, a grantee may demonstrate that no other funds are available for an activity by maintaining records of compliance with mandatory duplication of benefits requirements described in Section III.B.9.

6. The CARES Act and the CDBG-CV Notice eliminated the 15 percent limitation on the use of CDBG-CV and 2019 and 2020 federal fiscal year CDBG funds to prevent, prepare for, and respond to coronavirus for public service activities (i.e., those activities set forth in Section 105(a)(8) of the HCDA and 24 CFR 570.201(e) of the CDBG entitlement regulations). The cap is still routinely applied to all other 2019 and 2020 federal fiscal year CDBG-funded public service activities that do not address coronavirus.
7. CDBG funds may not be used for income payments, which are not included among eligible activities in section 105(a) of the HCD Act, and which are expressly prohibited by 24 CFR 570.207(b)(4) in the Entitlement CDBG regulations. The phrase income payments means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage) or utilities, but excludes emergency payments made over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family. HUD has waived section 105(a)(8) of the HCD Act and 24 CFR 570.207(b)(4) only to the extent necessary to establish the following alternative requirement: CDBG-CV funds may be used to provide emergency payments for individuals or families impacted by coronavirus for items such as food, clothing, housing (emergency rental assistance or mortgage assistance) or utilities for up to six consecutive months. Emergency payments must be made to the provider of such items or services on behalf of an individual or family, and not directly to an individual or family in the form of income payments, debit cards, or similar direct income payments. CDBG-CV grantees must ensure that proper documentation is maintained to ensure that all

costs incurred are eligible. Grantees using this alternative requirement must document, in their policies and procedures, how they will determine the amount of assistance to be provided is necessary and reasonable. This waiver is also applicable to 2019 and 2020 federal fiscal year CDBG funds used to prevent, prepare for, and respond to coronavirus.

8. 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. CDBG-CV grantees providing assistance to for-profit entities are still required to adopt financial underwriting policies and procedures in accordance with the guidelines for evaluating project costs and financial requirements found in Appendix A of 24 CFR Part 570. To facilitate the use of CDBG-CV and 2019 and 2020 federal fiscal year CDBG funds used to prevent, prepare for, and respond to coronavirus for economic development activities, HUD has instituted the following alternative requirements to demonstrate national objective compliance:
  - a. Removing the higher poverty rate required in some cases for central business districts, which is not required by statute. HUD is instituting an alternative requirement to modify the regulations at 24 CFR 570.208(a)(4)(v) by deleting the criteria at 24 CFR 570.208(a)(4)(v)(B). Under this alternative requirement, for purposes of the LMI job creation/retention national objective at 24 CFR 570.208(a)(4), a census tract qualifies for the presumptions under the criteria established in regulations at 24 CFR 570.208(a)(4)(v) if the poverty rate is at least 20 percent and if it evidences pervasive poverty and general distress using the criteria described in 24 CFR 570.208(a)(4)(v)(C).
  - b. Notwithstanding that the definitions of low-income person and moderate-income person in 24 CFR 570.3 are based on family income, for purposes of meeting the national objective criteria for job creation or retention at 24 CFR 570.208(a)(4), grantees and employers may consider individuals that apply for or hold jobs to be members of one-person families for activities that prevent, prepare for, and respond to coronavirus. HUD is also modifying related recordkeeping requirements at 24 CFR 570.506(b)(7) by adding the following additional presumption: the recipient may substitute records showing the type of job and the annual wages or salary of the job in lieu of maintaining records showing the person's family size and income to demonstrate that the person who filled or held/retained the job was a low- or moderate-income person, when required by paragraph 24 CFR 570.506(b)(5)(i)(B), (b)(5)(ii)(C), (b)(6)(iii) or (b)(6)(v). HUD will consider the person income-qualified if the annual wages or salary of the job is equal to or less than the Section 8 low-income



limit established by HUD for a one-person family. Grantees will typically obtain such information from assisted businesses rather than each person who received a job.

In addition, for CDBG-CV and 2019 and 2020 federal fiscal year CDBG funds used to prevent, prepare for, and respond to coronavirus, HUD eliminated the aggregate public benefit standard and modified the individual public benefit standards for job creation and retention. HUD waived the individual standards at 24 CFR 570.209(b)(3) and imposed the following alternative requirement:

For activities subject to the public benefit standards, grantees must document that: a) the activity will create or retain at least one full-time equivalent, permanent job per \$85,000 of CDBG funds used; b) the activity will provide goods or services to residents of an area such that the number of LMI persons residing in the area served by the assisted businesses amounts to at least one LMI person per \$1,700 of CDBG funds used; or c) the assistance was provided due to business disruption related to coronavirus (in which case, no monetary standard applies because HUD has determined that there is sufficient public benefit derived from the provision of assistance to stabilize or sustain businesses in the grantee's jurisdiction that suffer disruption due to coronavirus).

Finally, through the CDBG-CV Notice, HUD clarifies an existing requirement of economic development activities that grantees may carry out pursuant to 24 CFR 570.203(b). Grantees may provide assistance, with CDBG-CV and 2019 and 2020 federal fiscal year CDBG funds used to prevent, prepare for, and respond to coronavirus, to an economic development project through a for-profit entity that passes the funds through a financing mechanism (e.g., Qualified Opportunity Funds and New Markets Tax Credit (NMTC) investment vehicles). The regulations at 24 CFR 570.203(b) already list forms of support by which grantees can provide assistance to private, for-profit businesses where the assistance is appropriate to carry out an economic development project. HUD has previously interpreted this provision to allow for CDBG assistance to NMTC investment vehicles. This clarification makes clear that such assistance through any financing mechanism (which is not limited to NMTC investment vehicles) is eligible under 24 CFR 570.203(b). The regulation also does not apply to states, but states may consider 24 CFR 570.203(b), as clarified by the following alternative requirement, as guidance in the same way that they may consider other Entitlement CDBG regulations. HUD is not waiving 24 CFR 570.203(b) and other statutory and regulatory requirements remain in place.

The CDBG-CV Notice also established an alternative requirement, for the same grouping of funds mentioned in the last paragraph, that expanded the authority in section 105(a)(15) of the HCD Act and 24 CFR 570.204 to permit grantees subject to entitlement CDBG regulations to assist nonprofit organizations serving the development needs of their jurisdiction by carrying out community economic development projects through a financing mechanism. The nonprofit may pass assistance through a financing mechanism to another entity based on the language

in section 105(a)(15) of the HCD Act. Grantees subject to entitlement regulations must document that the assisted nonprofit is serving the development needs of the jurisdiction and that the assistance is used for a community economic development project that is necessary to prevent, prepare for, and respond to coronavirus.

9. 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, subject to the limitations at 24 CFR 570.202(a)(3); and manufactured housing when it constitutes part of the community's permanent housing stock (24 CFR 570.202(a)).
10. For NSP funds, HERA requirements supersede some CDBG requirements (see III.A.1) 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 NSP3 Notice, 75 FR 64332-64333. The NSP 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 and operate land banks for homes and residential properties that have been foreclosed upon.
  - d. Demolish blighted structures.
  - e. Redevelop demolished or vacant properties.

The NSP3 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 NSP3 Notice (Section 2301(c)(3) of HERA; Section II.H. of NSP3 Notice, 75 FR 64332-64333).

For CDBG-DR, the public benefit standards are waived; please consult applicable *Federal Register* notices.

11. For NSP funds, NSP requirements supersede existing CDBG requirements (see III.A.1) 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 NSP3 Notice, 75 FR 64329-64331). 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). 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 NSP3 Notice, 75 FR 64329-64331).

12. In addition to the activities allowed for CDBG as outlined above, additional flexibilities apply to CDBG-DR and CDBG-MIT funds. For CDBG-DR, HUD allows funding for the following activities: (a) program administrative costs up to 5 percent of total grant amount and program income (24 CFR 570.206); (b) program planning costs up to 20 percent of combined with administration costs (24 CFR 570.205) unless otherwise limited to only 15 percent by the *Federal Register* notice; (c) public services costs up to 15 percent of total grant amount and program income (24 CFR 570.201(e), 570.207). In addition, the secretary may provide waivers or specify alternative requirements if such waiver is not inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974. However, the secretary may not waive requirements related to fair housing, nondiscrimination, labor standards, and the environment.

For CDBG-DR awards made after 2013, the *Federal Register* notices prohibit assistance for second homes and limit business assistance to small businesses. For CDBG-DR awards made for disasters that occurred in 2017, disaster funds cannot be used for rehabilitation/reconstruction assistance to persons with incomes that exceed 120 percent area median income if they are located in a floodplain and have failed to maintain flood insurance.

For 2015 disasters and beyond, the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Pub. L. No. 116–20, approved June 6, 2019) authorized flexibility around the use of administrative funds for grantees that received funding under certain Public Laws. Grantees that received funds under Pub. L. nos. 114–113, 114–223, 114–254, 115–31, 115–56, 115–123, and 115–254, or any future act may use eligible administrative funds (up to 5 percent of each grant award plus up to 5 percent of program income generated by the grant) appropriated by these acts for the cost of administering any of these grants without regard to the particular disaster appropriation from which such funds originated. This flexibility allows these grantees to use up to 5 percent of each grant award (plus up to 5 percent of program income) to administer its disaster programs across all applicable appropriations (85 FR 4681).

For CDBG-MIT grantees, the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Pub. L. No. 116–20, approved June 6, 2019) authorizes the same flexibility for administrative funds as the 2015 and beyond disasters (84 FR 45838).

For CDBG-DR, the public benefit standards are waived for only those economic development activities designed to create or retain jobs or business. Auditors should consult applicable *Federal Register* notices on the HUD Exchange.

For all other applicable waivers or alternative requirements, auditors should consult the *Federal Register* notices on the HUD Exchange:

<https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/>.

## **B. Allowable Costs/Cost Principles**

1. All items of cost listed in 2 CFR Part 200, Subpart E, that require prior federal agency approval are allowable without prior approval, except for the following:
  - a. Depreciation methods for fixed assets shall not be changed without the approval of the federal cognizant agency.
  - b. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses (goods or services for personal use), regardless of whether reported as taxable income to the employees, require prior HUD approval.
  - c. Organization costs require prior HUD approval.
2. Fines, penalties, damages, and other settlements are unallowable (24 CFR section 570.200(a)(5)).
3. Grantees may use CDBG-CV funds only for those activities carried out to prevent, prepare for, and respond to coronavirus. By law, use of funds for any other purpose is unallowable. The CARES Act provides that CDBG-CV funds may be used to cover or reimburse allowable costs of activities to prevent, prepare for, and respond to coronavirus incurred by a state or locality incurred on or after January 21, 2020. The term “locality” is not defined by the CARES Act, the HCD Act, or the CDBG program regulations. For purposes of CDBG-CV grants, a “locality” shall mean units of general local government, as defined in section 102 of the HCD Act. The CARES Act also requires that all costs reimbursed with CDBG-CV funds be allowable costs, meaning they comply with all grant requirements. Therefore, as set forth in Section III.B.5.(b) of the CDBG-CV Notice, HUD has adopted the following waivers and alternative requirements to 24 CFR 570.200(h) to facilitate the use of CDBG-CV funds to reimburse allowable costs by modifying current regulations that are inconsistent with

CARES Act reimbursement authority and imposing safeguards to help ensure the allowability of all costs charged to the CDBG-CV grant:

Grantees shall not reimburse costs incurred before January 21, 2020, without written approval from HUD's Office of Block Grant Assistance (OBGA), by emailing the contact person listed at the beginning of the CDBG-CV Notice. HUD is imposing a presumption that costs of activities undertaken before January 21, 2020, the date the Centers for Disease Control and Prevention confirmed the first case of coronavirus in the United States in the State of Washington, are highly unlikely to be eligible for reimbursement because they likely are not costs to prevent, prepare for, and respond to coronavirus. The need to pay for coronavirus-related costs incurred after this date far exceeds the amount of CDBG-CV funds available. HUD cautions that it will only consider granting written approval in extraordinary cases where the clear link to the purposes of the CARES Act is documented by substantial evidence provided to HUD by the grantee. Inquiries related to this requirement can be submitted to the contact identified in the CDBG-CV Notice.

HUD has waived the requirements of 570.200(h) to the extent necessary to authorize a grantee to permit reimbursement of pre-application costs of subrecipients, units of general local government, and itself, in addition to pre-agreement and pre-award costs. However, an environmental review must be performed and a release of funds must be obtained in accordance with 24 CFR Part 58 prior to committing CDBG-CV funds to reimburse such costs. After the grantee signs a CDBG-CV agreement, it may reimburse a unit of general local government or subrecipient for costs incurred before the unit of general local government or subrecipient applies to the grantee for assistance.

For grantees subject to the entitlement CDBG regulation at 24 CFR 570.200(h), the following waivers and alternative requirements apply:

In lieu of the effective date described at 570.200(h), the grantee shall use the date in Box 4 of Form HUD-7082, Funding Approval/Agreement.

HUD is waiving the requirement at 570.200(h)(1)(i) and (ii) that the activity for which costs are incurred must be included in a consolidated plan action plan or amended consolidated plan action plan before incurring the costs. Instead, the activity for which costs were incurred must be included in the grantee's CDBG-CV application before CDBG-CV funds are used to reimburse those costs. Or, if the use of CDBG-CV funds for reimbursements is not included in the CDBG-CV application, this use may be included in a subsequent amendment to the annual action plan that describes the use of the CDBG-CV funds (following the grantee's citizen participation plan procedures for amendments).

To facilitate the use of funds provided under a one-time grant rather than an annual appropriation, HUD is waiving the time limitation and the monetary limitation on reimbursements in 570.200(h)(1)(v) and (vi) and related provisions

at 570.200(h)(2). HUD is not waiving the requirement at 570.200(h)(1)(iii) to comply with the environmental review procedures stated in 24 CFR Part 58.

All grantees may authorize subrecipients to incur pre-award costs in accordance with pre-award cost authority under 24 CFR 570.200(h), as modified above.

#### **F. Equipment and Real Property Management**

1. Except for awards to faith-based organizations, the real property requirements at 24 CFR Part 200 do not apply. The requirements that apply are in 24 CFR section 570.505 (24 CFR section 570.502(a)(5)).
2. NSP grantees that have established and currently operate land banks for homes and residential properties that have been foreclosed upon shall have in place a land bank management plan that will facilitate management and eventual disposition of the land bank inventory. Please reference *Federal Register* Notice of Neighborhood Stabilization Program; Closeout Requirements and Recapture (77 FR 70799).

The CDBG definition of the eligible activity of disposition, at 24 CFR 570.201(b), includes the “reasonable costs of temporarily managing such property.” HUD interprets this to include ongoing maintenance such as board-up, lawn-mowing, spot repairs, and other related functions that keep the property in a condition that stabilizes the neighborhood. Grantees managing scattered-site properties meeting the CDBG definition of a disposition activity must identify each property as a separate disposition activity in IDIS.

3. When equipment is sold, the proceeds are considered program income. Equipment not needed by the subrecipient for CDBG activities shall be transferred to the recipient for the CDBG program or shall be retained after compensating the recipient (24 CFR section 570.502(a)(6)).

#### **H. Period of Performance**

1. CDBG entitlement funds must be expended by the end of the eighth fiscal year after the fiscal year of appropriation. This requirement applies to annual CDBG appropriations. Funds must be expended by the end of the fifth fiscal year following the period of obligation. Annual appropriations legislation historically has provided an obligation period of three years for CDBG funding; the combined effect is to provide an expenditure period of eight fiscal years from the fiscal year of appropriation (31 USC 1552).
2. As set forth in Section III.B.7. of CDBG-CV Notice, grantees must expend all CDBG-CV funds (including CDBG-CV funds from additional allocations that are obligated by HUD through amendments to the grant agreement) within the six-year period of performance established by the CDBG-CV grant agreement. In addition, each grantee must expend at least 80 percent of all CDBG-CV funds

(including CDBG-CV funds from additional allocations that are obligated by HUD through amendments to the grant agreement) no later than the end of the third year of the period of performance established by the CDBG-CV grant agreement.

CDBG-CV funds will not be included in determining compliance with the timely expenditure requirements applicable to annual formula CDBG grants found at 24 CFR 570.902.

3. NSP1 grantees are required to expend an amount equal to or greater than the initial allocation of NSP1 funds within four years of receipt of those funds (Section II.M. of NSP3 Notice, 75 FR 64336-64337).
4. NSP3 grantees are required to expend an amount equal to or greater than 50 percent of their initial allocation of NSP3 funds within two years of receipt of those funds and 100 percent of their initial allocation of NSP3 funds within three years of receipt of those funds (Section II.M. of NSP3 Notice, 75 FR 64336-64337).
5. The appropriation accounting provisions in 31 USC 1551–1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. No. 101–510), limit the availability of certain appropriations for expenditure. Such a limitation may not be waived. The appropriations acts for NSP1 and NSP3 grants direct that these funds be available until expended. Notwithstanding these provisions, *Federal Register* Notice of Changes to NSP Closeout Requirements Related to Program Income Amendment (84 FR 48165) added the following language to Section X. of the Unified NSP1 and NSP3 Notice:

“Note that NSP I and NSP3 grant funds are subject to 31 U.S.C. 1555, which states, ‘An appropriation account available for obligation for an indefinite period shall be closed, and any remaining balance (whether obligated or unobligated) in that account shall be canceled and thereafter shall not be available for obligation or expenditure for any purpose, if (1) the head of the agency concerned or the President determines that the purposes for which the appropriation was made have been carried out; and (2) no disbursement has been made against the appropriation for two consecutive fiscal years.’”

6. CDBG-DR grantees are required to expend their grant funds as soon as possible following the execution of a grant agreement (obligation) with HUD. With the most recent appropriations, HUD instituted a 6-year expenditure deadline on all CDBG-DR grantees. In these instances, a CDBG-DR grantee is required to expend 100 percent of its allocation of CDBG–DR funds on eligible activities within six years of HUD’s execution of the initial grant agreement (applicable to Pub. L. nos. 114-113\*, 114-223\*, 114-254\*, 115-31\*, 115-56\*, 115-123\*, 115-254, and 116-20). Additionally, a CDBG-Mitigation (CDBG-MIT) grantee must expend 50 percent of its grant on eligible activities within six years of HUD’s execution of the grant agreement and 100 percent of its grant within twelve years of HUD’s execution of the agreement (Pub. L. No. 115-123 and Pub. L. No. 116-

20). A CDBG-DR grantee receiving an award for a 2011-2013 disaster must expend 100 percent of the funds within two years of the date its grant agreement with HUD is executed (Pub. L. No. 113-2\*\* and Pub. L. No. 112-55). Generally, the remaining active CDBG-DR grantees have funds available until expended (applicable to Pub. L. nos. 107-73, 107-38, 107-73, 107-117, 107-206, 108-324, 109-148, 109-234, 110-116, 110-252, 110-329, and 111-212).

\* (CDBG-DR funds awarded under these public laws are eligible for an expenditure extension for up to two years to provide grantees with flexibility during the COVID-19 pandemic.)

\*\* (CDBG-DR funds awarded under Pub. L. No. 113-2 were extended for an additional year by Pub. L. No. 116-20.)

## **J. Program Income**

1. The grantee must accurately account for any program income generated from the use of CDBG 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, and 570.504).
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 ensures 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 and 570.504).
3. As set forth in Section III.B.6.(a) of the CDBG-CV Notice, the receipt and expenditure of program income that is generated by the use of CDBG-CV funds shall be treated as annual formula CDBG program income and recorded as part of the financial transactions of the annual formula CDBG grant program. Based on this treatment of program income, the use of CDBG-CV funds for float-funded activities or guarantees as described at 24 CFR 570.301(b) and section 104(h) of the HCD Act is not allowed.

A grantee may permit subrecipients to retain program income from the use of CDBG-CV funds if the amount held does not exceed the subrecipient's projected cash needs for CDBG activities including activities to prevent, prepare for, and respond to coronavirus.

As program income to the grantees' annual formula CDBG programs, income generated from CDBG-CV activities will be included in timely expenditure



compliance determinations for each entitlement grantee's annual formula CDBG program and be subject to the requirements found at 24 CFR 570.902.

Removing the cap in Section 105(a)(8) of the HCD Act for activities to prevent, prepare for, and respond to coronavirus also removes the public services cap on the use of the program income, and removes the corresponding regulatory cap in 24 CFR 570.201(e) for CDBG-CV funds and fiscal year 2019 and 2020 funds used to prevent, prepare for, and respond to coronavirus.

Program income, regardless of the source funding of the activity that generated the income, shall be included in the compliance determination of the public service cap and the administrative and planning cost cap applicable to annual formula CDBG grants and program income, separately from CDBG-CV funds. For purposes of calculating the public services cap, the treatment of program income generated by the CDBG-CV grant and received (i.e., documented in IDIS) by the annual formula CDBG program shall be considered as any other program income received by the annual formula CDBG program.

4. NSP1 or NSP3 revenue received by a unit of general local government or subrecipient that is directly generated from the use of CDBG funds (which includes NSP1 and NSP3 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 NSP3 Notice, 75 FR 64337). HERA, however, 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 Section 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 (Section 2301(c)(3) of HERA; Section II.N. of NSP Notice, 73 FR 58340-58341).
5. With the advent of *Federal Register* Notice of Changes to NSP Closeout Requirements Related to Program Income (81 FR 38730) and the succeeding NSP closeout notice, Notice of Changes to NSP Closeout Requirements Related to Program Income Amendment (84 FR 48165), NSP1 and NSP3 grantees with CDBG annual formula programs may transfer not only NSP program income on hand, but also a future stream of NSP program income for an activity to the

annual CDBG program, eliminating the need for multiple written requests to transfer program income that is anticipated, but not yet received.

6. For CDBG-DR, grantees that generate program income must expend those funds, but grantees also have the option to transfer program income, to the annual CDBG program. There are alternative requirements in the *Federal Register* notices on the HUD Exchange at <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/> that provide comprehensive details about program income.

For CDBG-MIT, local government grantees are allowed to use program income for the operation and maintenance of CDBG-MIT projects. There are alternative requirements in the *Federal Register* notices on the HUD Exchange at <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/> that provides comprehensive details about program income.

## L. Reporting

### 1. Financial Reporting

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable (cash status only) (*this is the IDIS PR29 Cash on Hand Quarterly Report made available in IDIS on August 12, 2019, which allows grantees to generate this report by custom date ranges and export data to Excel and PDF*)
- d. *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. Section IV.B.2.(c) of the CDBG-CV Notice reiterated the waiver authorized by a May 7, 2020, HUD memorandum (found in the waiver information link noted in IV. *Other Information*, below) that waives the 90 day requirement for program year 2019 annual performance and evaluation reports, subject to the condition that within 180 days after the close of a jurisdiction’s program year that it submit its performance report.

Auditors are only expected to test information extracted from IDIS in the following system-generated reports:

- (1) PR26 – CDBG Financial Summary Report (restricted as of September 14, 2020, to run for CDBG annual formula grants only)

- This report can be used to check program income reported in IDIS (line 05), overall low-mod income benefit compliance (line 22), percent of funds obligated to the public services (line 36), and percent of funds obligated to the planning and administrative activities during the program year (line 46).
- (2) PR26 – CDBG-CV Financial Summary Report (made available September 14, 2020, to run for CDBG CARES Act grants only)  
This report can be used to check the overall low-mod income benefit compliance (line 15) and percent of funds expended for the planning and administrative activities (line 21).
  - (3) PR26 – CDBG Activity Summary by Selected Grant (Added field, as of September 14, 2020, in the report “Activity to prevent, prepare for, and respond to Coronavirus.” This field will be populated with Yes if the checkbox for “Activity to prevent, prepare for, and respond to Coronavirus” is checked on the activity set up screen otherwise Null. Added a subtotal for Coronavirus related activities for Public Services section only.) This report can be used to check percentage of funds expended for the planning and administrative activities for origin year 2015 and later grants.
  - (4) PR29 – CDBG Cash on Hand Quarterly Report
  - (5) PR29 – CDBG-CV Cash on Hand Quarterly Report (available in IDIS in July 2021)
- e. Section 15011 of the CARES Act requires that recipients of \$150,000 or more of CARES Act funding submit, not later than 10 days after the end of each calendar quarter, a report containing: information regarding the amount of funds received; the amount of funds obligated or expended for each project or activity; a detailed list of all such projects or activities, including a description of the project or activity; and detailed information on any subcontracts or subgrants awarded by the recipient. This report is limited to CDBG-CV funding and does not include other CDBG funds that may be used to address coronavirus. The requirements have been outlined in OMB memorandum M-20-21, *Implementation Guidance for Supplement Funding in Response to the Coronavirus Disease (COVID-19)* (available at <https://www.whitehouse.gov/wp-content/uploads/2020/04/Implementation-Guidance-for-Supplemental-Funding-Provided-in-Response.pdf>). Grantees and subrecipients have reported data meeting the Section 15011 requirements at [usaspending.gov](https://usaspending.gov). The Pandemic Response Accountability Committee (PRAC), an independent oversight committee within the Council of the Inspectors General on Integrity and Efficiency, has determined that the data reported in [usaspending.gov](https://usaspending.gov) has fulfilled these reporting requests.

## 2. Performance Reporting

*Section 3 of the Housing and Urban Development Act of 1968* – The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons. Section 3 projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. Section 3 reporting is undergoing a transition in fiscal year (FY) 2021. A new Section 3 rule (24 CFR Part 75) became effective on November 30, 2020, replacing the old rule at 24 CFR Part 135. Previously, grantees submitted Section 3 data on the HUD Form 60002 using the automated Section 3 Performance Evaluation and Registry System (SPEARS) (24 CFR sections 135.3(a)(1) and 135.90). As of November 30, 2020, CDBG recipients are still expected to maintain records of Section 3 statutory, regulatory, and contractual compliance, but are no longer required to report such compliance in SPEARS. Beginning in July 2021, grantees shall enter their Section 3 activities on the closeout screens in IDIS as well as within their annual reporting in the Consolidated Annual Performance and Evaluation Report (CAPER). Beginning in July 2021, grantees reporting in Disaster Recovery Grant Reporting system (DRGR) shall identify those activities that are subject to Section 3 requirements in the applicable DRGR action plan. DRGR is the management information system primarily used by CDBG-DR, CDBG-MIT, NSP, and RHP grantees to access grant funds and report performance accomplishments for grant-funded activities. The grantee must enter Section 3 accomplishments in the performance report as progress is made towards the Section 3 benchmarks.

Key line items in the IDIS Section 3 Report, on all projects completed within the reporting year, include the following (similar metrics are found in the DRGR P35-QPR-Section 3 Hours Report):

1. The total number of labor hours worked;
2. The total number of labor hours worked by Section 3 workers; and
3. The total number of labor hours worked by Targeted Section 3 workers.

Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established. The labor hours reported must include the total number of labor hours worked on a Section 3 project by all workers, including labor hours worked by any subrecipients, contractors and subcontractors that the recipient is required or elects to report. Please consult 24 CFR Part 75 for the various definitions of the workers noted above. Links to further guidance on Section 3

reporting requirements have been provided in Section IV. Additional Information, below.

For the following performance reports, auditors are not expected to review for compliance with programmatic requirements. Auditors may review whether the reports have been submitted by the required deadlines under each program. In cases where a performance report has not been submitted and an extension, as may be set forth below, is not applicable, auditors should confer with the local HUD field office to determine if an extension has been granted.

*Consolidated Annual Performance and Evaluation Report (CAPER) (24 CFR 91.520)*

A grantee's CAPER, submitted through the IDIS e-Con Planning Suite, is due 90 days after the close of a jurisdiction's program year. Please reference the note in L.1.d. above regarding an extension of this deadline for the grantee's 2019 program year.

The reporting requirements that apply to the use of annual formula CDBG grants also apply to CDBG-CV grants. Reporting requirements for CDBG-CV grantees can be found at 42 USC 12708(a), 24 CFR 91.520, 24 CFR 570.507 (entitlement). In addition, users are required, as of the June 15, 2020, IDIS release, to identify activities that will prevent, prepare for, and respond to coronavirus.

*Quarterly Performance Report (QPR) (OMB No. 2506-0165)*

This report is due each quarter from NSP1, NSP2, and NSP3 grantees and then annually after grant closeout. For CDBG-DR and CDBG-MIT grantees, the first QPR is due after the first full quarter following execution of a grant agreement with HUD. The report is submitted in HUD's DRGR system.

Each quarter, after the submission of the QPR, HUD reviews the QPRs and provides approvals/rejection-revision directions to the grantee.

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3 – Compliance Requirements, Section L. Reporting, for audit guidance.

**N. Special Tests and Provisions**

**1. Wage Rate Requirements**

**Compliance Requirements** The Wage Rate Requirements 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 1205 of Pub. L. No. 111-32; 24 CFR section 570.603).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

As with annual formula CDBG grants, CDBG-CV grants are subject to the Wage Rate Requirements, known more popularly as the Davis-Bacon prevailing wage requirements imposed by section 110(a) of the HCD Act. Under regulations of the Department of Labor (DOL) at 29 CFR 1.6(g), where federal assistance is not approved prior to contract award (or the beginning of construction if there is no contract award), Davis-Bacon wage rates apply retroactively to the beginning of construction and must be incorporated retroactively in the contract specifications. However, if there is no evidence that the owner intended to apply for the CDBG-CV assistance prior to the contract award or the start of the construction, HUD may request that DOL allow prospective, rather than retroactive, application of the Davis-Bacon wage rates. DOL may allow prospective application of Davis-Bacon requirements when it finds that it is necessary and proper in the public interest to prevent injustice or undue hardship and it finds no intent to apply for the federal assistance before contract award or the start of construction. The CDBG-CV Grantee should contact a HUD Labor Relations Specialist if such a situation arises.

## 2. Citizen Participation

**Compliance Requirements** At the time of submission to HUD for its annual grant, the grantee must certify to HUD that it has met the citizen participation requirements in 24 CFR section 91.105.

The CARES Act modifies some CDBG program requirements to provide immediate support for efforts to address coronavirus. The modifications, which are described in more detail in Section III. of the CDBG-CV Notice, permit the following:

- A public comment period of no less than five days when citizen participation is required (detailed in Section III.B.4.(a)(i) of the CDBG-CV Notice)
- A grantee to develop expedited citizen participation procedures and to hold virtual public hearings when necessary for public health reasons (Section III.B.4.(a)(i) of the CDBG-CV Notice)

Section III.B.4.(a)(iii) of the CDBG-CV Notice includes a corollary waiver and alternative requirement to permit states to extend these flexibilities to units of general local government and insular areas.

Section III.B.4.(a) of the CDBG-CV Notice applies to all fiscal year 2019 and 2020 annual formula CDBG grants, regardless of the use of funds. This section of the CDBG-CV Notice describes the program flexibilities provided by the CARES Act related to expedited citizen participation and virtual hearings. When this section refers

to CDBG-CV funds, it shall apply equally to fiscal years 2019 and 2020 CDBG grants.

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 section 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 NSP3 Notice, 75 FR 64328).

Grantees must identify what constitutes a substantial amendment to their action plan in their citizen participation plans. Grantees must identify a change in the use of CDBG funds from one activity to another as a substantial amendment, which is subject to the citizen participation process (24 CFR Part 91, Subpart C, and sections 91.105(c) and 91.505).

CDBG-DR and CDBG-MIT grantees must post the Action Plan for public comment for a minimum of seven or up to 30 days, based on the specific requirements identified in the applicable *Federal Register* notice. CDBG-DR and CDBG-MIT grantees are required to ensure that public comments are included in the Action Plan submitted to HUD.

**Audit Objectives** Determine whether the grantee has developed and implemented a citizen participation plan, including identifying what constitutes a substantial amendment.

### **Suggested Audit Procedures**

- 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. Verify that the grantee has identified what constitutes a substantial amendment to its citizen participation plan, and a change in the use of CDBG funds from one activity to another is among the criteria for a substantial amendment.
- d. Examine the grantee's citizen participation records, including items such as public hearing records and minutes, sign-in sheets, and mailing lists of interested parties for evidence that the elements of the citizen's participation plan were followed as the grantee certified.
- e. Green Building Standards. CDBG-DR grantees with appropriations after 2012 are required to ensure that green building standards are applied to all replacement housing and new construction housing activities. Additionally, the Green Building Retrofit Checklist should be used for all housing rehabilitation activities. On the contrary, CDBG-MIT grantees are not required to adhere to these standards but should consider them in the development of their programs.

### 3. Required Certifications and HUD Approvals

**Compliance Requirements** CDBG funds (and local funds to be reimbursed with CDBG 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 Objectives** 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 and local funds which were reimbursed with CDBG funds, were first obligated or expended and ascertain if any funds were obligated or expended prior to HUD's approval of the RROF.

### 4. Environmental Reviews

**Compliance Requirements** 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).

As is noted in Section III.B.6.(d)(iii) of the CDBG-CV Notice, HUD's environmental review regulations in 24 CFR Part 58 include two provisions that may be relevant to environmental review procedures for activities to prevent, prepare for, and respond to coronavirus. The first is 24 CFR 58.34(a)(10), which provides an exemption for certain activities undertaken in response to a national or locally declared public health emergency. Except for the applicable requirements of 24 CFR 58.6, a responsible entity does not have to comply with the requirements of Part 58 or undertake any environmental review, consultation, or other action under NEPA and the other provisions of law or authorities cited in 24 CFR 58.5 for exempt activities or projects consisting solely of exempt activities. Exempt activities include assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from imminent threats to public safety.

The second is a streamlined public notice and comment period in the regulation at 24 CFR 58.33, which may apply in some cases for emergency activities undertaken to prevent, prepare for, and respond to coronavirus. The application of these two provisions following a presidentially declared or locally declared public health emergency is discussed in the Notice, *Guidance on conducting environmental review pursuant to 24*



*Part 58 for activities undertaken in response to the public health emergency as a result of COVID-19 (CPD-20-07) posted at <https://www.hud.gov/sites/dfiles/OCHCO/documents/2020-07cpdn.pdf>.*

CDBG-DR grantees are required to ensure every project/activity undergoes the appropriate level of environmental review and receives clearance and Authorization to Use Grant Funds (AUGF) prior to expending any funds. As a result, special circumstances apply to HUD environmental reviews for disaster recovery efforts, and an environmental review is required accordingly: (a) analysis of impacts of a project on the surrounding environment and vice versa, (b) demonstrates compliance with federal environmental laws and authorities, (c) encourages public participation. Additional CDBG-DR environmental review information and federal regulations can be found at <https://www.hudexchange.info/programs/environmental-review/disaster-recovery-and-environment>.

**Audit Objectives** 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). Some CDBG-DR grantees may use the environmental review for projects that are also funded with FEMA. See *Federal Register* notices.

## **5. Rehabilitation**

**Compliance Requirements** When CDBG and CDBG-CV 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 Objectives** Determine whether the grantee ensures that 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

Further information about CDBG-CV funding and uses of funds may be found at [https://www.hud.gov/program\\_offices/comm\\_planning/cdbg\\_programs\\_covid-19](https://www.hud.gov/program_offices/comm_planning/cdbg_programs_covid-19).

Further information about available waivers of program requirements for CDBG-CV and other CPD programs may be found at [https://www.hud.gov/program\\_offices/comm\\_planning/waivers\\_covid-19](https://www.hud.gov/program_offices/comm_planning/waivers_covid-19).

Additional grantee CDBG-CV program implementation resources may be found at <https://www.hudexchange.info/programs/cdbg-cv/>.

Information on CDBG-DR and CDBG-MIT program waivers issued by HUD can be found at <https://www.hudexchange.info/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notice>.

HUD Compliance Reviews. Auditors may consult HUD's Community Planning and Development Monitoring Handbook for the specific compliance review exhibits that HUD uses to determine compliance. The CDBG-DR monitoring exhibits can be found at [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/cpd/6509.2](https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2). CDBG monitoring exhibits can be found in Chapter 3 following the same link.

Further instructions to grantees who report in DRGR on compliance with Section 3 reporting may be found at <https://www.hudexchange.info/resource/6413/drgr-fact-sheet-drgr-guidance-on-reporting-section-3-labor-hours/>.

Guidance on Section 3 compliance and reporting may also be found in CPD Notice 21-09, *Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992, final rule requirements for CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, and RHP projects*, found at <https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-09cpdn.pdf>.

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****ASSISTANCE LISTING 14.228 COMMUNITY DEVELOPMENT BLOCK  
GRANTS/STATE'S PROGRAM AND NON-ENTITLEMENT GRANTS IN  
HAWAII****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. Grantees can achieve this objective in two ways. First, a grantee can only use funds to assist eligible activities that fulfill one or more of three national objectives. Second, a grantee must spend at least 70 percent of its funds over a one-, two-, or three-year period, as specified by a grantee in its certification, for activities that address the national objective of benefiting low- and moderate-income persons.

The CDBG program was authorized by the Housing and Community Development Act of 1974, Title I, Section 101-122, Pub. L. No. 93-383, Statute 88,633, 42 USC 5301-5322 ("HCDA"). However, it was not until the Omnibus Budget Reconciliation Act of 1981 that Congress authorized the State CDBG program.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. No. 116-136, March 27, 2020) provided an emergency supplemental appropriation of CDBG funding for states, entitlement communities, and insular areas. This appropriation, referred to as CDBG-CV program funds, is to be used similarly as annual formula grants but specifically to prevent, prepare for, and respond to coronavirus.

The SUPPORT for Patients and Communities Act (Pub. L. No. 115-271, October 24, 2018) ("SUPPORT Act"), established the Pilot Program to Help Individuals in Recovery From a Substance Use Disorder Become Stably Housed ("Recovery Housing Program" or "RHP"). This pilot program authorizes assistance to grantees (states and the District of Columbia) to provide stable, temporary housing to individuals in recovery from a substance use disorder through fiscal year 2023. The Further Consolidated Appropriations Act, 2020 (Pub. L. No. 116-94, December 20, 2019) ("FY 20 Appropriations Act") made available \$25,000,000 for activities authorized under Section 8071 of the SUPPORT Act only to states with an age-adjusted rate of drug overdose deaths above the national overdose mortality rate, according to the Centers for Disease Control and Prevention. The Consolidated Appropriations Act 2021 (Pub. L. No. 116-260, December 27, 2020) ("FY 21 Appropriations Act") made available an additional \$25,000,000 for activities authorized under Section 8071.

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 of HERA is referred to as the Neighborhood Stabilization Program (NSP). These HERA funds are

also referred to as NSP-1 in the Neighborhood Stabilization Program (see Assistance Listing 14.256, II, “Program Procedures”). Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. No. 111-203, July 21, 2010) authorized additional funding for NSP that is referred to as NSP3. NSP funding provided under the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, February 17, 2009) (ARRA) is referred to as NSP2 and NSP-TA, which are covered by the Neighborhood Stabilization Program (Recovery Act Funded) (Assistance Listing 14.256) and audited separately.

The Community Development Block Grant disaster recovery (CDBG-DR) and Community Development Block Grant mitigation (CDBG-MIT) funding is authorized under Title I of the HCDA. Public laws are the appropriation acts that provide funding for each disaster: Pub. L. nos. 116-20; 115-254; 115-123; 115-72; 115-56 (Division B); 115-31 (Sec. 421); 114-254; 114-223; 114-113; 113-2; 112-55; 111-212; 110-329; 110-252; 110-116; 109-234; 109-148; 108-324; 107-206; 107-117; 107-73; and 107-38. The auditor must consult the relevant public law for the CDBG-DR award. The auditor can find links to the appropriate public law at <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/>. In addition to CDBG-DR, HUD is now authorized to administer the CDBG-MIT program under Title I of the HCDA. The public laws that appropriated funds for this purpose include Pub. L. nos. 115-123 (Division B) and 116-20 (Division B).

## **II. PROGRAM PROCEDURES**

### **A. Overview**

HUD allocates CDBG funds according to a statutory formula, pursuant to Section 106(d) of the HCDA (42 USC 5306(d)), to those states that elect to administer CDBG non-entitlement funds. A state, in turn, distributes most of its allocation to non-entitlement units of general local government (units of general local government that do not qualify for grants under the CDBG Entitlement Program) through a method of distribution. As such, the state is primarily a pass-through entity as defined by 2 CFR Part 200 (except for certain funds a state may use directly, such as administration and technical assistance).

The states that have elected to administer the CDBG non-entitlement funds include all states except Hawaii. Additionally, 42 USC 5302(a)(2) of the HCDA defines Puerto Rico as a state. For CDBG-DR and CDBG-MIT, Puerto Rico, United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands are considered states under disaster recovery allocations.

The state of Hawaii chose not to administer the non-entitlement funds. Therefore, the non-entitlement counties in Hawaii, which otherwise would have been eligible for funding under the State CDBG program, are generally subject to the CDBG Entitlement regulations. However, the regulations apply differently to those grantees in the following ways: (1) their funding comes from Section 106(d) of the HCDA (42 USC 5306(d)); (2) funds are distributed using the formula contained in 24 CFR 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 570.429(d)); (3) non-entitlement counties are not

eligible to use the exception criteria in 24 CFR 570.208(a)(1)(ii); and (4) 24 CFR 570.307 (Urban Counties) and 24 CFR 570.308 (Joint Requests) do not apply to non-entitlement counties in Hawaii. Except for these differences, non-entitlement counties in Hawaii follow the requirements of the CDBG Entitlement program (Assistance Listing 14.218).

## **B. Subprograms/Program Elements**

The CARES Act provided an emergency supplemental appropriation of CDBG funding for states, as well as entitlement communities and insular areas under the CDBG program. A CDBG-CV recipient may undertake a wide range of activities directed toward assisting their community to prevent, prepare for, and respond to coronavirus, including: public services designed to increase the capacity of the local health system to address the pandemic; emergency income payment programs to assist low- and moderate-income individuals and families; interim assistance activities to address the public health emergency; assistance to microenterprises or other for-profit entities when the recipient determines that the provision of such assistance is appropriate to carry out critical services; assistance for the acquisition, rehabilitation, or construction of facilities for coronavirus testing, diagnosis, or treatment; and coronavirus planning and capacity building activities. Unlike the annual formula program, a state may use a portion of its funds to act directly to carry out activities through employees, contractors, and subrecipients in all geographic areas within its jurisdiction, including entitlement areas and tribal populations.

The RHP program supports individuals in recovery onto a path to self-sufficiency. By providing stable housing to support recovery, RHP supports efforts for independent living. More specifically, RHP provides the funds to develop housing or maintain housing for individuals. States may carry out activities directly or through subrecipients or contractors with their RHP funds and in all geographic areas within its jurisdiction, including entitlement areas and tribal populations.

The NSP1 and NSP3 grants are special CDBG allocations to address the problem of abandoned and foreclosed homes. HERA and the Dodd-Frank Act 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 570.483(b) to determine whether the activity has met the low-, moderate-, and middle-income national objective. Section 2301(f)(3)(A) of HERA defines eligible individuals and families as those that do not exceed 120 percent of area median income, which differs from the annual formula CDBG program requirements.

HUD provides flexible CDBG-DR grants to help cities, counties, and states recover from Presidentially declared disasters, especially in low-income areas, subject to availability of supplemental appropriations. In response to presidentially declared disasters, Congress may appropriate additional funding for the CDBG program as CDBG-DR grants to rebuild the affected areas and provide crucial seed money to start the recovery process. Since CDBG-DR assistance may fund a broad range of recovery activities, HUD can help communities and neighborhoods that otherwise might not recover due to limited resources.

HUD also provides CDBG-MIT grants to help presidentially declared cities, counties and states alleviate risk and reduce future losses. Through these grants, HUD can help grantees support data-driven project design, build grantees' capacity to analyze risks and update its hazard mitigation plans, and support community risk reduction policy development. These grants are made to grantees that experienced prior qualifying disasters. The auditor can find links to the appropriate public law at <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/>.

The *Federal Register* notices that govern the use of CDBG-DR and CDBG-MIT funds are available at <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices> and <https://www.hudexchange.info/programs/cdbg-mit/>. Auditors should consult the applicable *Federal Register* notices for the specific CDBG-DR or CDBG-MIT award allocated to the state.

### Source of Governing Requirements

The State CDBG program is subject to Title I of the HCDA (42 USC 5301 et seq.). Implementing regulations may be found at 24 CFR Part 570, Subpart I. Any subparts other than Subpart I do not apply to the State CDBG program except as expressly provided otherwise. In addition to federal statutory and regulatory requirements, a state has the authority to issue rules consistent with federal statutes and regulations. An auditor should review the State CDBG program requirements rules before beginning the audit (24 CFR 570.480 and 570.481).

The State CDBG program was authorized by the Omnibus Budget Reconciliation Act of 1981. Therefore, the State CDBG program is excluded from coverage of some subparts of 2 CFR Part 200, however, the provisions set-forth in the fiscal requirements contained in 24 CFR 570.489 does apply some of the elements of 2 CFR Part 200. For State CDBG, in lieu of subparts C, D, and E of 2 CFR Part 200, see:

- 24 CFR 570.489(a) for limitations on administration and planning costs,
- 24 CFR 570.489(b) for pre-agreement cost requirements, Note: In addition to the state being allowed to incur costs before signing the grant agreement with HUD, the State may also establish procedures to allow a unit of general local government to incur pre-agreement costs before signing the award with the State.
- 24 CFR 570.489(c) for federal grant payment requirements, which references the requirements related to Treasury-State Agreements at 31 CFR Part 205,
- 24 CFR 570.489(d) for fiscal controls and accounting procedures, which includes three options for State CDBG grantees: (i) Using fiscal and administrative requirements applicable to the use of its own funds; (ii) Adopting new fiscal and administrative requirements; or (iii) Applying the provisions in 2 CFR Part 200,

- 24 CFR 570.489(e) and (f) for program income requirements, including revolving funds held by the state or awarded units of general local government.
- 24 CFR 570.489(j) and (k) for requirements regarding real and personal property (equipment), including the change of use of real property under the unit of general local government's control (including activities undertaken by subrecipients). In lieu of 24 CFR Part 200, the state shall establish and implement requirements governing the use, management, and disposition of real and personal property acquired with CDBG funds.
- 24 CFR 570.489(p) for provisions related to cost principles and prior approval, which reapplies 2 CFR Part 200, Subpart E, except that certain cost items are allowable without the prior approval of HUD.

These alternative requirements to sections of 2 CFR Part 200 are applicable to state grantees of CDBG (but not the non-entitlement counties in Hawaii) and its subrecipients.

CDBG-CV is authorized in title 12 of Division B of the CARES Act. HUD published a *“Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for CDBG-CV Grants, FY 2019 and 2020 CDBG Grants, and for Other Formula Programs”* (85 FR 51457, August 20, 2020) (“CDBG-CV Notice”) that establishes the program rules, alternative requirements, and the regulatory waivers for the use of CDBG-CV funds.

RHP is authorized in Section 8071 of the SUPPORT Act. HUD established the requirements for the RHP program, based on CDBG program requirements, in the *“Notice of FY2020 Allocations, Waivers, and Alternative Requirements for the Pilot Recovery Housing Program”* (85 FR 75361, November 25, 2020) (“RHP Program Notice”). Those requirements include waivers and alternative requirements to CDBG regulations and the HCDA for the use of RHP funds appropriated under the FY 20 Appropriations Act. HUD extended those requirements through the *“Notice of Waivers and Alternative Requirements for the Pilot Recovery Housing Program”* (86 FR 38496, July 21, 2021) (“RHP FY21 Notice”) to RHP funds appropriated by the FY 21 Appropriations Act and any future RHP appropriations.

NSP1, NSP2, and NSP3 funds are subject to HERA, ARRA, and the Dodd-Frank Act, respectively, and based on CDBG Program Requirements. NSP1 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 NSP funds (see “Availability of Other Program Information” below). The notices are available at <https://www.hudexchange.info/nsp/nsp-laws-regulations-and-federal-register-notices/>. 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 (NSP3) on October 19, 2010 (75 FR 64322-64348) to incorporate the bridge notice, the changes made by ARRA, and additional changes and clarification. Most of these requirements were incorporated into the NSP3 Notice.

CDBG-DR and CDBG-MIT funding is subject to Title I of the HCDA. The *Federal Register* notices that govern the use of CDBG-DR funds are located at <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices> and <https://www.hudexchange.info/programs/cdbg-mit/>. Auditors should consult the applicable *Federal Register* notices for the specific CDBG-DR and CDBG-MIT awards allocated to a state.

### **Availability of Other Program Information**

HUD publishes “CPD Notices” which provide interpretive guidance on program requirements. These Notices may be found at HUDClips, [https://www.hud.gov/program\\_offices/administration/hudclips/notices/cpd](https://www.hud.gov/program_offices/administration/hudclips/notices/cpd). For the State CDBG program, CPD Notice 2021-11 *Reporting Requirements for the State Performance and Evaluation Report (State PER)* provides guides on the financial statements used by State CDBG grantees in lieu of SF-425.

Additional information about CDBG-CV is available at the HUD CDBG Programs Covid-19 Grantee Guidance website at [https://www.hud.gov/program\\_offices/comm\\_planning/cdbg\\_programs\\_covid-19](https://www.hud.gov/program_offices/comm_planning/cdbg_programs_covid-19).

The specific Notice relevant to the CDBG-CV program is as follows: [https://www.hud.gov/sites/dfiles/CPD/documents/CDBG-CV\\_Notice\\_Federal\\_Register\\_Publication\\_2002-08.pdf](https://www.hud.gov/sites/dfiles/CPD/documents/CDBG-CV_Notice_Federal_Register_Publication_2002-08.pdf).

Additional information about RHP is available at the HUD Recovery Housing Program website at [https://www.hud.gov/program\\_offices/comm\\_planning/rhp](https://www.hud.gov/program_offices/comm_planning/rhp).

The specific Notice relevant to the RHP program is as follows: <https://www.hud.gov/sites/dfiles/CPD/documents/6225-N-01-R1-RHP-Notice-10-26-20-Final.pdf>.

Additional information about the NSP is available at the HUD NSP website at <https://www.hudexchange.info/programs/nsp/>.

The specific Notices relevant to the NSP1, NSP2, and NSP3 programs and their web locations are as follows:

- a. “NSP Notice” (73 FR 58330, October 6, 2008) at <https://www.hudexchange.info/resources/documents/NSP1Notice.pdf>
- b. “NSP1 Bridge Notice” (74 FR 29223, June 19, 2009) at [https://www.hudexchange.info/resources/documents/nsp1\\_bridgenotice\\_061909.pdf](https://www.hudexchange.info/resources/documents/nsp1_bridgenotice_061909.pdf)



- c. “NSP Definition and Modification Notice” (75 FR 18228, April 9, 2010) at <https://www.govinfo.gov/content/pkg/FR-2010-04-09/pdf/2010-8131.pdf>
- d. “NSP3 Notice” (75 FR 64322, October 19, 2010) at [https://www.hudexchange.info/resources/documents/UnifiedNSP1NSP3Notice\\_101910.pdf](https://www.hudexchange.info/resources/documents/UnifiedNSP1NSP3Notice_101910.pdf)

The specific *Federal Register* notices relevant to CDBG-DR and CDBG-MIT funding are available on the HUD Exchange at <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/> and <https://www.hudexchange.info/programs/cdbg-mit/>.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	N	Y	N	Y	Y	N	Y

#### A. Activities Allowed or Unallowed

1. Section 105(a) of the HCDA (42 USC 5305(a)) lists the activities eligible under the State CDBG 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 nonfederal 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 570.482(a)).

Section III.B.5.(f) of the CDBG-CV Notice, *Eligible Activities*, further specifies that a grantee may use CDBG-CV funds only for those activities carried out to prevent, prepare for, and respond to coronavirus. By law, use of funds for any other purpose is unallowable. Some funded activities may address the direct effects of the virus, while other activities respond to the indirect effects. Some CDBG-eligible activities, such as public services, economic development and microenterprise assistance, and public facilities clearly tie back to the purposes of the CARES Act. The CDBG-CV Notice, however, does not limit a grantee from carrying out any particular eligible CDBG activity described in the HCDA because other CDBG eligible activities, such as acquisition, can meet the purpose of the CARES Act.

2. In State CDBG, under the national objective criteria, each activity 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 570.483 and 570.490).

3. In State CDBG, states and non-entitlement units of general local governments may have loans guaranteed by HUD under Section 108 of the HCDA. HUD may guarantee loan funds in an amount no greater than five times a grantee's most recent annual CDBG grant, less amounts currently guaranteed or due for repayment under section 108; this is referred to as a grantee's borrowing capacity (for a non-entitlement unit of general local government, HUD uses the state's borrowing capacity. A grantee may only use guaranteed loan (or "Section 108") funds 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 US 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 570.703).
4. 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 570.482(f)(4)(ii)). For CDBG-DR, the public benefit standards are waived for only those economic development activities designed to create or retain jobs or businesses; please consult applicable *Federal Register* notices.
5. For RHP grantees, although the SUPPORT Act provides that RHP funds are treated as CDBG funds, not all CDBG eligible activities in section 105 of the HCD Act satisfy the purpose of RHP funds to provide stable, temporary housing to individuals in recovery from a substance use disorder. The RHP Program

Notice imposes the following waiver and alternative requirement to modify section 105(a) for the statutory purpose described in the SUPPORT Act: public facilities and improvements; acquisition of real property; lease, rent, and utility payments as eligible public services; rehabilitation and reconstructions of single-unit residential buildings and improvements; rehabilitation and reconstructions of multi-unit residential buildings and improvements; rehabilitation and reconstruction of public housing and improvements; disposition of real property; clearance and demolition; relocations; expansion of existing eligible activities to include new construction; grant administration; and technical assistance.

6. For NSP1 and NSP3 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 the NSP3 Notice. Section II.A. of the NSP Definition and Modification Notice provided definitional changes to “Abandoned” and “Foreclosed” properties, which expanded the inventory of available properties under NSP. In addition, Section 1497(b)(2) of the Dodd-Frank Act specified the date for a “Notice of Foreclosure.” The NSP 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 and operate land banks for homes that have been foreclosed upon (Section A of NSP1 Bridge Notice clarified that NSP funds can be used to establish and operate land banks)
  - d. demolish blighted structures
  - e. 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. A grantee must receive written HUD approval to undertake activities other than those listed in Section II.H of the NSP Notice and Section II.H.3.a. of the NSP3 Notice.

7. For NSP1 and NSP3 funds, NSP requirements supersede existing CDBG requirements to permit the use of only the low- and moderate-income national objective for NSP-assisted activities. An NSP activity may not qualify using the “prevent or eliminate slums and blight” or “address urgent community development needs” national objectives. 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 II.E. of the NSP3 Notice). HUD refers 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).

8. 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 the NSP Notice and of the NSP3 Notice).
9. For CDBG-DR and CDBG-MIT, in addition to the activities allowed for CDBG as outlined above, additional flexibilities apply to CDBG-DR and CDBG-MIT funds. HUD allows funding for the following activities: (a) program administrative costs up to five percent of total grant amount and program income; (b) program planning costs up to 20 percent of combined with administration costs unless otherwise limited by the *Federal Register* notices to only 15 percent of the total grant; (c) public services costs up to 15 percent of total grant amount and program income. In addition, the secretary may provide waivers or specify alternative requirements if such waiver is not inconsistent with the overall purpose of Title I of the HCDA. However, the secretary may not waive requirements related to fair housing, nondiscrimination, labor standards, and the environment.

For CDBG-DR awards made after 2013, the *Federal Register* notices prohibit assistance for second homes and limit business assistance to small businesses. For CDBG-DR awards made for disasters that occurred in 2017, disaster funds cannot be used for rehabilitation/reconstruction assistance to persons with incomes that exceed 120 percent area median income if they are located in a floodplain and have failed to maintain flood insurance.

For funds provided for 2015 disasters and beyond, the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Pub. L. No. 116–20, June 6, 2019) (“2019 Disaster Appropriations Act”) authorized flexibility around the use of administrative funds for grantees that received funding under certain Public Laws. A grantee that received funds under Pub. L. nos. 114–113, 114–223, 114–254, 115–31, 115–56, 115–123, and 115–254, or any future act may use eligible administrative funds (up to 5 percent of each grant award plus up to 5 percent of program income generated by the grant) appropriated by these acts for the cost of administering any of these grants without regard to the particular disaster appropriation from which such funds originated. This flexibility allows these grantees to use up to 5 percent of each grant award (plus up to 5 percent of program income) to administer its disaster programs across all applicable appropriations (“*Allocations, Common Application, Waivers, and Alternative Requirements for Disaster Community Development Block Grant Disaster Recovery Grantees*” (85 FR 4681, January 27, 2020)).

For CDBG-MIT grantees, the 2019 Disaster Appropriations Act authorizes the same flexibility for administrative funds as the 2015 and beyond disasters (“*Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees*” (84 FR 45838, August 30, 2019)).

For all other applicable waivers or alternative requirements, auditors should consult the *Federal Register* notices on the HUD Exchange: <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/>.

## **B. Allowable Costs/Cost Principles**

1. Pursuant to State CDBG requirements at 24 CFR 570.489(p), all items of cost listed in 2 CFR Part 200, Subpart E, which require prior federal agency approval are allowable without prior approval, except for the following:
  - a. Depreciation methods for fixed assets shall not be changed without the approval of the federal cognizant agency.
  - b. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses (goods or services for personal use), regardless of whether reported as taxable income to the employees, require prior HUD approval.
  - c. Organization costs require prior HUD approval.
2. Fines, penalties, damages, and other settlements are unallowable (24 CFR 570.200(a)(5)).
3. For CDBG-CV, a grantee may use CDBG-CV funds only for those activities carried out to prevent, prepare for, and respond to coronavirus. By law, use of funds for any other purpose is unallowable. The CARES Act provides that CDBG-CV funds may be used to cover or reimburse allowable costs of activities to prevent, prepare for, and respond to coronavirus incurred by a state or locality, including pre-award costs incurred on January 21 or later (unless otherwise approved by HUD).
4. For RHP, a grantee may only use RHP funds for allowable activities to provide individuals in recovery from a substance use disorder stable, temporary housing for a period of not more than two years or until the individual secures permanent housing, whichever is earlier. The RHP Program Notice modifies 24 CFR 570.489(b) to permit a state grantee to charge allowable pre-agreement costs incurred by itself, its recipients, or subrecipients to the RHP grant and require that all pre-agreement costs comply with RHP program requirements, including applicable requirements at 2 CFR Part 200 and Environmental Review Procedures stated in 24 CFR Part 58.

## F. Equipment and Real Property Management

1. For State CDBG and CDBG-CV grantees, the requirements for personal property (equipment) and real property management are contained in 24 CFR section 570.489(j) and (k).

24 CFR 570.489(k) *Accountability for real and personal property*. This provision says the state shall establish and implement requirements governing the use, management, and disposition of real and personal property acquired with CDBG funds. States may adopt 24 CFR Part 200 or set alternative requirements consistent with state law and 24 CFR 570 subpart I (including 570.489(j)).

24 CFR 570.489(j) *Change of use of real property*. These standards apply to real property within the unit of general local government's control (including activities undertaken by subrecipients) which was acquired or improved in whole or in part using CDBG funds in excess of the threshold for small purchase procurement (24 CFR 200.88). These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of the unit of general local government's grant from the state. Auditors should be aware that these provisions are not applicable to real property held by beneficiaries (i.e., CDBG grantees are not required to place property liens and other resale/repayment provisions upon housing-related assistance provided to low- and moderate-income households, though some grantees and subrecipients may choose to establish and implement such requirements).

2. For RHP grantees, the statutory and regulatory provisions governing the CDBG program shall apply to grantees. For purposes of the RHP program, all references to "unit of general local government" in 24 CFR 570.489(j), shall be read as "state and unit of general local government."
  - a. RHP funds may be used for disposition through sale, lease, or donation, or otherwise of real property acquired with RHP funds subject to 24 CFR 570.201(b) and section 105(a)(7) of the HCD Act (42 USC 5305(a)(7)), for the purpose of providing stable, temporary housing for individuals in recovery from a substance use disorder.
  - b. Eligible costs may include costs incidental to disposing of the property, such as preparation of legal documents, fees paid for surveys, transfer taxes, and other costs involved in the transfer of ownership of the RHP-assisted property.
3. NSP grantees that have established and currently operate land banks for homes and residential properties that have been foreclosed upon **shall** have in place a land bank management plan that will facilitate management and eventual disposition of the land bank inventory. Please reference *Federal Register* Notice of Neighborhood Stabilization Program; Closeout Requirements and Recapture (77 FR 70799).

The CDBG definition of the eligible activity of disposition, at 24 CFR 570.201(b), includes the “reasonable costs of temporarily managing such property.” HUD interprets this to include ongoing maintenance such as board-up, lawn-mowing, spot repairs, and other related functions that keep the property in a condition that stabilizes the neighborhood. Grantees managing scattered-site properties meeting the CDBG definition of a disposition activity must identify each property as a separate disposition activity in IDIS.

## H. Period of Performance

1. State CDBG and CDBG-CV accounts on the line of credit will cancel at the end of their eighth federal fiscal year, including the fiscal year of the appropriation. For example, the CDBG grant account will cancel at the end of FY2027 for funds appropriated in FY2020. Furthermore, as set forth in Section III.B.7. of the CDBG-CV Notice, a grantee must expend all CDBG-CV funds (including CDBG-CV funds from additional allocations that are obligated by HUD through amendments to the grant agreement) within the six-year period of performance established by the CDBG-CV grant agreement. In addition, a grantee must expend at least 80 percent of all CDBG-CV funds (including CDBG-CV funds from additional allocations that are obligated by HUD through amendments to the grant agreement) no later than the end of the third year of the period of performance established by the CDBG-CV grant agreement. Pursuant to Section III.B.7.(c.) of the CDBG-CV Notice, HUD may authorize extensions on the three-year expenditure and/or six-year period of performance requirements based on evidence of an extenuating circumstance.
2. For RHP, the grantee must expend all RHP funds before the end of the period of performance on September 1 of the seventh Federal fiscal year from the fiscal year of the appropriation (Section II.C. of the RHP FY21 Notice). For example, an RHP grantee must expend all RHP funding appropriated in the FY 20 Appropriations Act by September 1, 2027.
3. NSP1 grantees are required to expend an amount equal to or greater than the initial allocation of NSP1 funds within four years of receipt of those funds (Section II.M. of the NSP3 Notice).
4. NSP3 grantees are required to expend an amount equal to or greater than 50 percent of their initial allocation of NSP3 funds within two years of receipt of those funds and 100 percent of their initial allocation of NSP3 funds within three years of receipt of those funds (Section II.M. of the NSP3 Notice).
5. A CDBG-DR grantee is required to expend its grant funds as soon as possible following the execution of a grant agreement (obligation) with HUD. With the most recent appropriations, HUD instituted a six-year expenditure deadline on all CDBG-DR grantees. A grantee receiving CDBG-DR grants under the following Public Laws are required to expend 100 percent of the grant on eligible activities within six years of HUD’s execution of the initial grant agreement (Pub. L. nos.



114-113\*; 114-223\*; 114-254\*; 115-31\*; 115-56\*; 115-123\*; 115-254; and 116-20). Additionally, a CDBG-MIT grantee must expend 50 percent of the grant on eligible activities within six years of HUD's execution of the grant agreement and 100 percent of its grant within 12 years of HUD's execution of the agreement (Pub. L. nos. 115-123 and 116-20). Moreover, a CDBG-DR grantee receiving an award for a 2011-2013 disaster must expend 100 percent of the funds within two years of the date its grant agreement with HUD is executed (Pub. L. nos. 113-2\*\* and 112-55). Generally, a remaining active CDBG-DR grantee has funds available until expended (Pub. L. nos. 107-73; 107-38; 107-73; 107-117; 107-206; 108-324; 109-148; 109-234; 110-116; 110-252; 110-329; and 111-212).

\*CDBG-DR funds awarded under these public laws are eligible for an expenditure extension for up to two years to provide grantees with flexibility during the COVID-19 pandemic.

\*\*CDBG-DR funds awarded under Pub. L. No. 113-2 were extended for an additional year by Pub. L. No. 116-20.

## **J. Program Income**

1. For the State CDBG program, regulations applicable to program income are found at 24 CFR 570.489(e) and (f). For example, program income does not include income up to \$35,000 (other than receipts from revolving loan funds) received in a single program year by a unit of general local government and its subrecipients (24 CFR 570.489(e)(2)(i)).
2. Proceeds from the sale of real property purchased or improved with CDBG funds are not program income if the proceeds are received more than five years after closeout of the grant agreement between the state and the unit of general local government (24 CFR 570.489(e)(2)(v)).
3. As set forth in Section III.B.6.(a) of the CDBG-CV Notice, the receipt and expenditure of program income that is generated by the use of CDBG-CV funds is treated as annual formula CDBG program income and recorded as part of the financial transactions of the annual formula CDBG grant program. Based on this treatment of program income, the use of CDBG-CV funds for float-funded activities or guarantees as described at section 104(h) of the HCDA is not allowed.
4. Income generated from the use of RHP funds is subject to 42 USC 5304(j) and 24 CFR 570.489(e). To expedite or facilitate the use of RHP funds, the RHP Program Notice issued the following alternative requirements to program income provisions at 24 CFR 570.489(e): HUD modified 24 CFR 570.489(e)(1) to modify the definition of "program income" to include gross income received by subrecipients that was generated from the use of RHP funds. In addition, HUD modified 24 CFR 570.489(e)(2) to exclude from program income any income received and retained by a nonprofit operating within the grantee's jurisdiction

whose primary mission includes serving individuals in recovery from substance use disorder. If a grantee chooses to require the nonprofit to return income generated from the use of RHP funds, the income returned by the nonprofit to the grantee would be defined as program income.

The RHP Program Notice also requires a grantee to transfer program income and program assets to another open RHP grant or its annual CDBG program. Program income and assets received by a grantee after closeout of all RHP grants must be transferred to the grantee's annual CDBG award. Once transferred to the annual program, the waivers and alternative requirements that apply to the RHP grant no longer apply to the use of transferred program income. Rather, those funds will be subject to the grantee's regular CDBG program rules.

5. 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 570.500; Section II.N. of the NSP3 Notice).
  - 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 NSP1 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 the NSP1 Bridge Notice).
6. For CDBG-DR, grantees that generate program income must expend those funds, but grantees also have the option to transfer program income to the annual CDBG program.

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. SF-425, Federal Financial Report – Not Applicable to State CDBG and State CDBG-CV (see *CPD Notice 21-11*). State CDBG's equivalent

financial report is entitled the *PR28 Financial Summary*, or equivalent grant financial statement (see item d, below).

For NSP and RHP grantees, the SF-425 is provided annually.

- d. *PR28 Financial Summary Report (OMB No. 2506-0085)* – This financial statement is due from each state CDBG grantee within 90 days after the close of its program year. The *PR28 Financial Summary Report* instructions are found in Notice CPD-21-11, which is available at <https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-11cpdn.pdf> and includes a checklist for the review of the report. Auditors should find a *PR28 Financial Summary* for each open grant as an attachment to the Consolidated Annual Performance Report (CAPER) which are published at <https://www.hudexchange.info/programs/consolidated-plan/con-plans-aaps-capers/>.
- e. The Federal Funding Accountability and Transparency Act of 2006, FFATA is applicable to State CDBG, State CDBG-CV, CDBG-DR, NSP, and RHP.

## 2. Performance Reporting

Financial Auditors are not expected to review the following performance reports for compliance with programmatic requirements. Auditors may review whether the reports have been submitted by the required deadlines under each program. If a performance report has not been submitted, auditors should confer with the local HUD field office to determine if an extension has been granted.

For State CDBG and State CDBG-CV, the *Consolidated Annual Performance and Evaluation Report (CAPER)* (42 USC 12708(a), 24 CFR 91.520, and 24 CFR 570.491, OMB Control Number 2506-0117) is due 90 after the close of a jurisdiction's program year. However, the HUD Field Office is able to grant extensions.

For NSP, State CDBG-DR and CDBG-MIT grantees submit the *Quarterly Performance Report (QPR)* is due (OMB No. 2506-0165) after the first full quarter following execution of a grant agreement with HUD.

For RHP, a grantee must submit an annual performance report (including financial reports) as described in the RHP Program Notice no later than 30 days following the end of each federal fiscal year.

For all programs under Assistance Listing 14.228, *Section 3 of the Housing and Urban Development Act of 1968* is applicable (24 CFR Part 75). A grantee is required to submit annual reports related to hiring opportunities and labor hours. Again, financial auditors are not expected to review the Section 3 performance reports for compliance with programmatic requirements. Auditors may review whether the reports have been submitted by the required deadlines under each

program. If a performance report has not been submitted, auditors should confer with the local HUD field office to determine if an extension has been granted.

### 3. Special Reporting

Not Applicable

### 4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

## N. Special Tests and Provisions

### 1. Wage Rate Requirements

**Compliance Requirements** The Wage Rate Requirements 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).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

### 2. Environmental Oversight

**Compliance Requirements** A state must assume the environmental oversight responsibilities and functions of HUD under Section 104(g) of the HCDA (42 USC 5304(g)). A state must: (1) require each of its units of general local government (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; (2) 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; (3) 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 (4) 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.

A CDBG-DR and CDBG-MIT grantee is required to ensure every project/activity undergoes the appropriate level of environmental review and receives clearance and Authorization to Use Grant Funds (AUGF) prior to expending any funds. As a result, special circumstances apply to HUD environmental reviews for disaster recovery efforts, and an Environmental Review is required accordingly: (a) analysis of impacts of a project on the surrounding environment and vice versa; (b) demonstrates compliance with federal environmental laws and authorities; and (c) encourages public participation.

Additional CDBG-DR Environmental Review information and federal regulations can be found at <https://www.hudexchange.info/programs/environmental-review/disaster-recovery-and-environment>.

**Audit Objectives** Determine whether a 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 it obligated and expended the funds after the state's approval of the RROF and environmental certification.

### **3. Environmental Reviews**

**Compliance Requirements** Activities must have an environmental review unless they meet criteria specified in the regulations that would exclude them from RROF and environmental certification requirements. A state that carries out NSP activities directly are considered recipients and must assume environmental review responsibilities for the state's activities and those of any nongovernmental entity that participates in the project. A state that carries out activities directly must submit the RROF and the certifications to HUD for approval (24 CFR 58.4(b)(1), 58.34, and 58.35).

HUD's environmental review regulations in 24 CFR Part 58 include two provisions that may be relevant to environmental review procedures for activities to prevent, prepare for, and respond to coronavirus. The first is 24 CFR 58.34(a)(10), which provides an exemption for certain activities undertaken in response to a national or locally declared public health emergency. Except for the applicable requirements of 24 CFR 58.6, a responsible entity does not have to comply with the requirements of Part 58 or undertake any environmental review, consultation, or other action under NEPA and the other provisions of law or authorities cited in 24 CFR 58.5 for exempt activities or projects consisting solely of exempt activities. Exempt activities include assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from imminent threats to public safety.

The second is a streamlined public notice and comment period in the regulation at 24 CFR 58.33, which may apply in some cases for emergency activities undertaken to prevent, prepare for, and respond to coronavirus. The application of these two provisions following a presidentially-declared or locally-declared public health emergency is discussed in CPD Notice 20-07, *Guidance on conducting environmental review pursuant to 24 Part 58 for activities undertaken in response to the public health emergency as a*

result of COVID-19 (August 6, 2020) posted at <https://www.hud.gov/sites/dfiles/OCHCO/documents/2020-07cpdn.pdf>.

For RHP activities carried out directly by the state, the state must submit the certification and RROF to HUD for approval.

**Audit Objectives** Determine whether the state conducted required environmental reviews and obtained required HUD approvals.

#### **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 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. Some CDBG-DR grantees may use the environmental review for projects that are also funded with FEMA. See *Federal Register* notices.

#### **4. Citizen Participation**

**Compliance Requirements** Prior to the submission to HUD for its annual grant, a grantee must certify to HUD that it has met the citizen participation requirements in 24 CFR 91.115 and 570.486, as applicable.

The CARES Act modifies some CDBG program requirements to provide immediate support for efforts to address coronavirus, described in Section III of the CDBG-CV Notice. Section III.B.4.(a)(iii) of the CDBG-CV Notice includes a corollary waiver and alternative requirement to permit states to extend these flexibilities to units of general local government and insular areas.

Section III.B.4.(a) of the CDBG-CV Notice applies to all fiscal year 2019 and 2020 annual formula CDBG grants, regardless of the use of funds. This section of the CDBG-CV Notice describes the program flexibilities provided by the CARES Act related to expedited citizen participation and virtual hearings. Where this section refers to CDBG-CV funds, it applies equally to fiscal year 2019 and 2020 CDBG grants.

Section II.H. of the RHP Program Notice provides an overview of the grant process and RHP Action Plan requirements. The grantee develops the proposed RHP Action Plan and publishes it in accordance with the grantee's adopted citizen participation plan it has established in accordance with 24 CFR 91.105 (District of Columbia) or 24 CFR 91.115 (states) and the RHP Program Notice.

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 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 the NSP Notice and of the NSP3 Notice).

A CDBG-DR and CDBG-MIT grantee must post the Action Plan for public comment for a minimum of seven or up to 30 days, based on the specific requirements identified in the applicable *Federal Register* notice. A CDBG-DR and CDBG-MIT grantee is required to ensure that public comments are included in the Action Plan submitted to HUD.

**Audit Objectives** Determine whether the CDBG grantee has developed and implemented a citizen participation plan.

### **Suggested Audit Procedures**

- 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.
- d. HUD Compliance Reviews. Auditors may consult HUD's Community Planning and Development Monitoring Handbook for the specific compliance review exhibits that HUD uses to determine compliance. The CDBG-DR monitoring exhibits can be found at [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/cpd/6509.2](https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2).

## **5. Rehabilitation Using NSP Funds**

**Compliance Requirements** 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 NSP3 Notice, 75 FR 64333).

**Audit Objectives** To determine whether the grantee ensures 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**

Information on CDBG-DR and CDBG-MIT waivers and alternative requirements issued by HUD can be found at <https://www.hudexchange.info/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/>.



**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****ASSISTANCE LISTING 14.231 EMERGENCY SOLUTIONS GRANTS PROGRAM****I. PROGRAM OBJECTIVES**

The Emergency Solutions Grants (ESG) program provides grants to states, metropolitan cities, urban counties, and territories for (1) the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, (2) the payment of certain expenses related to operating emergency shelters, (3) essential services related to emergency shelters and street outreach for the homeless, and (4) homelessness prevention and rapid re-housing assistance.

In addition to the ESG Allocation in the fiscal year (FY) 2020 budget, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) Pub. L. No. 116-136 (2020) announced the allocation formula, amounts, and requirements for an additional \$3.96 billion in funding through the ESG program (ESG-CV). These funds must be used to prevent, prepare for, and respond to coronavirus, among individuals and families who are homeless or receiving homeless assistance and to support additional homeless assistance and homelessness prevention activities to mitigate the impacts created by coronavirus. Requirements at 24 CFR Part 576 will apply to the use of these funds, unless otherwise provided by the alternative requirements and flexibilities established under the CARES Act, this Notice, or subsequent waivers, amendments, or replacements to the Notice.

**II. PROGRAM PROCEDURES**

ESG program funds are provided under this program according to a formula based on the Community Development Block Grant Program (CDBG) formula. The percentage allocated will be equal to the percentage of the total amount available under CDBG for the prior fiscal year. To receive funds, each eligible entity must submit a Consolidated Plan (including an Annual Action Plan) to the Department of Housing and Development Urban (HUD). Metropolitan cities, urban counties, and territories may subgrant funds to private nonprofit organizations.

HUD allocated \$1,000,000,000 of the FY 2020 CARES funds to recipients of the FY 2020 ESG funds based on the same formula HUD used under 24 CFR 576.3. The remaining \$2,960,000,000 in funds were allocated directly to states and units of general local government according to a formula developed by the secretary, as required by the CARES Act:

[https://www.hud.gov/sites/dfiles/CPD/documents/ESG\\_CARES\\_Act\\_Round\\_2\\_Allocation\\_Met\\_hodology\\_rev.pdf](https://www.hud.gov/sites/dfiles/CPD/documents/ESG_CARES_Act_Round_2_Allocation_Met_hodology_rev.pdf). A list of recipients is provided at:

[https://www.hud.gov/program\\_offices/comm\\_planning/budget/fy20/](https://www.hud.gov/program_offices/comm_planning/budget/fy20/).

The Housing Opportunity Through Modernization Act of 2016, Pub. L. No. 114-201 (HOTMA), July 29, 2016, amended the McKinney-Vento Act to permit metropolitan cities and urban counties receiving ESG funding to subgrant their ESG funds to public housing agencies (PHAs) and local redevelopment authorities (LRAs) for eligible ESG activities. Prior to HOTMA, ESG recipients and subrecipients were not permitted to sub-award ESG program funds to PHAs or LRAs.

An urban county is a county that was classified as an urban county under 42 USC 5302(a) for the fiscal year immediately preceding the fiscal year for which ESG program funds are made available. States must subgrant all of their grant funds (except for funds for administrative costs and, under certain conditions, Homeless Management Information Systems (HMIS) costs) to (1) units of general purpose local government in the state (including metropolitan cities and urban counties that receive direct ESG program grants from HUD); and (2) private nonprofit organizations (provided that, for emergency shelter activities, the state obtains approval from the local government for the geographic area in which those activities are to be carried out). Each recipient must consult with the Continuum(s) of Care operating within the jurisdiction in determining how to allocate ESG program funds.

For ESG-CV and annual ESG funds used to prevent, prepare for, and respond to coronavirus, ESG, Notice CPD-21-08 provides recipients and subrecipients with the following additional flexibilities related to the means for carrying out grant activities:

- States are permitted to use up to 100 percent of grant funds to carry out activities directly;
- States are permitted to subaward funds to public housing agencies, as defined under section 3(b)(6) of the United States Housing Act of 1937, and local redevelopment authorities, as defined under state law;
- Recipients and subrecipients are permitted to subaward funds to tribes and tribally-designated housing entities (TDHEs). As provided in Section I.B.1.e of Notice CPD-21-08, the definition of “subrecipient” at 24 CFR 576.2 is waived to expressly include Indian tribes and TDHEs;
- Notice CPD-21-08 waived the definition of “State” in Section 411 of the McKinney-Vento Homeless Assistance Act and 24 CFR 576.2 to include an instrumentality of the Commonwealth of Puerto Rico. Additionally, the definition of “Territory” is waived to include an instrumentality of a Territory;
- The Commonwealth of Puerto Rico may subaward funds to an instrumentality of the Commonwealth; and
- Territories may subaward funds to an instrumentality or municipality.

### **Source of Governing Requirements**

The ESG program is authorized under Title IV, Subtitle B of the McKinney-Vento Homeless Assistance Act, as amended (42 USC 11371-11378). Implementing regulations are at 24 CFR Part 576.

The ESG-CV program is authorized under Coronavirus Aid, Relief, and Economic Security Act (CARES Act) Pub. L. No. 116-136. HUD issued [Notice CPD-20-08](#) to announce the allocation formula, amounts, and requirements for ESG-CV funding. HUD subsequently published [Notice CPD-21-08](#) (published July 19, 2021), which supersedes Notice CPD-20-08 (published on September 1, 2020) and reestablishes the allocation formula and amounts and reestablishes and

announces new requirements for the \$3.96 billion in funding provided for the ESG Program under the CARES Act. The following waivers provided additional flexibilities for the use of ESG-CV funds.

- [Notice CPD-21-05: Waiver and Alternative Requirements for the Emergency Solutions Grants \(ESG\) Program Under the CARES Act \(April 14, 2021\) – PDF](#) ‘
- [Availability of Additional Waivers for Community Planning and Development \(CPD\) Grant Programs to Prevent the Spread of COVID-19 and Mitigate Economic Impacts Caused by COVID-19 \(March 31, 2021\) – PDF](#)
- [Availability of Additional Waivers for CPD Grant Programs to Prevent the Spread of COVID-19 and Mitigate Economic Impacts Caused by COVID-19 \(May 22, 2020\) - PDF](#)
- [Availability of Additional Waivers for CPD Grant Programs to Prevent the Spread of COVID-19 and Mitigate Economic Impacts Caused by COVID-19 \(September 30, 2020\) – PDF](#)
- [CARES Act Flexibilities for ESG and HOPWA Funds Used to Support Coronavirus Response and Plan Amendment Waiver \(May 4, 2020\) – PDF](#)
- [Availability of Waivers of Community Planning and Development \(CPD\) Grant Program and Consolidated Plan Requirements to Prevent the Spread of COVID-19 and Mitigate Economic Impacts Caused by COVID-19 \(March 31, 2020\) – PDF](#)

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	Y	N	N	N	Y

**A. Activities Allowed or Unallowed**

1. ESG funds may be used for five program components: street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and HMIS; as well as administrative activities. The five program components and the eligible activities that may be funded under each are set forth in 24 CFR 576.101 through 576.107. Eligible administrative activities are set forth in 576.108.
2. CPD Notice 21-08 establishes additional eligible activities that may be funded with ESG-CV and annual ESG funds used to prevent, prepare for, and respond to coronavirus. The requirements at 24 CFR 576 – Subpart B apply, except that the additional eligible activities listed in Section III.E.3. of the notice are also eligible:
  - a. Temporary Emergency Shelter
  - b. Training
  - c. Hazard Pay
  - d. Handwashing Stations and Portable Bathrooms
  - e. Landlord Incentives
  - f. Volunteer Incentives
  - g. Cell Phones and Internet
  - h. Personal Protective Equipment (PPE) for Program Participants
  - i. Furniture and Household Furnishings
  - j. Essential Services for Individuals and Families Receiving Rapid Re-housing and Homelessness Prevention Assistance

- k. Centralized or Coordinated Entry
- l. Renters Insurance
- m. Vaccine Incentives
- n. Laundry
- o. Sponsor-based Rental Assistance

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

For ESG, recipients, other than states and territories, 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. Territories are exempt from this requirement. A state is exempt from matching the first \$100,000 of its grant but must match the rest with an equal amount from sources other than those provided under the ESG program (24 CFR section 576.201).

Match is not required for ESG-CV per the CARES Act (Pub. L. No. 116-136 (2020)), so this does not apply to recipients ESG-CV allocation. The match requirement is also waived for annual ESG funds used to prevent, prepare for, and respond to coronavirus (see CPD Notice: CPD-21-08, Section III.C).

### **2. Level of Effort**

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

Not Applicable

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

For the street outreach and emergency shelter components, if a recipient or subrecipient is a unit of general purpose local government, its ESG program funds cannot be used to replace funds the local government provided for street outreach and emergency shelter services during the immediately preceding 12-month period, unless HUD determines that the unit of general purpose local government is in a severe financial deficit (24 CFR section 576.101(c)).

### **3. Earmarking**

- a. For ESG, the total amount of each recipient's fiscal year grant that may be used for street outreach and emergency shelter activities cannot exceed the greater of: (1) 60 percent of the recipient's fiscal year grant; or (2) the amount of FY 2010 ESG program funds committed for homeless

assistance activities (24 CFR 576.100(b)). For ESG-CV and annual ESG funds used to prevent, prepare for, and respond to coronavirus, there is no cap on the amount used for street outreach or emergency shelter activities.

- b. The recipient may use up to 7.5 percent of its ESG program project costs for the payment of administrative costs related to the planning and execution of ESG activities (24 CFR section 576.108(a)). For ESG-CV and annual ESG funds used to prevent, prepare for, and respond to coronavirus, the recipient may use up to 10 percent of its program costs for administration.

## **I. Procurement and Suspension and Debarment**

The debarment and suspension regulations at 2 CFR Part 180 and 2 CFR Part 2424 apply as written, except that, as provided by the CARES Act, the recipient may deviate from the applicable procurement standards (e.g., 24 CFR 576.407(c) and (f) and 2 CFR 200.317-200.326) when procuring goods and services to prevent, prepare for, and respond to coronavirus. If the recipient deviates from its procurement standards, then the recipient must establish alternative written procurement standards, and maintain documentation on the alternative procurement standards used to safeguard against fraud, waste, and abuse in the procurement of goods and services to prevent, prepare for, and respond to coronavirus. This alternative requirement is necessary to ensure that the funds are used efficiently and effectively to prevent, prepare for, and respond to coronavirus. This alternative requirement applies to ESG recipients only and does not apply to subrecipients.

## **N. Special Tests and Provisions**

### **1. Maintenance as Homeless Shelters**

**Compliance Requirements** Any building renovated with ESG program funds for use as an emergency shelter for homeless persons must be maintained as a shelter for homeless persons for not less than a three-year period or, if the renovation constitutes major rehabilitation or conversion of the building, for not less than a 10-year period. The minimum use period begins on the date the building is first occupied by a homeless individual or family after the completed renovation. The minimum period of use of ten years must be enforced by a recorded deed or use restriction (24 CFR section 576.102(c)).

The minimum period of use requirements are waived for temporary emergency shelter renovation activities funded by ESG-CV and annual ESG funds used to prevent, prepare for, and respond to coronavirus; however, if funds were used for acquisition or renovation (including conversion or major rehabilitation), the property's use and disposition will be subject to the requirements provided in section III.E.3.a(iii) of Notice CPD-21-08. The real property requirements at 2 CFR 200.311 still apply; however, when the property is determined no longer necessary or appropriate for use as a temporary emergency shelter, as defined in Notice CPD-21-08, the property may be converted for

use as an emergency shelter without triggering the disposition requirements in 2 CFR 200.311(c). However, when it becomes unnecessary or impracticable to use the property either as temporary emergency shelter or emergency shelter, as described in Notice CPD-21-08, the owner of the property must obtain disposition instructions from HUD as provided by 2 CFR 200.311(c).

**Audit Objectives** Determine whether buildings renovated or converted for use as an emergency shelter with ESG program funds are maintained as emergency shelters for the required time periods and provide the required recorded deed or use restriction.

### **Suggested Audit Procedures**

- a. Verify the existence of the buildings improved with ESG program funds and their current use as a homeless shelter.
- b. Inquire of management whether any buildings improved with ESG program funds in prior years are no longer being used as shelters, and if so, whether the prescribed three- or ten-year period had expired.
- c. Verify that a building where the renovation constituted a major rehabilitation or conversion of the building has a recorded deed or use restriction.

## **2. Obligation, Expenditure and Payment Requirements**

**Compliance Requirements** *Obligation-ESG*. Funds allocated to states. Within 60 days from the date that HUD signs the grant agreement with a state (or grant amendment for reallocated funds), the recipient must obligate the entire grant, except the amount for its administrative costs. Within 120 days after the date that the state obligates its funds to a unit of general-purpose local government, the local government must obligate all of those funds.

*Obligation-ESG*. Funds allocated to metropolitan cities, urban counties, and territories. Within 180 days after the date that HUD signs the grant agreement (or a grant amendment for reallocation of funds) with a metropolitan city, urban county, or territory, the recipient must obligate all of the grant amount, except the amount for its administrative costs.

*Obligation-ESG-CV*. **Obligation Deadlines**. To ensure that all funding and flexibilities provided by the CARES Act and HUD under Notice can be used as necessary to prevent, prepare for, and respond to coronavirus, HUD waived the regulatory obligation deadlines and standards for meeting those deadlines and established alternative requirements as follows:

ESG-CV funds must be obligated by the recipient in accordance with 24 CFR 576.203(a)(1) and (2), except as provided below. The applicable period for obligating ESG-CV funds begins on the date HUD signed the recipient's grant agreement for the first allocation of ESG-CV funds. The obligation deadlines below apply to the both the first and second allocation of ESG-CV funds. HUD is also providing further flexibility

for recipients (including states and non-states) to provide additional time to identify entities that have capacity and expertise to mitigate the impacts of coronavirus, including those who have not previously or recently received ESG funding.

- a. Recipients that are states (including the Commonwealth of Puerto Rico) have:
  - (1) 180 days from the date HUD signs the grant agreement to obligate funds for activities it will carry out directly, as permitted in Section III.A.1. of Notice CPD-21-08. This obligation may be evidenced by a written designation of a department within the government to carry out an eligible activity directly; and
  - (2) up to 240 days from the date HUD signs the grant agreement to obligate ESG-CV funds to subrecipients. Recipients must maintain in the program records a description of any changes the recipient implemented to identify and select new subrecipients.
- b. Recipients that are metropolitan cities, urban counties, or territories may have up to 240 days from the date HUD signs the grant agreement to obligate ESG-CV funds. Recipients must maintain in their program records a description of any changes the recipient implemented to identify and select new subrecipients.

*Expenditures-ESG.* All of the recipient's grant must be expended for eligible activity costs within 24 months after the date HUD signs the grant agreement with the recipient. For the purpose of this requirement, expenditure means either an actual cash disbursement for a direct charge for a good or service or an indirect cost or the accrual of a direct charge for a good or service or an indirect cost.

*Payments to Subrecipients.* The recipient must pay each subrecipient for allowable costs within 30 days after receiving the subrecipient's complete payment request. This requirement also applies to each subrecipient that is a unit of general-purpose local government (24 CFR section 576.203).

*Expenditures-ESG-CV.* The requirements at 24 CFR 576.203(b) generally apply, except that the provision that all the recipient's grant must be expended for eligible activity costs within 24 months after the date HUD signs the grant agreement with the recipient is waived and the following alternative requirements are established:

- a. Overall Deadline for Expending First and Second Allocations. All funds awarded to a recipient through the first and second allocations of ESG-CV funds must be expended for eligible activity costs by September 30, 2022.
- b. Progressive Expenditure Deadlines and Recapture Provisions. To ensure ESG-CV funds are spent quickly on eligible activities to address the public health and economic crises caused by coronavirus, the following alternative requirements were established:



- (1) HUD may recapture up to 20 percent of a recipient's total award, including first and second allocation amounts, if the recipient has not expended at least 20 percent of that award by September 30, 2021.
- (2) HUD may recapture up to 80 percent of a recipient's total award, including first and second allocation amounts, if the recipient has not expended at least 80 percent of that award by March 31, 2022.

**Audit Objectives** Determine whether funds were obligated and expended within HUD-prescribed limits, and that payments were made to subrecipients on a timely basis.

**Suggested Audit Procedures**

- a. Determine the time periods for funds to be obligated and expended for the selected entities.
- b. Review records to determine the dates that funds were obligated and expended, as applicable.
- c. Review records to verify that payments to subrecipients were made within the 30-day time period after receipt of a complete payment request.

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****ASSISTANCE LISTING 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 state, local governments, other governmental entities, private nonprofit organizations, and community mental health associations that are public nonprofit 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 this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
N	N	N	N	Y	Y	Y	Y	Y	N	N	Y

**G. Matching, Level of Effort, Earmarking**

**1. Matching**

- a. The nonfederal 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 nonfederal 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 nonfederal 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 nonfederal entity must demonstrate that it has met its share of the costs for that year (24 CFR section 583.125).
- c. All funding for supportive services must be matched by 25 percent funding from nonfederal entity (Pub. L. No. 105-276).

**2. Level of Effort**

**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 5 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)).

## N. Special Tests and Provisions

### 1. Reasonable Rental Rates

**Compliance Requirements** 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. Nonfederal 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 Objectives** Determine reasonableness of the rents being paid by the nonfederal entities.

### Suggested Audit Procedures

- a. Determine the acceptability of the manner in which the nonfederal 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 Requirements** All nonfederal 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 nonfederal entity operating the project, HUD may authorize the nonfederal entity to convert the project to such use (24 CFR section 583.305).

**Audit Objectives** 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 Procedure**

Verify that a binding agreement exists between the nonfederal entity and owner of the structure, if other than the nonfederal 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****ASSISTANCE LISTING 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 Assistance Listing 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)).

**Source of Governing Requirements**

The Shelter Plus Care program is authorized under Title IV, Subtitle F of the McKinney-Vento Homeless Assistance Act (42 USC 11403). Implementing regulations are at 24 CFR Part 582.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program

supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
N	N	N	N	Y	Y	Y	Y	Y	N	N	Y

**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. Level of Effort**

**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 8 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, “Activities Allowed or Unallowed” (24 CFR section 582.105(e)).

## N. Special Tests and Provisions

### 1. Wage Rate Requirements

**Compliance Requirements** 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 Wage Rate Requirements (24 CFR section 882.804(b)).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

### 2. Rent Reasonableness

**Compliance Requirements** 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 nonfederal 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 Objectives** Determine reasonableness of the rents being paid by the grantee.

### Suggested Audit Procedures

- a. Identify the manner in which the nonfederal 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 nonfederal 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.

### 3. Housing Quality Standards

**Compliance Requirements** 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 nonfederal entity, or another entity acting on behalf of the nonfederal entity (other than the owner of the housing), must physically inspect each unit to ensure that the unit meets housing quality standards. Nonfederal 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 Objectives** Determine whether the grantee performs the required inspections to ensure that units meet housing quality standards.

#### **Suggested Audit Procedures**

- a. Verify through a review of documentation that the nonfederal entity identifies those units on which housing quality inspections are due.
- b. Verify through a review of documentation that the nonfederal entity performed inspections of units and that any needed repairs were completed timely.

#### **4. Project-Based Rental Assistance**

**Compliance Requirements** 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 10 years of rental subsidies, the owner must complete at least \$3,000 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 Objectives** 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 nonfederal entity to determine whether the agreement is for either five or 10 years.
- b. If the agreement is for 10 years, verify through a review of documentation that the required rehabilitation of at least \$3,000 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****ASSISTANCE LISTING 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 nonprofit organizations, in the production and operation of affordable housing (24 CFR section 92.1).

**HOME-American Rescue Plan (HOME-ARP)**

The American Rescue Plan Act of 2021 provided an additional \$5 billion of which \$4.925 billion was allocated using the HOME formula to meet the needs of those homeless or at risk of homelessness, the development of affordable housing, tenant based rental assistance, supportive services, and acquisition and development of non-congregate shelter units. Unlike HOME, these funds are not available for homebuyer or existing homeowner assistance activities. Also, up to 15 percent of each grant may be used for administrative purposes as opposed to HOME, which is up to 10 percent of each grant.

The HOME-ARP funds are available for certain qualifying populations (QPs) (as defined in Notice CPD-21-10: Requirements for the Use of Funds in the HOME-ARP Program):

1. Homeless (as defined in the McKinney Act definition at 24 CFR 91.5).
2. At-risk of homelessness (McKinney Act definition at 24 CFR 9.1.5).
3. Fleeing/Attempting to Flee Domestic Violence, Dating Violence, Sexual Assault, Stalking or Human Trafficking (definitions from VAWA regulations at 24 CFR 5.2003, except Human Trafficking definition from Trafficking Victims Protection Act of 2000).
4. Other Populations where assistance would: Prevent the family's homelessness or serve those with the greatest risk of housing instability.

**II. PROGRAM PROCEDURES**

The HOME and HOME-ARP programs are conducted by jurisdictions (states, cities, urban counties, and consortia) that receive an allocation of funds. Participating jurisdictions (PJs) 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/HOME-ARP program without active participation of units of general local government or may distribute HOME/HOME-ARP funds to units of general local government to carry out HOME/HOME-ARP 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/HOME-ARP funds from a state is a “state recipient.” A “subrecipient” is a public agency or nonprofit organization selected by the participating jurisdiction to administer all or some of the participating jurisdiction’s HOME/HOME-ARP programs. Before disbursing funds to an entity, each participating jurisdiction is required to enter into a written agreement with the entity. The contents of the agreement may vary depending on the role the entity assumes, or the type of project undertaken (e.g., state recipient, subrecipient, for-profit or nonprofit housing owner, developer, or sponsor, a contractor, or 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 program was established by the Title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 USC 12701–12840 and 3535(d)). Implementing regulations are codified at 24 CFR Part 92.

HOME-ARP was established in section 3205 of the American Rescue Plan Act of 2021 (Pub .L. No. 117-2). Notice CPD-21-10: Requirements for the Use of Funds in the HOME-ARP Program ([HOME-ARP Implementing Notice](#)) was published September 13, 2021. The Notice established requirements for HOME-ARP funds.

The American Rescue Plan (ARP) provides funds for homelessness and supportive services assistance under the HOME statute of Title II of NAHA (42 USC 12721 et seq.) and authorizes the Secretary of HUD to waive or specify alternative requirements for any provision of NAHA or regulation for the administration of the HOME-ARP program, except requirements related to fair housing, civil rights, nondiscrimination, labor standards, and the environment, upon a finding that the waiver or alternative requirement is necessary to expedite or facilitate the use of HOME-ARP funds. Pursuant to the [HOME-ARP Implementing Notice](#), the per-unit cost limits (42 USC 12742(e), commitment requirements (42 USC 12748(g)), matching requirements (42 USC 12750), and set-aside for housing developed, sponsored, or owned by community housing development organizations (CHDOs) (42 USC 12771) in NAHA do not apply to HOME-ARP funds.

### **Availability of Other Program Information**

On April 10, 2020, the Office of Community Planning and Development (CPD) issued two memoranda containing statutory suspensions and regulatory waivers for the HOME Program to provide flexibility for jurisdictions to address the COVID-19 pandemic. The participating jurisdictions must request these suspension/and or waivers in order to implement them. All participating jurisdictions are subject to the compliance requirements listed in Section III. The participating jurisdictions implementing the COVID-19 suspensions and waivers must adhere to the revised application of the requirements set forth in the waivers:

<https://www.hudexchange.info/programs/home/covid-19/#regulatory-resources>.

An extension to the original COVID-19 suspensions and waivers, along with additional information is provided in the following document:

<https://www.hud.gov/sites/dfiles/CPD/documents/HOME-General-Susp-and-Waivers-Revisions-Final.pdf>.

Pertinent information that will assist the auditor in understanding the HOME program is available on the agency website at <https://www.hudexchange.info/home/>.

Information regarding the American Rescue Plan requirements for HOME-ARP Program: <https://www.hudexchange.info/resource/6479/notice-cpd-2110-requirements-for-the-use-of-funds-in-the-home-arp-program/> and <https://www.hudexchange.info/resource/6480/home-arp-implementation-notice-fact-sheets/>.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	N	N	N	Y	N	Y	Y

#### A. Activities Allowed or Unallowed

##### 1. Activities Allowed

### HOME

- a. 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) 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, and when construction is expected to begin within 12 months. 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 hard 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).
- b. 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)).

### **HOME-ARP**

- a. Affordable Rental Housing: HOME-ARP rental funds may be used to acquire, construct or rehabilitate housing for those that meet the definition of one or more of the qualifying populations described in the [HOME-ARP Implementing Notice](#). Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide HOME-ARP rental housing within the timeframes provided in Section VI.B. of the [HOME-ARP Implementing Notice](#).

HOME-ARP funds may be used to assist one or more units in a project. Only the eligible development costs of the HOME-ARP units may be charged to the HOME-ARP program. Cost allocation in accordance with 24 CFR 92.205(d)(1) is required if the assisted and non-assisted units are not comparable. After project completion, the number of HOME-ARP units in a project cannot be reduced. During the HOME-ARP minimum compliance period and prior to the end of the HOME-ARP budget period, a PJ may invest additional HOME-ARP funds to provide operating cost assistance but is prohibited from investing additional HOME-ARP funds for capital costs except within the 12 months after project completion. A qualifying household admitted to a HOME-ARP rental unit may still receive HOME-ARP supportive services or Tenant-based Rental Assistance (TBRA) in accordance with the requirement of the HOME-ARP Implementing Notice.

Unlike the HOME program, which targets HOME-assisted rental units based on tenant income, 70 percent of all HOME-ARP-assisted units will admit households based only upon their status as qualifying households. The remaining 30 percent of assisted units may be occupied by low-income households.

HUD used its HOME-ARP statutory authority to permit the use of HOME-ARP funds to provide ongoing operating cost assistance or capitalize a project operating cost assistance reserve to address operating deficits of the HOME-ARP units restrict for qualifying households during the compliance period. HUD also suspended the maximum per-unit subsidy limit for HOME-ARP units, enabling HOME-ARP funds to pay the entire cost to acquire, rehabilitate and/or construct the HOME-ARP rental units.

- b. HOME-ARP Tenant-Based Rental Assistance (HOME-ARP TBRA) may be used to provide rental assistance, security deposit payments, and utility deposit assistance to qualifying households. HOME-ARP funds may be used to pay for up to 100 percent of these eligible costs. A PJ may use HOME-ARP TBRA funds to provide loans or grants to qualifying households for security deposits for rental units regardless of whether the PJ provides any other HOME-ARP TBRA assistance. The amount of funds that may be provided for a security deposit may not exceed the equivalent of two months' rent for the unit. Utility deposit assistance is an eligible cost only if rental assistance or a security deposit payment is provided. Costs of inspecting the housing are also eligible costs of HOME-ARP TBRA. Administration of HOME-ARP TBRA is an eligible cost **only** if executed in accordance with general management oversight and coordination at 24 CFR 92.207(a), except that the costs of inspecting the housing and determining the income eligibility of the family are eligible project costs under HOME-ARP TBRA.

Funding may also go towards a HOME-ARP sponsor, which is a nonprofit organization that provides housing or supportive services to qualifying households, to facilitate the leasing of a HOME-ARP rental unit or the use and maintenance of HOME-ARP TBRA. A sponsor may make rental subsidy payments and a security deposit payment on behalf of a qualifying household.

- c. Supportive Services- may only be provided to individuals and families who meet the definition of a qualifying population under Section IV.A of the HOME-ARP Implementing Notice and who are not already receiving these services through another program.

There are three categories of supportive services:

- (1) McKinney-Vento Supportive Services, listed in section 401(29) of the McKinney-Vento Homeless Assistance Act (42 USC 11360(29)).
- (2) Homelessness Prevention Services adapted from eligible homelessness prevention services under the Emergency Service Grant regulations at 24 CFR Part 576. See section VI.D of the [HOME-ARP Implementing Notice](#) for list of eligible services and costs.
- (3) Housing Counseling Services defined at 24 CFR 5.100 and 5.111, except for homeowner assistance and related services are not eligible.

- d. Acquisition and Development of Non-Congregate Shelter (NCS): A non-congregate shelter is one or more buildings that provide private units or rooms as temporary shelter to individuals and families and does not require occupants to sign a lease or occupancy agreement. HOME-ARP funds may be used to acquire and develop non-congregate shelter (HOME-ARP NCS) for those that meet one of the qualifying populations defined in the [HOME-ARP Implementing Notice](#). This activity may include new construction or the acquisition and/or rehabilitation of existing structures (such as motels, nursing homes or other facilities). Also, the demolition to existing structures for the purpose of developing HOME-ARP NCS is allowed. HOME-ARP funds may also be used for improvements to the project site, including the installation of utilities or utility connections, laundry facilities, community facilities, on-site management, or supportive service offices.

Soft Costs allowable are necessary costs incurred by the Participating Jurisdiction, subrecipient, or project owner associated with financing, acquisition, and development of HOME-ARP NCS projects.

Also, replacement reserves to cover reasonable and necessary costs of replacing major systems and their components is allowable.

- e. Nonprofit Operating and Capacity Building Assistance: A PJ may use up to five percent of its HOME-ARP allocation to pay operating expenses of CHDOs and other nonprofit organizations that will carry out activities with HOME-ARP funds. A PJ may also use up to an additional five percent of its allocation to pay eligible costs related to developing the capacity of eligible nonprofit organizations to successfully carry out HOME-ARP eligible activities.

PJs may award operating expense assistance or capacity building assistance to a nonprofit organization if it reasonably expects to provide HOME-ARP funds to the organization for any of the eligible HOME-ARP activities within 24 months of the award.

Operating expenses are defined as reasonable and necessary costs of operating the nonprofit organization. HOME-ARP funds used for operating expenses must be used for the “general operating costs” of the nonprofit organization. These costs include employee salaries, wages and other employee compensation and benefits; employee education, training, and travel; rent; utilities, communication costs; taxes, insurance; equipment, materials, and supplies.

Capacity Building Assistance expenses are defined as reasonable and necessary general operating costs that will result in expansion or improvement of an organization’s ability to successfully carry out eligible HOME-ARP activities. Eligible costs include salaries for new hires including wages and other employee compensation and benefits; costs related to employee training or other staff development that enhances an employee’s skill set and expertise; equipment (e.g., computer software or programs that improve organizational processes), upgrades to material and equipment, and supplies; and contracts for technical assistance or for consultants with expertise related to the HOME-ARP qualifying populations.

NAHA and the HOME regulations limit the amount of operating expense assistance that an organization can receive annually. ARP extends this limitation to the capacity building assistance paid with HOME-ARP funds.

- In any fiscal year, operating assistance provided to a nonprofit organization may not exceed the greater of 50 percent of the general operating expenses of the organization for that fiscal year or \$50,000.
- In any fiscal year, capacity building assistance provided to a nonprofit organization may not exceed the greater of 50 percent of



the general operating expenses of the organization for that fiscal year or \$50,000.

- If an organization received both operating assistance and capacity building assistance in any fiscal year, the aggregate total amount of assistance it may receive is the greater of 50 percent of the organization's total operating expenses for that fiscal year or \$75,000.
- f. A participating jurisdiction may use or "invest" HOME-ARP 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-ARP funds to guarantee loans made by lenders and, if required, the participating jurisdiction may establish a loan guarantee account with HOME-ARP 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-ARP funds are subject to all HOME-ARP and HOME (as amended in the HOME-ARP Implementing Notice) requirements, funds which are used to repay the guaranteed loans are not (24 CFR section 92.205(b)).

## 2. *Activities Unallowed*

### **HOME**

HOME funds may not be used for (a) project reserve accounts or operating subsidies; (b) tenant-based rental assistance for the special purpose of the Section 8 program; (c) nonfederal matching contributions under any other federal program; (d) annual contributions for the operation of public housing; (e) public housing modernization; (f) assistance to prepay low-income housing mortgages; (g) assistance to a project previously assisted with HOME funds during the period of affordability (i.e., the period for which the nonfederal entity must maintain subsidized housing); (h) the acquisition of property owned by the participating jurisdiction (except for property acquired with HOME funds or in anticipation of a HOME project); and (i) payment of delinquent taxes, fees, or charges.

Participating jurisdictions may not charge servicing, origination, or other fees for the purpose of covering costs of administering the HOME program. Participating jurisdictions may charge: (1) owners of rental projects reasonable annual fees for compliance monitoring during the period of affordability, (2) application fees to project owners to discourage frivolous applications, and (3) homebuyers a fee for housing counseling (24 CFR section 92.214).

## HOME-ARP

- a. Affordable Rental Housing: Emergency shelter, hotels, and motels (including those currently operating as non-congregate shelter), facilities such as nursing homes, residential treatment facilities, correctional facilities, halfway houses. However, housing for students or dormitories do not constitute housing in the HOME-ARP program.

HOME-ARP may not be used for any of the prohibited activities, costs or fees in 24 CFR 92.214, as revised by the Appendix of the HOME-ARP Implementing Notice.

- b. HOME-ARP TBRA: funds may not be used to pay for the homebuyer program as defined at 24 CFR 92.209(c)(2)(iv).
- c. Supportive Services: HOME-ARP funds may not be used to provide supportive services to individuals or families that do not meet the definition of a qualifying population defined in Section IV.A. of the HOME-ARP Implementing Notice.

Costs for the provision of services to existing homeowners related to homeownership and mortgages to existing homeowners are not eligible. (If a program participant is a candidate for homeownership, costs associated with pre-purchase homebuying counseling, education and outreach are eligible.)

No duplication of services; PJs are responsible for establishing requirements that allow a program participant to receive only the HOME-ARP services needed.

- d. Non-Congregate Shelter: HOME-ARP funds may not be used to pay ongoing costs of operating HOME-ARP NCS (such as allocable overhead and staffing costs, insurance, utilities) or to convert NCS to housing.

HOME-ARP funds may not be used to pay the operating costs of HOME-ARP NCS. The PJ is prohibited from investing additional HOME-ARP funds to pay for the cost of converting the NCS project from HOME-ARP NCS to permanent affordable housing or to pay for operating the project as permanent affordable housing.

## E. Eligibility

### 1. Eligibility for Individuals

#### HOME

- 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, including all persons in the household, 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 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 units in single-family (one–four unit) housing purchased with HOME funds. The maximum HOME rents, which include utilities or the utility allowance, 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 bedrooms. Rental projects with five or more units have 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 sections 92.216 and 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).

### **HOME-ARP**

- a. HOME-ARP requires that funds be used to primarily benefit individuals and families that meet the following specified “qualifying populations.” Any individual or family who meets the criteria for these populations is eligible to receive assistance or services funded through HOME-ARP without meeting additional criteria (e.g., additional income criteria). All income calculations to meet income criteria of a qualifying population or required for income determination in HOME-ARP eligible activities must use the annual income definition in 24 CFR 5.609 in accordance with the requirements of 24 CFR 92.203(a)(1).

The following are the specified “qualifying populations” (see the HOME-ARP Implementing Notice for detailed definitions):

- (1) Homeless, as defined in 24 CFR 91.5 *Homeless* (1), (2), or (3);

- (2) At risk of homelessness, as defined in 24 CFR 91.5 *At risk of homelessness*;
  - (3) [Fleeing or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Tracking](#), as defined by HUD.
  - (4) Other Populations where providing supportive services or assistance under section 212(a) of NAHA (42 USC 12742(a)) would prevent the family's homelessness or would serve those with the greatest risk of housing instability.
- b. HOME-ARP-assisted units in a rental housing project must be occupied only by households of individuals and families that meet the definition of one or more of the qualifying populations described in Section IV.A of the HOME-ARP Implementing.

#### Occupancy Requirements –

- *Qualifying Households.* Units restricted for occupancy qualifying households must be occupied by households that meet the definition of qualifying population at the time of admission to the HOME-ARP unit. A qualifying household after admission retains its eligibility to occupy a HOME-ARP rental unit restricted for qualifying populations, irrespective of the qualifying household's changes in income or whether the household continues to meet the definition of a qualifying population.
- *Low-Income Households.* At initial occupancy, units restricted for low-income households must be occupied by households that meet the definition of low-income in 24 CFR 92.2. If a tenant's income increases above the applicable low-income limit during the compliance period, the unit will be considered temporarily out of compliance. Noncompliance requires the PJ to take action in accordance with the rent and unit mix requirements in Section VI.B.15 and VI.B.17 of the HOME-ARP Implementing Notice, respectively.

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

Not Applicable

## 3. Eligibility for Subrecipients

Not Applicable

**J. Program Income****HOME**

When program income is generated by housing that is only partially assisted with HOME funds or matching funds, the income must be prorated to reflect the percentage of HOME funds used. Program income includes, but is not limited to, the following:

1. Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HOME funds or matching contributions;
2. Gross income from the use or rental of real property owned by the participating jurisdiction, state recipient, or a subrecipient, that was acquired, rehabilitated, or constructed with HOME funds or matching contributions, less costs incidental to generation of the income (program income does not include gross income from the use, rental or sale of real property received by the project owner, developer, or sponsor, unless the funds are paid by the project owner, developer, or sponsor to the participating jurisdiction, subrecipient or state recipient);
3. Payments of principal and interest on loans made using HOME funds or matching contributions;
4. Proceeds from the sale of loans made with HOME funds or matching contributions;
5. Proceeds from the sale of obligations secured by loans made with HOME funds or matching contributions;
6. Interest earned on program income pending its disposition; and
7. Any other interest or return on the investment permitted under 24 CFR section 92.205(b) of HOME funds or matching contributions (24 CFR sections 92.2 and 92.505).

**HOME-ARP**

Program income earned as a result of the use of HOME-ARP funds is HOME program income and must be used in accordance with the requirements of 24 CFR Part 92.

Program income includes, but is not limited to, principal and interest payments from a loan made with HOME-ARP funds, or other income or fees received from project owners in connection with HOME-ARP funds, and interest earned by the PJ on program income before disposition.

The participating jurisdiction must retain the funds in their HOME-ARP Investment Trust Fund local account (local account) and enter the program income into IDIS as HOME

program income, and also must subgrant the program income to the state recipient or subrecipient that retained the program income.

## **M. Subrecipient Monitoring**

Each participating state is responsible for distributing HOME/HOME-ARP 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/HOME-ARP 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/HOME-ARP 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/HOME-ARP 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/HOME-ARP funds, as required by 24 CFR section 92.500, and has met HOME/HOME-ARP 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/HOME-ARP 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/HOME-ARP funds to for-profit owners or developers, nonprofit organizations, subrecipients, homeowners, homebuyers, tenants receiving tenant-based rental assistance, or contractors—as applicable—the subrecipient must have a written agreement that contains the applicable provisions in 24 CFR section 92.504(c).

Regarding HOME-ARP funds: The same requirements for subrecipient monitoring applies except that activities for homeowners and homebuyers are excluded from HOME-ARP funding.

## **N. Special Tests and Provisions**

### **1. Wage Rate Requirements**

**Compliance Requirements** Contracts for the construction of affordable housing with 12 or more HOME-assisted units are required to comply with the Wage Rate Requirements (42 USC 12836).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

Regarding HOME-ARP funds: The same wage rate requirements apply.

## 2. Maximum Per-Unit Subsidy

**Compliance Requirements** 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) (i.e., 234) limit.

**Note:** The maximum per-unit subsidy limits established in NAHA do not apply to HOME-ARP units. Participating jurisdictions may pay up to 100 percent of the eligible and reasonable HOME-ARP costs allocated to a HOME-ARP unit, including operating cost assistance associated with units restricted for occupancy by qualifying households. All costs paid by HOME-ARP funds must comply with the [HOME-ARP Implementing Notice](#) requirements and the Cost principles at 2 CFR Part 200 Subpart E of the Uniform Administrative Requirements, as amended.

**Audit Objectives** Determine whether the grantee performs the required analysis to ensure that the per-unit investment of HOME funds being provided does not exceed the FHA mortgage limits in Subsection 221(d)(3).

### Suggested Audit Procedures

- a. Review a sample of projects to verify that the HOME per-unit investment amounts are supported by the participating jurisdiction's records.

## 3. Underwriting Requirements

### HOME

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 that is financially viable. Prior to the commitment of HOME funds to a project, participating jurisdictions must evaluate the project in accordance with guidelines that it has adopted, which must include (a) an examination of the sources and uses of funds for the project and a determination that the costs are reasonable; (b) an assessment of the current market demand in the neighborhood in which the project will be located; (c) an assessment of the experience and financial capacity of the developer; and (d) an assessment of the firm written financial commitments for the project (24 CFR section 92.250).

**Audit Objectives** Determine whether the grantee performs the required analysis to ensure that HOME subsidies being provided are not more than necessary to provide affordable housing and that such analysis appears reasonable and is 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 and 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) (i.e., 234) of the National Housing Act necessary to provide affordable housing.

### **HOME-ARP**

HOME-ARP must have standardized guidelines that include the following.

- Examination of the source and uses of funds for the project and a determination that costs are necessary and reasonable. The Participating jurisdiction must determine the amount of HOME-ARP development subsidy required to fill the gap between other committed funding sources and the cost to develop the project.
- A demonstration of unmet need among qualifying populations for the type of housing proposed.
- Market assessment is necessary if project contains units restrict for low-income or market-rate households per 24 CFR 92.250(b)(2).
- Documented review of the developer's experience and financial capacity are satisfactory based on the size and complexity of the project.
- Firm written financial commitments for the project.
- Review of the operating budget especially as it pertains to the operating cost assistance during the compliance period of the project.
- Overall assessment of the project viability thought the compliance period.

**Audit Objectives** Determine whether the grantee performs the required analysis to ensure that HOME-ARP underwriting guidelines are followed, and that such analysis appears reasonable and is properly supported.

### **Suggested Audit Procedures**

Review a sample of projects to verify that the HOME-ARP document list and analysis above is included in the participating jurisdiction's records.



#### 4. Drawdowns of HOME/HOME-ARP Funds

**Compliance Requirements** The Integrated Disbursement and Information System (IDIS) is used both to collect information on compliance with program requirements and to disburse HOME funds to local jurisdictions (24 CFR section 92.502).

**Audit Objectives** Determine whether the drawdowns of HOME funds using IDIS (HOME payment certification amounts) are supported by local jurisdiction records.

##### **Suggested Audit Procedures**

Verify that HOME/HOME-ARP payment certification amounts match the amount of the local jurisdiction's expenditures to support the drawdown request.

#### 5. Housing Quality Standards

**Compliance Requirements** During the period of affordability (i.e., the period for which the nonfederal 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 one to four units, (b) every two years for projects containing five 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/HOME-ARP-assisted tenant-based rental assistance to determine compliance with housing quality standards (24 CFR sections 92.209(i), 92.251(f), and 92.504(d)).

Regarding HOME-ARP funds: the rental units must comply with the same requirements as HOME per 24 CFR 92.251 for (a) new construction, (b) rehabilitation projects, (c)(1) and (2) acquisition of standard housing, (e) manufactured housing, and (f) on-going property condition standards.

**Note:** Requirements for the ongoing inspections of HOME-assisted rental housing were established by the HOME rule, published July 24, 2013. These requirements will become effective upon publication of a notice by HUD, which further sets forth these requirements. Once effective, the requirements for completion and ongoing inspections of HOME rental housing must comply with the requirements set forth at 24 CFR 92.504(d)(1).

**Audit Objectives** Determine whether the grantee performs the required inspections to ensure that property standards are met.

##### **Suggested Audit Procedures**

- a. Verify through a review of documentation that the nonfederal entity identifies those units on which housing quality inspections are due.

- b. Verify through a review of documentation that the nonfederal entity performs inspections of units and that any needed repairs are completed timely.

#### IV. OTHER INFORMATION

##### *Improper Payments*

A participating jurisdiction 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 funds to either its HOME Investment Trust Fund Treasury account or the local HOME account (24 CFR section 92.503(b)).

Regarding HOME-ARP funds: If funds are invested in HOME-ARP rental housing and NCS that does not meet the requirements in the Notice, these funds must be repaid to the participating jurisdiction's HOME-ARP Investment Trust Fund Treasury account (Treasury account). HOME-ARP funds **may not** be repaid to the participating jurisdiction's local account.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### ASSISTANCE LISTING 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 living with the human immunodeficiency virus (HIV), including those 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 10 percent through competitive grants. HUD allocates formula funds based on the number of persons living with HIV as reported to and confirmed by the Centers for Disease Control and Prevention (CDC), population data furnished by the US Bureau of the Census, two-bedroom Fair Market Rent data published by HUD, and poverty rate data derived by the American Community Survey (42 USC 12903(c)).

The competitive grants are awarded based on applications, as described in subpart C of the HOPWA regulations. Each year, priority is given by Congressional authority to the renewal of expiring permanent supportive housing project grants. If funds remain after renewals are awarded, they are distributed under a Notice of Funding Opportunity (NOFO) competition. All states and units of general local government and nonprofit organizations are eligible to apply for competitive grants to fund projects of national significance (SPNS). Only those states and units of general local government that do not qualify for formula allocations are eligible to apply for competitive grants to fund other projects. Except for grants involving projects of national significance, nonprofit 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).

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) included \$65 million in supplemental grant funding for the HOPWA program that the Department distributed in the following manner:

- \$53.7 million was allocated to formula grantees using the same data elements from the statutory allocation formula (42 USC 12903) used to determine fiscal year (FY) 2020 HOPWA formula allocations.
- \$10 million in additional one-time, nonrenewable funding was allocated to HOPWA permanent supportive housing competitive renewal grantees that were initially funded with appropriated funds from FY 2010 or earlier and are currently administering grant

awards. The supplemental grant funding was allocated to the competitive renewal grantees in a manner proportionate to their existing grants.

- \$1.3 million in funding was awarded, without competition, to increase prior awards made to existing HOPWA technical assistance (TA) providers. The purpose of the TA funding is to provide an immediate increase in capacity building and TA available to grantees.

### **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.

HOPWA CARES Act grants are authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136.

### **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 at:

[https://www.hud.gov/program\\_offices/comm\\_planning/hopwa](https://www.hud.gov/program_offices/comm_planning/hopwa).

For additional information that may be helpful to auditors in understanding the HOPWA CARES Act grants, available guidance and resources can be accessed here:

[https://www.hud.gov/program\\_offices/comm\\_planning/hopwa\\_covid-19](https://www.hud.gov/program_offices/comm_planning/hopwa_covid-19).

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	N	N	N	N	Y	Y	Y

**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 made available 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. The supplemental grant funds authorized under the CARES Act may be used to provide the eligible HOPWA activities identified at 24 CFR Part 574, so long as these funds are used for activities that are consistent with grantees’ community needs for COVID-19 preparedness and response.

Grantees may consider using the supplemental grant funds authorized under the CARES Act for the following activities:

- Stays at hotels, motels, or other locations to self-isolate, quarantine, or provide other infection control for HOPWA-eligible individuals or their family members;
- Providing transportation services for eligible households to access medical care, supplies, and food or to commute to places of employment;

- Assisting HOPWA-eligible households in accessing essential services and supplies such as food, medications, medical care, personal protective equipment (PPE) and information;
- Providing nutrition services for eligible households in the form of food banks, groceries, and meal deliveries;
- Educating assisted households on ways to reduce the risk of contracting or spreading COVID-19 to others; and
- Costs related to infection control measures such as cleaning and disinfectant supplies, gloves, PPE, and other safety-related supplies for staff and assisted households.

## **B. Allowable Costs/Cost Principles**

1. Grantees must ensure 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)).
2. HOPWA administrative costs do not include costs directly related to carrying out eligible activities, since those costs are eligible as part of the activity delivery costs of such activities (24 CFR section 574.3).
3. CARES Act funds may be used to cover or reimburse allowable costs as of the date a grantee or project sponsor began preparing for coronavirus, which HUD shall presume to be no earlier than January 21, 2020—the date the first confirmed case was reported in the United States according to the CDC. Grantees and project sponsors must maintain documentation demonstrating when they began preparing for COVID-19, such as notes on formal planning meetings or calls, and must maintain documentation to support any costs incurred by the recipient that the recipient plans to cover or reimburse with CARES Act grant funding.
4. Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5155) prohibits the duplication of benefits for programs that provide financial assistance to people or entities suffering losses as a result of a federally declared disaster or emergency. The duplication of benefits occurs when federal financial assistance is provided to a person or entity through a program to address losses resulting from a federally declared emergency or disaster, and the person or

entity has received (or would receive, by acting reasonably to obtain available assistance) financial assistance for the same costs from any other source (including insurance), and the total amount received exceeds the total need for those costs. HOPWA grantees must establish and maintain adequate procedures to prevent any duplication of benefits with CARES Act funds.

## **E. Eligibility**

### **1. Eligibility for Individuals**

- a. A person eligible for assistance under this program means a person with HIV or AIDS who is a low-income individual and the person's family, including persons important to their care or well-being, as defined in 24 CFR section 574.3. The eligibility of those tenants who were admitted to the program should be determined by (1) obtaining applications that contain all the information needed to determine eligibility, including diagnosis, documentation of housing need, 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.

In response to the COVID-19 pandemic, HUD issued regulatory waivers permitting HOPWA grantees and project sponsors to rely upon a family member's self-certification of income and credible information on their HIV status (such as knowledge of their HIV-related medical care) in lieu of source documentation to determine eligibility for HOPWA assistance of families and grantees affected by COVID-19.

All CPD waiver memoranda are available online at [https://www.hud.gov/program\\_offices/comm\\_planning/waivers\\_covid-19](https://www.hud.gov/program_offices/comm_planning/waivers_covid-19).

HOPWA specific waivers are included in the following memoranda:

- <https://www.hud.gov/sites/dfiles/CPD/documents/Availability-of-Waivers-of-CPD-Grant-Program-and-Consolidated-Plan-Requirements-to-Prevent-the-Spread-of-COVID-19-and-Mitigate-Economic-Impacts-Caused-by-COVID-19.pdf>
- [https://www.hud.gov/sites/dfiles/CPD/documents/Additional\\_Waivers\\_for\\_CPD\\_Grant\\_Programs\\_to\\_Prevent\\_COVID-19\\_Spread\\_and\\_Mitigate\\_COVID-19\\_Economic\\_Impacts.pdf](https://www.hud.gov/sites/dfiles/CPD/documents/Additional_Waivers_for_CPD_Grant_Programs_to_Prevent_COVID-19_Spread_and_Mitigate_COVID-19_Economic_Impacts.pdf)
- [https://www.hud.gov/sites/dfiles/CPD/documents/DI-7782-MegaWaiver-5-for-CPD\\_v2-3-26-2021\\_JAJ\\_signed.pdf](https://www.hud.gov/sites/dfiles/CPD/documents/DI-7782-MegaWaiver-5-for-CPD_v2-3-26-2021_JAJ_signed.pdf)
- [https://www.hud.gov/sites/dfiles/CPD/documents/signed-2021-MegaWaiver-6\\_Final.pdf](https://www.hud.gov/sites/dfiles/CPD/documents/signed-2021-MegaWaiver-6_Final.pdf)

- [https://www.hud.gov/sites/dfiles/CPD/documents/Additional\\_Waivers\\_CPD\\_COVID19\\_December\\_2021.pdf](https://www.hud.gov/sites/dfiles/CPD/documents/Additional_Waivers_CPD_COVID19_December_2021.pdf)

- 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. Per 24 CFR 574.320(a)(2) the rent standard shall be established by the grantee and shall be no more than the published section 8 fair market rent (FMR) or the HUD-approved community-wide exception rent for the unit size. Per 24 CFR section 574.320(a)(3), the rent charged for a unit must be reasonable in relation to rents currently being charged for comparable units in the private unassisted market and must not be in excess of rents currently being charged by the owner for comparable unassisted units. 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.

In response to the COVID-19 pandemic, HUD issued regulatory waivers permitting HOPWA grantees to establish rent standards, by unit size, that exceed FMR as long as they meet rent reasonableness requirements at 24 CFR section 574.320(a)(3). The waiver memoranda are available online at [https://www.hud.gov/program\\_offices/comm\\_planning/waivers\\_covid-19](https://www.hud.gov/program_offices/comm_planning/waivers_covid-19).

- d. A short-term supported housing facility may not provide residence to any individual for more than 60 days during any six-month 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). Short-term 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.

In response to the COVID-19 pandemic, HUD issued regulatory waivers that provided that, on an individual household basis, grantees or project sponsors may assist eligible households for a period that exceeds the time



limit specified in the regulations. The waiver memoranda are available online at [https://www.hud.gov/program\\_offices/comm\\_planning/waivers\\_covid-19](https://www.hud.gov/program_offices/comm_planning/waivers_covid-19).

- e. The CARES Act provided that the supplemental grant funding received under the Act may be used to provide Short-Term Rent, Mortgage and Utility (STRMU) assistance payments for a period of up to 24 months. The 24-month limit on STRMU assistance specified by the CARES Act is only applicable to the supplemental grant funds received under the CARES Act and any portion of a grantee's FY 2020 formula funds that have been approved under its Annual Action Plan (AAP) for allowable activities to prevent, prepare for, and respond to the COVID-19 pandemic.

**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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – For HOPWA, this form is only partially filled out for submittal. All of the information captured in this form except for the program income and indirect expenses sections is already provided through our financial and reporting systems. Grantees are required to only complete the sections on Program Income (Part 10. L-O), and Indirect Expenses (Part 11).
- d. *Integrated Disbursement Information System (IDIS) (OMB No. 2506-0077)* – HOPWA formula grantees and competitive grantees utilize *IDIS Online* to conduct financial transactions. Grantees must set up activities for the grantee and project sponsor in IDIS. An activity corresponds to the eligible HOPWA grant activities and is tied to the operating year. After an activity has been set up, funds are drawn down by creating a voucher that sends the payment request to the line of credit control system (LOCCS). Auditors may use the associated MicroStrategy reporting system to compare actual draw information with amounts reported in APR or CAPER, and receipts on file with the grantee: PR01 (total grant amounts with total draws and balances); PR02 (activity-level funding and drawn

amount under a grant); PR07 (sequential draws completed by the grantee); and PR05 (draws sorted by project and activity). The Contact Support link within IDIS can be used to get clarification on system navigation and report variables.

## 2. Performance Reporting

- a. HOPWA Formula Program grantees must submit a HUD-40110-D, [HOPWA Consolidated Annual Performance and Evaluation Report \(CAPER\)](#) (OMB Number 2506-0133) and HOPWA Competitive Program grantees must submit a HUD-40110-C, [HOPWA Annual Progress Report \(APR\)](#) (OMB Number 2506-0133) to provide HUD with complete information on the use of program funds. Both formula and competitive grantees are required to submit their completed APR and CAPER (respectively) no later than 90 days after the close of their program or operating year.

### *Key Line Items*

1. Amount of HOPWA funds expended with HOPWA in the program year for each HOPWA eligible activity. Auditor should review Part 3 Accomplishment Data Planned Goal and Actual Outputs, Table 1 HOPWA Performance Planned Goal and Actual Outputs, Column f HOPWA Actual funds in the CAPER, and Part 3C Summary Overview of Grant Activities Performance and Expenditure Information, Table 1 Performance and Expenditure Information by Activity Type, Column 2 Outputs: Amount of HOPWA Funds Expended.

**Audit Objectives** Determine grant funds spent reported on APR and CAPER match actual funds spent.

### **Suggested Audit Procedures**

Pull IDIS Microstrategy PR-07. Filter voucher dates by reporting period. Sort by activity. Compare total expenditures by activity to the reported activity totals in the APR or CAPER.

2. Stewardship Reporting on Capital Development Activities. For programs involving the use of HOPWA funds for new construction, acquisition, or for substantial rehabilitation of a building or structure, a grantee is required to operate the facility or structure to benefit HOPWA eligible persons for a minimum of ten years, although funds must be expended within three years from the date of grant agreement. An “Annual Report of Continued Usage for HOPWA Facility-Based Stewardship Units,” which can be found in Part 5e in the [APR](#) and Part 6 of the [CAPER](#), must be submitted for each operating year during which HOPWA funds are

expended. However, HUD may request information on the continued use of the building or structure for any year during the ten-year use period, even if no additional funds were available.

**Audit Objectives** Determine that organizations with HOPWA stewardship facilities subject to three- or ten-year use agreements appropriately submitted an APR or CAPER.

### **Suggested Audit Procedures**

For any CAPERs that reference having stewardship facilities in Part 3 Table 1, there should be a corresponding Part 6 completed. For any APRs that reference stewardship facilities in Part 3c Table 1, there should be a corresponding Part 5e completed. Any grantees with prior year annual reports that reference stewardship facilities that are not in their final stewardship year should also complete the stewardship sections in their most recent annual report.

- b. *CARES Act Reporting:* HOPWA grantees that accept the supplemental grant funding authorized under the CARES Act will be required to report on the activities undertaken with such funding. Consistent with 24 CFR 574.520, grantees will report information to HUD on the use of the supplemental grant funds, including the number of individuals assisted and the types of assistance provided. This information will be reported in the HOPWA CAPER for formula grantees. For competitive grantees, a shortened APR is required.

**Audit Objectives** Determine that HOPWA competitive grantees that received CARES Act funds submitted a shortened APR for their CARES Act awards.

- c. HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons (OMB No. 2529-0043)* – Each recipient that administers covered public and Indian housing assistance, regardless of the amount expended, and each recipient that administers covered housing and community development assistance in excess of \$200,000 in a program year, must submit HUD 60002 information using the automated Section 3 Performance Evaluation and Registration System (SPEARS) (24 CFR sections 135.3(a)(1) and 135.90). Information on the automated system is available at [https://www.hud.gov/program\\_offices/field\\_policy\\_mgt/section3/spears](https://www.hud.gov/program_offices/field_policy_mgt/section3/spears). The system was launched August 25, 2015. SPEARS pre-populates Form HUD 60002 with recipient name and address along with disbursement data for program funding covered by Section 3. Users have the flexibility of selecting the 12-month reporting period, typically to coincide with their respective fiscal cycle.

*Key Line Items* – The following line items contain critical information:

1. Number of new hires that meet the definition of a Section 3 resident
2. Total dollar amount of construction contracts awarded during the reporting period
3. Dollar amount of construction contracts awarded to Section 3 businesses during the reporting period
4. Number of Section 3 businesses receiving the construction contracts
5. Total dollar amount of nonconstruction contracts awarded during the reporting period
6. Dollar amount of nonconstruction contracts awarded to Section 3 businesses during the reporting period
7. Number of Section 3 businesses receiving the nonconstruction contracts

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions**

**1. Maintenance of Structures**

**Compliance Requirements** Project-based rental assistance provides a subsidy to a unit specifically reserved for HOPWA-eligible households by paying for the operating costs of the unit. Households do not retain the rental assistance if they move. Unless waived by HUD, any building or structure acquired, constructed, rehabilitated, or repaired with HOPWA funds 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 non-substantial rehabilitation or repair of a building or structure (24 CFR sections 574.310(c)(1)-(2)).

**Audit Objectives** Determine whether the project sponsor is receiving the proper amount of assistance and is maintaining the assisted buildings and structures for eligible households for the stipulated periods.

### **Suggested Audit Procedures**

- a. Obtain a select sample listing of the buildings or structures acquired, rehabilitated, constructed, or repaired 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 non-substantial 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 Requirements** 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).

In response to the COVID-19 pandemic, HUD issued regulatory waivers allowing grantees or project sponsors to visually inspect units using technology, such as video streaming, to ensure units meet HQS before any assistance is provided. The waiver memoranda are available online at

[https://www.hud.gov/program\\_offices/comm\\_planning/waivers\\_covid-19](https://www.hud.gov/program_offices/comm_planning/waivers_covid-19).

**Audit Objectives** Determine whether the grantee performs the required inspections before assistance is provided to a unit to ensure the unit meets 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.
- c. If virtual inspections are completed, verify by review of documentation that the grantee notified HUD of its intent to use the waiver and that there are written policies to physically reinspect the unit after health officials determine COVID-19 special measures are no longer necessary.

### 3. Community Residences

**Compliance Requirements** 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 Objectives** Determine whether the required certifications are being maintained and supported.

#### Suggested Audit Procedures

- a. Review a select sample of 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

### ASSISTANCE LISTING 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 have been achieved through the purchase and redevelopment of foreclosed and abandoned homes and residential properties that allows those properties to turn into useful, safe and sanitary housing.

#### II. PROGRAM PROCEDURES

##### A. Overview

NSP is separated into four categories.

NSP1 is authorized under Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008 (Pub. L. No. 110-289, July 30, 2008). NSP1 is not part of Assistance Listing 14.256, and this program supplement does not cover NSP1. NSP1 awards are made under Assistance Listings 14.218 and 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.

NSP3 is authorized by Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203, July 21, 2010). NSP3 is not part of Assistance Listing 14.256 and this program supplement does not cover NSP3. NSP3 awards are made under Assistance Listings 14.218 and 14.228 and are covered under those respective 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 provided information on funds availability, alternative requirements, and waivers issued by HUD.

## **B. Subprograms/Program Elements**

### 1. *NSP2*

Unlike the NSP1 and NSP3 formula grants provided to existing CDBG annual formula program grantees, NSP2 is a competitive grant program that made \$1.93 billion available to eligible grantees including states, local governments, nonprofits, and consortia of nonprofit entities. **NSP funding provided under the Housing and Economic Recovery Act of 2008 (HERA) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), referred to, respectively, as NSP1 and NSP3, are covered by the Community Development Block Grants/Entitlement Grants/Insular Areas (Assistance Listings 14.218 and 14.225) and audited separately.** NSP2 line of credit funds have been expended, but grantees are still managing program income, the expenditure of which must meet NSP2 purposes. Grant applicants were encouraged to use funds for concentrated investment in carefully chosen target areas. To facilitate the identification of target areas, HUD developed an online mapping application. The mapping tool provided foreclosure and abandonment risk scores for all census tracts, which were updated from the NSP1 risk scores. The methodology used to calculate scores for the NSP2 grants can be found at <https://www.huduser.gov/portal/NSP2datadesc.html>. The mapping tool has not been updated in several years and was replaced by a Foreclosure Need website that HUD required grantees to use, effective May 21, 2013. The September 12, 2019, *Federal Register* NSP Closeout Notice (84 FR 48165) notified grantees that HUD is no longer updating the Foreclosure Need websites and mapping tools. The 2019 Notice amended the NSP2 NOFA to eliminate the requirement that grantees use the HUD Foreclosure Need website. Instead, HUD is requiring that grantees meet the statutory requirement to give priority emphasis and consideration to areas with the greatest need when distributing NSP funds. NSP2 grantees amending their NSP2 applications to serve areas other than those that were previously identified as areas of greatest need must describe the nature and extent of the need for neighborhood stabilization in the amendment. NSP2 grantees must submit any amendments to the field office to forward to HUD Headquarters for review and approval.

The *Federal Register* notices that govern the use of NSP2 funds are available at <https://www.hudexchange.info/nsp/nsp-laws-regulations-and-federal-register-notices/>. This page contains notices for all three rounds of NSP. Auditors are cautioned to refer only to the notices on this page that address NSP2 requirements.

### 2. *NSP-TA*

At this stage in the life of this program, barring any future allocations from Congress, NSP-TA is geared toward identifying grantee issues with the Disaster Recovery Grant Reporting System (DRGR), assessing grantee closeout readiness, and resolving any



programmatic issues that are delaying grantees from closing out NSP grants. Depending upon its issue, a grantee requests assistance directly from HUD or through the HUD TA portal found on the HUD Exchange. Grantee steps for requesting assistance may be found at <https://www.hudexchange.info/program-support/technical-assistance/>.

### **Source of Governing Requirements**

NSP2 and NSP-TA are authorized by the Housing and Economic Recovery Act (Pub. L. No. 110–289) (HERA), as amended by Title XII of Division A of the American Reinvestment and Recovery Act of 2009 (Pub. L. No. 111–005) (ARRA). Like NSP1, NSP2 is a component of the Community Development Block Grant program (CDBG) (Assistance Listings 14.218 and 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 HUD Exchange at <https://www.hudexchange.info/programs/nsp/>. HUD has published detailed additional guidance on program income at [https://files.hudexchange.info/resources/documents/NSP%20Policy%20Alert\\_ProgramIncome.pdf](https://files.hudexchange.info/resources/documents/NSP%20Policy%20Alert_ProgramIncome.pdf).

Additional information about the NSP laws, regulations, and notices are available at <https://www.hudexchange.info/programs/nsp/nsp-laws-regulations-and-federal-register-notices/>.

Specific NSP2 notices are available at:

NSP1 Bridge Notice (Docket No. FR-5255-N-02) at <https://www.govinfo.gov/content/pkg/FR-2009-06-19/pdf/E9-14360.pdf>

NSP “Definition and Modification” Notice (Docket No. 5321-N-03) at <https://www.govinfo.gov/content/pkg/FR-2010-04-09/pdf/2010-8131.pdf>

NSP2 NOFA General Section Notice (Docket No. FR–5300–N–01) at <https://www.govinfo.gov/content/pkg/FR-2008-12-29/pdf/E8-30600.pdf>

NSP2 NOFA at <https://www.hudexchange.info/resource/654/nsp2-nofa-may-4-2009/>

NSP2 NOFA Correction at <https://www.hudexchange.info/resource/656/nsp2-nofa-correction-june-11-2009/>

NSP3 Notice (Unified NSP1 and NSP3 Notice) (Docket No. FR-5447-N-01) at <https://www.govinfo.gov/content/pkg/FR-2010-10-19/pdf/2010-26292.pdf>

NSP Closeout Notice (November 27, 2012) at  
<https://www.govinfo.gov/content/pkg/FR-2012-11-27/pdf/2012-28642.pdf>

Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 (NSP2) Under the American Recovery and Reinvestment Act, 2009: Announcement of Availability of Updated Foreclosure Information (May 21, 2013) at  
<https://www.govinfo.gov/content/pkg/FR-2013-05-21/pdf/2013-11995.pdf>

Notice of Changes to NSP Closeout Requirements Related to Program Income (June 14, 2016) at  
<https://www.govinfo.gov/content/pkg/FR-2016-06-14/pdf/2016-14062.pdf>

Notice of Changes to NSP Closeout Requirements Related to Program Income Amendment (September 12, 2019) at  
<https://www.govinfo.gov/content/pkg/FR-2019-09-12/pdf/2019-19708.pdf>

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	Y	N	Y	Y	N	Y

#### 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 (Appendix I.H, Eligibility and Allowable Costs, of NSP2 NOFA).
  3. For NSP funds, NSP requirements supersede existing CDBG requirements (see III.A.1) 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 NSP3 Notice, 75 FR 64329-64331). 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).
  4. 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 NSP3 Notice, 75 FR 64329-64331).
  5. 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).

## **B. Allowable Costs/Cost Principles**

1. All items of cost listed in 2 CFR Part 200, Subpart E, that require prior federal agency approval are allowable without prior approval, except for the following:
  - a. Depreciation methods for fixed assets shall not be changed without the approval of the federal cognizant agency.
  - b. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses (goods or services for personal use), regardless of whether reported as taxable income to the employees, require prior HUD approval.
  - c. Organization costs require prior HUD approval.
2. Fines, penalties, damages, and other settlements are unallowable (24 CFR section 570.200(a)(5)).

## **H. Period of Performance**

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).

## **J. Program Income**

NSP2 revenue received by states, local governments, nonprofits, and consortia of nonprofit entities that is directly generated from the use of NSP2 funds constitutes NSP2 program income. The expenditure of NSP2 program income must meet NSP2 purposes.

1. 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 NSP3 Notice, 75 FR 64337). HERA, however, 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 Section 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 (Section 2301(c)(3) of HERA; Section II.N. of NSP Notice, 73 FR 58340-58341).
2. With the advent of *Federal Register* Notice of Changes to NSP Closeout Requirements Related to Program Income (81 FR 38730) and the succeeding NSP closeout notice, Notice of Changes to NSP Closeout Requirements Related to Program Income Amendment (84 FR 48165), NSP2 grantees with CDBG annual formula programs may transfer not only NSP program income on hand, but also a future stream of NSP program income for an activity to the annual CDBG program, eliminating the need for multiple written requests to transfer program income that is anticipated, but not yet received. Transfers are made by written notification from the grantee in a form and manner prescribed by HUD and upon HUD written approval. The latter of the two notices mentioned at the beginning of this paragraph provides more specifics on the request and approval process for program income transfers. **This provision is limited to CDBG entitlements, state governments, and non-entitlement units of general local government that are state CDBG grant recipients and are current or former (closed out) NSP2 grantees and does not apply to nonprofits, consortia of nonprofit grantees and non-entitlement units of general local government that are not state CDBG grant recipients.**
  3. NSP2 grantees that are not CDBG entitlement communities or states must use post-closeout revenues generated from NSP-assisted activities that were funded before closeout for NSP purposes. If the grantee does not have another ongoing CDBG grant received directly from HUD at the time of closeout, then in accordance with 24 CFR 570.504(b)(5), income received after closeout from the disposition of real property or from loans outstanding at the time of closeout shall not be governed by NSP or CDBG rules, except that such income shall be used for activities that meet one of the national objectives in 24 CFR 570.208 and the eligibility requirements described in section 105 of the HCD Act. The provisions of 24 CFR 570.504(b)(5) are waived to limit its application to income received within five years of grant closeout. Any income received five years after grant closeout, as well as program income from funds outlaid after the date of the closeout agreement may be used without restriction. Such grantees are encouraged to use such funds in accordance with the principles above.

4. After grant closeout, former NSP grantees that are CDBG entitlements or state governments will report at least annually as provided for by HUD, in DRGR on the receipt and use of NSP program income, and the disposition of land-banked properties. These grantees must also include NSP program income in the annual CDBG Action Plan or substantial amendment in accordance with CDBG requirements.

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *Disaster Recovery Grant Reporting System (DRGR), (OMB No. 2506-0165)*

*Key Line Items* – The following line items contain critical information:

1. *Obligation Amount*
2. *Drawdown Amount*

### **2. Performance Reporting**

*Section 3 of the Housing and Urban Development Act of 1968* – The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons. Section 3 projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. Section 3 reporting is undergoing a transition in FY 2021. A new Section 3 rule (24 CFR Part 75) became effective on November 30, 2020, replacing the old rule at 24 CFR Part 135. Previously, grantees submitted Section 3 data on the HUD Form 60002 using the automated Section 3 Performance Evaluation and Registry System (SPEARS) (24 CFR sections 135.3(a)(1) and 135.90). As of November 30, 2020, NSP recipients are still expected to maintain records of Section 3 statutory, regulatory, and contractual compliance, but are no longer required to report such compliance in

SPEARS. HUD is developing guidance, expected to be effective in July 2021, for NSP grantees to report on Section 3 activities in DRGR.

Key data for NSP Section 3 reporting, on all projects completed within the reporting year, include the following:

1. The total number of labor hours worked;
2. The total number of labor hours worked by Section 3 workers; and
3. The total number of labor hours worked by Targeted Section 3 workers.

Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established. The labor hours reported must include the total number of labor hours worked on a Section 3 project by all workers, including labor hours worked by any subrecipients, contractors and subcontractors that the recipient is required or elects to report. Please consult 24 CFR Part 75 for the various definitions of the workers noted above and more details on Section 3 reporting requirements.

*Quarterly Performance Report (QPR) (OMB No. 2506-0165)*

This report is due each quarter from NSP1, NSP2, and NSP3 grantees and then annually after grant closeout. For state CDBG-DR grantees, the first QPR is due after the first full quarter following execution of a grant agreement with HUD. The report is submitted in HUD's Disaster Recovery Grant Reporting system (DRGR). The instructions for submitting QPRs can be found in the DRGR User Manual (<https://www.hudexchange.info/resource/4915/drgr-user-manual>).

The QPR is created using data in the DRGR action plan. Essentially, the QPRs are a tool that allows the grantee, HUD, and Congress to track expenditures and performance for individual activities. A NSP2 grantee is required to post QPRs on its website. Therefore, the DRGR action plan must be set-up properly in order for the grantee to be enabled to fully report on their activities and accomplishments.

Action plans in DRGR can be modified at almost any time. However, an action plan must be in an approved status before the QPR can be submitted to HUD for review and approval. Additionally, QPRs must be submitted and reviewed within a certain timeframe:

<b>Reporting Period End Date</b>	<b>Grantee Submission Deadlines</b>	<b>HUD Review Deadlines</b>
30-March	30-Apr	30-May
30-Jun	30-Jul	30-Aug
30-Sep	30-Oct	30-Nov

30-Dec	30-Jan	30-Feb
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Each quarter, after the submission of the QPR, HUD reviews the QPRs and provides approvals/rejection-revision directions to the grantee.

### 3. Special Reporting

Not Applicable

### 4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

## N. Special Tests and Provisions

### 1. Wage Rate Requirements

**Compliance Requirements** Wage Rate Requirements 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; 24 CFR 570.603).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

### 2. Citizen Participation

**Compliance Requirements** 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 ten 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 Objectives** 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 ten days.

### 3. Required Certifications and HUD Approvals

**Compliance Requirements** 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 58.34 and categorically excluded activities under 24 CFR 58.35(b) (24 CFR 58.22).

**Audit Objectives** 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.

#### **4. Environmental Reviews**

**Compliance Requirements** 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 within their jurisdiction as described under 24 CFR Part 58. NSP2 grantees cannot obligate or expend federal, or nonfederal, funds if the project or activity would limit reasonable choices or could produce an adverse environmental impact until all required environmental reviews and notifications have been completed by HUD or by a state, local government, or Indian tribe; and either (1) HUD notifies the grantee that the review under 24 CFR Part 50 is completed; or (2) HUD or the state 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 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 nonfederal 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 nongovernmental entity that participates in the project. These entities that directly implement activities must submit the RROF and the certifications to HUD for approval (24 CFR 58.4(b)(1), 58.34, and 58.35).

**Audit Objectives** 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 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.

## **5. Rehabilitation**

**Compliance Requirements** When NSP2 funds are used for rehabilitation, the grantee must ensure that the work is properly completed (24 CFR 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 Objectives** Determine whether the grantee ensures that 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 ensure 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

### ASSISTANCE LISTING 14.267 CONTINUUM OF CARE PROGRAM

#### I. PROGRAM OBJECTIVES

The Continuum of Care (CoC) program is designed to (1) promote community-wide commitment to the goal of ending homelessness; (2) provide funding for efforts by nonprofit providers, state, and local governments to quickly re-house homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; (3) promote access to and effective utilization of mainstream programs by homeless individuals and families; and (4) optimize self-sufficiency among individuals and families experiencing homelessness.

#### II. PROGRAM PROCEDURES

Grants are provided to state, local governments, other governmental entities, private nonprofit organizations, and community mental health agencies that are public nonprofit organizations. CoC program funds may be used to pay for the eligible costs used to establish and operate projects under five program components: (1) permanent housing, which includes permanent supportive housing for persons with disabilities, and rapid rehousing; (2) transitional housing; (3) supportive services only; (4) Homeless Management Information Systems (HMIS); and (5) in some cases, homelessness prevention.

A Unified Funding Agency (UFA) may be established for a CoC to (1) apply to the Department of Housing and Urban Development (HUD) for funding for all of the projects within the geographic area and enter into a grant agreement with HUD for the entire geographic area; (2) enter into legally binding agreements with subrecipients, and receive and distribute funds to subrecipients for all projects within the geographic area; (3) require subrecipients to establish fiscal control and accounting procedures as necessary to ensure the proper disbursement of and accounting for federal funds; and (4) obtain approval of any proposed grant agreement amendments by the CoC before submitting a request for an amendment to HUD.

#### Source of Governing Requirements

The CoC program is authorized by Subtitle C of Title IV of the McKinney-Vento Homeless Assistance Act (42 USC 11381-11389). Implementing regulations are in 24 CFR Part 578.

#### Availability of Other Program Information

Pertinent information regarding the CoC program is available on HUD's website at <https://www.hudexchange.info/coc>.

#### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have

been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
N	N	N	N	Y	Y	Y	Y	Y	N	N	Y

**G. Matching, Level of Effort, Earmarking**

**1. Matching**

The recipient or subrecipient must match all grant funds, except for leasing funds, with no less than 25 percent of cash or in-kind contributions from other sources. For CoC geographic areas in which there is more than one grant agreement, the 25 percent match must be provided on a grant-by-grant basis. Recipients that are a UFA or are the sole recipient for their Continuum may provide match on a Continuum-wide basis (24 CFR section 578.73(a)).

**2. Level of Effort**

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

Not Applicable

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

No assistance provided under the CoC 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 or persons at-risk of homelessness (24 CFR section 578.87(a)).

### 3. Earmarking

No more than 10 percent of any grant awarded may be used for paying the costs of administering the assistance (see III.A.11, “Activities Allowed or Unallowed”). Administrative costs include the costs associated with general management, oversight, and coordination, training on the CoC program requirements, and environmental review. Administrative costs do not include costs for CoC planning activities and UFA costs (24 CFR section 578.59).

## N. Special Tests and Provisions

### 1. Reasonable Rental Rates

**Compliance Requirements** 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 unassisted space (24 CFR section 578.49(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. Grant funds in an amount up to one month’s rent may be used to pay the non-recipient landlord for any damages to leased units by homeless participants (24 CFR sections 578.49(b)(2) and 578.51(g) and (j)).

**Audit Objectives** Determine reasonableness of the rents being paid with grant funds.

#### Suggested Audit Procedures

- a. Determine the acceptability of the manner in which the recipient or subrecipient 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 Requirements** Recipients or subrecipients 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 15 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 very low-income persons pursuant to a request for such use by the recipient or subrecipient operating the project, HUD may authorize the recipient or subrecipient to convert the project to such use (24 CFR section 578.81(a) and (b)).

**Audit Objectives** 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 recipient or subrecipient and owner of the structure, if other than the recipient or subrecipient, covering the provision of supportive housing or supportive services for 15 years if the grant assistance involves acquisition, rehabilitation, or new construction.

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****ASSISTANCE LISTING 14.269 HURRICANE SANDY COMMUNITY DEVELOPMENT  
BLOCK GRANT DISASTER RECOVERY GRANTS (CDBG-DR)****ASSISTANCE LISTING 14.272 NATIONAL DISASTER RESILIENCE COMPETITION  
(CDBG-NDR)****I. PROGRAM OBJECTIVES**

The primary objectives of the CDBG-DR and CDBG-NDR programs are to provide disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster, declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 USC 5121 et seq.) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013.

**II. PROGRAM PROCEDURES**

The CDBG-DR program provides grants to states or units of general local government to be used for specific disaster-related purposes. Formula funds are allocated to recipients through the issuance of CDBG-DR notices in the *Federal Register*. The CDBG-NDR program provides discretionary grants that address unmet needs from past disasters while addressing the vulnerabilities to future disasters. The National Disaster Resilience Competition (NDRC) Notice of Funding Availability (NOFA) (FR-5800-N-29A2) provided the funding process for CDBG-NDR grants. Prior to the obligation of funds, a grantee must submit an action plan detailing the proposed use of funds, including criteria for eligibility and how use of these funds will address disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas.

Notices provide the requirements regarding the use of funds, and waivers and alternative requirements to CDBG Block/Entitlement Grants (CDBG) requirements (see Assistance Listing 14.218). The Hurricane Sandy CDBG-DR program provides assistance to three categories of grantees: (1) state and local governments engaged in recovery from Hurricane Sandy; (2) state and local governments engaged in recovery from disasters that occurred in 2011 and 2012 other than Hurricane Sandy; and (3) state and local governments engaged in recovery from 2013 disasters. The CDBG-NDR program provides assistance to state and local governments engaged in recovery from disasters that occurred in 2011, 2012, or 2013. Auditors will need to look at the notices that apply to the grantee to understand the full scope of the funding and requirements associated with the grant that is under review. Requirements, waivers, and alternative requirements for CDBG-NDR grants can be found in the NOFA (FR-5800-N-29A2) and at Appendix A of the NOFA.

The Department of Housing and Urban Development (HUD) also may publish other applicable *Federal Register* notices subsequent to the publication of this program supplement. Auditors will need to consult the CDBG-DR website to access any subsequent applicable CDBG-DR/CDBG-NDR notices.



The applicable *Federal Register* notices, and the NOFA, governing CDBG-DR and CDBG-NDR funds, respectively, require that in an Action Plan for Disaster Recovery, grantees describe uses and activities that (1) are authorized under title I of the Housing and Community Development Act of 1974 (42 USC 5301 et seq.) (HCD Act) or allowed by a waiver or alternative requirement; and (2) respond to a disaster-related impact. To help meet these requirements, grantees must conduct an assessment of community impacts and unmet needs to guide the development and prioritization of planned recovery activities. All CDBG-DR/CDBG-NDR activities must clearly address the impact of the disaster for which funding was appropriated. Each activity must be CDBG-eligible (or receive a waiver), meet a national objective, and address a direct or indirect impact from the disaster in a county covered by a presidential disaster declaration.

The requirements for CDBG action plans, located at 42 USC 12705(a)(2), 42 USC 5304(a)(1), 42 USC 5304(m), 42 USC 5306(d)(2)(C)(iii), and 24 CFR sections 91.220 and 91.320, have been waived for funds provided for CDBG-DR/CDBG-NDR activities. Instead, per the applicable *Federal Register* notices or NOFA, each grantee must submit to HUD an Action Plan for Disaster Recovery for approval. For CDBG-NDR grantees, the Phase I and Phase II competition applications will serve as the action plan, as stated in the NOFA at Section I.B. The action plan must identify the proposed use(s) of the grantee's allocation, including criteria for eligibility, and how the uses address long-term recovery needs. For CDBG-DR grants, a grantee may submit a partial action plan, but the partial action plan must be amended one or more times until it describes uses for 100 percent of the grantee's CDBG-DR award. CDBG-NDR grantees request funding amounts in their applications but may amend applications and funding amounts in subsequent action plan amendments.

In the action plan, grantees must document how each activity is connected to the disaster for which it is receiving CDBG-DR/CDBG-NDR assistance. Following approval of an action plan providing for the initial or subsequent allocation of CDBG-DR/CDBG-NDR funds, a grantee must amend its action plan to project expenditures and outcomes within 90 days of the action plan approval. The projections must be based on each quarter's expected performance, beginning with the quarter funds are available to the grantee and continuing each quarter until all funds are expended. The action plan must be amended to reflect any subsequent changes, updates, or revisions of the projections. All amendments to action plans must be published by the grantee.

The secretary of HUD must certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to (1) prevent any duplication of benefits as defined by Section 312 of the Stafford Act; (2) ensure timely expenditure of funds; (3) maintain comprehensive websites regarding all disaster recovery activities assisted with these funds; and (4) detect and prevent waste, fraud, and abuse of funds.

### **Source of Governing Requirements**

These grants are authorized by the Disaster Relief Appropriations Act, 2013 (Appropriations Act), Pub. L. No. 113-2, January 29, 2013. Implementing regulations are located at 24 CFR Part 570. Waivers and requirements are provided in individual CDBG-DR and CDBG-NDR notices. Many of the general program waivers and requirements for the CDBG-DR program are in the

Hurricane Sandy CDBG-DR notice (78 FR 14329, March 5, 2013), with subsequent notices referencing the waivers and requirements in that notice. For CDBG-NDR, many of the general program requirements are in Appendix A of the NOFA (FR-5800-N-29A2) with subsequent notices to be published that references award amounts and waivers and alternative requirements.

### **Availability of Other Program Information**

Additional information about the CDBG-DR and CDBG-NDR programs and CDBG-DR notices are available at <https://www.hudexchange.info/cdbg-dr/>. The CDBG-NDR NOFA is available at [https://www.hud.gov/program\\_offices/administration/grants/fundsavail/nofa14/ndrc](https://www.hud.gov/program_offices/administration/grants/fundsavail/nofa14/ndrc). The applicable *Federal Register* notices for each category of grantee receiving assistance under the CDBG-DR and CDBG-NDR programs are as follows:

#### *All CDBG-DR Grantees*

- 79 FR 60490 (October 7, 2014)
- 80 FR 26942 (May 11, 2015)
- 80 FR 72102 (November 18, 2015)
- 81 FR 7567 (February 12, 2016)
- 82 FR 61320 (December 27, 2017)
- 84 FR 4836 (February 19, 2019)

#### *Hurricane Sandy CDBG-DR Grantees*

- 78 FR 14329 (March 5, 2013)
- 78 FR 23578 (April 19, 2013)
- 78 FR 45551 (July 29, 2013)
- 78 FR 46999 (August 2, 2013)
- 78 FR 52560 (August 23, 2013)
- 78 FR 69104 (November 18, 2013)
- 78 FR 76157 (December 16, 2013) (amending March 5, 2013 Notice)
- 79 FR 17173 (March 27, 2014)
- 79 FR 31970 (June 3, 2014) (amending March 5, 2013 Notice)

79 FR 40133 (July 11, 2014)

79 FR 62182 (October 16, 2014)

80 FR 17772 (April 2, 2015)

80 FR 51589 (August 25, 2015)

81 FR 54114 (August 15, 2016)

82 FR 9753 (February 8, 2017)

82 FR 36812 (August 7, 2017)

*2011/2012 Disaster CDBG-DR Grantees*

78 FR 32262 (May 29, 2013)

78 FR 76157 (December 16, 2013) (amending May 29, 2013 Notice)

79 FR 17175 (March 27, 2014) (Minot, ND Alternative Requirement)

79 FR 17176-17177 (March 27, 2014) (City of Joplin, MO Waivers)

79 FR 40133 (July 11, 2014)

79 FR 40135 (July 11, 2014) (Luzerne County, PA Alternative Requirement)

*2013 Disaster CDBG-DR Grantees*

78 FR 76154 (December 16, 2013)

79 FR 31964 (June 3, 2014)

79 FR 31970 (June 3, 2014) (State of Colorado Waiver)

80 FR 1039 (January 8, 2015)

82 FR 36812 (August 7, 2017)

*National Disaster Resilience Competition Grantees* (Note: The NOFA below is available on the Internet)

FR-5800-N-29A2 (June 22, 2015)

81 FR 36557 (June 7, 2016)

82 FR 36812 (August 7, 2107)

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	Y	N	Y	Y	N	Y

**A. Activities Allowed or Unallowed**

1. All activities undertaken must meet one of three national objectives of the regular CDBG program (see Assistance Listing 14.218, III.A.1, “Activities Allowed or Unallowed”) (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)).

In the applicable *Federal Register* notices for each category of grantee, HUD has provided an alternative requirement for the CDBG program (Assistance Listing 14.218) urgent need national objective criteria for these grants. In the regular CDBG program, in order to meet the urgent need national objective in 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-DR and CDBG-NDR,

HUD eliminated 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 alternative urgent need national objective may be used for grantees for two years following the obligation of funds for the activity.

HUD has also waived 24 CFR sections 570.506(b)(12)(i) and (iii) and 570.208(c) to the extent necessary, to allow these grantees to certify that an activity is designed to address current economic conditions that pose a threat to the economic welfare of communities (see the section on Applicable Rules, Statutes, Waivers, and Alternative Requirements of the applicable CDBG-DR notice in 78 FR 14329 for Hurricane Sandy grantees; 78 FR 32265 for 2011 and 2012 disaster grantees; 78 FR 76157 for 2013 disaster grantees; and Section V.A.1.f of Appendix A of the NOFA (FR-5800-N-29A2) for CDBG-NDR grantees).

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 nonfederal share for another grant program for activities that are otherwise eligible (this includes programs or activities administered by the Federal Emergency Management Agency (FEMA) or the US Army Corps of Engineers); (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 I 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 (see III.G.3));

- (u) housing services related to HOME-funded activities (see Assistance Listing 14.239); (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 nonprofit and for-profit entities for such construction or improvement (42 USC 5305(a); 24 CFR sections 570.200 through 570.207, and 570.482).
3. All the activities that a grantee undertakes using CDBG-DR/CDBG-NDR funds must be identified in an action plan or an amended action plan (78 FR 14332 for Hurricane Sandy grantees; 78 FR 32265 for 2011/2012 disaster grantees; 78 FR 76157 for 2013 disaster grantees; and Section I.B of the NOFA (FR-5800-N-29A2) for CDBG-NDR grantees).
  4. For Hurricane Sandy grantees, 2013 disaster grantees, and CDBG-NDR grantees, as documented in grantee files, infrastructure projects, and programs must be (a) based on a comprehensive risk analysis as provided for in the grantee’s action plan; and (b) constructed or rehabilitated consistent with identified resilience performance standards (78 FR 69107 for Hurricane Sandy grantees; 78 FR 31964 for 2013 disaster grantees; and Section V.A of the NOFA (FR-5800-N-29A2) for CDBG-NDR grantees).
  5. Housing projects and programs for CDBG-DR grantees, as documented in grantee files, must
    - a. incorporate green building standards;
    - b. not provide rehabilitation assistance, residential incentives, or buy-out assistance to secondary residences as defined by IRS publication 936; and
    - c. provide for the elevation of newly constructed or substantially improved structures located in a flood plan to a level of at least one foot higher than the latest FEMA-issued base flood elevation (78 FR 14333, 14345 and 78 FR 23579 for Hurricane Sandy grantees; 78 FR 32265 for 2011/2012 disaster grantees; and 78 FR 76157 for 2013 disaster grantees).
  6. Assistance to for-profit businesses can only be provided to those businesses that meet the definition of a small business as established by the Small Business Administration at 13 CFR Part 121 (provided that the size requirement shall apply only to each business EIN) (78 FR 14347, for Hurricane Sandy grantees; 78 FR 32265 for 2011/2012 disaster grantees; 78 FR 76157 for 2013 disaster grantees; and 78 FR 31970; and Section V.B.39. of Appendix A of the NOFA (FR-5800-N-29A2)).

7. For local government grantees, when CDBG-DR funds are used to finance rehabilitation, the rehabilitation is to be limited to (1) privately owned buildings and improvements for residential purposes; (2) low-income public housing and other publicly owned residential buildings and improvements; (3) publicly or privately owned commercial or industrial buildings, structures, or other real property, equipment, and improvements under certain circumstances; and (4) manufactured housing when it constitutes part of the community’s permanent housing stock (24 CFR sections 570.202 and 570.203). State grantees may also use CDBG-DR funds to finance the reconstruction or rehabilitation of privately owned buildings and improvements not related to a residential purpose. HUD has also waived provisions of 42 USC 5305(a) to allow the rehabilitation or reconstruction of public buildings by both local government and state grantees (78 FR 14346 for Hurricane Sandy grantees; 78 FR 32265 for 2011/2012 disaster grantees; and 78 FR 76157 for 2013 disaster grantees).
8. Each state and local government receiving a direct CDBG-DR award must expend its entire award within its jurisdiction (e.g., New York City must expend all funds within New York City), as described in each applicable *Federal Register* notice (see the section on Allocations and Related Information of the applicable CDBG-DR notice in 78 FR 14330, 78 FR 69105, and 79 FR 62183 for Hurricane Sandy grantees; 78 FR 32263 for 2011/2012 disaster grantees; and 78 FR 76155 and 79 FR 31965 for 2013 disaster grantees). For CDBG-NDR grantees, funds must be used to benefit the approved target area for which the grantee has demonstrated remaining unmet recovery needs, as described within its application or amended action plan and per the NOFA criteria for demonstrating unmet recovery needs (Section III.A, “Eligible Project Areas,” of the NOFA (FR-5800- N-29A2)).

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

Not Applicable

### **2. Level of Effort**

Not Applicable

### **3. Earmarking**

- a. For all grantees, HUD has waived the requirements at 24 CFR sections 570.200(a)(3) and 570.484 that require that 70 percent of CDBG funds be used for activities that benefit low- and moderate-income persons. Instead, 50 percent of CDGB-DR/CDBG-NDR funds must benefit low- and moderate-income persons. HUD may also establish an overall benefit requirement of less than 50 percent for individual grantees (78 FR 14339-14340 for Hurricane Sandy grantees; 78 FR 32265 for 2011/2012 disaster grantees; 78 FR 76157 for 2013 disaster grantees; and Section V.A.7. of Appendix A of the NOFA (FR-5800-N-29A2) for CDBG-NDR grantees).

- b. Not more than 20 percent of the total CDBG-DR/CDBG-NDR grant, plus 20 percent of program income received during a program year, may be obligated for activities that qualify as planning and general administration as defined in 24 CFR sections 570.205 and 570.206 (24 CFR section 570.200(g), 78 FR 14340 for Hurricane Sandy grantees; 78 FR 32265 for 2011/2012 disaster grantees; 78 FR 76157 for 2013 grantees; and Section V.A.10.b. of Appendix A of the NOFA (FR-5800-N-29A2) for CDBG-NDR grantees).
- c. Not more than 5 percent of the total CDBG-DR/CDBG-NDR grant may be used for general administration and technical assistance (78 FR 14340 for Hurricane Sandy grantees; 78 FR 32265 for 2011/2012 disaster grantees; 78 FR 76157 for 2013 disaster grantees; and Section V.A.10.b. of Appendix A of the NOFA (FR-5800-N-29A2) for CDBG-NDR grantees).

## **H. Period of Performance**

All funds must be expended within two years of the date HUD obligates funds to a grantee (funds are obligated to a grantee upon HUD's signing of the grantee's CDBG-DR or CDBG-NDR grant agreement or an amendment to the grant agreement). The requirement to expend funds within two years of the date of obligation is enforced relative to the activities funded under each obligation (i.e., the grant agreement or grant amendment, as applicable). For any funds that the grantee believes will not be expended by the deadline, it must submit a letter to HUD justifying why it is necessary to extend the deadline for a specific portion of funds. HUD will publish any approved waivers in the *Federal Register* once granted (Title IX, Section 904(c) of the Appropriations Act, 127 Stat. 17; 78 FR 14331 and 14341-14342 for Hurricane Sandy grantees; 78 FR 32644 and 32265 for 2011/2012 disaster grantees; 78 FR 76156-76157 for 2013 disaster grantees; and Section IV.E. of the NOFA (FR-5800-N-29A2) for CDBG-NDR grantees).

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable (cash status only)

### **2. Performance Reporting**

*HUD 60002, Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons (OMB No. 2529-0043)* – Each recipient that administers covered public and Indian housing assistance, regardless of the amount expended, and each recipient that administers covered housing and community development assistance in excess of \$200,000 in a program year, must



submit HUD 60002 information using the automated Section 3 Performance Evaluation and Registry (SPEARS) System (24 CFR sections 135.3(a)(1) and 135.90). Information on the automated system is available at [https://www.hud.gov/program\\_offices/field\\_policy\\_mgt/section3/spears](https://www.hud.gov/program_offices/field_policy_mgt/section3/spears). The system was launched August 24, 2015.

SPEARS pre-populates Form HUD 60002 with the recipient name and address along with disbursement data for program funding covered by Section 3. Users have the flexibility of selecting the 12-month reporting period, typically to coincide with their respective fiscal cycle. The due date for submission of 2013 and 2014 reports was extended to December 15, 2015.

*Key Line Items* – The following line items contain critical information:

1. Number of new hires that meet the definition of a Section 3 resident
2. Total dollar amount of construction contracts awarded during the reporting period
3. Dollar amount of construction contracts awarded to Section 3 businesses during the reporting period
4. Number of Section 3 businesses receiving the construction contracts
5. Total dollar amount of nonconstruction contracts awarded during the reporting period
6. Dollar amount of nonconstruction contracts awarded to Section 3 businesses during the reporting period
7. Number of Section 3 businesses receiving the nonconstruction contracts

### **3. Special Reporting**

Not Applicable

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## **N. Special Tests and Provisions**

### **1. Wage Rate Requirements**

**Compliance Requirements** Wage Rate Requirements 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 1205 of Pub. L. No. 111-32; 24 CFR section 570.603).

See Part 4, 20.001, Wage Rate Requirements Cross-Cutting Section.

## 2. Citizen Participation

**Compliance Requirements** Prior to the submission to HUD for its Disaster Recovery grant, the grantee must certify to HUD that it has met the citizen participation requirements through the adoption of a citizen participation plan. The applicable *Federal Register* notice allocating funds to a grantee or NOFA specifies the time frame for public comment on the action plan or action plan amendment.

Grantees are responsible for ensuring that all citizens have equal access to information about the programs, including persons with disabilities and limited English proficiency. Each grantee must ensure that program information is available in the appropriate languages for the geographic area served by the jurisdiction. Subsequent to publication of the proposed action plan, the grantee must provide a reasonable time frame and method(s) (including electronic submission) for receiving comments on the plan or substantial amendment (78 FR 14338 for Hurricane Sandy grantees; 79 FR 31969 for 2011/2012 disaster grantees; 78 FR 76156-76157 for 2013 disaster grantees; and Section III.C.1. of the NOFA (FR-5800-N-29A2) for CDBG-NDR grantees)).

**Audit Objectives** Determine whether the grantee has developed and implemented a citizen participation plan.

### Suggested Audit Procedures

- a. Verify that the grantee has a citizen participation plan.
- b. Examine HUD's approved action plans and note dates that the program information is available in the appropriate languages for the geographic area served by the jurisdiction.
- c. Verify through a review of the grantee's official website or other means that interested parties have been provided with an opportunity to examine the proposed plan or amendment's contents in accordance with the citizen participation plan.

## 3. Required Certifications and HUD Approvals

**Compliance Requirements** CDBG-DR/CDBG-NDR funds (and local funds to be repaid with CDBG-DR/CDBG-NDR 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 Objectives** Determine whether the recipient 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-DR/CDBG-NDR funds, and local funds which were repaid with CDBG-DR/CDBG-NDR funds, were first obligated or expended and ascertain if any funds were obligated or expended prior to HUD’s approval of the RROF.

#### **4. Environmental Reviews**

**Compliance Requirements** 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 Objectives** 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).

#### **5. Rehabilitation**

**Compliance Requirements** When CDBG-DR/CDBG-NDR funds are used for rehabilitation, the recipient must ensure that the work is properly completed (24 CFR section 570.506).

**Audit Objectives** Determine whether the recipient ensures rehabilitation work is properly completed.

**Suggested Audit Procedures**

- a. Verify that pre-rehabilitation inspections are conducted and describes the deficiencies to be corrected.
- b. Ascertain that the deficiencies to be corrected are incorporated into the rehabilitation contract.
- c. Verify through a review of documentation that the recipient inspects the rehabilitation work upon completion to ensure that it is carried out in accordance with contract specifications.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### ASSISTANCE LISTING 14.275 HOUSING TRUST FUND

#### I. PROGRAM OBJECTIVES

The Housing Trust Fund (HTF) is an affordable housing production program that complements existing federal, state, and local efforts to increase and preserve the supply of decent, safe, and sanitary affordable housing for extremely low-income (ELI) and very low-income households (VLI), including homeless families (24 CFR Part 93), by providing annual formula allocations to states. Grantees must use at least 80 percent of each annual grant for rental housing and may use up to 10 percent for homeownership and up to 10 percent for the grantee's reasonable administrative and planning costs. In any fiscal year in which total funding is below \$1 billion, all funds must be used to benefit ELI families or families with incomes at or below the federal poverty line. HTF funds may be used for the production or preservation of affordable housing through the acquisition, new construction, reconstruction, and/or rehabilitation of non-luxury housing with suitable amenities. All HTF-assisted units have a minimum affordability period of 30 years.

#### II. PROGRAM PROCEDURES

Fannie Mae and Freddie Mac set aside funds for HTF, which are made available to HUD each year. The department must publish HTF formula allocations for grantees in the *Federal Register* each year. The statute requires that each state and the District of Columbia receive an annual minimum allocation amount of \$3 million. Funds available after each state and the District of Columbia receive their minimum allocations will be allocated to Puerto Rico and the four insular areas. The consolidated plan regulation at 24 CFR section 91.320(k)(5), requires the state to create and submit an HTF allocation plan as part of its annual action plan submission. The allocation plan must describe how the state will distribute its HTF funds, including how it will use the funds to address its priority housing needs, what types of projects may be undertaken with those funds, and how recipients and projects will be selected to receive those funds.

Grantees may select units of general local government or state agencies as subgrantees. The grantee must enter into a written agreement with a subgrantee that details the requirements for the subgrantee. Subgrantees must also submit an allocation plan that includes all elements required by section 91.220(l)(5). The grantee is responsible for ensuring that its subgrantees adhere to all HTF regulations as well as any additional requirements set forth by the grantee. In addition, grantees are required to set-up and report program accomplishments for its HTF projects in HUD's Integrated Data Information System (IDIS) according to timeframes specified by the department. The grantee also draws down HTF funds from its HTF Treasury account using IDIS.

#### Source of Governing Requirements

HTF was established under Title I of the Housing and Economic Recovery Act of 2008 (HERA), which was a major housing legislation enacted to reform and improve the regulation of the government-sponsored enterprises (GSEs)—Fannie Mae and Freddie Mac, strengthen neighborhoods hardest hit by the foreclosure crisis, enhance mortgage protection, and maintain

the availability of affordable home loans. The reform of the GSEs is provided in the Federal Housing Finance Regulatory Reform Act of 2008, which is Division A, Title I of HERA. Section 1131 of Division A, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 USC 4501 et seq.) (the Act) to add a new section 1337 entitled “Affordable Housing Allocations” and a new section 1338 entitled “Housing Trust Fund.”

### Availability of Other Program Information

Pertinent information that will assist the auditor in understanding the Housing Trust Fund program is available on the agency website at <https://www.hudexchange.info/programs/htf/>.

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	Y	N	N	Y	N	N	Y

### A. Activities Allowed or Unallowed

HTF funds may be used for the production, preservation, and rehabilitation of affordable rental housing and affordable housing for first-time homebuyers through the acquisition (including assistance to homebuyers), new construction, reconstruction, or rehabilitation of nonluxury 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; for

operating costs of HTF-assisted rental housing; and for reasonable administrative and planning costs. Operating cost assistance and operating cost assistance reserves may be provided only to rental housing acquired, rehabilitated, reconstructed, or newly constructed with HTF funds. HTF-assisted housing must be permanent housing; specific restrictions apply to manufactured housing. There are restrictions regarding multi-unit projects also.

The grantee may not provide assistance (other than assistance to a homebuyer to acquire housing previously assisted with HTF funds or renewal of operating cost assistance or renewal of operating cost assistance reserve) to a project previously assisted with HTF funds during the period of affordability established by the grantee in the written agreement under 24 CFR section 93.404 (c)(2)(iv). However, additional HTF funds may be committed to a project up to one year after project completion, but the amount of HTF funds in the project may not exceed the maximum per-unit development subsidy amount established pursuant to 24 CFR section 93.300. Also, per 24 CFR section 93.204, several activities and fees that are not allowed, such as paying delinquent taxes, servicing or origination fees associated with the cost of administering the program.

## **B. Allowable Costs/Cost Principles**

**Eligible Project Costs.** HTF funds may be used to pay very specific project costs noted in 24 CFR section 93.201, such as the actual cost of constructing or rehabilitating housing, to make improvements to the project site that are in keeping with improvements of the surrounding, standard projects. Site improvements may include onsite roads and sewer and water lines necessary to the development of the project. The cost to refinance existing debt secured by rental housing units that are being rehabilitated with HTF funds but only if the refinancing is necessary to reduce the overall housing costs and to make the housing more affordable and proportional to the number of HTF-assisted units in the rental project. The proportional rehabilitation cost must be greater than the proportional amount of debt that is refinanced.

HTF funds may be used for the production, preservation, and rehabilitation of affordable rental housing and affordable housing for first-time homebuyers through the acquisition (including assistance to homebuyers), new construction, reconstruction, or rehabilitation of nonluxury 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; for operating costs of HTF-assisted rental housing; and for reasonable administrative and planning costs. The specific eligible costs for these activities are found in 24 CFR section 93.201 and section 93.202.

## **E. Eligibility**

### **1. Eligibility for Individuals**

The HTF program has income-targeting requirements. Only extremely low-income families may occupy an HTF-assisted unit. Income must be determined by

their “annual income” as defined in 24 CFR 5.609 or by “adjusted gross income, as defined by the IRS form 1040 series for individual federal annual income tax purposes. The grantee may use only one definition for each HTF-assisted program (e.g., down payment assistance program that it administers and for each rental housing project). However, for the initial determination of annual income, the grantee must examine at least two months of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family. Also, the grantee must obtain a written statement from the family attesting to their annual income and family size. This certification must state that the family will provide source documents upon request. The administrator of the program must yearly attest to the family size and annual income or alternatively, indicate the current dollar limit for very low or low-income families for the family size of the tenant and state that the tenant’s annual income does not exceed this limit.

**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**

Not more than 10 percent of the annual grant may be used for housing for homeownership.

Not more than 10 percent of the sum of each fiscal year HTF grant and of program income deposited into its local account or received and reported by its subgrantees during the program year, may be expended for payment of reasonable administrative and planning costs of the HTF.

Not more than one-third of each annual grant may be used for operating cost assistance and operating cost assistance reserves.

The grantee must use 100 percent of its HTF grant for the benefit of extremely low-income families or families with incomes at or below the poverty line (whichever is greater).

**J. Program Income**

Program income must be deposited in the grantee’s HTF local account unless the grantee permits a subgrantee to retain the program income for additional HTF projects pursuant to the written agreement required by 24 CFR 93.404(b). The grantee must report the program income received as well as the use of the program income for HTF in HUD’s disbursement and information system.



## N. Special Tests and Provisions

### 1. Maximum Per-Unit Subsidy and Underwriting and Subsidy Layering Requirements

**Compliance Requirements** Maximum per-unit development subsidy amount. The grantee must establish maximum limitations on the total amount of HTF funds that the grantee may invest per-unit for development of non-luxury housing, with adjustments for the number of bedrooms and the geographic location of the project. These limits must be reasonable and based on actual costs of developing non-luxury housing in the area. The grantee must include these limits in its consolidated plan and update these limits annually.

*Underwriting and Subsidy Layering.* Before committing funds to a project, the grantee must evaluate the project in accordance with guidelines that it has adopted for determining a reasonable level of profit or return on recipient's investment in a project and must not invest any more HTF funds, alone or in combination with other governmental assistance, than is necessary to provide quality affordable housing that is financially viable for a reasonable period (at minimum, the period of affordability in Section 93.302 or Section 93.304) and that will not provide a profit or return on the recipient's investment that exceeds the grantee's established standards for the size, type, and complexity of the project. The guidelines adopted by the grantees must require the grantee to undertake:

1. An examination of the sources and uses of funds for the project (including any operating cost assistance, operating cost assistance reserve, or project-based rental assistance that will be provided to the project) and a determination that the costs are reasonable; and
2. An assessment, at minimum, of the current market demand in the neighborhood in which the project will be located, the experience of the recipient, the financial capacity of the recipient, and firm written financial commitments for the project.

**Audit Objectives** Determine whether the HTF 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 HTF subsidy amounts are supported by the grantee's records.
- b. Review grantee records to verify that each housing project was evaluated in accordance with its guidelines and to ensure that the HTF assistance to the project is not any more than the maximum limits established by the grantee.

## **2. Drawdowns of HTF Funds**

**Compliance Requirements** The Integrated Disbursement and Information System (IDIS) is used both to collect information on compliance with program requirements and to disburse HTF funds to HTF grantees (24 CFR section 93.402).

**Audit Objectives** Determine whether the drawdowns of HTF funds using IDIS (HTF payment certificate amounts) are supported by grantee records.

### **Suggested Audit Procedures**

Verify that HTF payment certification amounts match the amount of the grantee's expenditures to support the drawdown request.

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****ASSISTANCE LISTING 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****A. Overview**

Operating Fund grants are available to achieve and maintain adequate operating and maintenance service and reserve funds. Capital Fund grants are provided for modernization and development activities.

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.

**B. Subprograms/Program Elements****1. *Operating Fund***

PHAs with greater than 250 rental dwelling units are required to manage properties according to an asset management model, consistent with the management norms in the broader multi-family management industry. PHAs must be in compliance with asset management requirements.

There are five interrelated core elements of asset management: project-based funding; budgeting; accounting; management; and oversight/performance assessment. PHAs must implement these project-based practices, which includes project-specific financial reporting through the Financial Data Schedule (FDS). PHAs that own and operate 250 or more dwelling rental units, and not intending to fund central office operating costs with Capital Fund grants, must establish a Central Office Cost Center (COCC) to account for non-project specific costs because, if using Capital Fund grants, these costs get charged to the project as opposed to a COCC.

The COCC must charge each project for indirect costs (expenses of the “management company,” namely the COCC) 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. 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 grant assistance is made available from the Operating Fund through the Annual Contributions Contract (ACC). The ACC is a grant agreement between HUD and the PHA, whereby HUD agrees to provide grant 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 Fund 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)* and HUD Form 52722, *Operating Fund Calculation of Utilities Expense Level (OMB No. 2577-0029)*. Both forms are 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: (1) size of project (number of units); (2) age of property (date of full availability); (3) bedroom mix; (4) building type; (5) occupancy type; (6) 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); (7) neighborhood poverty rate; (8) percentage of households assisted; (9) ownership type (profit, nonprofit, or limited dividend); and (10) 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.

As owners, PHAs have asset management responsibilities that are above and beyond property management activities. These responsibilities include decision-making on topics such as long-term capital planning and allocation, the setting of ceiling or flat rents, review of financial information and physical stock, property management performance, long-term viability of properties, property repositioning and replacement strategies, risk management responsibilities pertaining to regulatory compliance, and those decisions otherwise consistent with the PHA's ACC responsibilities, as appropriate.

## 2. *Rental Assistance Demonstration Program*

In 2012, Congress authorized the *Rental Assistance Demonstration (RAD)* to test a new way of meeting the large and growing capital improvement needs of the nation's aging public housing stock, as well as to preserve projects funded under HUD's "legacy" programs. Under RAD, properties "convert" their assistance to long-term, project-based Section 8 contracts. RAD provides an option for PHAs to convert some or all of its public housing units to either a project-based voucher program (PBV) or a project-based rental assistance contract with HUD multifamily (PBRA). Currently, Congressional appropriation language allows for 455,000 units to be converted under the RAD program. Units approved under RAD are removed from the public housing system when the new PBV or PBRA Section 8 contract is effective. Conversions may occur at any time during the year. While the project is effectively under a new federal program at closing, funding for these converted units under the PBV or PBRA program will not begin until the beginning of the next calendar year (i.e., January 1st of the year following closing). Therefore, the funding mechanism from the point of conversion through the end of the current calendar year remains public housing Operating Fund and/or the Capital Fund Program (CFP) grants. As such, any amounts (Operating Fund or CFP funds) received by the PHA under prior ACCs and transferred to the new RAD property as outlined by the documents of the RAD conversion are eligible and allowable costs of the respective program.

## 3. *Shortfall/Insolvency Program*

With the 2020 Consolidated Appropriations Act (Pub. L. No. 116-94), Congress provided for a side-aside in the Operating Fund program appropriation for a Shortfall /Insolvency program for \$25,000,000. This amount was to be used for PHAs experiencing financial insolvency as defined by the HUD secretary. The funds were to be allocated based on a needs-based approach with priority given to small PHAs (249 or fewer units) with less than four months of reserves. It is anticipated that the program may be reauthorized in 2021. The department has provided notice guidance on eligibility, requirements, and funding amounts. "For the purpose of this set-aside, any "very-small" and small PHA that has fewer than four months operating expenses held in reserve (Months of Operating Reserve, or MOR) were considered as meeting the statutory insolvency requirement and will be eligible to receive funding. The amount of funding that a PHA is eligible to receive under this set-aside is equal to the difference between the PHA's current MOR and the amount that is equal to four months of MOR for that PHA." MTW PHAs are eligible, as long as the agency has not reduced Operating Funds reserves through the program's flexible usage of funds. Funding from the Shortfall/Insolvency program is disbursed at the PHA level rather than the project level. These funds will then be allocated to the projects as revenue and for expenditures. Award letters will identify steps the PHA can take to improve financial performance. PHAs with less than one Month of Reserves (MOR) will have an improvement plan as a requirement for access to the full award amount. Alternatively, PHAs may have an executed Memorandum of

Agreement/Recovery Agreement/Corrective Action Plan related to substandard/troubled PHA performance status. Eligible uses are those allowed under Section 9 (e) of Housing and Community Development Act except that non-troubled PHAs may also include eligible Capital Fund uses under Section 9 (g).

**Audit Objectives** Determine whether the Shortfall funding was appropriately recorded and spent at projects in accordance with award letter financial improvement objectives.

### **Suggested Audit Procedures**

- a. Select a sample of projects that receive Shortfall funding and assess whether sampled expenditures were consistent with Operating Fund requirements
4. *Coronavirus Aid, Relief, and Economic Security Act (CARES Act)*

The Coronavirus Aid, Relief and Economic Security Act of 2020 (CARES Act) (Pub. L. No. 116-136) appropriated an additional \$685 million of Public Housing Operating Funds to “prevent, prepare for, and respond to coronavirus.” The additional Operating Funds may be used for eligible activities under the Operating Fund and the Capital Fund (Subsections (d)(1) and (e)(1) of Section 9 of the US Housing Act of 1937) and for other expenses related to preventing, preparing for, and responding to coronavirus, including activities to:

- support or maintain the health and safety of assisted individuals and families, and
- support education and childcare for impacted families.

HUD implemented the provisions of the CARES Act including allowable uses of funds and reporting requirements in PIH Notice PIH-2020-07. In addition, HUD provided instructions on Financial Data Schedule (FDS) reporting of CARES Act funds in PIH Notice PIH 2020-24. Amounts previously made available under the Operating Fund and Capital Fund programs in prior Acts, except for set-asides therein, may be used for the purposes described above through December 31, 2021, unless this time period is extended by the secretary.

## **C. Other**

### 1. *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 two months after the

PHA's fiscal year end and the audited financial statement is due nine 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. Operating Fund requirements are contained in 24 CFR Part 990. 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.

### Availability of Other Program Information

1. HUD maintains web pages ([http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph)) and ([http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/publications](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/publications)) that provide general information about this program.
2. HUD's Real Estate Assessment Center website that is available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/react](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/react) includes an *Instruction Guidebook for Completing Public Housing Assessment System Management Operations Certifications Form HUD 50072*, which is available at [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_26253.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_26253.pdf).
3. HUD's Office of Public and Indian Housing maintains a website at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph) that provides general information and updates on asset management. This website also has information on relevant HUD notices. The Supplement to Handbook 7475.1, which was published in Notice PIH 2007-9 (April 10, 2007) is available at [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_9191.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_9191.pdf).
4. Copies of HUD forms and notices are available at HUDCLIPS at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips).
5. HUD's Rental Assistance Demonstration Program main website is available at <https://www.hud.gov/RAD>.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then

determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	N	N	Y	N	N	N	Y

**A. Activities Allowed or Unallowed**

1. *Project-Specific Operating Expenses*

- a. Project-specific operating expenses include, but are not limited to, direct administrative costs, utilities costs, maintenance costs (maintenance must be either decentralized, or if centralized, recovered via fee-for service), tenant services, protective services, general expenses, non-routine or capital expenses, and other PHA- or HUD-identified costs which are project-specific for management purposes.
- b. Project-specific operating expenses also include a property management fee charged to each project that is used to fund operations of the central office. If the PHA contracts with a private management company to manage a project, the PHA may use the difference between the property management fee paid to the private management company and the fee that is reasonable to fund operations of the central office and other eligible purposes (see III.N, “Special Tests and Provisions”) (24 CFR section 990.280(b)(4)).

2. *Use of Excess Cash*

With the Operating Funds calculated at a project level, the Operating 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. Excess cash represents the sum of certain current asset accounts fewer current liabilities and less one month's 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) If approved by HUD HQ Counsel and concurred upon by the assistant secretary or general deputy assistant secretary, 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) Provided 2 CFR Part 200 is followed, benefits including pensions, 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 (e.g., 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 (2 CFR Part 200; 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. *Use of Operating Funds*

- a. 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 (Assistance Listing 14.881) 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 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)).
- b. Operating subsidy received by the PHA under prior ACCs and transferred to the new RAD property as outlined by the documents of the RAD conversion are eligible and allowable costs of the respective program.

### 4. *Use of Operating Funds for Capital Improvements*

- a. PHAs with less than 250 public housing units (and that are not designated as troubled and are, in the determination of HUD, operating and maintaining public housing in a safe, clean, and healthy condition) may use their Operating Funds for capital improvements (Section 9(g)(2) of the 1937 Act (42 USC 1357g(g)(2))).
- b. PHAs with 250 or more public housing units are permitted to use 20 percent of their Operating Funds for Section 9(d) capital and development purposes.

## **B. Allowable Costs/Cost Principles**

The amount of salary, including bonuses, of PHA chief executive officers, other officers, and employees paid with Section 8 Housing Choice Vouchers administrative fees and Section 9 Capital and Operating Funds may not exceed the annual rate of basic pay payable for a federal position at Level IV of the Executive Schedule (currently \$164,200) (Section 227 of Pub. L. No. 113-235, 128 Stat. 2756, December 16, 2014, and if carried forward in each subsequent appropriations act). Implementing guidance has been issued in PIH Notice 2016-14, “Guidance on the Public Housing Agency (PHA) salary

restriction in HUD's annual appropriations”

([http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/publications/notices](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/publications/notices)).

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). 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)). PHAs opting to fund centralized costs with capital funds must allocate overhead to projects through FDS line item 91810, "Allocated Overhead."
- c. If a PHA chooses to centralize functions under asset management, it must charge each project using a fee-for-service approach, unless proration is permitted. HUD has specified that the costs for rent collections, resident services, security/protective services, waiting lists, and work order processing may be prorated. (See III.N.7, "Fees Charged for Centralized Services," and III.N.8, "Prorating Front-Line Centralized Services.") With the exception of a central waiting list, resident services, and security/protective services, a project may not pay for the cost of a supervisor overseeing a front-line task that is performed centrally (see Section 7.10 Assignment of Costs per Supplement, Prorating Front-Line Administrative Costs, in the Supplement to HUD Handbook 7475.1 for exceptions). 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)). PHAs that own and operate 400 or fewer public housing units, may elect to be exempt from any asset management requirement imposed by HUD in connection with the operating fund rule, provided that an agency seeking a discontinuance of a reduction of subsidy (stop-loss) 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 if 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.

Property management fee rates established by HUD are available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph/am/accounting](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/am/accounting).

## **E. Eligibility**

### **1. Eligibility for Individuals**

- a. 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).
- b. The PHA must do the following:
- (1) 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).
  - (2) For both family income examinations and reexaminations, obtain and document in the family file third party verification of (a) reported family annual income, (b) the value of assets, (c) expenses related to deductions from annual income, and (d) other factors that affect the determination of adjusted income or income-based rent (24 CFR section 960.259).

- (3) 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).
- (4) Select tenants from the public housing waiting list (see III.N.2, "Special Tests and Provisions – Public Housing Waiting List") (24 CFR sections 960.206 and 960.208).
- (5) 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).
  - (a) The Rental Demonstration program prohibits PHAs from rescreening or requiring a tenant recertification due solely to a RAD conversion. However, this requirement does not eliminate the normally scheduled recertification (normally annually). Recertifications required to be performed as part of the normal tenant recertification process that occur after the RAD conversion, but before the end of the calendar year, will be conducted under the selected conversion program (PBV or PBRA) and not Public Housing. These recertifications are to be conducted to ensure that tenant payments are appropriate under the new program. Any testing that results in an audit finding should be a finding of the PBV or PBRA program and not of the public housing program.
  - (b) Eligible 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.

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

Not Applicable

**3. Eligibility for Subrecipients**

Not Applicable

## N. Special Tests and Provisions

### 1. Wage Rate Requirements

**Compliance Requirements** The Wage Rate Requirements 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

[https://www.hud.gov/program\\_offices/davis\\_bacon\\_and\\_labor\\_standards/olr\\_foa](https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/olr_foa).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

### 2. Public Housing Waiting List

**Compliance Requirements** 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 Objectives** Determine whether the PHA is following its own tenant selection policies in placing applicants on the waiting list and 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.

### 3. Tenant Participation Funds

**Compliance Requirements** 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 Objectives** 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.

#### **4. Project-Based Budgeting and Accounting**

**Compliance Requirements** 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)). Prior to the beginning of its fiscal year, a PHA is required to prepare an operating budget. The PHA's Board of Commissioners is required to review and approve the budget by resolution. The PHA is not required to submit the budget to HUD unless specifically requested to do so under special circumstances. The approved board resolution must be submitted to HUD (24 CFR section 990.315(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)).

Tracking financial performance at the project level under project-based accounting provides information necessary to make effective decisions at the project level. PHAs may only charge projects for services actually received. For example, in accounting for project costs, PHAs will not be permitted simply to spread the cost of central maintenance across all projects (24 CFR section 990.280).

**Audit Objectives** Determine whether each asset management 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. Confirm the PHA maintains a board-approved budget, which was approved by a board resolution prior to the beginning of the PHA's fiscal year.

- c. Review FDS and determine whether each project has its own column on the FDS.
- d. Verify that periodic analysis is performed of actual revenue and expenses associated with each project. Confirm the PHA addresses significant variances among budget to actual data.

## 5. Classification of Costs

**Compliance Requirements** 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, 5.3, and 7.10 in the Supplement to HUD Handbook 7475.1 for classifying costs) (24 CFR section 990.280(d)).

Certain front-line project administrative expenses may be performed centrally and “charged back” (expense proration, or fee-for-service) to the affected project(s). Centralized maintenance services can only be charged as a fee-for-service. Centralized indirect costs, on the other hand, are recoverable only from designated fees charged by the COCC (management, bookkeeping, asset management) (24 CFR sections 990.275 and 990.280).

**Audit Objectives** Determine whether project support costs were properly classified as fee expense recoverable from management, bookkeeping, and asset management fees, or front-line project expense, recoverable through expense proration, as a shared resource cost or fee-for-service (required for centralized maintenance services).

### Suggested Audit Procedures

- a. Select a sample of front-line project costs charged to the projects (by the COCC) and review the classification (recovery method) as either a front-line allocated expense or a fee-based front-line expense.
- b. Confirm among the sample selected that no costs are allocated by the COCC to projects, nor fees charged, for services that must be recoverable as indirect costs via the permissible fees (management, bookkeeping, asset management).

## 6. Balance Sheet Allocations

**Compliance Requirements** 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 Objectives** 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.

## **7. Fees Charged for Centralized Services**

**Compliance Requirements** 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, with the exception of charges for rent collections, resident services, security/protective services, waiting lists, and work-order processing (see Section 7.10 of the Supplement to Handbook 7475.1). 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 Objectives** 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.

## **8. Prorating Front-line Centralized Services**

**Compliance Requirements** In the case when a COCC chooses to centralize certain front-line project costs (e.g., rent collection, resident services, security, waiting lists, work order processing), it may (rather than using fee-for-service) pro-rate these costs based on a reasonable, documented methodology. The method of prorating these costs (e.g., cost allocation plan) shall reflect the PHA's broader accounting policy.

Projects with on-site staff that can provide these services at a project may not also be charged these services using proration. A PHA could prorate these costs based on percentage of units, bedroom distribution, turnover, or other reasonable method. With the exception of a central waiting list, resident services, and security/protective services, a project may not pay for the cost of a supervisor overseeing a front-line task that is performed centrally (see Section 7.10 of the Supplement to HUD Handbook 7475.1) (24 CFR section 990.280).

**Audit Objectives** Determine whether the centralized direct project costs charged to the project(s) by the COCC are reasonable, supervisory costs are properly charged, and costs are not charged to project using proration if on-site staff can provide the services.

### **Suggested Audit Procedures**

- a. Ascertain if the project is pro-rating front-line centralized services and, if so—
- b. Select a sample of costs prorated by the COCC to a project for centralized front line project costs.
- c. Review the method used to prorate amounts, including the method used to determine the level of cost allocation to the respective project(s) to ensure that the documented method mirrors the method associated with costs charged to a project.
- d. Verify that charges are based on the methodology established by the PHA.
- e. Confirm, by obtaining written representations from management, that the project(s) charged lack the on-site human resources to perform the function and whether such services were provided in the past. Verification can also be ascertained by reviewing the roles and responsibilities for the staff and determining if the services provided fall under these roles and responsibilities.
- f. Verify that no ineligible supervisory costs are charged to the project(s).

### **9. Asset Management Fee**

**Compliance Requirements** 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 Objectives** 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.

## **10. Management Fees**

**Compliance Requirements** 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)), including cost reasonableness guidance under 2 CFR Part 200.

**Audit Objectives** 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.

## **11. Allocated Overhead**

**Compliance Requirements** 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 if carried forwarded in all subsequent Acts).

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 (seven through ten). For those PHAs that converted to asset management, but are reporting using the allocated overhead 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 Objectives** 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.

## **12. Funding Central Office with Capital Fund Program Funds**

**Compliance Requirements** 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 ACC (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 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 the 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 for debt service. 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 five 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.) CFP grants are allowed to service the debt service payments for this COCC debt based on a percentage of the annual CFP appropriation.

- b. The costs of developing or modernizing an existing ACC non-dwelling structure under a Capital Fund Declaration of Trust (DOT) (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). If development of a structure, then a 40-year DOT applies; if modernization of a structure, then a 20-year DOT applies. DOT may vary based on the nature of the work; consult HUD Handbook 7475.1.

**Audit Objectives** 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 Capital Fund 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.

## **13. PHA Utilities Operating Funding Requests**

### **Compliance Requirements**

*Special Utilities Incentives.* If a PHA undertakes energy conservation measures that are financed by an entity other than HUD, the PHA may qualify for the incentives available under 24 CFR sections 990.185(a) and 990.190(b). In some cases, the rolling base consumption level (HUD Form 52722, Section 3, Line 8) for the utilities involved may be frozen during the contract period. For a PHA to qualify for these incentives, the PHA must obtain HUD approval. Approval is based on a determination that payments under the contract can be funded from the reasonably anticipated energy cost savings. The

contract period may not exceed 20 years (24 CFR section 990.185(a)) and is specified in the HUD approval letter.

*Rate Reduction.* If a PHA takes action beyond normal public participation in rate-making proceedings, such as well-head purchase of natural gas, administrative appeals, or legal action to reduce the rate it pays for utilities, then the PHA will be permitted to retain one-half the annual savings realized from these actions (24 CFR section 990.185(b)).

**Audit Objectives** Determine whether the cost saving from energy conservation incentives contracts generally comply with the terms of the energy contract, and have been approved by HUD, if required.

### **Suggested Audit Procedures**

- a. When entries are in HUD-52723 Section 3, Part A, Add-Ons, Line 8, Energy loan amortization, verify the project has a HUD approved energy loan amortization add-on pursuant to CFR sections 990.185(a)(3) and 990.190(b). Contract and add-on must be approved by the HUD field office. Verify that requested amount and term agrees with the energy loan amortization schedule in the approved contract.
- b. For projects with “frozen rolling base” checked in the form header box of HUD-52722, verify that the project has HUD field office approval that is applicable to the period in question.
- c. For projects with a “rate reduction incentive” checked in the form header box of HUD-52722, verify that the project meets the criteria in 24 CFR section 990.185(b).

## **14. Recording of Declarations of Trust/Declaration of Restrictive Covenants Against Public Housing Property**

**Compliance Requirements** A current DOT/**Declaration of Restrictive Covenants (DORC)**, 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 905, Subpart F) that has been acquired, developed, maintained, or assisted with funds from the US Housing Act of 1937. A DOT/DORC 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 2019-14 (HA), PHAs were asked to ensure that current (unexpired) DOT/DORCs are recorded against all of their public housing property.

Up to 2018, the form of DOT/DORC that a PHA recorded depended on the funding from HUD. In most instances, the PHA recorded the HUD-52190-A for Development Grant Projects or the HUD-52190-B for Public Housing Modernization Grant Projects (*OMB No. 2577-0075*). For mixed-finance development pursuant to 24 CFR Part 905, Subpart F, the form of DOT, known as the Declaration of Restrictive Covenants, was in the form

of a model document drafted for this purpose. In 2018, HUD published a new DOT/DORC form known as the HUD-52190 (4/2018). This form applies to public housing, including both conventional and mixed-finance public housing. A PHA does not need to record a new DOT/DORC unless no validly recorded DOT/DORC is encumbering the project. See PIH Notice 2019-14 (HA).

A current DOT/DORC would include all improvement and modernization efforts on the project. A DOT/DORC 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/DORC 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 905.100, 905.304, 905.318, 905.505, 905.600, and 905.604).

PHAs should have a list of all property (including land and nonresidential inventory, as well as dwelling units and modernization efforts) that a PHA owns and insures that is maintained or operated 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 DOT/DORCs 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 five years.) It is not necessary that all development numbers be referenced in DOT/DORCs. Rather, the audit should determine whether all of the property that should have been placed under a DOT/DORC has been treated correctly.

**Audit Objectives** Determine whether DOT/DORCs are being recorded properly for public housing.

### **Suggested Audit Procedures**

- a. From a list of all property (including land and nonresidential 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 five years.)
- b. Verify that current DOT/DORCs have been recorded for the public housing property in the projects.

## 15. Depository Agreements

**Compliance Requirements** PHAs are required to enter into General Depository Agreements with their financial institution using the HUD-51999 (*OMB No. 2577-0075*) or a form as 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 Objectives** 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.

## 16. Insurance Proceeds

**Compliance Requirements** PHAs are required to use insurance proceeds to promptly restore, reconstruct, and/or repair any damaged or destroyed property of a project, except when a PHA has written approval from HUD to do otherwise. Unspent insurance proceeds normally are recorded as restricted cash or restricted investments on the FDS up to the amount of the repair.

In cases of unforeseeable and unpreventable emergencies that include damages to the physical structure of the housing stock, PHAs are allowed to use their Operating Funds to cover the expenses associated with the damages. A PHA's insurance may cover the damages fully or partially, however, it usually takes time for the PHA to receive the insurance proceeds. Once received, the PHA must reimburse its operating account for any expenses that were initially covered with Operating Funds up to the amount received.

If the amount of the insurance proceeds is less than the cost of the repair and the PHA elected to use Operating Funds to cover the difference, the PHA is not allowed to draw down capital funds to reimburse the Low Rent program (Section 13 of the ACC). The ACC is available at

<http://portal.hud.gov/hudportal/documents/huddoc?id=anncontributionspta.pdf>.

**Audit Objectives** Determine whether the PHA used insurance proceeds to promptly repair damaged or destroyed property; unspent insurance proceeds are properly reported in the financial statements; and the Operating Funds were used to cover the allowable expenses.

### Suggested Audit Procedures

- a. Ascertain if the PHA received any insurance proceeds for damaged or destroyed property.



- b. Verify that insurance proceeds received in advance of contractor or repair bills are placed in a restricted cash account of the operating fund.
- c. Review contractor invoices and repair expenses to verify insurance proceeds were used to cover allowable expenses.
- d. Verify that the Operating Fund was reimbursed by any insurance proceeds received for repairs that were funded by the Operating Fund.

## **17. Environmental Contaminants Testing and Remediation**

**Compliance Requirements** Public Housing must be decent, safe, sanitary, and in good repair. PHAs must maintain such housing in a manner that meets the physical condition standards set forth in 24 CFR section 5.703 in order to be considered decent, safe, sanitary, and in good repair. Those standards address the major areas of the public housing: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations.

Health and safety considerations require that all areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other indoor air hazards such as radon testing. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR Part 35).

The physical condition standards in 24 CFR section 5.703 do not supersede or preempt state and local codes for building and maintenance with which Public Housing must comply. Public Housing must continue to adhere to these codes.

**Audit Objectives** For the period under audit, determine whether the PHA tested for and remediated environmental contaminants including but not limited to lead-based paint, radon gas, and mold to ensure that Public Housing met the physical condition standards for health and safety considerations set forth in 24 CFR section 5.703.

### **Suggested Audit Procedures**

- a. Determine if any physical inspections, required environmental tests, and/or environmental remediation activities were performed for the period under audit.
- b. Obtain and read all reports identified from procedure a. and determine if any health and safety considerations were observed.

- c. If so, determine if the PHA documented that they remediated the safety concern(s).
- d. If no physical inspection or environmental testing was performed, record the status for each and determine whether the PHA identified in some other manner that a violation of the physical condition standards for health and safety considerations, set forth in 24 CFR section 5.703, occurred. And, if so, that the PHA documented that they remediated the safety concern.

## **18. Proceeds under Sections 18 and 22 of the 1937 Act**

**Compliance Requirements** PHAs may obtain proceeds from dispositions of public housing real property under sections 18 and 22 of the 1937 Act. PHAs may use gross proceeds to deduct the costs of relocations and reasonable costs of disposition (transaction costs), if approved by HUD. PHAs may use net proceeds for the provision of low-income housing, to benefit the public housing residents of the PHA, or to leverage amounts for securing commercial enterprises on-site in public housing projects, appropriate to serve the needs of the public housing residents. A PHA's use of proceeds is subject to HUD approval. PHAs shall not use proceeds without obtaining written approval from HUD's Special Applications Center (SAC). Until expended, PHAs deposit the proceeds into an account subject to the HUD General Depository Agreement HUD-51999 (GDA)(4/18).

**Audit Objectives** Determine whether the PHA used proceeds for HUD-approved eligible expenses.

### **Suggested Audit Procedures**

- a. Ascertain if the PHA received any proceeds from disposing of real property under Section 18 or 22 of the 1937 Act;
- b. Verify that proceeds received are placed in a restricted account subject to the HUD General Depository Agreement HUD-51999 (GDA)(4/18); and
- c. Review PHA invoices and other documentation to verify proceeds were used for HUD-approved eligible expenses.

## **19. CARES Act Funding**

**Compliance Requirements** PIH Notice 2020-07 implements the requirements related to the \$685 million supplemental appropriation of Operating Funds for PHAs. The supplemental Operating Funds may be used for eligible activities under the Operating Fund and the Capital Fund (subsections (d)(1) and (e)(1) of Section 9 of the US Housing Act of 1937) and for other expenses related to preventing, preparing for, and responding to coronavirus, including activities to:

- support or maintain the health and safety of assisted individuals and families, and

- support education and childcare for impacted families.

Section 6 of PIH Notice 2020-07 identifies potential uses of funds that would prevent, prepare for, or respond to coronavirus, and is not intended to be exhaustive; however, the use of such funds may not be duplicative of services provided through other federally funded programs. While categorized for ease of use, HUD expects that PHA coronavirus-related expenses may fall within multiple categories simultaneously as they work to combat coronavirus. Some of the expenses listed, and other expenses PHAs incur related to the coronavirus, may be considered normal operating or capital expenses. When reporting costs associated with operations and administrative activity level, the PHA will report both normal operating and administrative costs and operating and administrative costs that are higher than typical historical costs due to the COVID-19 pandemic together. HUD is not requiring any distinction between the two costs.

HUD provided instructions on accounting for and FDS reporting of CARES Act funds in PIH Notice PIH 2020-24. HUD must meet its monitoring responsibilities and provide transparency in the PHAs' receipt and use of CARES Act supplemental funding. Therefore, the Real Estate Assessment Center (REAC), a division of HUD's Office of Public and Indian Housing has established the following six new columns on the FDS for reporting CARES Act supplemental funds.

#	New Column #	Column Name
1	14.PHC	Public Housing CARES Act Funding
2	14.HCC	HCV CARES Act Funding (both HAP and Administrative Fee)
3	14.MSC	Mainstream CARES Act Funding (both HAP and Administrative Fee)
4	14.MRC	Moderate Rehabilitation CARES Act Funding
5	14.CCC	Central Office Cost Center CARES Act Funding
6	14.CMT	CARES Act Funding Transferred to MTW

If a PHA has received CARES Act funding from any one of the following four programs—1) Public Housing Operating Fund, 2) HCV, 3) Mainstream Voucher, and/or 4) Moderate Rehabilitation (via the PBRA account)—the PHA is required to add the respective reporting column(s) in its FASS-PH submission and report the amounts in accordance with the instructions in PIH Notice 2020-24.

The CARES Act also requires that recipients and sub-recipients of CARES Act funds satisfy quarterly reporting requirements if the recipient has been awarded \$150,000 or more in covered funds. CARES Act quarterly reporting requirements are aligned with PHA FDS reporting guidance in PIH Notice 2020-24. This alignment will allow for consistency in reporting and ensure that PHAs maintain a single record of CARES Act expenses.

**Audit Objectives** Determine whether CARES Act Operating Funds received were used, accounted for, and reported in accordance with program requirements.

**Suggested Audit Procedures**

- a. Obtain supporting documentation for CARES Act Operating Funds received and evaluate to determine whether:
  - (1) the amounts received were accounted for separately under the appropriate program
  - (2) the amount recorded in the general ledger agrees to supporting documentation
  - (3) appropriate columns were included in the FDS and that amounts reported in the FDS agree to amounts in the general ledger
- b. If amounts are reported as transfers into the 14.PHC column on the FDS, select a sample of transfer transactions to determine whether the funds are from an allowable source as defined in the flexible use of funds provisions in PIH Notice 2020-07, and properly recorded in the general ledger and reported in the FDS.
- c. Select a sample of COCC fee disbursements charged to CARES Act Operating Funds and determine whether the fee amounts were allowable and properly recorded in the general ledger and reported in the FDS under the provisions in PIH Notice 2020-24.
- d. Select a sample of disbursements reported in the Public Housing Cares Act column on the FDS and test to determine:
  - (1) Whether the funds were used for expenses allowable under the applicable program, other expenses related to COVID-19 allowable pursuant to PIH Notice 2020-07, and not duplicative of services provided through other federally funded programs.
  - (2) Whether the transactions for amounts disbursed were accurately recorded in the appropriate program in the general ledger and follow the guidance provided in PIH Notice 2020-24.
- e. Determine whether amounts reported in CARES Act FDS columns resulting from CARES Act Operating Fund expenses agree to amounts recorded in the general ledger.
- f. If HUD has implemented quarterly CARES Act funds reporting requirements:
  - (1) Determine whether required reporting has been completed.
  - (2) Determine whether amounts in the quarterly reports are consistent with amounts reported in the FDS.

## 20. UEL Formula (Form 52722)

**Compliance Requirements** The Utility Expense Level (UEL) is used to calculate the utility portion of the Operating Fund subsidy. The UEL is a primary component of the operating subsidy grant revenue provided to the PHAs annually. This compliance supplement requires testing of rolling base data. PHAs must retain such data pursuant to 990.325. PHAs receive invoices for utilities. The consumption and cost data from those invoices are aggregated, in an Excel workbook or other platform, commonly referred to as a utility ledger. The aggregated data is transferred to the Form 52722. The auditors should perform a random sample of each of the main utility types (gas, water/sewer, electric, etc.) to review accuracy of the unit of measure, consumption and cost data reported on document Form 52722.

**Audit Objectives** Determine if the HUD document Form 52722 accurately reflects all current and historic utility cost and consumption. Verify that all needed adjustments due to changing unit of measurements and eligible unit months have been accurately completed. Complete a trend analysis that identifies any abnormal variances of the historic utility data to include the cost and consumption.

### Suggested Audit Procedures

- a. Auditors must verify the consumption unit of measure is consistent on the Form 52722 (i.e., the utility ledger and the utility invoice (bill)) (line 01a on the Form 52722).
- b. Auditors must test a sample of invoices to ensure that the actual consumption ties to the utility ledger.
- c. Auditor must test the aggregated consumption on the utility ledger to ensure it ties to line 01 of the Form 52722.
- d. Auditor must verify that each rolling base consumption amount and units of measure tie to the prior year Form 52722. The auditor must test rolling base invoice and utility ledgers to determine if the unit of consumption has changed. To the extent the unit of measure in the current year has changed, test to ensure that the rolling base was appropriately adjusted.
- e. To the extent that any units have been removed from inventory for a project (Form 52723 Section 2, line A15 has decreased) during the reporting period or rolling base, the auditor shall test to ensure that the adjustment was done consistently with the instruction found on the word version of the HUD Form 52722, which can be found on HUDCLIPS.
- f. Auditors must test a sample of invoices to ensure that the actual cost ties to the utility ledger.
- g. Auditor must test the aggregated cost on the utility ledger to ensure it ties to line 16 of Form 52722.

- h. The auditor must complete a trend analysis of the reporting year and the last three years of each major utility to identify any abnormal variances. Auditors should increase their sample size when there are abnormal variances.

## 21. Formula Income

**Compliance Requirements** The formula income is used to calculate the Operating Fund Revenue for each PHA. This calculation is generally based on prepopulated data calculated by HUD. However, in some cases Formula Income is not prepopulated. For further guidance review [Formula Income Guidance](#) the Operating Fund Web Page, the [Annual Operating Subsidy Processing Notice](#) and 24 CFR 990.195(d).

**Audit Objectives** For most projects, Formula income is prepopulated. Prepopulated data is derived from the FDS. Where the Formula Income was prepopulated and not modified, testing is not required. Where prepopulated data was modified, or Formula Income was not prepopulated, testing should occur. Auditor should determine Formula Income was not prepopulated by reviewing the prepopulated data available in the Operating Fund Web Portal. The PHA can provide the Auditor this data if the Auditor does not have access to the Operating Fund Web Portal.

The auditor should review the following documents to ensure Formula Income was calculated correctly. These documents are located on the HUD Financial Management Division (FMD) annual operating subsidy webpage.

- Guidance on Formula Income
- Guidance on Non-Asset Management PHAs Reporting a Single FDS with Multiple PIC Projects and HUD-52723s: Calculation of Formula Income and other Miscellaneous Add-ons including Audit and PILOT Funding.
- Guidance on the How to Reverse the Impact of Rent Reductions From the Jobs Plus Earned Income Disregard (JPEID) on Formula Income
- Financial Reporting for the Family Self-Sufficiency (FSS) Program ACCOUNTING BRIEF #23
- Annual Operating Subsidy Processing Notice

Where Formula Income was not prepopulated, or the prepopulated amount was adjusted, ensure that formula income input into Form 52723, or the adjustment to the prepopulated Formula Income, was done accurately.

### Suggested Audit Procedures

- a. Where prepopulated Formula Income was adjusted, test the supporting documentation to ensure that the adjustment was made for appropriate reasons. Test the supporting documentation and calculation to validate Formula Income

was correctly calculated. Adjustments should only be made due to JPEID, FSS, or Non-Asset Management with multiple projects that report only one project in FDS (see guidance provided on HUD FMD annual operating subsidy webpage).

- b. Where Formula Income was not prepopulated, test the supporting documentation and calculation to validate Formula Income was correctly calculated. Formula income may not have been prepopulated for the following reasons: Non-Asset Management with multiple projects that report only one project in FDS, mixed finance projects, or approved FDS data not available at the time FMD pulled data used to prepopulate the 52723.

#### **IV. OTHER INFORMATION**

The Moving to Work (MTW) demonstration program (Assistance Listing 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 and under the MTW Operations Notice. An MTW agency may apply funding fungibility funds from the following three programs:

- Section 8 Housing Choice Vouchers (Assistance Listing 14.871)
- Public Housing Capital Fund (Assistance Listing 14.872)
- Public and Indian Housing (Assistance Listing 14.850)

Depending on if a PHA is operating under an MTW Agreement or the MTW Operations Notice, the auditor should look to the MTW Agreement or the MTW Operations Notice, as applicable, to determine which funds are included. If Public Housing funds are transferred out of Public Housing, pursuant to either an MTW Agreement or the MTW Operations Notice, they are subject to the requirements of the MTW Agreement or the MTW Operations Notice 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 or the MTW Operations Notice, 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

### ASSISTANCE LISTING 14.862 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

#### I. PROGRAM OBJECTIVES

The primary objective of the Indian Community Development Block Grant (CDBG) program 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).

#### 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). Congress directed HUD to utilize the imminent threat grant process to award some funding under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. No. 116-136) and the American Rescue Plan Act of 2021 (ARP) (Pub. L. No. 117-2). Imminent threat grants awarded pursuant to the CARES Act or the ARP Act are discussed in greater detail later in this document.

#### Source of Governing Requirements

Implementing regulations are published at 24 CFR Part 1003.

#### Availability of Other Program Information

Additional information about the Indian CDBG program is available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing).

#### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a



compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	N	N	Y	N	Y	N	Y

**A. Activities Allowed or Unallowed**

*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 sites, 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 nonfederal 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; (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).

**B. Allowable Costs/Cost Principles**

1. All items of cost listed in 2 CFR Part 200, Subpart E, that require prior federal agency approval are allowable without prior approval, except for the following:
  - a. Depreciation methods for fixed assets shall not be changed without the approval of the federal cognizant agency.
  - b. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses (goods or services for personal use), regardless of whether reported as taxable income to the employees, require prior HUD approval.
  - c. Organization costs require prior HUD approval.
2. Fines, penalties, damages, and other settlements are unallowable.
3. No person providing consultant services in an employer-employee type of relationship may receive more than a reasonable rate of compensation. Such compensation must not exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule (currently \$161,900). The Executive Pay Schedule may be obtained at <https://www.opm.gov/policy-data-over-sight/pay-leave/salaries-wages> (24 CFR section 1003.501(b)).

**C. Cash Management**

The auditor should refer to Part III for the basic compliance requirement information and 2 CFR section 200.305 (24 CFR section 1003.501).

**F. Equipment and Real Property Management**

1. For equipment purchased with Indian CDBG funds, the requirements of 24 CFR section 85.32 or 2 CFR section 200.313 apply with the exception that when the equipment is sold, the proceeds are considered program income (24 CFR section 1003.501(a)(6)).
2. Except for awards to faith-based organization, the real property requirements in 2 CFR Part 200 do not apply. Generally, when real property that was acquired or improved using Indian CDBG program funds in excess of \$25,000 is disposed of, the Indian CDBG program 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).

**I. Procurement and Suspension and Debarment**

1. For the Indian CDBG program, HUD has determined that funds used are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (24

CFR section 1003.510), which means, to the greatest extent feasible, a recipient is to give preference in the award of contracts to Indian organizations and Indian-owned economic enterprises. Auditors should be familiar with these preference in contracting procedures set forth in 24 CFR section 1003.510(d) that, among other things, require recipients to:

- a. Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or
- b. Use a two-stage preference procedure, as follows:
  - (1) **Stage 1.** Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement or request for proposals limited to Indian-owned firms.
  - (2) **Stage 2.** If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises; or
  - (3) Develop, subject to Area ONAP one-time approval, the grantee's own method of providing preference.
2. Procurements that are within the dollar limitations established for small purchases under 2 CFR section 200.320 need not follow the formal bid or proposal procedures of 24 CFR section 1003.510(d), since these procurements are governed by the small purchase procedures of 2 CFR section 200.320. However, a recipient's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts (24 CFR section 1003.510(d)(3)).

## L. Reporting

### 1. Financial Reporting

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

### 2. Performance Reporting

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions****1. Environmental Review**

**Compliance Requirements** Program regulations provide that the responsible entity tribe will assume responsibilities for environmental review and decision-making under the requirements of 24 CFR Part 58. An environmental review must be prepared for each project or activity. 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 (RROF) and environmental certification. If the responsible entity tribe determines that it met a criterion specified in the regulations that would qualify the project as exempt or qualify the project for certain categorical exclusions, the RROF and environmental certification requirements do not apply (24 CFR sections 58.34 and 58.35, 24 CFR section 1003.605).

**Audit Objectives** 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:

**Environmental Reviews**

- a. Environmental determinations were made for each project or activity.
- b. Environmental determinations were supported by an environmental review, including supporting documentation for each applicable law and authority.
- c. For any project where an RROF and environmental certification was not submitted, the environmental review includes a written determination that the project or activity is exempt under a criterion of 24 CFR section 58.34 or is categorically excluded under a criterion of 24 CFR section 58.35(b), and meets the conditions specified for such exemption or categorical exclusion, with supporting documentation.

### Requests for Release of Funds

- 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 were obligated or expended subsequent to RROF and environmental certification approval by HUD.

Additional information on environmental review requirements can be found at <https://www.hudexchange.info/programs/environmental-review/>.

## IV. OTHER INFORMATION

### 1. Indian CDBG-CARES Imminent Threat Grants

#### a. General

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. No. 116-136) (CARES Act), was signed into law. The Act provides for up to \$100,000,000 in Indian CDBG Imminent Threat (IT) funding to prevent, prepare for, and respond to coronavirus, for emergencies that constitute imminent threats to health and safety. This funding was provided in the form of grants to eligible Indian tribes and must be used to prevent, prepare for, and respond to the Coronavirus disease 2019 (COVID-19). This funding must be used in accordance with the applicable requirements of the CARES Act, Title I of the Housing and Community Development Act of 1974, as amended (42 USC 5103 et seq.), [the Indian CDBG implementing regulations at 24 CFR Part 1003](#), and the issued May 15, 2020.

In addition, under the CARES Act, Congress authorized HUD to waive or specify alternative requirements for any statute or regulation (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment) that HUD administers to expedite or facilitate the use of Indian CDBG-CARES grant funds to prevent, prepare for, and respond to COVID-19.

On April 10, 2020, HUD issued [PIH Notice 2020-05](#) with waivers and alternative requirements authorized by the CARES Act. That Notice was superseded by [PIH Notice 2020-33\(HA\), REV-2](#), issued on November 30, 2020. [PIH Notice 2020-33\(HA\), REV-2](#), describes in detail the various updated waivers and alternative requirements that have been issued thus far with respect to Indian CDBG-CARES grants and FY 2019/2020 Indian CDBG grants repurposed to address COVID-19.

Before auditing an Indian CDBG-CARES grant recipient, auditors are strongly advised to review the Indian CDBG-CARES Implementation Notice, [PIH Notice](#)

[2020-11](#), and [PIH Notice 2020-33\(HA\), REV-2](#), particularly Section 14 of [PIH Notice 2020-13](#) addressing the waivers and alternative requirements affecting Indian CDBG IT program with respect to Indian CDBG-CARES grants and FY 2020 Indian CDBG grants.

The following section identifies allowability considerations for the Indian CDBG program, followed by a summary of waivers and alternative requirements affecting the Indian CDBG program considered important by HUD. Because the COVID-19 pandemic was ongoing at the time the Compliance Supplement Addendum was finalized, the auditor should make best efforts to identify and consider updates and revisions of [PIH Notice 2020-11](#) or [PIH Notice 2020-33\(HA\), REV-2](#), for Indian CDBG-CARES funding that were in place at the time of the audit. This can be done by visiting at [COVID-19 Recovery Programs site](#) of ONAP's website, CodeTalk, <https://www.hud.gov/codetalk>.

b. **Activities Allowed or Unallowed**

The CARES Act requires Indian CDBG-CARES grants to be used to prevent, prepare for, and respond to COVID-19.

To comply with this requirement, Indian CDBG-CARES grantees must ensure that all activities, projects, and programs being proposed can be tied to at least one of the following three eligible purposes:

- Activities, Projects, or Programs to Prevent COVID-19.
- Activities, Projects, or Programs to Prepare for COVID-19.
- Activities, Projects, or Programs to Respond to COVID-19.

Indian CDBG-CARES grant funds may also be used to cover or reimburse allowable costs paid with nonfederal funds by the Indian CDBG-CARES grantee, provided the funds were used to prevent, prepare for, or respond to COVID-19. This includes covering or reimbursing allowable costs incurred back to the date the Indian tribe began preparing for COVID-19, which may be prior to the date of enactment of the CARES Act, but in no event earlier than January 21, 2020.

The auditor should consider the following:

- **Prepare for:** Indian CDBG-CARES grant funds may be used prior to a local, service area, or regional coronavirus outbreak. This includes, but is not limited to, activities designed to develop processes and procedures to help keep people healthy, and other activities designed to reduce the risk of exposure to COVID-19 and avoid or slow the spread of the disease.

- **Prevent:** Indian CDBG-CARES grant funds may be used during a COVID-19 local, service area, or regional coronavirus outbreak. This includes, but is not limited to, activities designed to prevent the initial or further spread of the virus to the tribal community.
- **Respond to:** Once COVID-19 has spread in the community, examples of how Indian CDBG-CARES grantees may choose to respond to COVID-19 may include using Indian CDBG-CARES grant funds to care for those who have become infected and to limit the exposure and spread of the virus, providing emergency rent payments and other public services to families that cannot pay rent, carrying out activities to reduce severe overcrowding, preventing homelessness to ensure families are stably housed, and much more. Funds may continue to be used after the local, service area, or regional coronavirus outbreak on any continuing expenses incurred due to the spread of COVID-19.

These descriptions are designed to provide general guidance and are not intended to limit the range of eligible Indian CDBG-CARES grant activities that can be carried out. Provided a grantee can reasonably tie their Indian CDBG-CARES activities back to one or more eligible purposes, HUD will accept the classification.

Ineligible Activities include:

- Activities, projects, or programs that are not reasonably tied to preparing for, preventing, and responding to COVID-19 are ineligible under the Indian CDBG-CARES program.
- Unless waived or modified by HUD, as provided in [PIH Notice 2020-13](#) and any similar waiver notice issued in the future, ineligible activities described in 24 CFR section 1003.207 continue to be ineligible (e.g., buildings or portions thereof used for the general conduct of government, political activities, general government expenses).

c. **Waivers and Alternative Requirements Applicable Only to Indian CDBG-CARES Funding under the CARES Act**

The following waivers and alternative requirements apply only to Indian CDBG-CARES grants (the new Indian CDBG funding provided under the CARES Act), FY 2020 Indian CDBG funds (both Single Purpose Grants and IT Grants) appropriated under the Further Consolidated Appropriations Act of 2020 (Pub. L. No. 116-94), and FY 2019 Indian CDBG funds appropriated under the FY 2019 Consolidated Appropriations Act (Pub. L. No. 116-6). With respect to the FY 2019 and FY 2020 Indian CDBG funds, application of these waivers is permitted only on funding reprogrammed to address COVID-19.

These waivers and alternative requirements do not apply to Indian CDBG funds appropriated in any other prior year.

(1) **Removal of Public Services 15 Percent Cap under FY 2019 and FY 2020 Indian CDBG Grants**

**Statutory Authority:** Section 105 of HCD Act.

**Regulatory Authority:** 24 CFR section 1003.201(e); FY 2019/2020 Indian CDBG NOFA.

**Description:** Section 105 of the HCD Act and the Indian CDBG implementing regulation at 24 CFR section 1003.201(e) authorize the use of Indian CDBG funds to carry out public services activities but provide that the amount of Indian CDBG funds used for public services shall not exceed 15 percent of the respective Indian CDBG grant. Congress lifted the 15 percent cap on public services funded under the Indian CDBG IT funding appropriated under the CARES Act and for FY 2019 and FY 2020 Indian CDBG funding in recognition of the great and immediate need for public services to help address and prepare for the impact of COVID-19 in tribal communities.

Accordingly, HUD has waived Section 105 of the HCD Act, 24 CFR section 1003.201(e), and language in the definition of the term “public services” in the FY 2019/2020 Indian CDBG NOFA to the extent necessary to remove the 15 percent cap on FY 2019/2020 Indian CDBG funding (both Single Purpose and IT grants), to align with Indian CDBG IT funding provided under the CARES Act.

Indian CDBG grantees that have been awarded FY 2019/2020 Indian CDBG funds must still comply with the provisions of 24 CFR section 1003.305 if they are seeking to amend their grants to carry out additional public services or other activities to prevent, prepare for, or respond to COVID-19.

(2) **Rental Assistance, Utility Assistance, Food, Clothing, and Other Emergency Assistance**

**Statutory Authority:** Section 105 of the HCD Act.

**Regulatory Authority:** 24 CFR section 1003.207(b)(4).

**Description:** Section 105(a)(8) authorizes the use of Indian CDBG funds for a variety of public services. Under the implementing regulation at 24 CFR section 1003.207(b)(4), the general rule is that Indian CDBG funds may not be used for income payments. For purposes of the Indian CDBG program, income payments mean a series of subsistence-type grant



payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes emergency payments made over a period of up to three months to the provider of such items or services on behalf of an individual or family.

COVID-19 is having a substantial negative impact on Native American families' ability to work, earn an income, pay their rent or mortgage, access or pay for food and clothing, and access many other essential services. Many tribes and Tribally Designated Housing Entities (TDHEs) have reported to HUD that they shut down and community members are sheltering in place. To help tribal communities address these challenges, HUD has waived Section 105(a)(8) and 24 CFR section 1003.207(b)(4) to the extent necessary to establish the following alternative requirement:

- (a) Indian CDBG grant funds may be used to provide emergency payments for low and moderate income individuals or families impacted by COVID-19 for items such as food, medicine, clothing, and other necessities, as well as rental assistance and utility payment assistance, without regard for the three-month limitation in 24 CFR section 1003.207(b)(4), but for a period not to exceed six months unless further expanded by HUD at a later date.

At the time of the issuance of [PIH Notice 2020-13](#), emergency mortgage assistance was limited to no more than three months under 24 CFR section 1003.207(b)(4). HUD may have provided additional waiver relief for Indian CDBG-funded mortgage assistance at a later date as the COVID-19 pandemic progressed.

As noted above the auditor is advised to check for any additional waiver relief at the "[COVID-19 Recovery Programs](#)" site of HUD's [CodeTalk](#) website prior to addressing any issues related to the duration of assistance under this waiver.

- (b) These emergency payments must be used to either cover costs incurred directly by the Indian CDBG grantee in cases where the Indian CDBG grantee is providing this assistance or made directly to a third-party provider of such items or services on behalf of an individual or family and may not be paid directly to an individual or family in the form of income payments, debit cards, or similar direct income payments. Indian CDBG grantees may establish lines of credit with third-party providers (e.g., grocery stores) on behalf of specific beneficiary families, provided all expenses can be properly documented and all Indian CDBG-CARES funds used for this purpose are expended on eligible activities. In all cases, Indian CDBG grantees must ensure that proper documentation is maintained to ensure that all costs incurred are eligible.

Indian CDBG grantees using this alternative requirement must document, in its policies and procedures, how they will determine the amount of assistance to be provided is necessary and reasonable.

(3) **Purchase of Equipment**

**Regulatory Authority:** 24 CFR sections 1003.207(b)(1); 1003.201(c)(1)(ii).

**Description:** The purchase of equipment with Indian CDBG funds is generally ineligible under 24 CFR section 1003.207(b)(1), with some exceptions.

Given the immediate need for medical and personal protective equipment, and other related equipment needed to help prevent, prepare for, and respond to the COVID-19 pandemic in tribal communities, HUD has waived 24 CFR section 1003.207(b)(1) and authorized the use of Indian CDBG funds for the purchase of equipment necessary to prevent, prepare for, and respond to the COVID-19. Equipment must be used for authorized program purposes, and any proceeds from the disposition of equipment will be considered Indian CDBG-CARES program income.

The auditor should check whether HUD issued further guidance on the disposition of program income after grant closeout. Indian CDBG grantees must ensure that Indian CDBG funds are used to supplement other federal sources of funding for this purpose, including funding provided by the Indian Health Service, and should not be used to supplant such funding.

(4) **Operating Expenses for Public Facilities**

**Regulatory Authority:** 24 CFR section 1003.207(b)(2).

**Description:** 24 CFR section 1003.207(b)(2) provides that expenses associated with repairing, operating, or maintaining public facilities, improvements and services are generally ineligible, with some exceptions.

Indian tribes may find the need to use Indian CDBG funds to fund a variety of public facilities, including constructing facilities for testing, diagnosis, or treatment, rehabilitating existing facilities to establish infectious disease treatment clinics, acquiring, and converting hotels, motels, or similar facilities to expand capacity of hospitals to accommodate isolation of patients during recovery, and more. These facilities will likely need to be operated and maintained for the duration of the COVID-19 pandemic. Accordingly, HUD has waived 24 CFR section 1003.207(b)(2) to the extent necessary to allow the use of Indian CDBG

funds to pay for such operating and maintenance expenses of any public facility, to the extent it is used for COVID-19-related purposes. In incurring such costs, Indian CDBG grantees may not use this waiver to pay for associated staffing costs of such public facilities. Indian CDBG grantees must also ensure that Indian CDBG funds are used to supplement other federal sources of funding for this purpose, including funding provided by the Indian Health Service, and should not be used to supplant such funding.

(5) **New Housing Construction by Tribes**

**Statutory Authority:** Section 105 of the HCD Act.

**Regulatory Authority:** 24 CFR section 1003.207(b)(3).

**Description:** 24 CFR section 1003.207(b)(3) generally prohibits the use of Indian CDBG funds for new housing construction, with some exceptions. Indian CDBG may be used for new housing construction if provided as last resort housing under 24 CFR Part 42, or when carried out by a Community-Based Development Organization (CBDO).

As HUD found in its 2017 Native American Housing Needs Study, severe overcrowding and substandard housing is a major challenge in Indian Country. These conditions increase risks of infection amongst low- and moderate-income Native American families. Indian tribes may find the need to construct temporary or permanent new housing to help prevent, prepare for, and respond to COVID-19, and may find it necessary to do so without having to carry out such activities through a CBDO. Accordingly, HUD has waived and modified Section 105 of the HCD Act and 24 CFR 1003.207(b)(3) to the extent necessary to provide for the following alternative requirement: Indian tribes and tribal organizations may use Indian CDBG funds to carry out new housing construction when such construction is carried out to reduce overcrowding, or to otherwise prevent, prepare for, or respond to COVID-19.

Such new housing construction must meet applicable federal accessibility requirements, including requirements under Section 504 of the Rehabilitation Act and 24 CFR Part 8.

## 2. **Indian CDBG-ARP Imminent Threat Grants**

### a. **General**

On March 11, 2021, the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) (ARP) was signed into law. The Act provides \$280,000,000 in Indian CDBG Imminent Threat (IT) funding to be used for emergencies that constitute imminent threats to health and safety and that are designed to prevent, prepare for, or

respond to coronavirus. This funding was provided in the form of grants to eligible Indian tribes and must be used to prevent, prepare for, and respond to the Coronavirus disease 2019 (COVID-19). This funding must be used in accordance with the applicable requirements of the CARES Act, Title I of the Housing and Community Development Act of 1974 (HCDA), as amended (42 USC 5103 et seq.), [the Indian CDBG implementing regulations at 24 CFR Part 1003](#), and the ICDBG-ARP Implementation Notice, [Notice PIH-2021-22](#), issued July 20, 2021.

In addition, Congress authorized HUD to waive or specify alternative requirements for any provision of title I of the HCDA or regulation applicable to the ICDBG program, other than requirements related to fair housing, nondiscrimination, labor standards, and the environment. That authorization is contingent upon a finding that the waiver or alternative requirement is necessary to expedite or facilitate the use of amounts made available for the ICDBG-ARP program.

On July 20, 2021, HUD issued [Notice PIH-2021-22](#) with waivers and alternative requirements authorized by the ARP Act. That Notice describes in detail the various waivers and alternative requirements that have been issued thus far with respect to Indian CDBG-ARP grants.

Before auditing an Indian CDBG-ARP grant recipient, auditors are strongly advised to review the ICDBG-ARP Implementation Notice, [Notice PIH-2021-22](#), addressing the waivers and alternative requirements affecting Indian CDBG IT program with respect to Indian CDBG-ARP grants.

The following section identifies allowability considerations for the Indian CDBG program, followed by a summary of waivers and alternative requirements affecting the Indian CDBG program considered important by HUD. Because the COVID-19 pandemic was ongoing at the time the Compliance Supplement was finalized, the auditor should make best efforts to identify and consider updates and revisions of [Notice PIH-2021-22](#) for Indian CDBG-ARP funding that were in place at the time of the audit. This can be done by visiting at [COVID-19 Recovery Programs site](#) of ONAP's website, CodeTalk, <https://www.hud.gov/codetalk>.

**b. Activities Allowed or Unallowed**

Like the CARES Act, the ARP Act requires Indian CDBG-ARP grants to be used to prevent, prepare for, and respond to COVID-19.

To comply with this requirement, Indian CDBG-ARP grantees must ensure that all activities, projects, and programs being proposed can be tied to at least one of the following three eligible purposes:

- Activities, Projects, or Programs to Prevent COVID-19.

- Activities, Projects, or Programs to Prepare for COVID-19.
- Activities, Projects, or Programs to Respond to COVID-19.

And like ICDBG-CARES funds, ICDBG-ARP grant funds may also be used to cover or reimburse allowable costs paid with non-federal funds by the ICDBG-ARP grantee, provided the funds were used to prevent, prepare for, or respond to COVID-19. This includes covering or reimbursing allowable costs incurred back to the date the Indian tribe began preparing for COVID-19, which may be prior to the date of enactment of the ARP, but in no event earlier than January 22, 2020. Please note that this differs from the ICDBG-CARES which permitted reimbursing allowable costs incurred back to the date the Indian tribe began preparing for COVID-19, which may be prior to the date of enactment of the CARES Act, but in no event earlier than January 21, 2020.

The auditor should consider the following:

- **Prevent:** ICDBG-ARP grant funds may be used during a COVID-19 local, service area, or regional coronavirus outbreak. This includes, but is not limited to, activities designed to prevent the initial or further spread of the virus to the tribal community, such as using ICDBG-ARP funds to assist with the effort to vaccinate individuals, and much more.
- **Prepare for:** ICDBG-ARP grant funds may be used prior to a local, service area, or regional coronavirus outbreak. This includes, but is not limited to, activities designed to develop processes and procedures to help keep people healthy, and other activities designed to reduce the risk of exposure to COVID-19 and avoid or slow the spread of the disease.
- **Respond to:** Once COVID-19 has spread in the community, examples of how ICDBG-ARP grantees may choose to respond to COVID-19 may include using ICDBG-ARP grant funds to care for those who have become infected and to limit the exposure and spread of the virus, providing emergency rent payments and other public services to families that cannot pay rent, carrying out activities to reduce severe overcrowding, preventing homelessness to ensure families are stably housed, and much more. Funds may continue to be used after the local, service area, or regional coronavirus outbreak on any continuing expenses incurred due to the spread of COVID-19.

These descriptions are designed to provide general guidance to grantees and are not intended to limit the range of eligible ICDBG-ARP grant activities that can be carried out. Provided a grantee can, in HUD's judgment, reasonably tie their ICDBG-ARP activities back to one or more eligible purposes, HUD will accept the grantee's classification.

Pursuant to 24 CFR section 1003.200, ICDBG-ARP grants do not have to comply with the primary objective of the HCDA, that no less than 70 percent of expenditures of each grant be for activities which meet the criteria set forth in 24 CFR section 1003.208(a)-(d).

c. **Waivers and Alternative Requirements Applicable Only to Indian CDBG-ARP Funding**

The following waivers and alternative requirements apply only to Indian CDBG-ARP grants (the new Indian CDBG funding provided under the ARP Act. These waivers and alternative requirements do not apply to Indian CDBG funds appropriated in any other prior year.

(1) **Rental Assistance, Utility Assistance, Food, Clothing, and Other Emergency Assistance**

**Statutory Authority:** Section 105 of the HCDA

**Regulatory Authority:** 24 CFR section 1003.207(b)(4)

**Description:** Section 105(a)(8) authorizes the use of ICDBG funds for a variety of public services. Under the implementing regulation at 24 CFR section 1003.207(b)(4), the general rule is that ICDBG funds may not be used for income payments. For purposes of the ICDBG program, income payments mean a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage) or utilities, but excludes emergency payments made over a period of up to three months to the provider of such items or services on behalf of an individual or family.

COVID-19 is having a substantial negative impact on Native American families' ability to work, earn an income, pay their rent or mortgage, access or pay for food and clothing, and access many other essential services. Many Indian tribes and TDHEs have reported to HUD that they shut down and community members are sheltering in place. Additionally, HUD expects that Tribes will need to respond to long-term impacts of COVID-19. To help tribal communities address these challenges, HUD is waiving Section 105(a)(8) and 24 CFR section 1003.207(b)(4) to the extent necessary to establish the following alternative requirement:

ICDBG-ARP grant funds may be used to provide emergency payments for low- and moderate-income individuals or families impacted by COVID-19 for items such as food, medicine, clothing, and other necessities, as well as rental assistance and utility payment assistance, without regard for the three-month limitation in 24 CFR section 1003.207(b)(4), but for a period not to exceed six months unless further expanded by HUD at a later date. At this time, emergency mortgage assistance will remain limited to no

more than three months under 24 CFR section 1003.207(b)(4). Indian tribes are reminded that additional rental assistance and assistance for homeowners is available under the Department of Treasury's Emergency Rental Assistance program and the Homeowner Assistance Fund.

These emergency payments must be used to either cover costs incurred directly by the ICDBG-ARP grantee in cases where the ICDBG-ARP grantee is providing this assistance or made directly to a third-party provider of such items or services on behalf of an individual or family and may not be paid directly to an individual or family in the form of income payments, debit cards, or similar direct income payments. ICDBG-ARP grantees may establish lines of credit with third-party providers (e.g., grocery stores) on behalf of specific beneficiary families, provided all expenses can be properly documented and all ICDBG-ARP funds used for this purpose are expended on eligible activities. In all cases, ICDBG-ARP grantees must ensure that proper documentation is maintained to ensure that all costs incurred are eligible. ICDBG-ARP grantees using this alternative requirement must document, in their policies and procedures, how they will determine the amount of assistance to be provided is necessary and reasonable.

(2) **Purchase of Equipment**

**Regulatory Authority:** 24 CFR sections 1003.207(b)(1), 1003.201(c)(1)(ii)

**Description:** The purchase of equipment with ICDBG funds is generally ineligible under 24 CFR section 1003.207(b)(1), with some exceptions. Given the immediate need for medical and personal protective equipment, and other related equipment needed to help prevent, prepare for, or respond to the COVID-19 pandemic in tribal communities, HUD is waiving 24 CFR section 1003.207(b)(1) and authorizing the use of ICDBG-ARP funds for the purchase of equipment necessary to prevent, prepare for, or respond to COVID-19. Equipment must be used for authorized program purposes, and any proceeds from the disposition of equipment will be considered ICDBG-ARP program income. HUD may issue further guidance in the future on the disposition of program income after grant closeout.

ICDBG-ARP grantees must ensure that ICDBG-ARP funds are used to supplement other federal sources of funding for this purpose, including funding provided by the Indian Health Service, and should not be used to supplant such funding.

(3) **Operating Expenses for Public Facilities**

**Regulatory Authority:** 24 CFR section 1003.207(b)(2)

**Description:** The 24 CFR section 1003.207(b)(2) provides that expenses associated with repairing, operating, or maintaining public facilities, improvements and services are generally ineligible, with some exceptions. Indian tribes may find the need to use ICDBG-ARP funds to fund a variety of public facilities, including constructing facilities for testing, diagnosis, or treatment, rehabilitating existing facilities to establish infectious disease treatment clinics, acquiring and converting hotels, motels, or similar facilities to expand capacity of hospitals to accommodate isolation of patients during recovery, and more. These facilities will likely need to be operated and maintained for the duration of the COVID-19 pandemic.

Accordingly, HUD is waiving 24 CFR section 1003.207(b)(2) to the extent necessary to allow the use of ICDBG-ARP funds to pay for such operating and maintenance expenses of any public facility, to the extent it is used for COVID-19-related purposes.

ICDBG-ARP grantees must also ensure that ICDBG-ARP funds are used to supplement other Federal sources of funding for this purpose, including funding provided by the Indian Health Service, and should not be used to supplant such funding.

(4) **New Housing Construction by Tribes**

**Statutory Authority:** Section 105 of the HCDA

**Regulatory Authority:** 24 CFR section 1003.207(b)(3)

**Description:** 24 CFR section 1003.207(b)(3) generally prohibits the use of ICDBG funds for new housing construction, with some exceptions.

ICDBG may be used for new housing construction if provided as last resort housing under 24 CFR Part 42, or when carried out by a Community-Based Development Organization (CBDO).

As HUD found in its 2017 Native American Housing Needs Study, severe overcrowding and substandard housing is a major challenge in Indian Country. These conditions increase risks of infection amongst low- and moderate-income Native American families. Indian tribes may find the need to construct temporary or permanent new housing to help prevent, prepare for, or respond to COVID-19, and may find it necessary to do so without having to carry out such activities through a CBDO.



Accordingly, HUD is waiving and modifying Section 105 of the HCD Act and 24 CFR section 1003.207(b)(3) to the extent necessary to provide for the following alternative requirement: Indian tribes and tribal organizations may use ICDBG-ARP funds to carry out new housing construction when such construction is carried out to reduce overcrowding, or to otherwise prevent, prepare for, or respond to COVID-19.

When assessing applications for ICDBG-ARP grants that propose to carry out new housing construction, HUD will only fund applications that propose to carry out new housing construction that is clearly designed to prevent, prepare for, or respond to COVID-19, and that the applicant plans to carry out expeditiously. As a reminder, such new housing construction must meet applicable federal accessibility requirements, including requirements under Section 504 of the Rehabilitation Act of 1973 and 24 CFR Part 8. HUD will issue additional ICDBG-ARP implementation guidance in the near future.

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****ASSISTANCE LISTING 14.866 DEMOLITION AND REVITALIZATION OF SEVERELY DISTRESSED PUBLIC HOUSING (HOPE VI)****ASSISTANCE LISTING 14.889 CHOICE NEIGHBORHOODS IMPLEMENTATION GRANTS****I. PROGRAM OBJECTIVES**

The objective of HOPE VI revitalization grants is to provide assistance to public housing agencies (PHAs) for the purpose 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.

The objective of Choice Neighborhoods implementation grants is to transform neighborhoods of poverty into viable and sustainable mixed-income neighborhoods by revitalizing severely distressed public and assisted projects and by linking housing improvements with appropriate services, schools, public assets, transportation, and access to jobs. Choice Neighborhoods grants build upon the successes of public housing transformation under HOPE VI to provide support for the preservation and rehabilitation of public and Department of Housing and Urban Development (HUD)-assisted housing, within the context of a broader approach to concentrated poverty.

**II. PROGRAM PROCEDURES****A. Notice of Funding Availability**

For HOPE VI, HUD awarded demolition and revitalization grants to eligible PHAs through a competitive process. The procedure was set out in the Notices of Funding Availability (NOFAs) for the applicable fiscal year (FY). The NOFA established 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.

For Choice Neighborhoods grants, HUD awards planning or implementation grants to eligible organizations through a competitive process. The procedures and requirements are set out in the NOFAs for the applicable FY. The NOFA establishes the eligibility requirements for PHAs, local governments, nonprofit organizations, and for profit developers to apply for a Choice Neighborhoods grant. The Choice Neighborhoods program will replace the HOPE VI program.

## **B. Grant Agreement**

For both HOPE VI and Choice Neighborhoods, the grant agreement (Agreement) establishes grant requirements; the procedures and content for the HOPE VI Revitalization Plan or the Choice Neighborhoods planning or implementation grant; 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 or Transformation Plan (for Choice Neighborhoods only). 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.

## **C. Development and Mixed-Finance Development**

For both HOPE VI and Choice Neighborhoods, the selection of a development partner and the general administrative requirements are governed by 24 CFR Part 85 or 2 CFR Part 200. 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 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 (FIs) 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 or Choice Neighborhoods grantee has the evidentiary documents for the transaction 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, or Choice Neighborhoods, funds for the phase, as set out in the

HOPE VI or Choice Neighborhoods' Budgets, and the FIs 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 or Choice Neighborhoods, the grant is closed out in accordance with the procedures for each program.

#### **D. 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 (Assistance Listing 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 or Choice Neighborhoods funds cannot be included as part of that funding source, however the MTW funds can be utilized as part of HOPE VI or Choice Neighborhoods development activity. If a PHA is operating under an MTW Agreement, the auditor should look to the MTW agreement or plan to determine any differences from the requirements identified in this program supplement.

#### **Source of Governing Requirements**

The program authority for the HOPE VI and Choice Neighborhoods programs 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, December 16, 2003) and the Department of Housing and Urban Development Appropriations Act, Fiscal Year 2010 (Pub. L. No. 111-117, 123 Stat. 3080, December 16, 2009). 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, which is available at [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/hope6](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/hope6), and the Choice Neighborhoods program on its Home Page, which is available at [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/cn](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/cn), to provide 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 page, which are available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/react](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/react).

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	N	Y	Y	Y	N	Y

#### A. Activities Allowed or Unallowed

1. HOPE VI revitalization grant funds and Choice Neighborhoods implementation 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)).

**G. Matching, Level of Effort, Earmarking**

**1. Matching**

Grantees must provide a 5 percent overall match, and if more than 5 percent of the grant is used for community and supportive services, any amount over 5 percent must be matched (42 USC 1437v(c)).

**2. Level of Effort**

Not Applicable

**3. Earmarking**

Not Applicable

**L. Reporting**

**1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

- d. *Financial Reports (OMB No. 2535-0107)* – Financial Assessment Subsystem, FASS-PHA. The 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 and Choice Neighborhoods (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)* – Each recipient that administers covered public and Indian housing assistance, regardless of the amount expended, and each recipient that administers covered housing and community development assistance in excess of \$200,000 in a program year, must submit HUD 60002 information using the automated Section 3 Performance Evaluation and Registry (SPEARS) System (24 CFR sections 135.3(a)(1) and 135.90).

Information on the automated system is available at [https://www.hud.gov/program\\_offices/field\\_policy\\_mgt/section3/spears](https://www.hud.gov/program_offices/field_policy_mgt/section3/spears). The system was launched on August 24, 2015. The due date for submission of 2013 and 2014 reports was extended to December 15, 2015. SPEARS pre-populates Form HUD 60002 with recipient name and address along with disbursement data for program funding covered by Section 3. Users have the flexibility of selecting the 12-month reporting period, typically to coincide with their respective fiscal cycle.

*Key Line Items* – The following line items contain critical information:

1. Number of new hires that meet the definition of a Section 3 resident
2. Total dollar amount of construction contracts awarded during the reporting period
3. Dollar amount of construction contracts awarded to Section 3 businesses during the reporting period
4. Number of Section 3 businesses receiving the construction contracts
5. Total dollar amount of nonconstruction contracts awarded during the reporting period
6. Dollar amount of nonconstruction contracts awarded to Section 3 businesses during the reporting period
7. Number of Section 3 businesses receiving the nonconstruction contracts



**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions****1. Wage Rate Requirements**

**Compliance Requirements** HOPE VI and Choice Neighborhoods 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 Wage Rate Requirements (42 USC 1437j(a) and (b), 24 CFR sections 941.208 and 941.610(a)(8)(vi)).

See Part 4, 20.001, Wage Rate Requirements Cross-Cutting Section.

**2. FASS – PHA, Public Housing Assessment System Phase Indicator #2 – Financial Condition, and HUD-50075, PHA Plans**

**Compliance Requirements** 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 (24 CFR section 902.33). In the FASS-PHA Financial Assessment Sub System, the PHA transactions with nonprofit and private development entities are shown under the headings for HUD Programs and Business Activities for HOPE VI and Choice Neighborhoods (Revitalization of Severely Distressed Housing) and the Component Units (Non-Profit Affiliates). Such transactions would be noted in the FDS line items shown in Section III.L.1.d.(2) above. 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 nonprofit and private development entities. The PHA submits the Annual Statement, Component 7, for HOPE VI, Choice Neighborhoods, 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 Objectives** Determine whether the expenditures set out in the FDS line items that indicate participation by nonprofit 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 nonprofit and private development entities' use of HOPE VI and Choice Neighborhoods.
- 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

### ASSISTANCE LISTING 14.867 INDIAN HOUSING BLOCK GRANTS

#### I. PROGRAM OBJECTIVES

The primary objectives of the Indian Housing Block Grants (IHBG) program 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).

In addition to the annual IHBG funding pursuant to NAHASDA, under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. No. 116-136) and the American Rescue Plan Act of 2021 (ARP) (Pub. L. No. 117-2), Congress directed HUD to utilize the IHBG program to allocate and award \$200 million in CARES funding and \$450 million in ARP funding. IHBG funding awarded pursuant to the CARES Act or the ARP Act are discussed in greater detail later in this document.

#### Source of Governing Requirements

This program is authorized by NAHASDA, codified at 25 USC 4101 through 4212. Implementing regulations are in 24 CFR Part 1000.

#### Availability of Other Program Information

Additional information about the IHBG program is available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/ih/grants/ihbg](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/grants/ihbg).

#### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have

been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	N	N	Y	N	Y	N	Y

**A. Activities Allowed or Unallowed**

1. The following activities to develop, operate, maintain, or support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing are allowable:
  - 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 and rehabilitation of utilities, necessary infrastructure, and utility services, conversion, demolition, financing, administration and planning, improvement to achieve greater energy efficiency, mold remediation, 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; the costs of operation and maintenance of units developed with funds provided under NAHASDA; 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 of Housing and Urban Development as appropriate for such purpose (25 USC 4132(6)).
  - g. *Reserve Accounts* – The deposit of amounts, including grant amounts, in a reserve account only for the purpose of accumulating amounts for administration and planning relating to affordable housing activities. These amounts may be invested. Interest earned on reserves is not program income and may not be included in calculating the maximum amount of reserves. The maximum amount of reserves, whether in one or more accounts, that a recipient may have available at any one time is calculated by determining the five-year average of administration and planning amounts, not including reserve amounts, expended in a tribal program year and establishing one-fourth of that amount for the total eligible reserve (25 USC 4132(9); 24 CFR section 1000.239).
2. Unless the conditions specified in 25 USC 4111(d) (regarding tax exemption for real and personal property taxes and user fees) are met, grant 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.

**B. Allowable Cost/Cost Principles**

1. All items of cost listed in 2 CFR Part 200, Subpart E, that require prior federal agency approval are allowable without prior approval, except for the following:
  - a. Depreciation methods for fixed assets shall not be changed without the approval of the federal cognizant agency.
  - b. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses (goods or services for personal use), regardless of whether reported as taxable income to the employees, require prior HUD approval.
2. Fines, penalties, damages, and other settlements are unallowable.
3. No person providing consultant services in an employer-employee type of relationship may receive more than a reasonable rate of compensation. Such compensation must not exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule (currently \$161,900). The Executive Pay Schedule may be obtained at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2019/executive-senior-level> (24 CFR section 1000.26(b)).

**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 funds (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 (Section 201(b)(1) of NAHASDA (25 USC 4131(b)(1))).
- b. A non-low-income family may receive housing assistance if HUD approves that housing assistance due to a need that cannot reasonably be met without the assistance (Section 201(b)(2) of NAHASDA (25 USC 4131(b)(2))). A family that was low income at the times described in 24 CFR section 1000.147 but subsequently becomes a non-low-income family due to an increase in income may continue to participate in the program in accordance with the recipient's admission and occupancy policies. This includes a family member or household member who takes ownership of a homeownership unit. Non-low-income families cannot receive the same benefits that are provided to low-income families, as benefits are limited by 24 CFR section 1000.110(d) and must be based on the recipient's admission and occupancy policies (24 CFR section 1000.110).

- c. A family may receive housing assistance on a reservation or Indian area if the 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. Assistance for essential 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 family's housing needs cannot be reasonably met without such assistance (Section 201(b)(3) of NAHASDA (25 USC 4131(b)(3))).
- d. A law enforcement officer on an Indian reservation or other Indian area may receive housing assistance, if:
  - (1) The officer is employed on a full-time basis by the federal government or a state, county, or other unit of local government, or lawfully recognized tribal government;
  - (2) In implementing such full-time employment, the officer is sworn to uphold, and make arrests for violations of federal, state, county, or tribal law; and
  - (3) The recipient determines that the presence of the law enforcement officer on the Indian reservation or other Indian area may deter crime (Section 201(b)(4) of NAHASDA (25 USC 2531(b)(4))).

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

Not Applicable

## **3. Eligibility for Subrecipients**

Not Applicable

## **I. Procurement and Suspension and Debarment**

- 1. For the IHBG program, funds used are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC 450e(b)) or, if applicable, tribal preference in contracting under 25 USC 4111(k), which means that a recipient is to apply employment and contract preference laws (including regulations and tribal ordinances) that it has adopted; or, in absence of such laws, to the greatest extent feasible, a recipient is to give preference in the award of contracts to Indian organizations and Indian-owned economic enterprises (24 CFR section 1000.52).

2. A recipient is not required to comply with the procurement requirements under 2 CFR sections 200.318 through 200.326 or the Indian preference requirements with respect to any procurement of goods and services using IHBG funds with a value of less than \$5,000 (25 USC 4133(g)).
3. A recipient may use federal supply sources made available by the General Services Administration under 40 USC 501 (Section 101(j) of NAHASDA; 24 CFR section 1000.26(a)(11)(ii)).

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

### **2. Performance Reporting**

- a. HUD-52737, *Indian Housing Plan/Annual Performance Report (OMB No. 2577-0218)* – Recipients may complete the Annual Performance Report component of the form using either HUD’s online EPIC system or the Excel version that is submitted by paper or electronically as an email attachment to the Area Office of Native American Programs (ONAP) within 90 days of the end of the recipient’s program year. To access EPIC, log into this site: [https://portalapps.hud.gov/app\\_epic/](https://portalapps.hud.gov/app_epic/). User IDs and passwords are required to log into EPIC. The user must be registered in HUD’s Secure Systems to have a valid ID and password for EPIC. Secure Systems registration: [https://hudapps.hud.gov/public/wass/public/pha/phareg\\_page.jsp](https://hudapps.hud.gov/public/wass/public/pha/phareg_page.jsp). If the user already has registered with Secure Systems, the user must contact an Area Office of Native American Programs to complete the EPIC registration process.

*Key Line Items* – The following line items contain critical information:

1. Section 3, Line 1.9 – *Planned and Actual Outputs for 12-Month Program Year*.
2. Section 5, Line 1 – *Sources of Funds* – columns G and K.
3. Section 5, Line 2 – *Uses of Funds* – columns O through Q.
4. Section 11, Line 1 – *Inspections of Units* – columns C through F



5. Section 14, Lines 1 and 2 – *Jobs Supported by NAHASDA*.

- b. SF-425, *Federal Financial Report*. Review SF-425s submitted during the audit period to determine their completeness, accuracy, and timeliness of submissions. Review Box 12 (or attachment) of the form for the reasonableness of the investment status explanation.
- c. Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions**

**1. Wage Rate Requirements**

**Compliance Requirements** NAHASDA imposes the Wage Rate Requirements on contracts and agreements for assistance, sale, or lease for payments to laborers and mechanics employed in the development of affordable housing. NAHASDA provides that the Wage Rate Requirements 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)); 24 CFR section 1000.16)).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

**2. Environmental Review**

**Compliance Requirements** Program regulations provide that a tribe 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. The tribe is the responsible entity, whether or not a TDHE is authorized to receive IHBG grant amounts on behalf of the tribe (24 CFR section 58.2(a)(7)(ii)). 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 tribe assumes these responsibilities, the following applies: An environmental review must be prepared for each project or activity. 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 (RROF) and environmental certification. If the responsible entity tribe determines that it met a criterion specified in the regulations that would qualify the project as exempt or qualify the project for certain categorical exclusions, the RROF and environmental certification requirements do not apply (24 CFR sections 58.34 and 58.35(b), 24 CFR section 1000.20(b)(3)).

**Audit Objectives** 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:

#### *Environmental Reviews*

- a. Environmental determinations were made for each project or activity.
- b. Environmental determinations were supported by an environmental review, including supporting documentation for each applicable law and authority.
- c. For any project where an RROF and environmental certification was not submitted, the environmental review includes a written determination that the project or activity is exempt under a criterion of 24 CFR section 58.34 or is categorically excluded under a criterion of 24 CFR section 58.35(b), and meets the conditions specified for such exemption or categorical exclusion, with supporting documentation.

#### *Requests for Release of Funds*

- 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 were obligated or expended subsequent to RROF and environmental certification approval by HUD.

#### *Availability of Other Information*

Additional information on environmental review requirements can be found at <https://www.hudexchange.info/programs/environmental-review/>.

### 3. Investment of IHBG Funds

**Compliance Requirements** A recipient may invest IHBG funds for purposes of carrying out IHBG activities in investment securities if approved by HUD (25 USC 4134). Under IHBG, investments may be for a period not to exceed five years and only in those accounts or instruments identified in 24 CFR section 1000.58(c). A recipient may invest its IHBG annual grant in an amount equal to the annual formula grant amount less any formula grant amounts allocated for the operating subsidy element of the Formula Current Assisted Stock component of the formula. Please note, however, grantees may not invest IHBG funding received pursuant to the CARES Act or the ARP.

**Audit Objectives** Determine whether the investment of IHBG funds by the recipient meets the requirements of 24 CFR section 1000.58.

#### Suggested Audit Procedures

If IHBG 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 funds were invested only in those allowable accounts or instruments and within any conditions or restriction on the approval.
- c. Verify that each of these accounts are separate from other funds of the recipient and subject to an agreement in a form prescribed by HUD (i.e., HUD-52736-A for bank accounts or HUD-52736-B for brokers and dealers).
- d. Ensure these agreements are fully executed and maintained by the recipient in an accessible place.

## IV. OTHER INFORMATION

### 1. Indian Housing Block Grant -CARES Grants

#### a. General

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. No. 116-136) (CARES Act), was signed into law. The Act provides for an additional \$200,000,000 in Indian Housing Block Grant (IHBG) formula funding to eligible Indian tribes and tribally designated housing entities (TDHEs) specifically to prevent, prepare for, and respond to the Coronavirus disease 2019 (COVID-19), including to maintain normal operations and to fund eligible affordable housing activities under the Native American Housing Assistance and Self-Determination Act (NAHASDA) during the period that an IHBG recipient's program is impacted by COVID-19.

In addition, the CARES Act authorized HUD to waive, or specify alternative requirements for any statute or regulation (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment) that HUD administers to expedite or facilitate the use of IHBG-CARES grant funds to prevent, prepare for, and respond to COVID-19. This waiver authority also applies to IHBG funds appropriated under the Further Consolidated Appropriations Act, 2020 (Pub. L. No. 116-94).

On April 10, 2020, HUD issued PIH Notice 2020-05 with waivers and alternative requirements authorized by the CARES Act. That Notice was superseded by PIH Notice 2020-13 issued on July 2, 2020. PIH Notice 2020-13 describes in detail the various updated waivers and alternative requirements that have been issued thus far with respect to IHBG-CARES grants and FY 2020 IHBG grants repurposed to address COVID-19.

**Auditor be advised:** Before auditing an IHBG-CARES grant recipient, auditors are strongly advised to review the IHBG-CARES Implementation Notice, PIH Notice 2020-06, and PIH Notice 2020-13, particularly Section 13 of PIH Notice 2020-13 addressing the waivers and alternative requirements affecting IHBG program with respect to IHBG-CARES grants and FY 2020 IHBG grants

The following section identifies allowability considerations for IHBG-CARES funding, followed by a summary of waivers and alternative requirements affecting IHBG-CARES funding considered important by HUD. Because the COVID-19 pandemic was ongoing at the time this Compliance Supplement addendum was finalized, the Auditor should make best efforts to identify and consider updates and revisions of PIH Notice 2020-11 or PIH Notice 2020-13 for ICDBG-CARES funding that were in place at the time of the audit. This can be done by visiting <https://www.hud.gov/codetalk>.

#### **b. Activities Allowed or Unallowed**

The CARES Act requires ICDBG-CARES grants to be used to prevent, prepare for, and respond to COVID-19.

To comply with this requirement, ICDBG-CARES grantees must ensure that all activities, projects, and programs being proposed can be tied to at least one of the following three eligible purposes:

- Activities, Projects, or Programs to Prevent COVID-19
- Activities, Projects, or Programs to Prepare for COVID-19
- Activities, Projects, or Programs to Respond to COVID-19

Pursuant to the CARES Act, these funds may also be used to maintain normal operations and fund eligible IHBG activities during the period that a recipient's IHBG program is impacted by COVID-19. HUD expects and encourages recipients to expend funds expeditiously given the ongoing COVID-19 National Emergency. However, COVID-19

may have impacts on a recipient's IHBG program that range from immediate or short-term to medium-and long-term in nature. Accordingly, for purposes of this requirement, recipients may use IHBG-CARES grant funds to maintain normal operations both now and after the COVID-19 National Emergency, provided that the IHBG-CARES recipient can demonstrate that COVID-19 continues to impact its program.

IHBG-CARES grant funds may also be used to cover or reimburse allowable costs incurred by the IHBG-CARES recipient, provided the funds were used to prevent, prepare for, or respond to COVID-19. This includes covering or reimbursing allowable costs incurred back to the date the Indian tribe or TDHE began preparing for COVID-19, which may be prior to the date of enactment of the CARES Act, but in no event earlier than January 21, 2020.

The Auditor should consider the following:

- **Prepare for:** IHBG-CARES grant funds may be used prior to a local, service area, or regional coronavirus outbreak. This includes, but is not limited to, activities designed to develop processes and procedures to help keep people healthy, and other activities designed to reduce the risk of exposure to COVID-19 and avoid or slow the spread of the disease. Examples may include housing activities designed to reduce severe overcrowding, providing food delivery services to eligible families (including the elderly, disabled, and other high risk populations) to allow them to shelter in place, and public health campaigns designed to educate families on how to prepare for a possible outbreak in the community and ways to minimize community spread.
- **Prevent:** IHBG-CARES grant funds may be used during a COVID-19 local, service area, or regional coronavirus outbreak. This includes, but is not limited to, activities designed to prevent the initial or further spread of the virus to staff, tribal housing residents, and the tribal community. Examples may include distributing Personal Protective Equipment to housing maintenance staff, residents, and members of the community, using IHBG-CARES funds to clean common areas to prevent infections, and much more.
- **Respond to:** Once COVID-19 has spread to staff, tribal housing residents, and/or the tribal community, examples of how Indian tribes and TDHEs may choose to respond to COVID-19 may include using IHBG-CARES grant funds to care for those who have become infected and to limit the exposure and spread of the virus, provide rent assistance to eligible families that cannot pay rent, carrying out activities to reduce severe overcrowding, prevent homelessness to ensure families are stably housed, and much more. Funds may continue to be used after the local, service area, or regional coronavirus outbreak on any continuing expenses incurred due to the spread of COVID-19.

In most cases, maintaining normal operations and carrying out eligible activities, projects, or programs during the period that a recipient's program is impacted by COVID-19 will

likely tie back to the “Respond to” COVID-19 purpose. However, HUD recognizes that there may be circumstances where maintaining normal operations and carrying out eligible activities may tie back to the “Prepare for” or the “Prevent” eligible purpose. One example of maintaining normal operations is using IHBG-CARES funds to carry out eligible IHBG activities that the recipient initially planned to carry out with its regular IHBG funds but did not because it had to use its regular IHBG funds to carry out an unplanned activity to prevent, prepare for, or respond to COVID-19. In this scenario, the IHBG-CARES grant funds can be used to carry out the original IHBG activity.

These descriptions are designed to provide general guidance and are not intended to limit the range of eligible IHBG-CARES grant activities that can be carried out. Provided a grantee can reasonably tie their IHBG-CARES activities back to one or more eligible purposes, HUD will accept the classification.

**c. Waivers and Alternative Requirements Applicable Only to IHBG-CARES Funding**

The following waivers and alternative requirements apply only to IHBG-CARES grants (the new IHBG funding provided under the CARES Act), and FY 2020 IHBG funds appropriated under the Further Consolidated Appropriations Act of 2020 (Public Law 116–94) and reprogrammed to address COVID-19.

These waivers and alternative requirements do not apply to IHBG funds appropriated in any other prior year.

**(1) Reprogramming of FY 2020 IHBG Funding**

To encourage IHBG recipients to consider reprogramming existing FY 2020 IHBG funding to help address COVID-19, HUD has waived Section 103 of NAHASDA and 24 CFR section 1000.230 to the extent necessary to allow IHBG recipients to expend IHBG FY 2020 funds on IHBG activities that meet the eligible purposes of the CARES Act (to prevent, prepare for, and respond to COVID-19), including activities made eligible under the waivers and alternative requirements provided in this Notice, without first having to amend their FY 2020 Indian Housing Plan (IHP).

IHBG recipients that choose to do this must still amend their FY 2020 IHP, at a later date, but prior to submission of their APR, to reflect these new uses or activities, but may request an extension if doing so is not feasible and safe for tribal or TDHE staff at that time.

Additionally, HUD has waived the requirement in 24 CFR section 1000.232 that provides that certain IHP amendments that add new activities or involve a decrease in the amount of funds provided to protect and maintain the viability of FCAS units require HUD to review such modifications and determine that they comply with NAHASDA. IHBG recipients may reprogram FY 2020 funding to add new activities and decrease funding for FCAS units without HUD prior

review and approval, provided that the IHBG recipient is carrying out eligible COVID-19-related IHBG activities.

Similarly, the FY 2020 IHP must be amended to reflect these changes prior to submission of their APR, to reflect these added activities or a decrease in the amount of FCAS funds but may request an extension if doing so is not feasible and safe for tribal or TDHE staff at that time.

(2) **Income Verification**

**Regulatory Authority:** 24 CFR section 1000.128

**Description:** 24 CFR section 1000.128 requires IHBG recipients to verify that a family is income-eligible. Families are required to provide documentation to verify this determination, and a recipient is required to maintain that documentation. Families may be required by the IHBG recipient to periodically verify income after initial occupancy, and the recipient is required to maintain documentation.

Given the COVID-19 related challenges facing families seeking IHBG assistance, families currently receiving IHBG assistance that are due for income recertification, and tribal and TDHE staff charged with verifying income and maintaining documentation, HUD established the following alternative requirement under 24 CFR section 1000.128:

- (a) IHBG recipients may deviate from their current written admissions and occupancy policies, and may allow less frequent income recertifications; and
- (b) IHBG recipients may carry out intake and other tasks necessary to verify income remotely if the IHBG recipient or eligible families chooses to do so, including allowing income self-certification over the phone (with a written record by the IHBG recipient's staff), or through an email with a self-certification form signed by a family.

(3) **Public Health Services**

**Statutory Authority:** Section 202(3) of NAHASDA

**Description:** Section 202(3) of NAHASDA authorizes the use of IHBG funds for the provision of housing-related services for affordable housing. Under this eligible activity, IHBG funds can be used to provide services such as housing counseling, activities related to the provision of self-sufficiency and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in the IHBG program.

HUD has waived Section 202(3) and established an alternative requirement to the extent necessary to allow IHBG funds to be used to carry out a wide range of public health services under this category of eligible activities. Accordingly, in addition to the housing services normally eligible under Section 202(3), IHBG recipients may be used on a wide range of public health activities designed to allow IHBG-eligible residents and staff of the IHBG recipient to prepare for, prevent, and respond to COVID-19.

Eligible uses of IHBG funds under this waiver and alternative requirement include, but are not limited to: providing testing, diagnosis or other related services to residents; establishing a fixed or mobile location to conduct testing and treatment; paying for necessary equipment, supplies, and materials, including personal protective equipment; carrying out public health services designed to help staff, eligible residents, and other third-party providers serving eligible residents, prepare for, prevent, and respond to COVID-19; delivering meals on wheels or other food delivery services to eligible residents that are sheltered-in-place and complying with a stay at home order, or otherwise maintaining recommended social distancing.

IHBG grantees are to coordinate with recipients of other federal sources of funding for this purpose, including funding provided by the Indian Health Service, to ensure IHBG funds are used to supplement rather than supplant such funding.

(4) **COVID-19-Related Assistance to Non-Low Income and Non-Native Families**

**Statutory Authority:** Section 201(b) of NAHASDA

**Regulatory Authority:** 24 CFR section 1000.104, 1000.106, 1000.108, 1000.110; 1000.312, 1000.314, 1000.318

**Description:** Section 201(b) of NAHASDA and its implementation regulations, except for specified exceptions, limit assistance under eligible housing activities to low-income Indian families.

The COVID-19 pandemic poses a unique threat to the health and safety of tribal communities. Persons infected with the virus, regardless of income or tribal membership, pose a health risk to the entire community, and low-income families are especially vulnerable given the severe overcrowding in Indian Country, infrastructure challenges, and the lack of access to running water and readily available health care services in many remote communities. To effectively prevent, prepare for, and respond to COVID-19, IHBG recipients may find the need to use IHBG resources or NAHASDA-assisted housing units to provide shelter-in-place housing and public health services to otherwise ineligible persons and families, with the goal of protecting the health and safety of the most vulnerable low-income Native American families who may be infected.



Given this, HUD has waived section 201(b) and its implementing regulations, and established alternative requirements to the extent necessary to allow IHBG funds to be used by recipients to prevent, prepare for, and respond to COVID-19 through the following limited activities that provide assistance to all affected and threatened people without regard to income limits or Indian status: temporary shelter-in-place, isolation centers, purchasing and making medical testing kits available, purchasing and distributing masks and other personal protection equipment, emergency food preparation and distribution, cleaning and decontamination, and other directly related activities. Permanent rental assistance, mortgage assistance, housing rehabilitation, and new housing construction may not be provided for the benefit of such otherwise ineligible families under this waiver and alternative requirement.

This assistance may only be provided to such otherwise ineligible families if: it is provided during the COVID-19 pandemic; it is designed to protect the health and safety of low-income Native American families; it is provided on an urgent basis (as documented by the IHBG recipient); and it is temporary in nature.

When providing this assistance, IHBG recipients must maintain records documenting that these criteria were met at the time that such assistance was provided.

Under this waiver and alternative requirement, IHBG recipients may house low-income non-Indian families or over-income Indian and non-Indian families in NAHASDA-assisted units, including FCAS units to shelter-in-place those families per CDC guidelines to protect low-income Indian families and the Tribal community from the further spread of COVID-19, regardless of income or Indian status.

IHBG funds may also be used to provide temporary rental assistance to otherwise ineligible persons or families in privately owned units, hotels/motels, and similar facilities designed to shelter-in-place or isolate infected persons from others, if the criteria under this waiver and alternative requirements are met.

The use of NAHASDA-assisted units, including FCAS, or funds for the temporary shelter-in-place or isolation of any individuals shall be temporary and no individual shall be isolated longer than medically necessary.

The 24 CFR sections 1000.312 and 1000.314 identify FCAS units as low rent, Mutual Help, and Turnkey III housing units owned and operated by an IHBG recipient. 24 CFR section 1000.318 establishes when these units can be considered FCAS for purposes of the IHBG formula. These regulations have also been waived and modified to the extent necessary to not impact the FCAS eligibility of FCAS units used for this purpose of addressing COVID-19 regardless of income or Indian status, provided such units are operated as low income housing dwelling units once no longer needed to shelter-in-place persons,

and upon a determination that such units are safe to be occupied again by low income families not infected with COVID-19.

Assistance provided in accordance with this waiver shall not count towards the maximum amount of assistance that IHBG recipients may otherwise provide to non-low-income families specified in 24 CFR section 1000.110.

(5) **Useful Life**

**Statutory Authority:** Section 205 of NAHASDA

**Regulatory Authority:** 24 CFR sections 1000.141, 1000.142, 1000.143, 1000.144, 1000.146, 1000.147

**Description:** Section 205(a)(2) of NAHASDA requires each dwelling unit in a recipient's housing developed or assisted under the Act will remain affordable, according to binding commitments satisfactory to HUD, for the remaining useful life of the property. The HBG regulations require each recipient to describe, in its IHP, its determination of the useful life of the assisted housing units in its developments in accordance with the local conditions of the Indian area of the recipient. By approving the IHP, HUD determines the useful life in accordance with Section 205(a)(2).

HUD has waived these requirements to determine and maintain affordability during the useful life of housing units assisted with IHBG-CARES grant funding and FY 2020 IHBG funding used to address COVID-19 if that assistance is related to cleanup of COVID-19 contamination and temporary use dwelling units for purposes of housing and quarantining families to inhibit the spread of COVID-19 to low-income Indian families and the Tribal community.

(6) **Total Development Cost Limits**

**Regulatory Authority:** 24 CFR sections 1000.156, 1000.158, 1000.160, 1000.162

**Description:** The IHBG regulations require that affordable housing under NAHASDA be of moderate design with a size and with amenities consistent with unassisted housing offered for sale in the Indian tribe's general geographic area to buyers who are at or below the area median income. To achieve this requirement the recipient must either, adopt written standards for its affordable housing programs that reflect the requirement specified, or use TDC limits published periodically by HUD that establish the maximum amount of funds (from all sources) that the recipient may use to develop or acquire/rehabilitate affordable housing. The limits provided by the TDC may not, without prior HUD approval, exceed by more than 10 percent the TDC maximum cost for the project. Non-dwelling structures used to support an affordable housing activity

must be of a design, size and with features or amenities that are reasonable and necessary to accomplish the purpose intended by the structures.

HUD expects that COVID-19 will likely have both a short- and long-term impact on IHBG recipients' programs. Because of the long-term need to prevent, prepare for, and respond to COVID-19, IHBG recipients may find it appropriate to use IHBG-CARES grant funds to acquire or construct new housing units with the goal of reducing severe overcrowding in Indian Country that leave Native American populations, particularly the elderly and persons with disabilities, especially vulnerable to COVID-19.

Accordingly, HUD has established an alternative requirement relating to limitations on cost or design standards and TDC with respect to dwelling and non-dwelling units developed, acquired or assisted with funding provided to be used by recipients to prevent, prepare for, and respond to COVID-19. An IHBG recipient may exceed the current TDC maximum by 20 percent without HUD review or approval if the purpose of the development, acquisition or assistance is to prevent, prepare for, and respond to COVID-19. The recipient, however, must maintain documentation that indicates the dwelling and non-dwelling units developed, acquired or assisted with this funding will, after this crisis, be for IHBG eligible families and the design, size, and amenities are moderate and comparable to housing in the area. The TDC limits can be exceeded by more than 20 percent if the recipient receives written approval from HUD Headquarters. This waiver applies to both single-family and multi-family housing, as well as non-dwelling structures supporting an activity to prevent, prepare for, and respond to COVID-19.

This waiver and alternative requirement is available only so long as the Total Development Costs specified in PIH Notice 2019-19 remain in effect.

(7) Prohibition Against Investment of CARES Act Grant Funds

**Statutory Authority:** Section 204(b) of NAHASDA

**Regulatory Authority:** 24 CFR section 1000.58

**Description:** Section 204(b) of NAHASDA permits IHBG recipients to invest grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations as approved by HUD. Under 24 CFR section 1000.58 of the IHBG regulations, HUD has approved certain IHBG recipients based, among other things, on a history of compliance and capacity, to invest IHBG funding certain securities and interest-bearing accounts for the purpose of carrying out affordable housing activities.

HUD has waived Section 204(b) of NAHASDA and 24 CFR section 1000.58 and is prohibiting the investment of any IHBG funding provided under the CARES Act. Such funding is to be used by recipients to prevent, prepare for, and respond

to COVID-19, including to maintain normal operations and fund eligible affordable housing activities under NAHASDA during the period that each recipient's program is impacted by COVID-19. Given the limited scope of this funding to address the immediate health, safety and economic needs of citizens in Indian Country, drawing down funds for investment in securities and long-term interest-bearing accounts is prohibited.

(8) IHBG-CARES Funds Not Counted in Undisbursed Funds Factor (UDFF)

**Regulatory Authority:** 24 CFR section 1000.342

**Description:** 24 CFR section 1000.342 codifies the UDFF in the IHBG formula. It provides that if an Indian tribe's initial IHBG allocation calculation is \$5 million or more and the Indian tribe has undisbursed IHBG funds on October 1 of the fiscal year for which the allocation is made in an amount that is greater than the sum of the prior three years' initial allocation calculations, its grant allocation will be the greater of the initial allocation calculation minus the amount of undisbursed IHBG funds that exceed the sum of the prior three years' initial allocation calculations, or its 1996 Minimum.

HUD has waived 24 CFR section 1000.342 and establishing an alternative requirement to the extent necessary to exclude IHBG-CARES funds from counting towards an Indian tribe's undisbursed IHBG funds from prior years under the UDFF. IHBG-CARES funds are available for a specific purpose under the CARES Act and were allocated by HUD to allow Indian tribes and TDHEs to prevent, prepare for, and respond to COVID-19. If this funding were counted against an Indian tribe and resulted in it receiving less IHBG formula funding under the next IHBG formula allocation, such a reduction in future funding would undermine the purposes of the IHBG-CARES funds and have an adverse impact on Indian tribes working to respond to the current National Emergency.

## 2. Indian Housing Block Grant -ARP Grants

### a. General

On March 11, 2021, the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) (ARP) was signed into law. The Act provides \$450 million for the IHBG Program to be distributed according to the same funding formula used in FY 2021 to be used by eligible Tribes and TDHEs to prevent, prepare for, and respond to coronavirus, including to maintain normal operations and fund eligible affordable housing activities under NAHASDA, as amended, during the period that the program is impacted by coronavirus. ARP also permits the funding made available for the IHBG program to be used, as necessary, to cover or reimburse allowable costs to prevent, prepare for, and respond to coronavirus that are incurred by a recipient, including for costs incurred **after** January 21, 2020, that is January 22, 2020 to present (**Please Note:** The CARES Act permitted funding to be used, as necessary, to cover or reimburse allowable costs prior to the date of enactment of the CARES Act, but in no event earlier than January 21, 2020).

In addition, Congress authorized HUD to waive or specify alternative requirements for NAHASDA or regulations (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment) applicable to the IHBG program upon a finding by HUD that such waivers or alternative requirements are necessary to expedite or facilitate the use of IHBG-ARP funds.

On April 13, 2021, HUD issued the IHBG-ARP Implementation Notice PIH-2021-11 with instructions on how to apply for the IHBG-ARP funding and describing waivers and alternative requirements authorized by the ARP Act. That Notice describes in detail the various waivers and alternative requirements that have been issued thus far with respect to IHBG-ARP grants.

b. Activities Allowed or Unallowed:

ARP requires that recipients' use of IHBG-ARP grants be tied to preventing, preparing for, and responding to COVID-19, including maintaining normal operations and funding eligible affordable housing activities under NAHASDA during the period the program is impacted by COVID-19.

To comply with this requirement, IHBG-ARP recipients must ensure that all activities being proposed can be tied to at least one of the following three eligible purposes:

- Activities, Projects, or Programs to Prevent COVID-19
- Activities, Projects, or Programs to Prepare for COVID-19
- Activities, Projects, or Programs to Respond to COVID-19

And like IHBG-CARES funds, IHBG-ARP funds may also be used to maintain normal operations and fund eligible IHBG activities during the period that a recipient's IHBG program is impacted by COVID-19. This includes covering or reimbursing allowable costs incurred back to the date the Indian tribe began preparing for COVID-19, which may be prior to the date of enactment of the ARP, but in no event earlier than January 22, 2020.

The auditor should consider the following:

- Prepare for: IHBG-ARP grant funds may be used prior to a local, service area, or regional coronavirus outbreak. This includes, but is not limited to, activities designed to develop processes and procedures to help keep people healthy, and other activities designed to reduce the risk of exposure to COVID-19 and avoid or slow the spread of the disease. Examples may include housing activities designed to reduce severe overcrowding, providing food delivery services to eligible families (including the elderly, disabled, and other high-risk populations) to allow them to shelter in place, and public health campaigns designed to educate families

on how to prepare for a possible outbreak in the community and ways to minimize community spread.

- **Prevent:** IHBG-ARP grant funds may be used during a COVID-19 local, service area, or regional coronavirus outbreak. This includes, but is not limited to, activities designed to prevent the initial or further spread of the virus to staff, Tribal housing residents, and the Tribal community. Examples may include distributing Personal Protective Equipment to housing maintenance staff, residents, and members of the community, using IHBG- ARP funds to clean common areas to prevent infections, using IHBG-ARP funds to facilitate the vaccination of IHBG-assisted residents and IHBG recipient staff, and much more.
- **Respond to:** Once COVID-19 has spread to staff, Tribal housing residents, and/or the Tribal community, examples of how Indian tribes and TDHEs may choose to respond to COVID-19 may include using IHBG-ARP grant funds to care for those who have become infected and to limit the exposure and spread of the virus, provide rent assistance to eligible families that cannot pay rent, carrying out activities to reduce severe overcrowding, prevent homelessness to ensure families are stably housed, and much more. Funds may continue to be used after the local, service area, or regional coronavirus outbreak on any continuing expenses incurred due to the spread of COVID-19.

These descriptions are designed to provide general guidance to recipients and are not intended to limit the range of eligible IHBG-ARP grant activities that can be carried out. Provided a recipient can, in HUD's judgment, reasonably tie their IHBG-ARP activities back to one or more eligible purposes, HUD will accept the recipient's classification.

c. **Waivers and Alternative Requirements Applicable Only to IHBG-ARP Funding**

The following waivers and alternative requirements apply only to IHBG funding provided under the ARP. Indian tribes and TDHEs are reminded that these waivers and alternative requirements do not apply to IHBG funds appropriated in any other Act. In applying these waivers and alternative requirements, Indian tribes and TDHEs must ensure that they are doing so only with respect to IHBG-ARP grant.

(1) **Income Verification**

**Regulatory Authority:** 24 CFR section 1000.128

**Description:** 24 CFR section 1000.128 requires IHBG recipients to verify that a family is income eligible. Families are required to provide documentation to verify this determination, and a recipient is required to maintain that documentation. Families may be required by the IHBG recipient to periodically verify income after initial occupancy, and the recipient is required to maintain documentation.

Given the COVID-19 related challenges facing families seeking IHBG assistance, families currently receiving IHBG assistance that are due for income recertification, and Tribal and TDHE staff charged with verifying

income and maintaining documentation, HUD is establishing the following alternative requirement under 24 CFR section 1000.128:

- (a) IHBG-ARP recipients may deviate from their current written admissions and occupancy policies, and may allow less frequent income recertifications; and
- (b) IHBG-ARP recipients may carry out intake and other tasks necessary to verify income of applicants and residents remotely if the IHBG recipient or eligible families chooses to do so, including allowing income self-certification over the phone (with a written record by the IHBG recipient's staff), or through an email with a self-certification form signed by a family.

(2) **Public Health Services**

**Statutory Authority:** Section 202(3) of NAHASDA

**Description:** Section 202(3) of NAHASDA authorizes the use of IHBG funds for the provision of housing-related services for affordable housing. Under this eligible activity, IHBG funds can be used to provide services such as housing counseling, activities related to the provision of self-sufficiency and other services related to assisting owners, tenants, contractors, and other entities, participating, or seeking to participate in the IHBG program.

HUD is waiving Section 202(3) and establishing an alternative requirement to the extent necessary to allow IHBG funds to be used to carry out a wide range of public health services under this category of eligible activities. Accordingly, in addition to the housing services normally eligible under Section 202(3), IHBG funds may be used on a wide range of public health activities designed to allow IHBG-eligible residents and staff of the IHBG recipient to prepare for, prevent, and respond to COVID-19.

Eligible uses of IHBG funds under this waiver and alternative requirement include, but are not limited to: providing testing, diagnosis, vaccination or other related services to residents; establishing a fixed or mobile location to conduct testing, vaccination and treatment; paying for necessary equipment, supplies, and materials, including personal protective equipment; carrying out public health services designed to help staff, eligible residents, and other third-party providers serving eligible residents, prepare for, prevent, and respond to COVID-19; delivering meals on wheels or other food delivery services to eligible residents that are sheltered-in-place and complying with a stay at home order, or otherwise maintaining recommended social distancing.

With respect to vaccinations, eligible uses of IHBG funds under this waiver and alternative requirement include, but are not limited to, the following:

- paying the transportation costs to get IHBG-assisted families and staff of the recipient to and from a vaccination site;
- coordinating with health clinics to provide on-site vaccinations either at a Tribal or TDHE owned or operated location or at a mutually agreed upon location;
- paying the costs of providing public health information to staff and residents so they can learn about the benefits of getting vaccinated and how to get vaccinated; and
- supporting IHBG-assisted families and staff with online registration for vaccination appointments and keeping them informed as vaccination efforts continue.

HUD strongly encourages IHBG grantees to coordinate with recipients of other Federal sources of funding for this purpose, including funding provided by the Indian Health Service, to ensure IHBG funds are used to supplement rather than supplant such funding.

(3) **COVID-19-Related Assistance to Non-Low Income and Non-Native Families**

**Statutory Authority:** Section 201(b) of NAHASDA

**Regulatory Authority:** 24 CFR sections 1000.104, 1000.106, 1000.108, 1000.110, 1000.312, 1000.314, 1000.318

**Description:** Section 201(b) of NAHASDA and its implementation regulations, except for specified exceptions, limit assistance under eligible housing activities to low-income Indian families.

The COVID-19 pandemic poses a unique threat to the health and safety of Tribal communities. Persons infected with the virus, regardless of income or tribal membership, pose a health risk to the entire community, and low-income families are especially vulnerable given the severe overcrowding in Indian Country, infrastructure challenges, and the lack of access to running water and readily available health care services in many remote communities. To effectively prevent, prepare for, and respond to COVID-19, IHBG recipients may find the need to use IHBG resources or NAHASDA-assisted housing units to provide shelter-in-place housing and public health services to otherwise ineligible persons and families, with the goal of protecting the health and safety of the most vulnerable low-income Native American families who may be infected.

Given this, HUD is waiving Section 201(b) and its implementing regulations, and establishing alternative requirements to the extent necessary to allow IHBG funds



to be used by recipients to prevent, prepare for, and respond to COVID-19 through the following limited activities that provide assistance to all affected and threatened people without regard to income limits or Indian status: temporary shelter-in-place, isolation centers, purchasing and making medical testing kits available, purchasing and distributing masks and other personal protection equipment, emergency food preparation and distribution, cleaning and decontamination, and other directly related activities. Permanent rental assistance, mortgage assistance, housing rehabilitation, and new housing construction may not be provided for the benefit of such otherwise ineligible families under this waiver and alternative requirement.

This assistance may only be provided to such otherwise ineligible families if: it is provided during the COVID-19 pandemic; if it is designed to protect the health and safety of low-income Native American families; if it is provided on an urgent basis (as documented by the IHBG recipient); and if it is temporary in nature. When providing this assistance, IHBG recipients must maintain records documenting that these criteria were met at the time that such assistance was provided.

Under this waiver and alternative requirement, IHBG recipients may house low-income non-Indian families or over-income Indian and non-Indian families in NAHASDA-assisted units, including FCAS units, to shelter-in-place those families per CDC guidelines to protect low-income Indian families and the Tribal community from the further spread of COVID-19, regardless of income or Indian status. IHBG funds may also be used to provide temporary rental assistance to otherwise ineligible persons or families in privately owned units, hotels/motels, and similar facilities designed to shelter-in-place or isolate infected persons from others, if the criteria under this waiver and alternative requirements are met. The use of NAHASDA-assisted units, including FCAS, or funds for the temporary shelter-in-place or isolation of any individuals shall be temporary and no individual shall be isolated longer than medically necessary.

The 24 CFR sections 1000.312 and 1000.314 identify FCAS units as low rent, Mutual Help, and Turnkey III housing units owned and operated by an IHBG recipient. 24 CFR section 1000.318 establishes when these units can be considered FCAS for purposes of the IHBG formula. These regulations are also waived and modified to the extent necessary to not impact the FCAS eligibility of FCAS units used for this purpose of addressing COVID-19 regardless of income or Indian status, provided such units are operated as low-income housing dwelling units once no longer needed to shelter-in-place persons, and upon a determination that such units are safe to be occupied again by low-income families not infected with COVID-19.

Assistance provided in accordance with this waiver shall not count towards the maximum amount of assistance that IHBG recipients may otherwise provide to non-low-income families specified in 24 CFR section 1000.110.

(4) **Useful Life**

**Statutory Authority:** Section 205 of NAHASDA

**Regulatory Authority:** 24 CFR sections 1000.141, 1000.142, 1000.143, 1000.144, 1000.146, 1000.147

**Description:** Section 205(a)(2) of NAHASDA requires each dwelling unit in a recipient's housing developed or assisted under the Act will remain affordable, according to binding commitments satisfactory to HUD, for the remaining useful life of the property. The IHBG regulations require each recipient to describe, in its IHP, its determination of the useful life of the assisted housing units in its developments in accordance with the local conditions of the Indian area of the recipient. By approving the IHP, HUD determines the useful life in accordance with Section 205(a)(2).

HUD is waiving these requirements to determine and maintain affordability during the useful life of housing units assisted with IHBG-ARP grant funding used to address COVID-19 if that assistance is related to cleanup of COVID-19 contamination and temporary use dwelling units for purposes of housing and quarantining families to inhibit the spread of COVID-19 to low-income Indian families and the Tribal community.

Under this waiver, IHBG recipients are not required to establish an affordability determination or useful life period for assistance related to cleanup of COVID-19 contamination or temporary use of dwellings units used to quarantine families to inhibit the spread of COVID-19.

This waiver only applies during the period that a unit is being temporarily used to prevent, prepare for, or respond to COVID-19. Useful life restrictions are required for other housing activities conducted with IHBG-ARP funding. For example, if a unit is acquired for the purpose of quarantining families, no useful life restriction will apply to the unit during this temporary period when the unit is being used for COVID-19-related purposes. However, after the unit is no longer needed to temporarily quarantine families and is no longer needed for other COVID-19 purposes, the recipient must either place useful life restrictions on the property and continue to make it available for NAHASDA-eligible families for an affordability period set by the recipient consistent with its IHBG program or dispose of the unit.

(5) **Total Development Cost Limits**

**Regulatory Authority:** 24 CFR sections 1000.156, 1000.158, 1000.160, 1000.162

**Description:** The IHBG regulations require that affordable housing under NAHASDA be of moderate design with a size and with amenities consistent with unassisted housing offered for sale in the Indian tribe's general geographic area to buyers who are at or below the area median income. To achieve this requirement the recipient must either, adopt written standards for its affordable housing programs that reflect the requirement specified, or use TDC limits published periodically by HUD that establish the maximum amount of funds (from all sources) that the recipient may use to develop or acquire/rehabilitate affordable housing. The limits provided by the TDC may not, without prior HUD approval, exceed by more than 10 percent the TDC maximum cost for the project. Non-dwelling structures used to support an affordable housing activity must be of a design, size and with features or amenities that are reasonable and necessary to accomplish the purpose intended by the structures.

HUD expects that COVID-19 will likely have both a short- and long-term impact on IHBG recipients' programs. Because of the long-term need to prevent, prepare for, and respond to COVID-19, IHBG recipients may find it appropriate to use IHBG-ARP grant funds to acquire or construct new housing units with the goal of reducing severe overcrowding in Indian Country that leave Native American populations, particularly the elderly and persons with disabilities, especially vulnerable to COVID-19. Accordingly, HUD is establishing an alternative requirement relating to limitations on cost or design standards and TDC with respect to dwelling and non-dwelling units developed, acquired, or assisted with funding provided to be used by recipients to prevent, prepare for, and respond to COVID-19. An IHBG recipient may exceed the current TDC maximum by 20 percent without HUD review or approval if the purpose of the development, acquisition or assistance is to prevent, prepare for, and respond to COVID-19. The recipient, however, must maintain documentation that indicates the dwelling and non-dwelling units developed, acquired, or assisted with this funding will, after this crisis, be for IHBG eligible families and the design, size, and amenities are moderate and comparable to housing in the area. The TDC limits can be exceeded by more than 20 percent if the recipient receives written approval from HUD Headquarters. This waiver applies to both single-family and multi-family housing, as well as non-dwelling structures supporting an activity to prevent, prepare for, and respond to COVID-19.

This waiver and alternative requirement is available only so long as the Total Development Costs specified in Notice PIH 2019-19 remain in effect.

(6) **Prohibition Against Investment of ARP Grant Funds**

**Statutory Authority:** Section 204(b) of NAHASDA

**Regulatory Authority:** 24 CFR section 1000.58

**Description:** Section 204(b) of NAHASDA permits IHBG recipients to invest grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations as approved by HUD. Under 24 CFR section 1000.58 of the IHBG regulations, HUD has approved certain IHBG recipients based, among other things, on a history of compliance and capacity, to invest IHBG funding certain securities and interest-bearing accounts for the purpose of carrying out affordable housing activities.

HUD is waiving Section 204(b) of NAHASDA and 24 CFR section 1000.58 and prohibiting the investment of any IHBG funding provided under the ARP. Such funding is to be used by recipients to prevent, prepare for, and respond to COVID-19, including to maintain normal operations and fund eligible affordable housing activities under NAHASDA during the period that each recipient's program is impacted by COVID-19. Given the limited scope of this funding to address the immediate health, safety, and economic needs of citizens in Indian Country, drawing down funds for investment in securities and long-term interest-bearing accounts is prohibited.

(7) **IHBG-ARP Funds Not Counted in Undisbursed Funds Factor**

**Regulatory Authority:** 24 CFR section 1000.342

**Description:** The 24 CFR section 1000.342 codifies the Undisbursed Funds Factor (UDFF) in the IHBG formula. It provides that if an Indian tribe's initial IHBG allocation calculation is \$5 million or more and the Indian tribe has undisbursed IHBG funds on October 1 of the fiscal year for which the allocation is made in an amount that is greater than the sum of the prior three years' initial allocation calculations, its grant allocation will be the greater of the initial allocation calculation minus the amount of undisbursed IHBG funds that exceed the sum of the prior three years' initial allocation calculations, or its 1996 Minimum.

HUD is waiving 24 CFR section 1000.342 and establishing an alternative requirement to the extent necessary to exclude IHBG-ARP funds from counting towards an Indian tribe's undisbursed IHBG funds from prior years under the UDFF. IHBG-ARP funds are available for a specific purpose under the ARP and were allocated by HUD to allow Indian tribes and TDHEs to prevent, prepare for, and respond to COVID-19. If this funding were counted against an Indian tribe and resulted in it receiving less IHBG formula funding under the next IHBG formula allocation, such a reduction in future funding would undermine the purposes of the IHBG-ARP funds and have an adverse impact on Indian tribes working to respond to the current National Emergency.

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****ASSISTANCE LISTING 14.871 SECTION 8 HOUSING CHOICE VOUCHERS****ASSISTANCE LISTING 14.879 MAINSTREAM VOUCHER PROGRAM (MV)****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 Mainstream Voucher program (MV) enables families for whom the head, spouse, or co-head is a person with disabilities to lease affordable private housing of their choice.

**II. PROGRAM PROCEDURES****A. Overview**

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 a family's application for rental assistance, selects the applicant family 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.

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 has a minimum of 60 days to locate a rental unit where the landlord agrees to participate in the program (the PHA establishes the maximum number of days). 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)).

The voucher subsidy is set based on the difference between the lower of the PHA's applicable payment standard for the family, the payment standard for the unit size rented, 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). 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 generally is 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).

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 the units meet HQS. The PHA must also conduct supervisory quality control HQS inspections (24 CFR sections 982.305 and 982.405).

Under the homeownership option of the HCVP, 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).

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 (1) the name and address of the family, (2) the name and address of the owner, (3) dwelling unit size, (4) the beginning date of the lease term, (5) the monthly rent payable to the owner, (6) monthly rent payable by the family to the owner, and (7) the monthly HAP (24 CFR section 982.158).

## **B. Subprograms/Program Elements**

### **1. *Veterans Affairs Supportive Housing***

The 2008 Consolidated Appropriations Act (Pub. L. No. 110-161, 121 Stat. 2414-2415), enacted December 26, 2007, initiated funding 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 Assistance Listing 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. The HUD-VASH 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 March 23, 2012 (see Notice FR-5596-N-01, 77 FR 17086-17090, Implementation of the HUD-VA Supportive Housing Program). Notice PIH 2011-53 (HA) provides further guidance on the reporting and portability requirements of VASH and Notice PIH 2015-10 (HA) addresses how PHAs can use project-basing of HUD-VASH vouchers. The VASH program is included in Assistance Listing 14.871; however, for FASS-PH reporting for PHAs with a fiscal year end of March 31, 2011, and earlier, PHAs were to record rental assistance activities under Assistance Listing 14.VSH. Starting in calendar year (CY) 2011, all original VASH increments and renewals will be funded under the “VO” program type (i.e., the Housing Choice Voucher (HCV) program housing assistance payment (HAP) funding code) and are included in the PHA’s monthly VO disbursements. Because of this change in funding, CY 2011 and subsequent VASH HAP reporting was to be accounted for under the HCVP (Assistance Listing 14.871) and no longer was to be reported under 14.VSH. Special reporting instructions were provided to PHAs and are located at [http://portal.hud.gov/huddoc/vash\\_reporting\\_inst.pdf](http://portal.hud.gov/huddoc/vash_reporting_inst.pdf). Administrative fee-related revenues and expenses should be recorded under the HCVP as Assistance Listing 14.871 on the FDS. PHAs are required to submit family data using HUD-50058 in PIH Information Center (PIC), and HAP and leasing information using HUD-52681-B via the Voucher Management System (VMS). Also, PHAs have access to the Real Estate Assessment Center’s PHAs accounting briefs, which provide technical assistance in reporting their unaudited and audited financial statements through FASS, which are available at [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/react/products/fass/pha\\_briefs](https://www.hud.gov/program_offices/public_indian_housing/react/products/fass/pha_briefs).

## 2. *Family Unification Program*

Family Unification Program (FUP) vouchers are made available to families for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child, or children, in out-of-home care; or the delay in the discharge of the child, or children, to the family from out-of-home care; and youth at least 18 years and not more than 24 years of age (have not reached their 25th birthday) who left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in Section 475(5)(H) of the Social Security Act, and are homeless or are at risk of becoming homeless at age 16 or older. As required by statute, a FUP voucher issued to such a youth may only be used to provide housing assistance for the youth for a maximum of 36 months. FUP vouchers enable these families and youths to lease decent, safe, and sanitary housing that is affordable in the private-housing market. Funding for the FUP (Assistance Listing 14.880) has expired, but FUP vouchers still are being issued

(renewed) to FUP-eligible families and FUP-eligible youth through voucher renewals under HCVP.

3. *Non-Elderly Disabled*

Various appropriations acts have provided separate funding for non-elderly disabled (NED) vouchers, which are administered in accordance with regular HCVP requirements (24 CFR Part 982) and are included in under Assistance Listing 14.871. 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 via the VMS.

4. *Disaster Housing Assistance Program*

The Disaster Housing Assistance Program (DHAP) is a program designed by the Federal Emergency Management Agency (FEMA) and HUD to serve families displaced by catastrophic disaster. Through an Interagency Agreement (IAA) executed by both federal agencies, on FEMA's behalf, HUD has the authority to design, implement, and administer DHAP to provide temporary rental assistance to individuals displaced by disaster. The DHAP was established to provide rental assistance, security and utility deposits, and case management services for families who were displaced by hurricanes Katrina, Rita, Gustav, and Ike. The DHAP has now been extended to assist eligible families displaced by Hurricane Sandy (DHAP-Sandy) (with funds from Assistance Listings 97.048; 97.049; and 97.050). The IAA between FEMA and HUD, applicable to DHAP Sandy, expired on December 31, 2014. The DHAP-Sandy funding is separate and distinct from the PHA's regular voucher program, in terms of the source and use of the funding. The PHA is required to maintain records that allow for the easy identification of families assisted under DHAP-Sandy and must report monthly leasing and expenditure for such families separately from housing choice voucher families under the VMS. The PHA must maintain a separate HAP register for DHAP-Sandy to record and control assistance payments for rent subsidies. The PHAs report DHAP-Sandy family information to HUD through the Disaster Information System (DIS). A PHA administering DHAP-Sandy does not complete a HUD-50058 or enter any information on a DHAP-Sandy family into the PIC system.

The underlying authority for DHAP-Sandy is the Department of Homeland Security's general grant authority under Section 102(b)(2) of the Homeland Security Act of 2002, 6 USC 112(b)(2), and sections 306(a), 408(b)(1), and 426 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 USC 5149(a), 5174(b)(1), and 5189d, respectively.

5. *Mainstream Voucher Program (Former Mainstream 5-Year Program)*

The Omnibus Appropriations Act of 2009, Pub. L. No. 111-8, authorized funding for the MV under Section 811(d)(2) of the Cranston-Gonzalez National



Affordable Housing Act (42 USC 8013(d)(2)). PHAs authorized under state law to develop or operate housing assistance programs may apply for the program. In some instances, nonprofit agencies may also apply for housing vouchers. The MV provide housing assistance payments to participating owners on behalf of eligible tenants (i.e., families having the head, spouse, or co-head with disabilities). The MV is administered in accordance with regular HCV program requirements (24 CFR Part 982). However, for FASS-PH reporting, PHAs are to record rental assistance activities under Assistance Listing 14.879. Administrative fee-related revenues and expenses should also be recorded, under Assistance Listing 14.879 in the FDS. PHAs are also required to submit family data (HUD-50058) in PIC, and HAP and leasing (only) information using HUD-52681, and HUD-52681-B via the VMS. MV leasing and HAP costs are not included in the VMS HCV program voucher leasing and HAP totals; they are only considered for renewal calculation purposes. Unlike the HCV program, administrative fees expenses under the MV are not reported in VMS (HUD-52681-B). Only HCV program administrative expenses are reported.

6. *Coronavirus Aid, Relief, and Economic Security Act (CARES Act)*

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. No. 116-136), enacted on March 27, 2020, provided additional appropriations for HAP and administrative fee funding to prevent, prepare for, and respond to coronavirus (COVID-19). This included funding for PHAs to maintain normal operations and take other necessary actions during the period the program is impacted by COVID-19. The total supplemental appropriation for the HCV program is \$1.25 billion.

PIH Notice 2020-17, *CARES Act -HCV Program HAP Supplemental Funding*, covers the requirements related to the supplemental HAP funding totaling \$400 million for the HCV program, including mainstream vouchers. The supplemental HAP funding was made available for PHAs that either (1) experience a significant increase in voucher per unit costs (PUC) due to extraordinary circumstances, or (2) despite taking reasonable cost saving measures, as determined by the secretary, would otherwise be required to terminate rental assistance for families as a result of insufficient funding (herein referred to as Shortfall Funds).

At the same time, PIH Notices 2020-08 and 2020-18 *CARES Act – HCV Program Administrative Fees First and Second Award*, respectively covered the supplemental administrative fee portion totaling \$850 million for the HCV program, including mainstream vouchers. This supplemental administrative fee funding was made available to PHAs to cover administrative expenses and other expenses related to COVID-19, which are the eligible activities initially defined by the secretary and clarified in PIH Notice 2020-08, in addition to new eligible activities described in this PIH Notice 2020-18. The latter contain a complete list of the additional eligible activities (both those activities defined in PIH Notice 2020-08 and the new activities) is provided in section 4 of PIH Notice 2020-18.

PHAs were also instructed to request eligibility for COVID-19 related costs that were not explicitly included in the notice.

The CARES Act also authorized the secretary to use of administrative fees under Pub. L. No. 116-94 for COVID-19 related activities. In addition, the CARES Act authorized the secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the secretary administers in connection with the use of the amounts made available under this heading and the same heading of Pub. L. No. 116-94 (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a finding by the secretary that any such waivers or alternative requirements are necessary for the safe and effective administration of these funds. And that any such waivers or alternative requirements shall remain in effect for the time and duration specified by the secretary in such public notice and may be extended, if necessary, upon additional notice by the secretary.

For CARES Act waivers and alternative requirements, HUD issued PIH Notice 2020-33: *COVID-19 Statutory Requirements and Regulatory Waivers and Alternative Requirements for the Public Housing, Housing Choice Voucher (including Mainstream and Mod Rehab), Indian Housing Block Grant and Indian Community Development Block Grant programs, Suspension of Public Housing Assessment System and Section Eight Management Assessment Program, Revision 2*

([https://www.hud.gov/sites/dfiles/PIH/documents/PIH%202020-33\\_rev%2012.14.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/PIH%202020-33_rev%2012.14.pdf)). This notice restates the waivers and alternative requirements included previously in Notice PIH 2020-13, carries forward information on previously specified HUD actions, adds new waivers and alternative requirements, and incorporates the waivers and alternative requirements for mainstream vouchers and the Mod Rehab program. In addition, this Notice extends the period of availability of certain waivers, such as those related to Income Verification and Annual Examinations, until June 30, 2021.

Additionally, the CARES Act authorized the secretary to award any remaining unobligated balances appropriated under this heading in prior Acts for incremental tenant-based assistance contracts under section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 USC 8013). No less than 25 percent of such amounts was allocated proportionally to public housing agencies who received awards in the 2017 and 2019 competitions for such purposes.

Furthermore, HUD provided instructions on Financial Data Schedule (FDS) reporting of CARES Act funds in PIH Notice PIH 2020-24.

#### 7. *Emergency Housing Voucher Program*

The American Rescue Plan Act of 2021 (the ARP) (Pub. L. No. 117-2), enacted on March 11, 2021, provided relief to address the continued impact of the

COVID-19 pandemic on the economy, public health, state and local governments, individuals, and businesses.

Section 3202 of the ARP provided appropriations for new incremental Emergency Housing Voucher (EHVs), the renewal of those EHVs, and fees for the cost of administering the EHVs and other eligible expenses defined by notice to prevent, prepare for, and respond to coronavirus to facilitate the leasing of the emergency vouchers, such as security deposit assistance and other costs related to retention and support of participating owners.

Eligibility for these EHVs is limited to individuals and families who are (1) homeless; (2) at risk of homelessness; (3) fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking; or (4) recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability. After September 30, 2023, a PHA may not reissue any previously leased EHV, regardless of when the assistance for the formerly assisted family ends or ended.

EHVs are tenant-based rental assistance under section 8(o) of the United States Housing Act of 1937 (42 USC 1437f(o)). The ARP further provides that HUD may waive any provision of the United States Housing Act of 1937 or regulation applicable to such statute used to administer the amounts made available under section 3202 (except for requirements related to fair housing, nondiscrimination, labor standards and the environment), upon a finding that any such waivers or alternative requirements are necessary to expedite or facilitate the use of amounts made available for the EHVs. EHV waivers and alternate requirements are included in HUD issued PIH Notice 2021-15: Emergency Housing Vouchers – Operating Requirements.

HUD issued Notice PIH 2021-15 on May 5, 2021, in order to provide operating requirements to PHAs administering the EHV program. On May 10, 2021, HUD notified PHAs of their EHV funding eligibility based on the allocation formula outlined in Notice PIH 2021-15. PHAs had until May 24, 2021, to accept or decline their EHV allocation and any remaining vouchers were reallocated by HUD per the process described in Notice PIH 2021-15. Final allocations were made on June 2, 2021.

On June 30, 2021, HUD issued Notice PIH 2021-20, which revised the reporting guidance in Notice PIH 2021-15, the Emergency Housing Vouchers – Operating Requirements Notice, and set forth new requirements for Public Housing Agencies (PHAs) to report EHV household data into HUD's existing Information Management System/Public Housing Information Center (IMS/PIC) system.

On August 20, 2021, HUD issued Notice PIH 2021-25, which revised the reporting guidance in Notice PIH 2021-20 and Notice PIH 2021-15 and set forth

the reporting requirements for PHAs to report EHV data into the Voucher Management System (VMS) and the Financial Data Schedule (FDS).

### **C. Other**

The Section 8 Management Assessment Program (SEMAP) is HUD's assessment program to measure the performance of PHAs that administer the HCV program. Under SEMAP, PHAs submit an annual or biennial (depending on the size and previous SEMAP scores), 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 HCV program, 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 two months after the PHA's fiscal year end and the audited financial statement is due nine months after its fiscal year end (24 CFR section 5.801). The financial statement must include the financial activities of this program.

HUD uses HUD-52681-B via the VMS to monitor the PHA's HCVP financial and operational performance. In 2015, HUD published Notice PIH 2015-16, which clarified the financial reporting requirements and deadlines for those PHAs that administer the HCV program and HCV program-related programs. PIH Notice 2017-06, March 23, 2017) provides guidance on cash management procedures.

### **Source of Governing Requirements**

The HCV program regulations are found in 24 CFR parts 5, 982, 983, and 985.

### **Availability of Other Program Information**

Copies of PIH notices can be found at

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/notices/pih](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/pih).

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 at [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_9191.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_9191.pdf).

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	N	N	N	N	Y	N	Y

#### A. Activities Allowed or Unallowed

##### 1. Activities Allowed

- a. PHAs may use HCVP and MV funds only for HAPs to participating owners, and for associated administrative fees (24 CFR sections 982.151 and 982.152).
  - (1) Accumulated administrative fees prior to 2004 may be used for any housing-related purpose. Unspent administrative fees accumulated after January 1, 2005 (i.e., fees from 2004 and later funding, see III.L.1.e.(4)(a), “Financial Reporting – Financial Reports”) may be used only to support the HCVP. These funds still are 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 2015-17 (HA) dated October 6, 2015) (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; 24 CFR section 982.155).
- (2) CY HAP funding must be used for CY HAP and later HAP expenses. PHA's HAP equity balance also known as restricted net position (RNP) 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 may be facing a shortfall, and auditors have to be alert that the PHAs do not use the following year HAP budget authority to cover this shortfall (i.e., cover last year's HAP expense) (2005 Appropriations Act each subsequent appropriations act; see Section 15 of Notice PIH 2015-03).
- b. PHAs may use DHAP-Sandy funds
- (1) to provide eligible families with rental assistance, security, and utility deposit assistance; and
  - (2) for administrative, placement, and broker fees (see Section 4.d, PIH Notice 2013-14, Disaster Housing Assistance Program - Sandy (DHAP-Sandy) Operating Requirements, dated June 10, 2013).
- c. 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 types of fees the COCC can charge for the HCVP:
- (1) HCVP management fee, and
  - (2) Bookkeeping fee.
- d. PHAs may obtain proceeds from dispositions of public housing real property under Sections 18 and 22 of the 1937 Act (Assistance Listing 14.850). PHAs may use net proceeds, if approved by HUD, for the provision of low-income housing, which includes certain Section 8 HCVP uses. If a PHA receives HUD approval to use proceeds for certain HCVP purposes, those funds would be considered, and audited, under the HCVP.

**Audit Objectives** Determine whether the PHA used proceeds for HUD-approved eligible expenses.

### Suggested Audit Procedures

- (1) Ascertain if the PHA received any proceeds from disposing of real property under Section 18 or 22 of the 1937 Act;
- (2) Verify that proceeds received are placed in a restricted account subject to the HUD General Depository Agreement HUD-51999 (GDA)(4/18); and
- (3) Review PHA invoices and other documentation to verify proceeds were used for HUD-approved eligible HCVP expenses.

**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 2 CFR Part 200, Subpart E), a management fee of up to 20 percent of the prorated administrative fee earned 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 per voucher leased (see 71 FR 52710, HUD Notice – Public Housing Operating Fund Program; Guidance on Implementation of Asset Management, September 6, 2006, Section VIII, which is available at <https://portal.hud.gov/hudportal/documents/huddoc?id=fedregister5099-n-01.pdf> (42 USC 1437f(q)(1)).**

#### 2. *Activities Unallowed*

- a. HAP funding can only be used to support the payment of HAP expenses.
- b. With the exception of Moving to Work Housing Authorities, Transfers of HAP, and associated administrative fees, even temporarily, to support another program (such as the Low-Rent program or Local Housing programs) or use are not allowed and could be considered a breach of the ACC (see III.L.1.e.(3), “Reporting--Financial Reporting--FDS Transfer Line Items”). Such use may result in civil penalties or sanctions (24 CFR section 985.109).
- c. The 2005 Appropriations Act and subsequent appropriations 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 over-leasing. In addition, the 2008 Appropriations Act and subsequent appropriations acts require that administrative fees be based on actual leasing as of the first

day 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 17 of Notice PIH 2015-03). PHAs submit lease information via VMS. (See also III.L.1.d (1), “Reporting--Financial Reporting--Unit Months Leased.”)

## **B. Allowable Costs/Cost Principles**

The amount of salary, including bonuses, of PHA chief executive officers, other officers, and employees paid with Section 8 HCV administrative fees and Section 9 Capital and Operating funds may not exceed the annual rate of basic pay payable for a federal position at Level IV of the Executive Schedule (currently \$164,200) (Section 227 of Pub. L. No. 113-235, 128 Stat. 2756, December 16, 2014, and carried forward in each subsequent appropriations act). Implementing guidance has been issued in PIH Notice 2016-14, “Guidance on Public Housing Agency (PHA) salary restrictions in HUD’s annual appropriations” ([https://www.hud.gov/program\\_offices/public\\_indian\\_housing/publications/notices](https://www.hud.gov/program_offices/public_indian_housing/publications/notices)).

## **E. Eligibility**

### **1. Eligibility for Individuals**

- a. 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).
- b. The PHA must do the following:
  - (1) 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).
  - (2) 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).
  - (3) 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).

- (4) 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).
- (5) 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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. HUD-52681-B, *Voucher for Payment of Annual Contributions and Operating Statement (OMB No. 2577-0169)*. The PHA submits this form monthly to HUD electronically via the VMS. 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* – The following categories contain critical information:

1. *Unit Months Leased*
2. *HAP Expenses*
3. *All Specific Disaster Voucher Programs*

- e. *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 Line Items* – The following line items contain critical information:

1. 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.c, “Activities Allowed or Unallowed”).
  - (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. It is equal to the beginning administrative fee equity balance plus the total administrative fee revenue minus total administrative expense.
  - (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 2012-21. It is equal to the beginning HAP equity plus total HAP revenues minus total HAP expenses. Current CY appropriated HAP funding cannot be used to fund prior CY HAP deficits.
  - (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 Fair Market Rent 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)* – Each recipient that administers covered public and Indian housing assistance, regardless of the amount expended, and each recipient that administers covered housing and community development assistance in excess of \$200,000 in a program year, must submit HUD 60002 information using the automated Section 3 Performance Evaluation and Registry System (SPEARS) (24 CFR sections 135.3(a)(1) and 135.90).

Information on the automated system is available at [https://www.hud.gov/program\\_offices/field\\_policy\\_mgt/section3/spears](https://www.hud.gov/program_offices/field_policy_mgt/section3/spears). SPEARS pre-populates Form HUD 60002 with recipient name and address along with disbursement data for program funding covered by Section 3. Users have the flexibility of selecting the 12-month reporting period, typically to coincide with their respective fiscal cycle.

*Key Line Items* – The following line items contain critical information:

1. Number of new hires that meet the definition of a Section 3 resident
2. Total dollar amount of construction contracts awarded during the reporting period
3. Dollar amount of construction contracts awarded to Section 3 businesses during the reporting period

4. Number of Section 3 businesses receiving the construction contracts
5. Total dollar amount of nonconstruction contracts awarded during the reporting period
6. Dollar amount of nonconstruction contracts awarded to Section 3 businesses during the reporting period
7. Number of Section 3 businesses receiving the nonconstruction 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.

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. Lines 2k and 17a – *Family’s Participation in the Family Self Sufficiency (FSS) Program*
10. Line 17k (2) – *FSS Account Balance*

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## N. Special Tests and Provisions

### 1. Selection from the Waiting List

**Compliance Requirements** 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 Objectives** 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 Requirements** 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 5 percent decrease in the published Fair Market Rent 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 Objectives** 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 Requirements** 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 Objectives** 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 Requirements** 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 Objectives** Determine whether the PHA documented the required annual HQS inspections and quality control re-inspections.

**Suggested Audit Procedures**

- 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 Requirements** 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 Objectives** 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

**Compliance Requirements** 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 24 CFR Part 982, Subpart K).

**Audit Objectives** 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 Requirements** The ACC establishes the amounts HUD will provide a PHA for HAP and administrative fees. With the exception of Moving to Work Housing Authorities, HAP may not be used to cover administrative expenses nor may HAP (including RNP) be loaned, advanced, or transferred to other component units or other programs such as Public and Indian Housing (Assistance Listing 14.850) (24 CFR sections 982.151 and 982.152).

**Audit Objectives** 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 transfers from/to component unit

11040 – Prior period adjustments, equity transfers, and correction of errors

11170 – Administrative fee equity

11180 – Housing assistance payment equity

- b. Test for improper transfers or inappropriate use of funds

## 8. Depository Agreements

**Compliance Requirements** 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. Among the terms in many agreements are requirements for funds to be placed in an interest-bearing account (24 CFR section 982.156).

**Audit Objectives** 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, including that funds are placed in an interest-bearing account if required by the depository agreement.

## 9. Rolling Forward Equity Balances

**Compliance Requirements** 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). (**Note:** The Administrative Fee equity on the Income Statement may include Net Investments in Capital Assets depending on the PHA's situation, whereas the Unrestricted Net Position or Administrative Fee Reserve (discussed in Notice 2015-17, Use and Reporting of Administrative Fee Reserves) does not include capital assets.)

**Audit Objectives** 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.

## 10. CARES Act Funding

**Compliance Requirements** PIH Notice 2020-17, *CARES Act -HCV Program HAP Supplemental Funding*, covers the requirements related to the supplemental HAP funding totaling \$400 million for the HCV program, including MV. The supplemental HAP funding was made available for PHAs that either (1) experience a significant increase in voucher per unit costs (PUC) due to extraordinary circumstances, or (2) despite taking reasonable cost saving measures, as determined by the secretary, would otherwise be required to terminate rental assistance for families as a result of insufficient funding (herein referred to as Shortfall Funds). CARES Act HAP funding may only be used for current year eligible HAP expenses. HAP funding cannot be used for the repayment of debts or any amounts owed to HUD by HUD program participants including, but not limited to, OIG, Quality Assurance Division (QAD), or other monitoring review findings. HAP also cannot be used for Administrative Fee purposes. Furthermore, CARES Act HAP funds may not roll into RNP and must be tracked and accounted for separately throughout the period of availability.

PIH notices 2020-08 and 2020-18 *CARES Act – HCV Program Administrative Fees First and Second Award*, respectively, cover requirements related to the supplemental administrative fee funding totaling \$850 million for the HCV program, including MV. This supplemental administrative fee funding was made available to PHAs to cover administrative expenses and other expenses related to COVID-19. Section 4 of PIH Notice 2020-18 contains a complete list of additional eligible activities for COVID-19 funds. PHAs were also instructed to request eligibility for COVID-19 related costs that were not explicitly included in the notice.

Furthermore, HUD provided instructions on accounting for and FDS reporting of CARES Act funds in PIH Notice PIH 2020-24. HUD must meet its monitoring responsibilities and provide transparency in the PHAs' receipt and use of CARES Act supplemental funding. Therefore, the Real Estate Assessment Center (REAC), a division of HUD's Office of Public and Indian Housing, has established the following six new columns on the FDS for reporting CARES Act supplemental funds.

#	New Column #	Column Name
1	14.PHC	Public Housing CARES Act Funding
2	14.HCC	HCV CARES Act Funding (both HAP and Administrative Fee)
3	14.MSC	Mainstream CARES Act Funding (both HAP and Administrative Fee)

#	New Column #	Column Name
4	14.MRC	Moderate Rehabilitation CARES Act Funding
5	14.CCC	Central Office Cost Center CARES Act Funding
6	14.CMT	CARES Act Funding Transferred to MTW

If a PHA has received CARES Act funding from any one of the following four programs, 1) Public Housing Operating Fund, 2) HCV, 3) MV, and/or 4) Moderate Rehabilitation, (the latter via the PBRA account), the PHA is required to add the respective reporting column(s) in its FASS-PH submission and report the amounts in accordance with the instructions in PIH Notice 2020-24.

The CARES Act also requires that recipients and sub-recipients of CARES Act funds satisfy quarterly reporting requirements if the recipient has been awarded \$150,000 or more in covered funds. CARES Act quarterly reporting requirements are aligned with PHA FDS reporting guidance in PIH Notice 2000-24. This alignment will allow for consistency in reporting and ensure that PHAs maintain a single record of CARES Act expenses.

**Audit Objectives** Determine whether CARES Act HAP funds received were used, accounted for, and reported in accordance with program requirements.

### Suggested Audit Procedures

- a. Obtain supporting documentation for CARES Act HAP funds received and evaluate to determine whether:
  - (1) The amounts received were accounted for separately under the appropriate program.
  - (2) The amount recorded in the general ledger agrees to supporting documentation.
  - (3) Appropriate columns were included in the FDS and that amounts reported in the FDS agree to amounts in the general ledger.
- b. Select a sample of CARES Act HAP fund disbursements and test to determine:
  - (1) Whether the funds were used for current year eligible HAP expenses.
  - (2) If any funds were inappropriately used for the repayment of debts or any amounts owed to HUD including, but not limited to, OIG, QAD, or other monitoring review findings.
  - (3) Whether funds were inappropriately used for Administrative Fee purposes.
  - (4) Whether funds were inappropriately rolled into RNP.

- (5) Whether the transactions for amounts disbursed were accurately recorded in the appropriate program in the general ledger.
- c. Determine whether amounts reported in CARES Act columns on the FDS for HAP disbursements agree to amounts recorded in the general ledger.
- d. Obtain supporting documentation for CARES Act Administrative Fee funds received and evaluate to determine whether:
  - (1) The amounts received were accounted for separately under the appropriate program.
  - (2) The amount recorded in the general ledger agrees to supporting documentation.
  - (3) Appropriate columns were included in the FDS and that amounts reported in the FDS agree to amounts in the general ledger.
- e. Select a sample of CARES Act Administrative Fee fund disbursements and test to determine:
  - (1) Whether the funds were used for either administrative expenses allowable under the applicable program, or other expenses related to COVID-19 identified in Section 4 of PIH Notice 2020-18.
  - (2) Whether funds were used for a purpose other than those listed in Section 4 of PIH Notice 2020-18, and if so whether HUD approval was obtained for the use.
  - (3) Whether the transactions for amounts disbursed were accurately recorded in the appropriate program in the general ledger and follow the guidance provided in PIH Notice 2020-24.
- f. Select a sample of COCC fee disbursements charged to CARES Act Administrative Fees and determine whether the fee amounts were allowable and properly recorded in the general ledger and reported in the FDS under the provisions in PIH Notice 2020-24.
- g. Determine whether amounts reported in CARES Act FDS columns resulting from Administrative Fee expenses agree to amounts recorded in the general ledger.
- h. If HUD has implemented quarterly CARES Act funds reporting requirements:
  - (1) Determine whether required reporting has been completed.

- (2) Determine whether amounts in the quarterly reports are consistent with amounts reported in the FDS.

## 11. Emergency Housing Vouchers Program Funding

**Compliance Requirements** Section 3202 of the ARP provided appropriations for new incremental EHV's, the renewal of those EHV's, and fees for the cost of administering the EHV's and other eligible expenses defined by notice to prevent, prepare for, and respond to coronavirus to facilitate the leasing of the emergency vouchers, such as security deposit assistance and other costs related to retention and support of participating owners.

Eligibility for these EHV's is limited to individuals and families who are (1) homeless; (2) at risk of homelessness; (3) fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking; or (4) recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability. After September 30, 2023, a PHA may not reissue the any previously leased EHV, regardless of when the assistance for the formerly assisted family ends or ended.

EHV's are tenant-based rental assistance under section 8(o) of the United States Housing Act of 1937 (42 USC 1437f(o)). The ARP further provides that HUD may waive any provision of the United States Housing Act of 1937 or regulation applicable to such statute used to administer the amounts made available under section 3202 (except for requirements related to fair housing, nondiscrimination, labor standards and the environment), upon a finding that any such waivers or alternative requirements are necessary to expedite or facilitate the use of amounts made available for the EHV's. EHV waivers and alternate requirements are included in HUD issued PIH Notice 2021-15, *Emergency Housing Vouchers – Operating Requirements*.

Notice PIH 2021-15 provided operating requirements to PHAs administering the EHV program. Notice PIH 2021-20 revised the reporting guidance in Notice PIH 2021-15 and set forth new requirements for PHAs to report Emergency Housing Voucher (EHV) household data into HUD's existing IMS/PIC system.

Notice PIH 2021-25, *Emergency Housing Vouchers – Voucher Management System and Financial Data Schedule Reporting Requirements Notice* revised the reporting guidance in Notice PIH 2021-20, *Emergency Housing Vouchers – Household Reporting Requirements Notice* and Notice PIH 2021-15 and set forth the reporting requirements for PHAs to report EHV data into the VMS and FDS.

**Audit Objectives** Determine whether EHV funds received were used, accounted for, and reported in accordance with program requirements.

**Suggested Audit Procedures**

- a. Determine whether the PHA maintained separate financial records from its regular HCV funding for all EHV funding, both HAP and administrative fee amounts.
- b. Obtain a copy of the memorandum of understanding (MOU) in place with the Continuum of Care (CoC) or another partnering agency and evaluate whether:
  - (1) The MOU was in place within 30 days of the effective date of the ACC funding increment for the EHV.
  - (2) The MOU included, at a minimum, the services identified in Section 9(b) of PIH Notice 2021-15.
- c. Request and review documentation to determine if the PHA has executed a General Depository Agreement (HUD-51999) for EHV funding.
- d. Select a sample of tenants enrolled in the EHV program in the entity's fiscal period under audit and determine whether:
  - (1) The EHV tenant is eligible to participate in the EHV program by meeting one of the four eligible categories for EHV assistance (e.g., homeless; at risk of homelessness; fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking; recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability).
  - (2) The CoC or another partnering agency provided supporting documentation to the PHA of the referring agency's verification that the family meets one of the four eligible categories for EHV assistance.
  - (3) The referred tenant was not added to the PHA's regular HCV waiting list.
- e. Obtain supporting documentation for EHV Housing Assistance Payment (HAP) funds received and evaluate to determine whether:
  - (1) The amounts received were accounted for separately under the appropriate program.
  - (2) The amount recorded in the general ledger agrees to supporting documentation.
  - (3) Appropriate columns were included in the FDS in accordance with requirements in PIH Notice 2021-25, and that amounts reported in the FDS agree to amounts in the general ledger.

- f. Select a sample of EVH fund disbursements and test to determine:
  - (1) Whether the funds were used for current year eligible EHV expenses.
  - (2) If any funds were inappropriately used for the repayment of debts or any amounts owed to HUD including, but not limited to, OIG, QAD, or other monitoring review findings.
  - (3) Whether funds were inappropriately rolled into the regular HCV Restricted Net Position (RNP).
  - (4) Whether the transactions for amounts disbursed were accurately recorded in the appropriate program in the general ledger.
- g. Determine whether amounts reported in EHV columns on the FDS for HAP disbursements agree to amounts recorded in the general ledger.
- h. Obtain supporting documentation for EHV Administrative Fee funds received and evaluate to determine whether:
  - (1) The amounts received were accounted for separately under the appropriate program.
  - (2) The amount recorded in the general ledger agrees to supporting documentation.
  - (3) Appropriate columns were included in the FDS in accordance with requirements in PIH Notice 2021-25, and that amounts reported in the FDS agree to amounts in the general ledger.
- i. Select a sample of EHV Administrative Fee fund disbursements and test to determine:
  - (1) Whether the funds were used for EHV administrative and other eligible expenses allowable under the applicable program and as identified in Section 6 of PIH Notice 2021-15.
  - (2) Determine whether amounts reported in EHV columns on the FDS for Administrative Fee disbursements agree to amounts recorded in the general ledger.
  - (3) Whether the transactions for amounts disbursed were accurately recorded in the appropriate program in the general ledger and follow the guidance provided in PIH Notice 2021-15 and PIH Notice 2021-25.



- j. Determine that the PHA individually tracks each of the four different fee types (e.g., Preliminary Fee; Placement Fee/Expedited Issuance Reporting Fee; Ongoing Administrative Fee; Services Fee) received, the amount of the expense incurred by that fee type, and how much is unspent as indicated in Section 5 of Notice PIH 2021-25.
- k. Select a sample of COCC fee disbursements charged to the EHV program and determine whether the fee amounts were allowable and properly recorded in the general ledger and reported in the FDS under the provisions in Notice PIH 2021-25.
- l. Determine if EHV program funding is reported under Assistance Listings (formerly referred to as Catalog of Federal Domestic Assistance) number 14.871 - "Housing Choice Voucher Program" on the Schedule of Expenditures of Federal Awards and if the PHA identified how much of the EHV funding is included in the total either by a footnote to the SEFA or adding detail lines in the SEFA itself under the provisions of Notice PIH 2021-25 (HA), Section 8. k.

#### **IV. OTHER INFORMATION**

The MTW program (Assistance Listing 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 and under the MTW Operations Notice. An MTW agency may apply funding fungibility from the following three programs:

- Section 8 Housing Choice Vouchers (Assistance Listing 14.871)
- Public Housing Capital Fund (Assistance Listing 14.872)
- Public and Indian Housing (Assistance Listing 14.850)

Depending on if a PHA is operating under an MTW Agreement or the MTW Operations Notice, the auditor should look to the MTW Agreement or the MTW Operations Notice, as applicable, to determine which funds are included. Even though the Mainstream Vouchers program (Assistance Listing 14.879) follows HCVP procedures, that program is excluded from the MTW program. If HCVP funds are transferred out of HCVP, pursuant to an MTW Agreement or the MTW Operations Notice, they are subject to the requirements of the MTW Agreement or the MTW Operations Notice 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 or the MTW Operations Notice, 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.

PHAs may obtain proceeds from dispositions of public housing real property under Sections 18 and 22 of the 1937 Act (Assistance Listing 14.850). PHAs may use net proceeds, if approved by HUD, for the provision of low-income housing, which includes certain Section 8 HCVP uses. If a PHA receives HUD approval to use proceeds for certain HCVP purposes, those funds would be considered, and audited, under the HCVP.

**Audit Objectives** Determine whether the PHA used proceeds for HUD-approved eligible expenses.

**Suggested Audit Procedures**

- a. Ascertain if the PHA received any proceeds from disposing of real property under Section 18 or 22 of the 1937 Act;
- b. Verify that proceeds received are placed in a restricted account subject to the HUD General Depository Agreement HUD-51999 (GDA)(4/18); and
- c. Review PHA invoices and other documentation to verify proceeds were used for HUD-approved eligible HCVP expenses.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### ASSISTANCE LISTING 14.872 PUBLIC HOUSING CAPITAL FUND (CFP)

#### I. PROGRAM OBJECTIVES

The primary objective of the Capital Fund Program (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 the repair/replacement of aging building systems and the improvement of 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 public housing developments, sustain physical improvements at those developments, or correct management deficiencies.

The objective of development activities is 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. PHAs are able to build or acquire units up to the Faircloth limits. The Faircloth limits for PHAs are posted here:

[https://www.hud.gov/sites/dfiles/PIH/documents/Faircloth%20List\\_9-30-2018.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/Faircloth%20List_9-30-2018.pdf).

#### II. PROGRAM PROCEDURES

##### A. Overview

The CFP awards formula grants and several set aside specialty grants. CFP formula grants account for over 95 percent of CFP annual awards. CFP formula grants are made available to all PHAs that administer public housing units, 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. PHAs can use formula grants for any eligible Capital Fund activity.

The CFP also awards several set-aside specialty grants, including Replacement Housing Factor, Emergency/Disaster, Emergency/Disaster-Safety and Security, Emergency/Disaster-Carbon Monoxide, and Lead-Based Paint grants.

For Replacement Housing Factor (RHF) grants, these grants can only be used for the development of replacement housing units. In fiscal year (FY) 2014 RHF grants were replaced with Demolition and Disposition Transitional Funding (DDTF), which is included in the annual Capital Fund grant and not given as a separate grant. DDTF

operates in the same way as formula funds and can be used for any eligible Capital Fund activity. PHAs that were receiving years two to five of a first increment RHF grant, or years seven to ten of second increment funding in FY 2014 will continue to receive RHF grants until they have finished that increment. PHAs that were newly eligible for replacement funding in FY 2014 will receive DDTF as part of their formula grant.

For Emergency/Disaster grants, Congress has set aside an annual average of \$20 million within the Capital Fund account to assist PHAs that have incurred damage to their public housing units as a result of an emergency or non-presidentially declared 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.

For Emergency Safety and Security grants, Congress has set aside \$10 million. These grants support PHAs as they address the safety of public housing residents. These grants may be used to install, repair, or replace capital needs items including security systems/surveillance cameras, fencing, lighting systems, emergency alarm systems, window bars, deadbolt locks and doors. PHAs submit an application for this funding. The funding is allocated based on a lottery in which the Department of Housing and Urban Development (HUD) reviews approvable applications and enters the approvable applications in the lottery.

For Emergency Safety and Security-Carbon Monoxide, the Department has set aside \$5 million. These grants support PHAs as they address the safety of public housing residents. These grants may be used to install carbon monoxide detectors in public housing. PHAs submit a competitive application for this funding. The funding is allocated based on application score.

For Lead-Based Paint Capital Fund (LBPCF) grants, Congress has set aside anywhere from \$20 to \$45 million within the Capital Fund account to assist PHAs with lead-based paint challenges. These grants support PHAs as they address the safety of public housing residents. LBPCF grants may be used for lead-based paint inspection, risk assessment, clearance exams, relocation, and hazard controls. PHAs submit a competitive application for this funding. The funding is allocated based on application score. LBPCF grants are covered under 14.888 compliance supplement. For the Capital Fund Financing Program, HUD has permitted PHAs to borrow funding secured to a portion of future Capital Fund grants under the Capital Fund Financing Program (CFFP). PHAs must 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.

## **B. Subprograms/Program Elements**

Prior to submitting the 5-Year Action Plan to HUD for review and approval, a PHA must annually conduct a public hearing and consult with the Resident Advisory Board (RAB) of the PHA to discuss the Capital Fund submission. The PHA may elect to conduct a separate annual public hearing in order to solicit public comments or to hold the annual public hearing at the same time as the hearing for the Annual PHA Plan, the 5-Year Plan, or the required annual hearing for qualified public housing authorities. The hearing must be conducted at a location that is convenient to the residents served by the PHA.

In FY 2018, the CFP 5-Year Action Plan and Annual Statement/ Budget submission was moved to an electronic platform called EPIC for submission and approval. A PHA must have an approved 5-Year Action Plan (HUD 50075.2 (OMB No. 2577-0226)) in EPIC to have access to Capital Funds. Once a PHA submits an Annual Statement/Budget in EPIC (HUD 50075.1), it spreads Capital Funds to all of the appropriate budget line items (BLIs) in the Line of Credit Control System (LOCCS) in accordance with the information contained in the 5-Year Action Plan (HUD 50075.2). A PHA may then drawdown funds as needed on a three-day turnaround basis to pay for approved work activities. The three-day turnaround means the PHA expends the funds drawn down from LOCCS within three business days.

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 may develop additional public housing, including mixed-financed housing in accordance with 24 CFR section 905.600. 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.

## **C. Other**

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 two months after the PHA's fiscal year end and the audited financial statement is due nine 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) form HUD-53001 and actual development cost certificates (ADCC) with the local HUD Field Office when they complete a modernization or development project. The AMCC or ADCC is required for CFP grant closeout.

### **Source of Governing Requirements**

The programs are authorized under 42 USC 1437g and 3535(d). The program implementing regulation is 24 CFR Part 905.

### **Availability of Other Program Information**

HUD posts guidance on the CFP to its Office of Capital Improvements Home Page that provides grantees with information on timelines, budgets, financial instructions, and other program guidance. Information regarding the financial reporting requirements of the PHAs is provided by HUD on the Real Estate Assessment Center (REAC) website.

Here are some helpful links:

Office of Capital Improvements web page

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/capfund](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/capfund)

REAC web pages

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/reac](https://www.hud.gov/program_offices/public_indian_housing/reac)

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/reac/products/prodpha](https://www.hud.gov/program_offices/public_indian_housing/reac/products/prodpha)

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/reac/products/prodphasintrule](https://www.hud.gov/program_offices/public_indian_housing/reac/products/prodphasintrule)

### **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not

being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	Y	Y	N	N	N	Y

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

- a. For Capital Fund formula grants and grants from the set-aside for emergencies and natural disasters, allowed Capital Fund activities include the following: (1) developing, financing, or modernizing public housing; (2) vacancy reduction; (3) deferred maintenance; (4) replacement of obsolete utility systems and dwelling equipment; (5) code compliance; (6) management improvements; (7) demolition and replacement; (8) resident relocation; (9) resident economic empowerment/economic self-sufficiency; and (10) security; and homeownership (42 USC 1437g(d); 24 CFR section 905.200). A PHA with fewer than 250 units that is not designated as troubled under the Public Housing Assessment System (PHAS) may use up to 100 percent of its annual Capital Fund grant for activities that are eligible under the Operating Fund at 24 CFR Part 990 (see Assistance Listing 14.850, III.A, “Activities Allowed or Unallowed”), except that the PHA must have determined that there are no debt service payments, significant Capital Fund needs, or emergency needs that must be met prior to transferring 100 percent of its funds to operating expenses 24 CFR section 905.314(1).
- b. For Capital Fund Replacement Housing Factor (RHF) grants, activities are limited to the development of replacement housing (24 CFR section 905.400(i)).

2. *Activities Unallowed*

A PHA must not incur any cost in excess of the total HUD-approved PHA - Annual Statement/Budget. Budget revisions must be submitted in EPIC for deviations from the originally approved program. A PHA must not incur any cost

on behalf of any development that is not covered by its current approved 5-Year Action Plan (24 CFR section 905.200(a)).

The ineligible activities and costs for the Capital Fund Program are located at 24 CFR 905.202 (<https://www.ecfr.gov/current/title-24/subtitle-B/chapter-IX/part-905>). The following list describes ineligible activities and costs for the Capital Fund Program:

1. Not Related to Public Housing. PHAs may not spend Capital Funds on costs that are not associated with a Public Housing Development or Modernization Project.
2. Not in 5-Year Action Plan. PHAs may not spend Capital Funds on activities and costs that are not included in the PHA's 5-Year Action Plan (**Note:** Emergency Work or Non-Presidentially Declared Natural Disaster assistance that is not identified in the 5-Year Action Plan is an eligible cost).
3. Not Modest Design. PHAs may not spend Capital Funds on improvements or purchases that are not considered modest in design and cost because they include amenities, materials, and design in excess of what is customary for the locality, as determined by the PHA and field office. These include, but are not limited to, swimming pools, saunas, whirlpool baths, and hot tubs.
4. Not Eligible based on OMB Regulatory and Circular Guidance. PHAs may not spend Capital Funds on any costs not authorized in 2 CFR Part 200 (formerly OMB Circular A-87 and 2 CFR Part 225), including indirect Administrative Costs, indemnification, and capitalizing reserves.
5. Operating Assistance. PHAs may not spend Capital Funds on Public Housing operating assistance, except as provided through transfers to BLI 1406.
6. Benefitting Other Programs. Eligible costs that exceed the amount directly attributable to the public housing units when the physical or Management Improvements, including salaries and employee benefits and contributions, will benefit programs other than public housing, such as Section 8 Housing Choice Voucher, or local revitalization programs.

For example, the annual audit covers the breadth of the PHA's activities such as the Operating Fund, Capital Fund, Housing Choice Vouchers, and non-federally funded activities. Only a pro rata share of the Audit cost attributable to the Capital Fund may be charged to the Capital Fund.



7. Security Services. Ongoing security services, including:
  - Contracts with local police departments including above baseline police services except where permitted by HUD FY Appropriations Acts;
  - The salaries and benefits for security guards, patrols, or police officers (full-time, part-time, or after hours); and
  - The purchase or leasing of vehicles for security personnel.
8. Supportive Services. The provision of supportive services to public housing residents, including:
  - The salaries and benefits or contract costs for service providers, including resident coordinators, case managers, social workers, nurses, chore service providers, supplemental police or probation services providers, and tutors;
  - Health and wellness activities;
  - Educational enrichment and recreational activities, including social organizations; and
  - Job development and placement services, including the cost of professional licenses, certifications and exams, and transportation assistance.
9. Duplicate Funding. An otherwise eligible cost that is funded by another source and would result in duplicate funding; and
10. Other Activities. Any other activities and costs that HUD may determine are ineligible on a case-by-case basis, consistent with the 1937 Act and its regulations.

## **B. Allowable Costs/Cost Principles**

Allocation of Costs with Other Programs. Where the physical or Management Improvement costs will benefit programs other than public housing, such as the Housing Choice Voucher program or local revitalization programs, Capital Fund-eligible costs are limited to the amount directly attributable to the public housing program.

The amount of salary, including bonuses, of PHA chief executive officers, other officers, and employees paid with Section 8 Housing Choice Vouchers administrative fees and Section 9 Capital and Operating funds may not exceed the annual rate of basic pay payable for a federal position at Level IV of the Executive Schedule (currently \$172,500) (Section 227 of Pub. L. No. 113-235, 128 Stat. 2756, December 16, 2014, and carried

forward in each subsequent appropriations act). Implementing guidance has been issued in PIH Notice 2016-14, “Guidance on Public Housing Agency (PHA) salary restriction in HUD’s annual appropriations.”

## **H. Period of Performance**

1. Unless an extension is approved by HUD, a PHA must obligate at least 90 percent of each Capital Fund grant, including formula grants, RHF, natural disaster, and lead-based paint grants within 24 months of the funds of becoming available to the PHA for obligation. For emergency grants, safety and security grants and safety and security-carbon monoxide grants, the PHA must obligate at least 90 percent within twelve months of the funds becoming available. The funds become available when the HUD executes the ACC Amendment (24 CFR section 905.306).
2. For Capital Fund formula, RHF, natural disaster, and lead-based paint grants, unless HUD approves an extension, a PHA must expend all grant funds no later than 48 months after HUD executes the ACC Amendment (24 CFR section 905.306(f)). However, for emergency grants, safety and security grants and safety and security-carbon monoxide grants, a PHA must expend all grant funds no later than 24 months after HUD executes the ACC Amendment if such a requirement is contained in the ACC Amendment.

## **N. Special Tests and Provisions**

### **1. Wage Rate Requirements**

**Compliance Requirements** Projects funded with Capital Funds that are developed and/or modernized in accordance with 24 CFR Part 905, Subpart F, including projects that contain only public housing units and mixed-finance projects are subject to the Wage Rate Requirements (42 USC 1437j(a) and (b); 24 CFR section 905.308).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

### **2. FASS – PHA, Public Housing Assessment System Phase Indicator #2, Financial Condition, and HUD-50075, PHA Plans**

**Compliance Requirements** On an annual basis the PHA must report its Financial Data Schedule (FDS) disclosing 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 nonprofit 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.d.(2). The FASS-PHA FDS 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 nonprofit 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 Objectives** Determine whether the expenditures set out in the FDS line items that indicate participation by nonprofit 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 nonprofit 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).

### **3. Debt Secured to Public Housing Asset**

**Compliance Requirements** 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 Objectives** 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.

#### 4. Environmental Review

**Compliance Requirements** An environmental review must be completed for any project or activities before a PHA may acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds at an assisted or to-be-assisted site.

Environmental review procedures for PHAs are given in PIH Notice 2016-22 HA, “Environmental Review Requirements for Public Housing Agencies.” The environmental reviews are not tied to specific grants but apply to all the operating and capital activities of the PHA for a five-year period. The Notice cites the governing regulations at 24 CFR parts 50 and 58 and describes the methods of review and types of determinations. All of these methods and types culminate in a final approval document signed by a HUD Approving Official. To be in compliance a PHA must have such an approval document with an approval date that is not over five years old. This approval may be in any the following forms:

- a. Form HUD-7015.16, “Authorization to Use Grant Funds”
- b. Form HUD-4128, “Environmental Assessment and Compliance Findings for the Related Laws”
- c. Form HUD-4128-OHF, “Environmental Assessment and Compliance Findings for the Related Laws”
- d. Determination Letter
- e. An electronic signature in the HUD Environmental Review Online System (HEROS)
- f. Activities listed in Notice 2016-22, Appendix A, require no further environmental review.

**Audit Objectives** 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.

#### 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 when an environmental review was performed.
- c. Test whether program funds were committed only after the PHA has secured environmental clearance.

## 5. Insurance Proceeds

**Compliance Requirements** PHAs are required to use insurance proceeds to promptly restore, reconstruct, and/or repair any damaged or destroyed property of a project, except when a written approval of HUD instructs a PHA to do otherwise. Unspent insurance proceeds are normally recorded as cash-restricted modernization and development, FDS line 112, up to the amount of the repair (Section 13 of Part A of ACC).

*Emergency and Natural Disaster Reserve* – In cases of unforeseeable and unpreventable emergencies that include damages to the physical structure of the housing stock, PHAs may request funding from the Emergency and Natural Disaster Reserve of the Capital Fund, an appropriated set-aside of the Capital Fund. Such grants would have a “D” or an “E” as the fifth character in the grant number. The approval for these grants requires that the PHA pay first from any insurance proceeds, but while the PHA’s warranty or insurance policy may cover the damages fully or partially, it usually takes time for the PHA to receive the insurance proceeds. These grant funds may be used to cover any costs not met with insurance proceeds, but any remaining funds must be returned to HUD. If these grant funds are used before insurance proceeds are received, the PHA must pay back the Emergency and Natural Disaster Reserve.

**Audit Objectives** Determine whether the PHA has used its insurance proceeds to promptly repair claimed damages and has used the Emergency or Natural Disaster grant funds only for costs in excess of the insurance recoveries. Determine whether the PHA paid the funds back to Emergency and Natural Disaster Reserve, as may be required.

### Suggested Audit Procedures

- a. Ascertain if the PHA has received any insurance proceeds for damaged or destroyed property.
- b. Ascertain if the PHA received a grant from the Emergency and Natural Disaster Reserve.
- c. Verify that insurance proceeds received in advance of contractor or repair bills are placed in a restricted cash account.
- d. Review contractor invoices and repair expenses to verify insurance proceeds were used to cover allowable expenses.
- e. Verify that the PHA used insurance proceeds to meet repair or replacement costs before using emergency or natural disaster grant funds.
- f. Verify that emergency or natural disaster grant funds not needed to meet the capital needs for which the grant was made were returned to HUD.

## 6. Capital Funds for Operating Costs

**Compliance Requirements** Capital Funds transferred to operations (BLI 1406) are not considered obligated until the PHA has budgeted and drawn down the funds. To meet this requirement, the funds must be budgeted in line BLI 1406 (Operations) and the PHA must submit the voucher request in LOCCS. The PHA's reported obligation amount in LOCCS must be the same amount in the PHA's accounting system since the date of the voucher request in LOCCS is the point of obligation for funds in BLI 1406. The voucher request date must occur before those funds are reported as obligated in LOCCS under the Obligation & Expenditure tab (24 CFR section 905.314(l)).

**Audit Objectives** Determine whether obligations for operations costs are recorded properly.

### Suggested Audit Procedures

- a. Review the PHA's vouchers for funds expended from BLI 1406.
- b. Examine the voucher request dates against the reported obligation amounts in the LOCCS Obligation & Expenditure tab.
- c. Verify that the voucher request dates were before the funds were reported as obligated and the dollar value of the voucher requests corresponds to the reported obligated amount.

## IV. OTHER INFORMATION

The Moving to Work (MTW) demonstration program (Assistance Listing 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 (Assistance Listing 14.871)
- Public Housing Capital Fund (Assistance Listing 14.872)
- Public and Indian Housing (Assistance Listing 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 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

### ASSISTANCE LISTING 14.873 NATIVE HAWAIIAN HOUSING BLOCK GRANT

#### 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 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

HUD allocates the funds to the Department of Hawaiian Home Lands (DHHL), provided DHHL complies with the requirements of Section 802 of the Native American Housing Assistance and Self-Determination Act (NAHASDA). To access funds, DHHL must submit a Native Hawaiian Housing Plan (NHHP) to the Department of Housing and Urban Development (HUD), and HUD must find that the NHHP meets the requirements of NAHASDA.

In addition to the annual NHHBG funding pursuant to NAHASDA, under the American Rescue Plan Act of 2021 (ARP) (Pub. L. No. 117-2), Congress directed HUD to utilize the NHHBG program to allocate and award \$5 million in ARP funding to be used by DHHL to prevent, prepare for, and respond to coronavirus, including to maintain normal operations and fund eligible affordable housing activities under NAHASDA during the period that the NHHBG program is impacted by coronavirus. In addition, the funds for the NHHBG program may also be used to provide rental assistance to eligible Native Hawaiian families both on and off the Hawaiian Home Lands. Finally, ARP permits the funding made available for the NHHBG program to be used, as necessary, to cover or reimburse allowable costs to prevent, prepare for, and respond to coronavirus that are incurred by DHHL, including for costs incurred after January 21, 2020. NHHBG funding awarded pursuant to the ARP Act is discussed in greater detail later in this document.

#### Source of Governing Requirements

This program is authorized by NAHASDA, codified at 25 USC 4221 through 4243. The implementing regulations are in 24 CFR Part 1006.



**Availability of Other Program Information**

Additional information on the NHHBG program is available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/ih/codetalk/nap/nhhbgprogram](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/codetalk/nap/nhhbgprogram).

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	N	Y	Y	N	Y	N	Y

**A. Activities Allowed or Unallowed**

NHHBG funds (including program income generated by activities carried out with grant funds) may only be used for the following NAHASDA-eligible activities:

1. 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. 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. 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. 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. 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)).

## **B. Allowable Costs/Cost Principles**

1. All items of cost listed in 2 CFR Part 200, Subpart E that require prior federal agency approval are allowable without prior approval, except for the following:
  - a. Depreciation methods for fixed assets shall not be changed without the approval of the federal cognizant agency.
  - b. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses (goods or services for personal use), regardless of whether reported as taxable income to the employees, require prior HUD approval.
  - c. Organization costs require prior HUD approval.
2. Fines, penalties, damages, and other settlements are unallowable.
3. No person providing consultant services in an employer-employee type of relationship may receive more than a reasonable rate of compensation. Such compensation must not exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule (currently \$161,900). The Executive Pay Schedule may be obtained at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages> (24 CFR section 1006.370(b)).

**E. Eligibility****1. Eligibility for Individuals**

- a. 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)).
- b. The following families are eligible for affordable housing activities:
  - (1) Low-income Native Hawaiian families eligible to reside on the Hawaiian home lands (24 CFR section 1006.301(a)).
  - (2) 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)).
  - (3) A non-low-income and non-Native Hawaiian family may receive housing or NHHBG assistance if the DHHL documents that the 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

**H. Period of Performance**

Grant funds received prior to fiscal year (FY) 2015 may be used until expended. For NHHBG grant funds received in FY 2015 and subsequent fiscal years, all funds must be expended by September 30 of the 9th year of the appropriation. For example, FY 2015 funds must be expended by September 30, 2024 (Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2738, December 16, 2014, and subsequent appropriations).

**L. Reporting****1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable

- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs – Not Applicable*
- c. *SF-425, Federal Financial Report – Applicable*

## **2. Performance Reporting**

- a. HUD-50090, *Native Hawaiian Housing Plan/Annual Performance Report* – The Annual Performance Report section of the report must be submitted to HUD within 60 days of the end of the DHHL program year.

*Key Line Items* – The following line items contain critical information:

- 1. Section 3, Line 1.9 – *Planned and Actual Outputs for 12-month Program Year*
  - 2. Section 5, Line 1 – *Sources of Funds* – columns G and K
  - 3. Section 5, Line 2 – *Uses of Funds* – columns O through Q
  - 4. Section 9, Line 1 – *Inspections of Units* – columns B through F
  - 5. Section 12, Lines 1 and 2 – *Jobs Supported by NAHASDA*
- b. HUD-60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons (OMB No. 2529-0043)* – Each recipient that administers covered public and Indian housing assistance, regardless of the amount expended, and each recipient that administers covered housing and community development assistance in excess of \$200,000 in a program year, must submit HUD 60002 information using the automated Section 3 Performance Evaluation and Registry System (SPEARS) (24 CFR sections 135.3(a)(1) and 135.90).

Information on the automated system is available at

[https://www.hud.gov/program\\_offices/field\\_policy\\_mgt/section3/spears](https://www.hud.gov/program_offices/field_policy_mgt/section3/spears).

SPEARS pre-populates Form HUD 60002 with recipient name and address along with disbursement data for program funding covered by Section 3. Users have the flexibility of selecting the twelve-month reporting period, typically to coincide with their respective fiscal cycle.

*Key Line Items* – The following line items contain critical information:

- 1. Number of new hires that meet the definition of a Section 3 resident
- 2. Total dollar amount of construction contracts awarded during the reporting period

3. Dollar amount of construction contracts awarded to Section 3 businesses during the reporting period
4. Number of Section 3 businesses receiving the construction contracts
5. Total dollar amount of nonconstruction contracts awarded during the reporting period
6. Dollar amount of nonconstruction contracts awarded to Section 3 businesses during the reporting period
7. Number of Section 3 businesses receiving the nonconstruction contracts

### **3. Special Reporting**

Not Applicable

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## **N. Special Tests and Provisions**

### **1. Wage Rate Requirements**

**Compliance Requirements** For NHHBG funds, contracts and agreements for assistance, sale, or lease under this part must require prevailing wage rates under the Wage Rate Requirements 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 Wage Rate Requirements 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 (25 USC 4225(b); 24 CFR section 1006.345(a)).

See Part 4, 20.001, Wage Rate Requirements Cross-Cutting Section.

### **2. Environmental Review**

**Compliance Requirements** 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 Objectives** 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**

### *1. Native Hawaiian Housing Block Grants-ARP Grants*

#### **a. General**

On March 11, 2021, the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) (ARP) was signed into law. The Act provides \$5 million for the Native Hawaiian Housing Block Grant (NHHBG) Program and grants HUD authority to waive the provisions of Title VIII of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) and regulations or establish alternative requirements applicable to the NHHBG Program (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment) to expedite or facilitate the use of these funds.

On April 26, 2021, HUD issued NHHBG-ARP Implementation [Notice PIH-2021-13](#) with instructions on how to apply for the NHHBG-ARP funding and describing waivers and alternative requirements authorized by the ARP Act. That Notice describes in detail the various waivers and alternative requirements that have been issued thus far with respect to NHHBG-ARP grants.

### *2. Activities Allowed or Unallowed*

ARP requires that DHHL use NHHBG funding to prevent, prepare for, and respond to coronavirus, including to maintain normal operations and fund eligible affordable housing activities under NAHASDA during the period that the program is impacted by coronavirus. In addition, the funds for the NHHBG program may also be used to provide rental assistance to eligible Native Hawaiian families both on and off the Hawaiian Home Lands. Finally, ARP permits the funding made available for the NHHBG program to be used, as necessary, to

cover or reimburse allowable costs to prevent, prepare for, and respond to coronavirus that are incurred by DHHL, including for costs incurred after January 21, 2020.

To comply with this requirement, DHHL must ensure that all activities being proposed can be tied to at least one of the following three eligible purposes:

- Activities, Projects, or Programs to Prevent COVID-19
- Activities, Projects, or Programs to Prepare for COVID-19
- Activities, Projects, or Programs to Respond to COVID-19

The auditor should consider the following:

- **Prepare for:** NHHBG-ARP grant funds may be used prior to a local, service area, or regional coronavirus outbreak. This includes, but is not limited to, activities designed to develop processes and procedures designed to reduce the risk of exposure to COVID-19 and avoid or slow the spread of the disease. Examples may include housing activities designed to reduce severe overcrowding, providing food delivery services to eligible families (including the elderly, disabled, and other high-risk populations) to allow them to shelter in place, and public health campaigns designed to educate families on how to prepare for a possible outbreak in the community and ways to minimize community spread.
- **Prevent:** NHHBG-ARP grant funds may be used during a COVID-19 local, service area, or regional coronavirus outbreak. This includes, but is not limited to, activities designed to prevent the initial or further spread of the virus to staff, housing residents, and the community. Examples may include distributing Personal Protective Equipment to housing maintenance staff, residents, and members of the community, using NHHBG-ARP funds to clean common areas to prevent infections, and providing access to the COVID-19 vaccine.
- **Respond to:** Once COVID-19 has spread to staff, housing residents, and/or the community, examples of how DHHL may choose to respond to COVID-19 may include using NHHBG-ARP grant funds to care for those who have become infected and to limit the exposure and spread of the virus, provide rent/mortgage assistance to eligible families that have been impacted by COVID-19 and cannot pay rent/mortgage, carry out activities to reduce severe overcrowding, and prevent homelessness to ensure families are stably housed. Funds may continue to be used after the local, service area, or regional coronavirus outbreak on any continuing expenses incurred due to the spread of COVID-19.

These descriptions and the additional examples of eligible activities in the NHHBG-ARP Implementation [Notice PIH-2021-13](#) are designed to provide general guidance to DHHL and are not intended to limit the range of eligible NHHBG-ARP grant activities that can be carried out. Provided a recipient can, in HUD's judgment, reasonably tie their NHHBG-ARP activities back to one or more eligible purposes, HUD will accept the DHHL's classification.

**Rental Assistance:** NHHBG funds are generally limited to low-income Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands. Section 11003(a)(1)(C) of ARP authorizes DHHL to use NHHBG-ARP funds "to provide rental assistance to eligible Native Hawaiian families both on and off the Hawaiian Home Lands." Pursuant to the waivers in this Notice, HUD is authorizing DHHL to use its NHHBG-ARP grant funding to provide rental assistance to low-income Native Hawaiians, as defined in Section 801(9) of NAHASDA, whether or not the low-income Native Hawaiians are eligible to reside on the Hawaiian Home Lands. These are individuals who are (1) citizens of the United States; and (2) "descendant[s] of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii." This descendance can be demonstrated by genealogical records; verification by kupuna (elders) or kama'aina (long-term community residents); or birth records of the State of Hawaii.

**Reimbursement of Costs:** Section 11003(a)(1)(D) of ARP authorizes DHHL to use NHHBG-ARP grants to cover or reimburse any costs incurred by DHHL that are otherwise eligible and allowable under the NHHBG-ARP grant and that were paid by DHHL back to the date that DHHL began preparing for COVID-19, but after January 21, 2020.

Please note, however, that if DHHL used regular NHHBG funds to prevent, prepare for, and respond to COVID-19 prior to receiving its NHHBG-ARP funding, DHHL cannot reimburse its regular NHHBG funds by using NHHBG-ARP grant funds. On the other hand, if other non-Federal funds from the State of Hawaii or other sources were used for these purposes, those funds can be reimbursed with the NHHBG-ARP grant.

a. **Waivers and Alternative Requirements Applicable Only to NHHBG-ARP Funding**

(1) **Income Verification**

**Statutory Authority:** Section 809(a)(2) of NAHASDA

**Regulatory Authority:** 24 CFR section 1006.301, 1006.305, 1006.320

**Description:** With limited exceptions, NHHBG assistance under Title VIII of NAHASDA is limited to low-income Native Hawaiian families.



Given the COVID-19 related challenges facing families seeking NHHBG assistance, families currently receiving NHHBG assistance that are due for income recertification, and DHHL staff charged with verifying income and maintaining documentation, HUD is establishing the following alternative requirement:

- (a) DHHL may deviate from its current written admissions and occupancy policies, and may allow less frequent income recertifications; and
- (b) DHHL may carry out intake and other tasks necessary to verify income remotely if DHHL or eligible families choose to do so, including allowing income self-certification over the phone (with a written record by the DHHL's staff), or through an email with a self-certification form signed by a family.

(2) **Public Health Services**

**Statutory Authority:** Section 810(b)(2) of NAHASDA

**Description:** Section 810(b)(2) of NAHASDA authorizes the use of NHHBG funds for the provision of housing-related services for affordable housing. Under this eligible activity, NHHBG funds can be used to provide services such as housing counseling, activities related to the provision of self-sufficiency and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in the NHHBG program.

HUD is waiving Section 810(b)(2) and establishing an alternative requirement to the extent necessary to allow NHHBG-ARP funds to be used to carry out a wide range of public health services under this category of eligible activities. Accordingly, in addition to the housing services normally eligible under Section 810(b)(2), NHHBG-ARP funds may be used on a wide range of public health activities designed to allow NHHBG-eligible residents and staff of DHHL to prevent, prepare for, and respond to COVID-19.

Eligible uses of NHHBG-ARP funds under this waiver and alternative requirement include, but are not limited to: providing testing, diagnosis, vaccination or other related services to residents; establishing a fixed or mobile location to conduct testing, vaccination and treatment; paying for necessary equipment, supplies, and materials, including personal protective equipment; carrying out public health services designed to help staff, eligible residents, and other third-party providers serving eligible residents, prevent, prepare for, and respond to COVID-19; delivering meals on wheels or other food delivery services to eligible residents that

are sheltered-in-place and complying with a stay at home order, or otherwise maintaining recommended social distancing; and supporting NHHBG-assisted families and DHHL staff with information about vaccination efforts and registration for vaccination appointments.

(3) **COVID-19-Related Assistance to Non-Low Income Native Hawaiians and Non-Native Hawaiian Families on Hawaiian Home Lands**

**Statutory Authority:** Sections 801(9), 802(a), 809(a)(2) of NAHASDA

**Regulatory Authority:** 24 CFR section 1006.301, 1006.305, 1006.320

**Description:** Sections 802(a) and 809(a)(2) of NAHASDA and its implementing regulations, except for specified exceptions, limit assistance under eligible housing activities to low-income Native Hawaiian families eligible to reside on the Hawaiian Home Lands.

The COVID-19 pandemic poses a unique threat to the health and safety of Native Hawaiian communities. Persons infected with the virus, regardless of income or Native Hawaiian affiliation, pose a health risk to the entire community, and low-income families are especially vulnerable due to overcrowding, substandard housing conditions, and lack of readily available health care services in many remote communities. To effectively prevent, prepare for, and respond to COVID-19, DHHL may find the need to use NHHBG resources or NAHASDA-assisted housing units to provide shelter-in-place housing and public health services to otherwise ineligible persons and families residing on the Hawaiian Home Lands, with the goal of protecting the health and safety of the most vulnerable low-income Native Hawaiian families who may be infected.

Given this, HUD is waiving sections 802(a) and 809(a)(2) and its implementing regulations, and establishing alternative requirements to the extent necessary to allow NHHBG-ARP funds to be used by DHHL to prevent, prepare for, and respond to COVID-19 through the following limited activities that provide assistance to all affected and threatened people residing on the Hawaiian Home Lands without regard to income limits, or Native Hawaiian status: temporary shelter-in-place, isolation centers, purchasing and making medical testing kits available, purchasing and distributing masks and other personal protection equipment, facilitating vaccinations, emergency food preparation and distribution, cleaning and decontamination, and other directly related activities. The use of NAHASDA-assisted units or funds for shelter-in-place or isolation of any individuals shall be temporary and no individual shall be isolated longer than medically necessary. In addition, the temporary shelter-in-place or isolation of otherwise ineligible families residing on the Hawaiian Home Lands may be in privately owned units, hotels/motels, and similar

facilities, as necessary. Permanent rental assistance, mortgage assistance, housing rehabilitation, and new housing construction may not be provided for the benefit of such otherwise ineligible families under this waiver and alternative requirement.

This assistance may only be provided to such otherwise ineligible families residing on the Hawaiian Home Lands if: it is provided during the COVID-19 pandemic; it is designed to protect the health and safety of low-income Native Hawaiian families; it is provided on an urgent basis (as documented by DHHL); and it is temporary in nature. When providing this assistance, DHHL must maintain records documenting that these criteria were met at the time that such assistance was provided.

(4) **Useful Life**

**Statutory Authority:** Section 813 of NAHASDA

**Regulatory Authority:** 24 CFR section 1006.305

**Description:** Section 813(a)(2) of NAHASDA requires each dwelling unit in DHHL's housing developed or assisted under NAHASDA will remain affordable, according to binding commitments satisfactory to HUD, for the remaining useful life of the property as determined by HUD. This means that DHHL must describe in its NHHP its determination of the useful life of the assisted housing units in its developments in accordance with the local conditions of the area. By approving the NHHP, HUD determines the useful life to be in accordance with Section 813(a)(2) of NAHASDA.

HUD is waiving these requirements to determine and maintain affordability during the useful life of housing units assisted with NHHBG-ARP grant funding used to address COVID-19 if that assistance is related to cleanup of COVID-19 contamination and temporary use dwelling units for purposes of housing and quarantining families to inhibit the spread of COVID-19 to low-income Native Hawaiian families and the Native Hawaiian community.

Under this waiver, DHHL is not required to establish an affordability determination or useful life period for assistance related to cleanup of COVID-19 contamination or temporary use of dwellings units used to quarantine families to inhibit the spread of COVID-19.

This waiver only applies during the period that a unit is being temporarily used to prevent, prepare for, or respond to COVID-19. Useful life restrictions are required for other housing activities conducted with NHHBG-ARP funding. For example, if a unit is acquired for the purpose

of quarantining families, no useful life restriction will apply to the unit during this temporary period when the unit is being used for COVID-19-related purposes. However, after the unit is no longer needed to temporarily quarantine families and is no longer needed for other COVID-19 purposes, DHHL must either place useful life restrictions on the property and continue to make it available for NHHBG-eligible families for an affordability period set by DHHL consistent with its NHHBG program or dispose of the unit.

(5) **Prohibition Against Investment of ARP Grant Funds**

**Statutory Authority:** Section 812(b) of NAHASDA

**Regulatory Authority:** 24 CFR section 1006.235 Description: Section 812(b) of NAHASDA permits DHHL to invest grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations as approved by HUD. The 24 CFR section 1006.235 describes the types of investment DHHL may make with NHHBG funding.

HUD is waiving Section 812(b) of NAHASDA and 24 CFR section 1006.235 to the extent necessary to prohibit DHHL from drawing down NHHBG-ARP funds for investment in securities and long-term interest-bearing accounts. Such funding is to be used by DHHL to prevent, prepare for, and respond to COVID-19, including to maintain normal operations and fund eligible affordable housing activities under NAHASDA during the period that DHHL's NHHBG program is impacted by COVID-19. Given the limited scope of this funding to address the immediate health, safety and economic needs of Native Hawaiian families, drawing down funds for investment in securities and long-term interest-bearing accounts is prohibited.

(6) **Program Income**

**Regulatory Authority:** 24 CFR section 1006.340(b)(3), 1006.370(a)

**Description:** Section 805(a) of NAHASDA permits DHHL to retain program income realized from grant amounts received by DHHL under NAHASDA if the income was realized after initial disbursement of the grant amounts and DHHL agrees to use the program income for affordable housing activities in accordance with NAHASDA. The NHHBG regulations at 24 CFR section 1006.340(b)(3) further require that DHHL disburse program income before disbursing additional NHHBG funds in accordance with 24 CFR section 200.305. The NHHBG regulations at 24 CFR section 1006.370(a) also require DHHL and subrecipients receiving NHHBG funds comply with the requirements and standards of 24 CFR Part

200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.”

HUD is waiving 24 CFR sections 1006.340(b)(3) and 1006.370(a), with respect to requiring compliance with 2 CFR section 200.305(b)(5) and establishing an alternative requirement to allow DHHL to disburse NHHBG-ARP funding before disbursing program income realized from grant amounts received by DHHL under NAHASDA. This waiver is necessary to expedite the use of NHHBG funds provided under the ARP so that DHHL can act quickly to spend this funding to prevent, prepare for, and respond to COVID-19. Prioritizing the expenditure of NHHBG-ARP funding over NHHBG program income is critical because of the additional flexibilities HUD is establishing in this Notice with respect to the NHHBG-ARP funds which are designed to allow DHHL to better address the COVID-19 National Emergency.

(7) **Rental Assistance to Native Hawaiians Living Off the Hawaiian Home Lands**

**Statutory Authority:** Section 802(a) of NAHASDA Regulatory Authority: 24 CFR section 1006.20(a), 1006.301(a)

**Description:** Section 802(a) of NAHASDA and the NHHBG regulations at 24 CFR section 1006.20(a) provide that the Secretary will make a grant to DHHL under Title VIII of Page 17 NAHASDA to carry out affordable housing activities for Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands. The NHHBG regulations at 24 CFR section 1006.301(a) provide that assistance for eligible housing activities under NAHASDA and Part 1006 is generally limited to low-income Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands, with some limited exceptions.

The ARP provides that NHHBG-ARP funding may be used to provide rental assistance to eligible Native Hawaiian families both on and off the Hawaiian Home Lands. To implement this ARP requirement, HUD is waiving Section 802(a), 24 CFR section 1006.20(a), and 24 CFR section 1006.301(a) and establishing an alternative requirement to the extent necessary to allow NHHBG-ARP funds to be used to provide rental assistance to low-income Native Hawaiians residing off the Hawaiian Home Lands.

This waiver and alternative requirement allows NHHBG-ARP funds to provide critical rental assistance to both low-income Native Hawaiians that are eligible to reside on the Hawaiian Home Lands, and low-income Native Hawaiians that are not eligible to reside on the Hawaiian Home Lands but that meet the definition of “Native Hawaiian” as such term is

defined in Section 801(9) of NAHASDA. This waiver will facilitate and expedite the use of NHHBG-ARP funds to assist Native Hawaiians eligible under ARP that need rental assistance.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### ASSISTANCE LISTING 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

- a. Reduce cost and achieve greater costs effectiveness in federal expenditures;
- b. 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
- c. Increase housing choices for low-income families.

#### II. PROGRAM PROCEDURES

##### A. Overview

The MTW Demonstration program is authorized by Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (see “Source of Governing Requirements”).

Initially, 30 PHAs were permitted to participate in the demonstration program and since then Congress has authorized nine additional agencies. The Consolidated Appropriations Act of 2016 authorized HUD to add an additional 100 new agencies to the demonstration by the end of fiscal year (FY) 2022. Approximately 30 of these new agencies are anticipated to join the demonstration in FY 2020. 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:

- a. Section 8, Housing Choice Vouchers (Assistance Listing 14.871)

- b. Section 9, Public and Indian Housing (Assistance Listing 14.850)
- c. Section 9, Public Housing Capital Fund (Assistance Listing 14.872)

The authorized funding is stated in Attachment A of the Standard MTW Agreement for existing MTW agencies designated under the Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. New MTW agencies designated under the Consolidated Appropriations Act of 2016, and to any previously designated MTW agency that elects to operate under the terms of the Operations Notice, will be funded according to Operations Notice.

## **B. Statutory Requirements for MTW Agencies**

All PHAs participating in the MTW Demonstration program must meet the following statutory requirements:

- a. Ensure that at least 75 percent 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 percent of area median income) (Section 204(c)(3)(A) of Pub. L. No. 104-134 (42 USC 1437f (note)));
- b. 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)));
- c. 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)));
- d. 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
- e. Ensure 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:

- f. 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)));
- g. Section 18 of the 1937 Housing Act (42 USC 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



- h. Section 12 of the 1937 Housing Act (42 USC 1437j), which governs 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))).

**C. 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, initially set up for a ten-year period from 2008–2018, was extended to 2028. It consists of the following:

- a. *Attachment A* of the Standard MTW Agreement contains the calculation of subsidies, customized for each individual PHA.
- b. *Attachment B* of the Standard MTW Agreement contains standard reporting requirements that apply to all MTW Agencies. The Standard MTW Agreement provides a mechanism, through the submission of MTW annual plans and Reports, for HUD 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. Activities approved in the Annual MTW Plan must be reported in the ongoing activities section as stipulated in Attachment B.

(1) *Annual MTW Plans*

The PHA will prepare and submit an Annual MTW Plan, in accordance with Attachment B, or equivalent HUD form. 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 it is submitted and 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.2.c, "Reporting – Performance Reporting").

- c. *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 (Assistance Listing

14.850) and Section 8 Housing Choice Vouchers (Assistance Listing 14.871), authorizations related to Public Housing only, authorizations related to Section 8 Housing Choice Vouchers only, and authorizations related to family self-sufficiency.

- d. *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.
- e. 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 addresses 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.

#### **D. The Operations Notice for the Expansion of the MTW Demonstration Program**

The MTW Operations Notice was developed pursuant to the Consolidated Appropriations Act of 2016. The MTW Operations Notice establishes requirements for the implementation and continued operation of the MTW demonstration program, for the term of the MTW Annual Contributions Contracts (“the ACC”) amendment once an agency is designated. The appendices to the Operations Notice provide agencies specific information as related to the requirements of the MTW demonstration. The appendices consist of the following:

- a. *Waivers* and associated activities afford MTW agencies the opportunity to use their MTW authority to pursue locally driven policies, procedures, and programs in order to further the goals of the demonstration. When implementing MTW waivers through MTW activities, MTW agencies must ensure assisted families are made aware of the impacts the activity(ies) may have on their tenancy. MTW agencies may pursue waivers under the four categories: MTW Waivers, Safe Harbor Waivers, Agency-Specific Waivers, and Cohort-Specific Waivers.

- b. An *MTW Supplement* is a submission by MTW agencies as part of their Annual PHA Plan. MTW agencies must submit to HUD the Annual PHA Plan, including any required attachments, and the MTW Supplement no later than 75 days prior to the start of the agency's fiscal year. Per the MTW Operations Notice, while MTW agencies that are qualified under 24 CFR 903.3(c) are not required to submit the Annual PHA Plan, they are required to submit the MTW Supplement on an annual basis.
- c. The *MTW ACC Amendment* is an amendment to the ACC between the PHA and HUD to designate the PHA as part of the MTW demonstration. The ACC amendment outlines the term of the demonstration for 20 years, and the requirements and covenants to follow the MTW operations notice, participate in a cohort study, and the PHA's exemptions from specific provisions of the Housing Act of 1937, the necessary transition plan for when a PHA leaves the demonstration. Additionally, it includes the conditions under which a PHA may be found in default of the MTW demonstration and the remedies HUD may undertake, including the PHA's possible termination from the program.

#### **E. 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 (Assistance Listing 14.850) and Capital Fund (Assistance Listing 14.772) Programs and the Housing Choice Voucher (Assistance Listing 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 statutes 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://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph/mtw](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw). Public Housing notices are available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/regs](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/regs).

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	N	N	N	N	Y	N	Y

#### A. Activities Allowed or Unallowed

The authorizations in Attachment C of the Standard MTW Agreement and the Appendixes I and II of the MTW Operations Notice include acceptable uses of MTW funds and administrative activities related to both Public Housing (Assistance Listing 14.850) and Section 8 Housing Choice Vouchers (Assistance Listing 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.

## **Compliance Requirements**

Activities using the authorizations granted in Attachment C of the Standard MTW Agreement or Appendices I and II of the MTW Operations Notice must be included in the PHA's Annual MTW Plan in accordance with the Revised HUD Form 50900 or MTW Supplement to the PHA Plan, respectfully, and subsequently approved by HUD. HUD will review these activities in order to verify that they 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 agencies designated under the 1996 MTW Statute can be found in the Ongoing Activities Section of the PHA's HUD Form 50900, Annual MTW Plan and Annual MTW Report. Similarly, lists of approved activities for the MTW agencies designated, or those who have elected to come under the MTW Operations Notice, can be found in the MTW Supplement.

### **B. Allowable Costs/Cost Principles**

The amount of salary, including bonuses, of PHA chief executive officers, other officers, and employees paid with Section 8 Housing Choice Vouchers administrative fees and Section 9 Capital and Operating funds may not exceed the annual rate of basic pay payable for a federal position at Level IV of the Executive Schedule (currently \$164,200) (Section 227 of Pub. L. No. 113-235, 128 Stat. 2756, December 16, 2014, and carried forward in each subsequent appropriations act). Implementing guidance has been issued in PIH Notice 2016-14, "Guidance on Public Housing Agency (PHA) salary restriction in HUD's annual appropriations"

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/publications/notices](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/publications/notices).

## **Compliance Requirements**

MTW agencies are authorized to use amounts received through the Public Housing Operating Fund, Capital Fund, and HCV Program flexibly. Implemented activities and use of MTW funding flexibility under MTW is designed to meet one of three statutory objectives: achieving cost efficiencies, promoting self-sufficiency among residents, and/or increasing housing choice. It is the expectation that agencies exercise sound fiscal management to ensure the continuous operation of its agency and satisfaction of the MTW demonstration's statutory objectives.

For MTW agencies subject to the MTW Agreement, any implemented MTW activity must cite one or multiple Attachment C authorizations in the Standard MTW Agreement and be contained in an approved Annual MTW Plan. MTW agencies cannot implement any activities outside of the authorizations contained in the Standard MTW Agreement (including its attachments).

For MTW agencies subject to the MTW Operations Notice, any implemented MTW Waiver, Agency-Specific Waiver, Safe Harbor Waiver, and Cohort-Specific Waiver must be contained in an approved MTW Supplement to the PHA Plan.

## **C. Cash Management**

Congress provides funding for the HCV and Public Housing programs through annual appropriation acts. HUD then allocates and awards funding to PHAs in accordance with the appropriations acts. PHAs participating in the MTW demonstration are subject to the financial management requirements that apply to non-MTW agencies.

For those MTWs agencies administering the HCV program, Notice PIH 2017-06 establishes the cash management procedures for controlled disbursement of federal funds. This includes, but is not limited to, the drawdown of Housing Assistance Payment (HAP) funds for landlord payments, and the drawdown of HAP funds for non-HAP purposes, such as payments for development contracts or other eligible MTW activities.

MTWs with public housing under an ACC are subject to 24 CFR Part 990, with the exception of 11 PHAs with alternative funding formulas, as articulated in their Standard MTW Agreements. This includes PHAs that have not received operating subsidy previously, but are eligible for operating subsidy under the Operating Fund Formula.

### **Compliance Requirements**

It should be ensured that MTW agencies comply with all HUD and Treasury fiscal requirements. No flexibility under the MTW demonstration permits an agency to waive any requirements regarding cash management. MTW agencies are subject to the same cash management requirements as non-MTW agencies.

## **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

## **L. Reporting**

### **1. Financial Reporting**

a. *SF-270, Request for Advance or Reimbursement* – Not Applicable

b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *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 the initial 39 MTW agencies; the new 100 agencies brought onto the MTW demonstration through the Consolidated Appropriations Act of 2016 will report to HUD using the HUD-50058 MTW Expansion Family Report (*OMB No. 2577-0083*), which is being developed. 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 1c – *Program*
- 2. Line 2a – *Type of action*
- 3. Line 2b – *Effective date of action*
- 4. Line 2k – *FSS participation now or in the last year*
- 5. Line 3b, 3c – *Last name, First name*
- 6. Line 3e – *Date of birth*
- 7. Line 3n – *Social Security Numbers*
- 8. Line 5a – *Unit address*
- 9. Line 5h – *Date unit last past HQS inspection*
- 10. Line 5i – *Date of last annual HQS Inspection*
- 11. Line 7i – *Total annual income*
- 12. Line 13h – *Contract rent to owner*
- 13. Line 13k – *Tenant Rent*
- 14. Line 13x – *Mixed family tenant rent*
- 15. Line 17a – *Participation in special programs* – Participation in the Family Self Sufficiency (FSS) Program
- 16. Line 17k(2) – *FSS account information* – Balance

- e. *Financial Reports (OMB No. 2535-0107)* – Financial Assessment Subsystem, 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 (see Section 13, Moving to Work (MTW) Agencies Reporting to FASS-PH, of Notice PIH-2012-21 (HA), issued May 10, 2012).

*Key Line Items* – The following line items contain critical information:

1. FDS Line 111 – (Cash-unrestricted)
2. FDS Line 114 – (Cash-tenant security deposits)
3. FDS Line 120 – (Total receivables – net of allowances for doubtful accounts)
4. FDS Line 122 – (Accounts receivable – HUD other projects)
5. FDS Line 131 – (Investments – unrestricted)
6. FDS Line 132 – (Investments – restricted)
7. FDS Line 142 – (Prepaid expenses and other assets)
8. FDS Line 144 – (Inter-program – due from)
9. FDS Line 145 – (Assets held for sale)
10. FDS Line 310 – (Total current liabilities)
11. FDS Line 331 – (Accounts payable – HUD PHA programs)
12. FDS Line 342 – (Deferred revenue)
13. FDS Line 345 – (Other current liabilities)
14. FDS Line 346 – (Accrued liabilities – other)
15. FDS Line 347 – (Inter-program – due to)
16. FDS Line 508.1 – (Invested in capital assets, net of related debt)
17. FDS Line 511.1 – (Restricted Net Assets)
18. FDS Line 512.1 – (Unrestricted net assets)
19. FDS Line 96900 – (Total operating expense)
20. FDS Line 97100 – (Extraordinary maintenance)



21. FDS Line 97200 – (Casualty losses – non-capitalized)
22. FDS Line 97300 – (Housing assistance payments)
23. FDS Line 97350 – (HAP portability – in)
24. FDS Line 97800 – (Dwelling units rent expense)
25. FDS Line 10010 – (Operating transfers in)
26. FDS Line 10020 – (Operating transfers out)
27. FDS Line 10030 – (Operating transfers from/to primary government)
28. FDS Line 10093 – (Transfers between programs and projects in)
29. FDS Line 10094 – (Transfers between programs and projects out)

## 2. Performance Reporting

*Annual MTW Plan and Annual MTW Report – HUD Form 50900 (OMB No. 2577-0216) and MTW Supplement (OMB No. 2577-0226)* – 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;” (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;” and (3) ensuring that at least 75 percent 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 percent of area median income) (see III.G.3, “Earmarking”). The information needed to demonstrate these objectives can be found in HUD’s Inventory Management System/PIH Information Center (IMS- PIC), the Voucher Management System (VMS) and/or HUD successor systems and 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))) and MTW Supplement. Additional guidance is provided in PIH Notice 2013-2, Baseline Methodology for Moving to Work Public Housing Agencies, issued January 10, 2013.

*Key Line Items* – The following parts of Section II.B of the Annual MTW Report contain critical information:

1. Section II.B, Report Leasing
  - a. Actual Number of Households Served at the End of the Fiscal Year
  - b. Reporting Compliance with Statutory MTW Requirements: 75 percent of Families Assisted are Very Low-Income

- c. Reporting Compliance with Statutory MTW Requirements: Maintaining Comparable Mix
- 2. Section IV, Approved MTW Activities: HUD approval previously granted Metrics - PHA's are required to use all the applicable "Standard HUD Metrics" under each statutory objective cited for the approved MTW activity. (See the "Standard HUD Metrics" section of the HUD form 50900.)
- 3. Section V.3, Sources and Uses of MTW Funds
  - a. A. Describe the Activities that Used Only MTW Single Fund Activity - PHAs must provide a thorough narrative of each activity that uses only the Single Fund Flexibility in the body of the Plan. In the narrative, PHAs are encouraged to provide metrics to track the outcomes of these programs or activities. Activities that use other MTW waivers in addition to Single Fund Flexibility do not need to be described in this section because descriptions of these activities are found in either Section III, Proposed MTW Activities, or Section IV, Approved MTW Activities in the HUD Form 50900 or in the MTW Supplement.
  - b. C. Commitments of Unspent Funds – The PHA is required to provide a listing of planned commitments or obligations of unspent MTW funds at the end of the PHA's fiscal year.

### 3. Special Reporting

Not Applicable

### 4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

## N. Special Tests and Provisions

### 1. Wage Rate Requirements

**Compliance Requirements** With respect to public housing, the PHA must comply with federal-wide or HUD-determined wage rate requirements of Section 12 of the Housing Act of 1937 (42 USC 1437j(a) and (b)).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

### 2. Reasonable Rent Policy

**Compliance Requirements** 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))) or the MTW Supplement.

**Audit Objectives** 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.

### **3. Housing Quality Standards**

**Compliance Requirements** MTW Agencies must ensure 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 Objectives** 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 or MTW Supplement to determine how HQSs 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: Section 8 Housing Choice Vouchers (Assistance Listing 14.871); Public Housing Capital Fund (Assistance Listing 14.872); and Public and Indian Housing (Assistance Listing 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. Similarly, an auditor should look to the MTW Operations Notice for a PHA operating under the MTW Operations Notice. The amounts transferred into the MTW account are subject to the requirements of the MTW Agreement and should be included in the audit universe and total expenditures for MTW Agencies (Assistance Listing 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 Assistance Listing number for that program.

The auditor should review the agency's specific MTW agreement, attachments, and amendments for the authorizations applicable to each MTW agency.

Alternative Operating Subsidy PHAs: Baltimore, Cambridge, Chicago, Delaware, Lawrence-Douglas, New Haven, Oakland, Philadelphia, Pittsburgh, Home Forward (Portland), and Seattle.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### ASSISTANCE LISTING 14.888 LEAD-BASED PAINT CAPITAL FUND PROGRAM AND HOUSING-RELATED HAZARDS CAPITAL FUND

#### I. PROGRAM OBJECTIVES

The Lead-Based Paint Capital Fund (LBPCF) program is for Public Housing Authorities (PHAs) to evaluate and reduce lead-based paint in public housing. The LBPCF provides competitive grants to PHAs to evaluate and reduce lead-based paint hazards in public housing by carrying out the activities of risk assessments, abatement, and interim controls (as those terms are defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC 4851b)).

The Housing-related Hazards Capital Fund (HRHCF) program is to help Public Housing Authorities (PHAs) identify and eliminate housing-related hazards in public housing such as mold, carbon monoxide, pest infestation, radon, fire hazards and other housing hazards. These are competitive grants to public housing agencies to evaluate and reduce other housing-related hazards including carbon monoxide and mold in public housing.

#### II. PROGRAM PROCEDURES

##### A. Overview

For LBPCF grants, Congress has set aside anywhere from \$25 to \$45 million within the Capital Fund account to assist PHAs with lead challenges. These grants support PHAs as they address the safety of public housing residents. LBPCF grants may be used for lead-based paint inspection, risk assessment, clearance exams, relocation, and hazard controls. PHAs submit a competitive application for this funding. The funding is allocated based on application score.

For HRHCF grants, Congress has set aside \$20 million within the Capital Fund account to assist PHAs with mold, carbon monoxide and other housing hazards. PHAs submit a competitive application for this funding. The funding is allocated based on application score.

##### B. Subprograms/Program Elements

Below outlines the Capital Fund Program's general grant process. The LBPCF and HRHCF are subject to this process.

Prior to submitting the five-year action plan to HUD for review and approval, a PHA must annually conduct a public hearing and consult with the Resident Advisory Board (RAB) of the PHA to discuss the Capital Fund submission. The PHA may elect to conduct a separate annual public hearing in order to solicit public comments or to hold the annual public hearing at the same time as the hearing for the Annual PHA Plan, the 5-Year Plan, or the required annual hearing for qualified public housing authorities. The

hearing must be conducted at a location that is convenient to the residents served by the PHA.

In FY 2018, the CFP 5-Year Action Plan and Annual Statement/Budget submission was moved to an electronic platform called EPIC for submission and approval. A PHA must have an approved 5-Year Action Plan (HUD 50075.2 (*OMB No. 2577-0226*)) in EPIC to have access to Capital Funds. Once a PHA submits an Annual Statement/Budget in EPIC (HUD 50075.1), it spreads Capital Funds to all of the appropriate budget line items (BLIs) in the Line of Credit Control System (LOCCS) in accordance with the information contained in the 5-Year Action Plan (HUD 50075.2). A PHA can then drawdown funds as needed on a three-day turnaround basis to pay for approved work activities. The three-day turnaround means the PHA expends the funds drawn down from LOCCS within three business days.

In planning its LBPCF and/or HRHCF 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.

### **C. Other**

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 will be required 60 days after the PHA's fiscal year end and the audited financial statement is due nine months after its fiscal year end (24 CFR section 5.801). The financial statement must include the financial activities of this program.

PHAs file an actual modernization cost certificate (AMCC) form HUD-53001 with the local HUD Field Office when they complete a LBPCF and/or HRHCF project. The AMCC is required for LBPCF and/or HRHCF grant closeout.

## **Source of Governing Requirements**

The programs are authorized under 42 USC 1437g and 3535(d). The program implementing regulation is 24 CFR Part 905.

## **Availability of Other Program Information**

HUD posts guidance on the LBPCF and/or HRHCF to its Office of Capital Improvements Home Page that provides grantees with information on timelines, budgets, financial instructions, and other program guidance. Information regarding the financial reporting requirements of the PHAs is provided by HUD on the Real Estate Assessment Center (REAC) website.

Here are some helpful links:

Office of Capital Improvements web page

- [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/capfund](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/capfund)

HRHCF Grants.gov web page

- <https://www.grants.gov/web/grants/view-opportunity.html?oppId=332342>

REAC web pages

- [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/reac](https://www.hud.gov/program_offices/public_indian_housing/reac)
- [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/reac/products/prodpha](https://www.hud.gov/program_offices/public_indian_housing/reac/products/prodpha)
- [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/reac/products/prodphasintrule](https://www.hud.gov/program_offices/public_indian_housing/reac/products/prodphasintrule)

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	Y	Y	N	N	N	Y

**A. Activities Allowed or Unallowed**1. *Activities Allowed*

- a. For LBPCF grants allowed Capital Fund activities include the following: activities of lead-based paint risk assessments, inspections, abatement, interim controls, clearance examinations and relocation. Other work in the property, including work to prepare for lead hazard control (e.g., repairs to the substrate, fixing leaks or other renovations) shall be funded by other sources.
- b. For HRHCF grants, allowed Capital Fund activities include the following: activities associated with the housing-related hazard(s) identified in the PHA application and approved by HUD. Other work in the property, including work to prepare for hazard control (e.g., repairs to the substrate, fixing leaks or other renovations) shall be funded by other sources.

2. *Activities Unallowed*

A PHA may not incur any cost in excess of the total HUD-approved PHA Annual Statement/Budget. Budget revisions may be submitted in EPIC for deviations from the originally approved program. A PHA shall not incur any cost on behalf of any development that is not covered by its current approved 5-Year Action Plan (24 CFR section 905.200(a)).

This following list describes ineligible activities and costs for the Capital Fund Program:

- a. Not Related to Public Housing. PHAs may not spend Capital Funds on costs that are not associated with a Public Housing Development or Modernization Project.
- b. Not in 5-Year Action Plan. PHAs may not spend Capital Funds on activities and costs that are not included in the PHA's 5-Year Action Plan (Emergency Work or Non-Presidentially Declared Natural Disaster assistance that is not identified in the 5-Year Action Plan is an eligible cost).
- c. Not Modest Design. PHAs may not spend Capital Funds on improvements or purchases that are not considered modest in design and cost because they include amenities, materials, and design in excess of what is customary for the locality, as determined by the PHA and Field Office. These include, but are not limited to, swimming pools, saunas, whirlpool baths, and hot tubs.
- d. Not Eligible based on OMB Regulatory and Circular Guidance. PHAs may not spend Capital Funds on any costs not authorized in 2 CFR Part



200 (formerly OMB Circular A-87 and 2 CFR Part 225), including indirect Administrative Costs, indemnification, and capitalizing reserves.

- e. Operating Assistance. PHAs may not spend Capital Funds on Public Housing operating assistance, except as provided through transfers to BLI 1406.
- f. Benefitting Other Programs. Eligible costs that exceed the amount directly attributable to the public housing units when the physical or Management Improvements, including salaries and employee benefits and contributions, will benefit programs other than public housing, such as Section 8 Housing Choice Voucher, or local revitalization programs.

For example, the annual audit covers the breadth of the PHA's activities such as the Operating Fund, Capital Fund, Housing Choice Vouchers, and non-federally-funded activities. Only a pro rata share of the Audit cost attributable to the Capital Fund may be charged to the Capital Fund.

- g. Security Services. Ongoing security services, including:
  - Contracts with local police departments including above baseline police services except where permitted by HUD FY Appropriations Acts;
  - The salaries and benefits for security guards, patrols, or police officers (either full-time, part-time, or after hours); and
  - The purchase or leasing of vehicles for security personnel.
- h. Supportive Services. The provision of supportive services to public housing residents, including:
  - The salaries and benefits or contract costs for service providers, including resident coordinators, case managers, social workers, nurses, chore service providers, supplemental police or probation services providers, and tutors;
  - Health and wellness activities;
  - Educational enrichment and recreational activities, including social organizations; and
  - Job development and placement services, including the cost of professional licenses, certifications and exams, and transportation assistance.

- i. Duplicate Funding. An otherwise eligible cost that is funded by another source and would result in duplicate funding. Duplicate funding can be other federal, state, and non-federal programs; and
- j. Other Activities. Any other activities and costs that HUD may determine are ineligible on a case-by-case basis, consistent with the 1937 Act and its regulations.

LBPCF and HRHCF grants may not be used for any activities that are not both part of the original application and approved by HUD.

Additionally, LBPCF and HRHCF grants are restricted to specific budget line items (BLIs) by the applicable Notice of Funding Availability (NOFA) and/or Notice of Funding Opportunity (NOFO). PHAs may not place funds in a BLI that is not supported by the NOFA/NOFO.

## **B. Allowable Costs/Cost Principles**

Allocation of Costs with Other Programs. Where the physical or Management Improvement costs will benefit programs other than public housing, such as the Housing Choice Voucher program or local revitalization programs, Capital Fund-eligible costs are limited to the amount directly attributable to the public housing program.

The amount of salary, including bonuses, of PHA chief executive officers, other officers, and employees paid with Section 8 Housing Choice Vouchers administrative fees and Section 9 Capital and Operating funds may not exceed the annual rate of basic pay payable for a federal position at Level IV of the Executive Schedule (currently \$172,500) (Section 227 of Pub. L. No. 113-235, 128 Stat. 2756, December 16, 2014, and carried forward in each subsequent appropriations act). Implementing guidance has been issued in PIH Notice 2016-14, "Guidance on Public Housing Agency (PHA) salary restriction in HUD's annual appropriations."

## **H. Period of Performance**

1. Unless an extension is approved by HUD, a PHA must obligate at least 90 percent of each LBPCF and/or HRHCF grant within 24 months of the funds of becoming available to the PHA for obligation. The funds become available when the HUD executes the ACC Amendment (24 CFR section 905.306).
2. For LBPCF and/or HRHCF grants, unless HUD approves an extension, a PHA must expend all grant funds no later than 48 months after HUD executes the ACC Amendment (24 CFR section 905.306(f)).

## N. Special Tests and Provisions

### 1. Wage Rate Requirements

**Compliance Requirements** Projects funded with Capital Funds that are developed and/or modernized in accordance with 24 CFR Part 905, Subpart F, including projects that contain only public housing units and mixed-finance projects are subject to the Wage Rate Requirements (42 USC 1437j(a) and (b); 24 CFR section 905.308).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

### 2. FASS – PHA, Public Housing Assessment System Phase Indicator #2, Financial Condition, and HUD-50075, PHA Plans

**Compliance Requirements** On an annual basis the PHA must report its Financial Data Schedule (FDS) disclosing 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 nonprofit 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.d.(2). The FASS-PHA FDS 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 nonprofit 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 Objectives** Determine whether the expenditures set out in the FDS line items that indicate participation by nonprofit 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 whether any nonprofit and private development entities utilized the Capital Fund Program..
- b. If yes, 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).

### 3. Environmental Review

**Compliance Requirements** An environmental review must be completed for any project or activities before a PHA may acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds at an assisted or to-be-assisted site.

Environmental review procedures for PHAs are given in PIH Notice 2016-22 HA, “Environmental Review Requirements for Public Housing Agencies.” The environmental reviews are not tied to specific grants but apply to all the operating and capital activities of the PHA for a five-year period. The Notice cites the governing regulations at 24 CFR parts 50 and 58 and describes the methods of review and types of determinations. All of these methods and types culminate in a final approval document signed by a HUD Approving Official. To be in compliance a PHA must have such an approval document with an approval date that is not over five years old. This approval may be in any the following forms:

- a. Form HUD-7015.16 (*OMB No. 2506-0087*), “Authorization to Use Grant Funds”
- b. Form HUD-4128-OHF (*OMB No. 2502-0602*), “Environmental Assessment and Compliance Findings for the Related Laws”
- c. Determination Letter
- d. An electronic signature in the HUD Environmental Review Online System (HEROS)
- e. Activities listed in Notice 2016-22, Appendix A, require no further environmental review.

**Audit Objectives** 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.

#### Suggested Audit Procedures

- a. Select a sample of projects or activities when an environmental review was performed.
  1. Verify through a review of environmental review certifications that the environmental reviews were conducted for projects and activities unless an exemption was made.
  2. Test whether program funds were committed only after the PHA has secured environmental clearance.

#### **IV. OTHER INFORMATION**

The Moving to Work (MTW) demonstration program (Assistance Listing 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 (Assistance Listing 14.871)
- Public Housing Capital Fund (Assistance Listing 14.872)
- Public and Indian Housing (Assistance Listing 14.850)

Funds from LBPCF and/or HRHCF cannot be combined under the MTW Agreement.

## DEPARTMENT OF THE INTERIOR

### ASSISTANCE LISTING 15.000 BIA/BIE CROSS-CUTTING SECTION

#### INTRODUCTION

This section contains compliance requirements that apply to more than one program of the Bureau of Indian Affairs (BIA) or Bureau of Indian Education (BIE) 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) 25 USC 450e-3 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 BIA/BIE Cross-Cutting Section reference the applicable programs in Part 4, Agency Compliance Requirements. Similarly, the applicable programs in Part 4 reference this BIA/BIE Cross-Cutting Section.

**Important:** Due to program priorities, for 2019 each program may not have included all the cross-cutting section requirements within their “pick 6.” Past Compliance Supplements did not have a restriction for a maximum number of requirements; therefore, the cross-cutting section could apply to all impacted programs without consideration of the number of requirements. Agencies need to reconsider which requirements will remain in the cross-cutting section for future years; this will be addressed in the 2020 Compliance Supplement. For 2019, auditors are advised to use the program selections as the final guidance and not the cross-cutting section for the purposes of the 2019 audit.

Program	Assistance Listing No.	Program Name
ISDEAA Programs	15.021	Consolidated Tribal Government
ISDEAA Programs	15.022	Tribal Self-Governance
ISDEAA Programs	15.030	Indian Law Enforcement
ISDEAA Programs	15.047	Indian Education Facilities, Operations, and Maintenance
Tribally Controlled Schools Act	15.042	Indian School Equalization

#### 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 BIE.

#### 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 450l(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)).

Prior to the expenditure of these funds for the purposes for which they were intended, these funds can be invested (25 USC 450e-3). Indian tribes and tribal organizations are not accountable to BIA/BIE for the income earned from these investments (25 USC 450j(b)).

### **III. COMPLIANCE REQUIREMENTS**

#### **B. Allowable Costs/Costs Principles**

*BIA/BIE programs in this Supplement that this section applies to are: Consolidated Tribal Government (15.021); Indian Law Enforcement (15.030); and Indian School Equalization (15.042).*

Indian tribes and tribal organizations may without the approval of the BIA/BIE 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 nonfederal 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 Performance

*BIA/BIE programs in this Supplement that this section applies to are: Consolidated Tribal Government (15.021); Indian Law Enforcement (15.030); 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 4501(c)(b)(9)).

## N. Special Tests and Provisions

### Investment and Deposit of Advance Funds

*BIA/BIE programs in this Supplement that this section applies to are: Consolidated Tribal Government (15.021); Tribal Self-Governance (15.022); Indian Law Enforcement (15.030); and Indian School Equalization (15.042).*

**Compliance Requirements** 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 (25 USC 450e-3).

**Audit Objectives** 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/BIE advance funds and verify that all unused/unexpended funds were properly invested or deposited throughout the audit period.



## DEPARTMENT OF THE INTERIOR

### ASSISTANCE LISTING 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 this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	Y	N	N	Y	N	Y

**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 Part 4, 15.000 BIA/BIE Cross-Cutting Section.

**H. Period of Performance**

See Part 4, 15.000 BIA/BIE Cross-Cutting Section.

**L. Reporting**

**1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions**

See Part 4, 15.000 BIA/BIE Cross-Cutting Section.

## DEPARTMENT OF THE INTERIOR

### ASSISTANCE LISTING 15.022 TRIBAL SELF GOVERNANCE

#### I. PROGRAM OBJECTIVES

The objective of the Tribal Self-Governance program is to further the goals of the Indian Self-Determination and Education Assistance Act 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 5361 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 and to reallocate funds (25 USC 5363(b)). Tribes are selected from an applicant pool upon meeting certain eligibility requirements (25 USC 5362).

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 assistance payments, natural resource management and enhancement, housing improvement, and road maintenance (25 USC 5363(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 5361 et seq.).

#### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement, Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	N	N	Y	N	Y	N	Y

**A. Activities Allowed or Unallowed**

The ISDEAA provides for the expenditure of funds by Indian tribes and tribal organizations under self-determination contracts or self-governance annual/multi-year funding agreements for programs and activities previously provided by the Bureau of Indian Affairs (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 5363(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/multi-year funding agreement (25 USC 5363(b)(3); 25 CFR section 1000.85).

**L. Reporting**

**1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions**

See Part 4, 15.000 BIA/BIE Cross-Cutting Section.

**IV. OTHER INFORMATION**

Certain compliance requirements that apply to multiple BIA and Bureau of Indian Education (BIE) programs are discussed once in Part 4, 15.000 BIA/BIE Cross-Cutting Section of this Supplement rather than repeated in each individual program.

**DEPARTMENT OF THE INTERIOR  
DEPARTMENT OF LABOR  
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**ASSISTANCE LISTING 15.025 SERVICES TO INDIAN CHILDREN, ELDERLY AND FAMILIES**

**ASSISTANCE LISTING 15.026 INDIAN ADULT EDUCATION**

**ASSISTANCE LISTING 15.113 INDIAN SOCIAL SERVICES-WELFARE ASSISTANCE**

**ASSISTANCE LISTING 15.114 INDIAN EDUCATION-HIGHER EDUCATION GRANT**

**ASSISTANCE LISTING 15.130 INDIAN EDUCATION-ASSISTANCE TO SCHOOLS  
(Johnson-O'Malley)**

**ASSISTANCE LISTING 17.265 NATIVE AMERICAN EMPLOYMENT AND TRAINING**

**ASSISTANCE LISTING 93.558 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)**

**ASSISTANCE LISTING 93.569 COMMUNITY SERVICES BLOCK GRANT**

**ASSISTANCE LISTING 93.575 CHILD CARE AND DEVELOPMENT BLOCK GRANT**

**ASSISTANCE LISTING 93.594 TRIBAL WORK GRANTS – NATIVE EMPLOYMENT WORKS (NEW)**

**ASSISTANCE LISTING 93.596 CHILD CARE MANDATORY AND MATCHING FUNDS OF THE CHILD CARE AND DEVELOPMENT FUND**

Note: In February 2015, OMB approved a new reporting system for Pub. L. No. 102-477 Demonstration Projects (477). The reporting system maintained the prior reporting, referred to as “Version 1,” in which Indian tribal governments with an approved 477 Plan may continue to use through report periods ending in 2017. Effective for annual report periods ending after 2017, Indian tribal governments with an approved 477 Plan are required to use the new reporting forms referred to as “Version 2” (September 26, 2014, *Federal Register* [75 FR 57970]). The 477 program supplement for this cluster is applicable only to tribes who have started reporting under Version 2. If the Indian tribal government with an approved 477 Plan reports under Version 1 forms, then the auditor would use other applicable sections in the Supplement in the same manner as used in auditing under the 2016 Supplement (i.e., using Part 4 for programs/clusters included in that part or using Part 7 if not included in Part 4).

**I. PROGRAM OBJECTIVES**

Based upon a 477 Plan approved by the secretary of the Interior, an Indian tribal government (tribal government) is authorized to coordinate its federally funded employment, training, and related services grant programs in a manner that integrates the program services involved into a single, coordinated, comprehensive program with a single, integrated budget, and a single reporting system (25 USC 3401, 3403, and 3405).

The purposes of Pub. L. No. 102-477 are to demonstrate how Indian tribal governments can integrate the employment, training, and related services they provide in order to improve the effectiveness of those services, reduce joblessness in Indian communities, foster economic development on Indian lands, and serve tribally determined goals consistent with the policies of self-determination and self-governance (25 USC 3401).

## **II. PROGRAM PROCEDURES**

### **A. Overview**

Participation by a tribal government in a 477 Plan is completely voluntary. The lead federal agency is the Department of the Interior (DOI) and the coordinating federal partner agencies are the Department of Labor (DOL) and Health and Human Services (HHS).

Each 477 Plan is for up to a three-year period and is required to identify the federal grant programs to be integrated. There is no separate funding associated with Pub. L. No. 102-477. All the funds included in the 477 Plan are those which the tribal government would otherwise receive under the authority of the individual programs that are included in the 477 Plan.

While this 477 Cluster lists all of the possible programs which a tribal government may integrate into its 477 Plan, a particular tribe may decide not to include all of the listed programs in its 477 plan. The 477 Cluster for a particular tribal government will only include the programs listed in the 477 Cluster that are included in the tribal government's 477 Plan (25 USC 3405).

### **B. Administration of Funds**

The tribal government is not required to report expenditures under its 477 Plan by Assistance Listing number.

In general, program funds under a 477 Plan must be administered in such a manner as to allow for a determination that funds from specific programs (or an amount equal to the amount transferred from each program) are spent on allowable activities authorized under such program. Pub. L. No. 102-477 does not require a tribal government to maintain separate records tracing any services or activities conducted under its 477 Plan to the individual programs under which funds were authorized, nor must a tribe be required to allocate expenditures among such individual programs (25 USC 3413(a)).

Administrative costs of programs under a 477 Plan may be commingled and participating tribal governments are entitled to the full amount of such costs under each applicable federal program, and no overage shall be counted for federal audit purposes, provided that the overage is used for the purposes approved in the 477 Plan (25 USC 3413(b)).

A single report format is used for the programs included in the 477 Plan such that, together with records maintained on the consolidated program at the tribal level, the



report contains sufficient information to allow a determination that the tribal government has complied with the requirements incorporated in its 477 Plan and will provide assurances that the tribal government has complied with all directly applicable statutory requirements and with those directly applicable regulatory requirements which have not been waived (35 USC 3410(b)).

**Source of Governing Requirements**

The combining of these programs is authorized under Pub. L. No. 102-477, the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended by Pub. L. No. 106-568, the Omnibus Indian Advancement Act of 2000 (25 USC 3401-3417).

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	N	N	N	N	Y	N	Y

**A. Activities Allowed or Unallowed**

The expenditures included under each Functional Cost Category (Category), as listed on the Annual Financial Expenditure Report in lines 8.b through 8.f, must be properly classified in the Category and must be for activities allowable under the tribal government’s 477 Plan.

**B. Allowable Costs/Cost Principles**

As discussed in Appendix I to this Supplement, “Programs Excluded from A-102 Common Rule/Portions of 2 CFR Part 200,” the CCDF Cluster funds (Assistance Listings 93.575 and 93.596) are excluded from Subpart E of 2 CFR Part 200 at both the recipient and subrecipient levels. Similarly, CSBG (Assistance Listing 93.569) funds are excluded from Subpart E since tribal governments participating in 477 receive CSBG funds directly as a recipient. When funds are excluded from Subpart E, the tribal government must expend and account for CCDF and CSBG funds in accordance with the laws and procedures they use for expending and accounting for other nonfederal funds of the tribal government.

**E. Eligibility****1. Eligibility for Individuals**

The expenditures included under each Category, as listed on the Annual Financial Expenditure report in lines 8.b through 8.d, must be properly classified in that Category and must be paid to the correct individual for the correct amount under the requirements of the tribal government’s 477 Plan.

**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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request from Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *Public Law 102-477 Annual Financial Expenditure Report (Version 2) (OMB Control No. 1076-0135)* – This annual report must be submitted for each Plan Period until all of the funds available for the Plan Period have been fully expended and reported. For example, if there are Total Unexpended Funds at the end of the Plan Period from 10/01/2017 to 9/30/2020, for the Annual Report Period from 10/01/2020 to 9/30/2021 there would be two reports. One report is required for the 10/01/2017 to

9/30/2020 Plan Period and another report would be required for the 10/01/2020 to 9/30/2023 Plan Period.

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

*Public Law 102-477 Statistical Report (Version 2)(OMB Control No. 1076-0135)*

– This annual report provides statistical summary data of participants receiving any of the services available under the initiative.

The data includes current participants and those terminated from the program.

*Key Line Items* – The following line items contain critical information:

1. Line I – *Participants Served*

Line A – Total Participants

Line B – Total Terminees

Line C – Total Current Participants

2. Line II – *Terminnee Outcomes*

Line A – Total with Employment Objective

Line B – Total with Educational/Training Objective

Line C – Misc. Objective Received

Line D – Other (Non-Positive)

3. Line V – *Child Care and Development Activities*

Line A – Families Receiving Child Care

Line B – Children Receiving Child Care

Line C – Care Received – Type of Provider

Line 1 – Center Based

Line 2 – Family Child Care Home

Line 3 – Group Home

## Line 4 – Child’s Home

4. Line VI – *Jobs Creation/Economic Development*

## Line A – Number

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions****1. Accountability, Deposit, and Investment of Lump-Sum Drawdowns**

**Compliance Requirements** Tribal governments participating in a Pub. L. No. 102-477 demonstration project may draw down the full amount of available Pub. L. No. 102-477 funding under a 477 Plan in accordance with guidance provided by DOI.

Lump-sum drawdown/payments must be retained in clearly identifiable cash or investment accounts to be used only in accordance with the tribal government’s 477 Plan, must be readily accessible for payment of allowable expenditures in accordance with the 477 Plan from which it was derived in compliance with applicable requirements, and to the extent practical, earn interest. This does not require a tribal government to open a separate account with a financial institution or an investment manager. Investments of lump-sum payments must comply with 25 USC 450e-3, “Investment of Advance Payments: Restrictions.” All interest earned must be used on allowable expenditures in accordance with the 477 Plan from which it was derived and in compliance with applicable requirements.

Tribal governments receiving lump-sum drawdown/payments under a 477 Plan may invest these payments (some tribal governments refer to these advance payments as “deferred revenue”) before they are expended in accordance with the 477 Plan, as 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 (25 USC 450e-3).

**Audit Objectives** Determine whether the tribal government has properly accounted for, deposited, and invested lump-sum drawdowns/payments received under its 477 Plan and drawdown but unexpended funds are identifiable and readily accessible for use to carry out its 477 Plan.

### **Suggested Audit Procedures**

- a. Obtain and review the tribal government's policies and procedures and verify that those procedures comply with the requirements for lump-sum drawdowns/payments under a Pub. L. No. 102-477 demonstration project.
- b. Test lump-sum drawdowns/payments and ascertain if they were properly accounted for, deposited, and invested throughout the audit period.
- c. Review unused/unexpended lump-sum drawdowns/payments at year-end and verify that they are properly invested/deposited and are identifiable and readily accessible to carry out the work outlined in the 477 Plan.
- d. For each Plan Period with unexpended funds, compare the line 8.h, Total Unexpended Funds, of the Annual Financial Expenditure report to the sum of the unexpended drawdowns plus available funds not drawn down to ascertain if total unexpended funds are properly accounted for including cash balances for unexpended lump sum drawdowns.

## **IV. OTHER INFORMATION**

### *Reporting on the Schedule of Expenditures of Federal Awards (SEFA)*

The total expenditures for the 477 Cluster for the fiscal year must be shown on the SEFA as one line for each Plan Period covered with no identification of the individual Assistance Listing numbers included in the 477 Cluster. For example, for a tribal government with a fiscal year-end and annual report end of 9/30/2017, and a three-year plan period of 10/01/2017 to 9/30/2020, the amount reported on the Annual Financial Expenditure Report (Version 2) in line 8.g (Total Federal Expenditures), "Column II: This Annual Report Period," would be the same amount reported on the fiscal year (FY) 2017 SEFA for the 477 Cluster. If the tribal government's fiscal year-end date and reporting year-end differed, the amounts reported would be based upon general ledger amounts adjusted accordingly for the applicable reporting period.

If the tribal government had transactions or balances from multiple Plan Periods in a fiscal year, and, therefore, was required to file multiple Annual Financial Expenditure Reports, the SEFA must show a separate line for each Plan Period and identify the applicable Plan Period.

### *Notes to the SEFA*

The notes to the SEFA should list the Assistance Listing number and name of each contributing federal program that is a source of funding in the tribal government's 477 Plan. This disclosure in the notes should not include dollar amounts either by Assistance Listing number or otherwise.

### *Reporting to the Federal Audit Clearinghouse (FAC) on the Data Collection Form (SF-SAC)*

The 477 Cluster is reported to the FAC on the SF-SAC in a manner consistent with the display on the SEFA. For example, on the SF-SAC in Part II, Item 1(a), Federal Awarding Agency, would be "15"; Part II, Item 1(b), Assistance Listing Three Digit Extension, would be "U" for

unknown followed by two digit number assigned per FAC instructions (e.g., “U01”; Part II, Item 1(c), Additional Award Identification, would be “Plan Period Ending 9/30/2020” (example of Plan Period end date); Part II, Item 1(d) Name of Federal Award would be “Public Law 102-477 Programs”; and the other columns would correspond to normal SF-SAC reporting). If multiple plan periods, a separate line on the SF-SAC would be used for each Plan Period consistent with the SEFA with a different Assistance Listing Three Digit Extension for each Plan Period (e.g., “U01” for Plan Period ending 9/30/2020 and “U02” for Plan Period ending 9/30/2023).

## **DEPARTMENT OF THE INTERIOR**

### **ASSISTANCE LISTING 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 that have negotiated Self-Governance compacts. The website 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 this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	Y	N	N	Y	N	Y

**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 Part 4, 15.000 BIA/BIE Cross-Cutting Section.

**H. Period of Performance**

See Part 4, 15.000 BIA/BIE Cross-Cutting Section.

**L. Reporting**

**1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable



**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions**

See Part 4, 15.000 BIA/BIE Cross-Cutting Section.

## DEPARTMENT OF THE INTERIOR

### ASSISTANCE LISTING 15.042 INDIAN SCHOOL EQUALIZATION

#### I. PROGRAM OBJECTIVES

The objective of the Indian School Equalization program is to provide funding for elementary and secondary education.

#### II. PROGRAM PROCEDURES

The Bureau of Indian Education (BIE) programs make direct payments to federally recognized Indian tribal governments or tribal organizations currently operating a BIE-funded school.

Funds may be used for the education of Indian children in BIE-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 this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	N	Y	Y	N	Y	N	Y

**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 and maintenance and repair costs (25 USC 2502).

**B. Allowable Costs/Cost Principles**

See Part 4, 15.000 BIA/BIE Cross-Cutting Section.

**H. Period of Performance**

See Part 4, 15.000 BIA/BIE Cross-Cutting Section.

**L. Reporting**

**1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable only if specifically required in the grant agreement assurance statement.

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions**

Also see Part 4, 15.000 BIA/BIE Cross-Cutting Section.

**1. Character Investigations by Indian Tribes and Tribal Organizations**

**Compliance Requirements** The Indian Child Protection and Family Violence Prevention Act (25 USC 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 Objectives** 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 herself/himself was 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**

### **ASSISTANCE LISTING 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 this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	Y	N	N	Y	N	Y

**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 Performance**

See Part 4, 15.000 BIA/BIE Cross-Cutting Section.

**L. Reporting**

**1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable

- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable only if specifically required in the grant agreement assurance statement.

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions**

See Part 4, 15.000 BIA/BIE Cross-Cutting Section.



## DEPARTMENT OF THE INTERIOR

### ASSISTANCE LISTING 15.504 TITLE XVI 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.).

#### Source of Governing Requirements

Title XVI of Pub. L. No. 102-575 (43 USC 390h et seq.).

#### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	N	N	N	Y	N	N

**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).

**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 nonfederal participant, that the nonfederal 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-270, Request for Advance or Reimbursement* – Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## DEPARTMENT OF THE INTERIOR

### ASSISTANCE LISTING 15.507 WaterSMART (Sustain and Manage America's Resources for Tomorrow)

#### I. PROGRAM OBJECTIVES

The objectives of the WaterSMART program are to make funding available for eligible applicants to leverage their money and other resources by cost sharing with the Department of the Interior (DOI) on projects that save water, improve energy efficiency, address endangered species and other environmental issues, and facilitate transfers to new uses. The WaterSMART program works to establish a framework to provide federal leadership and assistance on the efficient use of water; integrate water and energy policies to support the sustainable use of all natural resources; and coordinate water conservation activities of various federal agencies and DOI bureaus and offices. Through the WaterSMART program, the DOI is working to achieve a sustainable water management strategy to meet the nation's water needs.

#### II. PROGRAM PROCEDURES

The Bureau of Reclamation, DOI, has the discretionary authority to award projects funded through grants and cooperative agreements to recipients who are selected through a competitive process.

##### Source of Governing Requirements

Governing requirements are specified in Section 9504 of Pub. L. No. 111-11 (42 USC 10364).

##### Availability of Other Program Information

For additional information on the WaterSMART program, see <https://www.usbr.gov/watersmart/>.

#### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	N	N	N	Y	N	N

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

a. Planning, designing, and constructing improvements that:

- (1) Conserve water;
- (2) Increase water use efficiency;
- (3) Facilitate water markets;
- (4) Enhance water management, including increasing the use of renewable energy in the management and delivery of water; or
- (5) Accelerate the adoption and use of advanced water treatment technologies; or to benefit threatened and endangered species (42 USC 10364(a)(1)).

b. Research activities designed to:

- (1) Conserve water resources;
- (2) Increase the efficiency of the use of water resources; or
- (3) Enhance the management of water resources, including increasing the use of renewable energy in the management and delivery of water (42 USC 10364(b)(1)).

2. *Activities Unallowed*

Operation and maintenance costs (42 USC 10364(a)(3)(E)(iv)).

**G. Matching, Level of Effort, Earmarking****1. Matching**

- a. The federal share of costs for planning, design, and construction activities shall not exceed 50 percent (42 USC 10364(a)(3)(E)(i)).
- b. The federal share of costs for research activities can be up to 100 percent. Specific cost-share requirements are identified within each award agreement (42 USC 10364(b)).

**2. Level of Effort**

Not Applicable

**3. Earmarking**

Not Applicable

**L. Reporting****1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## **DEPARTMENT OF THE INTERIOR**

### **ASSISTANCE LISTING 15.605 SPORT FISH RESTORATION PROGRAM**

### **ASSISTANCE LISTING 15.611 WILDLIFE RESTORATION AND BASIC HUNTER EDUCATION**

### **ASSISTANCE LISTING 15.626 ENHANCED HUNTER EDUCATION AND SAFETY PROGRAM**

#### **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, rehabilitate, and improve wildlife populations and their habitats, conduct wildlife management research, wildlife population surveys and inventories, acquire land, and provide for public use of wildlife resources.

The objective of Basic Hunter Education (Hunter Education and Safety program) is to provide training to hunters in the safe handling and use of firearms and archery equipment, hunter responsibilities and ethics, survival, construction, operation, and maintenance of public shooting ranges, and basic wildlife management and identification.

The objective of the Enhanced Hunter Education and Safety program is to enhance programs for hunter education, recruitment, and safety, increase interstate coordination of hunter education programs, enhance programs for bow hunters and archers, enhance construction and development of firearm and archery ranges, and update safety features of firearm and archery ranges.

#### **II. PROGRAM PROCEDURES**

##### **A. Overview**

The US Fish and Wildlife Service (FWS) makes program and project grants to the fish and wildlife 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, US 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, any of the 50 states can be paid up to 75 percent of the cost of the work performed. The District of Columbia, commonwealths, and territories may receive up to 100 percent with regional director approval.

##### **B. Subprograms/Program Elements**

The Sport Fish Restoration program has three subprograms: the Sport Fish Restoration–Recreational Boating Access subprogram; the Sport Fish Restoration–Aquatic Resources

Education subprogram; and the Sport Fish Restoration–Outreach and Communication subprogram. Definitions of terms applicable to this program are listed in 50 CFR section 80.2, including the definition of “sport fish.”

The Wildlife Restoration program has two subprograms: the Wildlife Restoration–Basic Hunter Education and Safety subprogram; and the Enhanced Hunter Education and Safety program. Definitions of terms applicable to this program are listed in 50 CFR section 80.2, including the definition of “wildlife.”

### **Source of Governing Requirements**

The Sport Fish Restoration program is authorized by the Sport Fish Restoration (Dingell-Johnson) Act (16 USC 777 through 777n, except 777e-1 and 777g-1). The Wildlife Restoration program is authorized by the Wildlife Restoration (Pittman-Robertson) Act (16 USC 669 through 669k). Program regulations are at 50 CFR Part 80. Program guidance is available in the FWS Manual chapters pertaining to Federal Financial Assistance and Wildlife and Sport Fish Restoration grants—Chapters 516 FW through 523 FW.

### **Availability of Other Program Information**

Other program information is available at [Toolkit Homepage - WSFR Toolkit - FA Wiki \(fws.gov\)](#). The FWS Manual is available at <http://www.fws.gov/policy/manuals/>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.



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Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	N	Y	N	Y	N

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

a. *Wildlife Restoration*

(1) Activities eligible for funding under the Wildlife Restoration program include:

- (a) Restoring and managing wildlife, including research, and obtaining data needed to administer wildlife resources, for the benefit of the public;
- (b) Acquiring real property for wildlife habitat or public access;
- (c) Restoring, rehabilitating, improving, or managing wildlife habitat; and
- (d) Supporting activities such as building structures, operation and maintenance, and coordination (50 CFR section 80.50(a)).

(2) Activities eligible for funding under the Wildlife Restoration–Basic Hunter Education and Safety subprogram include developing responsible hunters and public firearm and archery ranges (50 CFR section 80.50(b)).

(3) Activities eligible for funding under the Enhanced Hunter Education and Safety program include introduction and recruitment into hunting and shooting sports, interstate coordination, and enhanced construction and safety of firearm and archery ranges (50 CFR section 80.50(c)).

b. *Sport Fish Restoration*

- (1) Activities eligible for funding under the Sport Fish Restoration program include:
  - (a) Restoring and managing sport fish, including research, and obtaining data needed to administer wildlife resources, for the benefit of the public;
  - (b) Plans and activities for stocking and restocking;
  - (c) Acquiring real property for sport fish habitat or public access;
  - (d) Restoring, rehabilitating, improving, or managing sport fish habitat;
  - (e) Constructing, operating, and maintaining pumpout and dump stations; and
  - (f) Supporting activities such as building structures, operation and maintenance, and coordination (50 CFR section 80.51(a)).
- (2) Activities eligible for funding under the Sport Fish Restoration–Recreational Boating Access subprogram include acquiring land and building recreational boating access facilities and conducting surveys (50 CFR section 80.51(b)).
- (3) Activities eligible for funding under the Sport Fish Restoration–Aquatic Resources Education subprogram include enhancing public understanding of aquatic resources (50 CFR section 80.51(c)).
- (4) Activities eligible for funding under the Sport Fish Restoration–Outreach and Communication subprogram include improving communication with the recreational boating and fishing communities, increase participation, and promote responsibility (50 CFR section 80.51(d)).

2. *Activities Unallowed*

The following activities are unallowable except, when necessary, to carry out project purposes approved by the FWS regional director:

- a. Law enforcement activities (50 CFR section 80.54(a)).

- b. Public relations activities to promote the state fish and wildlife agency or any other state entity (50 CFR section 80.54(b)).
- c. Activities primarily for producing income (50 CFR section 80.54(c)).
- d. Activities that oppose regulated fishing, hunting, or trapping (50 CFR section 80.54(d)).

## **F. Equipment and Real Property Management**

Real property acquired or constructed with Wildlife Restoration program or Sport Fish Restoration program funds shall continue to serve the purpose for which it was acquired or constructed. Where grant funds are used for a capital improvement, a state fish and wildlife agency must have control adequate for the protection, maintenance, and use of the capital improvement for its authorized purpose during its useful life even if the agency did not acquire the land with grant funds. When property passes from management control of the state fish and wildlife agency or the state fish and wildlife agency allows use of real property that interferes with its authorized purpose, the control shall be fully restored to the state fish and wildlife agency or the real property shall be replaced using nonfederal funds. If the state fish and wildlife agency and the regional director jointly decide grant-funded real property is not needed for its original purpose, the real property must be used for another eligible purpose or the state fish and wildlife agency must dispose of the property (50 CFR Part 80, Subpart J).

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

- a. The federal share is at least 10 percent and up to 75 percent of allowable costs of the grant-funded project for the 50 states. The specific amount will be in the approved grant award. The 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 US Virgin Islands, and American Samoa may be from 75 to 100 percent of the allowable costs of a grant-funded project as decided by the Regional Director (50 CFR section 80.83).
- b. The state fish and wildlife agency must not draw down federal funds in a greater proportion to the use of match than total federal funds bear to total match unless:
  - (1) The drawdown is to pay for construction, including land acquisition;
  - (2) An in-kind contribution is not yet available for delivery to the grantee or subgrantee; or

- (3) The project is not at the point where it can accommodate an in-kind contribution.

The conditions above require the regional director's prior approval and the state must satisfy the match requirement before it submits the final Federal Financial Report (50 CFR section 80.96(a)).

## **2. Level of Effort**

Not Applicable

## **3. Earmarking**

- a. 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 3 percent of the annual apportionment to the state (50 CFR section 80.53).
- b. Each state's fish and wildlife agency may not spend more than 15 percent of the annual amount apportioned to the state from the Sport Fish Restoration and Boating Trust Fund for activities in both subprograms. The 15 percent maximum applies to both subprograms as if they were one. The Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the Territories of Guam, the US 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 80.62).
- c. A state fish and wildlife agency must allocate 15 percent of its annual allocation for the Recreational Boating Access subprogram. Allocations of more or less than 15 percent require the approval of the Regional Director (50 CFR section 80.61).

## **J. Program Income**

The state must treat income it earns after the grant period as license revenue or additional funding for grant purposes. The state must indicate how it will treat program income in the grant application or the default is to treat it as license revenue. States must treat income earned by a subgrantee after the grant period as license revenue, additional funding for grant purposes, or income subject to terms of a subgrantee agreement or contract. The state must indicate its choice in the project statement for the subgrant. If the state does not, the subgrantee does not have to account for any income it earns after the grant period unless required by an agreement or contract (50 CFR sections 80.125 and 80.126).

## DEPARTMENT OF THE INTERIOR

### ASSISTANCE LISTING 15.614 COASTAL WETLANDS PLANNING, PROTECTION AND RESTORATION PROGRAM (National Coastal Wetlands Conservation Grants)

#### I. PROGRAM OBJECTIVES

The objective of the National Coastal Wetlands Conservation Grants 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 Grants 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. 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 Grants program is authorized by Section 305, Title III, Pub. L. No. 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 the Coastal Wetlands Planning, Protection and Restoration program is found at <http://www.fws.gov/coastal/CoastalGrants/>.

#### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a

compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	N	Y	N	Y	N

**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 that 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, below, 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 US Virgin Islands—have been exempted from the matching share, as provided in Pub. L. No. 95-134, as amended by Pub. L. No. 95-348, Pub. L. No. 96-205, Pub. L. No. 98-213, and Pub. L. No. 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 nonfederal trustee are considered to be nonfederal, 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 nonfederal trustees under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Oil Pollution Act (OPA);
  - (2) The nonfederal trustee has joint and binding control over the funds;
  - (3) The co-trustees agree that monies from the fund should be available to the nonfederal trustee and can be used as a nonfederal match to support a project consistent with the settlement agreement, CERCLA, and OPA; and
  - (4) The monies have been transferred to the nonfederal 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)).



## DEPARTMENT OF THE INTERIOR

### ASSISTANCE LISTING 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 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 sub-awarded by states and territories in support of 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 USC 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 at <https://www.bia.gov/as-ia/revisions-pl-102-477-forms> and <https://www.bia.gov/bia/ois/dwd>. The FWS Manual is available at <https://fws.gov/program/wildlife-and-sport-fish-restoration>.

#### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a

direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	Y	N	Y	Y	N

**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 paragraphs 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 May 9, 2003, the following insular areas are exempt from the matching requirement up to \$200,000:

American Samoa, Guam, the Government of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the US Virgin Islands (48 USC 1469a).

**2. Level of Effort**

Not Applicable

**3. Earmarking**

Not Applicable

**L. Reporting**

**1. Financial Reporting**

a. *SF-270, Request for Advance or Reimbursement* – Applicable

b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs*– Not Applicable

c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## DEPARTMENT OF THE INTERIOR

### ASSISTANCE LISTING 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 US 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 at <http://www.fws.gov/grants/>.

#### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	N	N	Y	N	N

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

Allowable activities include acquisition, management, restoration (rehabilitating a degraded or nonfunctioning 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-270, Request for Advance or Reimbursement* – Not Applicable

b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## DEPARTMENT OF THE INTERIOR

### ASSISTANCE LISTING 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 US 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 at <http://www.fws.gov/grants/>.

#### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not

being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	N	N	N	Y	N	N

**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 United States or Canada is required to provide a nonfederal matching share in cash. A recipient carrying out grant activities in geographic areas outside of the United States or Canada, including Puerto Rico and the US Virgin Islands, is required to provide a nonfederal 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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## DEPARTMENT OF JUSTICE

### ASSISTANCE LISTING 16.034 CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING

#### I. PROGRAM OBJECTIVES

The Coronavirus Emergency Supplemental Funding (CESF) program provides funding to assist eligible states, units of local government, and federally recognized tribal governments in preventing, preparing for, and responding to the coronavirus. Allowable projects and purchases include, but are not limited to, overtime, equipment (including law enforcement and medical personal protective equipment), hiring, supplies (such as gloves, masks, sanitizer), training, travel expenses (particularly related to the distribution of resources to the most impacted areas), and addressing the medical needs of inmates in state, local, and tribal prisons, jails, and detention centers.

#### II. PROGRAM PROCEDURES

States, US territories, the District of Columbia, units of local government, and federally recognized tribal governments that were identified as eligible for funding under the fiscal year (FY) 2019 state and local Edward Byrne Memorial Justice Assistance Grant (JAG) program are eligible to apply under [Coronavirus Emergency Supplemental Funding Program Solicitation \(ojp.gov\)](https://ojp.gov).

**Note:** Only the state administering agency (SAA) that applied for FY 2019 JAG funding for a state/territory may apply for the state allocation of CESF funding.

In general, CESF allocations were calculated by proportionally increasing the allocations available under the FY 2019 JAG program to align with the CESF appropriation amount. The JAG-specific provision requiring “disparate jurisdictions” to choose a single fiscal agent to apply on behalf of each of the disparate jurisdictions does not apply to the CESF program. Instead, each “disparate” unit of local government under FY 2019 JAG (including those that were identified as “zero-county dispartes”) will be eligible for a direct award under CESF. In order to ensure that zero-county dispartes receive funding under CESF, the portion of funds for units of local government that were eligible to receive less than \$10,000 under FY 2019 JAG (an amount that is added to state awards under JAG) was divided equally among the zero-county dispartes.

#### Source of Governing Requirements

The CESF program is authorized by Division B of HR 748, Pub. L. No. 116-136 (Emergency Appropriations for Coronavirus Health Response and Agency Operations), 28 USC 530C.

#### Availability of Other Program Information

Program guidance including program statutes and other general information about the program is posted to the Bureau of Justice Assistance (BJA) web page (<https://www.bja.gov>). In addition, the [BJA FY 2020 Coronavirus Emergency Supplemental Funding Program Frequently Asked](#)

[Questions \(FAQs\) document](#) provides guidance on allowable costs and other topics. The DOJ Financial Guide, which contains information on allowable costs, methods of payment, audit requirements, accounting systems, and financial records, is available on the Office of Justice Programs (OJP) web site at <http://ojp.gov/financialguide/DOJ/index.htm>.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	N	N	Y	Y	Y	Y	N

#### A. Activities Allowed or Unallowed

##### 1. *Activities Allowed*

Funds awarded under the CESF program must be utilized to prevent, prepare for, or respond to the coronavirus. Allowable projects and purchases include, but are not limited to, overtime, equipment (including law enforcement and medical personal protective equipment), hiring, supplies (such as gloves, masks, and sanitizer), training, travel expenses (particularly related to the distribution of resources to the most impacted areas), and addressing the medical needs of inmates in state, local, and tribal prisons, jails, and detention centers.

See the CESF solicitation as well as the BJA [FAQs](#) for more detailed information about activities allowed.

## 2. *Activities Unallowed*

There are no specific prohibitions under the CESF program other than the unallowable costs that are identified in the DOJ Grants Financial Guide. However, individual items costing \$500,000 or more and Unmanned Aerial Systems (UAS), Unmanned Aircraft (UA), and/or Unmanned Aerial Vehicles (UAV) require prior approval. In addition, funds may not be used for direct administrative costs that exceed 10 percent of the total award amount and funds may not be used to supplant state or local funds but must be used to increase the amounts of such funds that would, in the absence of federal funds, be made available.

## **F. Equipment and Real Property Management**

Recipients must follow the Property Standards section of the [DOJ Grants Financial Guide](#), section 3.7.

## **J. Program Income**

Per the Eligible states (or SAAs) or units of local government may draw down funds either in advance or on a reimbursable basis. To draw down in advance, funds must be placed in an interest-bearing account, unless one of the exceptions BJA-2020-18553 4 in 2 CFR section 200.305(b)(8) apply. This interest-bearing account must allow for sufficient tracking and traceability of CESF program award funds (see, e.g., 2 CFR 200.302). It is not necessary that the interest-bearing account be a “trust fund.”

Special Condition #40 of each award states, “Establishment of interest-bearing account. If award funds are being drawn down in advance, the recipient (or a subrecipient, with respect to a subaward) is required to establish an interest-bearing account dedicated specifically to this award. Recipients (and subrecipients) must maintain advance payments of federal awards in interest-bearing accounts unless regulatory exclusions apply (2 CFR 200.305(b)(8)). The award funds, including any interest, may not be used to pay debts or expenses incurred by other activities beyond the scope of the Coronavirus Emergency Supplemental Funding (CESF) program. The recipient also agrees to obligate the award funds in the account (including any interest earned) during the period of performance for the award and expend within 90 days thereafter. Any unobligated or unexpended funds, including interest earned, must be returned to OJP at the time of closeout.”

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

a. Semi-annual Progress Reports – Semi-annual progress reports must be submitted through DOJ’s Justice Grants System (<https://justicegrants.usdoj.gov/>).

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**DEPARTMENT OF JUSTICE****ASSISTANCE LISTING 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, as well as other public, private, and nonprofit entities, with resources to address law enforcement needs with a focus on advancing public safety through the implementation of 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 transformation to build and strengthen community policing infrastructure.

**II. PROGRAM PROCEDURES****A. Overview**

COPS Office awards are made to law enforcement agencies, large and small, across the country as well as other public, private, and nonprofit entities. The overall intent of the grant programs is to help support and develop infrastructure and practices that will advance public safety through community policing.

COPS Office awards provide funds for personnel, technology, equipment, training and technical assistance, and innovative community policing strategies. The two main categories of awards are hiring and non-hiring.

**B. Subprograms/Program Elements****1. *Hiring Awards***

There are two types of hiring awards actively managed within the COPS Office:

COPS Hiring Program (CHP) awards, which provide funding directly to state, local, and tribal law enforcement agencies to hire new and/or rehire full-time career law enforcement officers to increase their community policing capacity and crime prevention efforts.

Tribal Resources Grant Program – Hiring (TRGP-Hiring) awards, which provide funds to tribal law enforcement agencies for newly hired or rehired full-time sworn career law enforcement officers and village public safety officers to improve crime-fighting capabilities in Indian country.

**2. *Non-Hiring Grants***

There are nine types of non-hiring awards actively managed within the COPS Office:

Anti-Heroin Task Force Program (AHTF), which provides funds to locate and investigate illicit activities through statewide collaboration related to the distribution of heroin, fentanyl, or carfentanil, or the unlawful distribution of prescription opioids.

COPS Anti-Gang Initiative (CAGI), which provides funds to law enforcement agencies with a multi-jurisdictional partnership comprising federal, state, and tribal, local law enforcement agencies to address gang activity, enforcement, prevention/education, and intervention.

COPS Anti-Methamphetamine Program (CAMP), which provides funds to locate and investigate illicit activities related to the manufacture and distribution of methamphetamine.

Tribal Resources Grant Program-Equipment/Training (TRGP-E/T), which provides funds to tribal law enforcement agencies for equipment, training, and officer hiring to improve crime-fighting capabilities in Indian country.

Community Policing Development (CPD) program awards are used to develop the capacity of law enforcement to implement community policing strategies by providing guidance on promising practices through the development and testing of innovative strategies; building knowledge about effective practices and outcomes; and supporting new, creative approaches to preventing crime and promoting safe communities.

Collaborative Reform Initiative for Technical Assistance (CRI-TA), which provides funding to advance the practice of community policing in law enforcement agencies by providing technical assistance to state, local, territorial, and tribal law enforcement agencies on a variety of topics that are tailored to meet their unique needs. This program provides practical “by the field, for the field” technical assistance from leading experts across a range of public safety, crime reduction, and community policing topics.

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 and implementing responses to problems of crime and disorder related to methamphetamine usage.

Preparing for Active Shooter Situations (PASS) training program, a competitive award program designed to increase law enforcement and public safety by providing funds to advance the practice of community policing in law enforcement agencies through nationally recognized, scenario-based training that prepares officers and other first responders to handle active shooter and other violent threats safely and effectively.

COPS Office STOP School Violence: School Violence Prevention Program (SVPP) provides funding directly to states, units of local government, Indian tribes, and public agencies to improve security at schools and on school grounds in the jurisdiction of the grantee through evidence-based school safety programs.

Law Enforcement Mental Health and Wellness Act (LEMHWA) helps law enforcement agencies establish or enhance mental health care services for their officers and deputies. The program initiates pilot programs that support peer mentoring, annual mental health checks, crisis hotlines, and the delivery of other critical mental health and wellness services. It also supports the development of resources for the mental health providers who deliver tailored, specific services to law enforcement based on the unique challenges they face.

### **Source of Governing Requirements**

All programs (except for one) are authorized under the Omnibus Crime Control and Safe Streets Act of 1968 as amended by the Violent Crime Control and Law Enforcement Act of 1994, Title I, Part Q, Pub. L. No. 103-322, 34 USC 10381 et seq. COPS Office School Violence Prevention Program (SVPP) is authorized under the Students, Teachers, and Officers Preventing (STOP) School Violence Act of 2018 (34 USC 10551 et seq.).

### **Availability of Other Program Information**

The DOJ-COPS home page, [COPS OFFICE \(usdoj.gov\)](https://www.usdoj.gov/cops), under the selection titled “Grants” provides information on regulations and other general information about each program.

Additional information about each program is found in the applicable Award Owner’s Manuals developed by the COPS Office. Grant recipients can access the Award Owner’s Manuals and Grant Monitoring Standards and Guidelines for Hiring and Redeployment on the COPS Office home under the Grants tab by clicking Program Documents and Compliance and Reporting.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.



A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	Y	N	N	Y	N	N

**A. Activities Allowed or Unallowed**

1. *Hiring*

Hiring grants (CHP 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 (34 USC 10381(b)(2));
- 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 deployment into community-oriented policing (34 USC 10381(b)(1) ); and
- c. For fiscal year (FY) 2012 CHP awards only, all newly hired officers must be post-September 11, 2001, military veterans (see page 12, Section 2, “Agency Eligibility Information” of the COPS FY 2012 Application Guide: COPS Hiring Program, which is available at <https://cops.usdoj.gov/programdocuments>).

Since FY 2015 CHP awards, the COPS Office has awarded additional consideration for CHP funding to applicants who commit to hiring or rehiring at least one military veteran (as defined in Appendix A).

2. *Non-Hiring Awards*

Non-hiring grants may include programs, projects, and other activities to obtain a wide variety of equipment, technology, civilian personnel, training, and technical, 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 Awards Owner’s Manual 34 USC 10381(b) and (d)).

**B. Allowable Costs/Cost Principles**

All costs are subject to the requirements in 2 CFR 200 Subpart E – Cost Principles, and approved costs are limited to those included in the financial clearance memo in the award package for each award.

The following apply to hiring grants only.

1. CHP and TRGP-hiring awards fund the approved entry-level salaries and fringe benefits of newly hired or rehired full-time officers, for either 36 or 60 months, depending on the program and the fiscal year. 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 in the award package that is provided to the grantee agency. Any additional costs for higher than entry-level salaries and fringe benefits will be the responsibility of the recipient agency (34 USC 10381(b) and applicable Application Guide).
2. For FY 2012 to FY 2020, CHP recipients, costs are limited to the approved entry-level salaries and fringe benefits of each newly hired and/or rehired full-time officer, with a maximum federal share of \$125,000 per officer position (unless a local match waiver is approved by the COPS Office), over the three-year (36 month) grant period.

**G. Matching, Level of Effort, Earmarking****1. Matching**

- a. There is no match requirement for CHP (FY 2010 and FY 2011 only), AHTF, CAGI, CAMP, CSPP, Meth, SSI, CPD, CRI-TA, PASS, LEMHWA, TRGP-Hiring, TRGP-E/T, and Tribal Meth.
- b. SVPP recipients must contribute a minimum of 25 percent of the allowable project costs (34 USC 10551(f)(1)). The COPS Office director may waive/alter the 25 percent required match in the case of a recipient with a demonstrated financial need (34 USC 10551(f)(3)).
- c. FY 2012 to FY 2020, CHP recipients must contribute a minimum of 25 percent of the allowable project costs (applicable Application Guide), unless a local match waiver is approved by the COPS Office (34 USC 10381(g)).

**2. Level of Effort**

Not Applicable

**3. Earmarking**

Not Applicable

**L. Reporting****1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

*Department Quarterly Progress Report (OMB No. 1103-0102)* – This report is required semi-annually during the life of the award for all COPS grants.

*Key Line Items* – The following questions contain critical information:

1. *Question 1* – How many active COPS grant position(s) were filled/hired? Full-time and part-time.
2. *Question 2* – How many of the unfilled COPS grant position(s) do you intend to fill? Full-time and part-time.
3. *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. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**IV. OTHER INFORMATION**

A limited number of recipients of FY 2011 through FY 2020 funds were selected to address particular Department of Justice priority crime problems, based specifically on information in their grant application's community policing plan. Those recipients will have additional special condition(s) in their grant agreement that the auditor will need to cover during the audit.

Auditors should be alert for additional requirements that may be included in the award package relevant to the requirements above noted as subject to audit, such as a restriction on the use of award funds to supplant existing personnel positions or the requirement to retain grant-funded positions for one year after the award period expires.

## DEPARTMENT OF JUSTICE

### ASSISTANCE LISTING 16.738 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM

#### I. PROGRAM OBJECTIVES

The Edward Byrne Memorial Justice Assistance Grant (JAG) program, authorized under Title I of Pub. L. No. 90-351 (generally codified at 34 USC 10151–10726), including Subpart 1 of Part E (codified at 34 USC 10151–10158), is the leading source of federal justice funding to state and local jurisdictions. The JAG program provides states, tribes, and local governments with critical funding necessary to support personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for **criminal justice** program areas, including law enforcement, prosecution, indigent defense, courts, crime prevention and education, corrections and community corrections, drug treatment and enforcement, planning, evaluation, technology improvement, and crime victim and witness initiatives and mental health programs and related law enforcement and corrections programs, including behavioral programs and crisis intervention teams. It should be noted that the JAG statute defines “criminal justice” as “activities pertaining to crime prevention, control, or reduction, or the enforcement of the criminal law, including, but not limited to, police efforts to prevent, control, or reduce crime or to apprehend criminals, including juveniles, activities of courts having criminal jurisdiction, and related agencies (including but not limited to prosecutorial and defender services, juvenile delinquency agencies and pretrial service or release agencies), activities of corrections, probation, or parole authorities and related agencies assisting in the rehabilitation, supervision, and care of criminal offenders, and programs relating to the prevention, control, or reduction of narcotic addiction and juvenile delinquency.”

#### 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 units of local government which, pursuant to statutory definition, includes tribes that perform law enforcement functions.

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. States also have a variable percentage of the allocation that is required to be “passed-through” to units of local government. This amount, calculated by the Bureau of Justice Statistics (BJS), Department of Justice (DOJ), 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 an award of at least \$10,000 may apply directly to the Bureau of Justice Assistance (BJA) for local JAG funds. The BJS Technical Report, which contains more information on the award calculation process, is available on BJA’s JAG web page at <https://www.bja.gov/Jag/pdfs/JAG-Technical-Report.pdf>.

All JAG program guidance states and units of local governments, including pass-through requirements, restrictions on funding usage, required certifications, and application checklists,

can be found within the state and local program solicitations (application guidance), which are updated annually and posted to BJA’s JAG web page at <https://www.bja.gov/Jag/>. The DOJ Financial Guide, which contains information on allowable costs, methods of payment, procurement, audit requirements, accounting systems, and financial records, is available on the Office of Justice programs (OJP) web site at <http://ojp.gov/financialguide/DOJ/index.htm>.

### 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 (34 USC 10151–10158).

### Availability of Other Program Information

The JAG web page at <https://www.bja.gov/Jag/> 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 this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	N	N	Y	Y	Y	Y	N

## A. Activities Allowed or Unallowed

### 1. *Activities Allowed*

Use of funds is restricted to the following broad program areas: law enforcement programs, prosecution and court programs, prevention and education programs, corrections and community corrections programs, drug treatment and enforcement programs, planning, evaluation, and technology improvement programs, crime victim and witness programs (other than compensation), and mental health programs and related law enforcement and corrections programs, including behavioral programs and crisis intervention teams.

See solicitations for specific program areas, which are posted to the JAG web page at <https://www.bja.gov/Jag>.

### 2. *Activities Unallowed*

**Prohibited uses of funds** – JAG funds may not be used (whether directly or indirectly) for any purpose prohibited by federal statute or regulation, including those purposes specifically prohibited by the JAG program statute as set out at 34 USC 10152. For full details on JAG funding restrictions and prohibitions, please refer to the current fiscal year JAG solicitations (application guidance) posted on the JAG web page found here: <https://www.bja.gov/Jag/>.

## L. Reporting

### 1. Financial Reporting

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

### 2. Performance Reporting

Fiscal Year (FY) 2019 JAG awards and prior:

- a. Quarterly Performance Metrics – Quarterly performance metrics reports must be submitted through BJA’s Performance Measurement Tool (PMT) website (<https://bjapmt.ojp.gov/>) until JustGrants is configured to accept the performance data directly. The accountability measures are available at [JAG Program Accountability Measures \(ojp.gov\)](https://www.bja.gov/JAG-Program-Accountability-Measures). Quarterly performance metrics will no longer be required once JustGrants is configured to accept performance data directly.

- b. Semi-annual Progress Reports – Semi-annual progress reports must be submitted through JustGrants and must contain the quarterly PMT reports for the applicable semi-annual reporting period until JustGrants is configured to accept performance data directly.

FY 2020 JAG awards and forward:

Eligible Allocation Amounts of Less than \$25,000

- a. Quarterly Performance Metrics – Quarterly performance metrics reports must be submitted through BJA’s PMT website (<https://bjapmt.ojp.gov/>) until JustGrants is configured to accept the performance data directly. The accountability measures are available at [JAG Program Accountability Measures \(ojp.gov\)](#). Quarterly performance metrics will no longer be required once JustGrants is configured to accept performance data directly.
- b. Annual Progress Reports – Annual progress reports must be submitted through JustGrants and must contain the quarterly PMT reports for the applicable Annual reporting period until JustGrants is configured to accept performance data directly.

Eligible Allocation Amounts \$25,000 or More

- a. Quarterly Performance Metrics – Quarterly performance metrics reports must be submitted through BJA’s PMT website (<https://bjapmt.ojp.gov/>) until JustGrants is configured to accept the performance data directly. The accountability measures are available at [JAG Program Accountability Measures \(ojp.gov\)](#). Quarterly performance metrics will no longer be required once JustGrants is configured to accept performance data directly.
- b. Semi-annual Progress Reports – Semi-annual progress reports must be submitted through JustGrants and must contain the quarterly PMT reports for the applicable semi-annual reporting period until JustGrants is configured to accept performance data directly.

### **3. Special Reporting**

Not Applicable

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## DEPARTMENT OF JUSTICE

### ASSISTANCE LISTING 16.922 EQUITABLE SHARING PROGRAM

#### I. PROGRAM OBJECTIVES

State, local, and tribal law enforcement agencies can request federally forfeited funds through the Equitable Sharing Program (Program) based on their qualitative and quantitative contributions to a federal forfeiture. The Program is managed by the Money Laundering and Asset Recovery Section (MLARS), a section within the Department of Justice's Criminal Division. Equitably shared funds must be used by law enforcement agencies for law enforcement purposes only. The Department of the Treasury also manages its own Program under Assistance Listing 21.016. Funds from each Program must be maintained and managed separately.

The Program is authorized by the following statutes: 21 USC section 881(e)(1)(A); 18 USC section 981(e)(2); 19 USC section 1616a; 31 USC sections 9705(b)(4)(A) and (b)(4)(B); and 21 USC section 881(e)(3).

Program policies and procedures are set forth in the *Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies (Guide)* (July 2018) as well as *Equitable Sharing Wires (Wires)*. *Wires* may be issued to address policy changes or Program updates without updating the *Guide*. These updates become policy and applicable Program requirements should be tested as part of the audit process. The *Guide* and *Wires* are available on the Department of Justice public website at <https://www.justice.gov/criminal-mlars/equitable-sharing-program>.

#### II. PROGRAM PROCEDURES

Equitable sharing funds are considered federal financial assistance as defined 2 Code of Federal Regulations (CFR) Section 200.40. Equitable sharing payments are classified as "Direct Payments for Specified Use" in the *Catalog of Federal Domestic Assistance* (2019).

As such, the funds are only subject to certain sections of the CFR, including Title 2, Subtitle A, Chapter II, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The applicable sections to the Program include Subpart A – Acronyms and Definitions; Subpart B – General Provisions (excluding sections 200.111–200.113); Subpart D – Post Federal Award Requirements (sections 200.303 – Internal Controls and 200.331–333 – Subrecipient Monitoring); and Subpart F – Audit Requirements.

#### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program



supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	Y	N	Y	Y	N

**A. Activities Allowed or Unallowed**

Although 2 CFR sections 200.400–200.475 are not applicable, the *Guide*, Section V, details allowable and unallowable activities. Specifically, sharing funds may be used for permissible law enforcement purposes that supplement, and not supplant, law enforcement resources.

**B. Allowable Costs/Cost Principles**

Although 2 CFR sections 200.400–200.475 are not applicable, the *Guide*, sections V.B.1, 2, and 3, detail allowable and unallowable uses of federal equitable sharing funds. Note that there may be specific exceptions for use of shared funds, so the *Guide* should be consulted for details. The *Guide’s* policies on the use and administration of equitable sharing funds may also be updated at any time through the issuance of an *Equitable Sharing Wire*.

**F. Equipment and Real Property Management**

Although 2 CFR sections 200.311 and 313 are not applicable, the *Guide*, Section VI, details the requirements for tangible property. Property purchased with equitable sharing funds, or obtained for official use, is subject to inventory control, log maintenance, and disposal requirements.

**G. Matching, Level of Effort, Earmarking**

**1. Matching**

The 2 CFR section 200.306 is not applicable.

**2. Level of Effort**

The *Guide*, Section V.A.1, states that agencies may supplement, not supplant, their appropriated funds.

**3. Earmarking**

The *Guide*, Section V.A.2, states that agencies may earmark funds already received and on hand but may not budget or commit funds not yet awarded or received.

**I. Procurement and Suspension and Debarment**

- a. Procurement – Although 2 CFR section 200.317-200.327 are not applicable, the *Guide*, Section VI.A.3, requires agencies to follow their jurisdiction’s procurement policies.
- b. Suspension and Debarment – 2 CFR section 180.200-225 is applicable.

**L. Reporting****1. Financial Reporting**

Not Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Although 2 CFR sections 200.328–200.330 are not applicable, the *Guide*, Section VII, details the annual reporting requirements for equitable sharing funds through the submission of the annual Equitable Sharing Agreement and Certification (ESAC) form. Agencies report on the ESAC the amount of funds received and how they were expended in general categories such as equipment and training.

*Key Section Items* – The following sections contain critical information for testing.

1. *Summary of Equitable Sharing Activity*
2. *Summary of Shared Funds Spent*

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**M. Subrecipient Monitoring**

The 2 CFR sections 200.331–200.333 are applicable. The *Guide*, Section V.B.1.k, allows agencies to transfer equitable sharing funds to qualifying community-based organizations. The *Guide*, Section V.B.2.h, prohibits the transfer of equitable sharing funds to other Program participants unless a waiver is granted from MLARS. Subrecipient monitoring is applicable to any transfer of Program funds.

**DEPARTMENT OF LABOR****ASSISTANCE LISTING 17.207 EMPLOYMENT SERVICE/WAGNER-PEYSER FUNDED ACTIVITIES****ASSISTANCE LISTING 17.801 JOBS FOR VETERANS STATE GRANT****I. PROGRAM OBJECTIVES***Wagner-Peyser Act Funded Workforce Employment Services – General*

The Wagner-Peyser Act-funded Employment Service (ES) is an integrated component of the nation's public workforce system. The public workforce system provides services to job seekers and employers through nearly 2,400 American Job Centers (AJC) (formerly known as One-Stop Career Centers) nationwide. They are coordinated and co-located with other adult programs under the Workforce Innovation and Opportunity Act (WIOA) to ensure that job seekers, workers, and employers have convenient and comprehensive access to a full continuum of workforce-related services.

The main purpose of the ES program is to improve the functioning of the nation's labor markets by bringing together individuals who are seeking employment and employers who are seeking workers. Under the Wagner-Peyser Act, unemployed individuals and other job seekers obtain career services, including job search, assessment, and career guidance services, to support them in obtaining and retaining employment. In addition, Wagner-Peyser Act-funded activities assist employers with building skilled, competitive workforces through recruitment assistance, employment referrals, and other workforce solutions. The Wagner-Peyser Act also funds labor exchange services through an array of electronic tools, to both job seekers and employers, allowing 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), the primary objective of the DVOP specialist is to provide career services to meet the employment needs of eligible veterans. In accordance with the statute, agency directives specify the following order of priority in the provision of services: (1) special disabled veterans; (2) other disabled veterans; and (3) other eligible veterans with significant barriers to employment (SBE), as defined in Veterans' Program Letter (VPL) 03-14, including changes 1 and 2, VPL 03-19, and Training and Employment Guidance Letter (TEGL) 19-13, including changes 1 and 2, and TEGL 20-13, including changes 1 and 2.

*Local Veterans' Employment Representative (LVER) Program*

In accordance with 38 USC 4104(b), as amended by the Jobs for Veterans Act (Pub. L. No. 107-288, November 7, 2002), LVER staff 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 system, generally, the AJC Career

Center System established by the WIOA of 2014 (Pub. L. No. 113-128). Coordination and cooperation is maintained with DVOP specialists, staff funded through the WIOA, the Wagner-Peyser Act, and other partners collocated in the AJCs to ensure priority of service for veterans and compliance with federal regulations, performance standards, and grant agreement provisions to provide veterans with the maximum employment and training opportunities.

## **II. PROGRAM PROCEDURES**

### **A. Overview**

The ES is a core program identified in WIOA and must be included as part of each state's Unified or Combined State Plan (20 CFR section 652.211).

Federal funds are granted to the states for the delivery of employment and workforce information services through a national network of AJC Career Centers. The governor of the state submits to the secretary of labor a Unified or Combined State Plan, which outlines a four-year strategy. The governor retains responsibility for all funds authorized under the Wagner-Peyser Act, specifically those funds authorized under Section 7(a) for providing the services and activities delivered through the one-stop delivery system. The governor has discretion to choose various approaches to planning for the utilization of funds reserved by Section 7(b) of the Wagner-Peyser Act.

### **B. Subprograms/Program Elements**

#### *Jobs for Veterans State Grants*

Non-competitively awarded grant funds are provided to states in amounts determined by formula. Jobs for Veterans State Grant (JVSG) funds are provided to states for employing DVOP specialists and LVER staff and deploying them, as practicable, among AJCs. In addition, combined DVOP/LVER staff may be requested to cover underserved areas, and other suitable locations. JVSG-funded staff carry out individualized career 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 in need of career services, receive maximum employment and training opportunities. DVOP specialists and LVER staff receive training through the National Veterans' Training Institute (NVTI) authorized under 38 USC 4109, in accordance with 38 USC 4102A(c)(8)(A).

JVSG plans are approved on a multi-year basis through the Veterans' Employment and Training Service (VETS) or may be incorporated in states' combined four-year WIOA State Plans. Coordination and cooperation are maintained between DVOP specialists and LVER staff and the staff who are funded through other WIOA/One Stop partner programs. Outreach and assistance are provided by DVOP specialists to individuals identified for participation in the Homeless Veterans' Reintegration Project, 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.

**Source of Governing Requirements**

These programs are authorized by the Wagner-Peyser Act, as amended by the WIOA of 2014 (the Act) (Pub. L. No. 113-128) (29 USC 49 et seq.), and the Jobs for Veterans Act (Pub. L. nos. 107-288 and 109-461), as amended by the VOW to Hire Heroes Act (Pub. L. No. 112-56); and 38 USC chapters 41 and 42 (employment and training programs for veterans). Implementing regulations are found at 20 CFR parts 652, 1001, and 1010.

**Availability of Other Program Information**

Other program information is available at <http://wdr.doleta.gov/directives/> and <http://www.dol.gov/vets/vpls/vpldirectory.html>.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

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Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	N	N	Y	N	Y	N	N	N	Y	N	N

**A. Activities Allowed or Unallowed**

1. *Labor Exchange*

Funds allotted to each state may be utilized by the State Workforce Agency (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. Career services are also made available within the one-stop system (20 CFR section 678.430).

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 and 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) Evaluating 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 that are experiencing limited demand due to changes in technology, 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; 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 nonprofit organizations; and
  - c. 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; program evaluations; 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))).
  - d. In coordination with the state agencies, plan activities that will allow staff to enhance their professional development and career advancement opportunities (Title III, WIOA section 303 (b)(2)).
4. *Section 7(d)*

In addition to the activities described under paragraphs two and three, above, Section 7(d) of the Act authorizes SWAs to perform other activities as specified in cost-reimbursement agreements with the secretary of labor or with any federal, state, or local public agency, or WIOA administrative entity, or private nonprofit 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 an AJC 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 agency directives (based on Pub. L. No. 107-288). These services include:

- a. Providing individualized career services to meet the employment needs of eligible veterans with significant barriers to employment (SBE) (see III.E.1, "Eligibility - Eligibility for Individuals," regarding SBE).



- b. Ensuring that maximum emphasis in meeting the employment needs of veterans is placed upon assisting economically and educationally disadvantaged veterans.
- c. Providing career services using a case management approach.
- d. Maintaining coordination and cooperation with Local Veterans' Employment Representative and other agency partners collocated in the AICs.
- e. Conduct outreach and assistance to individuals identified for participation in Homeless Veterans' Reintegration Program, 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.
- d. Conduct or facilitate job search workshops for job-seeking veterans.

8. *Consolidated DVOP/LVER*

Staff provide services to eligible veterans and eligible persons and businesses, primarily in underserved areas of each state in which they are approved to operate in accordance with 38 USC 4102A(h), when requested by a state and approved by

VETS. Services are provided as a DVOP specialist, described in item 6 above, or as a LVER staff member, described in item 7 above, as appropriate. More information regarding the criteria for consolidated DVOP/LVER positions can be found in VPL 01-20. It is important to point out that DVOP/LVER staff are prohibited from serving non-veterans and that the secretary must conduct regular audits to ensure compliance with the limitations on DVOP/LVER duties. Limitations on DVOP/LVER duties and/or compliance audit requirements are cited in VPL 04-18, TEGL 19-13, and Sec. 241 of VOW to Hire Heroes Act of 2011.

## **E. Eligibility**

### **1. Eligibility for Individuals**

- a. The SBE category, defined in VPL 03-14 (including changes 1 and 2), and VPL 03-19, implements the priority and maximum emphasis requirements of 38 USC 4103A(a). Special service-connected disabled veterans and service-connected disabled veterans are included in the group of veterans who are given priority because they have an SBE. In addition, the SBE categories give priority to the other categories of veterans and eligible spouses who are educationally or economically disadvantaged, such as certain groups of veterans and spouses who have been removed from the workforce for significant periods of time.
- b. An eligible veteran or eligible spouse is determined to have a SBE if he or she attests to meeting at least one of the following criteria:
  - (1) A special disabled or disabled veteran, defined in 38 USC 4211(1) and (3), as:
    - (a) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the secretary of Veterans Affairs for a disability (i) rated at 30 percent or more, or (ii) rated at 10 or 20 percent in the case of a veteran who has been determined to have a serious employment handicap; or
    - (b) A person who was discharged or released from active duty because of a service-connected disability;
  - (2) A disabled veteran is defined in 38 USC 4211(3) as:
    - (a) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or

- (b) A person who was discharged or released from active duty because of a service-connected disability;
- (3) Homeless, as defined in Sections 103(a) and (b) of the McKinney Vento Homeless Assistance Act (42 USC 11302(a) and (b));
- (4) A recently separated service member, as defined in 38 USC 4211(6), who at any point in the previous 12 months has been unemployed for 27 weeks;
- (5) An offender, as defined by WIOA Section 3(38), who has been released from incarceration;
- (6) Lack a high school diploma or an equivalent certificate; or
- (7) Low-income (as defined by WIOA in Section 3(36)).
- (8) Veterans aged 18–24 – Veterans aged 18–24 possess limited civilian work history, which can make transitioning to the civilian labor force more difficult. Veterans between the ages of 18 and 24 may need and benefit from services provided by a DVOP specialist.
- (9) Vietnam-era veterans – Pursuant to 38 USC 4211, the term “veteran of the Vietnam era” is an eligible veteran any part of whose active military, naval, or air service was during the Vietnam era. The Bureau of Labor Statistics and the Department of Veterans Affairs (VA) data indicate that there are still a sizeable number of Vietnam-era veterans in the workforce, and many face difficulty in finding and maintaining employment. In 2017, there were 1,689,000 Vietnam-era veterans in the workforce, with 64,000 unemployed and actively seeking employment. (**Note:** The Veterans’ Benefits Improvement Act with amendments defines “Vietnam-era” to mean: (a) the period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period; (b) the period beginning on August 5, 1964, and ending on May 7, 1975, in all other cases.)

## **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**

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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable (Assistance Listing numbers 17.801 and 17.804)
- d. *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, *Employment Service and Unemployment Insurance Programs*. Reports are due 45 days after the end of the reporting quarter. Financial data is required to be reported cumulatively from grant inception through the end of each reporting period. Additional information can be accessed at <http://www.doleta.gov/grants/> and scroll down to the section on Financial Reporting or go directly to the 9130 webpage here: <https://www.dol.gov/agencies/eta/grants/management/reporting>.
- e. *VETS-402 (A/B), Expenditure Detail Report* – This expenditure and staff utilization report separately identifies Jobs for Veterans State Grant-expenditures each quarter and year-to-date as a supplement to the DVOP and LVER SF 425, *Federal Financial Reports*.

## 2. Performance Reporting

WIOA Participant Individual Record Layout (PIRL) ETA-9170 (OMB No. 1205-0526) is used to report services, activities, and outcomes of service for all job seekers and veterans. This report is submitted quarterly.

The appropriate statewide performance report is WIOA PIRL ETA-9169.

The Wagner-Peyser Act funded Employment Service is responsible for reporting four of the six WIOA primary indicators of performance, which include:

- Employed 2nd Quarter after Exit
- Employed 4th Quarter after Exit
- Median Earnings
- Effectiveness in Serving Employers (**Note:** this metric is shared across the six WIOA core programs)

For additional information on WIOA performance reporting, including results, requirements, and information about the Workforce Integrated Performance System (WIPS) you may visit <https://www.dol.gov/agencies/eta/performance/>.

ETA 9173-WIOA Quarterly Report. This report is standard for all programs sharing the Workforce Integrated Performance System, utilizing the Participant Individual Record Layout. States submit individual record data files into this system where the results for this report are automatically tabulated. This is approved via OMB Control Number 1205-0521. The report template can be found here: [https://doleta.gov/performance/pfdocs/ETA\\_9173\\_Program\\_Performance\\_Report.xlsx](https://doleta.gov/performance/pfdocs/ETA_9173_Program_Performance_Report.xlsx).

## 3. Special Reporting

Not Applicable

## 4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

## DEPARTMENT OF LABOR

### ASSISTANCE LISTING 17.225 UNEMPLOYMENT INSURANCE (UI)

#### I. PROGRAM OBJECTIVES

The UI program, created by the Social Security Act (SSA), provides benefits, Unemployment Compensation (UC), 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 and to ex-members of the Armed Forces in 1958. 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 Benefits (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, UC for Federal Employees (UCFE), or UC for Ex-Service Members (UCX).

#### II. PROGRAM PROCEDURES

##### A. Overview

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 and that state law and operations substantially comply with federal law.

Unless otherwise noted, responsibilities of the US Department of Labor (DOL) include: (1) allocating available administrative funds among states; (2) administering the Unemployment Trust Fund (UTF) through the US 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.

Benefits payable under several additional programs also are administered by the SWAs, as agents for the DOL; however, they are distinct programs with separate compliance requirements—the Trade Adjustment Assistance/Alternative Trade Adjustment Assistance/Reemployment Trade Adjustment Assistance (TAA/ATAA/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 (Assistance Listings 17.245 and 97.034, respectively).

For example, SWAs provide weekly Trade Readjustment Allowances (TRA) /ATAA/RTAA payments for eligible program participants consistent with the eligibility requirements of Assistance Listing 17.245.

Under the DUA program, the SWA is accountable to DOL and, through DOL, to the Federal Emergency Management Agency (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 and quarterly reports.

In 2020, in response to the Coronavirus Disease 2019 (COVID-19), new UC programs were created via legislation. Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (Title II, Subtitle A of Pub. L. No. 116-136), Pandemic Unemployment Assistance (PUA), Federal Pandemic Unemployment Compensation (FPUC); and Pandemic Emergency Unemployment Compensation (PEUC) programs were created. The Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act) (Division N, Title II, Subtitle A of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260) created the Mixed Earners Unemployment Compensation (MEUC) program and provided for additional changes to the CARES Act programs. Additionally, the American Rescue Plan Act of 2021 (ARPA) (Pub. L. No. 117-2), further extended and modified the programs provided under the CARES Act and Continued Assistance Act.

For each program administered under the UI program umbrella, (UC, UCFE, UCX, TRA/ATAA/RTAA, EB, DUA, FPUC, PUA, PEUC, and MEUC) states must ensure full payment of applicable benefits “when due” (and states must deny payments when not due).

**Note:** Informal references are frequently made to eligibility for “weeks” of UC. The auditor is cautioned that, with the exception of PUA, eligibility is generally for a maximum dollar amount of UC, which is often inaccurately referred to as receipt of UC for a given number of weeks. PUA is limited to a specific number of weeks, as discussed further below.

## **B. Subprograms/Program Elements**

We note that federal legislation created four new temporary extension programs in response to the spread of COVID-19, as described below. Because these are temporary programs and subject to changes from subsequent legislation, we provide a high-level summary in this section and refer to Departmental guidance for additional details on the latest iteration. Auditors may refer to Attachment I of UIPL No. 14-21 for the latest summary of coordination across UI programs. Auditors may refer to Attachment II of UIPL No. 14-21 for the latest table describing effective start and end dates for each of the programs.

These temporary programs—PUA, PEUC, FPUC, and MEUC—expired on September 6, 2021. States must process and pay benefits to eligible individuals under the PUA, PEUC, FPUC, and MEUC programs for all weeks of unemployment ending on or before the date of termination or expiration (whichever comes first). The state must also comply with all responsibilities with respect to claims filed under these programs for those weeks, including, without limitation, the requirements under the Agreement and in guidance. Accordingly, the Agreement remains in effect with respect to the PUA, PEUC, FPUC, and MEUC programs for weeks of unemployment ending on or before the date of termination or expiration (whichever comes first) until all issues relating to those weeks are resolved. See section 4.a. of UIPL No. 14-21, Change 1.

### *1. Regular UI Program*

The regular UI program provides UI 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 UI 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 two states, Arkansas and New York, 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 UI laws, the total (maximum) UC a claimant is entitled to varies within certain limits according to the worker’s wages in the base period (see III.E, “Eligibility – Eligibility for Individuals”). 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 if provided under state UI law, which may be paid for each dependent up to a maximum number of dependents.

### *2. Extended Benefits (EB) Program*

When certain measures of unemployment exceed thresholds established in law, the EB program 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 benefits (20 CFR section 615.6). Eligibility for EB and the period for which the claimant is eligible is determined by the state in which the original claim was established (EUCA Section 202(a)(2), 20 CFR section 615.2(2)). When all measures of unemployment fall below the established thresholds, the EB program will "trigger off" the period of EB, ending benefit payments. An alternate trigger is available in some states. In addition to a mandatory trigger mechanism required in all states, federal law provides for optional triggers which some states have adopted. For information on the triggers, see Section 203, EUCA, 20 CFR sections 615.11 through 615.13.

Section 266 of the Continued Assistance Act provides states with the option to disregard the 13-week mandatory "off" period described in Section 203(b)(1)(B), EUCA, for weeks between November 1, 2020, and December 31, 2021, if permitted under state law.

Additionally, Section 206(c) of the Continued Assistance Act provides that, if permitted under state law, an individual may be eligible for EB after exhausting PEUC as long as the state is in an EB period after the date the individual exhausts PEUC, even if the individual's benefit year has expired.

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) thirteen times the weekly amount of regular compensation; or (3) thirty-nine 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 measure reaches a benchmark rate established in EUCA. While EB are payable under the terms and conditions of state law, the Federal Unemployment Tax Act (FUTA) requires that state UC law conform to certain provisions of EUCA (26 USC 3304(a)(11)). Pub. L. No. 112-96 amended the law to allow states to offer self-employment assistance (SEA) to eligible individuals in lieu of EB if state law is amended to provide it.

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.

The Families First Coronavirus Response Act, Pub. L. No. 116-127, specifically Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), made emergency supplemental appropriations in response to the economic impacts of COVID-19. Section 4105 of EUISAA provides full federal funding, under certain circumstances, of: 1) sharable regular compensation and sharable extended compensation; and 2) temporary federal matching for the first week of EB for states with no waiting week. Under EUISAA, these provisions were set to expire on December 31, 2020 (Section 6 of UIPL No. 13-20). The Continued Assistance Act extends the availability of these reimbursements as described above to March 14, 2021 (Section 4.a.iii. of UIPL No. 09-21). ARPA further extends the availability of these reimbursements to weeks beginning before September 6, 2021 (Section 4.a.ii. of UIPL No. 14-21).

On March 27, 2020, the president signed the CARES Act (Pub. L. No. 113-136), which includes the Relief for Workers Affected by Coronavirus Act set out in Title II, Subtitle A. Section 2107 of the CARES Act created the Pandemic Emergency Unemployment Compensation (PEUC) program, which provides additional weeks of benefits to individuals who exhaust regular UC—while an individual generally must exhaust PEUC before becoming eligible for EB, many individuals were receiving EB at the time that additional weeks of PEUC were authorized under the Continued Assistance Act and again under ARPA. Individuals who were receiving EB at the time these additional weeks were made available must exhaust EB before resuming collection of the PEUC claim (Section 4.f. of UIPL No. 17-20, Change 2 and Section 4.f. of UIPL No. 17-20, Change 3).

Additionally, the Continued Assistance Act provides optional, time-limited, and temporary waiver authority regarding the 13-week “off” period in Section 203(b)(1)(B) of EUCA, if permitted by state law (Section 4.c. of UIPL No. 24-20, Change 1).

On March 11, 2021, the president signed ARPA into law. This Act amends certain provisions of the Emergency Unemployment Insurance Stabilization and Access Act (EUISAA), set out in Division D of the Families First Coronavirus Response Act (Pub. L. No. 116-127) and the CARES Act as amended by the Protecting Nonprofits from Catastrophic Cash Flow Strain Act of 2020 (Protecting Nonprofits Act) (Pub. L. No. 116-151) and the Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act) (Pub. L. No. 116-260).

ARPA provides temporary federal matching for the first week of EB for states with no waiting week is extended to weeks of unemployment beginning before September 6, 2021. In states where the week of unemployment ends on a Saturday, the last week of unemployment for which this funding is available is the

week ending on September 11, 2021. In states where the week of unemployment ends on a Sunday, the last week of unemployment for which this funding is available is the week ending on September 5, 2021.

The auditor should also refer to UIPL 28-20 for more specific guidance to code payment to the correct source and ensure overpayments are returned to the proper source.

3. *UCFE and UCX Programs*

For UCFE, the qualifying requirements, determination of the 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).

4. *TRA/RTAA Benefit Payments/Wage Subsidies*

Effective July 1, 2021, the TAA program reverted to a modified version of the 2002 program known as Reversion 2021. Individuals receive benefits and services based on the version of the program under which their petition was certified. For fiscal year (FY) 2020, more than 96 percent of program participants were eligible under the 2015 version. DOL’s Office of Trade Adjustment Assistance administers the concurrent programs and oversees TAA program operations in the states in cooperation with the Regional Offices of ETA.

Trade Readjustment Allowances (TRA) are available as weekly income support to eligible workers who have exhausted UI benefits. The federal regulations for the Trade Adjustment Assistance (TAA) program were published in August of 2020 and are found at 20 CFR Part 618. There are various TEGs and UIPLs that also apply to TRA. The most recent version of the TAA Program operates under the amendments enacted by the TAA Reauthorization Act of 2015 (2015 program). The 2015 program includes up to 130 weeks of income support (including regular UI). Reversion 2021 provides the same number of weeks of income support, but with more limited flexibility around other TRA-related issues. Guidance on Reversion 2021 is contained in TEG 24-20 and TEN 01-21.

In addition to TRA, the 2015 program includes the Reemployment Trade Adjustment Assistance (RTAA) benefit, originally established under the Trade

and Globalization Adjustment Assistance Act of 2009 (TGAAA). RTAA is a wage subsidy available to certain eligible workers who are 50 years of age and older and elect to receive this benefit upon obtaining qualifying reemployment. The maximum benefit is \$10,000. Under Reversion 2021, RTAA reverts to the rules for ATAA which limit receipt of other TAA Program benefits.

5. *DUA Benefit Payments*

DUA is authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). DOL oversees the DUA program and coordinates with FEMA, which provides the funds for payment of DUA and for state administration. State Workforce Agencies administer the DUA program on behalf of the federal government.

Based on a request by the governor of a state or the chief executive of a federally recognized Indian tribal government, 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).

6. *PUA Benefit Payments*

The PUA program was created under the CARES Act to provide benefits to covered individuals. A “covered individual” is someone who meets each of the following three conditions:

- a. The individual is not eligible for regular UC, EB, or PEUC. This also includes those who have exhausted all rights to such benefits, self-employed, those seeking part-time employment, individuals lacking sufficient work history. Self-employed individuals include independent contractors and gig economy workers.
- b. Such individual must self-certify that they are unemployed, partially unemployed, or unable or unavailable to work due to one of the COVID-19 related reasons identified in Section 2102(a)(3)(A)(ii)(I) of the CARES Act and in Departmental guidance (see UIPL 16-20 and Attachment I, Section C.1. of UIPL 16-20, Change 4). Because this eligibility is based on self-certification, states may only request supporting documentation if they have reasonable suspicions of fraud (see question 23 of Attachment I to UIPL No. 16-20, Change 2).
- c. Additionally, individuals who are paid on or after December 27, 2020, must submit proof of documentation substantiating employment, self-employment, or the planned commencement of employment or self-employment (see Attachment I, Section C.2. of UIPL No. 16-20, Change

- 4). This includes individuals requesting retroactive payments that are not received until after December 27, 2020.

PUA is payable for weeks of unemployment, partial unemployment, or inability to work caused by the COVID-19 related reasons listed above beginning on or after January 27, 2020. For states where the week of unemployment ends on a Saturday, the first week for which PUA may be paid is the week ending February 8, 2020. In states where the week of unemployment ends on a Sunday, the first week for which PUA may be paid is the week ending February 9, 2020.

*Identity Verification.* For states to have an adequate system for administering the PUA program, states must include procedures for “identity verification or validation and for timely payment, to the extent reasonable and practicable” by January 26, 2021, which is 30 days after December 27, 2020 (enactment of the Continued Assistance Act). States that previously verified an individual’s identity on a UC, EB, or PEUC claim within the last 12 months are not required to re-verify identity on the PUA claim, though the Department encourages the state to take additional measures if the identity is questioned. Individuals filing new PUA initial claims that have not been through the state’s identity verification process must have their identities verified to be eligible.

*Claim Effective Dates and Backdating Limitations.* Individuals filing for PUA must have their claim backdated to the first week during the Pandemic Assistance Period in which the individual was unemployed, partially unemployed, or unable or unavailable to work because of COVID-19 related reason(s) identified in Attachment I to UIPL No. 16-20, Change 6. Section 201(f) of the Continued Assistance Act provides a limitation on backdating for claims filed after December 27, 2020 (the enactment date of the Continued Assistance Act).

- *PUA initial claims filed on or before December 27, 2020.* Initial PUA claims filed on or before this date may be backdated no earlier than the week that begins on or after February 2, 2020, the first week of the Pandemic Assistance Period (PAP).
- *PUA initial claims filed after December 27, 2020.* Initial PUA claims filed after this date may be backdated no earlier than December 1, 2020 (a claim effective date of December 6, 2020, for states with a Saturday week ending date and a claim effective date of December 7, 2020, for states with a Sunday week ending date).

To comply with the requirements in Section 263 of the Continued Assistance Act, all states must ensure , with respect to weeks of unemployment beginning on or after January 26, 2021 (30 days after the enactment date of the Continued Assistance Act), continued claim forms contain a self-certification process for PUA claimants to identify the specific COVID-19 related reason under Section 2102(a)(3)(A)(ii)(I)(aa) through (kk) of the CARES Act for which they are

unemployed, partially unemployed, or unable or unavailable to work. For states with a Saturday week ending date, this begins with ending February 6, 2021. For states with a Sunday week ending date, this begins with week ending February 7, 2021.

For continued claims filed with respect to weeks ending before January 26, 2021 (January 30, 2021, for states with a Saturday week ending date and January 31, 2021, for states with a Sunday week ending date), if a state made a good faith effort to implement the PUA program, an individual will not be denied benefits solely for failing to submit a weekly recertification. The determination of whether a state made a “good faith effort” to implement the PUA program will be performed by the Employment and Training Administration and it will determine what, if any, retroactive action is required to obtain self-certifications (Attachment III to UIPL No. 16-20, Change 6).

Calculating Weekly Benefit Amounts (WBA). The PUA WBA is equal to the WBA authorized under state UC law where the individual was employed. For individuals without reported wages sufficient to establish a WBA, the WBA will be calculated according to processes for Disaster Unemployment Assistance (see Attachment II of UIPL No. 16-20, Change 1). As set out in 20 CFR section 625.6(b), the minimum PUA WBA is “50 percent of the average weekly payment of regular compensation in the state, as provided quarterly by the Department.” The minimum WBA for all PUA claims is identified by state in UIPL No. 03-20.

Duration of PUA Claims. The maximum number of weeks of PUA benefits is 79 weeks. The number of weeks available continues to be reduced by any weeks of regular UC and EB that the individual receives with respect to the PAP (Section 4.c.i. of UIPL No. 14-21).

States are reminded, as described in Section C.17. of Attachment I to UIPL No. 16-20, Change 4, the additional 11 weeks provided under the Continued Assistance Act (increasing the duration from 39 weeks to 50 weeks) may only be paid with respect to weeks of unemployment beginning on or after December 27, 2020. In states where the week of unemployment ends on a Saturday, the first week for which these additional 11 weeks may be paid is the week ending January 2, 2021. In states where the week of unemployment ends on a Sunday, the first week for which these additional 11 weeks of benefits may be paid is the week ending January 3, 2021.

The additional 29 weeks of benefits provided under ARPA (increasing the duration from 50 to 79 weeks) may only be paid with respect to weeks of unemployment ending after March 14, 2021. We note that there are 25 weeks between the week ending March 13, 2021, and the last payable week of September 4, 2021. As such, individuals may not exhaust their full PUA entitlement before the program expires.

In states where the week of unemployment ends on a Saturday, the first week for which these additional 29 weeks of benefits may be paid is the week ending on March 20, 2021. In states where the week of unemployment ends on a Sunday, the first week for which these additional 29 weeks of benefits may be paid is the week ending on March 21, 2021.

*Program End Date.* The state must process and pay benefits to eligible individuals under the PUA program for all weeks of unemployment ending on or before the date of termination or expiration (whichever comes first) (Attachment II, UIPL 16-20, Change 6 and UIPL 14-21, Change 1).

The state must also comply with all responsibilities with respect to claims filed under the PUA program for those weeks, including, without limitation, the requirements under the Agreement and in guidance. Accordingly, the Agreement remains in effect with respect to the PUA program for weeks of unemployment ending on or before the date of termination or expiration (whichever comes first) until all issues relating to those weeks are resolved.

In all states, under current federal law, no PUA payment may be made with respect to weeks of unemployment ending after September 6, 2021. In states where the week of unemployment ends on a Saturday, the last payable week for PUA is the week ending September 4, 2021. In states where the week of unemployment ends on a Sunday, the last payable week for PUA is the week ending September 5, 2021. For states that terminate the Agreement to operate the PUA program before September 6, 2021, no payments for the PUA program may be made with respect to weeks of unemployment ending after the date the state terminates participation in the Agreement.

Hold Harmless for Proper Administration (Section 9011(c), ARPA). Generally, an individual must have exhausted all entitlement to regular UC, PEUC, and EB before being eligible for PUA. However, ARPA provides a “hold harmless” provision for an individual who previously exhausted PEUC and is now receiving PUA, but, because of Section 9016(b), ARPA, becomes eligible for additional amounts of PEUC beginning on or after March 11, 2021. States may temporarily continue paying PUA to an individual currently receiving PUA who is newly eligible to receive PEUC due to the additional weeks of PEUC. This flexibility is allowed for an appropriate period of time as determined by the secretary.

Additional information on the PUA program can be found in UIPL No. 16-20; UIPL No. 16-20, Change 1; UIPL No. 16-20, Change 2; UIPL No. 16-20, Change 3; UIPL No. 16-20, Change 4; UIPL No. 16-20, changes 5 and 6; and UIPL No. 14-21 and UIPL No. 14-21, Change 1 ARPA.

## 7. *PEUC Benefit Payments*

**Eligible Individuals.** PEUC is a temporary program that provides additional weeks of benefits to individuals who:

- have exhausted all rights to regular compensation under state law or federal law with respect to a benefit year that ended on or after July 1, 2019;
- have no rights to regular compensation with respect to a week under any other state UC law or federal UC law, or to compensation under any other federal law;
- are not receiving compensation with respect to a week under the UC law of Canada; and
- are able to work, available to work, and actively seeking work, while recognizing that states must provide flexibility in meeting the “actively seeking work” requirement if individuals are unable to search for work because of COVID-19, including because of illness, quarantine, or movement restriction.

Duration of PEUC Claims. The maximum amount of PEUC compensation that may be established in an individual’s account for the benefit year is increased from 24 times the individual’s average weekly benefit amount (WBA) to 53 times the individual’s average WBA (Section 4.c.v. of UIPL No. 14-21).

States are reminded, as described in Section 4.d. of UIPL No. 17-20, Change 2, the additional amount provided under the Continued Assistance Act (increasing entitlement from 13 times the individual’s average WBA to 24 times the individual’s average WBA) may only be paid with respect to weeks of unemployment beginning on or after December 27, 2020. In states where the week of unemployment ends on a Saturday, the first week for which this additional amount may be paid is the week ending January 2, 2021. In states where the week of unemployment ends on a Sunday, the first week for which this additional amount may be paid is the week ending January 3, 2021.

The additional amount provided under ARPA (increasing entitlement from 24 times the individual’s average WBA to 53 times the individual’s average WBA) may only be paid with respect to weeks of unemployment ending after March 14, 2021. In states where the week of unemployment ends on a Saturday, the first week for which this additional amount may be paid is week ending on March 20, 2021. We note that there are 25 weeks between the week ending March 13, 2021, and the last payable week of September 4, 2021. As such, individuals may not exhaust their full PEUC entitlement before the program expires.

In states where the week of unemployment ends on a Sunday, the first week for which this additional amount may be paid is week ending on March 21, 2021.



*Program End Date.* The state must process and pay benefits to eligible individuals under the PEUC program for all weeks of unemployment ending on or before the date of termination or expiration (whichever comes first) (UIPL 14-21, Change 1).

The state must also comply with all responsibilities with respect to claims filed under the PEUC program for those weeks, including, without limitation, the requirements under the Agreement and in guidance. Accordingly, the Agreement remains in effect with respect to the PEUC program for weeks of unemployment ending on or before the date of termination or expiration (whichever comes first) until all issues relating to those weeks are resolved.

In all states, under current federal law, no PEUC payment may be made with respect to weeks of unemployment ending after September 6, 2021. In states where the week of unemployment ends on a Saturday, the last payable week for PEUC is the week ending September 4, 2021. In states where the week of unemployment ends on a Sunday, the last payable week for PEUC is the week ending September 5, 2021. For states that terminate the Agreement to operate the PEUC program before September 6, 2021, no payments for the PEUC program may be made with respect to weeks of unemployment ending after the date the state terminates participation in the Agreement.

Additional information on the PEUC program can be found in UIPL No. 17-20; UIPL No. 17-20, Change 1; and UIPL No. 17-20, Change 2; UIPL No. 17-20, Change 3; UIPL No. 14-21 and UIPL 14-21, Change 1.

#### 8. *FPUC Benefit Payments*

The FPUC program was created under Section 2104 of the CARES Act. This program provided an additional \$600 per week to individuals who are collecting regular UC (including UCFE and UCX), as well as the following unemployment compensation programs:

- Pandemic Emergency Unemployment Compensation (PEUC);
- Pandemic Unemployment Assistance (PUA);
- Extended Benefits (EB);
- Short Time Compensation (STC);
- Trade Readjustment Allowances (TRA);
- Disaster Unemployment Assistance (DUA); and

- Payments under the Self-Employment Assistance (SEA) program.

If an individual is eligible to receive at least \$1 of underlying benefit for the week in question, then they must also receive the \$600 FPUC supplemental payment. This applies to all weeks of unemployment beginning with week ending April 4, 2020, through week ending July 25, 2020.

The FPUC program was reauthorized under the Continued Assistance Act to provide \$300 per week in supplemental benefits for weeks of unemployment starting with week ending January 2, 2021, through week ending March 13, 2021. FPUC is not payable with respect to any week during the gap in applicability, that is, weeks of unemployment ending after July 31, 2020, through weeks of unemployment ending on or before December 26, 2020.

ARPA further extended the FPUC program at \$300 per week through the week ending on or before September 6, 2021 (Section 4.c.iii. of UIPL No. 14-21).

*Program End Date.* The state must process and pay benefits to eligible individuals under the FPUC program for all weeks of unemployment ending on or before the date of termination or expiration (whichever comes first) (UIPL 14-21, Change 1).

The state must also comply with all responsibilities with respect to claims filed under the FPUC program for those weeks, including, without limitation, the requirements under the Agreement and in guidance. Accordingly, the Agreement remains in effect with respect to the FPUC program for weeks of unemployment ending on or before the date of termination or expiration (whichever comes first) until all issues relating to those weeks are resolved.

In all states, under current federal law, no FPUC payment may be made with respect to weeks of unemployment ending after September 6, 2021. In states where the week of unemployment ends on a Saturday, the last payable week for FPUC is the week ending September 4, 2021. In states where the week of unemployment ends on a Sunday, the last payable week for FPUC is the week ending September 5, 2021. For states that terminate the Agreement to operate the FPUC program before September 6, 2021, no payments for the FPUC program may be made with respect to weeks of unemployment ending after the date the state terminates participation in the Agreement.

Additional information on the FPUC program can be found in UIPL No. 15-20; UIPL No. 15-20, Change 1; UIPL No. 15-20, Change 2; UIPL No. 15-20, Change 3; UIPL No. 15-20, Change 4; UIPL No. 14-21 and UIPL No 14-21, Change 1.

#### 9. *MEUC Benefit Payments*

The MEUC program was created under the Continued Assistance Act. State participation in the MEUC program is optional and requires a state to enter into an

agreement with DOL to operate the program. This program provides \$100 each week, in addition to FPUC, to individuals with \$5,000 or more in self-employment income in the previous tax year who are receiving unemployment benefits from a program other than PUA.

Eligible individuals must: (i) have received at least \$5,000 of self-employment income in the most recent taxable year prior to the individual's application for regular UC, (ii) be receiving a UI benefit (other than PUA) for which FPUC is payable, and (iii) submit documentation substantiating their self-employment income. This supplemental payment does not apply to individuals collecting PUA. States must determine an individual's eligibility for MEUC prior to releasing MEUC payments. Once verified the state must make the MEUC supplemental payment for each week during the program dates in which the individual qualifies for at least \$1 of underlying benefit (except PUA).

MEUC is payable beginning with weeks of unemployment no earlier than week ending January 2, 2021 (January 3, 2021, for states with a Sunday week ending date) through the week ending March 13, 2021. ARPA further extended the MEUC program at \$100 per week through the week ending on or before September 6, 2021 (Section 4.c.iii. of UIPL No. 14-21).

*Program End Date.* The state must process and pay benefits to eligible individuals under the MEUC program for all weeks of unemployment ending on or before the date of termination or expiration (whichever comes first) (UIPL 14-21, Change 1).

The state must also comply with all responsibilities with respect to claims filed under the MEUC program for those weeks, including, without limitation, the requirements under the Agreement and in guidance. Accordingly, the Agreement remains in effect with respect to the MEUC program for weeks of unemployment ending on or before the date of termination or expiration (whichever comes first) until all issues relating to those weeks are resolved.

In all states, under current federal law, no MECU payment may be made with respect to weeks of unemployment ending after September 6, 2021. In states where the week of unemployment ends on a Saturday, the last payable week for MEUC is the week ending September 4, 2021. In states where the week of unemployment ends on a Sunday, the last payable week for MEUC is the week ending September 5, 2021. For states that terminate the Agreement to operate the MEUC program before September 6, 2021, no payments for the MEUC program may be made with respect to weeks of unemployment ending after the date the state terminates participation in the Agreement.

Additional information on the MEUC program can be found in UIPL No.15-20, Change 3; UIPL No. 15-20, Change 4; UIPL No. 14-21 and UIPL 14-21, Change 1.

### **C. Program Funding**

UI payments to claimants are funded primarily by state UI taxes on covered employers (three states, Alaska, New Jersey, and Pennsylvania, also have provisions for employee taxes). Some employers make direct reimbursements to the state for UI 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 nonprofit 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 UI payments.

FUTA imposes a federal tax on covered employers. Effective July 1, 2011, the FUTA tax is 6 percent of the first \$7,000 of covered employee wages. The law, however, provides a credit against federal tax liability of up to 5.4 percent to employers who pay state UI taxes timely under an approved state UI program. This credit is allowed regardless of the amount of the UI tax paid to the state by the employer. Employers may receive these credits only when the state UI law, and its application, conform and substantially comply with FUTA requirements. All states currently meet the FUTA requirements.

Another aspect of the FUTA tax is the FUTA credit reduction, which could occur when a state with an insolvent UI trust fund borrows from the US Treasury and those loans remain unpaid for a certain period. When a state has an outstanding UC trust fund loan on January 1 for two consecutive years and there is an outstanding balance on November 10 following the second January 1, the FUTA tax rate for employers in that state will be increased by 0.3 percent. Each additional year the loans remain unpaid will cause additional and incremental increases to the FUTA tax rate until the loans are repaid. Revenue derived from the FUTA credit reduction is used solely to reduce outstanding UI trust fund loans.

FUTA revenues from the 0.6 percent are collected by the Internal Revenue Service (IRS) and deposited into the general fund of the US 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 DOL’s Employment and Training Administration (ETA) to provide funding to states impacted by the disaster after a major disaster declaration has been made. Funding for each disaster is provided separately. States are expected to report the DUA costs for each disaster separately by administrative and benefits costs. The funding period (known as the disaster assistance period) generally covers a 26-week period after the declaration.

See III.B.1. Eligibility for Individuals, for additional information on temporary emergency flexibilities related to employer experience rating.

### 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.), the FUTA (26 USC 3301 et seq.), UCFE (5 USC 8501 et seq.), and UCX (5 USC 8521 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 No. 11-02, and operating instructions for the ATAA program are found in TEGL No. 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 No. 22-08, TEGL No. 10-11, TEGL No. 7-13, TEGL No. 14-14, and TEGL No. 5-15.

The DUA program can be found at 42 USC 5177 and the 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

Other information on the UI programs can be found at <https://www.dol.gov/agencies/eta/employment-services> and <https://oui.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 <https://oui.doleta.gov/unemploy/disaster.asp>. Additional information on programs created in response to COVID-19 can be found at <https://oui.doleta.gov/unemploy/coronavirus/>.

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	Y	Y	N	N	Y	N	Y

### A. Activities Allowed or Unallowed

#### 1. *Activities Allowed*

- a. 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. *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, Pub. L. No. 111-5, and Pub. L. No. 112-40).

3. *DUA*

Funds may be used only for the payment of DUA benefits and for DUA-related state administrative costs.

4. *FPUC*

- a. FPUC payments may be payable either as (1) as an increase of the weekly benefit payment to the individual, or (2) as a separate supplemental payment made, on the same schedule as regular UC, to the individual (Section 2004 (b)(2), CARES).
- b. FPUC is not payable to individuals receiving state additional compensation.

**E. Eligibility**

**1. Eligibility for Individuals**

*A note on temporary emergency flexibilities.* Section 4102(b), EUISAA, provides states with the ability to modify or waive certain aspects of their UC law as needed to respond to the spread of COVID-19. These provisions include work search, waiting week, good cause, and employer experience rating. If exercised, the state’s regular eligibility requirements described below regarding work search, waiting week, good cause, and employer experience rating may be modified or waived for a temporary period of time in response to the spread of COVID-19. A state should have supporting documentation (e.g., statutory changes, emergency rules, or executive orders) if these temporary flexibilities were exercised for the time period in question (see Section 5 of UIPL No. 13-20 for emergency flexibilities).

- a. *Regular Unemployment Compensation Program* – Under state UC 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 four of the last five 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 non-compensable period of unemployment in which the worker is otherwise eligible for benefits.

To be eligible to receive UC, all states provide that a claimant must have been separated from suitable work for non-disqualifying reasons under state law (i.e., not because of such acts as leaving voluntarily without good cause or discharge for misconduct connected with work). After separation, they must be able and available for work, actively seeking work, legally authorized to work in the United States and must not have refused an offer of suitable work.

- b. *EB Program* – To qualify for EB, a claimant must have exhausted regular UI 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).

Section 206(c)(2)(B) of the Continued Assistance Act amended Section 2107(a) of the CARES Act regarding the application of Section 203(c) of EUCA to PEUC exhaustees. First, section 206(c)(2)(A) of the Continued Assistance Act provides that any individual who is receiving EB for the week of unemployment that includes December 27, 2020 (the date of enactment of the Continued Assistance Act) shall not be eligible for PEUC until the individual has exhausted all rights to EB.

Second, at a state’s option, for weeks of unemployment beginning after December 27, 2020, and before April 12, 2021, an individual’s eligibility for EB shall be considered to include any week that begins after the individual exhausts all rights to PEUC and that falls during an EB period that began after the date the individual exhausted all rights to PEUC. This applies even if the individual’s benefit year has expired, provided the state is in an EB period as of the date the individual exhausts PEUC.

- c. *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 initial eligibility for UCX benefits is determined in accordance with 20 CFR section 614.3. Continued eligibility for UCX benefits, after the UCX claim has been established 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).



- d. *TRA* – 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 been entitled and 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* is payable to eligible claimants after exhaustion of UI benefits, which include and are defined as (1) regular compensation under state law; (2) EB; and (3) any federal supplemental compensation program that may be authorized by Congress from time-to-time.

*TRA* may consist of (1) basic, (2) additional, (3) remedial, (4) remedial and/or pre-requisite, and (5) completion. The distinction depends on whether the benefits accrue under the 2002, 2009, 2011, Reversion 2014, or 2015 program amendments, and is determined by the petition number.

The maximum basic *TRA* amount payable is the product of 52 times the WBA of the first benefit period. This maximum amount is reduced by the entire UI entitlement of the first benefit period including EB, and/or any federal supplemental compensation, such as EUC08. This maximum amount is the same under the 2002, 2009, and Reversion 2014, as well as 2015 program amendments. If the combination of all UI entitlement in the first benefit period exceeds the maximum basic *TRA* amount payable, no basic *TRA* is payable.

Additional *TRA* requires that the individual participate in TAA training for each week claimed. Under the 2002 program amendments, additional *TRA* may be payable for up to 52 weeks in a 52 consecutive-weeks period. Under the 2009 program amendments, additional *TRA* may be payable for up to 78 weeks in a 91 consecutive-weeks period. Under the 2011 program amendments, Reversion 2014, and 2015 program amendments, additional *TRA* may be payable for up to 65 weeks in a 78 consecutive-weeks period. Please note that, under all additional *TRA* payable (including completion *TRA* discussed below), each week paid counts towards the maximum weeks payable regardless of the amount paid each week.

Under the 2002 program amendments, up to an additional 26 weeks may be payable as *TRA* if the individual engaged in remedial education. Under the 2009 program amendments, up to an additional 26 week total may be

payable as TRA if the individual engaged in either remedial education, and/or pre-requisite education. Under the 2011 program amendments, Reversion 2014, and 2015 program amendments, up to an additional 13 weeks may be payable as completion TRA if the individual is pursuing a degree or industry-recognized credential, continues to make satisfactory progress in meeting the training benchmarks, and will complete the training within the period of eligibility.

For TRA eligibility derived from petitions filed before May 18, 2009, or between February 15, 2011, and October 21, 2011 (2002 program amendments), as well as those filed on or after January 1, 2014, under Reversion 2014, 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, and before February 15, 2011 (2009 program amendments), or on and after October 21, 2011, and before January 1, 2014 (2011 program amendments), 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. For TRA eligibility derived from petitions filed on or after June 29, 2015, 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.

- e. *ATAA* – For *ATAA* payments, an individual must be an adversely affected worker covered under a DOL TAA certification of eligibility and meet the following conditions at the time of reemployment as provided in TEGL No. 11-02 and TEGL No. 02-03:
- (1) Be at least age 50 at the 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. *RTAA* – To be eligible to receive *RTAA* payments, an individual must be an adversely affected worker covered under a DOL TAA certification of

eligibility if they meets the following conditions at the time of reemployment (TEGL No. 22-08):

- (1) Is at least 50 years of age.
- (2) Earns not more than \$55,000 each year in wages from reemployment (2009 program amendments) or \$50,000 each year in wages from re-employment (2011, 2015 program amendments).
- (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 TAA-approved training program.
- (4) Is not employed at the firm from which the worker was separated.

- g. *DUA* – To be eligible for DUA, the individual’s employment or self-employment was lost or interrupted as a direct result of a major disaster or the individual was prevented from commencing employment or self-employment due to the major disaster. 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 regular 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.

- (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 UC are *not* eligible for DUA. DUA may not be paid as a supplement to UC 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 DOL's 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 (20 CFR section 625.8).
- h. Aliens must show proof that they are authorized to work by the US Citizenship and Immigration Services (USCIS) in order to be eligible to receive a federal public benefit (42 USC 1302b-7(d) and (e)).
  - i. *PUA* – PUA provides benefits to covered individuals, who are those individuals not eligible for regular unemployment compensation (UC or extended benefits under state or federal law or PEUC, including those who have exhausted all rights to such benefits. Covered individuals also include self-employed, those seeking part-time employment, individuals lacking sufficient work history, and those who otherwise do not qualify for regular unemployment compensation or extended benefits under state or federal law or PEUC.

PUA is payable to individuals who are ineligible for regular UC, EB, or PEUC and are unemployed, partially unemployed, or unable or unavailable to work due to one of the COVID-19 related reasons identified in Attachment I to UIPL No. 16-20, Change 6. Section 2102(a)(3)(A)(ii)(I) of the CARES Act included 10 specific COVID-19 related reasons. The Department, under the authority provided by Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, added additional COVID-19 related reasons three new COVID-19 related reasons with the publication of UIPL No. 16-20, Change 5 on February 25, 2021. All COVID-19 related reasons apply retroactively to the beginning of the PUA program.

Additionally, individuals who are paid on or after December 27, 2020, must submit proof of documentation substantiating employment, self-employment, or the planned commencement of employment or self-employment (see Attachment I, Section C.2. of UIPL No. 16-20, Change 4). This includes individuals requesting retroactive payments that are not received until after December 27, 2020.

Further, as described in Section 4.b.i. of UIPL No. 16-20, Change 5, paraphrasing of the COVID-19 related reasons is not permissible; individuals must be permitted to select more than one COVID-19 related reason; individuals must be permitted to select different COVID-19 related reasons each week; and individuals must be permitted to file and select no COVID-19 related reasons. Below is a list of acceptable COVID-19 related reasons:

- (1) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- (2) A member of the individual's household has been diagnosed with COVID-19;
- (3) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- (4) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (5) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- (6) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- (7) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;

- (8) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
  - (9) The individual has to quit his or her job as a direct result of COVID-19;
  - (10) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
  - (11) The individual meets any additional criteria established by the Department for unemployment assistance under this section.
    - (a) An individual who works as an independent contractor with reportable income may also qualify for PUA benefits if he or she is unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities;
    - (b) The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines;
    - (c) An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures; or
    - (d) An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.
- j. *PEUC* – To be eligible for PEUC, a claimant must have exhausted all rights to regular compensation under state law or federal law with respect to a benefit year that ended on or after July 1, 2019; have no rights to regular compensation with respect to a week under any other state UC law or federal UC law, or to compensation under any other federal law; are not

receiving compensation with respect to a week under the UC law of Canada; and are able to work, available to work, and actively seeking work, while recognizing that states must provide flexibility in meeting the “actively seeking work” requirement if individuals are unable to search for work because of COVID-19, including because of illness, quarantine, or movement restriction.

- k. *FPUC* – To be eligible for FPUC during the program dates described in Section 8 above, individuals must be eligible to receive at least \$1 of underlying benefits for the week in question (including regular UC, UCFE, UCX, PEUC, PUA, EB, STC, TRA, DUA, and SEA). FPUC does not require the individual to submit a separate initial application or continued claim.
- l. *MEUC* – Eligible individuals must: (i) have received at least \$5,000 of self-employment income in the most recent taxable year prior to the individual’s application for regular UC, (ii) be receiving a UI benefit (other than PUA) for which FPUC is payable, and (iii) submit documentation substantiating their self-employment income. This additional payment does not apply to individuals collecting PUA. States must determine an individual’s eligibility for MEUC prior to releasing MEUC payments. Once verified, the state must make the MEUC supplemental payment for each week during the program dates in which the individual qualifies for at least \$1 of underlying benefit (except PUA).

## 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.

**The federal government will reimburse the state at 100 percent of eligible costs for EB starting with weeks of unemployment beginning after March 18, 2020, (starting with weeks of unemployment ending March 28, 2020, for states with a Saturday week ending date). This reimbursement continues through weeks of unemployment beginning before September 6, 2021. For states with a Saturday week ending date, the last reimbursable week is week ending September 11, 2021. For states with a Sunday week ending date, the last reimbursable week is week ending September 5, 2021, and before March 14, 2021. Any overpayment recoveries made during the period of 100 percent federal funding must be returned to the Extended Unemployment Compensation Account (EUCA) in the UTF. In addition, all payments made for the EB program, PEUC, and PUA are 100 percent federally funded and must be returned to EUCA in the UTF.**

b. *Federal Pandemic Unemployment Compensation*

The state is required to pay zero of the FPUC paid by the SWA to eligible claimants (i.e., FPUC funds are not required to be matched).

**2. Level of Effort**

Not Applicable

**3. Earmarking**

Not Applicable

**H. Period of Performance**

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 must report the cost of each disaster separately by administrative cost and benefits. The funding period for disasters generally covers a 26-week period after the declaration has been declared. Within 60 days 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. *Extended Benefits* – The start and end date of extended benefits are paid based on statutory triggers.
4. *Temporary Federal Extensions and Supplemental Payments* – For the period of performance for Pandemic Unemployment Assistance (PUA), PEUC, Federal Pandemic Unemployment Compensation (FPUC), and Mixed Earners Unemployment Compensation (MEUC), refer to Attachment II of UIPL No. 14-21 for the most recent start and end dates for these temporary federal extensions. **States may continue to report activity on these programs beyond the ending of the program. Currently, the period of performance for these programs is 6/30/2022. This date may be extended if activity is expected to continue beyond this date.**

## L. Reporting

### 1. Financial Reporting

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *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. Financial data is required to be reported cumulatively from grant inception through the end of each reporting period. Additional information on *OMB Number 1205-0461* can be accessed at <http://www.doleta.gov/grants/> and scroll down to the section on Financial Reporting. A separate ETA 9130 is submitted for each of the following: UI, PEUC, and PUA Administration, DUA, TRA/RTAA, and UI Projects (administration and benefits). See TEGL No. 02-16 for specific and clarifying instructions about the ETA 9130 [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5156](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5156).
- e. *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).

- f. *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).

## 2. Performance Reporting

States are required to submit periodic reporting to evaluate the performance of the states' UI programs. The auditor should test the information included in the key reports included below that ensure the timeliness of benefits paid. Detailed information on these reports can be accessed under:

[https://wdr.doleta.gov/directives/attach/ETAH/ETHand401\\_5th.pdf](https://wdr.doleta.gov/directives/attach/ETAH/ETHand401_5th.pdf).

Report Name	Frequency of Submission	Reference Core Measure	Sections for Test
ETA 9050 – Time Lapse of All First Payments except Workshare	Monthly	First Payment Time Lapse 14/21 days, Interstate and Intrastate UI, UCFE, and UCX, full and partial weeks	Section A. Do not include Workshare
ETA 9052 – Nonmonetary Determination Time Lapse Detection	Monthly	Nonmonetary Determinations 21-Day Timeliness	Sections A, B, and C
ETA 9055 – Appeals Case Aging – Lower and Higher Authority Appeals	Monthly	Average Age of Pending Lower and Higher Authority Appeals	Section A. Exclude the test for states that do not have Higher Authority Appeals.

## 3. Special Reporting

*ETA 2208A, Quarterly UI Above-Base Report (OMB No. 1205-0132)* – Quarterly report of staff years worked and paid by program category. Key line items are one through seven of Section A. The auditor is not expected to test sections B through E.

## 4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

## N. Special Tests and Provisions

### 1. Employer Experience Rating

**Compliance Requirements** Certain benefits accrue to states and employers as a result of the state having 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 UI 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).

Note that states were provided with temporary emergency flexibility regarding experience rating as needed in response to the spread of COVID-19. As such, a state should have supporting documentation (e.g., statutory changes, emergency rules, or executive orders) if this temporary flexibility was exercised for the time period in question.

**Audit Objectives** To verify the accuracy of the employer's annual state UI tax rate and 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 Requirements** 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.

The Payments Integrity Information Act (PIIA) of 2019 codified the requirement for valid statistical estimates of improper payments. SWAs are required by 20 CFR section 602.11(d) to operate and maintain a quality control system. The Benefits Accuracy Measurement (BAM) program is DOL's quality control system designed to assess the accuracy of UI benefit payments and denied claims, unless the SWA is excepted from such requirement (20 CFR section 602.22). 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 statistically sound 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, complete prompt, and in-depth investigations to determine if the administration of the UC program is consistent with state and federal law (20 CFR section 602.21(d)). DOL has promulgated investigational requirements and instructions in ET Handbook No. 395 (see below), pursuant to 20 CFR section 602.30(a). As presented in the handbook, the investigation involves a review of state agency records, as well as contacting the claimant, employers, and third parties (either in-person, by telephone, or by fax) to conduct new and original fact-finding related to all of the information pertinent to the paid or denied claim that was sampled. BAM investigators review cases for adherence to federal and state law as well as official policy. For claims that were overpaid or underpaid, the BAM investigator determines the amount of payment error, the cause of and the responsibility for any payment error. For erroneously denied, BAM investigators also determine the potential eligibility of the claimant and the point in the UI claims process at which the error was detected. Investigators record the actions taken by the agency and employer prior to the payment or denial decision that is in error. BAM covers state UC,UCFE, and UCX.

Additional information on BAM procedures, historical data, and a state contacts list can be obtained at <https://oui.doleta.gov/unemploy/bqc.asp>.

The auditor should review the requirements relating to the investigative process and data collection in ET Handbook No. 395, 5th Edition, Benefit Accuracy Measurement State Operations Handbook, Chapters IV, V, VI, VII, and Appendix C (Investigative Guide Source, Action, and Documentation), pertinent UIPLs, including UIPL No. 25-20 ([https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_25-20.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_25-20.pdf)), No. 28-13 ([http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=6139](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6139)), No. 13-16 ([https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=4604](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4604)), and other sources of information, including Question and Answer series on the Employment and Training website (see above).

**Audit Objectives** 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. Please note that due to the COVID-19 pandemic, on a case-by-case basis, some states were provided operational flexibilities to temporarily suspend BAM sampling and investigations.

- 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 and timeliness requirements and identify any impediments to the state BAM unit's performance in this area.
- e. Conduct reviews of a representative sub-sample of completed cases to ensure that established BAM procedures were followed (e.g., cases selected for 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 Requirements** 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 sections 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 Objectives** 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. UI Program Integrity – Overpayments

**Compliance Requirements** Pub. L. No. 112-40, enacted on October 21, 2011, and effective October 21, 2013, amended sections 303(a) and 453A of the Social Security Act and sections 3303, 3304, and 3309 of FUTA to improve program integrity and reduce overpayments (see UIPL No. 02-12, changes 1 and 2 [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=6707](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6707)). States are (1) required to impose a monetary penalty (not less than 15 percent) on claimants whose fraudulent acts resulted in overpayments, and (2) states are prohibited from providing relief from charges

to an employer's UI account when overpayments are the result of the employer's failure to respond timely or adequately to a request for information. States may continue to waive recovery of overpayments in certain situations and must continue to offer the individual a fair hearing prior to recovery. In addition, states may approve "blanket waivers" where individuals are eligible for payment under an unemployment benefit program for a given week, but through no fault of the individual, they were paid incorrectly under either the PUA or PEUC program at a higher weekly benefit amount (WBA), or specific to PUA, when, through no fault of the individual, the state paid the individual a minimum WBA based on DUA guidance other than UIPL No. 03-20 (UIPL No. 20-21, section 4.d.ii.).

Section 2103 of Pub. L. No. 112-96 amended FUTA and the Social Security Act to require states to recover overpayments through an offset against UC payments. States must enter into two agreements prior to commencing the recoveries: Cross Program Offset and Recovery Agreement (see UIPL No. 05-13), which allows states to offset state UI from federal UI overpayments; and Interstate Reciprocal Overpayment Recovery Agreement, which allows states to recover overpayments from benefits being administered by another state.

States that recover PEUC and EB overpayments must ensure that the recovered payments are returned to EUCA in chronological order from the date the overpayment was established, identifying the program source (PEUC or EB) when the funds are returned to the UTF. In addition, any FPUC that is recovered must be returned to the UTF.

Additionally, states that recover FPUC, PUA, PEUC, and MEUC overpayments must ensure that the recovered payments are returned to the source of such funds. Program Integrity-related requirements and guidance for each of the programs above are described in more detail in various UIPLs listed below:

FPUC/MEUC: UIPL 15-20, Change 1, 2, and 3, and any subsequent changes.

PUA: UIPL 16-20, Change 1, 2, 3, and 4, and any subsequent changes.

PEUC: UIPL 17-20, Change 1 and 2, and any subsequent changes.

The Bipartisan Budget Act of 2013 (Pub. L. No. 113-67) amended Section 303 of the Social Security Act to require states to utilize the Treasury Offset Program (TOP), authorized by Section 6402(f)(4), Internal Revenue Code (IRC), to recover covered unemployment compensation debts that remain uncollected one year after the debt was determined to be due. Covered unemployment compensation debts include benefit overpayments due to fraud and benefit overpayments due to a claimant's failure to report earnings. Some states may need to amend their UI law in order to have the authority to collect overpayments through TOP. In addition, states will also need to enter into an agreement with Treasury. See UIPL No. 02-19 and UIPL No. 12-14 for guidance on the implementation of the TOP requirement. Please note that IRC 6103(l)(10) restricts access to TOP federal tax information (FTI). The access limitation extends to contractors employed by the state, including those managing state technology systems that process

and store TOP FTI, and to auditors engaged to conduct the Single Audit process, whether they are contractors or employees of the state. DOL recognizes that this restriction to accessing TOP FTI used for benefit administration prevents state auditors from meeting the audit objectives concerning a state's use of TOP for the recovery of UI improper payments. Because of this legal restriction auditors should not create an audit issue or finding based on their lack of access to TOP FTI.

**Audit Objectives** To determine if states are (a) properly identifying and handling overpayments, including, as applicable, assessment and deposit of penalties and not relieving employers of charges when their untimely or inaccurate responses cause improper payments; and (b) offsetting all debts resulting from an overpayment of the individual's UC payments. Please note that the suggested audit procedures mentioned below are not applicable to offsets through TOP.

### **Suggested Audit Procedures**

- a. Determine if the state has a written procedure for identifying overpayments and classifying them in a manner that allows the state to take appropriate follow-up action (e.g., as resulting from individual fraud or employer fault).
- b. Determine if the state entered into a Cross Program Offset and Recovery Agreement and an Interstate Reciprocal Overpayment Recovery Agreement.
- c. Determine if the state law prohibits the state from providing relief from charges to an employer's UI account when a UI overpayment results from an employer failing to respond timely or adequately to a request for information by the state agency.
- d. Based on a sample of overpayment cases:
  - (1) Determine if the state identified the basis for the overpayment consistent with its written procedures.
  - (2) If the overpayment was based on fraud, determine if the claimant was notified of the 15 percent penalty, and if there was no appeal or the claimant was unsuccessful in appeal, there was follow-up to collect the penalty, and the state deposited the penalty into the state's account in the Unemployment Trust Fund.
  - (3) If the overpayment was a result of the employer's untimely or inaccurate response, determine if the state enforced the requirement in state law that the employer not be relieved of charges.
  - (4) Verify that states are offsetting against UI payments.

Program	Offsets limited to no more than 50 percent	Offsets limited to three years	Subject to Cross-Program Offsets (CPORA)	Subject to Interstate Offsets (IRORA)	Reference
Regular UC	State law	State law	Yes	Yes	State law
EB	State law	State law	Yes	Yes	State law
PEUC	Yes	Yes	Yes	Yes	Section E of Attachment I to UIPL No. 17-20  Section F of Attachment I to UIPL No. 17-20, Change 1
PUA	Yes	No	Yes	Yes	Section C.13.h. of Attachment I to UIPL No. 16-20  Section H of Attachment I to UIPL No. 16-20, Change 1  Questions 20-23 of Attachment I to UIPL No. 16-20, Change 2  Section C.21. of Attachment I to UIPL No. 16-20, Change 4
FPUC	Yes	Yes	Yes	Yes	Section F of Attachment I to UIPL No. 15-20  Section B of Attachment I to UIPL No. 15-20, Change 1
MEUC	Yes	Yes	Yes	Yes	Same as FPUC

## 5. UI Reemployment Programs: Worker Profiling and Reemployment Services (WPRS) and Reemployment Services and Eligibility Assessments (RESEA)

**Compliance Requirements** The UI program serves as one of the principal “gateways” to the workforce system. It is often the first workforce program accessed by individuals who need workforce services. The WPRS and RESEA programs serve as UI’s primary programs that facilitate the reemployment needs of UI claimants.

WPRS, which is mandated by Section 303(j) of the Social Security Act, is designed to identify UI claimants who are most likely to exhaust their benefits and need reemployment assistance to return to work, and refer them to appropriate reemployment services, such as: job search and job placement assistance; counseling; testing; provision of occupational and labor market information; and assessments. WPRS provides reemployment services to selected claimants through an early intervention process. The number of individuals served under WPRS is determined by the state (and/or local areas) based on its capacity to serve these individuals. UIPL No. 41-94 provides guidance on WPRS requirements.

RESEA is authorized by Section 306 of the Social Security Act and builds on the success of RESEA’s predecessor, the former UI Reemployment and Eligibility Assessment (REA) program. RESEA uses an evidence-based integrated approach that combines an



eligibility assessment for continuing UI eligibility and the provision of reemployment services. State administration of the RESEA is voluntary and under certain circumstances may be designed to also satisfy WPRS requirements. Operating guidance for the RESEA program is updated annually. UIPL 13-21 provides RESEA operating Guidance for FY 2021.

**Audit Objectives** To verify that states operate a WPRS or RESEA program that satisfies the WPRS mandate in accordance with federal requirements.

### **Suggested Audit Procedures**

- a. Verify that the state is operating a WPRS and/or RESEA program.
- b. If the state operates a WPRS, determine if the state's WPRS program components satisfy the following program components:
  - (1) Verify that the UI agency profiles all claimants to identify those likely to exhaust regular UI and in need of reemployment services.
  - (2) Verify that to the extent that reemployment services are available, the "identified" claimants will either be immediately referred to these services or placed in a selection pool from which a referral may later be made.
  - (3) Verify that services begin with an orientation session advising claimants of the availability and benefit of reemployment services, and, if appropriate, an individual assessment of each claimant's needs including referral to reemployment services tailored to the individual's needs.
  - (4) Verify that procedures and agreements are in place between UI and the reemployment service provider regarding: (1) the number of claimants to be referred to the provider and (2) the information the provider must forward to the UI agency.
- c. If the state operates a RESEA program, to comply with WPRS, determine if the state's RESEA program components satisfy WPRS requirements:
  - (1) Verify that the state's procedure for selecting RESEA participants includes the profiling of all claimants to identify those likely to exhaust regular UI and in need of reemployment services.
  - (2) Verify that the state is providing RESEA services statewide. (A state is considered to be operating RESEA statewide if RESEA services are available in each Workforce Innovation and Opportunity Act designated local workforce development area.)
  - (3) Verify that the state operates a WPRS program in addition to the RESEA program if item one and/or two fails verification.

- d. For RESEA programs, determine if UI staff is engaged in the planning, administration, oversight, and training of eligibility issues.
- (1) Select a sub-sample of RESEA cases and perform the following:
    - (a) Verify that the state notice to claimant includes the RESEA's eligibility condition, requirements, benefits, and clear warnings regarding the consequences of failing to complete required elements and reasonable scheduling accommodations are provided.
    - (b) Verify that the UI staff have received feedback that the claimant reported as directed and participated in required RESEA activities.
    - (c) Verify that if UI eligibility issues are identified in the eligibility review, then they have been referred to UI for adjudication.
  - (2) Verify that UI staff provided training to RESEA service provider staff on UC eligibility requirements.
  - (3) Review state procedures and verify that UI staff review quarterly RESEA performance reports prior to submission.

#### **IV. OTHER INFORMATION**

State unemployment tax revenues and the governmental, tribal, and nonprofit reimbursements in lieu of state taxes (state UI funds) must be deposited to the UTF in the US 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, PUA, PEUC, FPUC, and MEUC must be included in the total expenditures of Assistance Listing 17.225 when determining Type A programs. Therefore, state UI funds must 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 Assistance Listing 17.225 is encouraged.

**DEPARTMENT OF LABOR****ASSISTANCE LISTING 17.235 SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM****I. PROGRAM OBJECTIVES**

The Senior Community Service Employment Program (SCSEP) is the only federally funded program that targets older individuals 55 years and older who want to enter or reenter the workforce. SCSEP provides part-time subsidized work experience through community service assignments before transitioning program participants to unsubsidized employment. To be eligible for the SCSEP project program participants must be at least 55 years old, have a family income of no more than 125 percent of the federal poverty level, and considered not job ready. This program provides a significant source of work experience, skilled training, supportive services, and placement and employment opportunities to the participants.

**II. PROGRAM PROCEDURES**

To allot program funds for use in each state, the Department of Labor (DOL) utilizes a statutory formula based on fiscal year (FY) 2000 level of activities, 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, US territories, and national grantees (public and private nonprofit entities other than political parties (Section 506 of the Older Americans Act)). The relative amount of funding for each type of eligible applicant is 22 percent to state and territorial agencies and 78 percent to national grantees. As a result of a national grantee competition conducted in 2020, there are now 19 national grantees. 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 reauthorized by Pub. L. No. 114-144 Older Americans Act Reauthorization Act of 2016 (OAA-2016). OAA implementing regulations are published at 20 CFR Part 641. For more information on SCSEP, visit <https://www.dol.gov/agencies/eta/seniors>

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	Y	N	N	N	Y	Y	N

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

- a. Allowable activities include but are not limited to: (1) outreach, (2) orientation, (3) assessment, (4) counseling, (5) classroom training, (6) job development, (7) community service assignments, (8) payment of wages and fringe benefits, (9) training, (10) supportive services, and (11) placement in unsubsidized employment.
- b. Costs of participating as a required partner in the American Job Centers (AJC) (formerly known as One-Stop Career Centers or by another name) Delivery System established in accordance with section 134(c) 121(b) of the Workforce Innovation and Opportunity Act (WIOA) of 2014 (Pub. L. No. 113-128) are allowable, as long as SCSEP services and funding are provided in accordance with the Memorandum of Understanding required by WIOA 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 subgrantee’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 and 2 CFR section 200.450, SCSEP funds cannot be used to pay any salaries or

expenses related to any activity designed to influence legislation or appropriations pending before the US Congress or any state legislature (29 CFR section 641.850(c)) and 2 CFR section 200.450.

- 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 (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 six months on an annualized basis or the actual income during the preceding 12 months (whichever method is more favorable to the individual) is not more than 125 percent of the poverty levels established and periodically updated by the US Department of Health and Human Services (42 USC 3056p). The poverty guidelines are issued each year in the *Federal Register* and the Department of Health and Human Services maintains the poverty guidelines at <https://aspe.hhs.gov/poverty-guidelines>. 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, of not less than 10 percent of the total cost of the project, except that the federal government may pay all costs of any project that is:

- a. an emergency or disaster project; or
- 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; or
- c. a project which is exempt by law (42 USC 3056(c)).

## **2. Level of Effort**

### **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 of labor (20 CFR section 641.867(b)).

Grantees are required to negotiate their share in the infrastructure cost with required local partners in accordance with the Workforce Innovation and Opportunity Act (Final Rule 20 CFR 679.370(k))

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable

- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *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, *Older Worker Program*. Reports are due 45 days after the end of the reporting quarter. Financial data is required to be reported cumulatively from grant inception through the end of each reporting period. Additional information can be accessed at <http://www.doleta.gov/grants/> and scroll down to the section on Financial Reporting. See TEGL 02-16 for specific and clarifying instructions about the ETA 9130  
[http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5156](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5156).

## 2. Performance Reporting

- a. The grant recipient maintains a performance management system to manage, track, and measure performance and operating goals, indicators, milestones, and expected outcomes that comply with the terms and conditions of the award. The grant recipient adheres to OMB reporting package requirements for the grant awards including accurate, complete, and timely submission of reports that compare actual results to planned results, describes obstacles to achievement of grant objectives, and provides details on corrective actions.

Examine the grant recipient's most recently available performance reports. Compare actual performance with planned performance from the beginning of the grant period through the most recent quarter for each type of performance outcome identified in the grant.

Joint WIOA Quarterly Narrative Performance Reports (QNPR) are submitted 45 days after the quarter closes. The most recently submitted QNR should be evaluated based on the actual activities and related results of the project for that period. The submitted narrative report should accurately reflect the current status of the project for the period and the progress to date in meetings its goals and/or objectives and the capacity to use performance data to evaluate and improve the quality of services, including if applicable, reasons why established goals were not met.

ETA-5140, SCSEP Quarterly Progress Report is generated by the department and accessible via the SCSEP Performance and Results QPR (SPARQ) online system and via <https://www.dol.gov/agencies/eta/seniors/performance> requires grantees must meet 80 percent of the agreed-upon level of performance for the

aggregate of all the core performance measures. Performance in the range of 80 percent to 100 percent constitutes meeting the level for the core performance measures.

*Key Line Items* – The following line items contain critical information for the QPR:

1. *Section E.1* – The number of eligible individuals served. Defined as the total number of participants served divided by a grantee's authorized number of positions, after adjusting for differences in minimum wage among the states and areas.
2. *Section E.2* – Hours (in the aggregate) of community service employment. Defined as the total number of hours of community service provided by SCSEP participants divided by the number of hours of community service funded by the grantee's grant, after adjusting for differences in minimum wage among the states and areas. Paid training hours are excluded from this measure.
3. *Section E.3* – Most-in-need or the number of participating individuals described in OAA sec. 518(a)(3)(B)(ii) or (b)(2). Defined by counting the total number of the following characteristics for all participants and dividing by the number of participants served. Participants are characterized as most-in-need if they:
  - (1) Have a severe disability;
  - (2) Are frail;
  - (3) Are age 75 or older;
  - (4) Meet the eligibility requirements related to age for, but do not receive, benefits under title II of the Social Security Act (42 USC 401 et seq.);
  - (5) Live in an area with persistent unemployment and are individuals with severely limited employment prospects;
  - (6) Have limited English proficiency;
  - (7) Have low literacy skills;
  - (8) Have a disability;
  - (9) Reside in a rural area;



- (10) Are veterans;
  - (11) Have low employment prospects;
  - (12) Have failed to find employment after utilizing services provided under title I of the Workforce Innovation and Opportunity Act; or
  - (13) Are homeless or at risk for homelessness.
  - (14) Individuals Formerly Incarcerated
4. *Section E.4* – The percentage of project participants who are in unsubsidized employment during the second quarter after exit from the project. Defined by the formula: The number of participants who exited during the reporting period who are employed in unsubsidized employment during the second quarter after the exit quarter divided by the number of participants who exited during the reporting period multiplied by 100.
  5. *Section E.5* – The percentage of project participants who are in unsubsidized employment during the fourth quarter after exit from the project. Defined by the formula: The number of participants who exited during the reporting period who are employed in unsubsidized employment during the fourth quarter after the exit quarter divided by the number of participants who exited during the reporting period multiplied by 100.
  6. *Section E.6* – The median earnings of project participants who are in unsubsidized employment during the second quarter after exit from the project. Defined by the formula: For all participants who exited and are in unsubsidized employment during the second quarter after the exit quarter: The wage that is at the midpoint (of all the wages) between the highest and lowest wage earned in the second quarter after the exit quarter.
  7. *Section E.7* – Indicators of effectiveness in serving employers, host agencies, and project participants. Defined as the combined results of customer assessments of the services received by each of these three customer groups.

### **3. Special Reporting**

- a. SCSEP is required to submit to the Department the Annual Equitable Distribution Report (ETA 8705 A and ETA 8705B), SCSEP positions by grantee and by state. State grantees in collaboration with the national grantees are required to submit a state report.

*Key Line Items* – The following line items contain critical information for ETA 8705A: Equitable Distribution Report (Grantee):

1. *Summary of variance* – Ensure the numbers in this section of the Equitable Distribution Report are consistent with the numbers/percentages/variance reported in the relevant modified position tables downloadable through the ETA System.
2. *Reasons for and significance of the variance* – Describe any significant variance and explain the possible reasons for the variance. Detail any challenges that affect your ability to meet and/or maintain ED. Identify if there is a history of noncompliance with ED in any area. Describe any administrative issues, subgrantee structure, or external factors unrelated to ED patterns (e.g., a change of subgrantee, natural disaster) contributing to the problem.
3. *Plan to improve ED in your grant during program year* – Explain your plans to reduce the variance in your grant during the program year. Provide concrete steps (consolidating positions by county, position swaps, attrition) to fix ED, particularly in difficult to serve areas such as rural counties, counties where there has been a significant historical inequity, and/or areas where there have been recent large increases in numbers of eligible persons.

*Key Line Items* – The following line items contain critical information for ETA 8705B: Equitable Distribution Report (state):

1. *Summary of variance* – Ensure the numbers in this section of the Equitable Distribution Report are consistent with the numbers/percentages/variance reported in the Modified Positions by state tables downloadable from the ETA System.
2. *Reasons for and significance of the variance* – Describe any significant variance and explain the possible reasons for the variance. Detail any collaboration among the state grantee and the national grantees within the state when addressing the variances by county statewide for all grantees. Describe challenges that affect your collective ability to meet and/or maintain ED in each county throughout the state. Identify if there is a history of noncompliance with ED in any area. Describe any administrative issues, grantee/subgrantee structure, or external factors unrelated to ED patterns (e.g., a change of subgrantee, natural disaster) contributing to the problem.
3. *Plan to improve ED in your grant during program year* – Explain your plans to reduce the variance in your state during the program

year. Describe how all SCSEP grantees will collectively work to reduce variances throughout the state. Highlight collaboration between the state grantee and the national grantees operating in the state. Provide concrete steps (consolidating positions by county, position swaps, attrition) to fix ED, particularly in difficult to serve areas such as rural counties, counties where there has been a significant historical inequity, and/or areas where there have been recent large increases in numbers of eligible persons.

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**M. Subrecipient Monitoring**

- a. SCSEP recipients must ensure that organizations that are subrecipients under the Title V of the Older Americans Act and expend more than the minimum level specified in 2 CFR Part 200, Subpart F, have either an organization-wide audit conducted in accordance with 2 CFR Part 200 or a program-specific financial and compliance audit (OAA 502(c)(4)) (including cash management). Each recipient at a minimum must have a monitoring system which provides an annual on-site monitoring review of subrecipient compliance with DOL uniform administrative requirements, including the appropriate administrative requirements and cost principles for subrecipients and other entities receiving OAA funds. Recipient must ensure that subrecipients follow established requirements of the OAA, SCSEP Regulation, and Employment and Training Administration directives to achieve program quality and outcomes and must require prompt corrective action be taken if any substantial violations are identified as result of annual on-site monitoring.
- b. The recipient may issue additional requirements and instructions to subrecipients on monitoring activities.

OMB Control Number 1205-0040 authorizes the collection of the reports mentioned above.

**DEPARTMENT OF LABOR****ASSISTANCE LISTING 17.245 TRADE ADJUSTMENT ASSISTANCE FOR WORKERS****I. PROGRAM OBJECTIVES**

The purpose of the Trade Adjustment Assistance (TAA) for Workers Program (TAA Program) is to provide assistance to workers adversely affected by foreign trade. The TAA Program provides adversely affected workers and adversely affected incumbent workers with opportunities to obtain skills, credentials, resources, and support to help them become reemployed.

The TAA Program provides federal assistance to workers who are adversely affected by foreign trade. TAA includes resources and opportunities to obtain the skills, credentials, and support necessary for successful reemployment. Any member of a worker group certified by the Department as trade-affected is potentially eligible to receive TAA Program benefits and services through a local American Job Center (AJC), such as employment and case management, training, income support in the form of Trade Readjustment Allowances (TRA), job search allowances, relocation allowances, and a Health Coverage Tax Credit (HCTC). The Reemployment TAA (RTAA) benefit is also available and provides wage supplements for eligible reemployed workers, age 50 and over, whose reemployment resulted in lower wages than those earned in their trade-affected employment.

**II. PROGRAM PROCEDURES**

The Trade Act amendments provides workers covered by certifications of petitions the benefits and services that were available under the provisions of the Trade Act that were in effect on the date the petitions were filed. Therefore, the Department of Labor (DOL) administers four versions of the TAA program to provide benefits to all workers covered by certifications of petitions: the 2002, 2009, and 2011/2015, and Reversion 2021 programs, as the 2011 and 2015 programs have the same worker group eligibility and benefits provisions. The majority of TAA participants (96%) currently in the TAA program were certified under the 2015 Program. (See FY 2020 TAA Program Annual Report to Congress <https://www.dol.gov/sites/dolgov/files/ETA/tradeact/pdfs/AnnualReport20.pdf>.)

Funds are provided to State Workforce Agencies (SWAs) that serve as agents of DOL for administering the worker adjustment assistance provisions of the Trade Act. Funds are awarded to states for training by the Office of Trade Adjustment Assistance (OTAA) and funding for TAA Program TRA and RTAA benefits are awarded by the Office of Unemployment Insurance

Through the American Job Centers network and other local workforce offices, SWAs arrange for eligible program participants to receive training, employment and case management services, job search allowances, relocation allowances, to assist trade-affected return to employment offering sustainable wages..

The RTAA (depending on the applicable program) wages supplements paid to participants are administered by the offices that carry out the UI program (see Assistance Listing 17.225 in this Supplement).

## Source of Governing Requirements

The Trade Act of 1974 has been amended multiple times—most recently by the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. No. 107-210) (TAARA or Trade Act of 2002); 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 Adjustment Assistance Extension Act of 2011 (TAAEA or Trade Act of 2011) (Title II of Pub. L. No. 112-40); and the Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015 or Trade Act of 2015) (Title IV of the Trade Preferences Extension Act of 2015, Pub. L. No. 114-27). The program is currently operating under Reversion 2021. Reversion 2021 refers to the version of the TAA program created by the reversion provisions of the TAARA 2015. These provisions required the TAA program to revert to a prior version of itself (the 2002 Program), with certain changes, as prescribed by the TAARA 2015 termination provisions, beginning at midnight on July 1, 2021. If no new legislation is enacted to extend or reauthorize the TAA program, DOL will cease acceptance and certifications of petitions filed on and after that date but continue to serve workers covered by petitions filed before July 2022.

**Current Regulations:** On August 21, 2020, the TAA Final Rule was published in the Federal Register and became effective on September 21, 2020. In this rule, the Department streamlined and consolidated three separate parts of the CFR that contain TAA Program regulations (20 CFR parts 617 and 618, 29 CFR Part 90) into a single part (20 CFR Part 618) with nine subparts. In addition, the rule codified into regulation elements of the most recent TAA Program amendments, the Trade Adjustment Assistance Reauthorization Act of 2015 (Pub. L. No. 114-27, title IV) (TAARA 2015). This final rule also incorporates operating instructions issued via administrative guidance into the TAA Program regulations, with some refinements. Further, the revisions align the TAA Program regulations with the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. No. 113-128), the 2014 comprehensive legislation that reauthorized the public workforce system. See <https://www.dol.gov/agencies/eta/tradeact/law/regulations>.

**Guidance Governing Current Program Operation TEN 01-21:** Frequently Asked Questions Relating to Trade Adjustment Assistance Program Reversion 2021- See: [https://wdr.doleta.gov/directives/corr\\_doc.cfm?docn=6885](https://wdr.doleta.gov/directives/corr_doc.cfm?docn=6885); and **TEGL 24-20:** Operating Instructions for Implementing the Reversion Provisions of the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Reauthorization Act of 2015. See: [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=6175](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6175).

The Trade Act of 2002 applies to petitions with TA-W numbers less than 69,999 with a petition institution date prior to May 17, 2009, and most petitions with TA-W numbers greater than 80,000 and less than 81,000, with a petition institution date of February 15, 2011 through October 20, 2011. The Trade Act of 2009 applies to petitions with TA-W numbers greater than 70,000 and less than 80,000 with a petition institution date of May 18, 2009 through February 14, 2011, the Trade Act of 2011 applies to petitions with TA-W numbers greater than 81,000 and less than 85,000, with a petition institution date of October 21, 2011 through December 31, 2013, and the Trade Act of 2015 applies to petitions with TA-W numbers greater than 90,000, with a petition institution date of June 29, 2015. Reversion 2014 applied to petitions with TA-W numbers greater than 85,000 and less than 90,000, with a petition institution date of

January 1, 2014 through June 28, 2015, but these worker groups transitioned to the Trade Act of 2015 on September 28, 2015. Reversion 2021 applies to petitions filed on and after July 1, 2021, with TA-W numbers greater than 98,000.

### Availability of Other Program Information

Other information on TAA Program procedures may be obtained through the agency website at <https://www.dol.gov/agencies/eta/tradeact>.

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	N	N	N	N	Y	Y	N

### A. Activities Allowed or Unallowed

#### 1. *Activities Allowed*

The following requirements apply to TAA benefits.

- a. *Trade Act of 2002, the Trade Acts of 2009, 2011, 2015, and Reversion 2021.*

Allowable activities include payments in the form of income support, i.e., Trade Readjustment Allowances (TRA), job search allowances, relocation allowances, and training, employment and case management services, and wage supplements payable to workers 50 and older who find new employment in the form of Alternative/Reemployment Trade Adjustment Assistance (A/RTAA) to eligible participants (Trade Act sections 231–238, and 246, under the Trade Act of 2002, the Trade Act of 2009, the Trade Act of 2011, Reversion provisions of the amendments to the Trade Act of 1974 enacted by the Trade Adjustment Assistance Reauthorization Act of 2015, known as Reversion 2021.

b. *Trade Acts of 2009, 2011, 2015, and Reversion 2021*

Allowable activities for workers covered under certifications of petitions filed under the Trade Acts of 2009, 2011, 2015 and Reversion 2021 include employment and case management activities such as vocational testing, counseling, and job placement services; however, all TAA participants may receive these services and other employment services through other programs such as the Workforce Innovation and Opportunity Act (WIOA) (20 CFR Part 618).

## **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: (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 period specified in the certification (generally two years after the date of the certification), or before the termination date, if one is issued (19 USC 2272; 20 CFR sections 618).

b. *Training*

Under the Trade Act of 2002 and Reversion 2021, workers must be enrolled in their approved training within eight 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, 2011, or 2015, 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 231, TAARA 2015).

c. *Maximum Number of Weeks for Receipt of Approved Training*

Under the Trade Act of 2002 and Reversion 2021, 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 (20 CFR section 618.22(f)(2)).

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 (20 CFR section 618.22(f)(2)).

Under the Trade Act of 2011 or 2015, 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 (20 CFR section 618.22(f)(2)).

**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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *ETA-9130M, 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. Financial data is required to be reported cumulatively from grant inception through the end of each reporting period. See TEGL 02-16 for specific and clarifying instructions about the ETA 9130 at [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5156](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5156); and [https://www.doleta.gov/grants/financial\\_reporting/pdf/ETA\\_9130\\_M\\_Instructions\\_i.pdf](https://www.doleta.gov/grants/financial_reporting/pdf/ETA_9130_M_Instructions_i.pdf) for the form.



- e. *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 618.930).
- f. *SF-424 Standard Form (SF) 424, Application for Federal Assistance, through [www.grants.gov](http://www.grants.gov)*. SWAs are requested to ensure that the SF-424 for TaOA grant funding for their state is submitted to ETA via [www.grants.gov](http://www.grants.gov) (see TEGL No. 13-20 for additional).

## 2. Performance Reporting

*Participant Individual Record Layout (PIRL) (OMB No. 1205-0521)* – SWAs are required to submit quarterly reports on participant characteristics, services and benefits received, and outcomes achieved on a rolling four quarter basis (TEGL No. 10-16, Change 1, and TEGL No. 14-18, *Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor*. Also see, TEGL No. 08-21, *Timeline for the Implementation of the Amendments to Performance Reporting Information Collection Requests (ICRs) in the Workforce Integrated Performance System (WIPS)*).

*Key Line Items* – The following line items contain critical information:

1. *Employment Rate Second Quarter: Section D.01 – Employment and Job Retention Data*  
1602 – Employed in 2nd Quarter after Exit Quarter  
The percentage and number of participants who are in unsubsidized employment during the second quarter after exit from the program.
2. *Employment Rate Fourth Quarter: Section D.01 – Employment and Job Retention Data*  
1606 – Employed in 4th Quarter after Exit Quarter  
The percentage and number of participants who are in unsubsidized employment during the fourth quarter after exit from the program.
3. *Median Earnings: Section D.02 – Wage Record Data*  
1704 – Wages 2nd Quarter after Exit Quarter  
The median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program.
4. *Credential Attainment: Section D.03 – Education and Credential Data*  
1800 – Type of Recognized Credential  
1801 – Date Attained Recognized Credential

- 1406 – Date Enrolled in Post Exit Education or Training Program (Section C.05 – Youth Program Services/Elements Not Captured Elsewhere)
- 1600 – Employed in 1st Quarter after Exit (Section D.01 – Employment and Job Retention Data)

The percentage of those participants enrolled in an education or training program (excluding those in on-the-job training and customized training) who attain a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within one year after exit from the program. A participant who has attained a secondary school diploma or its recognized equivalent is included in the percentage of participants who have attained a secondary school diploma or its recognized equivalent only if the participant also is employed or is enrolled in an education or training program leading to a recognized postsecondary credential within one year after exit from the program.

- 5. *Measurable Skills Gains*: Section D.03 – Education and Credential Data
  - 1806 – Date of Most Recent Measurable Skills Gains: Educational Functioning Level
  - 1807 – Date of Most Recent Measurable Skills Gains: Postsecondary Transcript/Report Card
  - 1808 – Date of Most Recent Measurable Skills Gains: Secondary Transcript/Report Card
  - 1809 – Date of Most Recent Measurable Skills Gains: Training Milestone
  - 1810 – Date of Most Recent Measurable Skills Gains: Skills Progression

The percentage of program participants who, during the period, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational, or other forms of progress, towards such a credential or employment.

### **3. Special Reporting**

Not Applicable

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**DEPARTMENT OF LABOR****ASSISTANCE LISTING 17.258 WIOA ADULT PROGRAM****ASSISTANCE LISTING 17.259 WIOA YOUTH ACTIVITIES****ASSISTANCE LISTING 17.278 WIOA DISLOCATED WORKER FORMULA GRANTS****I. PROGRAM OBJECTIVES**

The Workforce Innovation and Opportunity Act of 2014 (WIOA) authorizes formula grant programs to states to help job seekers access employment, education, training, and support services to succeed in the labor market. Using a variety of methods, states provide employment and training services through a network of American Job Centers (AJC), also known as One-Stop Career Centers. The WIOA programs provide employment and training programs for adults, dislocated workers, and youth, and Wagner-Peyser Act employment services administered by the Department of Labor (DOL). The programs also provide adult education and literacy services that complement the Vocational Rehabilitation state grants awarded by the US Department of Education. These grants assist individuals with disabilities in obtaining employment and help job seekers achieve gainful employment. Youth employment and educational services are available to eligible out-of-school youth, ages 16 to 24, and low-income in-school youth, ages 14 to 21, who face barriers to employment.

**II. PROGRAM PROCEDURES***Subtitle B Statewide and Local Workforce Development Programs*

These programs provide the framework for delivery of workforce activities at the state and local levels to individuals who need those services, with an emphasis on serving individuals with barriers to employment, 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 Workforce Development Board and develop a Unified State Plan or a Combined State Plan.

A Local Workforce Development Board (local board) is appointed by the chief elected official in each local area in accordance with state criteria established under WIOA Section 107(b) and must be certified by the governor every two years. Each local board, in partnership with the appropriate chief elected officials, develops, and submits a comprehensive four-year plan to the governor, which identifies and describes certain policies, procedures, and local activities that are consistent with the Unified State Plan or the Combined State Plan. The plan must include a description of the AJC delivery system to be established or designated in the local area, including a copy of the local Memorandum of Understanding (MOU) between the local board and each of the AJC partners (1) describing the operation of the local AJC delivery system; (2) identifying the AJC operator or entity responsible for the disbursement of grant funds; and (3) describing the competitive process to be used to award grants and contracts for activities carried out under Subtitle I of WIOA.

The agreement between the local board and the AJC operator specifies the operator's role. That role may range from simply coordinating service providers within the center, to being the primary provider of services within the center to coordinating activities throughout the local AJC system. The AJC operator may be a single entity or consortium of entities and may operate one or more AJC centers. In addition, there may be more than one AJC operator in a local area. The types of entities that may be selected to be the AJC operator include: (1) an institution of higher education; (2) an employment service state agency established under the Wagner-Peyser Act on behalf of the local office of the agency; (3) a community-based organization, nonprofit organization, or intermediary; (4) a private for-profit entity; (5) a government agency; and (6) another interested organization or entity, which may include a local Chamber of Commerce or other business organization, or a labor organization.

The following federal programs are required to be partners in the local AJC system: (1) programs authorized under Title I of WIOA; (2) programs authorized under the Wagner-Peyser Act (29 USC 49 et seq.); (3) adult education and literacy activities authorized under Title II of WIOA; (4) programs authorized under Title I of the Rehabilitation Act of 1973 (29 USC 720 et seq.), other than Section 112, WIOA, or Part C of that title; (5) senior community service employment activities authorized under Title V of the Older Americans Act of 1965 (42 USC 3056 et seq.); (6) career and technical education programs at the postsecondary level authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 USC 2301 et seq.); (7) activities authorized under chapter 2 of Title II of the Trade Act of 1974 (19 USC 2271 et seq.); (8) activities authorized under chapter 41 of Title 38, USC; (9) employment and training activities carried out under the Community Services Block Grant (42 USC 9901 et seq.); (10) employment and training activities carried out by the Department of Housing and Urban Development; (11) programs authorized under state unemployment compensation laws (in accordance with applicable federal law); (12) programs authorized under Section 212 of the Second Chance Act of 2007 (42 USC 17532); and (13) programs authorized under Part A of Title IV of the Social Security Act (42 USC 601 et seq.).

WIOA also provides that other entities delivering workforce development programs may serve as additional partners in the AJC system with the approval of the local board and chief elected official. For a complete list of additional partners, please refer to Section 121(b)(2)(B) of the WIOA.

Each entity in a local area must (1) provide access through the AJC delivery system to the one-stop career services; (2) use a portion of funds made available for the program and activities to maintain the AJC delivery system, including payment of infrastructure costs; (3) enter into a local MOU with the local board relating to the operation of the AJC system; (4) participate in the operation of the AJC system consistent with the terms of the MOU and requirements of authorizing laws; and (5) provide representation on the state Workforce Development Board.

Career services are available at any comprehensive AJC center. Well-trained staff are co-located at each center, and cross-trained. Cost-reimbursement or other agreements between service providers at the comprehensive AJC center and the partner programs are available and are described in the Unified State Plan and the local MOU.

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 Section 106(b)(1)(B) of the WIOA. Instead, local boards, in partnership with the state, identify training providers and programs whose performance qualifies them to receive WIOA funds to train adults and dislocated workers. After receiving career services, and in consultation with case managers, eligible participants who need training use the eligible training provider list, which contains performance and cost information on training eligible providers, to make an informed choice.

Individual Training Accounts (ITAs) are established for eligible individuals to finance training through these eligible training 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 also may be made through payment of a portion of the costs at different points in the training course. Exceptions to the use of ITAs are permissible only where the services provided are for on-the-job or customized training; and where the local board determines that there is an insufficient number of eligible providers available locally.

### **Source of Governing Requirements**

The WIOA program is authorized by Title I of the Workforce Innovation and Opportunity Act of 2014 (Pub. L. No. 113-128). The regulations for the Title I WIOA adult, dislocated worker, and youth programs are at 20 CFR parts 680, 681, 682, and 683, as well as the joint DOL and Department of Education regulations found at 20 CFR parts 676 through 678.

### **Availability of Other Program Information**

Other information on programs authorized under the WIOA can be found at <http://www.doleta.gov/wioa>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	N	N	Y	N	Y	Y	N	N	Y	Y	N

**A. Activities Allowed or Unallowed**

1. *Statewide Activities*

a. Administrative

- (1) Preparing the annual performance progress report and submitting it to the secretary of labor (20 CFR sections 677.160 and 683.300(d) and WIOA, Section 116(d)(1), WIOA, 128 Stat. 1476).
- (2) Operating a fiscal and management accountability information system (20 CFR sections 652.8(b) and 682.200(1); Section 116(i), WIOA, 128 Stat. 1481).
- (3) Carrying out monitoring and oversight activities (20 CFR sections 682.200(j) and 683.410; sections 129(b)(1)(E), 134(a)(2)(B)(iv), and 184(a)(4), WIOA, 128 Stat. 1507, 1521, and 1591).

b. Programmatic

- (1) Conducting statewide workforce development activities
  - (a) *Required statewide youth activities.* Administration of youth workforce development activities (Section 129(b)(1), WIOA, 128 Stat. 1506 et seq.).
  - (b) *Other allowable statewide youth activities.* Providing technical assistance and career services to local areas, including local boards, AJC operators, AJC partners, and eligible training providers (Section 129(b)(2), WIOA, 128 Stat. 1507).
  - (c) *Required statewide adult dislocated worker services.* Providing employment and training activities, such as rapid

- response activities, and additional assistance to local areas (Section 134(a)(2), WIOA, 128 Stat. 1520).
- (d) *Other allowable statewide adult dislocated worker services.* Establishing and implementing innovative incumbent worker training programs (Section 134(a)(3), WIOA, 128 Stat. 1522 et seq.).
- (2) Providing support to local areas for the identification of eligible training providers (Section 122(a)(2), WIOA, 128 Stat. 1493).
- (3) Implementing innovative programs for displaced homemakers and programs to increase the number of individuals trained for and placed in nontraditional employment (Section 134(c)(3), WIOA, 128 Stat. 1528).
- (4) 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 (Section 134(a)(2), WIOA, 128 Stat. 1520).
- (5) Disseminating the following:
- (a) The state list of eligible training providers for adults and dislocated workers.
- (b) Information identifying eligible training providers of on-the-job training (OJT) and customized training.
- (c) Performance and program cost information about these providers.
- (d) A list of eligible providers of youth activities (Section 122, WIOA, 128 Stat. 1492 et seq.).
- (6) Conducting evaluations of workforce activities for adults, dislocated workers, and youth, in order to promote, establish, implement, and utilize methods for continuously improving core program activities to achieve high-level performance within, and high-level outcomes from, the workforce development system (Section 116(e), WIOA, 128 Stat. 1479).
- (7) Providing incentive grants (Section 134(a)(3)(A)(xi), WIOA, 128 Stat. 1524).
- (8) Providing technical assistance to local areas that fail to meet local performance measures (Section 129(b)(2)(E), WIOA, 128 Stat. 1508).

- (9) Assisting in the establishment and operation of AJC delivery systems, in accordance with the strategy described in the Unified State Plan.
- (10) Providing additional assistance to local areas that have high concentrations of eligible youth (Section 129(b)(1)(F), WIOA, 128 Stat. 1507).

2. *Local Activities*

*Subtitle B, Chapter 3 Adult and Dislocated Worker Employment and Training Activities – Required Activities*

- a. Funds must be used at the local level to pay for career and training services through the AJC system for program participants.
- b. Basic Career Services – The following are basic career services (Sections 134(c)(2)(A)(i) through (xi), WIOA, 128 Stat. 1525 et seq., and TEGL 19-16):
  - (1) Eligibility determination for WIOA services.
  - (2) Outreach, intake, and orientation to available information and services.
  - (3) Initial assessment of skill levels, including literacy, numeracy, and English language proficiency, as well as aptitudes, abilities (including skills gaps), and supportive service needs.
  - (4) Provision of labor exchange services, including job search and placement assistance, as well as career counseling and appropriate recruitment and other business services provided by employers.
  - (5) Provision of referrals to and coordination of activities with other programs and services within the AJC system.
  - (6) Provision of workforce and labor market employment statistics and job information.
  - (7) Provision of performance information and program cost information on eligible training providers by program and type of provider.
  - (8) Providing information on local area performance.
  - (9) Provision of information on availability of supportive services and assistance.



- (10) Provision of information and meaningful assistance to individuals seeking assistance in filing a claim for unemployment compensation.
  - (11) Providing assistance on financial aid eligibility for training and education programs that are not funded under the WIOA.
- c. Individualized Career Services – The following are individualized career services (Section 134(c)(2)(A)(xii), WIOA, 128 Stat. 1527). These services must be provided to participants after AJC staff determine that such services are required to retain or obtain employment, consistent with statutory priorities:
- (1) Comprehensive and specialized assessments of skill levels and service needs, including diagnostic testing, in-depth interviewing, and evaluation.
  - (2) Development of an individual employment plan.
  - (3) Group and/or individual counseling and mentoring.
  - (4) Career planning.
  - (5) Short-term pre-vocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and workplace behavior skills training.
  - (6) Internships and work experiences linked to careers.
  - (7) Workforce preparation activities, including basic academic skills, critical thinking skills, digital literacy skills, and self-management skills.
  - (8) Financial literacy services.
  - (9) Out-of-area job search assistance and relocation assistance.
  - (10) English-language acquisition and integrated education and training programs.
- d. Training Services – When determined appropriate, the following training services are allowable (Section 134(c)(3)(D), WIOA, 128 Stat. 1529):
- (1) Occupational skills training, including training for nontraditional employment.

- (2) On-the-job-training (OJT). Employers may be reimbursed up to 50 percent, and, in some instances, 75 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 (Section 134(c)(3)(H), WIOA, 128 Stat. 1531). Instances in which the reimbursement level may be up to 75 percent are based on the following criteria:
  - (a) Participant characteristics (e.g., length of unemployment, current skill level, and barriers to employment);
  - (b) Size of the employer;
  - (c) Quality of employer-provided training and advancement opportunities, and
  - (d) Other factors the state or local board may determine appropriate, such as number of employees participating in the training, wage and benefit levels of employees, and relation of the training to the competitiveness of the participant.
- (3) Incumbent worker training (20 CFR section 680.800; Section 134(d)(4), WIOA, 128 Stat. 1535) (see III.G.3.b.(2), “Matching, Level of Effort, Earmarking – Earmarking,” for a limitation).
- (4) Programs that combine workplace training with related instruction, including cooperative education programs.
- (5) Training programs operated by the private sector.
- (6) Skill upgrading and retraining.
- (7) Entrepreneurial training.
- (8) Transitional jobs, as long as they do not exceed 10 percent of the funds allocated to the local area and are consistent with the requirements of Section 134(d)(5), WIOA, 128 Stat. 1537.
- (9) Job readiness training in combination with other training programs.
- (10) Adult education and literacy training.
- (11) Customized training (customized training is designed to meet the specific requirements of an employer. Such employers are required to pay a significant portion of the cost of the training (Section 3(14), WIOA, 128 Stat. 1431)).

- e. Follow-up Services – Follow-up services must be provided, as appropriate, for participants who are placed in unsubsidized employment, for up to 12 months after the first day of employment. Follow-up services may include counseling about the work place (Section 134(c)(2)(A)(xiii), WIOA, 128 Stat. 1527; TEGL 19-16, 4. *Follow-up Services*, p. 5).
- f. Pay for Performance (PFP) – Pay for Performance (PFP) is a type of performance-based contract allowed under the WIOA that maximizes the likelihood that the government pays only for demonstrably effective services and may secure performance outcomes at a lower cost than might otherwise occur. Local WIOA funds set aside for PFP contract strategies remain available over an extended period, compared to the usual two-year limit for such funds, and are only paid to a service provider upon meeting certain performance outcome thresholds. If a local area opts to implement a PFP contract strategy, the contract must provide Adult and Dislocated Worker training services in WIOA Section 134(c)(3)(D) and/or Youth activities in Section 129(c)(2), as applicable. For the Adult and Dislocated Worker contract strategies, such services are the “allowable training” listed in WIOA Section 134(c)(3)(D), which includes occupational skills training, OJT, incumbent worker training, cooperative education, private sector training, skill upgrading and retraining, entrepreneurial training, transitional jobs, job readiness training, adult education and literacy activities, and customized training.

*Subtitle B, Chapter 3 Adult and Dislocated Worker Employment and Training Activities – Other Activities*

At the discretion of the state and local boards, the following services may be provided (Section 134(d), WIOA, 128 Stat. 1532 et seq.):

- a. Job seeker services, including:
  - (1) Customer support to enable individuals with barriers to employment to navigate among multiple services,
  - (2) Training programs for displaced homemakers and for individuals training for nontraditional occupations, and
  - (3) Work support activities for low-wage workers.
- b. Employer services, including:
  - (1) Customized screening and referral of individuals in career and training services to employers; and
  - (2) Customized employment-related services to employers, employer associations, or other organization on a fee-for-service basis, in

- addition to labor exchange services available to employers under the Wagner-Peyser Act; and
- (3) Activities to provide business services and strategies.
- c. Coordination activities, including:
- (1) Employment and training activities in coordination with child support enforcement and child support services;
  - (2) Employment and training activities in coordination with cooperative extension programs carried out by the US Department of Agriculture;
  - (3) Employment and training activities to facilitate remote access to services provided through a one-stop delivery system, including facilitating access through the use of technology;
  - (4) Improving coordination with economic development activities to promote entrepreneurial skills training and microenterprise services;
  - (5) Improving linkages with small employers;
  - (6) Strengthening linkages with unemployment insurance programs;
  - (7) Improving coordination of activities for individuals with disabilities; and
  - (8) Improving coordination with other federal agency supported workforce development initiatives.
- d. Implementing PFP contract strategies for training services. PFP contract strategies include only the activities listed in the definition of PFP contracting strategies at WIOA Section 3(47), such as payments for performance outcomes and independent validation of results.
- e. Technical assistance for AJCs, partners, and eligible training providers on the provision of services to individuals with disabilities.
- f. Activities for setting self-sufficiency standards for the provision of career and training services.
- g. Implementing promising services to workers and businesses.
- h. Supportive services, including needs related payments.

- i. Locating transitional jobs, which are time-limited work experiences that are subsidized and are in the public, private, or nonprofit sectors. They are for individuals with barriers to employment who are chronically unemployed or who have an inconsistent work history and are combined with comprehensive career and supportive services (Section 134(d)(5)(A), WIOA, 128 Stat. 1537).

*Subtitle B, Youth Activities*

- a. Youth activities can provide a wide array of activities relating to employment, education, and youth development. The activities identified in Section 129(c)(2), WIOA (128 Stat. 1509 and 1510) include the following:
  - (1) Tutoring, study skills training, instruction and evidence-based dropout prevention and recovery strategies that lead to completion of the requirements for a secondary school diploma or its recognized equivalent (including a recognized certificate of attendance or similar document for individuals with disabilities) or for a recognized post-secondary credential;
  - (2) Alternative secondary school services or dropout recovery services, as appropriate;
  - (3) Paid and unpaid work experiences that have academic and occupational education as a component of the work experience, which may include the following types of work experiences:
    - (a) summer employment opportunities and other employment opportunities available throughout the school year;
    - (b) pre-apprenticeship programs;
    - (c) internships and job shadowing; and
    - (d) OJT opportunities;
  - (4) Occupational skill training, which includes priority consideration for training programs that lead to recognized post-secondary credentials that align with in-demand industry sectors or occupations in the local area involved, if the local board determines that the programs meet the quality criteria described in Section 123, WIOA (128 Stat. 1498);
  - (5) Education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;
  - (6) Leadership development opportunities, including community service and peer-centered activities encouraging responsibility and other positive social and civil behaviors;
  - (7) Supportive services;

- (8) Adult mentoring for a duration of at least 12 months that may occur both during and after program participation;
- (9) Follow-up services for not less than 12 months after the completion of participation;
- (10) Comprehensive guidance and counseling, which may include drug and alcohol abuse counseling and referral, as appropriate;
- (11) Financial literacy education;
- (12) Entrepreneurial skills training;
- (13) Services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and
- (14) Activities that help youth prepare for and transition to post-secondary education and training;
- (15) PFP contract strategies must be used to provide Adult and Dislocated Worker training services in WIOA Section 134(c)(3) and/or Youth activities in Section 129(c)(2), as applicable. The Youth services include training and also tutoring, work experience, supportive services, counseling, entrepreneurship, labor market information, financial literacy, and other services listed in WIOA Section 129(c)(2).

A local area conducts a feasibility study or determination to identify the problem the project will address, the population that will be targeted, the services that will be provided, and the performance outcomes that will be used as criteria; and to estimate the acceptable cost to the government associated with achieving the projected performance outcomes. The state modifies its WIOA grant to set aside the funds that will be used for PFP and thus will have a longer obligation period and establishes financial controls to track this fund use at the local level. The local area begins its PFP project, including negotiating and awarding a PFP contract. The local PFP project recruits participants and provides services. An independent validator determines if the project has achieved its outcomes. The local area pays for any outcomes as named in its PFP contract. If outcomes have not been achieved, the local area does not pay for outcomes.

- b. Funds allocated to a local area for eligible youth shall be used for programs that:
- (1) Objectively assess academic levels, occupational skills levels, service needs (e.g., occupational, prior work experience, employability, interests, aptitudes), supportive service needs of each participant, and developmental needs of each participant, for the purpose of identifying appropriate services and career pathways;
  - (2) Develop service strategies that are directly linked to one or more indicators of performance of the youth program described in Section 116(b)(2)(A)(ii), WIOA, 128 Stat. 1472, and identify career pathways that include education and employment goals, appropriate achievement objectives, and the appropriate services needed to achieve the goals and objectives for each participant taking into account the assessment conducted; and
  - (3) Provide activities leading to the attainment of a secondary school diploma or its recognized equivalent, postsecondary education preparation, strong linkages between academic instruction and occupational education that lead to the attainment of recognized postsecondary credentials, preparation for unsubsidized employment opportunities, and effective connections to employers in in-demand industry sectors and occupations of the local and regional labor markets (Section 129(c)(1)(A)(B)(C), WIOA, 128 Stat. 1508).

*Waivers and Workforce-Flexibility*

- (1) Under the secretary of labor's general waiver authority (Adult, Dislocated Worker, and Youth Waivers), the secretary may waive statutory or regulatory requirements of the adult and youth provisions of the WIOA and sections 8 through 10 of the Wagner-Peyser Act) (29 USC 49g through 49i) (Section 189(i)(3), WIOA, 128 Stat. 1601).
- (2) 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; Sections 190(a)-(d), WIOA, 128 Stat.1602 et seq.).

3. *WIOA, Activities Unallowed*

- a. WIOA Title I funds may not be used for the following activities, except as indicated:
- (1) Construction, purchase of facilities or buildings, or other capital expenditures for improvements to land or buildings except with the prior approval of the secretary of labor. WIOA Title I funds can be used for construction only in limited situations, including meeting obligations to provide physical and programmatic accessibility and reasonable accommodations, certain repairs, renovations, alterations, and capital improvements of property, and for disaster relief projects under Section 170(d), WIOA, 128 Stat.1575, Youth Build programs under Section 171(c)(2)(A)(i), WIOA, 128 Stat. 1578, and for other projects that the secretary determines necessary to carry out the WIOA, as described under Section 189(c) of WIOA, 128 Stat. 1599.
  - (2) 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 (Section 181(e), WIOA, 128 Stat. 1588).
  - (3) 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, WIOA 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 WIOA participants (Section 188(a)(3), WIOA, 128 Stat. 1598).
  - (4) 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 (Section 181(d)(1)), WIOA, 128 Stat. 1588).
  - (5) Providing customized training, skill training, or OJT 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 (Section 181(d)(2), WIOA, 128 Stat. 1588).

- (6) Paying the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce investment system (Section 181(b)(1), WIOA, 128 Stat. 1586).
- (7) Public service employment, except to provide disaster relief employment, as specifically authorized in Section 194(10), WIOA (128 Stat.1606).

- b. Funds available to states and local areas under Subtitle B may not be used for foreign travel (29 USC 2931(e), WIOA, 128 Stat. 1588).

## **E. Eligibility**

### **1. Eligibility for Individuals**

- a. All Programs

Selective Service – Participants between the ages of 18 and 26 need to register with the Military Selective Service, Section 3 (50 USC App. 453)) Such registration is also required by Section 189 (h), WIOA 113-128.

- b. All Subtitle B Statewide and Local Programs

- (1) An adult must be 18 years of age or older (Section 3(2), WIOA, 128 Stat. 1429).
- (2) A dislocated worker means an individual who meets the definition in Section 3(15), WIOA, 128 Stat. 1431).
- (3) A dislocated homemaker means an individual who meets the definition in Section 3(16), WIOA, 128 Stat. 1432).
- (4) An in-school youth and an out-of-school youth are eligible to participate in workforce investment activities if they meet the definition in Section 129(a)(1)(B) and (C), WIOA, 128 Stat. 1504 et seq.

- c. Subtitle B Youth Activities

A person is eligible to receive services under Youth Activities if they are an out-of-school youth or an in-school youth (Section 129(a)(1), WIOA, 128 Stat. 1504).

- (1) An “out-of-school youth” is an individual who is:
  - (a) Not attending any school (as defined under state law);
  - (b) Not younger than 16 or older than age 24 at time of enrollment. (Because age eligibility is based on age at enrollment, participants may continue to receive services beyond the age of 24 once they are enrolled in the program); and
  - (c) One or more of the following:
    - (i) A school dropout;
    - (ii) A youth who is within the age of compulsory school attendance, but has not attended school for at least the most recent complete school year calendar quarter (school year calendar quarter is based on how a local school district defines its school year quarters); in cases where schools do not use school year quarters, local programs must use calendar year quarters);
    - (iii) A recipient of a secondary school diploma or its recognized equivalent who is a low-income individual and is either basic skills deficient or an English language learner;
  - (d) An offender;
  - (e) A homeless individual, aged 16 to 24 who meets the criteria defined in Section 41403(6) of the Violence Against Women Act of 1994 (42 USC 14043e–2(6)), a homeless child or youth aged 16 to 24 who meets the criteria defined in Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 USC 11434a(2)) or a runaway;
  - (f) An individual in foster care or who has aged out of the foster care system or who has attained 16 years of age and left foster care for kinship guardianship or adoption, a child eligible for assistance under Section 477 of the Social Security Act (42 USC 677), or in an out-of-home placement;
  - (g) An individual who is pregnant or parenting;
  - (h) An individual with a disability;

- (i) A low-income individual who requires additional assistance to enter or complete an educational program or to secure or hold employment (Sections 3(46) and 129(a)(1)(B), WIOA, 128 Stat. 1437 and 1504).
- (2) An “in-school youth” is an individual who is:
  - (a) Attending school (as defined by state law);
  - (b) Not younger than age 14 or (unless an individual with a disability who is attending school under state law) older than age 21;
  - (c) A low-income individual; and
  - (d) One or more of the following:
    - (i) Basic skills deficient;
    - (ii) An English language learner;
    - (iii) An offender;
    - (iv) A homeless individual, aged 14 to 21 who meets the criteria in Section 41403(6) of the Violence Against Women Act of 1994 (42 USC 14043e–2(6)), a homeless child or youth aged 14 to 21 who meets the criteria in Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 USC 11434a(2)), or a runaway;
    - (v) An individual in foster care or who has aged out of the foster care system or who has attained 16 years of age and left foster care for kinship guardianship or adoption, a child eligible for assistance under Section 477 of the Social Security Act (42 USC 677), or in an out-of-home placement;
    - (vi) An individual who is pregnant or parenting;
    - (vii) An individual with a disability;
    - (viii) An individual who requires additional assistance to complete an educational program or to secure or hold employment (sections 3(27) and 129(a)(1)(C), WIOA, 128 Stat. 1435 and 1505).

**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. Statewide Activities**

- (1) The governor shall reserve not more than 15 percent of each of the amounts allotted to the state Adult, Dislocated Worker, and Youth Activities for a fiscal year to carry out statewide activities under Section 129(b) or statewide employment and training activities for adults or dislocated workers under section 134(a) (Section 128(a), WIOA, 128 Stat. 1502).
- (2) Not more than 5 percent of the funds allotted to a state under Section 127(b)(1)(C) of WIOA shall be used by the state for administrative activities related to youth workforce investment and employment and training activities (Section 129(b)(3), WIOA, 128 Stat 1508).
- (3) 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 682.350; sections 133(a)(2) and 134(a)(2)(A), WIOA, 128 Stat. 1516 and 1520).

**b. Local Areas**

- (1) A local area may expend no more than 10 percent of the Adult, Dislocated Worker, and Youth Activities funds allocated to the

local area under Sections 128(b) (WIOA, 128 Stat. 1502) and 133(b) (WIOA, 128 Stat. 1516) for within state allocations. 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.

- (2) The amount that may be spent on incumbent worker training may not exceed 20 percent of the amount of the combined total of federal funds allocated to local areas to carry out the Adult and Dislocated Worker programs for a program year (20 CFR section 680.800; Section 134(d)(4), WIOA, 128 Stat. 1535).
- (3) WIOA authorizes workforce investment areas, with the approval of the governor, to transfer up to 100 percent of the Adult Activities funds to Dislocated Workers Activities, and up to 100 percent of Dislocated Workers Activities funds to Adult Activities (Section 133(b)(4), WIOA, 128 Stat. 1518).
- (4) At the discretion of the local board, not more than 10 percent of the total funds allocated to the local area under section 128(b) and under section 133(b)(2)-(3) may be used to implement a pay-for-performance contract strategy as defined in WIOA Section 3(47) (WIOA Section 129(c)(1)(D) and 134(d)(1)(A)(iii)).
- (5) As no state has received prior approval for implementation of a PFP contract strategy, no funds from the program years prior to PY 2019 are available for PFP contract strategies or for the accompanying extended disbursement. However, these funds could still be used for other types of performance-based contracting, but the life of those funds remains the normal two-year limit for local WIOA grant funds.

c. Youth Activities

- (1) A minimum of 75 percent of the Youth Activity funds allocated to states and local areas, except for the local area expenditures for administration, must be used to provide services to out-of-school youth (Section 129(a)(4)(A), WIOA, 128 Stat. 1506).
- (2) Not less than 20 percent of Youth Activity funds allocated to the local area, except for the local area expenditures for administration, must be used to provide paid and unpaid work experiences (Section 129(c)(4)), WIOA, 128 Stat. 1510).

## H. Period of Performance

### 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 3249(g)(2)).

### 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 two-year period must be returned to the state, which can use the funds for statewide projects during the third program year of availability. The state may also distribute the funds to local areas, which may have expended their original allocation and may need additional funds to complete their projects within the two-year period (29 USC 3249(g)(2)).

Funds used to carry out PFP contract strategies by local areas shall remain available until expended through procedures outlined in Attachment III of TEGL 8-20 (WIOA 189(g)(2)(D)).

## L. Reporting

### 1. Financial Reporting

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *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 Innovation and Opportunity 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. Funds reserved and set aside for PFP contract strategies are required to be reported on ETA 9130 basic reports for each WIOA fund source utilized. Reports are due 45 days after the end of the reporting quarter. Financial data is required to be reported cumulatively from grant inception through the end of each reporting period. Additional information can be accessed at <http://www.doleta.gov/grants/>; scroll down to the section on Financial Reporting. See TEGL 02-16 for specific and clarifying instructions about

the ETA 9130 at  
[https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5156](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5156).

## 2. Performance Reporting

*WIOA Participant Individual Record Layout (PIRL) (OMB No. 1205-0526)*

The report is used to report services, activities, and outcomes of service for all job seekers and veterans at

[https://www.doleta.gov/performance/pfdocs/ETA\\_9170\\_WIOA\\_PIRL\\_Final.pdf](https://www.doleta.gov/performance/pfdocs/ETA_9170_WIOA_PIRL_Final.pdf)

This report is submitted quarterly.

The WIOA Adult and Dislocated Worker Programs are responsible for reporting common WIOA performance indicators. *Key data elements* include:

- Data Element 1602 – Employed 2nd Quarter after Exit Quarter: is the percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program (certain criteria apply);
- Data Element 1606 – Employed 4th Quarter after Exit Quarter: This element is the percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program.
- Data Element 1704 – Median Earnings, Median Wages 2nd Quarter After Exit – is the median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program, as established through direct UI wage record match, federal or military employment records, or supplemental wage information. The median is the number that is in the middle of the series of numbers so that there is the same quantity of numbers above the median as there are below the median.
- Data Element 1800 – Credential Attainment Rate is the percentage of those participants enrolled in an education or training program (excluding those in OJT and customized training) who attained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within one year after exit from the program.
- Data Element 1806 – Measurable Skill Gains is the percentage of participants who, during a program year, are in an education or training programs that lead to a recognized postsecondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational, or other forms of progress, towards such a credential or employment.

- Data Element 1618 – Effectiveness in Serving Employers. WIOA section 116(b)(2)(A)(i)(VI) requires the departments to establish a primary indicator of performance for effectiveness in serving employers. The departments have determined that this indicator will be measured as a shared outcome across all six core programs within each state to ensure a holistic approach to serving employers. The departments are initially implementing this indicator in the form of a pilot program to test the rigor and feasibility of the three proposed approaches, and to develop a standardized indicator. This indicator is reported on an annual basis; therefore, the reporting period for the effectiveness in serving employers indicators is the program year.
- The correct form numbers for reporting performance indicators are as follows:
  - Participant Reporting WIOA PIRL ETA-9170.
  - Statewide Performance Report WIOA PIRL ETA-9169.

WIOA Youth program grantees are responsible for reporting WIOA performance indicators as identified in WIOA Section 116(a)(2)(A)(ii) which includes:

- Data Element 1900 – Employed, or in Education or Training Activities in the 2nd Quarter after Exit is the percentage of title I youth program participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program.
- Data Element 1901 – Employed, or in Education or Training Activities in the 4th Quarter after Exit is the percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program.
- Data Element 1704 – Median Earnings, see above.
- Data Element 1800 – Credential Attainment Rate, see above.
- Data Element 1806 – Measurable Skill Gains, see above.
- Data Element 1618 – Effectiveness in Serving Employers, see above.

For additional information, on WIOA performance reporting, including results, requirements, and information about the Workforce Integrated Performance System (WIPS), you may visit <https://www.dol.gov/agencies/eta/performance/results>. At this link, you will find program data collected quarterly and annually.



**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**M. Subrecipient Monitoring**

1. Recipients must ensure that commercial organizations that are subrecipients under WIOA Title I and expend more than the minimum level specified in 2 CFR Part 200, Subpart F, have either an organization-wide audit conducted in accordance with 2 CFR Part 200 or a program-specific financial and compliance audit (20 CFR section 683.210).
2. Each state must have a monitoring system which:
  - a. Provides for annual on-site monitoring reviews of local areas' compliance with DOL uniform administrative requirements, including the appropriate administrative requirements and cost principles for subrecipients and other entities receiving WIOA funds, as required by Section 184(a)(4), WIOA (128 Stat. 1591);
  - b. Ensures that established policies to achieve program quality and outcomes meet the Act's objectives, including policies relating to the provision of services by AJC centers, eligible providers of training services, and eligible providers of youth activities;
  - c. Enables the governor to determine if subrecipients and contractors are in substantial compliance with WIOA requirements;
  - d. Enables the governor to determine whether a local plan will be disapproved for failure to make acceptable progress in addressing deficiencies; and
  - e. Enables the governor to ensure compliance with WIOA nondiscrimination and equal opportunity requirements (29 USC 3248) (20 CFR sections 683.410(b)(1) through (3)).
3. The state must require that prompt corrective action be taken if any substantial violations are identified as result of annual on-site monitoring and must impose the sanctions provided in sections 184(b) and (c) of WIOA if a subrecipient fails to take required corrective action. The state may issue additional requirements and instructions to subrecipients on monitoring activities (20 CFR sections 683.410(b)(4) and (5)).

## DEPARTMENT OF LABOR

### ASSISTANCE LISTING 17.264 NATIONAL FARMWORKER JOBS PROGRAM

#### I. PROGRAM OBJECTIVES

The National Farmworker Jobs Program (NFJP) is a nationally directed, locally administered program of services for eligible migrant and seasonal farmworkers (MSFW), including youth MSFW, and their dependents who encounter chronic unemployment and underemployment. The program partners with community organizations, state agencies, and state monitor advocates to provide services, including career services, training services, housing assistance services, youth services, and related assistance services, to farmworkers who depend primarily on jobs in agricultural labor performed across the country to obtain or retain unsubsidized employment, or stabilize their unsubsidized employment, including upgraded employment in agriculture.

#### II. PROGRAM PROCEDURES

The Department of Labor (DOL) awards NFJP grants competitively to eligible applicants that submit four-year program plans for operating the NFJP in state, substate, and multi-state service areas. Grantees provide career services, training services, youth services, housing assistance and other related assistance. Funds for employment and training grants are allocated through an administrative formula to state service areas. A percentage of program funds is designated for Housing Assistance grants and is allocated based on the services described and the service areas specified in grantee program plans. Grants are awarded for a four-year period.

The NFJP is a required one-stop partner. Therefore, Local Workforce Development Boards, in the areas of the state where an NFJP operates, must negotiate Memorandums of Understanding (MOUs) with NFJP grantees. Additionally, state monitor advocates are required to negotiate MOUs with NFJP grantees.

#### Source of Governing Requirements

The program is authorized by Title I, Subtitle D, Section 167, of the Workforce Innovation and Opportunity Act (Pub. L. No. 113-128). The NFJP regulations under WIOA are located at 20 CFR Part 685. Some governing statutory provisions are included in the annual appropriation for the program, with the most recent appropriation being the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260).

#### Availability of Other Program Information

Additional information on programs authorized under the WIOA can be found at [National Farmworker Jobs Program | U.S. Department of Labor \(dol.gov\)](https://www.dol.gov/eis/program/nfjp).

#### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have

been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	Y	N	N	N	Y	Y	N	N

**A. Activities Allowed or Unallowed**

1. Activities allowed are in accordance with a service delivery strategy described in the grantee’s approved four-year program plan.
  - a. Career services.
  - b. Training services, including, but are not limited to, occupational-skills training and on-the-job training.
  - c. Related assistance services that support farmworkers and their families to obtain or retain unsubsidized employment, or stabilize their unsubsidized employment, including upgraded employment in agriculture.
  - d. Housing Assistance grantees may provide permanent and temporary housing services.
  - e. Youth services that include but are not limited to (1) career services and training; (2) youth workforce investment activities specified in WIOA, (Section 129, WIOA, 128 Stat. 1504 et seq.); (3) life skills activities, which may include self- and interpersonal skills development; (4) community service projects; and (5) other activities and services that conform to the use of funds for youth activities described in Section 129, WIOA).

2. WIOA Title I funds may not be used for the following activities, except as indicated:
  - a. Construction, purchase of facilities or buildings, or other capital expenditures for improvements to land or buildings except with the prior approval of the secretary of labor. WIOA Title I funds can be used for construction only in limited situations as described under 20 CFR 685.360(c), including meeting obligations to provide physical and programmatic accessibility and reasonable accommodations, certain repairs, renovations, alterations, and capital improvements of property, and for disaster relief projects under Section 170(d), WIOA, 128 Stat. 1575, Youth Build programs under Section 171(c)(2)(A)(i), WIOA, 128 Stat. 1578, and for other projects that the Secretary determines necessary to carry out the WIOA, as described under Section 189(c) of WIOA, 128 Stat. 1599.
  - 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 (Section 181(e), WIOA, 128 Stat. 1588).
  - 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, WIOA 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 WIOA participants (Section 188(a)(3), WIOA, 128 Stat. 1598).
  - 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 (Section 181(d)(1)), WIOA, 128 Stat. 1588).
  - 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 (Section 181(d)(2), WIOA, 128 Stat. 1588).

- f. Paying the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce investment system (Section 181(b)(1), WIOA, 128 Stat. 1586).
- g. Public service employment, except to provide disaster relief employment, as specifically authorized in Section 194(10), WIOA, 128 Stat.1606.

## **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, an individual must be an eligible as follows (Section 167(i), WIOA, 128 Stat. 1566):
  - (1) Eligible migrant farmworker, as defined in WIOA Section 167(i)(2), means an eligible seasonal farmworker, as defined in WIOA Section 167(i)(3), 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. Dependents of migrant farmworkers also are eligible.
  - (2) Eligible seasonal farmworker, as defined in WIOA Section 167(i)(3), means a low-income individual who for 12 consecutive months out of the 24 months prior to application for the program involved, has been primarily employed in agricultural or fish farming labor that is characterized by chronic unemployment or underemployment, and faces multiple barriers to economic self-sufficiency. Dependents of seasonal farmworkers also are eligible.
  - (3) Eligible migrant and seasonal farmworker youth means an eligible MSFW aged 14–24 who is individually eligible or a dependent of an eligible MSFW (described in 20 CFR section 685.110). Grantees may enroll participants aged 18–24 as either a MSFW adult or a MSFW youth participant (described in 20 CFR section 685.320) but not in both categories.

### **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 in a local area to use WIOA-funded services, facilities, or equipment, on a fee-for-service basis, to provide employment and training activities to incumbent workers if their use does not interfere with utilization by eligible participants and the income generated from such fees is treated as program income (Section 194(13), WIOA, 128 Stat. 1607; 20 CFR section 683.200(c)(9)).

**J. Program Income**

1. There is no requirement that a fee-for-service be charged to employers. However, if a fee is charged for services provided under 20 CFR sections 678.435(b) or (c), the fees are considered program income (20 CFR section 678.440).
2. The addition method is required for use on all program income earned under Title I WIOA grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the program in which it was earned. 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 program (Section 194(7), WIOA, 128 Stat. 1606; 20 CFR section 683.200(c)(6)).
3. WIOA specifically include 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 Title I WIOA. Any excess of revenue over costs incurred for services provided by a governmental or nonprofit entity must be included in program income earned (Section 194(7), WIOA, 128 Stat. 1606; 20 CFR sections 683.200(c)(7) and (c)(8)).

**L. Reporting****1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *ETA 9130(J), 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. Financial data is required to be reported cumulatively

from grant inception through the end of each reporting period. Additional information can be accessed at <http://www.doleta.gov/grants/>; scroll down to the section on Financial Reporting. See Training and Guidance Letter (TEGL) 02-16 for specific and clarifying instructions about the ETA 9130 at [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5156](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5156).

## **2. Performance Reporting**

NFJP grantees are required to submit quarterly performance reports using ETA Form 9172 and ETA Form 9179 for each grant award. Reports are required to be prepared using the specific instructions for the program. Reports are due 45 days after the end of the reporting quarter. Additional information is available in TEGL 14-18 at [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=7611](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7611).

- a. Participant Individual Record Layout (PIRL) ETA Form 9172 – The ETA Form 9172 is available at <https://www.dol.gov/sites/dolgov/files/ETA/Performance/pdfs/ETA%209172%20DOL%20only%20PIRL%20CLEAN%203.1.2021.pdf>. The ETA Form 9172, OMB Control Number 1205-0521, is a quantitative report of all participants served through this program. Grantees collect and upload the data file into the Workforce Integrated Performance System (WIPS).
- b. Quarterly Narrative Report (QNR), ETA Form 9179 – The ETA Form 9179 is available at [https://www.dol.gov/sites/dolgov/files/ETA/Performance/pdfs/WIOA%20QNPR%20Template\\_ET-9179%205-20-21%20FINAL.pdf](https://www.dol.gov/sites/dolgov/files/ETA/Performance/pdfs/WIOA%20QNPR%20Template_ET-9179%205-20-21%20FINAL.pdf). The ETA Form 9179, OMB Control Number 1205-0448, is a qualitative report that provides an overview of how grantees are progressing towards their project plan as approved in their Statement of Work. In the QNR, describe activities, events, and partnership successes or hurdles that impact the grant during the reporting quarter. Grantees upload the report into WIPS.

## **3. Special Reporting**

Not Applicable

## **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**DEPARTMENT OF LABOR****ASSISTANCE LISTING 17.265 NATIVE AMERICAN EMPLOYMENT AND TRAINING****I. PROGRAM OBJECTIVES**

Section 166 of the Workforce Innovation and Opportunity Act (WIOA) authorizes funding to Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, and Native Hawaiian organizations to provide employment and training services to unemployed and low-income Native Americans, Alaska Natives, and Native Hawaiians. The stated purpose of Section 166 of WIOA is to support employment and training activities in order to (1) develop more fully the academic, occupational, and literacy skills of such individuals; (2) make individuals more competitive in the workforce and equip them with the entrepreneurial skills necessary for successful self-employment; and (3) promote economic and social development in accordance with the goals and values of such communities.

**II. PROGRAM PROCEDURES**

The Department of Labor's (DOL) Division of Indian and Native American Programs (DINAP) makes grant funds available for comprehensive workforce investment activities for Indians, Alaskan Natives, and Native Hawaiians. In addition, supplemental funding is made available to entities serving Native American youth "on or near Indian reservations and in Oklahoma, Alaska, or Hawaii" through grants to American Indian, Native American, and Native Hawaiian organizations. Funding is made available through a competitive grants process and award amounts are determined by use of a funding formula.

Grantees are required to submit a Comprehensive Services Plan for DOL approval. The Plan must (1) identify program emphasis areas, (2) designate a specific target population to be served by the grant, (3) establish specific plans for serving youth (if they receive supplemental funding), (4) develop a budget and identify the level of administrative costs needed for the four-year plan, and (5) identify appropriate program linkages with other agencies. Section 166 grantees are required to negotiate Memorandums of Understanding (MOUs) with the Local Workforce Development Board(s) (LWDBs), which operate in whole or in part within the grantee's service area. The LWDBs receive grant funds from the DOL, which come through the state, to provide employment and training services that are similar to the Native American Section 166 program.

**Source of Governing Requirements**

This program is authorized by Title I of the WIOA (Pub. L. No. 113-128). The WIOA superseded the Workforce Investment Act of 1998. WIOA regulations are located at 20 CFR parts 678, 683, and 684.

**Availability of Other Program Information**

Additional information on programs authorized under the WIOA can be found at <http://www.doleta.gov/dinap/> and <http://www.doleta.gov/>.



### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	Y	N	N	N	Y	Y	N	N

#### A. Activities Allowed or Unallowed

##### 1. *Activities Allowed*

Funds must be used for the following types of activities that are necessary to meet the needs of Indians, Alaska Natives, or Native Hawaiians preparing to enter, reenter, or retain unsubsidized employment leading to self-sufficiency:

- a. Comprehensive workforce development activities for Indians, Alaska Natives, or Native Hawaiians, including training on entrepreneurial skills; or
- b. Supplemental services for Indian, Alaska Native, or Native Hawaiian youth on or near Indian reservations and in Oklahoma, Alaska, or Hawaii (29 USC 3221(d), Section 166(d), WIOA, 128 Stat. 1560 and 1561).

##### 2. *Activities Unallowed*

Funds may not be used for the following activities, except as indicated:

- a. Construction, purchase of facilities or buildings, or other capital expenditures for improvements to land or buildings except with the prior approval of the secretary of labor. WIOA Title I funds can be used for construction only in limited situations, including meeting obligations to provide physical and programmatic accessibility and reasonable accommodations, certain repairs, renovations, alterations, and capital improvements of property, and for other projects that the secretary determines necessary to carry out the WIOA, as described under Section 189(c), WIOA, 128 Stat. 1599.
- 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 (Section 181(e), WIOA, 128 Stat. 1588; 20 CFR section 683.245).
- 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, WIOA 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 WIOA participants (Section 188(a)(3), WIOA, 128 Stat. 1598; 20 CFR section 683.255).
- 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 (Section 181(d)(1)), WIOA, 128 Stat. 1588; 20 CFR section 683.260(a)(1)).
- 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 (Section 181(d)(2), WIOA, 128 Stat. 1588; 20 CFR section 683.260(a)(2)).
- f. Paying the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce investment system (Section 181(b)(1), WIOA, 128 Stat. 1586; 20 CFR section 683.250(a)(1)).

- g. Public service employment, except to provide disaster relief employment, as specifically authorized in Section 194(10), WIOA, 128 Stat. 1606; 20 CFR section 683.250(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. *Adults* – An individual is eligible to receive services under the Indian and Native American adult program if he or she meets the definition of an Indian, as defined in Section 4(d) of the Indian Self-Determination and Education Assistance Act (25 USC 450b), and also is one of the following:
  - (1) Unemployed (Section 3(61), WIOA, 128 Stat. 1439)
  - (2) Underemployed
  - (3) A low-income individual as defined in Section (3)(36), WIOA (128 Stat. 1435)
- c. *Youth* – Funds available to serve Indian, Alaska Native, and Native Hawaiian youth on or near Indian reservations and in Oklahoma, Alaska, and Hawaii are available as a supplement to the adult funds. To be eligible to receive supplemental youth services, an individual must be:
  - (1) American Indian, Alaska Native, or Native Hawaiian;
  - (2) Between the ages of 14 and 24; and
  - (3) A low-income individual, as defined at WIOA Section 3(36). However, 20 CFR section 684.430(a)(3) allows up to 5 percent of individuals who do not meet the minimum income criteria to be eligible to receive supplemental youth services if such individuals meet the eligibility requirements of paragraphs (1) and (2) above. The term low-income also includes a youth living in a high-poverty area (sections 129(a)(1)(B)(ii), (a)(1)(C)(ii), (a)(2), and (a)(3), WIOA, 128 Stat. 1505 and 1506; 20 CFR section 684.430(b)). “High-poverty area” is defined at 20 CFR section 684.130.

### **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 WIOA-funded local area services, facilities, or 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 (Section 194(13), WIOA, 128 Stat. 1607; 20 CFR section 683.200(c)(9)).

## **J. Program Income**

1. The addition method is required for use on all program income earned under WIOA grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the WIOA 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 WIOA program (Section 194(7), WIOA, 128 Stat.1606; 20 CFR section 683.200(c)(6)).
2. WIOA specifically include 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 WIOA. Any excess of revenue over costs incurred for services provided by a governmental or nonprofit entity must be included in program income earned (Section 194(7), WIOA, 128 Stat. 1606; 20 CFR sections 683.200(c)(7) and (c)(8)).

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. 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 WIOA 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. Financial data is required to be reported cumulatively from grant inception through the end of each reporting period. See TEGL 02-16 for specific and clarifying instructions about the ETA 9130 at [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5156](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5156).

## 2. Performance Reporting

- a. ETA-9084, *Indian and Native American Comprehensive Services Report (OMB No. 1205-0422)* – Reports data on participation, termination, performance measures outcomes, and the socio-economic characteristics of all exiters. 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 this report quarterly, within 45 days after the end of the quarter, except that federally recognized Indian tribes participating in the demonstration under Pub. L. No. 102-477 are not required to submit quarterly reports (as is the case for ETA-9130 and ETA-9085 grantees are required to submit these reports quarterly, within 45 days after the end of the quarter).

See ETA Form 9084 located at

<https://www.dol.gov/sites/dolgov/files/ETA/dinap/pdfs/ETA-Form-9084-and-Instructions.pdf>.

*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 socioeconomic characteristics of participants. Grantees receiving these funds are required to submit a semiannual and annual report except federally recognized Indian tribes participating in the demonstration under Pub. L. No. 102-477 (as is the case for ETA-9130 and ETA-9084).

See ETA Form 9085 located at

<https://www.dol.gov/sites/dolgov/files/ETA/dinap/pdfs/ETA-Form-9085-and-Instructions.pdf>.

*Key Line Items* – The following line items contain critical information:

1. Line 1 – *Total Participants*
2. Line 2 – *Total Exiters*
3. Line 3 – *Total Current Participants*
4. Line 29 – *Improved Basic Skills by at Least Two Grade Levels*
5. Line 30 – *Attained High School Diploma*
6. Line 31 – *Attained GED*
7. Line 35 – *Attainment of Two or More Goals*

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**IV. OTHER INFORMATION**

Audits of Indian tribal governments with the Native American Employment and Training program in their approved 477 Plan with reporting under Version 2 forms (75 FR 57970 (September 26, 2014)) must follow the guidance in the 477 Cluster found in the Department of the Interior’s section of Part 4 of this Supplement. See the “Note” at the beginning of the 477 Cluster for additional information.

Audits of Indian tribal governments with the Native American Employment and Training program in their approved 477 Plan with reporting under Version 1 forms must follow this program supplement for Assistance Listing 17.265.

1. The auditor should use the approved Pub. L. No. 102-477 plan in determining compliance requirements to be tested;
2. The auditor is permitted to audit the Pub. L. No. 102-477 demonstration project as a cluster of programs; and
3. The Native American Employment and Training program grantee may present demonstration project expenditures in its Schedule of Expenditures of Federal Awards (SEFA) in the same manner in which it had been presenting these expenditures in the period immediately prior to this Supplement or in the same manner in which it had been presenting these expenditures in the period immediately prior to the 2009 Compliance Supplement.

## **WAGE RATE REQUIREMENTS CROSS-CUTTING SECTION**

### **INTRODUCTION**

This section contains guidance for audit of the Wage Rate Requirements (also known as the Davis-Bacon Act) as they apply to programs of the Department of Transportation and other federal agencies, as specified below and referenced in III.N, “Special Tests and Provisions,” of the affected programs in Part 4 of the Supplement. The statutory source requirement (i.e., the “compliance requirement”) is stated in the individual programs, along with any program-specific limitations and a reference to this cross-cutting section. The general compliance requirement, audit objectives, and suggested audit procedures are specified in this cross-cutting section.

#### **Assistance Listing # Program Name**

### **DEPARTMENT OF TRANSPORTATION**

#### **Airport Improvement Program**

20.106	Airport Improvement Program
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#### **TIFIA Program**

20.223	Transportation Infrastructure Finance and Innovation Act (TIFIA) Program
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#### **High-Speed Intercity Passenger Rail**

20.319	High-Speed Rail Corridors and Intercity Passenger Rail Service – Capital Assistance Grants
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### **DEPARTMENT OF COMMERCE**

#### **Economic Development**

11.300	Investments for Public Works and Economic Development Facilities
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11.307	Economic Adjustment Assistance
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#### **Broadband Technology**

11.557	Broadband Technology Opportunities Program
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### **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

#### **Supportive Housing for the Elderly**

14.157 Supportive Housing for the Elderly (Section 202)

**Supportive Housing for Persons with Disabilities (Section 811)**

14.181 Supportive Housing for Persons with Disabilities (Section 811)

**CDBG – Entitlement Grants Cluster**

14.218 Community Development Block Grants/Entitlement Grants

14.225 Community Development Block Grants/Special Purpose Grants/Insular Areas

**State-Administered CDBG**

14.228 Community Development Block Grants/State’s Program and Non-Entitlement Grants in Hawaii

**Shelter Plus Care**

14.238 Shelter Plus Care

**Home Investment Partnerships Program**

14.239 Home Investment Partnerships Program

**NSP – Recovery Act**

14.256 Neighborhood Stabilization Program (Recovery Act Funded)

**CDBG Disaster Recovery Grants Pub. L. No. 113-2 Cluster**

14.269 Hurricane Sandy Community Development Block Grant Disaster Recovery Grants (CDBG-DR)

14.272 National Disaster Resilience Competition (CDBG-NDR)

**Public Housing**

14.850 Public and Indian Housing

**HOPE VI Cluster**

14.866 Demolition and Revitalization of Severely Distressed Public Housing (Hope VI)



14.889 Choice Neighborhoods Implementation Grants

**Indian Housing Block Grants**

14.867 Indian Housing Block Grants

**CFP**

14.872 Public Housing Capital Fund (CFP)

**Native Hawaiian Housing**

14.873 Native Hawaiian Housing Block Grants

**Moving to Work Demonstration Program**

14.881 Moving to Work Demonstration Program

**DEPARTMENT OF THE TREASURY**

**Gulf RESTORE**

21.015 Resources and Ecosystems Sustainability, Tourist Opportunities,  
and Revived Economies of the Gulf Coast States (Gulf RESTORE)

**DEPARTMENT OF EDUCATION**

**Impact Aid**

84.041 Impact Aid (Title VIII of ESEA)

**GULF COAST ECOSYSTEM RESTORATION COUNCIL**

**RESTORE Act Comprehensive Plan Component**

87.051 Gulf Coast Ecosystem Restoration Council Comprehensive Plan  
Component Program

**RESTORE Act Spill Impact Component**

87.052 Gulf Coast Ecosystem Restoration Council Oil Spill Impact  
Program

### III. COMPLIANCE REQUIREMENTS

#### N. Special Tests and Provisions

##### 1. Wage Rate Requirements

**Compliance Requirements** All laborers and mechanics employed by contractors or subcontractors to work on construction contracts in excess of \$2,000 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 Department of Labor (DOL) (40 USC 3141–3144, 3146, and 3147).

Nonfederal entities shall include in their construction contracts subject to the Wage Rate Requirements (which still may be referenced as the Davis-Bacon Act) a provision that the contractor or subcontractor comply with those requirements and the DOL regulations (29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction). This includes a requirement for the contractor or subcontractor to submit to the nonfederal 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; the A-102 Common Rule (section 36(i)(5)); OMB Circular A-110 (2 CFR Part 215, Appendix A, Contract Provisions); **2 CFR Part 176, Subpart C**; and 2 CFR section 200.326).

This reporting is often done using Optional Form WH-347, which includes the required statement of compliance (*OMB No. 1235-0008*). The DOL, Employment Standards Administration, maintains a Davis-Bacon and Related Acts web page (<https://www.dol.gov/agencies/whd/government-contracts/construction>). Optional Form WH-347 and instructions are available on this web page.

**Audit Objectives** Determine whether the nonfederal entity notified contractors and subcontractors of the requirements to comply with the Wage Rate Requirements and obtained copies of certified payrolls.

##### **Suggested Audit Procedures**

Select a sample of construction contracts and subcontracts greater than \$2,000 that are covered by the Wage Rate Requirements and perform the following procedures:

- a. Verify that the required prevailing wage rate clauses were included in the contract or subcontract.
- b. For each week in which work was performed under the contract or subcontract, verify that the contractor or subcontractor submitted the required certified payrolls.

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

## DEPARTMENT OF TRANSPORTATION

### ASSISTANCE LISTING 20.106 AIRPORT IMPROVEMENT PROGRAM

#### I. PROGRAM OBJECTIVES

Note: This program is considered a “higher risk” program for 2022, pursuant to 2 CFR section 200.519(c)(2). Refer to the “Programs with Higher Risk Designation” section of Part 8, Appendix IV, Internal Reference Tables, for a discussion of the impact of the “higher risk” designation on the major program determination process.

The objective of the Airport Improvement Program (AIP) 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, US 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.

#### Source of Governing Requirements

This program is authorized by 49 USC Chapter 471.

#### Availability of Other Program Information

Additional program information is provided in FAA Order 5100.38D, *Airport Improvement Program Handbook* (available at [AIP Handbook – Office of Airports \(faa.gov\)](https://www.faa.gov/airports/resources/aip-handbook)) and FAA Advisory Circulars in the 150/5100 series (available at [http://www.faa.gov/airports/resources/advisory\\_circulars/](http://www.faa.gov/airports/resources/advisory_circulars/)). The FAA also maintains an Airports *Federal Register* Notices page available at [Federal Register Notices \(FRNs\) for Airport Programs \(faa.gov\)](https://www.faa.gov/airports/resources/federal-register-notices).

Program related questions may be directed to Patricia Dickerson, FAA Airports Financial Assistance Division, at 202-267-9297 (direct) and 202-267-3831 (main) or by e-mail at [patricia.a.dickerson@faa.gov](mailto:patricia.a.dickerson@faa.gov). Questions related to the revenue diversion and other compliance requirements may be directed to Olu Okegbenro, FAA Airport Compliance Division at 202-267-3785 (direct) and 202-267-3446 (main) or by e-mail at [Olu.Okegbenro@faa.gov](mailto:Olu.Okegbenro@faa.gov).

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	N	N	Y	N	Y

#### 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 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 USC 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 5100.38D, *Airport Improvement Program Handbook*, and FAA Advisory Circulars in the 150/5100 series).
- (1) Emergency planning.
  - (2) Decorative landscaping, sculpture, or art works.
  - (3) Communication systems except those used for safety/security.
  - (4) 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.
  - (5) Roads of whatever length, exclusively for the purpose of connecting public parking facilities to an access road.
  - (6) Roads serving solely industrial or non-aviation-related areas or facilities.
  - (7) Equipment that is used by air traffic controllers such as Airport surface detection systems (ASDE).
  - (8) Maintenance/service facilities except for those allowed to service required ARFF equipment.
  - (9) Office/administrative equipment, including data processing equipment, computers, recorders, etc.

- (10) 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 US 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)).

**B. Allowable Costs/Cost Principles**

Costs charged to federal funds under the AIP program must comply with the cost principles at 2 CFR Part 200, Subpart E, the AIP Handbook – Change 1 and any other requirements or restrictions on the use of federal funding.

**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**

All match funding must be provided in compliance with the requirements of 2 CFR Part 200.306. The grantee's share of project costs on an AIP grant (also known as cost share) is defined in 49 USC 47109 and set forth in the grant award. The nonfederal share varies by airport size and is generally 25 percent for large and medium hub airports and 10 percent for all other airports.

Acceptable match, whether cash or in-kind, must be allowable and eligible. In addition, match must be provided by the recipient; or provided as cash by a third party; or provided as in-kind by a third party; or any combination of cash and in-kind provided by the recipient and/or a third party.

2. **Level of Effort**

Not Applicable

3. **Earmarking**

Not Applicable

**L. Reporting****1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement – Applicable*
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs – Applicable*
- c. *SF-425, Federal Financial Report – Applicable*
- d. *FAA Form 5100-127, Operating and Financial Summary (OMB No. 2120-0569)*

Sponsors of commercial service airports are required to submit this report, which captures revenues and expenditures at the airport, including revenue surplus.

- e. *FAA Form 5100-126, Financial Government Payment Report (OMB No. 2120-0569)*

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. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions****1. Wage Rate Requirements**

**Compliance Requirements** The Wage Rate Requirements are applicable to construction work for airport development projects (49 USC 47112).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

## 2. Revenue Diversion

**Compliance Requirements** 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 that 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 ([Federal Register Notices \(FRNs\) for Airport Programs \(faa.gov\)](https://www.faa.gov/airports/airports-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 46301(a)(3)).

**Audit Objectives** 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 ensure 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(l)) 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(l) is only required when the Airport Improvement Program is audited as major program under 2 CFR Part 200, Subpart F, and that the auditor reporting requirements of 2 CFR Part 200, Subpart F, 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 2 CFR section 200.518, or the FAA designating the AIP as a major program under 2 CFR section 200.503(e).

**DEPARTMENT OF TRANSPORTATION****ASSISTANCE LISTING 20.205 HIGHWAY PLANNING AND CONSTRUCTION  
(Federal-Aid Highway Program)****ASSISTANCE LISTING 20.219 RECREATIONAL TRAILS PROGRAM****ASSISTANCE LISTING 20.224 FEDERAL LANDS ACCESS PROGRAM****ASSISTANCE LISTING 23.003 APPALACHIAN DEVELOPMENT HIGHWAY  
SYSTEM****I. PROGRAM OBJECTIVES**

The objectives of the Highway Planning and Construction Cluster are to (1) assist states, tribal governments, and state land management agencies in the planning and development of an integrated, interconnected transportation system important to interstate commerce and travel by constructing, rehabilitating, and preserving the National Highway System (NHS), including interstate highways, and other state-aid highways; (2) provide aid for the repair of state-aid highways following disasters; (3) foster safe highway design and improve bridge conditions; (4) to support community-level transportation infrastructure; and (5) to provide for other special purposes. This cluster also provides for the improvement of roads in the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, and on 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 state-aid highways (i.e., roads open to the public and not functionally classified as local or rural minor collector roads). Exceptions to the use on state-aid highways include (1) planning and research activities; (2) bridge and safety improvements, which may be on any public road; (3) highway safety improvement projects, bicycle and pedestrian projects, transportation alternatives, and recreational trails projects, which may be located along any road or off road; and (4) projects funded under the Federal Lands and Tribal Transportation Program (FLTTP). Some limited categories of funds may be granted directly to other state agencies, tribal governments, or Local Public Agencies (LPAs), such as cities, counties, Metropolitan Planning Organizations (MPOs), and other political subdivisions. Funds may also be passed through such agencies, but the direct recipient retains overall stewardship responsibility.

While each category of funds has individual eligibility requirements, in general federal funds may be used for (1) surveying; (2) engineering studies and design; (3) environmental studies; (4) right-of-way acquisition and relocation assistance; (5) capital improvements classified as new

construction or reconstruction; (6) improvements for functional, geometric, or safety reasons; (7) 4R projects (restoration, rehabilitation, resurfacing, and reconstruction); (8) preservation; (9) planning; research, development, and technology transfer; (10) intelligent transportation systems projects; (11) roadside beautification; (12) vegetation management; (13) wetland and natural habitat mitigation; (14) traffic management and control improvements; (15) improvements necessary to accommodate other transportation modes; (16) development and establishment of transportation management systems; (17) billboard removal; (18) fringe and corridor parking; (19) car pool and van pool projects; (20) historic preservation and rehabilitation of historic transportation facilities; (21) scenic and historic highway improvements; (22) inspection and evaluation of bridges, tunnels, and other highway assets; (23) asset management; (24) construction of ferry boats, ferry terminal facilities, and approaches to such facilities; (25) highway safety improvement projects; (26) bicycle and pedestrian projects; (27) transportation alternatives; (28) recreational trails; and (29) workforce development, training, and education. 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., FLTTP, National Highway Performance Program (NHPP), Surface Transportation Block Grant (STBG) program, or Congestion Mitigation and Air Quality (CMAQ) Improvement program) may be used for improvements to transit. CMAQ funds are for transportation projects and programs in air quality, nonattainment and maintenance areas for ozone, carbon monoxide, and particulate matter, which reduce transportation related emissions, though provision is made for states without air quality issues. ADHS projects are subject to the same standards, specifications, policies, and procedures as other state-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 the metropolitan long-range plan and the Transportation Improvement Program for the area. Projects in nonmetropolitan areas of a state must be consistent with the state's transportation plan. All federal-aid projects must also be included in the approved Statewide Transportation Improvement Program (STIP) developed as part of the required statewide transportation planning process. The Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) must approve the STIP jointly.

Prior to fiscal year (FY) 2013, the ADHS was a cost-to-complete program (i.e., funding was 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 Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. No. 112-141) did not provide dedicated funding for the ADHS but did make ADHS activities eligible under the NHPP and STBG programs. The Fixing America's Surface Transportation (FAST) Act (Pub. L. No. 114-94) provided states through FY 2050 the authority to select a state share of up to 100 percent for the cost of constructing highways and access roads on the ADHS. 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 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 state requirements have been satisfied, FHWA authorizes the work with the ADHS, STBG, and/or NHPP funds. FHWA provides oversight for the design and construction of the ADHS (23 USC 106(g)(5)(B)).

The Federal Lands Access Program (FLAP) was established under the MAP-21 and continued under the FAST Act (Pub. L. No. 114-94) (23 USC 204). The program makes funds available for transportation projects on federal lands access transportation facilities located on or adjacent to, or that provide access to federal lands. Priority is given to projects accessing high-use federal recreation sites or federal economic generators, as identified by the secretaries of the appropriate federal land management agencies.

### **Source of Governing Requirements**

The primary sources of program requirements are 23 USC (Highways). Implementing regulations are found in 23 CFR (Highways) and 49 CFR (Transportation). The ADHS program requirements are found in 40 USC (Public Building, Property, And Works).

### **Availability of Other Program Information**

FHWA program laws, regulations, and other general information can be found at <http://www.fhwa.dot.gov/> and <https://www.fhwa.dot.gov/fastact/>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	N	N	Y	Y	N	Y	Y

**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, certain emergency repair work under 23 USC 125, and preliminary engineering under Section 1440 of the FAST Act (23 USC 121 note); (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, 630.205, and 635.112). The authorization to proceed date is the same as the authorization date of the project agreement except for instances when the project needs to advance before the project agreement can be completed.
2. Federal funds can be used for administrative settlement costs incurred in defending contract claim proceedings before arbitration boards or state courts only if approved by FHWA for state-aid projects. If special counsel is used, it must be recommended by the State Attorney or State Department of Transportation (State 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 (40 USC 14501).
4. FLTTP funds may be used for work on projects that provide access to or within federal or tribal lands (23 USC 201 through 202 and 25 CFR Part 170).

**F. Equipment and Real Property Management**

1. The state and LPA subrecipients shall charge at a minimum, fair market value for the sale, use, lease, or lease renewal of real property acquired with federal highway funds. The state or LPA shall use such income for projects eligible under 23 USC. Exceptions may be granted to allow use for social, environmental, or

economic purposes (23 USC 156). Tribal governments are not subject to 23 USC 156 and fall under tribal self-governance provisions and 2 CFR Part 200.

2. 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)).
3. 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).

## **I. Procurement and Suspension and Debarment**

1. In general, state DOTs and LPAs must award construction contracts on the basis of the lowest responsive bid submitted by a bidder meeting the contracting agency's criteria for responsibility. Competitive bidding is required unless the contracting agency is able to demonstrate to FHWA that some other method is more cost effective or that an emergency exists (23 USC 112(b)(1); 23 CFR sections 635.104 and 635.114), or if exempt by other law, such as for the Recreational Trails Program (23 USC 133(i)), or through the use of [https://www.fhwa.dot.gov/environment/transportation\\_alternatives/guidance/\(MAP-21 Section 1524\)](https://www.fhwa.dot.gov/environment/transportation_alternatives/guidance/(MAP-21%20Section%201524)). Contracting agencies also may procure construction services through competitive proposals by using design-build contracts (23 USC 112(b)(3); 23 CFR Part 636) or construction manager/general contractor contracts (23 USC 112(b)(4)).
2. For construction contracts, bidding documents must be advertised for at least three weeks, unless a shorter period is justified in the project files. Recipients may not negotiate with the potential contractors during the time between bid opening and contract award (such negotiations would be noted in the contract files). Awards must be made to the lowest responsible bidder. If the award was made to a bidder other than the low bidder, then the project files must contain justification (23 CFR sections 635.112(b), 635.113, and 635.114).

## **J. Program Income**

State and local governments may only use the state share of net income from the sale, use, or lease of real property previously acquired with state funds if the income is used for projects eligible under 23 USC (23 USC 156). The amount of state funds and the total projects costs are recorded in the project agreement to determine the proportional nonfederal share.

## M. Subrecipient Monitoring

State DOTs are required to determine whether subrecipients have sufficient accounting controls to properly manage such federal funds (23 USC 106(g)(4)(A)).

## N. Special Tests and Provisions

### 1. Quality Assurance Program

**Compliance Requirements** A State DOT or LPA must have a quality assurance (QA) program, approved by FHWA, for construction projects on the NHS 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, 637.207, and 637.209).

**Audit Objectives** 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.

### 2. Contractor Recoveries

**Compliance Requirements** 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 state-aid project involved shall be credited with the state 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 Objectives** Determine whether the proper credit was made to the state 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 state-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.

### 3. Project Approvals

**Compliance Requirements** FHWA project approval/authorization to proceed is required before costs are incurred for all phases or projects, except for certain property acquisition costs permitted under 23 USC 108, certain emergency repair work under 23 USC 125, and preliminary engineering under Section 1440 of the FAST Act (23 USC 121 note). Based on the Stewardship and Oversight agreement between the State DOT and the FHWA Division office, projects may be authorized under the authority in 23 USC 106(c), which allows the State DOT to assume responsibilities for designs, plans, specifications, estimates, contract awards, and inspection of progress. When FHWA authorizes a construction project or phase in a project agreement, the State DOT may incur costs (i.e., advertise for bids or use force account work) (23 CFR sections 630.205(c), 635.112(a), 635.204, and 635.309).

**Audit Objectives** Determine whether project activities are started with required state 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 the date of FHWA's project agreement.

### 4. Value Engineering

**Compliance Requirements** State DOTs are required to establish a value engineering (VE) program and ensure that a VE analysis is performed on all applicable projects. The program should include procedures to approve or reject recommendations and for monitoring to ensure that resulting, approved recommendations are incorporated into the plans, specifications, and estimate. Applicable projects are (a) projects located on the NHS with an estimated total project cost of \$50 million or more that utilize federal highway program funding; (b) bridge projects located on the NHS with an estimated total cost of \$40 million or more that utilize federal highway program funding; and (c) any other projects that the FHWA determines to be appropriate. Projects utilizing the design-build method of construction do not require a VE analysis (23 USC 106(e)(5)). Critical elements of VE programs include identification of a state VE coordinator; establishment of a VE policy, and documented VE procedures, including requirements to identify applicable projects, verify required VE analyses are completed on State DOT and subrecipient projects; and monitor, assess, and report on the performance of the VE program (23 USC 106(e); 23 CFR Part 627).

**Audit Objectives** Determine whether established VE programs include VE policies and procedures, documented analyses conducted for applicable projects, evaluations of VE



recommendations, and incorporation of approved recommendations into the plans, specifications, and estimate for the project.

### **Suggested Audit Procedures**

- a. Verify that the State DOT established a VE program in accordance with state requirements.
- b. Review a sample of applicable projects to ensure that a VE analysis was conducted, recommendations were evaluated, and approved recommendations were incorporated into the design of the project, and that the results of the analysis and recommendations implemented were documented in accordance with the established VE program's policies and procedures.

## **5. Utilities**

**Compliance Requirements** State DOTs are required to develop policies and procedures pertaining to the use, accommodation and/or relocation of public and private utility facilities on highway rights-of way using federal highway funds. State DOTs are required to develop, maintain, and obtain FHWA approval of their Utility Accommodation Policy (UAP) (23 CFR section 645.215). Expenses incurred for relocating utility facilities necessitated by highway construction projects using federal highway program funds are eligible for reimbursement from FHWA provided these costs were incurred in a manner consistent with state laws or FHWA regulations, whichever is more restrictive (23 CFR section 645.103(d)).

PS&E packages for projects using federal highway program funds must have a utility agreement or statement verifying the appropriate coordination with all utilities on the project occurred prior to FHWA construction authorization. Each agreement or statement should specify that the utility use and occupancy of the right-of-way or any required utility work will be completed prior to the highway construction, or there were conditions specified allowing for the utility work to be coordinated with and completed in coordination with the highway construction schedule (23 CFR section 635.309(b)).

Utility agreements, permits, and supporting documentation define the conditions and provisions for accomplishing and reimbursing utility companies for utility relocation work that was required due to a federal highway program funded project. The agreements and supporting documentation, and the state requirements they reference, require that:

- a. There must be itemized cost estimates for the proposed utility work (23 CFR section 645.113(c));
- b. The utility agreement was approved prior to the utility incurring any costs or conducting any work that would be eligible for reimbursement (23 CFR section 645.113(g)(3));
- c. Reimbursement of utility costs will occur after the work is completed (23 CFR section 645.107(a));

- d. The utility incurred the costs and billings submitted verifying the work was completed in accordance with the utility agreement (23 CFR section 645.113(a-f) and 23 CFR section 645.117); and
- e. Billed costs were eligible for reimbursement (23 CFR section 645.117).

**Audit Objectives** Determine whether the agreements, supporting documentation, and reimbursement for the adjustment and/or relocation of utility facilities on state-aid highway projects were accomplished in a manner which complies with state laws and FHWA regulations.

### **Suggested Audit Procedures**

- a. Verify that the State DOT has a current UAP approved by FHWA.
- b. Review a sample of PS&E packages on projects using federal highway program funds to verify that there is a utility agreement or statement confirming that the appropriate coordination with all utilities on the project has occurred prior to FHWA construction authorization.
- c. Review a sample of utility agreements and supporting documentation to verify required supporting material was prepared and that costs reimbursed met the requirements of the agreements.

## **6. Administration of Engineering and Design-Related Service Contracts**

**Compliance Requirements** 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 from consultants and sub-consultants for projects using federal highway funds (23 USC 112(b)(2); 23 CFR Part 172). Requirements applicable to engineering and design-related services contracts include:

- a. Contracting agencies (state DOTs and LPAs) must have written policies and procedures for each method of procurement used to procure engineering and design services. State DOT policies and procedures, or recipient LPA policies and procedures, must be approved by FHWA. LPAs that are subrecipients may adopt written policies and procedures prescribed by the awarding State DOT or prepare and maintain their own written policies and procedures approved by the State DOT (23 CFR section 172.5(b)).
- b. Contracting agencies (state DOTs and LPAs) are required to accept the indirect cost rates for consultants and sub-consultants that have been established by a cognizant agency in accordance with the Federal Acquisition Regulation (48 CFR Part 31) for one-year applicable accounting periods if such rates are not currently under dispute. Consultants and sub-consultants providing engineering and design-related services contracts must certify to contracting agencies that costs used to establish indirect cost rates are in compliance with the applicable cost principles contained in the Federal Acquisition Regulation (48 CFR Part 31) by submitting a

“Certificate of Final Indirect Costs” (23 USC 112(b)(2)(C); 23 CFR section 172.11(c)(3)).

- c. Contracts for a consultant to act in a management support role on behalf of a contracting agency or subrecipient for engineering or design related services must be approved by FHWA before the consultant is hired unless an alternative approval procedure has been approved by FHWA (23 CFR section 172.7(b)(5)).

**Audit Objectives** Determine if consultants performing engineering and design-related services for projects using federal highway funding were procured using FHWA-approved qualifications-based selection procedures.

### **Suggested Audit Procedures**

- a. Verify that the State DOT, or recipient LPA, has written policies and procedures (usually in the form of a Consultant Manual) for procurement of engineering and design services and that those procedures have been approved by FHWA. For subrecipient LPAs, verify that they are using written policies and procedures prescribed by the awarding State DOT or that the subrecipients’ written policies and procedures have been approved by the State DOT.
- b. Verify that contracting agencies are accepting the appropriate indirect cost rates.
- c. Verify that consultants and sub-consultants have submitted to the contracting agency a “Certificate of Final Indirect Costs.”
- d. Verify that contracts for consultants acting in a management support role have been approved by FHWA or are covered by an FHWA-approved alternate procedure.

## DEPARTMENT OF TRANSPORTATION

### ASSISTANCE LISTING 20.218 MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

### ASSISTANCE LISTING 20.237 HIGH PRIORITY GRANT PROGRAM

#### I. PROGRAM OBJECTIVES

The Federal Motor Carrier Safety Assistance (FMCSA) program, Motor Carrier Safety Assistance Program (MCSAP), and High Priority (HP) grant program share the same objectives to support a safe and efficient surface transportation system. They include:

- Making targeted investments to promote safe commercial motor vehicle (CMV) transportation, including the transportation of passengers and hazardous materials;
- Investing in activities likely to generate maximum reductions in the number and severity of CMV crashes and fatalities resulting from such crashes;
- Adopting and enforcing effective motor carrier, CMV, and driver safety regulations and practices consistent with federal requirements; and
- Assessing and improving statewide performance by setting program goals and meeting performance standards, measures, and benchmarks.

While MCSAP and HP grants share the same objectives, some eligible activities and costs differ. Chapters in the MCSAP Comprehensive Policy provide program-specific policy (including cost eligibility) and technical assistance when administering both MCSAP and HP grant programs. Within the HP grant program, the Fixing America's Surface Transportation (FAST) Act established the Innovative Technology Deployment (ITD) program which has goals and objectives that differ from traditional MCSAP activities. However, the ITD program was integrated into HP and MCSAP (for operations and maintenance) to support activities and information technology enhancement that complement and enhance CMV and motor carrier enforcement activities.

#### II. PROGRAM PROCEDURES

FMCSA developed an electronic commercial vehicle safety plan (CVSP) development tool (called eCVSP) available at [eCVSP Login \(dot.gov\)](#). The eCVSP software application allows a MCSAP lead agency to create an online CVSP and track the progress of CVSP development through to approval. Use of the eCVSP helps ensure that states satisfy the requirements in 49 CFR 350.213, expedites FMCSA's review of the document, facilitates the prompt returning of comments or requests for clarification, and allows the MCSAP lead agency to easily resubmit a revised document.

In accordance with 49 USC 31102(i) and grant/financial management requirements in 2 CFR Part 200, each CVSP receives a fair, equitable and objective review prior to award approval. This review ensures that applicable statutory and regulatory requirements will be met and allowable

CVSP projects and activities will succeed. The CVSP review process generally consists of a review in the following areas:

1. *Application Review.* The FMCSA reviews the CVSP and all supplemental attachments (e.g., forms and certifications) for completeness and to ensure that the MCSAP lead agency meets the basic eligibility requirements defined in the Notice of Funding Opportunity (NOFA).
2. *Programmatic Review.* The FMCSA review the CVSP to make sure that the information presented is reasonable and understandable and the activities proposed in the application are measurable, achievable, and consistent with program or legislative requirements.
3. *Financial Review.* The FMCSA evaluates the fiscal integrity and financial capability of a MCSAP lead agency, and reviews the CVSP details, including the budget and budget narrative, and any other documentation to examine costs for proposed project/program activities to determine if are they appear reasonable, necessary, eligible and allowable for award. Note that approval of the CVSP is not a final approval of costs as defined in accordance with 2 CFR Part 200 Subpart E.
4. *Suitability Review.* In accordance with [2 CFR section 200.205](#) the suitability review is discussed in more detail in the MCSAP Comprehensive Policy. The FMCSA evaluates the CVSP against the performance-based information required in accordance with [49 CFR section 350.213](#).

### Source of Governing Requirements

The MCSAP grant program is authorized by the Fixing America's Surface Transportation Act, Pub. L. No. 114-94, sections 5101(a) and 5101(c) (2015). The MCSAP is governed by 49 USC 31102 and 31104, and by 49 CFR section 350, as applicable.

The HP grant program is authorized by the Fixing America's Surface Transportation Act, Pub. L. No. 114-94, sections 5101(a) and 5101(c) (2015). HP grants are governed by 49 USC 31102(l) and 31104, and by 49 CFR section 350, as applicable.

### Availability of Other Program Information

Additional information about the programs may be found on the FMCSA website at <https://www.fmcsa.dot.gov/mission/grants>. Program policy guidance for the MCSAP and HP programs may be found at <https://www.fmcsa.dot.gov/mission/grants/motor-carrier-safety-assistance-program-grant-comprehensive-policy>.

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then

determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	Y	N	Y	Y	N	N

**A. Activities Allowed or Unallowed**

The primary MCSAP activities eligible for reimbursement include the National Program Elements currently outlined in 49 CFR section 350.203:

1. Driver and Vehicle Inspections
2. Traffic Enforcement
3. Compliance Reviews, Carrier Interventions, Investigations, and New Entrant Safety Audits
4. Public Education and Awareness
5. Data Collection

In addition, 49 CFR section 350.227 lists other activities eligible for reimbursement under the MCSAP. In addition, the FAST Act added other CMV safety activities that are eligible under MCSAP. These include:

- a. Border enforcement safety activities (inspections, traffic enforcement, etc.)
- b. Performance and Registration Information Systems Management (PRISM)
- c. Innovative Technology Deployment (ITD) (operations and maintenance only)

The state must ensure that these activities, if financed through MCSAP funds, will not diminish the effectiveness of the development and implementation of the programs to improve motor carrier, CMV, and driver safety.

These other activities also include:

- Sanitary food transportation inspections performed under 49 USC 5701.
- The following activities, when carried out in conjunction with an appropriate North American Standard (NAS) inspection of a CMV and inspection report.
- Enforcement of CMV size and weight limitations at locations, excluding fixed-weight facilities, such as near steep grades or mountainous terrains, where the weight of a CMV can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States.
- Detection of and enforcement actions taken as a result of criminal activity, including trafficking of human beings, in a CMV or by any occupant, including the operator, of the CMV.

## **F. Equipment and Real Property Management**

### *1. Equipment Management Requirements for Subrecipients of States*

Notwithstanding 2 CFR section 200.313, subrecipients of states shall follow such policies and procedures allowed by the state with respect to the use, management and disposal of equipment acquired under a DOT award (2 CFR section 1201.313).

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

The FAST Act sets minimum matching requirements for each grant program. Matching means the portion of project costs not paid by federal funds. For example, FMCSA grant programs require that FMCSA reimburse 85 percent of eligible project costs, while the recipient provides the remaining 15 percent share.

After award, recipients must document all expenditures relating to cost sharing or matching in the same manner as those for the federal grant funds. Every item must be verifiable (i.e., tracked and documented) and any claimed cost share expense can only be counted once. In addition, a cost sharing or matching requirement may not be met by costs borne by another federal grant except as provided by federal statute. The FAST Act allows FMCSA to modify the federal share of a grant program from the standard 85/15 threshold (85 percent federal, 15 percent recipient share). FMCSA may opt to offer 100 percent federal financial assistance for a specific project(s) and/or priorities within a grant program. Other

projects funded at 100 percent federal share may be announced in the NOFA as a National Priority and are at the discretion of FMCSA.

The value of third party in-kind contributions may be accepted as the match. The use of third party in-kind contributions should be identified in the grant/sub-grant agreement, or amendments thereto, and approved by FMCSA. The use of in-kind contributions may not be made retroactive prior to approval of the work program or an amendment thereto. Recipient (or subrecipients) should be aware that they are responsible for ensuring that the following additional criteria are met:

- The third party performing the work must agree to allow the value of the work to be used as the match;
- The cost of the third party work must not be borne by other federal funds or be used as a match for other federally funded grants/sub-grants;
- The work performed by the third party must be an eligible activity that benefits the federally funded work and must be identified in the work program;
- The third party costs (e.g., salaries, fringe benefits) must be allowable under 2 CFR section 200, Subpart E – Cost Principles;
- The third party work must be performed during the period to which the matching requirement applies; and
- The third party in-kind contributions must be verifiable from the records of the recipient or subrecipient and these records must show how the value placed on third party in kind contributions was derived.

## **2. Level of Effort**

The MCSAP lead agency must maintain a certain level of expenditure, in addition to the required 15 percent matching share of a MCSAP grant. This financial requirement is known as maintenance of effort (MOE) or level of effort. The purpose of the MOE is to ensure that MCSAP lead agencies are committed to maintaining their own state funded CMV safety programs, notwithstanding federal funding.

A MCSAP lead agency must maintain within each federal fiscal year a level of effort that is at least equal to the average of what the MCSAP lead agency spent on MCSAP eligible activities in fiscal year (FY) 2004 and FY 2005.

Expenditures of other state agencies, local agencies, or sub-grantees (whether supported by MCSAP grant funds or not), other federal funds, and MCSAP lead agency matching funds are not to be included in the MOE calculation.



A change in the MCSAP lead agency does not negate the MOE requirement because the state funding for these efforts also transitioned to the new state lead agency. The concept of “successor in interest” applies. Thus, no state may have a zero MOE simply because the MCSAP lead agency is different in a current year than it was in FYs 2004 and 2005, and the successor agency must meet the MOE requirements established by the FY 2004 and FY 2005 baseline.

Because non-CMV and CMV traffic enforcement activities without an inspection were not authorized until the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was enacted in late FY 2005, MCSAP lead agencies are not to include these expenditures in calculating the MOE baseline. MCSAP lead agencies may, however, include documented non-CMV traffic enforcement and other new efforts and initiatives they have implemented since FYs 2004 and 2005 to meet the annual MOE obligation.

The MCSAP lead agency must retain the documentation used to calculate the MOE average for audit purposes. In the absence of records, a reasonable estimate, based upon available information should be submitted to FMCSA for review and approval. MCSAP lead agencies must self-certify (per [49 CFR sections 350.211](#) and [350.213](#)) that the calculated MOE will be met each fiscal year and reflect their MOE in their CVSP. The state must annually submit its MOE substantiation document to FMCSA to support the actual expenditures during the fiscal year.

### **3. Earmarking**

Not Applicable

## **H. Period of Performance**

The notice of grant award (NGA) contains the grant agreement’s period of performance. The NGA period of performance means the time during which the grant recipient may incur obligations to carry out the work authorized under the grant agreement. The FMCSA may establish a shorter, but not longer, grant agreement period of performance than what the statutory availability of funds timeframe allows. All allowable periods of performance are located in 49 USC 31104(f), as amended by the FAST Act.

## **J. Program Income**

Notwithstanding 2 CFR section 200.80, except as otherwise provided in federal statutes, regulations, or the terms and conditions of the federal award, program income also does not include taxes, special assessments, levies, and fines raised by a grantee and subgrantee, and interest earned on any of them. Please see 2 CFR 200.307 (f) 2 CFR 200.77 (period of performance) and 2 CFR 200.407 (prior written approval).

## **L. Reporting**

### **1. Financial Reporting**

The FMCSA will not reimburse recipients from a grant for an amount that is more than the government share of costs incurred as of the date of the voucher. This signifies that recipients are limited in the percentage of costs per voucher, not per grant. For example, states are limited to 85 percent reimbursement under MCSAP. Because FMCSA's reimbursement requirement is incurred by the date of each voucher, the state must meet the matching share requirement, for example 15 percent per voucher.

- a. *SF-270, Request for Advance or Reimbursement* – Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Program* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

### **2. Performance Reporting**

The FMCSA requires recipients to provide performance progress and financial reports as a condition of the grant agreement. These reports help FMCSA monitor recipient progress towards the project objectives and provide an important measure of accountability for the recipient. The FMCSA has standardized the information required in the performance report; however, at a minimum, each performance report must contain the following information:

- a. An account of significant progress (findings, events, trends, etc.) made during the reporting period;
- b. A description of any technical and/or cost problem(s) encountered or anticipated that will affect completion of the grant within the time and fiscal constraints as set forth in this agreement, together with recommended solutions or corrective action plans (with dates) to such problems, or identification of specific action that is required by the FMCSA, or a statement that no problems were encountered;
- c. An outline of work and activities planned for the next reporting period; and
- d. Provide status update/resolution for all outstanding findings from program reviews and/or audits.

### **3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## DEPARTMENT OF TRANSPORTATION

### ASSISTANCE LISTING 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 (nonfederal) 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 highways and bridges, transit, rail, intelligent transportation systems, transit-oriented development, rural infrastructure, state infrastructural banks, and intermodal freight projects, including certain projects that provide access to ports.

#### II. PROGRAM PROCEDURES

Public entities, or private entities with public sponsorship, seeking to finance the design and construction, or reconstruction, of eligible surface transportation projects may apply for TIFIA assistance. The program targets large projects, generally in excess of \$50 million. Some exceptions to the minimum cost requirement are (1) transit-oriented development, local, and rural projects, which have minimum project costs of at least \$10 million; and (2) intelligent transportation systems, with minimum project costs of at least \$15 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 have a dedicated revenue source and 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 <https://www.transportation.gov/buildamerica/financing/tifia>.

#### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance

requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.”

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	Y	N	N	N	N	Y

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

Highway, transit, passenger rail, certain freight facilities, certain port projects, rural infrastructure projects, transit-oriented development projects, and SIB rural projects funds may receive credit assistance through the TIFIA Program.

- Eligible highway facilities include interstates, state highways, bridges, toll roads, international bridges or tunnels, and any other type of facility eligible for grant assistance under Title 23, the highways title of the US Code (23 USC). This also includes a category specifically permitted under the TIFIA statute (i.e., a project for an international bridge or tunnel for which an international entity authorized under federal or state law is responsible).
- Eligible transit projects include the design and construction of stations, track, and other transit-related infrastructure, purchase of transit vehicles, and any other type of project that is eligible for grant assistance under the transit title of the US Code (Chapter 53 of Title 49 of the US Code), including the installation of positive train control systems. Additionally, intercity bus vehicles and facilities are eligible to receive TIFIA credit assistance.
- Rail projects involving the design and construction of intercity passenger rail facilities or the procurement of intercity passenger rail vehicles are eligible for TIFIA credit assistance.

- Public freight rail facilities, private facilities providing public benefit for highway users by way of direct freight interchange between highway and rail carriers, intermodal freight transfer facilities, projects that provide access to such facilities, and service improvements (including capital investments for intelligent transportation systems) at such facilities, are also eligible for TIFIA credit assistance. In addition, a logical series of such projects with the common objective of improving the flow of goods can be combined.
- Projects located within the boundary of a port terminal are also eligible to receive TIFIA credit assistance, so long as the project is limited to only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port.
- Eligible projects also include related transportation improvement projects grouped together in order to reach the minimum cost threshold for eligibility, so long as the individual components are eligible and the related projects are secured by a common pledge.
- Rural Project Assistance: The TIFIA statute provides two different forms of assistance to rural infrastructure projects. The FAST Act expanded TIFIA eligibility to include capitalization of rural projects funds within SIBs, and it continued the DOT's ability to offer reduced interest rates to Rural Projects<sup>104</sup>.

## **B. Costs Allowed or Unallowed**

### *1. Costs Allowed*

TIFIA credit assistance is available to cover only eligible project costs. A calculation of total eligible project costs is important to determine whether the project meets the eligibility test for minimum project size and whether the credit request does not exceed applicable thresholds of reasonably anticipated eligible project costs as required by statute.

The TIFIA statute, codified at 23 USC sections 601-610, defines eligible project costs as those expenses 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.
- 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. *Costs Unallowed*

Capitalized interest on TIFIA credit assistance may not be included as an eligible project cost.

Also, TIFIA administrative charges, such as application fees, transaction fees, loan servicing fees, credit monitoring fees, and the charges associated with obtaining the required preliminary rating opinion letter, will not be considered among the eligible project costs. In all cases, eligible project costs should be calculated and presented on a cash basis (that is, as year-of-expenditure dollars) with the year of planned expenditure clearly identified.

## H. **Period of Performance**

The maximum maturity of all TIFIA credit instruments is 35 years after a project's substantial completion.

## N. **Special Tests and Provisions**

### 1. **Wage Rate Requirements**

**Compliance Requirements** The provisions of the Wage Rate Requirements apply to projects receiving TIFIA assistance (49 USC 5333(a)).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

### 2. **Administration of Engineering and Design-Related Service Contracts**

**Compliance Requirements** 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 from consultants and sub-consultants for projects using federal-aid highway funds (23 USC 112(b)(2); 23 CFR Part 172). Requirements applicable to engineering and design-related services contracts include:

- a. Contracting agencies (state DOTs and LPAs) must have written policies and procedures for each method of procurement used to procure engineering and

design services. State DOT policies and procedures, or recipient LPA policies and procedures, must be approved by FHWA. LPAs that are subrecipients may adopt written policies and procedures prescribed by the awarding State DOT or prepare and maintain their own written policies and procedures approved by the State DOT (23 CFR section 172.5(c)).

- b. Contracting agencies (state DOTs and LPAs) are required to accept the indirect cost rates for consultants and sub-consultants that have been established by a cognizant agency in accordance with the Federal Acquisition Regulation (48 CFR Part 31) for one-year applicable accounting periods if such rates are not currently under dispute. Consultants and sub-consultants providing engineering and design-related services contracts must certify to contracting agencies that costs used to establish indirect cost rates are in compliance with the applicable cost principles contained in the Federal Acquisition Regulation (48 CFR Part 31) by submitting a “Certificate of Final Indirect Costs” (23 USC 112(b)(2)(C); 23 CFR section 172.11).
- c. Contracts for a consultant to act in a management support role on behalf of a contracting agency or subrecipient for engineering or design-related services must be approved by FHWA before the consultant is hired unless an alternative approval procedure has been approved by FHWA (23 CFR section 172.7(b)(5)).

**Audit Objectives** Determine if consultants performing engineering and design-related services for projects using federal-aid highway funding were procured using FHWA-approved, qualifications-based selection procedures.

#### **Suggested Audit Procedures**

- a. Verify that the State DOT has written policies and procedures (usually in the form of a Consultant Manual) for procurement of engineering and design services and that those procedures have been approved by FHWA. For subrecipients (LPAs), verify that they are using written policies and procedures prescribed by the awarding State DOT or that the subrecipients’ written policies and procedures have been approved by the State DOT.
- b. Verify that contracting agencies are accepting the appropriate indirect cost rates.
- c. Verify that consultants and sub-consultants have submitted to the contracting agency a “Certificate of Final Indirect Costs.”
- d. Verify that contracts for consultants acting in a management support role have been approved by FHWA or are covered by an FHWA-approved alternate procedure.

#### **IV. OTHER INFORMATION**

See the Safe Harbor Status discussion in Part 1 for additional information.



## DEPARTMENT OF TRANSPORTATION

### ASSISTANCE LISTING 20.315 NATIONAL RAILROAD PASSENGER CORPORATION GRANTS

#### I. PROGRAM OBJECTIVES

Note: This program is considered a “higher risk” program for 2022, pursuant to 2 CFR section 200.519(c)(2). Refer to the “Programs with Higher Risk Designation” section of Part 8, Appendix IV, Internal Reference Tables, for a discussion of the impact of the “higher risk” designation on the major program determination process.

The Federal Railroad Administration (FRA) executes and oversees grant agreements with the National Railroad Passenger Corporation (Amtrak) to provide Amtrak with federal funds appropriated by Congress. In conjunction with operating revenues and funds from states, local governments, and other entities, Amtrak uses federal funds for a wide range of its operating and capital activities, including a portion of its operating expenses, capital maintenance of fleet and infrastructure, capital expansion and investment programs, and capital debt repayment.

#### II. PROGRAM PROCEDURES

##### A. Background

The FAST Act (Pub. L. No. 114-94, enacted December 4, 2015) authorized \$305 billion over fiscal years 2016 to 2020 for the Department of Transportation’s (DOT) surface transportation programs, including highway, highway and motor vehicle safety, public transportation, motor carrier safety, hazardous materials safety, rail, and research, technology and statistics programs. The FAST Act authorization includes \$8.05 billion for grants to Amtrak, composed of \$2.596 billion for the Northeast Corridor (NEC) and \$5.454 billion for the National Network as well as other requirements related to Amtrak, passenger rail, and freight rail. Annual appropriations may vary from the amounts authorized in the FAST Act for the NEC and National Network.

The Department of Transportation (DOT), Federal Railroad Administration (FRA) *Amtrak Annual Grants Management and Oversight Manual, Version 5.0 (July 2020)* meets the requirements of Section 11202(a) of the FAST Act (titled Amtrak Grant Process), which requires the secretary of transportation (Secretary) to establish and transmit “substantive and procedural requirements, including schedules,” for grant requests by Amtrak for federal funds appropriated to the Secretary for the use of Amtrak to the Committee on Commerce, Science, and Transportation, the Committee on Appropriations of the Senate, the Committee on Transportation and Infrastructure, and the Committee on Appropriations of the House of Representatives.

The Notice of Grant Award (NGA) includes key grant information: the Statement of Work (SOW) and Terms and Conditions. The Terms and Conditions consist of provisions derived from enacted legislation, FRA policy, federal statutes, and government-wide regulations recipients of federal awards must follow. The conditions specify report

formats and frequency of reporting, payment method, prior approval requirements and also include Amtrak specific provisions. Amtrak is responsible for reviewing and understanding the financial, administrative and legal requirements outlined in the document.

Given the size and complexity of Amtrak's program and its unique funding history, FRA and Amtrak engage in a collaborative process to ensure the conditions not only align with government-wide and DOT requirements but also enable Amtrak to achieve programmatic goals and objectives.

### **Source of Governing Requirements**

The 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards applies to this program, as modified by the terms and conditions of the annual grant agreements (69A36521502440AMTDC and 69A36521502430AMTDC).

Sections 11201 and 11202 of FAST Act, 49 USC 24319, applies to this program.

Continuing Appropriations and Military Construction, Veterans Affairs and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act and Further Continuing and Security Assistance Appropriations Act, Pub. L. nos. 114-223 and 254.

Continuing Appropriations Act, 2016, and Consolidated Appropriations Act, 2016, Pub. L. nos. 114-53 and 113.

Continuing Appropriation Resolution, 2015 and Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. nos. 113-164 and 235.

Continuing Appropriations Act, 2018, and Supplemental Appropriations for Disaster Relief Requirements Act, 2017; Further Continuing Appropriations Act, 2018; Further Additional Continuing Appropriations Act, 2018; Extension of Continuing Appropriations Act, 2018; Further Extension of Continuing Appropriations Act, 2018; and the Consolidated Appropriations Act, 2018. Pub. L. nos. 114-56, 90, 96, 120, 123, 141.

Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, making further continuing appropriations for fiscal year 2019, and for other purposes making appropriations for fiscal year 2019; Further Additional Continuing Appropriations Act, 2019; Consolidated Appropriations Act, 2019. Pub. L. nos. 115-245, 298; 116-5, 6.

Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94; Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136.

Continuing Appropriations Act, 2021 and Other Extensions Act making appropriations for fiscal year (FY) 2021 through December 11, 2020, Pub. L. No. 116-159, October 1, 2020 Further Continuing Appropriations Act, 2021 and Other Extensions Act making appropriations for FY

2021 through December 18, 2020, Pub. L. No. 116-215, December 11, 2020 Further Extension of Continuing Appropriations Act, 2021 making appropriations for FY 2021 through December 28, 2020, Pub. L. No. 116-246, December 22, 2020 Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, December 27, 2020 American Rescue Plan Act of 2021, Pub. L. No. 117-2, March 11, 2021.

**Availability of Other Program Information**

Department of Transportation, Federal Railroad Administration *Amtrak Annual Grants Management and Oversight Manual, Version 5.0 (July 2020)*.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.”

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	Y	N	Y	N	Y

**A. Activities Allowed or Unallowed**

Grants to Amtrak are authorized under Sections 11101(a) and (b) of the FAST Act to fund “activities associated with the Northeast Corridor” and “activities associated with the National Network.” Congress provides further direction on the use of funds in each appropriation act, often directing Amtrak to spend specific sums on certain activities (e.g., Americans with Disabilities Act compliance or the acquisition of rolling stock). These set-asides, however, do not affect the broad eligibility of the grant funds, only the

amounts spent on these specified activities. FRA has generally interpreted “activities associated with” the Northeast Corridor and National Network to mean activities that support Amtrak’s provision of intercity passenger rail. In practice, activities allowed include operating and capital costs and debt service payments. Activities unallowed include costs unrelated to intercity passenger rail service, such as costs associated with Amtrak’s ancillary service line (e.g., commuter train contract services).

## **B. Allowable Costs/Cost Principles**

Amtrak’s grant agreement requires it to “conform with Federal guidelines or regulations and Federal cost principles for Recipients that are for-profit organizations, as set forth in the Federal Acquisition Regulation, 48 CFR Subpart 31.2, ‘Contracts with Commercial Organizations,’ in lieu of 2 CFR Part 200, Subpart E.”

## **G. Matching, Level of Effort, Earmarking**

The appropriation Act that directs grants be made to Amtrak and the corresponding grant agreements often include directed spending requirements, including but not limited to:

- Spend “at least \$75 million from its FY 2021 NEC and NN grants to bring Amtrak served facilities and stations into compliance with the ADA” – ADA compliance is qualitatively material to Amtrak.
- Use no less than \$109,805,000 for states’ PRIIA Section 212 capital payments – PRIIA 212 funds are quantitatively and qualitatively material.

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Applicable
- c. *SF-425, Federal Financial Report* – Applicable
- d. Program Income Report
- e. Consolidated Financial Sources and Uses Statements
- f. Monthly Expenditure Report (MER)
- g. Estimated Monthly Expenditure Reports

### **2. Performance Reporting**

- a. Capital Project Analysis Report (VaVb Report)

- b. Program of Project Status Report (PSR)
- c. Amtrak's Performance Tracking (APT) Detailed Route Report
- d. APT Allocation Rules Archives Report
- e. Monthly Credit Facility Report
- f. Rail Fleet Monthly Report
- g. PRIIA 212 Payments
- h. Withdrawn Property, Equipment, and Supplies
- i. Debt Service Payment Report
- j. APT Annual Report
- k. Final Work Plan
- l. Rail Fleet Asset Condition Report

### **3. Special Reporting**

Not Applicable

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## **N. Special Tests and Provisions**

Amtrak's grant agreements have some qualitatively material special provisions, including but not limited to:

### **1. Use and Reporting of Overtime for Agreement Employees**

**Compliance Requirements** As required by the Appropriations Act, Amtrak will not use any of the funds provided for overtime costs in excess of \$35,000 for any individual employee; provided, however, Amtrak's president may waive the \$35,000 limit when the president determines that the limit poses a risk to the safety and operational efficiency of the system. Amtrak must submit a copy of the summary of all overtime payments incurred for the calendar year and the three prior calendar years to the House and Senate Committees on Appropriations as required by the Act. Such summary must include the total number of employees that received waivers and the total overtime payments Amtrak

paid to those employees receiving waivers for each month of calendar year and the three prior calendar years.

**Audit Objectives** Determine whether Amtrak is in compliance with the Appropriations Act in regard to overtime costs.

### **Suggested Audit Procedures**

- a. If overtime payments were incurred, verify that Amtrak submitted a copy of the Overtime Cost Report of all overtime payments incurred for the calendar year and the three prior calendar years to the House and Senate Committees on Appropriations, and that the report contains the necessary approvals, authorizations, and concurrences.
- b. Verify that waivers were obtained for those employees receiving overtime in excess of \$35,000.

## **2. Preventing and Reporting on Employee Furloughs**

**Compliance Requirements** The American Rescue Plan Act requires Amtrak to recall and manage employees furloughed on or after October 1, 2020, as a result of efforts to prevent, prepare for, and respond to coronavirus. As required by Section 12.b of Attachment 1 of the FY21 National Network grant and Section 9.b of Attachment 1 of the FY21 Northeast Corridor grant, Amtrak is required to submit the weekly total number and cumulative total number of coronavirus furloughed employees recalled, the number of coronavirus furloughed employees still furloughed, and the weekly total number and cumulative total number of employees furloughed for reasons not related to coronavirus. If at any point the total number of employees furloughed as a result of efforts to prevent, prepare for, and respond to coronavirus reaches zero, Amtrak may submit the report monthly instead of weekly.

**Audit Objectives** Determine whether Amtrak is in compliance with the reporting requirements of Section 12.b of Attachment 1 of the FY21 National Network grant and Section 9.b of Attachment 1 of the FY21 Northeast Corridor grant.

### **Suggested Audit Procedures**

- a. Select a sample of weekly furloughed employee reports to ensure Amtrak is accurately submitting reports, in compliance with the reporting requirements of Section 12.b of Attachment 1 of the FY21 National Network grant and Section 9.b of Attachment 1 of the FY21 Northeast Corridor grant.

## **3. Buy American Act/Domestic Buying Preference**

**Compliance Requirements** Amtrak must comply with the Buy American Act, 41 USC 8301-8305 (“the Act”) and the Buy American requirements in the grant agreement. These requirements prohibit grantees from using foreign construction materials or procuring

foreign equipment in projects that are funded by DOT grants. The prohibition applies to items that were purchased for and used in the project, even if the source of the funds is not federal in nature (i.e., a purchase in support of the project made by the grantee using its own funds to satisfy the program's cost share requirements). There are certain exceptions to this requirement but, under the terms of the grant agreement, a grantee must generally first obtain DOT approval before applying the exception.

**Audit Objectives** Determine whether Amtrak complied with the Buy American Act provisions when purchasing materials for the grant.

**Suggested Audit Procedures**

- a. Select a sample of the Amtrak's procurement solicitations and award documentation to determine if Amtrak included the Buy American Act provisions into all contracts and subcontracts when procuring for project construction materials to ensure compliance.

## DEPARTMENT OF TRANSPORTATION

### ASSISTANCE LISTING 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:

1. High-Speed Rail Corridor Development program (49 USC 26106),



2. Intercity Passenger Rail Service Corridor Capital Assistance program (49 USC Chapter 244),
3. Congestion Grants program (49 USC 24105),
4. Fiscal Year 2009 Capital Assistance to States – Intercity Passenger Rail Service program (Pub. L. No. 111-8 (123 Stat. 934)), and
5. 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/Page/P0140>. **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 this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	Y	Y	N	Y	Y	Y

**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 nonmotorized 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*

FYs 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)).

## **H. Period of Performance**

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-270, Request for Advance or Reimbursement* – Not Applicable

b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

c. *SF-425, Federal Financial Report* – Applicable

## 2. Performance Reporting

Not Applicable

## 3. Special Reporting

Not Applicable

## 4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

## N. Special Tests and Provisions

### 1. Wage Rate Requirements

**Compliance Requirements** Two provisions related to the Wage Rate Requirements are included in 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 Wage Rate Requirements generally. The second provision also mandates compliance the Wage Rate Requirements 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). The 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. The 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 Wage Rate 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 Wage Rate Requirements for these projects. For projects that do not propose to use rights-of-way owned by a railroad, normal Wage Rate 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)).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

**DEPARTMENT OF TRANSPORTATION****ASSISTANCE LISTING 20.500 FEDERAL TRANSIT – CAPITAL INVESTMENT GRANTS (Fixed Guideway Capital Investment Grants)****ASSISTANCE LISTING 20.507 FEDERAL TRANSIT – FORMULA GRANTS (Urbanized Area Formula Program)****ASSISTANCE LISTING 20.525 STATE OF GOOD REPAIR GRANTS PROGRAM****ASSISTANCE LISTING 20.526 BUS AND BUS FACILITIES FORMULA & DISCRETIONARY PROGRAMS (Bus Program)****I. PROGRAM OBJECTIVES**

Note: This program is considered a “higher risk” program for 2022, pursuant to 2 CFR section 200.519(c)(2). Refer to the “Programs with Higher Risk Designation” section of Part 8, Appendix IV, Internal Reference Tables, for a discussion of the impact of the “higher risk” designation on the major program determination process.

*Urbanized Area Formula Program (Section 5307)*

The objective of the Urbanized Area Formula Program (5307 program) is 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.

*Fixed Guideway Capital Investment Grants (Section 5309)*

The objective of the Fixed Guideway Capital Investment Grants program (5309 program) is to provide funds for construction of new or extended fixed guideway systems, corridor-based bus rapid transit systems, and core capacity improvement projects that increase capacity by at least 10 percent in existing fixed guideway corridors that are at capacity today or will be in five years. In addition, the Pilot Program for Transit-Oriented Development (TOD) Planning provides funding for corridor-level comprehensive planning activities conducted in conjunction with new fixed guideway or core capacity improvement projects. The Expedited Project Delivery (EPD) Pilot Program aims to expedite funding of new fixed guideway capital projects, small starts projects, or core capacity improvement projects and to encourage innovative partnerships and funding mechanisms.

*State of Good Repair Grants Program (Section 5337)*

The objective of the State of Good Repair Grants program (5337 program) is to provide financial assistance for replacement, maintenance, and rehabilitation projects for existing fixed guideway (including rail, bus rapid transit, and passenger ferries) and high intensity motorbus (buses operating in high-occupancy vehicle (HOV) lanes) systems to maintain public transportation

systems in a state of good repair so that they operate safely, efficiently, reliably, and sustainably and offer balanced transportation choices that help to improve mobility, reduce congestion, and encourage economic development.

### *Buses & Bus Facilities Program (Section 5339)*

The objective of the Buses and Bus Facilities program (5339 program) is to provide financial assistance to replace, rehabilitate, and purchase buses and related equipment as well as construct bus-related facilities through both formula and competitive selection procedures. The Buses and Bus Facilities program includes three tiers. The 5339(a) formula tier provides funds based on population, ridership, and vehicle mileage. The 5339(b) portion of the bus program is dedicated to a discretionary competition for buses, bus facilities and bus related equipment. The 5339(c) portion of the bus program is dedicated to the Low or No Emissions discretionary competitions for low or no emissions buses, bus facilities, and bus related equipment.

## **II. PROGRAM PROCEDURES**

Federal transit law under Chapter 53 of Title 49, US Code, authorizes the Urbanized Area Formula program (49 USC 5307, including the competitive Passenger Ferry program), the Capital Investment Grants program (49 USC 5309), the Grants for Buses and Bus Facilities program (49 USC 5339, including the Grants for Buses and Bus Facilities formula program (5339(a)), the competitive buses and bus facilities program (5339(b)), and the Low or No Emission Grants program (5339(c))), and the State of Good Repair Grants program (49 USC 5337). The pilot program for TOD Planning is authorized by Section 20005(b) of the Moving Ahead for Progress in the 21st Century Act (MAP-21; Pub. L. No. 112-141, July 6, 2012). The EPD Pilot Program is authorized by Section 3005(b) of the Fixing America's Surface Transportation Act (FAST Act; Pub. L. No. 114-94, December 4, 2015).

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, quarterly or annual progress and financial status reports, and, where applicable, Triennial Reviews.

FTA is required to perform reviews and evaluations of 49 USC 5307 grant activities at least every three years. The most recent FTA Triennial Review Workshop Workbook provides guidance to FTA staff and recipients on the conduct of triennial reviews and is available at <https://www.transit.dot.gov/fy20-comprehensive-review-guide>. These reviews are conducted with specific reference to compliance with statutory and administrative requirements and consistency of 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 website listed below.

### **Source of Governing Requirements**

The programs in this cluster are authorized by 49 USC 5307, 5309, 5337, and 5339, as well as Section 20005(b) of MAP-21 and Section 3005(b) of FAST. Program regulations are at 49 CFR parts 601 through 665.



**Availability of Other Program Information**

Additional information is available on the FTA website at <http://www.fta.dot.gov/>.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	Y	Y	N	N	Y	N

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

- a. Generally, under all programs, unless otherwise specified below, capital activities, as defined in 49 USC 5302(3), are eligible activities, including preventive maintenance and certain expenses related to crime prevention and security (49 USC 5307(a), 5309(b), 5337(b), and 5339(a)).
- b. Under the 5307 program, for projects awarded before October 1, 2012, 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)).

- c. Under the 5307 program, operating assistance for all urbanized areas under 200,000 population, and certain larger urbanized areas under limited exceptions, and planning for all urbanized areas (49 USC 5307(a)(2)). Additional flexibility for reimbursing operating expenses for all 5307 recipients has been extended in response to the COVID-19 public health emergency. FTA allowed all recipients of 5307 formula funds to use apportioned funds for operating expenses related to the emergency, beginning January 20, 2020, regardless of the size of the transit system or urbanized area. Additional detail and Frequently Asked Questions available at:
- FTA Formula Funding Under Emergency Relief Program  
<https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19>
  - CARES, CRRSAA & ER Funding Requirements  
<https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19#CARESER>
- d. Under the 5307 program, human resources and workforce development activities, including training, and training provided at the National Transit Institute or through a state-contracted training provider (49 USC 5314 (b) and (c)).
- e. Under the 5337 program, the only capital projects authorized are projects that implement a transit asset management plan and projects that maintain, rehabilitate, and replace transit assets for high intensity fixed guideway and motorbus systems in a state of good repair (49 USC 5337(b)).
- f. Under the 5339 program, the only capital projects authorized are bus, bus facilities, and bus-related equipment projects (49 USC 5339(a)).
- g. Under the 5339 program, workforce development (49 USC 5314(b)).
- h. Under the 5309 program, for projects awarded before October 1, 2012, the only capital projects authorized are those for
- (1) bus and bus facilities;
  - (2) new fixed guideways, including Small Starts;
  - (3) fixed guideway modernization; or
  - (4) corridor improvements (49 USC 5309(b)(1) through (b)(4)).
- i. Under the 5309 program, for projects awarded on or after October 1, 2012, the only capital projects authorized are those for

- (1) new or extended fixed guideway capital projects;
  - (2) corridor-based bus rapid transit projects; or
  - (3) core capacity improvement projects (49 USC 5309(b)).
- j. Under the Pilot Program for TOD Planning, only comprehensive planning associated with a new fixed guideway or core capacity improvement transit capital project as defined in federal public transportation law (49 USC 5309(a)) is allowable (Section 20005(b) of MAP-21).
- k. Under the EPD Pilot Program, only new or extended fixed guideway capital projects, small start projects, or core capacity improvement projects are eligible for funding that use a public-private partnership and will be operated and maintained by employees of an existing public transportation provider (Section 3005(b) of the FAST Act).
2. *Activities Unallowed*
- a. Under the 5309 and 5337 programs, the following:
    - (1) Mobility management;
    - (2) Operating expenses; and
    - (3) Alternatives analysis, including planning, with funds appropriated after fiscal year (FY) 2005 (49 USC 5309(b) and 5337).
  - b. Under the 5307 program, operating assistance in areas over 200,000, unless under certain limited exceptions (49 USC 5307(a)(2)).
  - c. Under the 5339 program, preventive maintenance, and rail-related activities (49 USC 5339).

## **H. Period of Performance**

OMB Uniform Guidance section 200.343(b) requires nonfederal entities to liquidate all obligations incurred under the federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the federal award unless the federal awarding agency or pass-through entity authorizes an extension.

FTA Circular 5010.1E describes Period of Performance as “the time during which the recipient or subrecipient may incur new obligations to carry out the scope of work authorized under the Grant or Cooperative Agreement. FTA, or the pass-through entity, must include the start and end dates of the period of performance in the Grant or Cooperative Agreement, regardless of whether pre-award authority has been exercised. The start date is the Federal Award Date of an Award (5010.1E(I)(5)(a)(111)).”

Typically, for traditional programs an award for preventative maintenance or operating activities is not meant to be an open, ongoing award. These awards should contain no more than three apportionment fiscal years of funding. The award may be amended multiple times to account for the three fiscal years of funding allocated to the recipient. Any request may only be for the immediately preceding year and/or current year activities.

For CARES Act, CRRSAA, and formula (5307 and 5311) programs under Emergency Relief, all expenses must be incurred on or after January 20, 2020. Grants for operating assistance and preventive maintenance using CARES Act or CRRSAA funds may cover a period of time that corresponds to the expected spend-down rate of the funds, and the agency may establish the end of the period of performance of the grant accordingly.

#### **I. Procurement and Suspension and Debarment**

Recipients must use qualifications-based selection procedures (Brooks Act or an equivalent qualifications-based requirement of a state) when acting as contracting agencies to procure engineering and design-related services for construction of a transit project (49 USC 5325(b)(1)).

## DEPARTMENT OF TRANSPORTATION

### ASSISTANCE LISTING 20.509 FORMULA GRANTS FOR RURAL AREAS

#### I. PROGRAM OBJECTIVES

The objectives of the Formula Grants for Rural Areas (Section 5311) program are to initiate, improve, or continue public transportation service in rural areas by providing financial assistance for operating, planning, administrative expenses, and 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 for training, technical assistance, research, and related support services to support rural transit service.

#### II. PROGRAM PROCEDURES

##### A. State Agencies

The Federal Transit Administration (FTA) annually publishes formula apportionments to the states in a *Federal Register* notice published within 10 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.

##### B. Appalachian Development Public Transportation Assistance Program

The Appalachian Development Public Transportation Assistance Program is a formula program under the Section 5311 program that provides additional funding to support public transportation in the Appalachian region. There are 13 eligible states that receive an allocation under this provision. Recipients may use these funds for any purpose that is eligible under Section 5311.

##### C. Tribal Transit Program

The Tribal Transit Program (TTP) under the 5311 program includes both formula and discretionary components. Federally recognized Indian tribes are eligible direct recipients and apply directly to FTA. Under the discretionary program, funds are made available annually on a competitive basis. Recipients of TTP funds may use these funds for any purpose that is eligible under Section 5311.

## **D. Subrecipients**

Except for the TTP, 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. Program regulations are in 49 CFR parts 601 through 665. Note that certain exceptions or dollar thresholds in these rules may exclude many rural transit activities. 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 US Bureau of the Census).

### **Availability of Other Program Information**

Information about the program may be found on the FTA website at <http://www.fta.dot.gov/>. Program Guidance and Application Instructions are contained in FTA Circulars, which may be found on the website.

## **III. COMPLIANCE REQUIREMENTS**

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Y	Y	Y	N	Y	N	N	Y	N	N	Y	N

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

- a. Local transportation service (transit service available to the public) in a rural area (49 USC 5311(d)).
- b. Support of intercity bus transportation (49 USC 5311(f)).
- c. 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)).
- d. Planning, operating, and capital projects (49 USC 4911(b)(1)).
- e. Job access and reverse commute projects, and the acquisition of public transportation services, including service agreements with private providers of public transportation (49 USC 5311(b)(1)).
- f. RTAP funds may be used to provide training, technical assistance, research and related support services for providers of rural public transit and related services (49 USC 5311(b)(3)).

**DEPARTMENT OF TRANSPORTATION****ASSISTANCE LISTING 20.513 ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES****ASSISTANCE LISTING 20.516 JOB ACCESS AND REVERSE COMMUTE PROGRAM****ASSISTANCE LISTING 20.521 NEW FREEDOM PROGRAM****I. PROGRAM OBJECTIVES****Enhanced Mobility of Seniors and Individuals with Disabilities (5310 Program)**

The objective of the 5310 formula and discretionary program is to enhance mobility for seniors and persons with disabilities by providing funds for programs that serve the special needs of transit-dependent populations beyond traditional public transportation services and Americans with Disabilities Act (ADA) complementary paratransit services.

**Job Access and Reverse Commute (JARC) Program**

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 Program**

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 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 ADA.

**II. PROGRAM PROCEDURES**

The Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. No. 112-141) combined the Capital Assistance program for Elderly Persons and Persons with Disabilities (Assistance Listing 20.513) and the New Freedom program (Assistance Listing 20.521) into the 5310 program.

Effective with the passage of MAP-21 (October 1, 2012), the JARC, and New Freedom programs were repealed and no additional grants were awarded. Section 3006(b) of the Fixing America's Surface Transportation (FAST) Act (Pub. L. No. 114-94) (49 USC 5310 note) created a discretionary component to the previously formula-only 5310 program. This pilot program for



innovative coordinated access and mobility provides funding for efforts that improve the coordination of transportation services with nonemergency medical care for the transportation disadvantaged. Funding is intended for organizations that focus on coordinated transportation solutions.

FTA annually publishes formula apportionments in a *Federal Register* notice published within ten 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 addition, the governor of each state is required to designate a state agency to administer the program for urbanized areas with a population between 50,000 and 199,999 and nonurbanized areas. The governor must also designate a designated recipient to administer the program for urbanized areas with a population of 200,000 or more. In the case of the JARC and New Freedom programs, the governor (1) designated 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, designated a recipient to administer the program for the large, urbanized area(s). The state agencies and designated recipients (large, urbanized areas) are responsible for fair distribution of the funds. State agencies or their 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, a 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 requires that projects selected for funding under the 5310, JARC, and New Freedom programs be included in a locally developed, coordinated public transit-human services transportation plan, and that the plan be developed through a process that includes seniors and individuals with disabilities, as well as representatives of public, private, and nonprofit transportation and human services providers and members of the general public.

FTA monitors compliance with federal requirements through administrative “State Management Reviews,” in which a state agency is generally reviewed every three years. Designated recipients who also receive FTA financial assistance under the Urbanized Area Formula program (Assistance Listing 20.507) 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 5310 formula program is authorized by 49 USC 5310, the pilot program for innovative coordinated access and mobility is authorized by Section 3006(b) of the FAST Act (49 USC 5310 note), the JARC program was authorized by 49 USC 5316, and the New Freedom program was authorized by 49 USC 5317. Program regulations are in 49 CFR parts 601 through 665.

### Availability of Other Program Information

Additional information about the programs may be found on the FTA website at <https://www.transit.dot.gov/funding/grants/grant-programs>. Program guidance for the JARC, New Freedom, and 5310 programs are contained in FTA Circulars 9050.1, 9045.1, and 9070.1, respectively. Current FTA circulars can be found at <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/final-circulars>.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	N	N	Y	N	N	Y	N

**A. Activities Allowed or Unallowed**

1. Under the 5310 program:
  - a. For awards prior to October 1, 2012, funds are available only 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. Operating expenses are not allowed.
  - b. For awards on or after October 1, 2012, funds are available for operating and capital expenses for transportation services that address the needs of seniors and individuals with disabilities (49 USC 5310(b)(1)).
  - c. For awards on or after December 27, 2020, under the Coronavirus Response and Relief Supplemental Appropriations Act 2021 (CRRSAA) or FY 2021 and prior appropriations, funds must be used for operating expenses unless the recipient has certified that it has not furloughed any employees. Funds can be used for either operating or capital expenses if the recipient has certified that it has not furloughed any employees.
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 nontraditional 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, as amended (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 nonprofit 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)).

## DEPARTMENT OF TRANSPORTATION

### ASSISTANCE LISTING 20.527 PUBLIC TRANSPORTATION EMERGENCY RELIEF PROGRAM

#### I. PROGRAM OBJECTIVES

The objective of the Public Transportation Emergency Relief Program (49 USC 5324) is to assist public transit operators affected by a declared emergency or a major disaster in preparing for, responding to, recovering from, and reducing vulnerabilities to emergencies and major disasters.

#### II. PROGRAM PROCEDURES

The Public Transportation Emergency Relief Program provides operating assistance and capital funding to aid recipients and subrecipients in restoring public transportation service, and in repairing and reconstructing public transportation assets to a state of good repair as expeditiously as possible following an emergency declared by a governor or major disaster declared by the president under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Grants are awarded to public agencies on approval of applications for specific projects submitted to the Federal Transit Administration (FTA), US Department of Transportation. FTA monitors the progress of those projects through on-site inspections, telephone contacts, correspondence, and quarterly progress, and financial status reports.

FTA determines the terms and conditions applicable to recipients of Emergency Relief funds and publishes the applicable requirements in the *Federal Register* at the time of the allocation of funds. In general, recipients of Emergency Relief are required to comply with the program requirements of 49 USC 5307, including an evaluation of grant activities at least every three years by FTA. The most recent FTA Triennial Review Workshop Workbook provides guidance to FTA staff and recipients on the conduct of triennial reviews and is available at <https://www.transit.dot.gov/funding/grantee-resources/triennial-reviews/triennial-reviews>. These reviews are conducted with specific reference to compliance with statutory and administrative requirements and consistency of 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 website listed below.

Grants for emergency operations, emergency protective measures, emergency repairs, permanent repairs and resiliency projects are made under 49 USC 5324. Grants to address an emergency also can be made using 49 USC 5307 or 49 USC 5311 funds.

#### Source of Governing Requirements

The Public Transportation Emergency Relief Program is authorized by 49 USC 5324. Program regulations are at 49 CFR Part 602. Applicable program requirements associated with the federal transit programs are at 49 CFR parts 601 through 665.

**Availability of Other Program Information**

Additional information is available on the FTA website at <http://www.fta.dot.gov/emergencyrelief>.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	N	N	Y	N	N	Y	N

**A. Activities Allowed or Unallowed**

**FY20/FY21 Special Circumstance: COVID-19 Response and Recovery**

The following additional eligibilities were extended to unobligated funding in the Urbanized Area Formula (49 USC 5307) and Formula Grants for Rural Areas (49 USC 5311) programs for emergency expenses as authorized by 49 USC 5324.

- a. Administrative leave for transit agency employees who were idled due to the coronavirus pandemic.
- b. Operating costs for meal delivery and similar non-transit uses of federally assisted vehicles.

- c. All operating and capital expenses provided at up to 100 percent federal share, at the option of the recipient, for all recipients of eligible FTA formula funds, regardless of Urbanized Area or fleet size.

Additional detail and Frequently Asked Questions available at:

- [FTA Formula Funding Under Emergency Relief Program  
https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19](https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19)
- [CARES, CRRSAA & ER Funding Requirements  
Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 \(COVID-19\) | FTA \(dot.gov\)](#)

1. *Activities Allowed Under 5324*

- a. Capital activities, as defined in 49 USC 5302(3), to protect, repair, reconstruct, or replace equipment and facilities of a public transportation system operating in the United States or on an Indian reservation that the secretary of transportation determines are in danger of suffering serious damage, or has suffered serious damage, as a result of an emergency (49 USC 5324(b)).
- b. Eligible operating costs of public transportation equipment and facilities in an area directly affected by an emergency, relating to:
- (1) Evacuation services;
  - (2) Rescue operations;
  - (3) Temporary public transportation service; or
  - (4) Reestablishing, expanding, or relocating public transportation route service before, during, or after an emergency (49 USC 5324(a)(1)).

2. *Activities Not Allowed*

- a. Heavy maintenance, defined as work that would usually be done by a public transit agency to repair damage normally expected from seasonal or occasional events; or those that can reasonably be accommodated by a transit system's routine maintenance, emergency, or contingency program, and does not rise to the level of serious damage.
- b. Project costs for which the recipient has received funding from another source, including but not limited to insurance proceeds and FTA and other federal grants.

- c. Except for FTA-approved resilience projects, projects that change the function of the original infrastructure.
- d. Reimbursement of lost revenue due to disruptions caused by an emergency or major disaster.
- e. Project costs associated with replacement or replenishment of damaged or lost material that is not the property of the affected applicant and not incorporated into a public transportation system, such as stockpiled materials or items awaiting installation.



## **DEPARTMENT OF TRANSPORTATION**

### **ASSISTANCE LISTING 20.600 STATE AND COMMUNITY HIGHWAY SAFETY**

### **ASSISTANCE LISTING 20.611 INCENTIVE GRANT PROGRAM TO PROHIBIT RACIAL PROFILING**

### **ASSISTANCE LISTING 20.616 NATIONAL PRIORITY SAFETY PROGRAMS**

#### **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**

The Highway Safety Act of 1966 established a formula grant program for states to save lives and prevent injuries due to road traffic crashes. To qualify for Section 402 funding, states must submit by July 1 every year for NHTSA approval an annual Highway Safety Plan (HSP) that identifies highway safety problems; establishes performance targets; documents an evidence-based enforcement plan; and describes strategies and projects, supported by data, to reduce traffic crashes. The Fixing America's Surface Transportation (FAST Act), (Pub. L. No. 114-94), amended NHTSA's highway safety grant program (23 USC 402) and the National Priority Safety program grants (23 USC 405).

No changes were made to the contents of the HSPs. The FAST Act restored (with some changes) the racial profiling data collection grant authorized under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59 (Section 1906). The National Priority Safety programs, which is considered one program, was authorized by the Moving Ahead for Progress in the 21st Century (Map-21 Pub. L. No. 112-141). The areas covered by the National Priority programs are Occupant Protection, Impaired Driving, Ignition Interlock, State Traffic Safety Information System Improvements, Motorcyclist Safety, Distracted Driving, and Graduated Drivers Licensing. The FAST Act added new grants, including 24/7 Sobriety program grants, Nonmotorized Grants, and Racial Profiling Data Collection Grants.

#### **Source of Governing Requirements**

Programs are authorized under 23 USC Chapter 4 (Highway Safety), Pub. L. No. 109-59, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) as amended by Section 112001 of Pub. L. No. 112-141, the Surface Transportation Extension Act of 2012, Part II; MAP-21, and Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94. Implementing regulations are in 23 CFR Part 1300.

**Availability of Other Program Information**

The National Highway Traffic Safety Administration maintains a website that provides program laws, regulations, and other general information (<http://www.nhtsa.dot.gov>). Program procedures have been published in the [Federal Register Vol. 83, No. 17](#) (Assistance Listings 20.600, 20.611, and 200.616).

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

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Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	Y	N	N	Y	Y	N

**A. Activities Allowed or Unallowed**

Funds must be expended as specified in the grantee’s highway safety plan.

1. *Activities allowed or allowed with specific conditions*
  - a. Purchase of the following types of equipment is subject to compliance with any applicable standards and performance specifications and inclusion on the applicable Conforming Products List (CPL) established by NHTSA, the Research and Innovative Technology Administration (RITA), the American College of Surgeons, or by other nationally recognized standard-setting agencies or by state standards and

performance specifications, as long as they are at least as stringent as applicable national standards and performance specifications:

- (1) Police traffic enforcement, speed-measuring devices, such as Radars, Lidars, and Across the Road devices. (A comprehensive list of such devices can be found online at <https://www.theiacp.org/resources/document/iacp-radarlidar-testing>);
  - (2) Alcohol testing devices and costs for re-certification of such devices;
  - (3) Ambulances;
  - (4) Helicopters. (Helicopters must be equipped for emergency medical services (EMS) missions and for police traffic safety functions related to law enforcement, with an absolute priority accorded to EMS duty needs for crash site victim removal.);
  - (5) Automated External Defibrillators (AED). (AEDs are to be used for training EMS personnel only.) AED's cannot be used to equip ambulances (or police cars or offices); and
  - (6) Fixed wing aircraft.
- b. The purchase and installation of regulatory and warning signs and supports and field reference markers for roads off the federal-aid system.
  - c. Travel for out-of-state individuals benefiting the host state's highway safety program.
  - d. Training of personnel and the development of new training curricula, materials, and supplies, including portable skid platforms and driving simulators if they are used for a NHTSA-approved training program.
  - e. Consultant services, promotional activities, alcoholic beverages to support police "sting" operations (e.g., undercover police-directed operations to detect unlawful practices associated with underage drinking laws), and meetings and conferences. Costs for promotional items are only allowable when evidence is provided that items are directly related and integral to project objectives.
  - f. For State and Community Highway Safety (Assistance Listing 20.600) funds, supplementing demonstration projects implemented under Section 403 (23 USC 402(g)(2)).

- g. Cooperating with neighboring states for highway safety purposes that benefit all participating states (23 USC 402(c)).
  - h. Advertising space.
- 2. *Activities Unallowed*
  - a. Highway construction, maintenance or design, construction or reconstruction of permanent facilities, highway safety appurtenances, office furnishings and fixtures, and purchase of land.
  - b. Truck scales, traffic signal preemption systems, automated traffic enforcement systems radars, and the impaired driving funds under National Priority Safety programs (Assistance Listing 20.616) speed measuring devices.
  - c. Research costs, expenses to defray activities of federal agencies, alcoholic beverages for consumption purposes or techniques for determining driver impairment, entertainment costs, and commercial drivers' compliance requirements.
  - d. No federal funds may be used for any activity specifically designed to urge or influence a state or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any state or local legislative body. Such activities include both direct and indirect (e.g., grassroots) lobbying activities, with one exception. This does not preclude a state official whose salary is supported with NHTSA funds to engage in direct contact with state or local legislative officials, in accordance with customary state practice, even if it urges legislative officials to favor or oppose the adoption of a specific pending legislative proposal (23 CFR Part 1200, Appendix A) and (23 CFR Part 1300, Appendix A).

## **B. Allowable Costs/Cost Principles**

Costs charged to federal funds under sections 402, 405, and 1906 must comply with the cost principles in 2 CFR Part 200.

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

- a. States receiving State and Community Highway Safety grants (Section 402) are required to contribute at least 20 percent, or the applicable sliding scale rate, as stated in the grant award, of the total cost of the program. States are required to pay at least 50 percent, or the applicable sliding scale rate, as stated in the grant award, of the costs for planning and administration (Indian nations and territories are 100 percent federally).

funded) (23 USC 120(b) and 402(d); 23 CFR section 1200.13(a)), 23 CFR 1300.13(a) (Assistance Listing 20.600).

- b. States receiving grants National Priority Safety programs are required to contribute at least 20 percent of the total cost of the program (territories and Indian nations are 100 percent federally funded) (23 USC 402(d); 23 CFR section 1200.20(f)), 23 CFR section 1300.20(f) (Assistance Listing 20.616).
- c. Additional matching requirements may be specified in the grantee's highway safety plan to limit the maximum federal share of an ambulance, helicopter, AED, or aircraft to 25 percent.

## **2. Level of Effort**

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

For the State and Community Highway Safety program (Assistance Listing 20.600) and the National Priority Safety programs (Assistance Listing 20.616), as authorized by the FAST Act, a state must maintain its aggregate expenditures from all other sources at or above the average level of such expenditures in fiscal years 2014 and 2015 for activities for Occupant Protection, State Traffic Safety Information System Improvements, and Impaired Driving Countermeasures (23 USC 405(a)(1)(H); 23 CFR sections 1200.21(d)(5), 1200.22(f), and 1200.23(d)(2)), 1300.21(d)(5), 1300.22(c), and 1300.23(d)(2).

### **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 (Assistance Listing 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 1200, Appendix E) and 1300 Appendix C.
- b. The federal costs for planning and administration under State and Community Highway Safety (Assistance Listing 20.600) shall not exceed 15 percent of the funds received by the state. The federal costs for planning and administration under State and Community Highway Safety (Assistance Listing 20.600) shall not exceed 5 percent of the funds received by the Indian nations (23 CFR section 1200.13(a) and 23 CFR section 1300). In accordance with 23 USC 120(i), the federal share payable for projects in the US Virgin Islands, Guam, American Samoa,

and the Commonwealth of the Northern Mariana Islands shall be 100 percent (23 CFR 1300.13(a)).

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement – Not Applicable*
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs – Not Applicable*
- c. *SF-425, Federal Financial Report – Not Applicable*
- d. *HS-217, Highway Safety Plan Cost Summary (OMB No. 2127-0003)*
- e. *Federal-Aid Reimbursement Voucher (OMB No. 2127-0003)*

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

Not Applicable

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## **M. Subrecipient Monitoring**

NHTSA Regional Offices monitor the states' highway safety offices and the state offices monitor their subrecipients. The Regional Offices routinely conduct on-site monitoring and reviews that involve oversight of the highway safety office activities and their oversight of the subrecipients.

## DEPARTMENT OF TRANSPORTATION

### ASSISTANCE LISTING 20.816 MARITIME ADMINISTRATION MARINE HIGHWAY GRANT PROGRAM

#### I. PROGRAM OBJECTIVES

The objective of the Marine Highway Grant Program (MHP) is to develop public-private partnerships and create Marine Highway Projects (services) on Designated Marine Highways. By creating a new mode of transport, the MHP creates options for shippers. Moving freight from highways and railways reduce congestion, emissions, road maintenance, increases resiliency, and provides other public benefits.

#### II. PROGRAM PROCEDURES

In order to be part of the MHP, a Marine Highway Project must be located on a Marine Highway Route previously designated by the Secretary of Transportation.

The program office accepts MHP applications twice a year on January 31st and July 31st. A Marine Highway Projects Open Season announcement is published in the *Federal Register* and it provides the dates and application procedures (<https://www.maritime.dot.gov/sites/marad.dot.gov/files/docs/grants-finances/marine-highways/3066/marine-highway-project-designation-open-season-general-information-announcement.pdf>).

The secretary designates MHPs and only designated MHPs are eligible for Marine Highway grants. Only the project applicant or a private entity approved by the project (sponsor) is eligible to apply.

When funds are appropriated, a Notice of Funding Opportunity will be published for Marine Highway Grants. Applications for Marine Highway Grants must be submitted via grants.gov.

#### Source of Governing Requirements

This program is authorized by 46 USC Chapter 55601.

#### Availability of Other Program Information

Additional program information is provided in the Marine Highway Final Rule <https://maritime.dot.gov/sites/marad.dot.gov/files/docs/intermodal-systems/marine-highways/3056/final-rule-federal-register.pdf>.

A list of Designated Marine Highway Routes can be found at <https://maritime.dot.gov/sites/marad.dot.gov/files/docs/grants-finances/marine-highways/3061/marine-highway-route-descriptions-8-14-2019.pdf>.

A list of the current Marine Highway Projects eligible to apply for grants can be found at <https://maritime.dot.gov/sites/marad.dot.gov/files/docs/grants-finances/marine-highways/3071/marine-highway-project-description-pages-1-27-2020.pdf>.

The Marine Highway Module of the Port Planning & Investment Toolkit was created in cooperation with the American Association of Port Authorities (AAPA). The toolkit is intended to provide US ports with a common framework and examples of best practices when planning, evaluating and funding/financing freight transportation, facility and other port-related improvement projects. The Marine Highway Module is available at [https://www.maritime.dot.gov/sites/marad.dot.gov/files/2020-10/PPIT%20Marine%20Highway%20Module%20Final%20200831\\_ADA\\_wappendices.pdf](https://www.maritime.dot.gov/sites/marad.dot.gov/files/2020-10/PPIT%20Marine%20Highway%20Module%20Final%20200831_ADA_wappendices.pdf).

Program related questions may be directed to Timothy Pickering, Operations Development Manager at 202-366-0704 (direct), or by e-mail at [timothy.pickering@dot.gov](mailto:timothy.pickering@dot.gov).

Questions related to compliance requirements may be directed to Tracey Ford, Director, MARAD, Office of Federal Assistance Education & Engagement at 202-366-0321 (direct), or by e-mail at [Tracey.Ford@dot.gov](mailto:Tracey.Ford@dot.gov).

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

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Y	Y	N	N	N	Y	N	Y	N	Y	N	N



**A. Activities Allowed or Unallowed**1. *Activities Allowed*

Marine Highway Grants can be made for the development and expansion of port and landside infrastructure and the development and expansion of documented vessels. (46 USC 55601(b) (1) and (3)).

2. *Activities Unallowed*

a. In general, federal funds cannot be expended for:

- (1) equipment, vessels or improvements for the movement of purely bulk products,
- (2) planning efforts related to marketing studies, and
- (2) costs incurred before the execution of the grant agreement unless such costs are approved in advance by the Maritime Administration.

**B. Allowable Costs/Cost Principles**

Costs charged to federal funds under the MHP program must comply with the cost principles administered pursuant to the “Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards” found at 2 CFR Part 200, as adopted by the Department at 2 CFR Part 1201. Additionally, all applicable federal laws and regulations will apply to projects that receive Marine Highway Grants and any other requirements or restrictions on the use of federal funding.

**G. Matching**

The nonfederal entity must provide at least 20 percent of project costs from nonfederal sources. The nonfederal entity is required to provide a letter or other documentation, the sources of these funds. Funding sources are to be verified to determine compliance by examining actual evidence that documents the nonfederal entity’s ability to finance their cost share (loan agreement, commitment from investors, cash on balance sheet, etc.).

**I. Procurement**1. *Wage Rate Requirements*

**Compliance Requirements** All laborers and mechanics employed by contractors or subcontractors to work on construction contracts in excess of \$2,000 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 Department of Labor (DOL) (40 USC 3141-3144, 3146, and 3147).

Nonfederal entities shall include in their construction contracts subject to the Wage Rate Requirements (which still may be referenced as the Davis-Bacon Act) a provision that the contractor or subcontractor comply with those requirements and the DOL regulations (29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction). This includes a requirement for the contractor or subcontractor to submit to the nonfederal 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; the A-102 Common Rule (section 36(i)(5)); OMB Circular A-110 (2 CFR Part 215, Appendix A, Contract Provisions); **2 CFR Part 176, Subpart C**; and 2 CFR section 200.326).

This reporting is often done using Optional Form WH-347, which includes the required statement of compliance (*OMB No. 1235-0008*). The US Department of Labor, Employment Standards Administration, maintains a Davis-Bacon and Related Acts webpage (<https://www.dol.gov/agencies/whd/government-contracts/construction>). Optional Form WH-347 and instructions are available on this web page.

**Audit Objectives** Determine whether the nonfederal entity notified contractors and subcontractors of the requirements to comply with the Wage Rate Requirements and obtained copies of certified payrolls.

### **Suggested Audit Procedures**

Select a sample of construction contracts and subcontracts greater than \$2,000 that are covered by the Wage Rate Requirements and perform the following procedures:

- a. Verify that the required prevailing wage rate clauses were included in the contract or subcontract.
- b. For each week in which work was performed under the contract or subcontract, verify that the contractor or subcontractor submitted the required certified payrolls.

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

## 2. *Buy American Act Compliance Requirements*

**Compliance Requirements** Each applicant selected for AMH grant funding must comply with the Buy American Act, 41 USC 8301-8305 (“the Act”) and the Buy American requirements in the grant agreement. These requirements prohibit grantees from using foreign construction materials or procuring foreign equipment in projects that are funded by AMH grants. The prohibition applies to items that were purchased for and used in the project, even if the source of the

funds is not federal in nature (i.e., a purchase in support of the project made by the grantee using its own funds to satisfy the program's cost share requirements). There are certain exceptions to this requirement but, under the terms of the grant agreement, a grantee must generally first obtain DOT approval before applying the exception.

**Audit Objectives** Determine whether the nonfederal entity complied with the Buy American Act provisions when purchasing materials for the grant.

### **Suggested Audit Procedures**

- a. Select a sample of the nonfederal entity's procurement solicitations and award documentation to determine if the nonfederal entity included the Buy American Act provisions into all contracts and subcontracts when procuring for project construction materials to ensure compliance.

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Applicable
- b. *SF-425, Federal Financial Report* – Applicable

### **2. Progress Reporting and Recertification**

Applicable

### **3. Performance Reporting**

#### **Outcome Performance Reporting Requirements**

**Compliance Requirements** Each applicant selected for AMH grant funding must collect information and report on the project's observed performance with respect to the relevant long-term outcomes that are expected to be achieved through construction of the project. Performance indicators include formal goals or targets for a period determined by DOT. They will be used to evaluate and compare projects and monitor the results that grant funds achieve to the intended long-term outcomes of the AMH. Performance reporting continues for three years after project construction is completed. For each project selected for award, DOT, with input from the grant recipients, identifies the outcome performance measures to be collected. Those measures and the reporting requirements are formalized in the agreement obligating award funds for the project.

This reporting (referred to as Outcomes Measurement Reporting) is accomplished on a quarterly basis using a template agreed upon by the grantee and MARAD.

**Audit Objectives** Determine whether the nonfederal entity complied with the reporting requirement, whether the information reported to DOT agrees with related information retained by the nonfederal entity and whether the project met the agreed-upon goals or targets.

**Suggested Audit Procedures**

- a. Review all twelve of the outcomes reports submitted by the nonfederal entity to ensure that they complied fully with the reporting requirement.
- b. Select up to 25 percent of the outcomes reports and examine the nonfederal entity's internal records to ensure that the values reflected in the outcomes reports correspond with the nonfederal entity's internal records.
- c. Review the section of the grant agreement between the nonfederal entity and MARAD that discusses outcome performance measurement. Select up to two of the measures identified and based on information in the outcomes measurement report, determine whether the project attained the agreed-upon measures.

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## DEPARTMENT OF TRANSPORTATION

### ASSISTANCE LISTING 20.823 MARITIME ADMINISTRATION – PORT INFRASTRUCTURE DEVELOPMENT PROGRAM

#### I. PROGRAM OBJECTIVE

Port Infrastructure Development Program (PIDP) to make grants to improve port facilities at coastal seaports.

The PIDP was established under 46 USC 50302. The statute authorizes the Department of Transportation (“Department” or “DOT”) to establish a port infrastructure development program for the improvement of port facilities. To carry out a project under this program, the Department may provide financial assistance, including grants, to port authorities or commissions or their subdivisions and agents for port and intermodal infrastructure-related projects. The Department seeks projects that will: (1) advance technology-supported safety and design efficiency improvements; (2) bring facilities to a state of good repair and improve resiliency; (3) promote efficient trade in energy resources; (4) promote exports of manufacturing, agriculture, or other goods.

#### II. PROGRAM PROCEDURES

Grants are awarded to public agencies on approval of applications submitted to the Maritime Administration (MARAD). MARAD monitors the progress of those projects through on-site inspections, telephone contacts, correspondence, quarterly progress and financial status and reports.

MARAD is required to perform oversight reviews and evaluations based on guidance from the Department of Transportation Guide to Financial Assistance (Effective January 1, 2020) and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 CFR parts 200, 1201.

To be selected for a PIDP discretionary grant, an applicant must be an Eligible Applicant and the project must be an Eligible Project.

##### *Eligible Projects*

For the purposes of these grants, a “coastal seaport” is a seaport capable of receiving deep-draft vessels (drafting greater or equal to 20 feet) from a foreign or domestic port. Eligible projects for PIDP grants shall be located either within the boundary of a coastal seaport, or outside the boundary of a coastal seaport and directly related to port operations or to an intermodal connection to a port. Eligible projects should improve the safety, efficiency, or reliability of the movement of goods into, out of, around, or within a port, as well as the unloading and loading of cargo at a coastal seaport including phytosanitary facilities. Examples of potential projects include but are not limited to highway or rail infrastructure that develops or extends intermodal connectivity, intermodal facilities, marine terminal equipment, wharf construction or redevelopment, vessel alternative fueling access and distribution, fuel efficient cargo handling

equipment, freight intelligent transportation systems, digital infrastructure systems, and berth dredging incidental to construction. This program will not fund vessel construction.

**Source of Governing Requirements**

The PIDP Program was established under 46 USC 50302.

**Availability of Other Program Information**

<https://www.maritime.dot.gov/ports/port-infrastructure-development-program>

Program related questions may be directed to Timothy Pickering, Operations Development Manager, at 202-366-0704 (direct) or by e-mail at [timothy.pickering@dot.gov](mailto:timothy.pickering@dot.gov).

Questions related to compliance requirements may be directed to Tracey Ford, Director, MARAD, Office of Federal Assistance Education & Engagement at 202-366-0321 (direct) or by e-mail at [Tracey.Ford@dot.gov](mailto:Tracey.Ford@dot.gov).

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.”

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	N	Y	N	Y	Y	N

## A. Activities Allowed or Unallowed

### 1. *Activities Allowed*

The PIDP Program was established under [46 USC 50302](#). The statute authorizes the Department of Transportation (“Department” or “DOT”) to establish a port infrastructure development program for the improvement of port facilities. To carry out a project under this program, the Department may provide financial assistance, including grants, to port authorities or commissions or their subdivisions and agents for port and intermodal infrastructure-related projects.

### 2. *Activities Unallowed*

a. In general, federal funds cannot be expended for:

- (1) Equipment, vessels or improvements for the movement of purely bulk products,
- (2) Planning efforts related to marketing studies, and
- (3) Costs incurred before the execution of the grant agreement unless such costs are approved in advance by the Maritime Administration.

## B. Allowable Costs/Cost Principles

Costs charged to federal funds under the PIDP program must comply with the cost principles administered pursuant to the “Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards” found at 2 CFR Part 200, as adopted by the Department at 2 CFR Part 1201.

## G. Matching

The nonfederal entity must provide at least 20 percent of project costs from nonfederal sources. The nonfederal entity is required to provide a letter or other documentation, the sources of these funds. Funding sources are to be verified to determine compliance by examining actual evidence that documents the nonfederal entity’s ability to finance their cost share (loan agreement, commitment from investors, cash on balance sheet, etc.).

## I. Procurement

### 1. *Wage Rate Requirements*

**Compliance Requirements** All laborers and mechanics employed by contractors or subcontractors to work on construction contracts in excess of \$2,000 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 Department of Labor (DOL) (40 USC 3141-3144, 3146, and 3147).

Nonfederal entities shall include in their construction contracts subject to the Wage Rate Requirements (which still may be referenced as the Davis-Bacon Act) a provision that the contractor or subcontractor comply with those requirements and the DOL regulations (29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction). This includes a requirement for the contractor or subcontractor to submit to the nonfederal 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; the A-102 Common Rule (section 36(i)(5)); OMB Circular A-110 (2 CFR Part 215, Appendix A, Contract Provisions); **2 CFR Part 176, Subpart C**; and 2 CFR section 200.326).

This reporting is often done using Optional Form WH-347, which includes the Employment Standards Administration, maintains a Davis-Bacon and Related Acts web page (<https://www.dol.gov/agencies/whd/government-contracts/construction>). Optional Form WH-347 and instructions are available on this web page.

**Audit Objectives** Determine whether the nonfederal entity notified contractors and subcontractors of the requirements to comply with the Wage Rate Requirements and obtained copies of certified payrolls.

### **Suggested Audit Procedures**

Select a sample of construction contracts and subcontracts greater than \$2,000 that are covered by the Wage Rate Requirements and perform the following procedures:

- a. Verify that the required prevailing wage rate clauses were included in the contract or subcontract.
- b. For each week in which work was performed under the contract or subcontract, verify that the contractor or subcontractor submitted the required certified payrolls.

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

## 2. *Engineering and Design Services Requirements*

**Compliance Requirements** The nonfederal entity (recipient) shall award each contract or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary



engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner that a contract for architectural and engineering services is negotiated under the Brooks Act, 40 USC 1101-1104, or an equivalent qualifications-based requirement prescribed for or by the Recipient and approved in writing by MARAD.

Nonfederal entities shall include in their contracts subject to the Brooks Act Requirements a provision that the contractors

**Audit Objectives** Determine whether the nonfederal entity complied with the Brooks Acts Requirements when procuring for engineering and design services.

### **Suggested Audit Procedures**

Select a sample of the nonfederal entity's procurement solicitations and award documentation for contracts or subcontracts for engineering and design services to determine if the nonfederal entity complied with the Brooks Act's special qualification based selection process.

### 3. *Buy American Act Compliance Requirements*

**Compliance Requirements** Each applicant selected for PIDP grant funding must comply with the Buy American Act, 41 USC 8301–8305 (“the Act”) and the Buy American requirements in the grant agreement, which implement the Buy American Act. These requirements prohibit grantees from using foreign construction materials in projects that are funded by federal grants administered by MARAD. The prohibition applies to items that were purchased for and used in the project, even if the source of the funds is not federal in nature (i.e., a purchase in support of the project made by the grantee using its own funds that will count towards its matching cost share requirement). There are certain exceptions to this requirement but, under the terms of the grant agreement, a grantee must generally first obtain DOT approval before applying the exception.

**Audit Objectives** Determine whether the nonfederal entity complied with the Buy American Act provisions when purchasing materials for the grant.

### **Suggested Audit Procedures**

- a. Select a sample of the nonfederal entity's procurement solicitations and award documentation to determine if the nonfederal entity included the Buy American Act provisions into all contracts and subcontracts when procuring for project construction materials.

## L. Reporting

### 1. Financial Reporting

- a. *SF-270, Request for Advance or Reimbursement* – Applicable
- b. *SF-425, Federal Financial Report* – Applicable

### 2. Progress Reporting and Recertification

Applicable

### 3. Performance Reporting

#### Outcome Performance Reporting Requirements

**Compliance Requirements** Each applicant selected for PIDP grant funding must collect information and report on the project's observed performance with respect to the relevant long-term outcomes that are expected to be achieved through construction of the project. Performance indicators include formal goals or targets for a period determined by DOT. They will be used to evaluate and compare projects and monitor the results that grant funds achieve to the intended long-term outcomes of the PIDP. Performance reporting continues for three years after project construction is completed. For each project selected for award, DOT, with input from the grant recipients, identifies the outcome performance measures to be collected. Those measures and the reporting requirements are formalized in the agreement obligating award funds for the project.

This reporting (referred to as Outcomes Measurement Reporting) is accomplished on a quarterly basis using a template agreed upon by the grantee and MARAD.

**Audit Objectives** Determine whether the nonfederal entity complied with the reporting requirement, whether the information reported to DOT agrees with related information retained by the nonfederal entity and whether the project met the agreed-upon goals or targets.

#### Suggested Audit Procedures

- a. Review all twelve of the outcomes reports submitted by the nonfederal entity to ensure that they complied fully with the reporting requirement.
- b. Select up to 25 percent of the outcomes reports and examine the nonfederal entity's internal records to ensure that the values reflected in the outcomes reports correspond with the nonfederal entity's internal records.

- c. Review the section of the grant agreement between the nonfederal entity and MARAD that discusses outcome performance measurement. Select up to two of the measures identified and based on information in the outcomes measurement report, determine whether the project attained the agreed-upon measures.

#### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

### **M. Subrecipient Monitoring**

**Pass-through Entity Responsibilities.** If the nonfederal entity (recipient) makes a subaward under the program award, the nonfederal entity is required to comply with the requirements on pass-through entities under two. CFR parts 200 and 1201, including 2 CFR 200.330–200.332. The entity must monitor activities of all subrecipients activities and contractors; and retain all records relevant to the award as required under 2 CFR 200.333.

## DEPARTMENT OF THE TREASURY

### ASSISTANCE LISTING 21.015 RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES (Gulf RESTORE)

#### I. PROGRAM OBJECTIVES

The objectives of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) program are to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast Region.

#### II. PROGRAM PROCEDURES

The RESTORE Act established the Gulf Coast Restoration Trust Fund (Trust Fund) to hold 80 percent of the administrative and civil penalties paid by parties responsible for the Deepwater Horizon oil spill after July 6, 2012, plus interest on investments. Amounts in the trust fund are allocated among the five components: Direct Component, Comprehensive Plan Component, Spill Impact Component, the National Oceanic and Atmospheric Administration RESTORE Act Science Program, and a Centers of Excellence Research Grants Program. The Department of the Treasury (Treasury) is responsible for administering the Direct Component and the Centers of Excellence Research Grants Program.

Through the Direct Component, Treasury makes grants for ecological and economic restoration of the Gulf Coast Region. Thirty-five (35) percent of the penalties paid into the trust fund is used for grants to support eligible activities proposed by the states of Alabama, Louisiana, Mississippi, and Texas; the Florida counties of Bay, Charlotte, Citrus, Collier, Dixie, Escambia, Franklin, Gulf, Hernando, Hillsborough, Jefferson, Lee, Levy, Manatee, Monroe, Okaloosa, Pasco, Pinellas, Santa Rosa, Sarasota, Taylor, Wakulla, and Walton; and the Louisiana Coastal Zone parishes of Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, and Vermilion. Each state, county, and parish has a defined share of the amount of the Direct Component. Recipients may choose to make subawards to complete eligible activities if approved by Treasury.

Through the Centers of Excellence Research Grants program, Treasury awards grants to the five Gulf Coast states (Alabama, Florida, Louisiana, Mississippi, and Texas) for the establishment of Centers of Excellence focused on science, technology, and monitoring in at least one of five disciplines listed in the RESTORE Act. The states select these Centers through a competitive process and fund the research work through subawards. Each state has an equal share of the Centers of Excellence Research Grants program trust fund allocation.

This program supplement covers only Treasury's grants to the states, counties, and parishes under the Direct Component and grants to states under the Centers of Excellence, which, at the state level does not include research activity. However, subawards under the Centers of Excellence will be audited as part of the R&D Cluster in Part 5 of the Supplement.

## Source of Governing Requirements

The primary source of program requirements is the RESTORE Act (Subtitle F of Pub. L. No. 121-141), (33 USC 1321(t) and 33 USC 1321 note). Program implementing regulations are in 31 CFR Part 34.

## Availability of Other Program Information

Other program information regarding grants under the RESTORE Act is available at the Treasury website at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/restore-act>.

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	Y	N	N	Y	Y

### A. Activities Allowed or Unallowed

#### 1. *Activities Allowed in the Direct Component*

All activities must be included in, and conform to, the description in the recipient’s grant agreement, and may include the following:

- a. Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region;
  - b. Mitigation of damage to fish, wildlife, and natural resources;
  - c. Implementation of a federally approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring;
  - d. Workforce development and job creation;
  - e. Improvements to or on state parks located in coastal areas affected by the Deepwater Horizon oil spill;
  - f. Infrastructure projects benefitting the economy or ecological resources, including port infrastructure;
  - g. Coastal flood protection and related infrastructure;
  - h. Promotion of tourism in the Gulf Coast Region, including promotion of recreational fishing;
  - i. Promotion of the consumption of seafood harvested from the Gulf Coast Region;
  - j. Planning assistance;
  - k. Administrative costs; and
  - l. The nonfederal share of the cost of any project or program authorized by federal law that is an eligible activity under the RESTORE Act (31 CFR sections 34.2, 34.200, and 34.201).
2. *Activities Unallowed for the Direct Component*

Activities that were included in any claim for compensation presented after July 6, 2012, to the Oil Spill Liability Trust Fund authorized by 26 USC 9509 (31 CFR section 34.200(a)(3)).

3. *Activities Allowed for the Centers of Excellence Research Grants Program*

Effective May 3, 2019, Treasury issued a final rule to revise the method by which the statutory 3 percent limitation on administrative costs is applied under the Direct Component, Comprehensive Plan Component, and Spill Impact Component under the RESTORE Act. Through this revision, the 3 percent limit on administrative costs may be applied to the total amounts of funds received by a recipient under each of the three components either on a grant-by-grant or on an

aggregate basis as described in 31 CFR Part 34.204 Limitations on administrative costs and administrative expenses.

Administrative costs, for purposes of this limitation, are defined as indirect costs for administration incurred by the Gulf Coast states, coastal political subdivisions, and coastal zone parishes that are allocable to activities authorized under the Act. Administrative costs do not include that portion of indirect costs that are identified specifically with, or readily assignable to, facilities as defined in 2 CFR section 200.414. The 3 percent limitation does not apply to the administrative costs of subrecipients (31 CFR sections 34.2 and 34.204). The instructions and tools for calculating allowable costs are available on the Treasury RESTORE Act website at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/restore-act>.

## **B. Allowable Costs/Cost Principles**

Costs incurred for administrative duties of the Alabama Gulf Coast Recovery Council are not allowed to the extent those duties were performed by public officials and employees who are not subject to the ethics laws of the state of Alabama (31 CFR section 34.302(a)).

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

Not Applicable

### **2. Level of Effort**

Not Applicable

### **3. Earmarking**

Effective May 3, 2019, Treasury issued a final rule to revise the method by which the statutory 3 percent limitation on administrative costs is applied under the Direct Component, Comprehensive Plan Component, and Spill Impact Component under the RESTORE Act. Through this revision, the 3 percent limit on administrative costs may be applied to the total amounts of funds received by a recipient under each of the three components either on a grant-by-grant or on an aggregate basis as described in 31 CFR Part 34.204 Limitations on administrative costs and administrative expenses.

Administrative costs, for purposes of this limitation, are defined as indirect costs for administration incurred by the Gulf Coast states, coastal political subdivisions, and coastal zone parishes that are allocable to activities authorized under the Act. Administrative costs do not include that portion of indirect costs that are identified specifically with, or readily assignable to, facilities as defined in 2 CFR section 200.414. The 3 percent limitation does not apply to the administrative

costs of subrecipients (31 CFR sections 34.2 and 34.204). The instructions and tools for calculating allowable costs are available on the Treasury RESTORE Act website at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/restore-act>.

## **I. Procurement and Suspension and Debarment**

1. When awarding contracts under the Direct Component, a recipient may give preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in the state of project execution (31 CFR section 34.305(b)).
2. Under the Direct Component, the acquisition of land, or interests in land, can only be from a willing seller (31 CFR section 34.803(f)).

## **N. Special Tests and Provisions**

### **1. Wage Rate Requirements**

Under the Direct Component, for contracts that exceed \$2,000 that are for the construction, alteration, or repair of treatment works as defined at 33 USC 1292(2), all laborers and mechanics employed by contractors and subcontractors must be paid wages at rates not less than those prevailing for the same type of work on similar construction in the immediate locality, as determined by the secretary of labor, in accordance with the Wage Rate Requirements (33 USC 1372).

See Wage Rate Requirements Cross-Cutting Section (page 4-20.001-4).



## DEPARTMENT OF THE TREASURY

### ASSISTANCE LISTING 21.016 EQUITABLE SHARING PROGRAM

#### I. PROGRAM OBJECTIVES

The purpose of the Equitable Sharing Program (Program) is to foster greater law enforcement cooperation among state, local, tribal, and federal law enforcement agencies. State and local law enforcement agencies can request federally forfeited funds or tangible assets through the Program based on their qualitative and quantitative contributions to an investigation resulting in federal forfeiture. Equitably shared funds must be used by law enforcement agencies for law enforcement purposes only.

#### II. PROGRAM PROCEDURES

##### A. Overview

The Program is managed by the Treasury Executive Office for Asset Forfeiture (TEOAF), which reports to the Department of the Treasury's Office of Terrorism and Financial Intelligence (TFI). TEOAF manages the Treasury Forfeiture Fund, which is the receipt account for non-tax federal forfeitures made by Treasury and Department of Homeland Security law enforcement agencies. State, local, or tribal law enforcement agencies that assist in federal investigations resulting in forfeiture may seek a portion of the federally forfeited funds in an amount commensurate with their efforts resulting in the forfeiture.

A law enforcement agency seeking a share of federally forfeited funds must meet eligibility requirement of being a law enforcement agency, must file an annual Equitable Sharing Agreement and Certification (ESAC) form, and must be in compliance with program requirements at the time of payment. The payment must bear a reasonable relationship to the level of the recipient agency's participation in the total law enforcement effort resulting in the forfeiture.

Shared funds may be used for a variety of law enforcement purposes, including but not limited to training, equipment, accounting services, joint law enforcement/public safety operations, drug, gang and other prevention or awareness programs.

Equitable sharing funds are considered federal financial assistance as defined in 2 Code of Federal Regulations (CFR) section 200.40. Equitable sharing payments are classified as "Direct Payment for Specified Use" in the Catalog of Federal Domestic Financial Assistance.

#### Source of Governing Requirements

The Equitable Sharing Program is authorized by 31 USC Section 9705(a)(1)(G) and (b)(4); 18 USC Section 981(e)(2); 19 USC Section 1616a(c); and 21 USC Section 881(e)(1)(A) and (e)(3). The specific program requirements are implemented by guidelines, set forth in the *Joint Department of Justice/Department of Treasury Guide to Equitable Sharing for State, Local, and*

*Tribal Law Enforcement Agencies (Guide)* (July 2018). Also, periodically, updates to policies impacting the Treasury Equitable Sharing program may be included in public notices issued by DOJ called “DOJ Wires,” which are available here: <https://www.justice.gov/criminal-mlars/equitable-sharing-program>.

### Availability of Other Program Information

More details regarding the Program, including the *Guide* are available at [www.treasury.gov/resource-center/terrorist-illicit-finance/Pages/Equitable-Sharing.aspx](http://www.treasury.gov/resource-center/terrorist-illicit-finance/Pages/Equitable-Sharing.aspx), as well as the Department of Justice website at <https://www.justice.gov/criminal-mlars/equitable-sharing-program>.

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	Y	Y	N	Y	N	Y	N	N

### A. Activities Allowed or Unallowed

#### 1. *Financial Assistance*

Section V.A through V.B of the *Guide* sets forth examples of the authorized activities and uses of shared funds. The ESAC form, and *Guide* in general, sets forth the general terms and conditions for a recipient of shared funds. Specifically,

shared funds may be used for permissible law enforcement expenses that supplement, and not supplant, law enforcement resources.

2. *Transfer of Tangible Assets*

Section V.D of the *Guide* sets forth requirements pertaining to tangible assets or, rarely, real property transferred to a state or local agency in lieu of forfeited proceeds.

**B. Allowable Costs/Cost Principles**

As a direct payment for specified use, these funds are considered federal financial assistance and are subject to only the following sections of the *Code of Federal Regulations*, Title 2, Subtitle A, Chapter II, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“2 CFR”): Subpart A – Acronyms and Definitions; Subpart B – General Provisions (excluding Sections 200.111 to 200.113); Subpart D – Post Federal Award Requirements (only sections 200.303 – Internal Controls and 200.331 to 333 – Subrecipient Monitoring in the limited case of where a cash transfer is permitted); and Subpart F – Audit Requirements. All other provisions of 2 CFR, including 2 CFR sections 200.400 to 200.476, are inapplicable to the Program. Although 2 CFR sections 200.400 to 200.475 are not applicable, the *Guide*, sections V.B.1, 2, and 3, detail allowable and unallowable uses of federal equitable sharing funds. Note that there may be specific exceptions for use of shared funds, so the *Guide* should be consulted for details. The *Guide’s* policies on the use and administration of equitable sharing funds may also be updated at any time through the issuance of updated guidance.

**E. Eligibility**

**1. Eligibility for Recipient State or Local Law Enforcement Agencies**

Recipients of shared funds must meet the eligibility requirements set forth in the *Guide*, sections 1.B, II, and III. Generally, this means they must be in compliance with all applicable civil rights requirements, must be deemed a law enforcement agency (determined by Treasury or Department of Justice (DOJ)), must be in compliance with program requirements, and must have had some participation in the investigation resulting in the forfeiture for which it is seeking funds.

**2. Eligibility for Individuals**

Not Applicable

**3. Eligibility for Groups of Individuals or Area of Service Delivery**

Not Applicable

**4. Eligibility for Subrecipients**

Transfer of cash from one recipient to another is not permitted except in rare circumstances where TEOAF has granted a waiver. In that case, the subrecipient monitoring requirements of 2 CFR 200.331 to 333 would apply.

**F. Equipment and Real Property Management**

See *Guide*, Section V.C for Program-specific requirements.

**G. Matching, Level of Effort, Earmarking****1. Matching**

Not applicable

**2. Level of Effort**

Agencies may supplement, not supplant, their appropriated funds. See *Guide*, sections I.C and V for Program-specific requirements.

**3. Earmarking**

The *Guide*, Section V.A.2, states that agencies may earmark funds already received from and on hand but may not budget or commit funds not yet awarded or received.

**I. Procurement and Suspension and Debarment**

1. Procurement – Although 2 CFR sections 200.317 to 200.327 are not applicable, the *Guide*, Section VI.A.3, requires agencies to follow their jurisdiction's procurement policies.
2. Suspension and Debarment – 2 CFR sections 180.200 to 225 are applicable.

**L. Reporting**

See *Guide*, Section VII for Program-specific requirements. The *Guide*, Section VII, details the annual reporting requirements for equitable sharing fund through the submission of the annual ESAC form. Agencies report on the ESAC the amount of funds received and how they were expended in general categories such as equipment and training.

**1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Program* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**IV. OTHER INFORMATION**

The DOJ also manages its own Equitable Sharing Program under Assistance Listing 16.922. Funds from each program must be maintained and managed separately.

**DEPARTMENT OF THE TREASURY****ASSISTANCE LISTING 21.019 CORONAVIRUS RELIEF FUND****I. PROGRAM OBJECTIVES**

The purpose of the Coronavirus Relief Fund (the Fund) is to provide direct payments to state, territorial, tribal, and certain eligible local governments to cover:

1. Necessary expenditures incurred due to the public health emergency with respect to Coronavirus Disease 2019 (COVID-19);
2. Costs that were not accounted for in the government's most recently approved budget as of March 27, 2020; and
3. Costs that were incurred during the period that begins on March 1, 2020; and ends on December 31, 2021.

On December 27, 2020, the Consolidated Appropriations Act, 2021, Pub. L. No.116-260 was signed into law. Division N, Title X, Section 1001 extends the period for which recipients may incur eligible costs using payments from the Fund from December 30, 2020, to December 31, 2021.

For more information on the limitation for use of payments from the Fund, please reference US Department of the Treasury's (Treasury) guidance located in the section below titled "Availability of Other Program Information."

Auditors must use Treasury's guidance and Frequently Asked Questions (FAQ) in final form as published in the *Federal Register* on January 15, 2021, at 86 FR 4182 and Treasury's Office of Inspector General (OIG) guidance on reporting and record retention, including related FAQs at <https://oig.treasury.gov/cares-act-reporting-and-record-keeping-information>, as the criteria when auditing use of payments from the Fund, as well as when reporting findings.

**II. PROGRAM PROCEDURES****A. Overview**

The Treasury provided assistance of \$150 billion from the Fund in direct payments to state, territorial, tribal, and eligible local governments with \$3 billion reserved for payments to the District of Columbia, Puerto Rico, US Virgin Islands, Guam, Northern Mariana Islands, and American Samoa and \$8 billion reserved for payments to tribal governments. The remaining \$139 billion were allocated for payments to the 50 states and eligible local governments with each state receiving a minimum payment no less than \$1.25 billion for fiscal year 2020. Payments to states were subject to reduction based on payments to eligible local governments. Amounts paid to states and eligible local governments were based on 2019 population data from the US Census Bureau.

Units of local government eligible for direct payment include counties, municipalities, towns, townships, villages, parishes, boroughs, or other units of general government below the state level with a population that exceeds 500,000. Eligible units of local government had to provide a certification to receive direct payment from the Fund. The secretary of the Treasury made a determination to allocate payments to tribal governments based on population, employment, and expenditure data.

State, territorial, tribal, and eligible local governments are required to use payments from the Fund to cover:

1. Necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
2. Costs that were not accounted for in the governments' most recently approved budget as of March 27, 2020; and
3. Costs that were incurred during the period that begins on March 1, 2020; and ends on December 31, 2021.

Governments otherwise have broad discretion to utilize payments for expenditures ranging from COVID-19 testing including, but not limited to, reimbursing small businesses for the costs of business interruption caused by required closures.

The CARES Act statutory criteria on use of payments from the Fund stated in section 601(d) of the Social Security Act, as added by section 5001 of Division A of the CARES Act and as interpreted in Treasury's guidance and FAQs, applies to prime recipients, subrecipients, and beneficiaries, as detailed in Section M. on Subrecipient Monitoring below and Treasury's FAQ No. B.13. Please note that Fund payments provided to beneficiaries are not subject to audit per 2 CFR Part 200, Subpart F.

## **B. Subprograms/Program Elements**

Not Applicable

## **Source of Governing Requirements**

The Fund is authorized by the CARES Act, Pub. L. No. 116-136, Division A, Title V (2020) (codified as 42 USC 801 et seq.), as amended by the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division N, Title X, Section 1001.

## **Availability of Other Program Information**

Additional information on the Fund is available on the Treasury website at <https://home.treasury.gov/policy-issues/cares/state-and-local-governments>.

Treasury has published in the *Federal Register* its Guidance and FAQs regarding the Coronavirus Relief Fund for states, tribal governments, and certain eligible local governments.

The guidance published in the *Federal Register* is unchanged from the last version of the Guidance dated September 2, 2020, and the FAQ dated October 19, 2020, each of which was published on Treasury's website, except for certain changes noted in the *Federal Register* notice.

The *Federal Register* notice is available at 86 FR 4182 (Jan. 15, 2021) and on Treasury's website at [https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register\\_2021-00827.pdf](https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register_2021-00827.pdf).

Treasury OIG's guidance on reporting and record retention, including related FAQs, can be found at <https://oig.treasury.gov/cares-act-reporting-and-record-keeping-information>.

If there are specific questions regarding the Fund, the CARES Program Office may be contacted via telephone at 202-622-6415 or by e-mail at [CoronaVirusReliefFund@treasury.gov](mailto:CoronaVirusReliefFund@treasury.gov).

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement, Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	Y	N	N	Y	Y	N

#### A. Activities Allowed or Unallowed

The Fund is designed to provide ready funding to address unforeseen financial needs and risks created by the COVID-19 public health emergency. Governments may use Fund payments for eligible expenses subject to the restrictions set forth in section 601(d) of the Social Security Act. Payments must be used to cover costs that are:



1. Necessary expenditures incurred due to the public health emergency with respect to COVID-19;
2. Not accounted for in the governments' most recently approved budget as of March 27, 2020; and
3. Incurred during the period that begins on March 1, 2020; and ends on December 31, 2021.

A cost meets the requirement of "costs not accounted for in the budget most recently approved as of March 27, 2020," if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget or (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.

Please see Treasury's guidance on "Costs not accounted for in the budget most recently approved as of March 27, 2020," at [https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register\\_2021-00827.pdf](https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register_2021-00827.pdf) for additional details.

Fund payments are not required to be used as the source of funding of last resort. However, recipients may not use payments from the Fund to cover expenditures for which they will receive reimbursement from other sources. Governments are responsible for making determinations as to what expenditures are necessary due to the public health emergency with respect to COVID-19.

Please see Treasury's FAQs at [https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register\\_2021-00827.pdf](https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register_2021-00827.pdf) for more information related to the expenditures that may or may not be covered with payments from the Fund.

## **B. Allowable Cost/Cost Principles**

As a direct payment for specified use, these funds are considered federal financial assistance, but are not provided pursuant to a grant agreement. In accordance with 2 CFR section 200.101(b) regarding applicability only certain provisions of the *Code of Federal Regulations*, Title 2, Subtitle A, Chapter II, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance" – 2 CFR Part 200) apply to the Fund and these provisions include the following:

- a. Subpart A-Definitions;
- b. Subpart B-General provisions except for 2 CFR sections 200.111–113;
- c. 2 CFR section 200.303 regarding internal controls;
- d. 2 CFR sections 200.330–332 regarding subrecipient monitoring and management; and
- e. Subpart F – Audit Requirements

All other provisions of 2 CFR Part 200 are not applicable to the Fund.

While 2 CFR Part 200, Subpart E, cost principles do not apply to the Fund, auditors should use Treasury's guidance and FAQs published in the *Federal Register* as the criteria when testing the allowability of costs under the Fund. For example, while not exhaustive, in the context of real property improvements and acquisitions and equipment acquisitions (which includes vehicles) this means that the acquisition itself must be necessary due to the COVID-19 public health emergency. In particular, a government must (i) determine that it is not able to meet the need arising from the public health emergency in a cost-effective manner by leasing property or equipment or by improving property already owned and (ii) maintain documentation to support this determination. Likewise, an improvement, such as the installation of modifications to permit social distancing, would need to be determined to be necessary to address the COVID-19 public health emergency (see Treasury's FAQ No. A.58 for more detail on real property improvements and acquisitions and equipment acquisitions).

## **H. Period of Performance**

Governments must use the direct payments for necessary expenditures incurred between March 1, 2020, and December 31, 2021, due to the COVID-19 public health emergency. Please see Treasury's guidance on "Costs incurred during the period that begins on March 1, 2020, and ends on December 31, 2021" for more detail at:

[https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register\\_2021-00827.pdf](https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register_2021-00827.pdf).

## **L. Reporting**

### **1. Financial Reporting**

Not Applicable

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

- a. Each prime recipient of the Fund shall provide a quarterly Financial Progress Report that contains COVID-19 related costs incurred during the covered period (the period beginning on March 1, 2020; and ending on December 31, 2021) to Treasury OIG. Each prime recipient shall report this quarterly information mentioned above into the GrantSolutions portal. The prime recipient's quarterly Financial Progress Report submissions should be supported by the data in the prime recipient's accounting system.

*Key Line Items* – The following line items from the reporting contain critical information:

- (1) The total amount of payments from the Fund received from Treasury.
  - (2) The amount of funds received that were expended or obligated for each project or activity.
  - (3) A detailed list of all projects or activities for which funds were expended or obligated, including:
    - (a) The name of the project or activity (please refer to Treasury OIG guidance at [Department of the Treasury Office of Inspector General Coronavirus Relief Fund Frequently Asked Questions Related to Reporting and Recordkeeping \(Revised\)\(OIG-CA-20-028R\)](#) (Note: This revised guidance incorporates the extension of the Fund through December 31, 2021, and reflects all previous requirements of the November 25, 2020 version.)
    - (b) A description of the project or activity
  - (4) Detailed information on any loans issued; contracts and grants awarded; transfers made to other government entities; and direct payments made by the prime recipient that are greater than \$50,000. For amounts less than \$50,000, the prime recipient must report in the aggregate for these expenditure categories. For direct payments to individuals, aggregate reporting is required to be reported regardless of the amount.
- b. Beginning September 21, 2020, prime recipients were required to submit via the GrantSolutions portal the first detailed quarterly Financial Progress Report, which cover the period March 1 through June 30, 2020 (with exception to the September 21 first quarter deadline and the October 13 second quarter reporting deadlines for those prime recipients using the GrantSolutions' upload feature, which was available December 1, 2020). Thereafter, quarterly reporting will be due no later than ten days after each calendar quarter. If the 10th calendar day falls on a weekend or a federal holiday, the due date will be the next working day. Reporting shall end with either the calendar quarter after the COVID-19 related costs and expenditures have been liquidated and paid or the calendar quarter ending September 30, 2022, whichever comes first. The prime recipient's quarterly Financial Progress Report submission should be supported by the data in the prime recipient's accounting system.

- c. Special reports for Federal Funding Accountability and Transparency Act (FFATA) reporting. Per question 31 in the Treasury OIG FAQs Related to Reporting and Recordkeeping (referred to above), FFATA reporting does not apply to this program.

Please reference OIG's FAQs (<https://oig.treasury.gov/sites/oig/files/2021-03/OIG-CA-20-028R.pdf>) and other related guidance for more information at <https://oig.treasury.gov/cares-act>.

#### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

#### **M. Subrecipient Monitoring**

Applicable

For additional information on subrecipient monitoring, please reference Part 3 of the Compliance Supplement. (Note: The Single Audit Act and 2 CFR Part 200, Subpart F regarding audit requirements do not apply to beneficiaries as defined in Treasury's FAQ B.13 at [CRF-Guidance-Federal-Register\\_2021-00827.pdf \(treasury.gov\)](#).)

**DEPARTMENT OF THE TREASURY****ASSISTANCE LISTING 21.020 COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM****I. PROGRAM OBJECTIVES**

The purpose of the Community Development Financial Institutions (CDFI) program is to use federal resources to invest in, and build the capacity of, CDFIs to help them serve low-income and underserved people and communities that lack access to affordable financial products and services.

**II. PROGRAM PROCEDURES****A. Overview**

The CDFI program is administered by the Community Development Financial Institutions Fund (CDFI Fund), Department of the Treasury. Through the CDFI program, the CDFI Fund provides two types of monetary awards to CDFIs—financial assistance awards and technical assistance awards. 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 banks, credit unions, depository institution holding companies, loan funds, and venture capital funds.

An organization must be a certified CDFI when the Notice of Funding Availability (NOFA) is released in order to be eligible to apply for a financial assistance award through the CDFI Program. Organizations that are Emerging CDFIs or Sponsoring Entities may only apply for technical assistance awards.

CDFIs may use the funds to pursue a variety of goals, including:

- a. Promoting economic development to develop businesses, create jobs, and develop commercial real estate;
- b. Developing affordable housing and to promote homeownership; and
- c. Providing community development financial services, such as basic banking services, financial literacy programs, and alternatives to predatory lending.

**B. Subprograms/Program Elements**

The CDFI Fund provides financial assistance and technical assistance awards to help certified and emerging CDFIs sustain and expand their services and build their technical capacity. Financial and technical assistance awards are provided through a yearly competitive nationwide evaluation and selection process. After selection, each CDFI program award recipient enters into an assistance agreement, which includes performance goals and other terms and conditions.

**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.). The CDFI program implementing regulations are codified at 12 CFR Part 1805.

**Availability of Other Program Information**

Additional information on the CDFI program is available on the CDFI Fund website at <https://www.cdfifund.gov>. A template of the assistance agreement is available on the CDFI Fund website. If there are specific questions regarding the programs, the CDFI Fund may be contacted via telephone at (202) 653-0421 or by e-mail at [cdfihelp@cdfi.treas.gov](mailto:cdfihelp@cdfi.treas.gov).

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	Y	N	Y	N	Y	N	N

**A. Activities Allowed or Unallowed**

1. *Financial Assistance*

Section 3.7 of the terms and conditions in the assistance agreement prescribes the specific authorized activities of financial assistance awards for each CDFI program award recipient (12 CFR sections 1805.300 and 1805.301).

2. *Technical Assistance*

Technical assistance awards may include training for management and other personnel; development of programs, products, and services; improving financial management and internal operations; or other activities deemed appropriate by the CDFI Fund. Section 3.8 of the terms and conditions in the assistance agreement prescribes the specific authorized activities of the technical assistance amounts for each CDFI award recipient (12 CFR section 1805.303).

**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**

CDFI program award recipients 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 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, unless waived by Congress in the appropriation for the program. Such match must come from sources other than the federal government and must consist of nonfederal funds. The applicable time frame for meeting the match is set forth in the NOFA published in the *Federal Register* for each funding round. The most recent NOFAs can be retrieved from the CDFI Fund’s website at <https://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 award recipient will not exceed the amount of match that the award recipient has in hand.

- b. *Technical assistance* – There is no match requirement for technical assistance amounts under the CDFI program (12 CFR section 1805.303(d)).

**2. Level of Effort**

Not Applicable

**3. Earmarking**

Not Applicable

**L. Reporting****1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable to FY 2018 and older technical assistance awards only
- d. Single Audit Report

**2. Performance Reporting**

- a. Uses of Award Report (UOA) (OMB Control Number 1559-0032) – The UOA is used to determine whether the Recipient used funds in compliance with authorized activities and to demonstrate how award funds are expended. Auditors should review reports for the Category of Activity, Description of Activity, and Total Dollar Amount against the Recipient’s Assistance Agreement and financial reports. The UOA Report is available on the CDFI Fund website at <http://www.cdfifund.gov/> under the Compliance Resources and Reporting section for the CDFI program.
- b. Transaction Level Report (TLR) (OMB Control Number 1559-0027) – Applicable to financial assistance awards only – The TLR is used to collect compliance and performance data and provides transactional information on an organization’s portfolio. The TLR requires reporting on newly originated loans and investments closed as of a Recipient’s fiscal year end. Key data points auditors should validate against the organization’s records are the “original amount of a loan or investment,” date originated, and purpose. The CDFI TLR Data Point Guidance is available on the CDFI Fund website at <http://cdfifund.gov>. It is accessible by selecting “Tools & Resources” at the top of the website and then “Compliance and Performance Reporting Resources.”

**3. Special Reporting**

Not Applicable



#### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

#### **IV. OTHER INFORMATION**

For determining whether the audit threshold is met and determining Type A programs: financial assistance and technical assistance awards are considered expended once the Recipient expenses the funds for the authorized uses outlined in the Recipient's assistance agreement.

Recipients that received assistance in the form of a loan are required to submit both performance and financial reports for the period of performance designated in the assistance agreement. However, this does not relieve the borrower of the requirement to file financial reports on these loans or otherwise comply with program requirements until the loan is repaid to the CDFI Fund.

Note: All capitalized terms used herein but not defined have such definitions as specified in the Program's Interim Rule, NOFA, or applicable Assistance Agreement.

**DEPARTMENT OF THE TREASURY****ASSISTANCE LISTING 21.023 EMERGENCY RENTAL ASSISTANCE PROGRAM****I. PROGRAM OBJECTIVES**

Note: This program is considered a “higher risk” program for 2022, pursuant to 2 CFR section 200.519(c)(2). Refer to the “Programs with Higher Risk Designation” section of Part 8, Appendix IV, Internal Reference Tables, for a discussion of the impact of the “higher risk” designation on the major program determination process.

Two pieces of legislation authorized funding for Emergency Rental Assistance. The authorizations include some different legal requirements. Therefore, this Compliance Supplement addresses the requirements as “ERA 1” and “ERA 2.” ERA1 was authorized by Division N, Title V, Section 501 of the Consolidated Appropriations Act, 2021 (the Act), Pub. L. No. 116-260 (December 27, 2020). ERA 2 was authorized by Title III, Subtitle B, Section 3201 of the American Rescue Plan Act (ARPA), 2021, Pub. L. No. 117-2 (March 11, 2021). Both ERA 1 and ERA 2 funding is defined as “other financial assistance” per 2 CFR Part 200.1 and both ERA 1 and ERA 2 are administered by Treasury as direct payments for specified use.

The purpose of ERA is to provide direct payments to eligible entities to assist eligible households with financial assistance and to provide housing stability services and, in the case of ERA 2 as applicable, to cover the costs for other affordable rental housing and eviction prevention activities. ERA grantees may provide assistance directly to eligible landlords and utility providers on behalf of an eligible household or directly to an eligible household (see section 501(c)(2)(C)(i) of the Consolidated Appropriations Act, 2021 and FAQ 12 for more detail on landlords and utility provider participation in the program). Financial assistance for eligible households may include payment of rent, rental arrears, utilities and home energy costs, utilities and home energy costs arrears, and other expenses related to housing. ERA grantees may also use funds to provide housing stability services as authorized by the respective statutes.

**II. PROGRAM PROCEDURES****A. Overview**

ERA 1 provided \$25 billion for the US Department of the Treasury (Treasury) to make payments to States (defined to include the District of Columbia), US territories (Puerto Rico, US Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), Indian tribes or their tribally designated housing entities, as applicable, the Department of Hawaiian Home Lands, and certain local governments with more than 200,000 residents. These entities are collectively referred to as “eligible grantees” or “ERA 1 grantees.” ERA 1 award funds may be used to provide financial assistance and housing stability services to eligible households. All ERA 1 grantees that submitted the requested documentation to Treasury and executed a financial assistance agreement received their total ERA 1 award funds in one payment.

ERA 2 provided \$21.55 billion for Treasury to make payments to States (defined to include the District of Columbia), US Territories (Puerto Rico, US Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), and local governments with more than 200,000 residents. These entities are collectively referred to as “eligible grantees” or “ERA 2 grantees.” ERA 2 award funds may be used to assist eligible households with financial assistance and to provide housing stability services and, as applicable, to cover the costs for other affordable rental housing and eviction prevention activities.

Pursuant to section 3201(c)(1) of ARPA, Treasury made initial payments of 40 percent of an eligible grantee’s total award amount to the each grantees under ERA 2 that submitted the required documentation and executed the financial assistance agreement. Through February 2022, Treasury made payments of the remaining 60 percent of ERA 2 grantees’ award funds after they certified that at least 75 percent of the initial ERA 2 payment has been obligated pursuant to section 3201(c)(2) of ARPA. Beginning in February 2022, Treasury altered its ERA 2 payment tranche policy to allow grantees to receive the remainder of their ERA 2 award funds in two payments (half of the remaining balance, followed by the remaining balance), subject to potential reductions resulting from the implementation of a statutory reallocation requirement.

Additional information on statutory differences between ERA 1 and ERA 2 are described in the Emergency Rental Assistance Frequently Asked Questions (FAQs) posted [here](#).

Section 501(b)(1)(A) of the Consolidated Appropriation Act, 2021 directs Treasury to use US Census Bureau data for the most recent year for which data is available for population calculations for determining the populations of state and local governments. Funds are distributed via a per capita formula allocation detailed on Treasury.gov that considers the minimum allocation of \$200 million for states and the District of Columbia. Allocation amounts can be found via the following link: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/allocations-and-payments>.

### Source of Governing Requirements

- Emergency Rental Assistance (“ERA 1”), Division N, Title V, Section 501 of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (December 27, 2020) and codified as 15 USC 9058a;
- Emergency Rental Assistance (“ERA 2”), Title III, Subtitle B, Section 3201 of the American Rescue Plan Act, 2021, Pub. L. No. 117-2 (March 11, 2021) codified as 15 USC 9058c;
- Section 15011 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. No. 116-136), as amended by Title VIII, Section 801(b) of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260) on December 27, 2020; and

- Treasury’s Frequently Asked Questions (FAQs) and related guidance available on Treasury.gov, including important version changes over time that can be found on the ERA program website.

### Availability of Other Program Information

General information for the ERA program is available on the program website at [www.treasury.gov/ERA](http://www.treasury.gov/ERA). Information includes the following documents:

- ERA authorizing statute: <https://www.govinfo.gov/content/pkg/PLAW-116publ260/pdf/PLAW-116publ260.pdf>
- ERA 2 authorizing statute: <https://www.govinfo.gov/content/pkg/PLAW-117publ2/pdf/PLAW-117publ2.pdf>
- Section 15011 of the CARES Act regarding ERA1 reporting: <https://www.govinfo.gov/content/pkg/PLAW-116publ136/pdf/PLAW-116publ136.pdf>
- ERA 1 Award Terms template: <https://home.treasury.gov/system/files/136/Emergency-rental-assistance-terms-FINAL.pdf>
- ERA 2 Award Terms template: [https://home.treasury.gov/system/files/136/ERA2\\_Granttee\\_Award\\_Terms\\_572021.pdf](https://home.treasury.gov/system/files/136/ERA2_Granttee_Award_Terms_572021.pdf)
- Treasury’s ERA Frequently Asked Questions (FAQs) and program guidelines are available at <https://home.treasury.gov/system/files/136/ERA-FAQ-8-25-2021.pdf>
- Treasury’s ERA 1 Reallocation guidance: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/guidance>
- Treasury’s ERA 2 Reallocation Guidance: <https://home.treasury.gov/system/files/136/ERA2-Reallocation-Guidance-March-30-2022.pdf>
- ERA Promising Practices guidance: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/promising-practices>
- ERA Program and Service Design guidance: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/service-design>

- ERA Compliance and Reporting guidance: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/reporting>
- Guidance from the Treasury Office of Inspector General (OIG) related to the reporting of ERA fraud, waste, and abuse and any future monitoring of funds requirements (where applicable) <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/fraud>

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	N	Y	N	N	Y	N	Y

#### A. Activities Allowed or Unallowed

ERA 1 and ERA 2 funds may be used for administrative expenses, housing stability services, and financial assistance on behalf of an eligible household, as defined in the Treasury guidance. In the case of ERA 2, after October 2022, grantees that have obligated 75 percent of their allocations may choose to use up to 25 percent of their allocation for, “other affordable rental housing and eviction prevention purposes, as defined by the Secretary, serving very low-income families.” As of March 1, 2022, Treasury had not yet released guidance to further define these additional uses.

Where applicable, the final ERA 1 payment amount distributed by Treasury to the ERA 1 grantee through an ERA 1 “redirect” and/or “reallocation” process, pursuant to Treasury’s Reallocation Guidance, is described on [Treasury.gov](https://www.treasury.gov). If a grantee receives redirected or reallocated funds, the funds are subject to the same requirements under the ERA 1 Award Terms previously accepted by the grantee in connection with their ERA 1 award with the addition that grantees receiving reallocated ERA 1 funds may request from Treasury an extension of their final obligation date from September 30, 2022, to December 29, 2022. Please see the ERA page at [Treasury.gov](https://www.treasury.gov) and [ERA FAQs](#) for the latest guidance regarding eligible uses under ERA 1 and ERA 2.

**Administrative Expenses:** The revised Award Terms for ERA 1 and ERA 2 awards issued by Treasury permits ERA grantees to use award funds provided to cover both direct and indirect administrative costs. The cost of a grantee contacting a landlord to encourage their participation and acceptance of ERA assistance is one of many examples of an eligible administrative cost. Under ERA 1, a grantee may use up to 10 percent of the total award amount for direct and indirect administrative costs and may use up to 10 percent of the total award amount for housing stability services. Under ERA 2, a grantee may use up to 15 percent of the total award amount for direct and indirect administrative costs and may use up to 10 percent of the total award amount for housing stability services as described below (see also FAQ 29).

**Housing Stability Services:** Under ERA 1, housing stability services includes case management and other services related to the COVID-19 outbreak intended to help keep households stably housed. Under ERA 2, housing stability services do not have to be related to the COVID-19 outbreak. For ERA 1 and ERA 2, housing stability services include those that enable households to maintain or obtain housing. Such services may include, among other things, eviction prevention and eviction diversion programs; mediation between landlords and tenants; housing counseling; fair housing counseling; housing navigators or promoters that help households access programs or find housing; case management related to housing stability; housing-related services for survivors of domestic abuse or human trafficking; legal services or attorney’s fees related to eviction proceedings and maintaining housing stability; and specialized services for individuals with disabilities or seniors that support their ability to access or maintain housing (see FAQ 23).

**Financial Assistance:** Financial assistance to households includes payment of rent, rental arrears, utilities and home energy costs, utility and home energy costs arrears, and other expenses related to housing pursuant to section 501(c)(2)(A) of the Act and section 3201(d)(1)(A) of ARPA. Please note that under the ERA1 program, award funds used for “other expenses” must be related to housing and “incurred due, directly indirectly, to the novel coronavirus disease (COVID-19) outbreak” (see section 501(c)(2)(A)(v) of the Act). However, the ERA2 statute requires that “other expenses” be “related to housing” but does not require that they be incurred due to the COVID-19 outbreak (see section 3201(d)(1)(A)(V) of ARPA). The amount of financial assistance for prospective rent cannot exceed three months under a single household application. There is no maximum dollar amount for the cumulative financial assistance that may be provided on behalf of

an eligible household beyond the requirements set forth in the ERA FAQs. These requirements include that amounts paid be based on documentation of household income, leases, and equivalent forms (or for applicants unable to present adequate documentation, a written attestation from the applicant up to a monthly maximum of 100 percent of the greater of the Fair Market Rent or the Small Area Fair Market Rent for the area in which the applicant resides) and that the amount of assistance provided to any household under ERA 1 and ERA 2, including assistance provided by other ERA 1 and ERA 2 grantees cannot exceed 18 months.

Financial assistance arrears may only cover household expenses accrued on or after March 13, 2020, up to a maximum of 15 months for ERA 1 and a maximum of 18 months, under ERA 1 and ERA 2 combined. For prospective rent assistance greater than three months up to the statutory maximum of 18 months under ERA 1 and ERA 2, the household must apply to the program again and the grantee must have sufficient funds. Households may receive up to 12 months of assistance under ERA 1 and an additional three months if necessary to ensure housing stability for the household for a total of three months. This means that for ERA 1, the maximum rental arrears monthly coverage period, where applicable, is 15 months where necessary for housing stability and households may only receive up to three months of prospective rent, where applicable and qualifying (see FAQ 10).

Examples of other costs for both ERA 1 and ERA 2 include relocation expenses (including prospective relocation expenses), rental security deposits, rental fees including application and screening fees, reasonable accrued late fees, Internet service to a given rental unit, and rental bonds where necessary to avoid an eviction order, as provided in the Treasury guidance and subject to certain conditions (for example, that Internet service expenses are eligible only if grantees establish policies governing the appropriate of use for this purpose).

**Other Affordable Rental Housing and Eviction Prevention Purposes:** Treasury anticipates releasing an FAQ soon to further define these uses.

## **B. Allowable Costs / Cost Principles**

The cost principles in 2 CFR Part 200, Subpart E (Cost Principles) except the 2 CFR 200.418 and 2 CFR 200.419 apply to ERA 1 and ERA 2. Under ERA 1, a grantee may use up to 10 percent of the total award amount for direct and indirect administrative costs. Under ERA 2, a grantee may use up to 15 percent of the total award amount for direct and indirect administrative costs (see FAQ 29).

## **E. Eligibility**

Treasury expects auditor testing of household eligibility to focus on whether grantees established and adhered to reasonable policies for evaluating household applications within Treasury's framework providing for the use of self-attestation, categorical eligibility, and fact-specific proxies in qualifying circumstances.

This approach to eligibility was implemented in accordance with Consolidated Appropriations Act, 2021, for ERA 1 in sections 501(c)(2)(C)(ii) of the Act concerning documentation of payments to households, sections 501(f)(2)(A) and (B) of the Act concerning signature requirements for applications and documentation required for tenants, section 501(k)(1) concerning area median income determinations, and sections 501(k)(3)(A)(I) and (II) concerning eligible household determinations and attestation requirements. This treatment is further explained in the ERA FAQs; the Consolidated Appropriations Act, 2021; and the Treasury, Department of Justice and Department of Housing and Urban Development joint letter issued August 27, 2021 (<https://home.treasury.gov/system/files/136/Eviction-Moratorium-Joint-Letter.pdf>).

To the extent that a grantee has established and consistently followed its own reasonable procedures for implementing an eligibility determination process, consistent with Treasury's guidance, it is not Treasury's expectation that grantees should seek additional documentation from a beneficiary after the initial determination of eligibility has been completed, including for those determined to be eligible using self-attestation, categorical eligibility, or fact-specific proxies in qualifying circumstances. Testing of individual household eligibility-related documentation should be limited to material already collected by the grantee during application as much as possible to avoid imposing undue burden on households that remain at risk of housing instability.

Treasury guidance related to determining where an applicant lives and the amount that they owe can be found in FAQ 5. Grantees must obtain, if available, a current lease, signed by the applicant and the landlord or sublessor, that identifies the unit where the applicant resides and establishes the rental payment amount. If a household does not have a signed lease, documentation of residence may include evidence of paying utilities for the residential unit, an attestation by a landlord who can be identified as the verified owner or management agent of the unit, or other reasonable documentation as determined by the grantee. In the absence of a signed lease, evidence of the amount of a rental payment may include bank statements, check stubs, or other documentation that reasonably establishes a pattern of paying rent, a written attestation by a landlord who can be verified as the legitimate owner or management agent of the unit, or other reasonable documentation as defined by the grantee in its policies and procedures.

Additional Treasury guidance related to income determination can be found in FAQ 4 and related guidance (<https://home.treasury.gov/system/files/136/ERA-FAQ-8-25-2021.pdf>). ERA 2 builds on the eligibility criteria in ERA 1 and permits additional flexibilities.

The ERA FAQs document the full eligibility considerations for grantees to extend emergency assistance to vulnerable populations without imposing undue documentation burdens. As described, given the challenges presented by the COVID-19 pandemic, grantees may be flexible as to the particular form of documentation they require, including by permitting photocopies or digital photographs of documents, e-mails, or attestations from employers, landlords, caseworkers, or others with knowledge of the



household's circumstances. Grantees must require all applications for assistance to include an attestation from the applicant household that all information included is correct and complete. In all cases, grantees must document their policies and procedures for determining household eligibility to include policies and procedures for determining the prioritization of households in compliance with the statute and maintain records of their determinations.

Grantees may rely on a written attestation without further documentation of household income from the applicant under three approaches:

- **Self-attestation Alone** – In order to provide assistance rapidly during the public health emergency related to COVID-19, the grantee may rely on a self-attestation of household income, financial hardship, and/or risk of homelessness and housing instability without further verification if the applicant confirms in their application or other document that they are unable to provide documentation, provided the other requirements detailed in Treasury guidance are satisfied. If an applicant is able to provide satisfactory evidence of residence but is unable to present adequate documentation of the amount of the rental obligation, grantees may accept a written attestation from the applicant to support the payment of assistance up to a monthly maximum of 100 percent of the greater of the Fair Market Rent or the Small Area Fair Market Rent for the area in which the applicant resides, as most recently determined by HUD and made available at <https://www.huduser.gov/portal/datasets/fmr.html>;
- **Categorical Eligibility** – If an applicant household income has been verified to be at or below 80 percent of the area median income (for ERA 1) or if an applicant household has been verified as a low-income family as defined in Section 3(b) of the United States Housing Act of 1937 (42 USC 1437a(b)) (for ERA 2) in connection with another local, state, or federal government assistance program, grantees are permitted to rely on a determination letter from the government agency that verified the applicant's household income or status as a low-income family, provided that the determination for such program was made on or after January 1, 2020; and/or
- **Fact-specific proxy** – A grantee may rely on a written attestation from the applicant household as to household income if the grantee also uses any reasonable fact-specific proxy for household income, such as reliance on data regarding average incomes in the household's geographic area. Grantees also have discretion to provide waivers or exceptions to this documentation requirement to accommodate disabilities, extenuating circumstances related to the pandemic, or a lack of technological access. In these cases, the grantee is still responsible for making the required determination regarding the applicant's household income and documenting that determination.

Grantees have discretion to provide waivers or exceptions to certain documentation requirements to accommodate disabilities, extenuating circumstances related to the

pandemic, or a lack of technological access. In these cases, the grantee is still responsible for making the required determination regarding the applicant's household income and documenting that determination. Pursuant to section 501(k)(3)(B) of Division N of the Consolidated Appropriations Act, 2021, and 2 CFR 200.403, when providing ERA 1 assistance, the grantee must review the household's income and sources of assistance to confirm that the ERA 1 assistance does not duplicate any other assistance, including federal, state, or local assistance provided for the same costs. Grantees may rely on an attestation from the applicant regarding non-duplication with other government assistance, and the duplication requirement does not apply to ERA 2; however, to maximize program efficacy, Treasury encourages grantees to minimize the provision of duplicative assistance.

Treasury strongly encourages grantees to rely on the self-certification of applicants with regard to whether their financial hardship meet statutory eligibility requirements. Similarly, with respect to determining whether one or more individuals within the household can demonstrate a risk of experiencing homelessness or housing instability, Treasury indicates that a grantee may rely on a past due utility or rent notice or eviction notice, evidence of unsafe or unhealthy living conditions (which may include overcrowding) or any other evidence of risk, as determined by the grantee. Treasury clearly indicates that a grantee may rely on an applicant's self-certification identifying the applicable risk factor or factors, without further documentation, if other documentation is not immediately available.

## **H. Period of Performance**

Under Section 501(e)(1) of the Consolidated Appropriations Act, 2021, the period of performance for ERA 1 awards began on the date that the grantee executed the ERA 1 Award Terms and ended on December 31, 2021. Section 3201(h) of ARPA extended the award period of performance from December 31, 2021 to September 30, 2022. Pursuant to Section 501(e)(2) of the Consolidated Appropriations Act, 2021, Treasury extended the award period of performance to end on December 29, 2022 for ERA 1 grantees that receive reallocated funds.

Under section 3201(g) of ARPA, the period of performance for ERA 2 awards begins on the date that Treasury and the grantee executed the ERA 2 Award Terms and ends on September 30, 2025. All award funds not obligated or expended by the end of the period of performance date for ERA 1 and ERA 2 awards must be returned to Treasury as part of the award closeout process pursuant to 2 CFR 200.344(d), including amounts distributed through redirection and reallocation.

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable

- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

## 2. Performance Reporting

See Special Reporting.

## 3. Special Reporting

### ERA 1 and ERA 2 Reports

ERA 1 and ERA 2 quarterly and monthly reporting requirements are available at the links provided below. Grantees are required to submit reports in accordance with the guidance beginning in the first quarter of 2021 through September of 2022 for ERA 1 (and December 2022 for recipients receiving reallocated funds) and through September of 2025 for ERA 2. ERA 1 grantees—excluding Indian tribes, tribally designated housing entities and the Department of Hawaiian Home Lands consistent with the reporting allowances provided in section 501(g) of the Consolidated Appropriations Act, 2021—are required to submit monthly reports. Interim reporting requirements that were temporarily in place through the second quarter of 2021 pursuant to OMB Memorandum M-21-20 while grantees responded to the housing crisis and Treasury deployed new reporting features have been replaced by the complete quarterly reporting requirements in Treasury’s reporting and compliance guidance available on [Treasury.gov](https://www.treasury.gov). Interim reports should be reviewed where submitted prior to issuance of the full reporting requirements for consistency with internal records and good faith effort by grantees. Reporting guidance and terminology issued by Treasury at the time of report filing periods may be utilized, except where grantees were instructed to update report submissions in accordance with more recent instructions.

The reports that ERA grantees must submit are:

- **Monthly Reports (1505-0266)**: The two Monthly Reporting questions are included in the information collection for the Interim Quarterly Reports. Beginning with the monthly report for the April 1 through April 30, 2021, period of performance for ERA 1 generally due to Treasury by May 15, 2021, state, local and territorial grantees receiving ERA 1 awards submit monthly reports. For ERA 2, monthly reporting began with the June 1 through June 30, 2021 period of performance and reports were due to Treasury by July 15, 2021, or where otherwise extended in an approved authorization from [EmergencyRentalAssistance@Treasury.gov](mailto:EmergencyRentalAssistance@Treasury.gov). Grantees receiving ERA 1 and ERA 2 allocations later in the award cycle as evidenced by award or reallocation dates are not required to submit reports for periods not covered by the assistance agreement. Tribal government

grantees are exempt from the monthly reporting requirement, as detailed in Treasury guidance.

The key lines on the form are:

1. Total number of participating households that received ERA assistance of any kind; and
  2. Total amount of ERA funds expended by the ERA grantee to or for participating households on behalf of eligible households. This a key line item because it feeds into Treasury's reallocation formula, as detailed in guidance at Treasury.gov.
- **Quarterly Reports (1505-0266)**: All ERA grantees must submit quarterly reports with reporting periods of one calendar quarter and several cumulative fields covering all activity from the date of award through the quarter close. These reports provide financial and performance data regarding grantee administration of their ERA projects and capture program design in addition to program status data elements. Quarterly reports are intended to capture standard financial and performance data, as well as detailed information on qualifying direct and indirect expenditures pursuant to the government-wide Federal Funding Accountability and Transparency Act (FFATA) reporting requirements and in accordance with Section 15011 of the CARES Act, as amended and interpreted in Treasury's reporting and compliance guidance on Treasury.gov.

The key line items in the form are:

1. The cumulative amount obligated by the grantee; and
2. The cumulative amount expended by the grantee

The above are key line items because grantees must certify 65 percent of funds as having been obligated, including the assumed up to 10 percent obligation provided for in Treasury's guidance, to qualify for receiving a reallocation payment for ERA1 and grantees are subject to returning funds under reallocation where their expenditure ratio for ERA 1 is less than the requirement in effect at the time, as detailed in Treasury's reallocation guidance (the threshold escalates).

### **Evaluating Grantee Data Privacy Protection**

Where select grantees are initially unable to utilize the Treasury ERA reporting portal due solely to Treasury's identity proofing and authentication provider ID.me not accepting tribal identification cards and other reasonable, documented technology limitations related to broadband access, Treasury provided grantees

flexibility as long as some form of reasonable notice and request for exception was provided and that the grantee otherwise met reporting requirements and eventually provided one reasonably reliable quarterly report for each of the periods of performance beginning December 27, 2020 through September of 2022 and beyond for ERA 2 under the American Rescue Plan Act of 2021. While identity proofing and authentication are critical for maintaining grantee and household privacy, Treasury is aware of some hardships and as of January 2022 has released an alternative identity proofing solution for grantees demonstrating hardship through Login.gov.

A full list of reports and reporting requirements may be found in Treasury's reporting and compliance guidance page [here](#). Please note that tribal grantees and tribal housing authorities were exempt from several components of reporting pursuant to Section 501 of the Consolidated Appropriations Act, 2021, including monthly reporting, demographic and socioeconomic exhibits, and household data files as detailed in Appendix 1 – Reporting Elements by ERA Recipient Type and Appendix 6 – Required ERA1 and ERA2 Monthly Reports, of the Emergency Rental Assistance Program Reporting Guidance.

Grantees under ERA 1 are required to comply with the requirement in section 501(g)(4) of Division N of the Consolidated Appropriations Act, 2021 to establish data privacy and security requirements for information they collect and grantees under ERA 2 are also encouraged to comply with those requirements.

Treasury's Office of Inspector General may require the collection of additional information in order to fulfill its ERA oversight and monitoring requirements.

#### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3 of the 2022 OMB Compliance Supplement for audit guidance.

#### **N. Special Tests and Provisions**

**ERA 1 Funds Redirection:** Where applicable to a grantee, auditors should confirm: 1) that all voluntarily redirected ERA 1 award funds were approved by the grantee's authorizing official in accordance with Treasury guidance; 2) all redirected ERA 1 award funds were deposited to the official, authorized bank account of the receiving grantee, as approved by Treasury; and 3) all ERA 1 award funds received through the redirection process are used in accordance with the ERA 1 Award Terms.

Pursuant to section 501(b)(1)(A) of the Consolidated Appropriations Act, 2021 and Treasury's implementing instructions to requesting grantees, grantees are permitted to redirect ERA 1 funds when a locality receives an ERA 1 award and subsequently transfers 100 percent of the ERA 1 award funds received from Treasury to its eligible state and Treasury approves the transaction. The redirection of award funds is finalized when the locality has submitted the relevant redirection documentation to Treasury and Treasury has provided confirmation of acceptance. At that time, the locality's ERA 1

award is cancelled, and the locality has no further legal obligation to Treasury under the ERA 1 award. The state's ERA 1 award is modified by the amount of the funds transferred from the local government to the state and the state is responsible as the grantee for reporting on the use of the transferred award funds that become subject to the requirements set forth in the Award Terms previously accepted by the state in connection with its ERA 1 award. A local government that has redirected 100 percent of its ERA 1 award funds to its state but has not submitted the relevant redirection documentation to Treasury or is still awaiting confirmation of acceptance of submitted documentation by Treasury, is still responsible for complying with the ERA 1 Award Terms, including submitting Monthly and Quarterly reports until their redirection forms were submitted and accepted by Treasury.

**ERA Funds Reallocation:** Auditors should confirm that financial information certified by grantees used by Treasury to make reallocation determinations is accurate and that excess funds that are subject to involuntary recapture are returned to Treasury in accordance with Treasury's confirmation letter from [EmergencyRentalAssistance@Treasury.gov](mailto:EmergencyRentalAssistance@Treasury.gov). The financial information certified as part of reallocation includes monthly expenditure and cumulative obligations levels, as described in the Treasury reallocation guidance. ERA 1 expenditures reported monthly by the grantee are inputs to Treasury's reallocation expenditure ratio. ERA1 obligations certified in the Request for Reallocated Funds form (1505-0266), including in the Request for Voluntarily Reallocated Funds, are inputs into determining eligibility to receive reallocated funds. ERA 2 expenditures and obligations reported in quarterly reports by the grantee are inputs to Treasury's ERA 2 reallocation expenditure and obligation ratios. The reallocation expenditure ratio determines whether the grantee is subject to involuntary reallocation due to an insufficient ratio and the amount of excess funds subject to recapture by Treasury. Auditors should confirm the amounts reported as expended and obligated accurately capture the grantee's housing activity at the time of submission, as reflected in a grantee's award and/or financial systems, and that grantees receiving reallocated funds met the Treasury criteria.

Pursuant to section 501(d) of the Consolidated Appropriations Act, 2021, Treasury is required to reallocate "excess" ERA 1 award funds. Treasury's objective in reallocations is to ensure ERA 1 award funds remain available to grantees in accordance with their jurisdictional needs and demonstrated capacity to deliver assistance while the ERA appropriations remain available. Treasury's ERA 1 reallocation guidance on [Treasury.gov](https://www.treasury.gov) and previewed here describes how grantees that have expenditure ratios below designated thresholds as of September 30, 2021, were subject to involuntary recapture, in the absence of mitigating actions, requiring the grantee to return funds to Treasury within the provided timeframes. Treasury continues to periodically assess expenditures using escalating expenditure benchmarks to identify and reallocate excess funds. For the first assessment using data as of September 30, 2021, grantees could mitigate the impact of recapture by submitting a certification that the grantee's financial assistance activity had since increased to a level beyond the minimum threshold, committing to a voluntary reallocation, or by providing a Performance Improvement Plan. Treasury's reallocation guidance on [Treasury.gov](https://www.treasury.gov) will continue to detail specific

ERA reallocation timelines. The guidance also describes the voluntary reallocation process through which a grantee may request that Treasury reallocate its ERA 1 award funds to other ERA 1 grantees in the same state. Treasury is not recapturing funds from Indian Tribes or Tribally Designated Housing Entities (TDHEs) prior to the end of the second quarter of 2022, except where a Tribal grantee, its TDHE, or housing authority voluntarily return funds to Treasury. Auditors should refer to the ERA 1 reallocation guidance at [www.treasury.gov/era](http://www.treasury.gov/era). Guidance for ERA 2 reallocation can also be found on this site.

#### **IV. OTHER INFORMATION**

Auditors should refer to Part 3 of the Compliance Supplement for suggested audit procedures. If there are specific questions regarding ERA, the Office of Recovery Programs may be contacted via e-mail at [EmergencyRentalAssistance@treasury.gov](mailto:EmergencyRentalAssistance@treasury.gov).

**DEPARTMENT OF THE TREASURY****ASSISTANCE LISTING 21.026 HOMEOWNER ASSISTANCE FUND PROGRAM****I. PROGRAM OBJECTIVES**

The Homeowner Assistance Fund (HAF) program provides \$9.961 billion for the US Department of the Treasury (“Treasury”) to make payments to states (defined to include the District of Columbia, Puerto Rico, US Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), Indian tribes or their tribally designated housing entities, and the Department of Hawaiian Home Lands (collectively the “eligible entities” or “HAF Participants”) to mitigate financial hardships associated with the coronavirus pandemic, including for the purpose of preventing homeowner mortgage delinquencies, defaults, foreclosures, loss of utilities or home energy services, and displacements of homeowners experiencing financial hardship after January 21, 2020, through qualified expenses related to mortgages and housing.

**II. PROGRAM PROCEDURES****A. Overview**

Section 3206 of the American Rescue Plan Act of 2021 (the “Act”), Pub. L. No. 117-2 (March 11, 2021) established the HAF program and provides \$9.961 billion for Treasury to make payments to the eligible entities to provide the assistance to homeowners for qualified expenses related to mortgages and housing as described in section 3201(c)(1) of the Act and Treasury’s HAF Guidance.

Pursuant to section 3206(c)(2) of the Act, at least 60 percent of the HAF participant’s award funds must be used to provide assistance with mortgage payments, homeowner’s insurance, utility payments, and other qualified expenses related to mortgages and housing to eligible homeowners within a certain target income. The law requires HAF participants to prioritize the remaining award funds to provide assistance to “socially disadvantaged individuals” (see also the section on “Targeting” in the HAF Guidance).

Section 3206(d) of the Act prescribes that the HAF funding must be allocated as follows:

1. \$30 million for the US Virgin Islands, Guam, Northern Mariana Islands, and American Samoa (US territories);
2. \$498 million for the Department of Hawaiian Home Lands (DHHL) and Indian tribes or their tribally designated housing entities; and
3. the remainder for the 50 states, the District of Columbia, and Puerto Rico. Each state, the District of Columbia, and Puerto Rico will receive a minimum payment of \$50 million. Amounts that will be paid to states, the District of Columbia, and Puerto Rico are based on homeowner need as it relates to unemployment and mortgage delinquencies or mortgage foreclosures in those jurisdictions.



Amounts paid to US territories are based on share of population, and amounts paid to tribal entities are based on a formula under section 3206(f) of the Act.

### Source of Governing Requirements

- Section 3206 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (March 11, 2021) and codified as 15 USC 9058d.
- As implemented by Treasury’s HAF guidance available on Treasury.gov, including important version changes over time that can be found on the site.

### Availability of Other Program Information

General information for the HAF program is available through the program website at [www.treasury.gov/HAF](http://www.treasury.gov/HAF). Information includes the following documents:

- [HAF Guidance](#)
- [HAF Interim Reporting Guidance](#)
- [HAF Reporting Frequently Asked Questions \(FAQs\)](#)
- [Data and Methodology for State and Territory Allocations](#)

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	N	N	N	N	Y	Y	N

### A. Activities Allowed or Unallowed

HAF participants may use their HAF award funds for qualified expenses related to mortgages and housing, including for the purpose of preventing homeowner mortgage delinquencies, homeowner mortgage defaults, homeowner mortgage foreclosures, homeowner loss of utilities or home energy services, and displacements of homeowners experiencing financial hardship after January 21, 2020. Please see the [HAF Guidance](#) for the full list of qualified expenses.

### B. Allowable Cost/ Cost Principles

HAF funds are considered “other financial assistance” per 2 CFR 200.1 and are administered by Treasury as direct payments for specified use. Refer to 2 CFR Part 200, Subpart E regarding the Cost Principles that apply to the use of funds under this program.

Allowable Costs under the HAF program include the following:

1. mortgage payment assistance;
2. financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing-related costs related to a period of forbearance, delinquency, or default;
3. mortgage principal reduction, including with respect to a second mortgage provided by a nonprofit or government entity;
4. facilitating mortgage interest rate reductions;
5. payment assistance for: (a) homeowner’s utilities, including electric, gas, home energy, and water; (b) homeowner’s internet service, including broadband internet access service, as defined in 47 CFR 8.1(b) (or any successor regulation); (c) homeowner’s insurance, flood insurance, and mortgage insurance; (d) homeowner’s association fees or liens, condominium association fees, or common charges; and (e) down payment assistance loans provided by nonprofit or government entities;

6. payment assistance for delinquent property taxes to prevent homeowner tax foreclosures;
7. measures to prevent homeowner displacement, such as home repairs to maintain the habitability of a home or assistance to enable households to receive clear title to their properties;
8. counseling or educational efforts by housing counseling agencies approved by HUD, tribal government (including such efforts by in-house housing counselors who are HUD certified or tribally approved), or legal services, targeted to households eligible to be served with funding from the HAF related to foreclosure prevention or displacement, in an aggregate amount up to 5 percent of the funding from the HAF received by the HAF participant;
9. reimbursement of funds expended by a state, local government, or applicable tribal entity during the period beginning on January 21, 2020, and ending on the date that the first funds are disbursed by the HAF participant under the HAF, for a qualified expense (other than any qualified expense paid directly or indirectly by another federal funding source, or any qualified expenses described in clauses (6), (7), (8), or (10) of this definition);
10. planning, community engagement, needs assessment, and administrative expenses related to the HAF participant's disbursement of HAF funds for qualified expenses, in an aggregate amount not to exceed 15 percent of the funding from the HAF received by the HAF participant; and
11. payment of lot rent for a manufactured home, where such payment would promote housing stability and prevent the default of the resident of the manufactured home.

Please see the HAF Guidance on the HAF program page on Treasury.gov for the latest guidance regarding the eligible uses of HAF funds.

### **C. Cash Management**

See Part 3, Section C, "Cash Management" for a general description of the compliance requirements, the related audit objectives, and suggested audit procedures.

### **E. Eligibility**

Treasury expects auditors to test the eligibility of homeowners to receive HAF assistance and to focus on whether HAF participants established and adhered to reasonable policies and procedures for evaluating homeowners' applications in accordance with the HAF Guidance which permits HAF participants to reasonably rely on self-attestation.

Testing of individual homeowner eligibility-related documentation should be limited to material already collected by the HAF participant in the application as much as possible to avoid imposing undue burden on homeowners that are experiencing financial hardships.

The HAF Guidance documents the full eligibility considerations for HAF participants to extend financial assistance to vulnerable populations without imposing undue documentation burdens. HAF participants must require all applications for assistance to include an attestation from the applicant homeowner that all information included is correct and complete. In addition, HAF participants are expected to have policies and procedures to determine homeowner eligibility in the following three criteria:

**Financial Hardship:** HAF participants may rely on homeowners' attestations that they experienced financial hardship after January 21, 2020 (including a hardship that began before January 21, 2020 but continued after that date). The attestation must describe the nature of the financial hardship (for example, job loss, reduction in income, or increased costs due to healthcare or the need to care for a family member).

**Income:** HAF participants may take one of two approaches to income verification: (1) the homeowner may provide a written attestation as to household income together with supporting documentation such as paystubs, W2s or other wage statements, IRS Form 1099s, tax filings, depository institution statements demonstrating regular income, or an attestation from an employer; or (2) the homeowner may provide a written attestation as to household income and the HAF participant may use a reasonable fact-specific proxy for household income, such as reliance on data regarding average incomes in the household's geographic area. To be eligible for HAF assistance, the homeowner must have income equal to or less than 150 percent of the area median income or 100 percent of the median income for the United States, whichever is greater.

For additional information, please see Treasury's HAF Guidance at: <https://home.treasury.gov/system/files/136/HAF-Guidance.pdf>

## L. Reporting

### 1. Financial Reporting

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not applicable

### 2. Performance Reporting

Not Applicable

### 3. Special Reporting

- **Interim Reports (1505-0269):** State, and territorial HAF participants that received HAF awards are required to submit a one-time Interim Report. Treasury is requiring these HAF participants to submit this one-time Interim Report covers the reporting period beginning on the date of issuance of the HAF award and ending on January 31, 2022. HAF participants must submit the Interim Report via Treasury's portal in calendar by March 4, 2022. HAF participants may download copies of their Interim Reports for evaluation by auditors.

The key line items in the report include the following:

- a. Number of unique Homeowners that received HAF assistance and subset (s) that are classified as Socially Disadvantaged and 100 percent Area Median Income (AMI) or less.
  - b. Homeowners that received HAF assistance disaggregated by Program Design Element.
  - f. Amount of assistance provided to Homeowners disaggregated by Program Design Element.
- **Quarterly Reporting (1505-0269):** Treasury will begin receiving HAF Quarterly Reports following the first quarter of calendar year 2022. HAF Reporting Guidance can be accessed on the [HAF website](#).

### 4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3 of the 2022 OMB Compliance Supplement for audit guidance.

### M. Subrecipient Monitoring

All HAF participants and their subrecipients must be registered in SAM.gov. HAF participants must monitor and manage their subrecipients in accordance with 2 CFR 200.332 to ensure their subrecipients are administering the subawards in compliance with the terms and conditions of the subawards.

## IV. OTHER INFORMATION

If there are specific questions regarding the HAF program, the Office of Recovery Programs may be contacted by e-mail at [HAF@Treasury.gov](mailto:HAF@Treasury.gov).

**DEPARTMENT OF THE TREASURY****ASSISTANCE LISTING 21.027 CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS****I. PROGRAM OBJECTIVES**

Note: This program is considered a “higher risk” program for 2022, pursuant to 2 CFR section 200.519(c)(2). Refer to the “Programs with Higher Risk Designation” section of Part 8, Appendix IV, Internal Reference Tables, for a discussion of the impact of the “higher risk” designation on the major program determination process.

Note: Per Part IV, “Other Information,” certain Coronavirus State and Local Fiscal Recovery Funds recipients are provided with an option to have an alternative compliance examination engagement in lieu of a Single Audit or a Program-Specific Audit under 2 CFR Part 200, Subpart F.

The purpose of the Coronavirus State and Local Fiscal Recovery Funds (“CSLFRF”) is to provide direct payments to states (defined to include the District of Columbia), US territories (defined to include Puerto Rico, US Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), tribal governments, metropolitan cities, counties, and (through states) non-entitlement units of local government (collectively the “eligible entities”) to:

1. Respond to the public health emergency, COVID-19 or its negative economic impacts, including providing assistance to households, small businesses, nonprofits, and impacted industries, such as tourism, travel, and hospitality;
2. Respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of eligible employers that have eligible workers who are performing essential work, or by providing grants to eligible entities who perform essential work;
3. Provide government services, to the extent COVID-19 caused a reduction in revenues collected in the most recent full fiscal year of the state, territory, tribal government, metropolitan city, county, or non-entitlement units of local government;
4. Make necessary investments in water, sewer, or broadband infrastructure.

**II. PROGRAM PROCEDURES****A. Overview**

Sections 602 and 603 of the Social Security Act (the “Act”), as added by section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (Mar. 11, 2021) authorized the Coronavirus State Fiscal Recovery Fund (“CSFRF”) and Coronavirus Local Fiscal Recovery Fund (“CLFRF”), respectively (referred to collectively as the “Coronavirus State and Local Fiscal Recovery Funds” or “CSLFRF”). CSLFRF is administered by the

US Department of the Treasury (“Treasury”) and provides assistance in the form of direct payments for specified use. CSLFRF provides \$350 billion for payments to eligible entities.

The total allocations to the eligible entities under CSLFRF are as follows:

- (1) \$195.3 billion reserved for making payments to the 50 states and the District of Columbia;
- (2) \$4.5 billion reserved for making payments to the US territories;
- (3) \$20 billion reserved for making payments to tribal governments;
- (4) \$45.57 billion reserved for making payments to metropolitan cities;
- (5) \$65.1 billion reserved for making payments to counties; and
- (6) \$19.53 billion reserved for making payments to Non-entitlement Units of Local Government (NEU).

Amounts paid to eligible states and local governments were based on 2019 population data from the US Census Bureau as well as latest available data from the Bureau of Labor Statistics at the time of the issuance of Treasury’s Interim Final Rule. Treasury made a determination to allocate payments to tribal governments based on enrollment and employment data as well as consultation with tribal leaders.

Prior to receipt of award funds, all eligible entities are required to execute a Financial Assistance Agreement, which includes the Award Terms and Conditions that recipients must comply with in carrying out the objectives of their award. As a condition of receiving payment from CSLFRF, states, the District of Columbia, and US territories executed a Financial Assistance Agreement that included the required section 602(d)(1) certification. Tribal and local governments are not required to provide such certification as a condition of receiving payment under CSLFRF. Eligible entities are expected to use the direct payments to meet pandemic response needs and rebuild a strong, more equitable economy as the country recovers.

Please note that, as discussed in Part IV. Other Information, certain CSLFRF recipients are provided with an option to have an alternative compliance examination engagement in lieu of a Single Audit or a Program-Specific Audit under 2 CFR Part 200, Subpart F.

### **Source of Governing Requirements**

The Coronavirus State and Local Fiscal Recovery Funds program is authorized by sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (Mar. 11, 2021), and codified at 42 USC 802 and 803 and implemented by Treasury’s [Interim Final Rule](#) and [Final Rule](#) at 31 CFR Part 35.

On January 6, 2022, Treasury adopted a Final Rule to implement the requirements of the CSLFRF program. The Final Rule responded to comments Treasury received on the Interim Final Rule and is effective as of April 1, 2022.

Along with the Final Rule, Treasury published a Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule (the “Statement”) that clarifies the transition from compliance with the Interim Final Rule to compliance with the Final Rule. Recipients should review the Final Rule for additional information. Recipients must comply with the Final Rule that was effective as of April 1, 2022. Prior to April 1, 2022, recipients may take actions and use funds in a manner consistent with the Final Rule, and Treasury will not take action to enforce the Interim Final Rule if a use of funds is consistent with the terms of the Final Rule, regardless of when the CSLFRF funds were used. This means that Treasury will not take action to enforce against uses of the Interim Final Rule to the extent that the recipient wishes to change its planned uses of CSLFRF funds in a manner consistent with the Final Rule.

Auditors must audit recipients on award funds they expended for their fiscal year 2022 based on the requirements set forth in the Act, Treasury’s Interim Final Rule, Treasury’s Final Rule, and Frequently Asked Questions (FAQs) that were in effect at the time of those expenditures.

Auditors must audit recipients on award funds they expended in accordance with the Final Rule at 31 CFR Part 35 on and after April 1, 2022, the date the Final Rule became effective, as well as FAQs that are in effect at the time of those expenditures. See the IV., “Other Information” section below for auditor guidance relating to the criteria auditors should use for compliance testing purposes.

### **Availability of Other Program Information**

Additional information on the requirements for CSLFRF is available through the program webpage on Treasury’s website at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>. CSLFRF’s Compliance and Reporting Guidance can be found at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities>.

FAQs about CSLFRF are outlined on the program webpage on Treasury’s website at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>. If there are specific questions regarding CSLFRF, the Office of Recovery Programs may be contacted via e-mail at [SLFRF@treasury.gov](mailto:SLFRF@treasury.gov).

### **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have



been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	Y	Y	N	Y	Y	N

**A. Activities Allowed or Unallowed**

Recipients may use CSLFRF payments for any eligible expenses subject to the restrictions set forth in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 (codified as 42 USC 802 and 42 USC 803 respectively), Treasury’s Interim Final Rule and Final Rule at 31 CFR sections 35.7 and 35.8, and FAQs at <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

The following activities are not permitted under CSLFRF:

- Offset a reduction in net tax revenue (applicable to states and territories)
- Deposits into pension funds (applicable to all recipients except Tribes)
- Debt service or replenishing financial reserves (e.g., “rainy day funds”) (applicable to all recipients)
- Satisfaction of settlements and judgements (applicable to all recipients)
- Programs, services, or capital expenditures that include a term or condition that undermines efforts to stop the spread of COVID-19 (applicable to all recipients)

Recipients may use payments from CSLFRF to:

- **Support public health expenditures**, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
- **Address negative economic impacts caused by the public health emergency**, including economic harms to workers, households, small businesses, impacted industries, and the public sector;
- **Replace lost public sector revenue** to provide government services; recipients may use this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic.
- **Provide premium pay for essential workers**, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and
- **Invest in water, sewer, and broadband infrastructure**, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

Under the Final Rule, recipients can elect a one-time “standard allowance” of \$10 million (not to exceed the recipient’s award amount) to spend on the “provision of government services” during the period of performance. Alternatively, recipients can calculate lost revenue based on the formula provided in the Final Rule to determine the limit for the amount of CSLFRF funds that can be used for the “provision of government services.” Recipients should provide auditors with evidence that they meet the requirements to elect the standard allowance or provide auditors with evidence supporting their revenue loss calculation.

The dollar amount of the revenue loss determines the limit for the amount of CSLFRF funds that can be used to “provide government services” (which is one of four eligible uses of CSLFRF funds). For SEFA reporting purposes, the aggregate expenditures for all four eligible use categories are reported on the SEFA and not the result of the revenue loss calculation or standard allowance. See the IV, “Other Information” section below for guidance on the related Schedule of Expenditures of Federal Award reporting.

## **B. Allowable Cost/Cost Principles**

CSLFRF is considered “other financial assistance” per 2 CFR section 200.1 and is administered as direct payments for specified use. The 2 CFR Part 200, Subpart E is applicable to expenditures under CSLFRF unless stated otherwise.

## **H. Period of Performance**

The period of performance for the award under CSLFRF begins on the date the awards are issued (i.e., the date funds are disbursed to recipients) and ends on December 31, 2026, pursuant to the Financial Assistance Agreement.

Recipients may only use funds to cover costs incurred during the period beginning on March 3, 2021 and ending on December 31, 2024, per section 602(g)(1) of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 and Treasury's Interim Final Rule and Final Rule at 31 CFR section 35.5(a). Recipients must liquidate all obligations incurred by December 31, 2024 under the award no later than December 31, 2026, which is the end of the period of performance. As such, auditors should test that recipients only used award funds to cover costs incurred from the period beginning on March 3, 2021 and ending on December 31, 2024. Auditors should also test that recipients did not incur and apply to their award any new costs during the period beginning December 31, 2024 and ending on December 31, 2026. During this two-year period, recipients are only permitted to liquidate all obligations they incurred by December 31, 2024.

## **I. Procurement and Suspension and Debarment**

### **1. Procurement**

Recipients may use award funds to enter into contracts to procure goods and services necessary to implement one or more of the eligible purposes outlined in sections 602(c) and 603(c) of the Act and Treasury's Interim Final Rule and Final Rule. As such, recipients are expected to have procurement policies and procedures in place that comply with the procurement standards outlined in the Uniform Guidance. Specifically, a state must follow the same policies and procedures it uses for procurements from its non-federal funds and comply with 2 CFR sections 200.321, 200.322, and 200.323. States must also ensure that every contract includes the applicable contract clauses required by 2 CFR section 200.327. All other entities under the program, including subrecipients of a state, must follow the procurement standards in 2 CFR sections 200.318 through 200.327, including ensuring that the procurement method used for the contracts are appropriate based on the dollar amount and conditions specified in 2 CFR section 200.320.

### **2. Suspension and Debarment**

Prior to entering into subawards and contracts with award funds, recipients must verify that such contractors and subrecipients are not suspended, debarred, or otherwise excluded pursuant to 31 CFR section 19.300.

**L. Reporting****1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable

**2. Performance Reporting**

See Special Reporting below.

**3. Special Reporting**

- a. There are three types of reporting requirements for the CSLFRF program:
  1. **Interim Report:** Provide initial overview of status and uses of funding. The interim report will include a recipient's expenditures through July 31, 2021 by category and at the summary level. The reporting requirements vary by type of recipient, the total allocation amount, and the date which the recipient first received its allocation. This is a one-time report.
  2. **Project and Expenditure Report:** Report on financial data, projects funded, expenditures, and contracts and subawards over \$50,000, and other information. Project and Expenditure Reports are due on a regular, recurring basis after the Interim Reports. The reporting frequency and deadlines vary by type of recipient and total allocation amount.
  3. **Recovery Plan Performance Report:** The Recovery Plan Performance Report (the "Recovery Plan") will provide information on the projects that large recipients are undertaking with program funding and how they plan to ensure program outcomes are achieved in an effective, efficient, and equitable manner. It will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury. The Recovery Plan will be posted on the website of the recipient as well as provided to Treasury.

The reporting threshold is based on the total allocation expected under the SLFRF program, not the funds received by the recipient as of the time of reporting. Treasury may extend reporting deadlines.

Reporting requirements include which reports a recipient must file, the frequency at which the recipient must report, the covered period of reporting, and the report deadlines. Reporting requirements for each type and size of recipient can be found in Part 2, Section B of the Compliance and Reporting Guidance.

- b. NEUs are recipients under CSLFRF and are required to report their award expenditures on their SEFA and data collection form. The states that distributed award funds to the NEUs must not report the amounts provided to the NEUs on their SEFA.
- c. *Key Line Items* – The following line items contain critical information for the Interim Report:
  1. Obligations and Expenditures
    - Current period obligation
    - Cumulative obligation
    - Current period expenditure
    - Cumulative expenditure
- d. *Key Line Items* – The following line items contain critical information for the Project and Expenditure Report:
  1. Obligations and Expenditures
    - Current period obligation
    - Cumulative obligation
    - Current period expenditure
    - Cumulative expenditure
  2. Subawards
  3. Detailed information on any loans issued; contracts and grants awarded; transfers made to other government entities; and direct payments made by the recipient that are greater than \$50,000. For amounts less than \$50,000, the recipient must report in the aggregate for these same categories of loans issued; contracts and grants awarded; transfers made to other government entities; and direct payments made by the recipient.
- e. *Key Line Items* – The following line items contain critical information for the Recovery Plan Performance Report:
  1. Public Disclosure Link
    - The URL is publicly accessible.

- The URL is prominently displayed on the main page or the main COVID response page of the recipient's website

Please see Treasury's Compliance and Reporting Guidance at (<https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities>) for more information.

#### **4. Special Reporting for Federal Funding Accountability and Transparency Act (FFATA)**

- a. Treasury received approval from the Office of Management and Budget (OMB) to increase the subaward reporting threshold outlined in 2 CFR Part 170 from \$30,000 to \$50,000 for CSLFRF.
- b. Although FFATA reporting is applicable to CSLFRF, Treasury is making all required FFATA reporting on behalf of recipients. Thus, compliance with FFATA reporting requirements is not subject to audit.

#### **M. Subrecipient Monitoring**

Applicable

Note that subrecipient monitoring is not required for entities deemed to be beneficiaries. Because non-entitlement units of local government are considered by Treasury to be direct recipients of CSLFRF (and not subrecipients or beneficiaries), states have no subrecipient monitoring responsibilities related to the funding states were required to distribute to non-entitlement units of local government.

The subrecipient or beneficiary designation is an important distinction as funding provided to beneficiaries is not subject to audit pursuant to the Single Audit Act and 2 CFR Part 200, Subpart F, but funding provided to subrecipients is subject to those audit requirements. When recipients of CSLFRF provide award funds to entities to respond to the negative economic impacts of COVID-19 as end users, and not for the purpose of carrying out program requirements, the entities receiving such funding are beneficiaries of CSLFRF. Alternatively, when recipients of CSLFRF provide award funds to an entity to carry out a program on behalf of the CSLFRF recipient, the entities receiving such funding are subrecipients.

#### **IV. OTHER INFORMATION**

The CSLFRF program is authorized by sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (Mar. 11, 2021) as implemented by Treasury's [Interim Final Rule](#) and [Final Rule](#) at 31 CFR Part 35.

On January 6, 2022, Treasury adopted a Final Rule to implement the requirements of the CSLFRF program. The Final Rule responded to comments Treasury received on the Interim Final Rule and is effective as of April 1, 2022.

Along with the Final Rule, Treasury published a Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule (the “Statement”) that clarifies the transition from compliance with the Interim Final Rule to compliance with the Final Rule. Recipients should review the Final Rule for additional information. Recipients must comply with the Final Rule, effective on April 1, 2022. Prior to April 1, 2022, recipients may take actions and use funds in a manner consistent with the Final Rule, and Treasury will not take action to enforce the Interim Final Rule if a use of funds is consistent with the terms of the Final Rule, regardless of when the CSLFRF funds were used. This means that Treasury will not take action to enforce against uses of the Interim Final Rule to the extent that the recipient wishes to change its planned uses of CSLFRF funds in a manner consistent with the Final Rule.

Auditors must audit recipients on award funds they expended for their fiscal year 2022 based on the requirements set forth in the Act, Treasury’s Interim Final Rule, and Frequently Asked Questions (FAQs) that were in effect at the time of those expenditures.

Auditors must audit recipients on award funds they expended in accordance with Treasury’s Final Rule at 31 CFR Part 35 on and after April 1, 2022, the date when the Final Rule became effective, as well as FAQs that are in effect at the time of those expenditures. See below for auditor guidance relating to the criteria auditors should use for compliance testing purposes.

#### *Schedule of Expenditures of Federal Awards (SEFA)*

As noted above in Activities Allowed or Unallowed, the dollar amount of the revenue loss determines the limit for the amount of CSLFRF funds that can be used to “provide government services” (which is one of four eligible uses of CSLFRF funds). For SEFA reporting purposes, the aggregate expenditures for all four eligible use categories are reported on the SEFA and not the result of the revenue loss calculation or standard allowance.

Additionally, because NEUs are considered direct recipients under CSLFRF, NEUs that do not elect or are not eligible for the alternative compliance examination engagement are required to report their award expenditures on the SEFA and data collection form as direct awards. Further, States must not report award funds that were required to be distributed to the NEUs on State SEFAs or data collection forms.

### **Requirements for an Alternative Compliance Examination Engagement for Recipients That Would Otherwise be Required to Undergo a Single Audit or Program-Specific Audit as a Result of Receiving CSLFRF Awards**

#### **A. OVERVIEW**

The US Department of the Treasury (“Treasury”) recognizes that many recipients of Coronavirus State and Local Fiscal Recovery Funds (“CSLFRF”) may newly be required to

complete a Single Audit or a Program-Specific Audit pursuant to the Single Audit Act and its implementing regulations, 2 CFR Part 200, Subpart F, due to their receipt of an CSLFRF award which may lead to them expending \$750,000 or more during their fiscal year in Federal awards. This may be because the recipient has not received federal financial assistance before, or the other federal financial assistance they expended did not exceed the \$750,000 audit threshold set forth 2 CFR 200.501(a). This section describes an alternative approach for CSLFRF recipients that would otherwise not be required to undergo an audit pursuant to 2 CFR Part 200, Subpart F, if it was not for the expenditures of CSLFRF funds directly awarded by Treasury. This alternative approach is permitted by OMB as further described in the 2021 OMB Compliance Supplement, Part 8, Appendix VII – Other Audit Advisories and as detailed below. However, an CSLFRF recipient may still elect to undergo a Single Audit or a Program-Specific Audit under 2 CFR Part 200, Subpart F.

### **Recipient Eligibility**

Recipient eligibility to use this alternative approach is as follows:

CSLFRF recipients that expend \$750,000 or more during the recipient's fiscal year in federal awards and which meet **both** criteria listed below have the option to follow the alternative CSLFRF compliance examination engagement:

1. The recipient's total CSLFRF award received directly from Treasury or received (through states) as a non-entitlement unit of local government is at or below \$10 million; and
2. Other federal award funds the recipient expended (not including their CSLFRF award funds) are less than \$750,000 during the recipient's fiscal year.

### **Alternative Compliance Examination Engagement**

The alternative approach to a Single Audit or Program-Specific Audit under 2 CFR Part 200, Subpart F, permits eligible recipients to engage a practitioner to perform a compliance examination engagement in accordance with the Government Accountability Office (GAO) [Government Auditing Standards](#). The GAO *Government Auditing Standards* direct practitioners to conduct these engagements in accordance with the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Attestation Engagements. The AICPA attestation standards are codified in the AT-C section of the AICPA's *Professional Standards* and [AT-C section 315, Compliance Attestation](#), which is the standard to be followed. This engagement, which results in an opinion on compliance, is to be directed at the compliance requirements described below in D. Compliance Requirements. This alternative is intended to reduce the burden of a full Single Audit or Program-Specific Audit on eligible recipients and practitioners, as well as uphold Treasury's responsibility to be good stewards of federal funds. This balance of burden reduction and Treasury responsibility to be good stewards is achieved in several ways as follows:

- A financial statement audit is not required for those eligible recipients that expend award funds from other Federal programs.



- A compliance examination engagement simplifies the engagement for both recipients and practitioners.
- A formal schedule of expenditures of federal awards is not required as the practitioner opines directly on compliance for a single program.
- The requirements for internal control in 2 CFR 200.514(c) are not relevant to the engagement, although AT-C 315, paragraph .15, still requires the practitioner to obtain an understanding of relevant portions of internal control over compliance sufficient to plan the engagement and to assess control risk for compliance with specified requirements.
- The engagement still involves testing of the compliance requirements described below and results in a related examination opinion which is similar to the compliance opinion provided under 2 CFR Part 200, Subpart F.
- The engagement reporting is simplified as compared to audit report required by 2 CFR Part 200, Subpart F. One compliance examination opinion is issued (versus up to 3 reports for a Single Audit or Program-Specific Audit) and the reporting allows for reporting findings that are noted in a similar manner to how they are reported for audits under 2 CFR Part 200, Subpart F.

The following subsections of this section align with normal OMB Compliance Supplement presentation for a Federal program; however, practitioners performing the alternative compliance examination engagement should use this “Other Information” section as a standalone document. Practitioners should not use Part 3 of the OMB *Compliance Supplement* or the full Part 4 section of the CSLFRF Program Compliance Supplement (designated for audits of the program performed under 2 CFR Part 200, Subpart F) when testing compliance. Instead, the examination objectives and suggested examination procedures below should be used on their own.

## **B. PROGRAM OBJECTIVES**

CSLFRF provides direct payments to states (defined to include the District of Columbia), US territories (defined to include Puerto Rico, US Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), tribal governments, metropolitan cities, counties, and (through states) non-entitlement units of local government (collectively the “eligible entities”) to:

1. Respond to the COVID-19 public health emergency or its negative economic impacts, including by providing assistance to households, small businesses, nonprofits, and impacted industries, such as tourism, travel, and hospitality;
2. Respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the recipient that perform essential work or by providing grants to eligible employers that have eligible workers who are performing essential work;

3. Provide government services, to the extent the COVID-19 public health emergency caused a reduction in revenues relative to the revenues collected in the most recent full fiscal year of the eligible entities; and,
4. Make necessary investments in water, sewer, or broadband infrastructure.

## **C. PROGRAM PROCEDURES**

### **1. Overview**

Sections 602 and 603 of the Social Security Act (the “Act”), as added by section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (Mar. 11, 2021) authorized the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund, respectively (referred to collectively as the “Coronavirus State and Local Fiscal Recovery Funds” or “CSLFRF”). CSLFRF is administered by the Treasury and provides assistance in the form of direct payments for specified uses. CSLFRF provides \$350 billion for payments to eligible entities.

The total allocations to the eligible entities under CSLFRF are as follows:

1. \$195.3 billion reserved for making payments to the 50 states and the District of Columbia;
2. \$4.5 billion reserved for making payments to the US territories;
3. \$20 billion reserved for making payments to tribal governments;
4. \$45.57 billion reserved for making payments to metropolitan cities;
5. \$65.1 billion reserved for making payments to counties; and
6. \$19.53 billion reserved for making payments to states for distribution to Non-entitlement Units of Local Government (NEU).

Prior to receipt of award funds, all eligible entities are required to execute a Financial Assistance Agreement, which includes the Award Terms and Conditions that recipients must comply with in carrying out the objectives of their award. As a condition of receiving payment from CSLFRF, states, the District of Columbia, and US territories executed a Financial Assistance Agreement that included the certification required by section 602(d)(1) of the Act. Tribal and local governments are not required to provide such certification as a condition of receiving payment under CSLFRF. Eligible entities are required to use their award funds as set forth in sections 602(c)(1) and 603(c)(1) of the Act and Treasury’s Final Rule, 31 CFR Part 35 to meet pandemic response needs and rebuild a strong, more equitable economy as the country recovers.

## 2. Source of Governing Requirements

The Coronavirus State and Local Fiscal Recovery Funds program is authorized by sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (Mar. 11, 2021) and codified at 42 USC 802 and 803, and implemented by Treasury's [Interim Final Rule](#) and [Final Rule](#) at 31 CFR Part 35.

On January 6, 2022, the US Department of the Treasury adopted a Final Rule implementing the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF). The Final Rule responds to comments received on the Interim Final Rule and took effect on April 1, 2022.

Along with the Final Rule, Treasury published a *Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule* (the "Statement") that clarifies the transition from compliance with the Interim Final Rule to compliance with the Final Rule. Recipients should also review the Final Rule for additional information.

Recipients must comply with the Final Rule beginning on April 1, 2022, when the Final Rule takes effect. Prior to April 1, 2022, recipients may take actions and use funds in a manner consistent with the Final Rule, and Treasury will not take action to enforce the Interim Final Rule if a use of funds is consistent with the terms of the Final Rule, regardless of when the CSLFRF funds were used. This means that Treasury will not take action to enforce against uses of the Interim Final Rule to the extent that the recipient wishes to change its planned uses of CSLFRF funds in a manner consistent with the Final Rule.

Auditors must audit recipients on award funds they expended for their fiscal year 2022 based on the requirements set forth in the Act, Treasury's Interim Final Rule, Treasury's Final Rule, and Frequently Asked Questions (FAQs) that were in effect at the time of those expenditures.

Auditors must audit recipients on award funds they expended on and after April 1, 2022, when the Final Rule at 31 CFR Part 35 became effective as well as FAQs that are in effect at the time of those expenditures.

## 3. Availability of Other Program Information

Additional information on the requirements for CSLFRF available through the program webpage on Treasury's website at [Coronavirus State and Local Fiscal Recovery Funds | US Department of the Treasury](#).

CSLFRF's Compliance and Reporting Guidance can be found at [Recipient Compliance and Reporting Responsibilities | US Department of the Treasury](#).

The [Final Rule](#), an overview of the Final Rule, and FAQs about CSLFRF are outlined on the program webpage on Treasury’s website at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>.

If there are specific questions regarding CSLFRF, the Office of Recovery Programs may be contacted by e-mail at [SLFRF@treasury.gov](mailto:SLFRF@treasury.gov).

**D. COMPLIANCE REQUIREMENTS**

**Preconditions for the Compliance Examination Engagement**

Consistent with, and in addition to, the preconditions for an attestation engagement are outlined in the AICPA’s attestation standards in AT-C 105, [Concepts Common to All Attestation Engagements](#), AT-C 205, [Examination Engagements](#), and AT-C 315, [Compliance Attestation](#). As a precondition to this compliance examination engagement, the practitioner should determine that:

- a. management can provide evidence to the practitioner that it meets the recipient eligibility criteria for the alternative compliance examination engagement as outlined in Section A, “Recipient Eligibility;”
- b. management accepts responsibility for the entity's compliance with the compliance requirements below and the entity's internal control over compliance; and
- c. management evaluates the entity's compliance with the compliance requirements in this section.

**Compliance Requirements Relevant to the Compliance Examination Engagement**

The requirements noted with a “Y” in the “Matrix of Compliance Requirements” below are subject to the compliance examination engagement.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	N	N	N	N	N	N

## A. Activities Allowed or Unallowed

**Compliance Requirement** Recipients have considerable flexibility to use CSLFRF funds on activities to address the diverse needs of their communities. However, the CSLFRF Final Rule identifies specific restrictions. In-depth description of the unallowed activities (referred to in the CSLFRF Final Rule as ineligible uses) can be found in the “Restrictions on Use” section of the [Coronavirus State and Local Fiscal Recovery Funds: Overview of the Final Rule](#). The ineligible uses are listed below:

- Offset a reduction in net tax revenue (applicable to states and territories)
- Deposits into pension funds (applicable to all recipients except Tribes)
- Debt service or replenishing financial reserves (e.g., “rainy day funds”) (applicable to all recipients)
- Satisfaction of settlements and judgements (applicable to all recipients)
- Programs, services, or capital expenditures that include a term or condition that undermines efforts to stop the spread of COVID-19 (applicable to all recipients)

**Examination Objective** Determine whether the recipients used CSLFRF funds for ineligible uses.

### Suggested Examination Procedures

- Obtain an understanding of the design of relevant portions of internal control over compliance regarding unallowable activities by performing some or all of the following:
  - a. Inquiries of appropriate management, supervisory, and staff personnel
  - b. Inspection of the entity's relevant documents
  - c. Observation of the entity's activities and operations
- Review a sample of CSLFRF expenditures to determine if recipients used CSLFRF funds for ineligible uses

## B. Allowable Cost/Cost Principles

**Compliance Requirement** Recipients that are eligible for the alternative compliance examination engagement may elect the standard allowance for revenue loss, pursuant to which they could use the entirety of their allocation for the provision of government services. Recipients are required to comply with 2 CFR 200.404(e) regarding

reasonable costs, and, as such, are required to not deviate from their established practices and policies regarding the incurrence of costs.

**Examination Objective** Determine whether the recipient significantly deviated from its established practices and policies regarding the incurrence of costs.

### **Suggested Examination Procedures**

- Obtain an understanding of the design of relevant portions of internal control over compliance and established practices and policies regarding the incurrence of costs by performing some or all of the following:
  - a. Inquiries of appropriate management, supervisory, and staff personnel
  - b. Inspection of the entity's relevant documents
  - c. Observation of the entity's activities and operations
- Test a sample of SLFRF expenditures to determine that the recipient treated costs consistently with its established practices and policies.

## **E. REPORTING**

As described in the GAO *Government Auditing Standards*, and elaborated upon in AICPA standards, the practitioner issues the following reporting in the alternative compliance examination engagement:

- Practitioner's Examination Report prepared in accordance with [AT-C 315](#) and [Government Auditing Standards](#).
- Schedule of Findings and Responses (if applicable) that includes findings required to be reported under GAGAS and the related finding elements required by GAGAS.

## **F. COMPLIANCE EXAMINATION ENGAGEMENT SUBMISSION INSTRUCTIONS**

The submission deadlines for the alternative compliance examination engagement are the same as those for Single Audits and Program Specific audits due in accordance with 2 CFR Part 200, Subpart F. Therefore, the results of the alternative compliance examination engagement must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period.

Per OMB Memorandum M-21-20, Promoting Public Trust in the Federal Government through Effective Implementation of the American Rescue Plan Act and Stewardship of the Taxpayer Resources, recipients that have not yet filed their Single Audits with the Federal Audit Clearinghouse as of the date of OMB Memorandum M-21-20 (i.e., March 19, 2021) that have

fiscal year-ends through June 30, 2021, may delay the completion and submission of the Single Audit reporting package, as required under 2 CFR 200.501, to six months beyond the normal due date. This extension can also be applied to the completion and submission of the alternative compliance examination engagement for the same periods as described in OMB Memorandum M-21-20 for Single Audits.

Additional instructions for where and how to submit the results of the alternative compliance examination engagement will be forthcoming and posted to the Coronavirus State and Local Fiscal Recovery Funds' website.

**DEPARTMENT OF THE TREASURY****ASSISTANCE LISTING 21.029 CORONAVIRUS CAPITAL PROJECTS FUND****I. PROGRAM OBJECTIVES**

The purpose of the Coronavirus Capital Projects Fund (CPF) is to provide grants to states (defined to include the 50 states, the District of Columbia and Puerto Rico), US territories and freely associated states (United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau), and tribal governments, to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID-19).

**II. PROGRAM PROCEDURES****A. Overview**

Section 604 of the Social Security Act, as added by section 9901 of the American Rescue Plan Act of 2021 (the “Act”), Pub. L. No. 117-2 (Mar. 11, 2021), authorized the \$10 billion Coronavirus Capital Projects Fund (“CPF”). The CPF is administered by the US Department of the Treasury (“Treasury”) and provides assistance in the form of grants.

Recipients may use CPF funds to carry out capital projects that (1) directly enable work, education, and health monitoring; (2) address a need that results from or was exacerbated by the COVID-19 public health emergency; and (3) address a critical need of unserved or underserved populations. Examples include:

- Investments in broadband infrastructure in eligible areas that meet certain speed requirements.
- Investments in digital connectivity technologies, such as devices, public computer facilities, and public wi-fi infrastructure that facilitate Internet access.
- Construction or renovation of multi-purpose community facilities that jointly enable work, education, and health monitoring.
- Other capital projects that meet the program requirements.

Under Section 604(b)(1)(A) of the Act, each of the states (including the District of Columbia and Puerto Rico) is allocated a fixed amount of \$100 million, totaling \$5.2 billion. States may also receive a portion of the remaining \$4.6 billion, to be allocated in accordance with the requirements set forth in section 604(b)(2)(A) of the Act:

- 50 percent of such amount shall be allocated among the states based on the proportion that the population of each state bears to the population of all states;



- 25 percent of such amount shall be allocated among the states based on the proportion that the number of individuals living in rural areas in each state bears to the number of individuals living in rural areas in all states; and
- 25 percent of such amount shall be allocated among the states based on the proportion that the number of individuals with a household income that is below 150 percent of the poverty line applicable to a family of the size involved in each state bears to the number of such individuals in all states.

Section 604(b)(1)(B) of the Act directs the secretary to pay a total of \$100 million divided in equal shares among United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. Section 604(b)(1)(C) of the Act directs the secretary to pay a total of \$100 million divided in equal shares to tribal governments and the State of Hawaii for the exclusive use of the Department of Hawaiian Home Lands and the Native Hawaiian Education Programs. Using the statutory formulas found in sections 604(b)(1) and (2) of the Act, Treasury calculated and published the allocation for each eligible entity along with the specific calculation methodologies used for all eligible entities (see “Allocation Information” at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund>). State allocations vary. Each tribal government is allocated \$167,504. Each territory and freely associated state is allocated \$14,285,714.

## **B. Source of Governing Requirements**

The Coronavirus Capital Projects Fund is authorized by section 604 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (Mar. 11, 2021), codified as 42 USC 804; and is implemented by Treasury’s Guidance for States and Freely Associated States and Treasury’s Guidance for Tribal Governments (together, Treasury’s Guidance), link provided below.

Auditors should refer to the Act, Treasury’s Guidance, FAQs, Grant Agreements, and approved Grant Plans, and Program Plans. Treasury’s Guidance and the FAQs can be accessed on the Treasury website via the links provided below. The Grant Agreements and approved Grant Plans and Program Plans can be obtained from grant recipients.

### **Availability of Other Program Information**

1. Treasury’s Guidance for States, Territories and Freely Associated States can also be found at <https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf>.
2. Treasury’s Guidance for Tribal Governments can also be found at <https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-Tribal-Governments.pdf>.
3. FAQs about the Fund are outlined on the program webpage on Treasury’s website at

[Coronavirus Capital Projects Fund FAQs \(treasury.gov\).](https://www.treasury.gov/press-releases/Pages/pr20200414)

If there are questions regarding the CPF, the Office of Recovery Programs may be contacted via by e-mail at [CapitalProjectsFund@treasury.gov](mailto:CapitalProjectsFund@treasury.gov).

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program- specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	Y	Y	N	N	Y	N

**A. Activities Allowed or Unallowed**

CPF is designed to provide funding for capital projects that meet all of the three criteria below:

1. directly enable work, education, and health monitoring,
2. designed to address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency, and
3. designed to address a critical need of the community.

Presumptively eligible projects include:

- Broadband infrastructure projects designed to deliver service that meets or exceeds symmetrical download and upload speeds of 100 Mbps.
- Digital connectivity technology projects that involve the purchase and/or installation of devices and equipment to facilitate broadband internet access, where affordability has been identified by the Recipient as a barrier to broadband adoption and use.
- Multi-purpose community facilities that are designed to jointly and directly enable work, education, and health monitoring.

Projects may additionally be approved by Treasury on a case-by-case basis provided they meet the enumerated criteria above.

**Activities that may not be funded by the CPF include but are not limited to:**

General infrastructure projects, such as highways, bridges, transit systems, and ports, are not eligible under the Capital Projects Fund program.

General construction and improvement of hospitals and traditional schools are not presumed to be eligible, although, there may be opportunities for such projects to receive funding under the Capital Projects Fund program if they meet the project eligibility criteria. Such projects will be reviewed on a case-by-case basis.

**The following costs are not eligible**, unless otherwise permitted by Treasury:

- Acquisition of spectrum licenses;
- Operating expenses, other than grant administration costs (limited to \$25,000 or 5 percent of the grant award, whichever is greater);
- Short-term operating leases;
- Payment of interest or principal on outstanding debt instruments, or other debt service costs incurred prior to March 15, 2021;
- Fees or issuance costs associated with the issuance of new debt;
- Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding;
- To support or oppose collective bargaining. This does not affect the ability to use funds to comply with 41 CFR 60-14; and

**B. Allowable Cost/Cost Principles**

Allowable costs are determined in accordance with the cost principles identified in 2 CFR Part 200, Subpart E. Treasury does not intend for the Uniform Guidance definition of “capital assets” to limit eligible investments under the CPF program. For purposes of the CPF program, “Capital Project” or “Project” means the construction, purchase, and installation of, and/or improvements to capital assets where the costs of such assets are capitalized or depreciated, including ancillary costs necessary to put the capital asset to use as further described in the Treasury’s Guidance and FAQs. This definition may be found in Section IV of Treasury’s Guidance.

CPF grant recipients may use CPF award funds to match other federal funds to the extent that they are permitted by statute. For example, CPF funds may be used to meet the matching requirements for the Infrastructure Investment and Jobs Act (IIJA) Division F, Title I, Sec. 60102 (h)(3)(B)(iii)(I)(dd). CPF recipients should ensure that the program or project is an acceptable use of funds for the other federal funding stream. CPF grant funding may not be used for costs that will be reimbursed by the other federal or state funding stream; CPF funds must be used only for complementary purposes.

**C. Cash Management***State and Territory Recipients*

Treasury has assessed that beginning in 2022, all state and territory recipients are subject to Part B of the Cash Management Improvement Act.

*Tribal Recipients*

In accordance with the CPF FAQs on the [CPF site](#), Treasury has made the determination that if a tribal recipient fully disburses award funds before the end of the period of performance, the timing and number of advance payments made by Treasury are as close as is administratively feasible to the actual disbursements by a tribal recipient and is in accordance with 2 CFR 200.305(b)(1).

**H. Period of Performance**

Funding must be used to cover eligible costs that are incurred during the period that begins on the date that the Grant Agreement is executed and ends on December 31, 2026. Recipients are permitted to use CPF grant award funds for pre-award costs incurred after March 15, 2021, but before their Grant Agreement is executed, but only if they provided reasonable assurance to Treasury that the costs were incurred pursuant to the negotiation of and in anticipation of the Capital Projects Fund award and are necessary for the efficient and timely performance of the Project. Such costs are allowable only to the extent they would have been allowable if incurred after the date of the Capital Projects Fund award and only with the written approval of Treasury. For the avoidance of doubt, unless otherwise

provided, Treasury's approval of the Recipient's applicable Program Plan shall constitute written approval of pre-award costs that are identified in the Program Plan.

## **I. Procurement and Suspension and Debarment**

### *1. Procurement*

Auditors should test compliance with 2 CFR section 200.216, the Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Award funds may not be used to procure or obtain any covered telecommunication and video surveillance services or equipment as described in 2 CFR section 200.216, including covered telecommunication and video surveillance services or equipment provided or produced by entities owned or controlled by the People's Republic of China and telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

### *2. Suspension and Debarment*

See Part 3, Section I, "Procurement and Suspension and Debarment" for a general description of the compliance requirements, the related audit objectives, and suggested audit procedures.

## **M. Subrecipient Monitoring**

See Part 3, Section M, "Subrecipient Monitoring" for a general description of the compliance requirements, the related audit objectives, and suggested audit procedures.

## **IV. OTHER INFORMATION**

If there are specific questions regarding CPF, the Office of Recovery Programs may be contacted by e-mail at [CapitalProjectsFund@treasury.gov](mailto:CapitalProjectsFund@treasury.gov).

## FEDERAL COMMUNICATIONS COMMISSION

### ASSISTANCE LISTING 32.006 COVID-19 TELEHEALTH PROGRAM

#### I. PROGRAM OBJECTIVES

The coronavirus disease 2019 (COVID-19) Telehealth Program (Program) provides \$200 million in funding, appropriated by Congress as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Round 1), to help health care providers provide telehealth services in response to the COVID-19 pandemic. The Federal Communications Commission (Commission) established the Program through a Report and Order released on April 2, 2020, available at <https://docs.fcc.gov/public/attachments/FCC-20-44A1.pdf>. This Program provides immediate support to eligible health care providers responding to the COVID-19 pandemic by funding the telecommunications services, information services, and devices necessary to provide telehealth services until the Program's funds have been expended or the COVID-19 pandemic has ended.

However, demand for the program significantly exceeded available funding. To build on the success of Round 1 of the Commission's COVID-19 Telehealth Program, in the Consolidated Appropriations Act 2021 (Round 2), Congress appropriated an additional \$249.95 million for this Program. Thus, on February 2, 2021, the Commission released a Report and Order (Round 2 Administration Report and Order), available at <https://docs.fcc.gov/public/attachments/FCC-21-24A1.pdf>, expanding the administrative responsibilities of the Universal Service Administrative Company (USAC) to administer the Program with financial oversight delegated to the Commission's Office of the Managing Director (OMD) to work in coordination with the Wireline Competition Bureau (WCB). Subsequently, on March 30, 2021, the Commission released a Report and Order (Round 2 Report and Order) <https://docs.fcc.gov/public/attachments/FCC-21-39A1.pdf> establishing requirements, processes, and procedures for Round 2 of Program funding.

For more details regarding the Program, please visit the Commission's public website (Round 1) at <https://www.fcc.gov/covid-19-telehealth-program>, and USAC's website (Round 2) at <https://www.usac.org/about/covid-19-telehealth-program/>.

#### II. PROGRAM PROCEDURES

##### Application Requirements

Eligible health care providers must submit the "COVID-19 Telehealth Program Application and Request for Funding" application through an online application portal. In conjunction with completing an application, applicants are required to complete four steps.

First, applicants are required to request and receive an eligibility determination from USAC. Requirements are as follows:

- a. **Round 1 Funding** – Applicants are required to request and receive an eligibility determination for each health care provider site included in their application by filing an FCC Form 460, Eligibility and Registration Form, with USAC.

- b. **Round 2 Funding** – Applicants are required to request and receive an eligibility determination from USAC for only the lead health care provider site by filing an FCC Form 460, Eligibility and Registration Form. Health care provider sites that USAC has already deemed eligible to participate in the Commission’s existing Rural Health Care Program or in Round 1 of the Program may rely on that eligibility determination for Round 2 of the Program. Applicants must certify to the eligibility of all other health care provider sites that received eligible funded services or connected devices on their Round 2 Request for Reimbursement Form.

Second, as entities doing business before the Commission, applicants are also required to obtain an FCC Registration Number (FRN) in the Commission Registration System (CORES). Third, applicants are required to register with the federal System for Award Management (SAM) to be able to receive Program payments if awarded funding. Fourth, entities seeking funding through Round 1 or Round 2 of the Program were required to submit an application. Applicants submitting applications prior to May 2, 2020, were instructed to download a fillable PDF application form and email the completed form and supporting documentation to [TelehealthApplicationSupport@fcc.gov](mailto:TelehealthApplicationSupport@fcc.gov). Effective May 2, 2020, applicants were required to apply through the COVID-19 Telehealth Program Application Portal.

### **Application Evaluation Process**

For Round 1 funding, WCB, in consultation with the FCC’s Connect2Health Task Force, reviewed the Program applications, as outlined in the Commission’s Report and Order, selected participants, and made funding awards on a rolling basis to eligible applicants based on the estimated costs of the eligible services and connected devices they intended to purchase with Program funds. Awards were made until the funding was exhausted, which occurred on July 8, 2020.

For Round 2 funding, the Commission adopted application evaluation metrics. For Round 2, to ensure equitable nationwide distribution of Program funding, the Commission adopted requirements to ensure that at least two applications with lead health care providers from every state, territory, and the District of Columbia received Program funding across both rounds of the Program if such applications exist.

To distribute more funding to applicants, the Commission established a \$1 million cap per applicant for rounds 1 and 2 funding. All eligible Round 2 applicants may qualify for the full commitment amount per application, including those receiving Round 1 funding. The final Round 2 funding commitments were announced on January 26, 2022.

### **Source of Governing Requirements**

Round 1 Funding:

Round 1 is governed under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281 (2020). This bill is available at [H.R.748 - 116th Congress \(2019-2020\): CARES Act | Congress.gov | Library of Congress](https://www.congress.gov/bills/116/748/all/1/summary).

Pursuant to the CARES Act, the Commission adopted provisions for the Program in Report and Order: *Promoting Telehealth for Low-Income Consumers; COVID-19 Telehealth Program*, WC Docket nos. 18-213, 20-89, and Report and Order, 35 FCC Rcd 3366, 3375-84, paras. 15–36 (2020). The second section of the Report and Order implements the Connected Care Pilot Program, which is a Universal Service Fund-supported program and is separate from the Program. The Round 1 Report and Order is available at <https://docs.fcc.gov/public/attachments/FCC-20-44A1.pdf>.

#### Round 2 Funding:

Round 2 is governed under the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division N-Additional Coronavirus Response and Relief, Title IX-Broadband Internet Access Service, section 903 “FCC COVID-19 Telehealth Program” (2020). The bill is available at <https://www.congress.gov/bill/116th-congress/house-bill/133/text>.

On March 30, 2021, the Commission adopted a Report and Order and Order on Reconsideration that established the requirements and necessary procedures for the Commission to award the additional Round 2 funds appropriated under the Consolidated Appropriations Act, 2021 (*COVID-19 Telehealth Program, Promoting Telehealth for Low-Income Consumers*), WC Docket nos. 20-89, 18-213, Report and Order, FCC 21-39, available at <https://docs.fcc.gov/public/attachments/FCC-21-39A1.pdf>.

As a direct payment for specified use, these funds are considered federal financial assistance and are subject to only the following sections of the Code of Federal Regulations, Title II, Chapter II, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“2 CFR”): Subpart A- Acronyms and Definitions; Subpart B, General provisions; subparts C–D (specifically 2 CFR section 200.203 – Requirement to provide public notice of federal financial assistance programs; 2 CFR section 200.303 Internal controls; and 2 CFR sections 200.331–333 Subrecipient Monitoring and Management); Subpart F, Audit Requirements. The remaining sections of subparts C, D, and E do not apply to this Program. Code of Federal Regulations is available at [CFR - Title 2 \(2021\): Grants and Agreements | ECFR.gov | Code of Federal Regulations](https://www.ecfr.gov/).

#### Availability of Other Program Information

Program information is available at <https://www.fcc.gov/covid-19-telehealth-program-invoices-reimbursements> and USAC’s website <https://www.usac.org/about/covid-19-telehealth-program/>. A “Frequently Asked Questions” section is provided on each website for additional details.

The documents listed in the “Source of Governing Requirements” and the above link serve as a guide for tests and findings.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have



been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	Y	Y	N	Y	N	Y

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

Telehealth telecommunications or information services/connected devices that use broadband Internet access service-enabled technologies or telecommunications to deliver remote medical, diagnostic, patient-centered, and treatment-related services directly to patients.

- a. **Round 1 Funding** – Consistent with the Report and Order (FCC 20-44), funding recipients can seek reimbursement for eligible telecommunications and information services and connected devices that were not included in the COVID-19 Telehealth Program Application and Request for Funding application, as well as seek reimbursement for different quantities than were included in the application. Existing services that were not purchased in response to COVID-19 are ineligible for funding. However, if existing services were upgraded to respond to COVID-19, the costs of the upgrade may be considered for funding. Detailed information on eligible services and devices for rounds 1 and 2 is available at the above websites.
- b. **Round 2 Funding** – In addition to the Activities Allowed in Round 1, consistent with the Report and Order (FCC 21-39), applicants may apply to receive retroactive funding for eligible services and devices purchased

on or after March 13, 2020, so long as they did not receive Round 1 funding for those eligible services and devices.

2. *Activities Unallowed*

Participants cannot receive duplicate funding from any source (private, state, or federal) for the exact same services or devices eligible for support under the Program.

Participants cannot be a vendor or service provider of the eligible services and/or connected devices for which they receive Program reimbursement.

Program funding cannot be used to purchase, rent, lease, or otherwise obtain any communications equipment or service identified and published on the Covered List. See the Covered List included in WC Docket No. 18-89, Public Notice, DA 21-309, at <https://docs.fcc.gov/public/attachments/DA-21-309A1.pdf>. (Pursuant to section 2(a) of the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act), and section 1.50002 of the Commission's rules, the Federal Communications Commission's Public Safety and Homeland Security Bureau (Bureau) publishes of a list of communications equipment and services (Covered List) that are deemed to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons.)

**B. Allowable Costs/Cost Principles**

See Eligibility of Services and Connected Devices section of the Round 1 FAQs at <https://www.fcc.gov/covid-19-telehealth-program-invoice-frequently-asked-questions> and Appendix B – Eligible Services List for COVID-19 Telehealth Program (Round 2) at <https://docs.fcc.gov/public/attachments/FCC-21-39A1.pdf>.

1. Telecommunications, information services, broadband connectivity services, and connected devices costs necessary to provide telehealth services to patients in response to COVID-19. Connected device costs for which funding is requested must be integral to patient care. Devices mentioned below in example list have been deemed to be integral to patient care.
2. The Program will only fund devices (e.g., pulse oximetry, blood pressure monitoring devices) that are themselves connected.
3. Program funds can be used to treat patients/patient groups at a health care facility or remotely that could free up resources and could reduce a health care professional's unnecessary exposure to COVID-19.

Examples of services and connected devices that program applicants are eligible to seek funding for include but are not limited to:

- *Telecommunications Services:* Voice services for health care providers or their patients.
  - *Information Services:* Internet connectivity services for health care providers or their patients, remote patient monitoring platforms and services; patient reported outcome platforms; store and forward services, such as asynchronous transfer of patient images and data for interpretation by a physician; platforms and services to provide synchronous video consultation.
  - *Internet Connected Devices/Equipment:* Tablets, smart phones, or connected devices to receive connected care services at home or telehealth at a provider site (e.g., broadband enabled blood pressure monitors; pulse-ox) for patient or health care provider use; telemedicine kiosks/carts for health care provider site. Connected devices that are Bluetooth or Wi-Fi enabled are eligible.
4. Round 1 and Round 2 funding will not be provided for ineligible services including, personnel, administrative, construction, marketing, maintenance, technical support, separate costs for warranties and protection, and training activities/costs. Ineligible activities include IT services/costs for the development of new websites, systems, and platforms.
  5. The Program will also not fund unconnected devices (e.g., devices that patients can use at home and then share the results with their medical professional manually), accessories, or non-telehealth items (e.g., office furniture and supplies, security systems, back-up power equipment, incidental expenses/indirect costs, smart watches, and fitness trackers).

## **H. Period of Performance**

See Eligible Services and Devices section at <https://www.fcc.gov/covid-19-telehealth-program-frequently-asked-questions-faqs>.

For Round 1 funding, the period of performance is as follows:

1. For eligible items, purchased on or after March 13, 2020, and by December 31, 2020, eligible health care providers may apply to receive reimbursement through the Program.

For monthly recurring services (e.g., internet service), funding recipients seeking reimbursement for eligible recurring services may apply their funding commitment towards six months of eligible recurring services as long as those services are implemented on or after March 13, 2020, and by December 31, 2020. Eligible upfront or prepaid costs/licenses with an annual term (e.g., bundled telehealth services, telehealth platforms, telehealth services, and telehealth platform/service user fees, access charges, or subscriptions) are

eligible for a full year of support. Existing services that were not purchased in response to COVID-19 are ineligible for funding. However, if existing services were upgraded to respond to COVID-19, the costs of the upgrade may be considered for funding.

For Round 2 funding, the period of performance is as follows:

1. For eligible services and devices, applicants may apply to receive funding retroactive on eligible items purchased on or after March 13, 2020, so long as they did not receive Round 1 funding for those eligible services and devices. Existing services that were not purchased in response to COVID-19 are ineligible for funding. However, if existing services were upgraded to respond to COVID-19, the costs of the upgrade may be considered for funding.
2. For monthly recurring services, applicants may receive Program funding for up to 12 months of eligible recurring services, and annual license agreements (only one one-year term will be funded) including retroactive funding for services and devices purchased on or after March 13, 2020.

## **I. Procurement and Suspension and Debarment**

See the Covered List included in WC Docket No. 18-89, Public Notice, DA 21-309, at <https://docs.fcc.gov/public/attachments/DA-21-309A1.pdf>.

### *1. Procurement*

Because the Program is a federal subsidy, Program funding may not be used to purchase, rent, lease, or otherwise obtain any communications equipment or service identified and published on the Covered List.

### *2. Suspension and Debarment*

Entities that seek to be funding recipients in the Program are required to first register in SAM.gov before they can receive Program payments and should not be able to register if suspended or debarred from receiving federal funds. Pursuant to 47 CFR section 54.8, the Commission's suspension and debarment rules, which are currently applicable to the USF program, apply to COVID-19 Telehealth program funding recipients. The Commission shall suspend and debar a person (any individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized) convicted of criminal violations or held civilly liable for certain acts arising out of activities associated with or related to the E-rate, High Cost, Rural Health Care, and Lifeline programs. See 47 CFR sections 54.8(c), (d), and (g). Associated activities include the receipt of funds or discounted services through one or more of the USF support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding one or more of the USF support mechanisms. See 47 CFR section 54.8(a)(1).

Section 54.8(d) states:

Unless otherwise ordered, *any persons suspended or debarred shall be excluded from activities associated with or related to the schools and libraries support mechanism (E-rate), the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism (Lifeline).* Suspension and debarment of a person other than an individual constitutes suspension and debarment of all divisions and/or other organizational elements from participation in the program for the suspension and debarment period, unless the notice of suspension and proposed debarment is limited by its terms to one or more specifically identified individuals, divisions, or other organizational elements or to specific types of transactions. 47 CFR section 54.8(d).

## **L. Reporting**

### **1. Financial Reporting**

Completed program request for reimbursement forms submitted to the FCC, including supporting invoice documents, serve as Financial Reports from the awardees.

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

Not applicable

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## **N. Special Tests and Provisions**

### **1. Eligibility**

**Compliance Requirements** Consistent with the 1996 Act and the CARES Act, nonprofit and public eligible health care providers fall within the categories of health care providers in section 254(h)(7)(B) of the 1996 Act and include:

- a. post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;
- b. community health centers or health centers providing health care to migrants;
- c. local health departments or agencies;

- d. community mental health centers;
- e. not-for-profit hospitals;
- f. rural health clinics;
- g. skilled nursing facilities; or
- h. consortia of health care providers consisting of one or more entities falling into the first seven categories.

Eligible entities include a dedicated ER of a rural, for profit hospital or a part-time eligible entity located in an ineligible facility. For Round 2, the other eligible entities can be located in rural or non-rural area and can operate from a temporary or mobile location.

**Audit Objectives** Determine whether a funding recipient is an eligible health care provider consistent with the Program's rules and requirements.

#### **Suggested Audit Procedures**

- a. Verify that the site(s) receiving funded eligible services and equipment is an eligible health care provider . Based on health care provider entity type, use information in the following verifier websites in addition to any other available sources to confirm eligibility:
  - Documentation of an approved eligibility determination from USAC
  - Community health centers or centers providing health care to migrants – <https://findahealthcenter.hrsa.gov/>
  - Community mental health center – (no specific verifier website available)
  - Local health department/agency – <https://www.naccho.org/membership/lhd- directory>
  - Not-for-profit hospital – <https://guide.aha.org/guide/searchResults>
  - Post-secondary educational institution offering health care instruction, teaching hospital, or medical school – <https://ope.ed.gov/dapip/#/home>
  - Rural health clinic (not limited to rural locations for purposes of the Program)
  - Dedicated ER of rural, for-profit hospital – <https://guide.aha.org/guide/searchResults>

- Skilled nursing facility – <https://www.medicare.gov/nursinghomecompare/search.html>

## FEDERAL COMMUNICATIONS COMMISSION

### ASSISTANCE LISTING 32.009 EMERGENCY CONNECTIVITY FUND PROGRAM

#### I. PROGRAM OBJECTIVES

Note: This program is considered a “higher risk” program for 2022, pursuant to 2 CFR section 200.519(c)(2). Refer to the “Programs with Higher Risk Designation” section of Part 8, Appendix IV, Internal Reference Tables, for a discussion of the impact of the “higher risk” designation on the major program determination process.

Congress established the Emergency Connectivity Fund (ECF) through section 7402 of the American Rescue Plan Act of 2021 (Act), and appropriated \$7.171 billion for the purchase of eligible equipment, advanced telecommunications, and information services for use by students, school staff, and library patrons at locations that include locations other than at a school or library to remain available until September 30, 2030. In addition, Congress appropriated \$1 million for the Inspector General of the Federal Communications Commission (Commission) to conduct oversight of support provided through the ECF. Congress directed the Commission to promulgate rules providing for the distribution of funding from the Emergency Connectivity Fund within 60 days from the date of enactment. The Commission adopted rules and established the Emergency Connectivity Fund Program on May 10, 2021. See *Establishing the Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696 (2021) available at <https://docs.fcc.gov/public/attachments/FCC-21-58A1.pdf> (Report and Order). Congress also provided that these appropriated funds would remain available until September 30, 2030.

The ECF Program provides funding to meet the remote learning needs of students, school staff, and library patrons who would otherwise lack access to connected devices and broadband connections sufficient to engage in remote learning during the COVID-19 emergency period. In the Report and Order, the Commission adopted an initial 45-day application filing window to allow eligible schools and libraries to request funding for eligible services and equipment to be received or delivered between July 1, 2021 through June 30, 2022, the current school year.

The Act also provides that the Commission and the Universal Service Administrative Company (USAC), the permanent administrator of the Universal Service Fund, will administer the regulations adopted pursuant to section 7402. In the Report and Order, the Commission directed USAC to administer the Emergency Connectivity Fund Program under its oversight and pursuant to the terms of the March 19, 2021 Memorandum of Understanding (MOU) between the Commission and USAC.

As a direct payment for specified use, these funds are considered federal financial assistance and are subject to only the certain sections (as noted in the Source of Governing Documents, below) of the Code of Federal Regulations, Title II, Chapter II, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. For Audit purposes, Nonprofit organizations must refer to Subpart F and other types of organizations may be audited by the Commission or Contractor. Audit information may be requested by the Commission, USAC, or Commission’s contractor for program specific audits.



For additional details regarding the ECF Program, please visit <https://www.fcc.gov/emergency-connectivity-fund> and <https://www.emergencyconnectivityfund.org/>.

## II. PROGRAM PROCEDURES

Consistent with Congressional direction in section 7402, schools, libraries, and consortia of schools and libraries that are eligible for support through the E-Rate Program, are eligible to request and receive support through the ECF Program. However, eligible schools and libraries do not have to be participants in the E-Rate Program, to participate in the ECF Program. In its Report and Order, the Commission determined that the Program would leverage many of the existing forms, including the E-Rate application form (i.e., FCC Form 471 – Description of Services Ordered and Certification Form) and other E-Rate processes to the extent feasible for the Program to streamline the process for applying for and receiving support through the ECF Program.

The Commission opened an initial 45-day filing window for applicants to submit requests for funding (i.e., ECF FCC Form 471 applications) for eligible equipment and services received or delivered between July 1, 2021 and June 30, 2022. The first initial application filing window opened on June 29, 2021 and closed on August 13, 2021. Due to the availability of remaining funds after the close of the initial application filing window, a second ECF Program application filing window opened on September 28, 2021, and closed on October 13, 2021, to allow schools and libraries to apply for funding to address remaining unmet connectivity needs of their students, school staff, and library patrons. During the second application filing window, applicants could submit requests for funding to purchase eligible equipment and services to be received or delivered between July 1, 2021 and June 30, 2022.

USAC reviews the timely filed ECF FCC Form 471 applications and makes recommendations for issuing commitments for the funding requests. The Commission reviews and approves the recommended funding decisions and USAC then issues the funding commitment decision letters to the applicants and service providers. The Commission records the commitments and obligates funds in the Commission's financial system. In the event that demand exceeds available funds, the Commission and USAC will prioritize support based on the applicant's E-Rate Program discount rate for category one services, with a 5 percent bump up for rural schools and libraries. See ECF Program prioritization matrix at 47 CFR section 54.1708(c).

Applicants that will submit requests for reimbursement for Program payments, or service providers that agree to submit requests for reimbursement on behalf of the applicant, must register or renew their account with the System for Award Management (SAM), which is located at <https://sam.gov/content/home>, in order to receive program disbursements.

Applicants will submit reimbursement requests using the ECF FCC Form 472, Billed Entity Applicant Reimbursement (BEAR) Form, and service providers that agree to invoice on behalf of applicants will submit the ECF FCC Form 474, Service Provider Invoice (SPI) Form. Applicants and service providers are required to include certain certifications on the form to protect against waste, fraud, and abuse. Applicants and service providers are also required to submit vendor invoices detailing the items purchased, along with their reimbursement requests. Invoices must support the amounts requested in the application form and reimbursement request.

The Commission authorizes the disbursement of funds by the United States Department of Treasury after approving the proposed payments.

### **Source of Governing Requirements**

The Emergency Connectivity Fund Program is established pursuant to the American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 109-110, Sec. 7402(c). The bill is available at [H.R.1319 - 117th Congress \(2021\): American Rescue Plan Act | Congress.gov | Library of Congress](#).

Pursuant to the American Rescue Plan Act, the Commission adopted rules for the ECF Program in its May 10, 2021 Report and Order: *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket Nos- 21-58, 21-93 Report and Order, 36 FCC Rcd 8696 (2021). The Report and Order is available at <https://docs.fcc.gov/public/attachments/FCC-21-58A1.pdf>. The rules for the ECF Program are available at [47 CFR sections 54.1700 et seq.](#)

As a direct payment for specified use, these funds are considered federal financial assistance and are subject to only the following sections of the Code of Federal Regulations, Title II, Chapter II, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“2 CFR”): Subpart A, Acronyms and Definitions; Subpart B, General provisions; subparts C–D (specifically 2 CFR section 200.203 – Requirement to provide public notice of federal financial assistance programs; 2 CFR section 200.303 Internal controls; and 2 CFR sections 200.331-333 Subrecipient Monitoring and Management); Subpart F, Audit Requirements.

The following remaining 2 CFR policy requirements are excluded from coverage under this assistance listing: Subpart C; Subpart D; Subpart E.

Code of Federal Regulations is available at [CFR - Title 2 \(2021\): Grants and Agreements | ECFR.gov | Code of Federal Regulations](#).

### **Availability of Other Program Information**

Program information is available at <https://www.fcc.gov/emergency-connectivity-fund>. See “Frequently Asked Questions” section for details. Additional information is also available at <https://www.emergencyconnectivityfund.org/>.

The documents listed in the “Source of Governing Requirements” and the above link serve as a guide for tests and findings.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance

requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	N	Y	Y	N	N	N	Y

**A. Activities Allowed or Unallowed**

See Eligible Services and Equipment section at <https://www.fcc.gov/emergency-connectivity-fund> and Appendix B – Eligible Services List for Emergency Connectivity Fund Program at <https://docs.fcc.gov/public/attachments/FCC-21-58A1.pdf>.

1. *Activities Allowed*

ECF Program-funded devices and services must be used primarily for off-campus educational purposes and by students, school staff, and library patrons with otherwise unmet needs. To ensure that funding is focused on unmet needs, the Commission requires schools, library, and consortia to certify, as part of their funding application, that they are only seeking support for eligible equipment and/or broadband connectivity provided to students, school staff, and library patrons who would otherwise lack access to connected devices and/or broadband connectivity sufficient to engage in remote learning.

The ECF FCC Form 471 application must be signed by the person authorized to order eligible equipment and/or services for the eligible school, library, or consortium and shall include that person's certification under penalty of perjury. Certifications include:

- a. Since the connected devices supported by this Program are intended to be used primarily for educational purposes and by students, school staff, and library patrons, the Commission requires schools and libraries to restrict access to eligible connected devices to only those students, school staff, and library patrons with appropriate credentials.

- b. The library applicant must certify that the library or library consortium listed on the FCC Form 471 application is only seeking support for eligible equipment and/or services provided to library patrons who have signed and returned a statement that the library patron would otherwise lack access to equipment or services sufficient to meet the patron's educational needs if not for the use of the equipment or service being provided by the library. To ensure that libraries are providing eligible equipment and services to patrons with unmet needs, before providing a library patron with eligible equipment or services, the library must provide the patron a copy of an eligible use policy, which explains that the equipment or service is intended for library patrons who do not otherwise have access to equipment or services sufficient to meet the patron's educational needs. The library must also obtain a signed statement from the library patron that they would otherwise lack access to the equipment or services sufficient to meet their educational needs if not for the equipment or service provided by the library.
- c. The school or school consortium applicant must certify that the school entities listed on the FCC Form 471 application are only seeking support for eligible equipment and/or services provided to students and school staff who would otherwise lack connected devices and/or broadband services sufficient to engage in remote learning. These applicants must describe how and when they collected the information that they use for the estimates provided in their responses on the application section pertaining to the unmet needs of their students.

The complete list of certifications required on the program application is listed at 47 CFR section 54.1710(a)(1)(i)-(xv).

The complete list of certifications required on the program Request for Reimbursement forms to be made by applicants and the service providers that agree to submit these forms on the behalf of applicants is listed at 47 CFR section 54.1711(a)(1)(i)-(xii) and (a)(2)(i)-(x).

Both applicants and service providers, who agree to invoice on the applicant's behalf, may submit requests for reimbursement. The applicant must indicate that its service provider will submit the requests for reimbursement in its application and provide evidence that shows that the service provider has agreed to the arrangement.

Applicants who have entered into contractual arrangements or are otherwise legally obligated to purchase eligible equipment and services from their service provider, can submit requests for reimbursement before they have paid their service provider(s) for the requested equipment and services. The equipment or services must have been received before the applicant may submit requests for reimbursement. Applicants must also pay their service provider within 30 days

after receipt of funds and will be required to certify compliance and provide verification of payment to the service provider.

## 2. *Activities Unallowed*

Schools and libraries are prohibited from seeking and receiving reimbursement for eligible equipment and services purchased for use solely at the school or library. Additionally, for funding requests submitted during the first two application filing windows, items purchased or received prior to July 1, 2021, or after June 30, 2023, are ineligible for ECF funding at this time (see, e.g., 47 CFR section 54.1708(b) and *Establishing the Emergency Connectivity Fund to Close the Homework Gap*, Order, DA 22-176 (rel. Feb. 22, 2022) (extending the service delivery date from June 30, 2022 to June 30, 2023). There is a minor exception for multi-year lease agreements for equipment or connected devices. The ECF Program will fund the lease payments for this equipment or connected devices for the period July 1, 2021 through June 30, 2023, the extended service delivery date for equipment, non-recurring services, and recurring services requested during for the first two application filing windows. The applicants may have received this equipment or connected devices before the July 1, 2021 date for these multi-year lease arrangements.

ECF Program rules require that on the ECF Request for Reimbursement forms - the FCC Form 472 and FCC Form 474 – applicants and service providers certify to the following under penalty of perjury: “No Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained, as required by § 54.10.”

Entities participating in the Emergency Connectivity Fund may not seek Emergency Connectivity Fund support or reimbursement for eligible equipment or services that have been purchased with or reimbursed in full from other Federal pandemic-relief funding, targeted state funding, other external sources of targeted funding or targeted gifts, or eligible for discounts from the schools and libraries universal service support mechanism or other universal service support mechanisms.

## **B. Allowable Costs/Cost Principles**

See Eligible Services and Equipment section at <https://www.fcc.gov/emergency-connectivity-fund-faqs> and Appendix B – Eligible Services List for Emergency Connectivity Fund Program at <https://docs.fcc.gov/public/attachments/FCC-21-58A1.pdf>.

Section 7402(b) provides that the Commission will reimburse 100 percent of the costs associated with the purchase of eligible equipment and/or advanced telecommunications

and information services, except that any reimbursement of a school or library for the costs associated with any eligible equipment may not exceed an amount the Commission determines to be reasonable. Section 7402(d)(6) defines eligible equipment to mean: (1) Wi-Fi hotspots, (2) modems, (3) routers, (4) devices that combine a modem and router, and (5) connected devices. Section 7402(d)(11) defines Wi-Fi hotspot as a device that is capable of—(A) receiving advanced telecommunications and information services; and (B) sharing such services with another connected device through the use of Wi-Fi. Section 7402(d)(3) defines connected devices as laptop computers, tablet computers, or similar end-user devices that are capable of connecting to advanced telecommunications and information services. Section 7402(d)(1) defines “advanced telecommunications and information services” to mean advanced telecommunications and information services, as such term is used in section 254(h) of the Communications Act of 1934.

1. **Eligible Equipment:** Wi-Fi hotspots, modems, routers, devices that combine a modem and router, and connected devices (i.e., laptops and tablet computers). Aircards used to connect end-user devices to the Internet through cellular data services are wireless modems and are also eligible for support through the ECF Program.
2. **Connected Devices:** The Commission defined connected devices as laptop computers and tablet computers that are capable of connecting to advanced telecommunications and information services (47 CFR section 54.1700(c)). It is expected that connected devices will be Wi-Fi enabled and be able to support video conferencing platforms and other software necessary to ensure full participation in remote learning. It is also expected that connected devices will be accessible to and usable by individuals with disabilities. If people with disabilities require connected devices to connect to the Internet, schools and libraries will request such devices to accommodate disabilities, if needed. The Commission also determined that desktop computers and mobile phones, including smart phones, are ineligible for ECF Program support.
3. **Advanced Telecommunications and Information Service:** The Commission defined advanced telecommunications and information services as services as the term is used in section 254(h) of the Communications Act, 47 USC section 254(h) (47 CFR section 54.1700(a)). To qualify for funding for the ECF Program, schools and libraries will only be reimbursed for purchasing a commercially available service providing a fixed or mobile broadband Internet access connection for off-campus use by students, school staff, or library patrons.
4. **Limited exception for network construction and/or datacasting.** Funding for network construction or self-provisioned networks will be permitted only where no commercially available broadband Internet access services are available that are sufficient to support remote learning for students, school staff, or library patrons. Under those same limited circumstances, funding for customer premises equipment to receive datacasting services will also be available. Applicants must demonstrate that there were no commercially available Internet access service options available sufficient to support remote learning from one or a combination

of providers. Applicants must also define the geographic area that was or will be served and assess the estimated number of students, school staff, or library patrons to be served. Applicants must be able to provide clear evidence of how they determined that an existing fixed or mobile network sufficient to support remote learning was or is not available and that for prospective construction, they sought service from existing providers serving the area prior to constructing a new network and that such providers were unable or unwilling to provide services sufficient to meet the remote learning needs of their students, school staff, or library patrons. Applicants will also be required to certify that they sought service from existing providers in the relevant area and that such providers were unable or unwilling to provide broadband Internet access services sufficient to meet their remote learning needs before constructing new networks or requesting funding for datacasting customer premises equipment.

For networks already constructed or equipment already purchased during the pandemic, applicants must show that services were provided to students, school staff, or library patrons during the funding period supported by the second filing window.

For future construction, they must show that construction is completed and services provided within one year of a funding commitment decision.

5. **Installation, Taxes, and Fees:** The Program will cover reasonable costs of the enumerated equipment, connected devices, and services, including installation, activation, and initial configuration costs, taxes, and fees. Installation and configuration costs will only be eligible for support if they are provided by the same vendor that is providing the eligible equipment.
6. **Wi-Fi Hotspots on School Buses and Bookmobiles:** Schools and libraries are allowed to use Emergency Connectivity Fund Program support to purchase Wi-Fi hotspots for school buses and bookmobiles to provide off-campus broadband services to students, school staff, and library patrons who currently lack sufficient broadband access.
7. **Reasonable Amount:** The Commission has determined that \$400 is a reasonable, maximum support amount for connected devices. Applicants may request a waiver of the reasonable support amount for connected devices, if the reasonable cost to purchase devices for students, school staff, or patrons with disabilities is higher than \$400 and the public interest warrants deviation from the general rule. For Wi-Fi hotspots provided to an individual student, school staff member, or library patron, \$250 is the maximum reasonable cost based on advertised costs for Wi-Fi hotspots.
8. **Funding will not be provided for desktop computers and mobile phones, including smartphones.** Funding for more than one connection and connected device per user is also prohibited.

For other types of eligible equipment—namely, modems, routers, and devices that combine modems and routers, and multi-user Wi-Fi hotspots, the Commission delegated authority to the Bureau to provide guidance to USAC for assessing the reasonability of the costs for these applications. USAC will also make the pricing data from the Emergency Connectivity Fund Program publicly available through its Open Data platform (<https://www.emergencyconnectivityfund.org/open-data/>). The publication of this pricing data will allow applicants to review prices paid by schools and libraries across the country for same and similar eligible equipment and services

9. Applicants may use consultants to assist with the preparation of their funding applications and reimbursement requests, but any fees associated with such assistance are not eligible for funding under the Program.

## **F. Equipment/Real Property Management**

### *1. Equipment and Services*

Applicants may request ECF Program funding for only eligible equipment and services. Eligible equipment and services funded by the Emergency Connectivity Fund Program are detailed in sections (A) and (B) above.

The Eligible Services List provides guidance on the equipment and services eligible for funding under the Emergency Connectivity Fund Program: [https://www.fcc.gov/sites/default/files/ecf\\_esl.pdf](https://www.fcc.gov/sites/default/files/ecf_esl.pdf).

Emergency Connectivity Fund Program participants are required to maintain asset and service inventories of the devices and services purchased with ECF Program support.

Equipment and service inventory requirements.

Schools, libraries, and consortia shall keep asset and service inventories as follows:

- a. For each connected device or other piece of equipment provided to an individual student, school staff member, or library patron, the asset inventory must identify:
  - (1) The device or equipment type (i.e. laptop, tablet, mobile hotspot, modem, router);
  - (2) The device or equipment make/model;
  - (3) The device or equipment serial number;
  - (4) The full name of the person to whom the device or other piece of equipment was provided; and



- (5) The dates the device or other piece of equipment was loaned out and returned to the school or library, or the date the school or library was notified that the device or other piece of equipment was missing, lost, or damaged.
- b. For each connected device or other piece of eligible equipment not provided to an individual student, school staff member, or library patron, but used to provide service to multiple eligible users, the asset inventory must contain:
  - (1) The device type or equipment type (i.e. laptop, tablet, mobile hotspot, modem, router);
  - (2) The device or equipment make/model;
  - (3) The device or equipment serial number;
  - (4) The name of the school or library employee responsible for that device or equipment; and
  - (5) The dates the device or equipment was in service.
- c. For services provided to individual students, school staff, or library patrons, the service inventory must contain:
  - (1) The type of service provided (i.e., DSL, cable, fiber, fixed wireless, satellite, mobile wireless);
  - (2) The service plan details, including upload and download speeds and monthly data cap;
  - (3) The full name of the person(s) to whom the service was provided;
  - (4) The service address (for fixed broadband service only);
  - (5) The installation date of the service (for fixed broadband service only); and
- d. For services not provided to an individual student, school staff member, or library patron, but used to provide service to multiple eligible users, the service inventory must contain:
  - (1) The type of service provided (i.e., DSL, cable, fiber, fixed wireless, satellite, mobile wireless);

- (2) The service plan details, including upload and download speeds and monthly data cap
- (3) The name of the school or library employee responsible for the service;
- (4) A description of the intended service area;
- (5) The service address (for fixed broadband service only);
- (6) The installation date of the service (for fixed broadband service only); and
- (7) The last date of service, as applicable (for fixed broadband service only).

The FCC has also provided guidance for audits regarding the provision of personally identifiable information (PII) to USAC or Commission staff about individuals (e.g., students, school staff members, or library patrons). (See paragraph 134 of the Report and Order). In the Report and Order, the FCC stated that anyone that requests program information that could contain PII should protect all audit documentation from unauthorized access and abide by all applicable federal and state privacy laws. If anonymized or deidentified information regarding the students, school staff, and library patrons is not sufficient, auditors may request that the school or library obtain consent of the parents or guardians, for students, and the consent of the school staff member or library patron to have access to this PII or explore other legal options for obtaining PII.

- e. Records retention. All Emergency Connectivity Fund participants shall retain records related to their participation in the program sufficient to demonstrate compliance with all program rules for at least ten (10) years from the last date of service or delivery of equipment.
- f. Prohibition on resale. Eligible equipment and services purchased with Emergency Connectivity Fund support shall not be sold, resold, or transferred in consideration of money or any other thing of value, except as provided in paragraph (g) below.
- g. Disposal of obsolete equipment. Eligible equipment purchased using Emergency Connectivity Fund support shall be considered obsolete if the equipment are at least three years old. Obsolete equipment may be resold or transferred in consideration of money or any other thing of value, disposed of, donated, or traded.

2. *Real Property Management*

Not applicable

**H. Period of Performance**

1. Approved eligible equipment and services requested during the first two application filing windows must be received or delivered between July 1, 2021 and June 30, 2023, and therefore must be invoiced by August 29, 2023.
2. Applicants and service providers are required to submit reimbursement requests and invoices for prospective purchases within 60 days from the date of the funding commitment decision letter; a revised funding commitment decision letter approving a post commitment change or a successful appeal of a previously denied or reduced funding commitment; or service delivery date, whichever is later. See 47 CFR section 54.1711(d) and *Establishing the Emergency Connectivity Fund to Close the Homework Gap*, Order, DA 22-176 (rel. Feb. 22, 2022) (extending the service delivery date from June 30, 2022 to June 30, 2023).
3. For recurring services that are invoiced on a monthly or periodic basis, approved applicants may invoice within 60 days of the last date of service. For example, if an approved applicant receives monthly or periodic services through June 30, 2023, they must invoice by no later than August 29, 2023 (i.e., 60 days after the last date of service).
4. For equipment or other non-recurring services that have not been received when the applicant submits the application, applicants may use June 30, 2023 (i.e., 60 days after June 30, 2023), whichever is later.

**I. Procurement and Suspension and Debarment**

1. *Procurement*

Program applicants must certify on the ECF FCC Form 471 application that the school, library, or consortia listed on the ECF FCC Form 471 application has complied with all applicable state, local, or tribal local laws regarding procurement of services for which support is being sought.

Schools and libraries may seek support from the ECF Program for the purchase of eligible services and equipment using existing bulk purchase programs or sponsored service agreements, so long as doing so is consistent with the relevant local, state, and tribal procurement regulations. The Emergency Connectivity Fund Program is aimed at connecting numerous students, school staff, and library patrons at their homes or other locations, and therefore a school district or library system appropriately may have agreements with multiple service providers to offer connectivity.

Gift restrictions for the Program prohibit eligible schools and libraries receiving support through the Emergency Connectivity Fund Program, including their employees, officers, representatives, agents, independent contractors, and individuals who are on the governing boards, from soliciting or accepting any gift or other thing of value from a service provider participating in or seeking to participate in the Emergency Connectivity Fund Program. Participating service providers are likewise prohibited from offering or providing any gift or other thing of value to eligible entities, including their employees, officers, representatives, agents, independent contractors, and individuals who are on the governing boards. An exception in the Emergency Connectivity Fund Program gift rule allows service providers to offer and provide, and applicants to solicit and accept, broadband connections, devices, networking equipment, or other things of value that are directly related to addressing the pandemic-related needs of students, school staff, and library patrons through June 30, 2022.

## 2. *Suspension and Debarment*

The Commission's suspension and debarment rules applicable to the Universal Service Fund Programs are also applicable to the Emergency Connectivity Fund Program (47 CFR section 54.8 (Suspension and Debarment rules)).

## N. **Special Tests and Provisions**

### 1. **Eligible Entities**

**Compliance Requirements** Section 254(h)(7) of the Communications Act, as well as the limitations on eligibility set forth in section 254(h)(4) of the Communications Act, will be used to determine eligibility to receive Program funding.

For purposes of the ECF Program, the same definitions of “elementary school,” “secondary school,” “library,” and “library consortium” that are used in the E-Rate rules, with one minor modification explained below. Elementary or secondary schools as defined in the Elementary and Secondary Education Act (20 USC 7801(19) and (45)) are eligible for funding. Under ECF Program rules, “an elementary school means an elementary school as defined in 20 U.S.C § 7801, a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.” See 47 CFR section 54.1700(g). A secondary school “means a secondary school as defined in 20 U.S.C. § 7801, a non-profit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law except that the term does not include any education beyond grade 12.” See 47 CFR 54.1700(k).

For the ECF Program, a library is defined as “(1) a public library; (2) a public elementary school or secondary school library; (3) a tribal library; (4) an academic library; (5) a research library;” and “(6) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.” See 47 CFR 54.1700(h). The Library Services and Technology Act (LSTA) was amended to make clear that tribal libraries are eligible for

support under the LSTA. Additionally, a library may also refer to a library consortium, which is defined as “any local, statewide, regional, or interstate cooperative association of libraries that provides for the systematic and effective coordination of the resources of schools, public, academic, and special libraries and information centers, for improving services to the clientele of such libraries. For purposes of these rules, references to library will also include library consortium.” See 47 CFR section 54.1700(i).

The ECF Program eligible entities requirements are:

- a. Schools or libraries that are eligible for E-Rate support, are also eligible for the ECF program, consistent with Congressional direction in Section 7402 of the Act.
- b. Private schools that meet the definition of elementary or secondary schools as defined in the Elementary and Secondary Education Act (20 USC section 7801(19) and (45)), are nonprofit, and do not have an endowment exceeding \$50 million.
- c. A library’s eligibility depends on its funding as an independent entity. Only libraries whose budgets are completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges, and universities) are eligible.

**Audit Objectives** Determine that the entity that incurred the expenditure complies with the eligibility requirements.

### **Suggested Audit Procedures**

- a. Ascertain that the entity that records expenditure meets eligibility requirements. One approach to verify the eligibility of an entity is to confirm whether the entity is receiving or has previously received E-Rate support. Information on E-Rate support is available at <https://opendata.usac.org/stories/s/E-rate-Tools/bneq-mh8b/>. Another approach is to confirm whether the school meets the definition of the Elementary and Secondary Education Act using data sets and search tools made available by the US Department of Education’s National Center for Education Statistics (available at <https://nces.ed.gov/ccd/> for information on public schools and <https://nces.ed.gov/surveys/pss/> for information on private schools). Similarly, the Institute of Museum and Library Services provides data sets and search tools that may be used to confirm whether the library meets the eligibility criteria (available at <https://www.imls.gov/research-tools/data-collection>). In addition, the entity itself could provide documentation sufficient to show eligibility.
- b. If the consortium lead entity or consortium member records the expenditure, verify that the entity meets eligibility requirements. Consortia members may be verified using the approaches described above. Note that the consortium lead entity is not required to be an eligible entity (see 47 CFR sections 54.500-54.501).

## 2. Restricted Purpose

### Compliance Requirements

#### a. Unmet need

To ensure that funding is focused on *unmet need*, the Commission requires schools, library, and consortia to certify, as part of their funding application, that they are only seeking support for eligible equipment and/or broadband provided to students and school staff who would otherwise lack access to connected devices and/or broadband connectivity sufficient to engage in remote learning.

At the application stage, school need only provide the best estimates of their unmet need. They may use whatever method they deem appropriate for estimating unmet need and are not required to provide any documentation to support these estimates when they submit their ECF FCC Form 471 application. Here is a link to see the unmet need questions for schools on the application:

[www.emergencyconnectivityfund.org/ecf-fcc-form-471/entity-information](http://www.emergencyconnectivityfund.org/ecf-fcc-form-471/entity-information).

When schools file for requests for reimbursement, however, they should only request reimbursement for eligible equipment and services provided to students or school staff who would otherwise lack broadband services and/or devices sufficient to engage in remote learning. For example, if a school requested ECF funding to support the broadband services at the homes of 100 students based on an estimate of those that lacked services, but it determines during the school year that only 90 students have unmet need, the school should only seek reimbursement for the services provided to those 90 students. Schools may also be asked to provide documentation to support actual costs of assigned equipment and/or services after funds have been committed.

#### b. Per-location and per-user limitations

Per-location and per-user limitations will be imposed to maximize the use of limited funds. An eligible school or library will be reimbursed for no more than one connected device and no more than one Wi-Fi hotspot per student, school staff member, or library patron during the COVID-19 emergency period, and no more than one fixed broadband connection per location. However, unlike the per-location limit for fixed broadband, a similar per-location limitation will not be imposed on Wi-Fi hotspots because Wi-Fi hotspots distributed by schools and libraries may be insufficient for multiple users and many homes with multiple students, school staff, or library patrons may need more than one Wi-Fi hotspot to fully engage in remote learning. For purposes of the per-location limitation each unit in a multi-tenant environment (e.g., apartment buildings) will be considered as a separate location.

**Audit Objectives** Determine that program funds meet the restricted purpose test.

### **Suggested Audit Procedures**

- a. Test a sample of transactions to determine compliance with the requirement to seek reimbursement for eligible equipment and services provided to students or staff who would otherwise lack broadband services and/or devices sufficient to engage in remote learning (i.e., with unmet needs). (Note: The student counts for unmet needs submitted on the FCC ECF Form 471 are the school/district's best estimate and therefore the focus should be on what is sought for the request for reimbursements). Request and review documentation supporting compliance with the requirement to request reimbursement for eligible equipment and services provided to students or staff who would otherwise lack broadband services and/or devices sufficient to engage in remote learning. Documentation may include asset inventories referenced in section F. above for Equipment Management, as well as ECF Program forms to review and compare application and invoicing forms and documentation.
- b. Request a sample of the library patron statements collected by the libraries to test the requirement that patrons would have otherwise lacked access to equipment or services sufficient to meet their educational needs, if not for the use of the equipment and/or service being provided by the library. Request and review library patron documentation supporting the certification statements and any other documentation to show compliance with ECF Program rules.
- c. Test a sample of asset and service inventories and other documentation from schools and libraries that support compliance with the per-location and per-user limitations.

## NATIONAL ENDOWMENT FOR THE HUMANITIES

### ASSISTANCE LISTING 45.129 PROMOTION OF THE HUMANITIES – FEDERAL/STATE PARTNERSHIP

#### I. PROGRAM OBJECTIVES

The Federal/State Partnership program provides funding through general operating support grants to humanities councils in each state (including the District of Columbia, the Commonwealth of Puerto Rico, the US 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. The state humanities councils also design and conduct humanities projects.

#### II. PROGRAM PROCEDURES

The National Endowment for the Humanities (NEH) awards general operating support grants to each of the 56 state humanities councils upon submission and approval of the *Federal/State Partnership Compliance Plan and Federal/State Partnership Compliance Plan Cover Sheet*. 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, each state humanities council is required to submit a *Summary Budget for the Funding Period*, wherein the Council must list the total anticipated expenditure of NEH Outright funds, NEH Federal Matching funds, and cash cost sharing (including the gifts that will be certified to NEH for matching). The state humanities councils may subgrant funds, referred to as “regrants” in this program, to local nonprofit organizations, institutions, groups, and individuals.

#### Source of Governing Requirements

The authorizing statute for this program is 20 USC 956(f).

#### Availability of Other Program Information

NEH maintains a website (<http://www.neh.gov>) that provides general information about NEH programs. Four publications titled a) “[General Terms and Conditions for General Support Grants to State Humanities Councils | The National Endowment for the Humanities \(neh.gov\)](#),” b) “[Addendum to: General Terms and Conditions for Awards and General Terms and Conditions for General Support Grants for State Humanities Councils | The National Endowment for the Humanities \(neh.gov\)](#),” c) “[Matching Guidelines for General Support Grants to State Humanities Councils | The National Endowment for the Humanities \(neh.gov\)](#),” and d) “[General Terms and Conditions for American Rescue Plan State Humanities Councils Awards | The National Endowment for the Humanities \(neh.gov\)](#)” are specifically applicable to this program.

#### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2,



“Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	N	Y	N	Y	Y	N

**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 ensure 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)(9), and 956(c)(10)).
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* 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* and accompanying instructions (20 USC 960(a)(2)(B)).

For those councils covered by the Economic Development of the Territories Act (the US 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-270, Request for Advance or Reimbursement* – Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

**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. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## SMALL BUSINESS ADMINISTRATION

### ASSISTANCE LISTING 59.075 SHUTTERED VENUE OPERATORS GRANT

**IMPORTANT NOTE:** The 2021 Compliance Supplement did not include a Part 4 section for the Shuttered Venue Operators Grant program. As noted in Part 1 of the Supplement, when auditing a major program that is not included in the Supplement, the auditor must follow the guidance in Part 7 and use the types of compliance requirements in Part 3 to identify the applicable compliance requirements that could have both a direct and material effect on the program. There is nothing to preclude an auditor from using this 2022 Compliance Supplement section as a resource when developing the approach for auditing this program in a single audit subject to the 2021 Compliance Supplement. However, there is also no requirement or expectation that auditors refer to or use this 2022 section for auditing the Shuttered Venue Operators Grant program for periods subject to the 2021 Compliance Supplement.

Also, this program funding was provided to both non-federal entities (e.g., states, local governments, or nonprofit organizations) and for-profit entities. The guidance in this section is only applicable for audits of non-federal entities. The Small Business Administration is developing separate audit requirements and guidance for audits of for-profit entities with SVOG awards which will be shared upon completion.

#### I. PROGRAM OBJECTIVES

The Shuttered Venue Operators Grant (SVOG) program provides grant awards of up to \$10 million to support the ongoing operations of eligible live venue operators or promoters, theatrical producers, live performing arts organization operators, nonprofit museum operators, motion picture theater operators (including owners), and talent representatives who have experienced significant revenue losses because of the COVID-19 pandemic.

The SVOG program was created in Section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (part of HR 133 Consolidated Appropriations Act, 2021) signed into law on December 27, 2020, including \$15 billion in grants to operators of eligible shuttered venues. On March 11, 2021, the American Rescue Plan Act of 2021 (Pub. L. No. 117-2, title V, sec. 5005) was enacted; it provided an additional \$1,249,500,000 in grants for eligible entities. Of this total grant funding, at least \$2 billion was reserved for applicants with up to 50 full-time employees.

#### II. PROGRAM PROCEDURES

The SVOG program provides awards to the following eligible applicant types:

- Live performing arts organization operator
- Live venue operator or promoter
- Motion picture theater operator (including owners)

- Nonprofit museum operators
- Talent representative
- Theatrical producer

During the application process, entities were required to select one applicant type when applying in order to account for applicant-type specific criteria. However, all applicants were expected to clearly present the financial and operational impact of the COVID-19 pandemic to confirm their eligibility for an award and establish their funding need. The maximum award amount (cumulative across all award decision types) is \$10 million. For affiliates, the maximum award is \$10 million per entity (no more than five entities per affiliate group for a cumulative total of \$50 million). Museum operator affiliate groups are unique in that in that there is a \$10 million cumulative award cap across all affiliated entities.

The SVOG program implemented four award decisioning processes, each with a separate notification. Through SVOG, a single entity could have received up to four different SBA Form 1222s or Notice of Award (NOA) documents. Each NOA issued supersedes any previous NOAs and serves as the principal award document. The NOA documents have version numbers 1–4 corresponding to the award decision made. The four award decision processes (in sequential order) include:

1. Initial Award – Award decision made based on initial application package (NOA Document #1). Recipients receiving an initial award were given a 12-month grant term (Budget Period - NOA Box 5) to spend award funds. Any applicant that was denied an initial award was given the opportunity to appeal their eligibility. If the decline decision was overturned, then the entity was given an initial award (NOA Document Version #1).
2. Reconsideration – Recipients meeting specific criteria were given the opportunity to request a second review of their initial award amount. If SBA adjusted the award amount, then the SBA issued a new NOA (NOA Document #2). If a grantee received a reconsideration award, the grant term remained 12 months.
3. Supplemental – Recipients meeting specific criteria were eligible to receive supplemental funding support awards. Recipients receiving a supplemental award were given an 18-month grant term commencing from the date of initial award issuance and received an updated NOA (NOA Document Version #3). SBA is allowing grantees that receive a supplemental award to spend all funds, both initial and supplemental phase awards, across the 18-month grant term. SBA also issued zero-dollar supplemental awards to permit qualifying entities to extend their grant term by six months. In addition to the 18-month grant term, the issuance of a supplemental grant award also provides grantees with a six-month expenditure period extension, specifically extending the end date to incur eligible expenses from December 31, 2021 to June 30, 2022.
4. Reconsideration 2.0 – SBA opened a final award decision invitation to all grantees to request a final review of their funding need and eligibility for additional award funds. If a reconsideration 2.0 award is issued a new NOA is created (NOA Document Version #4).

The SVOG initially commenced with a multiple disbursement process, but quickly changed to a single disbursement of funds. Therefore, entities receiving funding from multiple award decisions were issued a single disbursement of funds in line with each award decision.

Some entities who received SVOG awards may have also received Paycheck Protection Program (PPP) loans. The American Rescue Plan Act of 2021 modified and amended the PPP program. Prior to the amendments of the American Rescue Plan Act of 2021, entities that received SVOG awards were ineligible to apply and receive PPP loans. After the amendments of the American Rescue Plan Act of 2021, the SVOG program deducted all PPP loans issued a loan number on or after December 27, 2020, regardless of repayment or non-use of those PPP funds. See the October 20, 2021, SVOG FAQ, #102 for more information.

### **Source of Governing Requirements**

The SVOG program was created by Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (part of HR 133 Consolidated Appropriations Act, 2021) signed into law on December 27, 2020. This Act provided the initial funding and program eligibility qualifications utilized to establish the award decisioning process and build program parameters. On March 11, 2021, the American Rescue Plan Act of 2021 (Pub. L. No. 117-2, title V, sec. 5005) provided additional program funding and clarifications on program design and implementation. All grantees receiving awards from the SVOG program are expected to utilize funding consistent with the terms and conditions of the program and 2 CFR Part 200.

### **Availability of Other Program Information**

Shuttered Venue Operators Grant Website

<https://www.sba.gov/funding-programs/loans/covid-19-relief-options/shuttered-venue-operators-grant>

Shuttered Venue Operators Grant Portal

<https://www.svograntportal.sba.gov/s/>

A number of documents posted on SVOG's website contain information pertinent to program. They are:

1. Shuttered Venue Operators Grant program website – [www.sba.gov/svog](http://www.sba.gov/svog)
2. Post-application guidance (February 16, 2022) – <https://www.sba.gov/document/support-post-application-guidance-svog-applicants>
3. Frequently Asked Questions regarding SVOG (February 16, 2022) – <https://www.sba.gov/document/support-svog-post-award-frequently-asked-questions>
4. Frequently Asked Questions regarding SVOG (October 10, 2021) – <https://www.sba.gov/document/support-faq-regarding-shuttered-venue-operators-grant-svog>

If there are specific questions regarding the SVOG program, e-mail [SVOGrant@sba.gov](mailto:SVOGrant@sba.gov).

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	Y	N	N	N	N	N

#### A. Activities Allowed or Unallowed

##### 1. *Activities Allowed*

See Pub. L. No. 116-260 Title III, Sec. 324 (d)(2)(B)(i-viii), **SVOG FAQs, and Post-Award FAQs.**

Grantees are generally encouraged to use funds to reimburse or pay for ordinary and necessary business expenses to reopen or keep open a business that was shuttered during the COVID-19 pandemic (specific allowable uses listed below). As previously described, grantees affirm allowable use by submitting budgets to SBA showing distribution of award funds across the eight allowable budget categories. After the SBA completes the four award decisions outlined above, all grantees are required to submit a finalized budget to SBA through the SVOG Portal, which will outline the intended use of funds for the award and establish the budget basis for monitoring and closeout review. The request for a finalized

budget response is expected to be issued to grantees on a rolling basis beginning in February 2022.

SVOG award funds may be used for any of the following:

- a. Payroll costs;
- b. Payments on any covered rent obligation;
- c. Any covered utility payment;
- d. Scheduled payments of interest or principal on any covered mortgage obligation (which shall not include any prepayment of principal on a covered mortgage obligation);
- e. Scheduled payments of interest or principal on any indebtedness or debt instrument (which shall not include any prepayment of principal) incurred in the ordinary course of business that is a liability of the eligible person or entity and was incurred prior to February 15, 2020;
- f. Covered worker protection expenditures;
- g. Payments made to independent contractors, as reported on Form-1099 MISC, not to exceed a total of \$100,000 in annual compensation for any individual employee of an independent contractor; and
- h. Other ordinary and necessary business expenses, including—
  - (1) Maintenance expenses,
  - (2) Administrative costs, including fees and licensing costs,
  - (3) State and local taxes and fees,
  - (4) Operating leases in effect as of February 15, 2020,
  - (5) Payments required for insurance on any insurance policy, and
  - (6) Advertising, production transportation, and capital expenditures related to producing a theatrical or live performing arts production, concert, exhibition, or comedy show, except that grant funds may not be used primarily for such expenditures.

Entities that received SVOG awards may have also received funding from other Federal sources, for example, PPP loans, the Economic Injury Disaster Loan (EIDL), or the Employee Retention Credit (ERC). SVOG awards should only



reimburse costs that have not already been reimbursed (or received a credit) by other funding sources. When an entity takes into account only a portion of an employee's salary as "qualified wages" for the purpose of the ERC or other federal funding, entities may use SVOG funds to pay only the remaining portion of the employee's salary. **Additional clarification on allowable use of funds are provided in the SVOG FAQs at <https://www.sba.gov/document/support-faq-regarding-shuttered-venue-operators-grant-svog> and the Post-Award FAQs at <https://www.sba.gov/document/support-svog-post-award-frequently-asked-questions>.**

As noted above, the SVOG program establishes several cost items as allowable up to a spending cap. Two allowable cost examples with caps include:

- To pay independent contractors, as reported on Form-1099 MISC, not to exceed a total of \$100,000 in annual compensation for any individual employee of an independent contractor; and
- To pay advertising, production transportation, and capital expenditures related to producing a theatrical or live performing arts production, concert, exhibition, or comedy show, except that grant funds may not be used primarily for such expenditures.

## 2. *Activities Unallowed*

See Pub. L. No. 116-260, Title III, sec. 324 (d)(3)(A-E), **SVOG FAQs, and Post-Award FAQs**

SVOG award funds may **not** be used for any of the following:

- a. To purchase real estate;
- b. For payments of interest or principal on loans originating after February 15, 2020;
- c. To invest or re-lend funds;
- d. For contributions or expenditures to, or on behalf of, any political party, party committee, or candidate for elective office;
- e. For pre-payment of principal on any mortgage obligation, indebtedness, or debt instrument origination on or before February 15, 2020; or
- f. To purchase or pay loans for items of prurient sexual nature.

## **B. Allowable Costs/Cost Principles**

SVOG was structured as a grant program and therefore all recipients must implement their awards and spend funds consistent with the *Code of Federal Regulations*, Title 2, Subtitle A, Chapter II, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. However, when the program statute allows the use of SVOG award funds for a specific use beyond the scope of uses outlined in the Uniform Guidance, that use is allowed. Please refer to the SVOG Post-Award FAQs for examples.

The purchase of alcohol is generally prohibited with 2 CFR section 200.423. However, the SVOG program provides for federal award funds to be utilized for the purchase of alcohol in certain circumstances as outlined in the SVOG FAQs, No. 173. When considering the allowability of alcohol purchases with SVOG award funds, please review and adhere to the guidance on assessing “an ordinary and necessary business” expense as described in the FAQs and defined by the IRS in Publication No. 535.

The authorizing statute permits reimbursement of eligible and allowable costs dating back to March 1, 2020, which for some entities could be a period of one year or more prior to issuance of an initial SVOG award. Box 1 of the SVOG NOA document recognizes the authorizing statute and the authorizing statute serves as SBA’s basis for approving pre-award costs consistent with 2 CFR section 200.458. Please refer to FAQ No. 33 for additional information.

Grantees will submit a finalized budget to SBA in the first few months of 2022, which will establish the basis for monitoring and closeout. At closeout, grantees will provide a reconciliation of expenses by allowable budget category in response to the expense report action item. Grantees should maintain justification for any changes from the final budget to the expense report and maintain clear records of the costs charged to the SVOG award substantiating eligibility and allowability.

## **H. Period of Performance**

Recipients that receive an initial SVOG award will be able to spend award funds over a 12-month period (defined in NOA Box 5 as the *Budget Period*) after the award issuance date (defined in the most recent NOA Box 4 as the *Project Period*) for eligible and allowable costs incurred between March 1, 2020, and December 31, 2021. Recipients that receive a supplemental award will be able to spend all award funds (both initial and supplemental phase awards) received over an 18-month period (defined in most recent NOA Box 5 as the *Budget Period*) after the initial phase award issuance date (defined in the most recent NOA Box 4 as the *Project Period*) for eligible and allowable costs incurred between March 1, 2020, and June 30, 2022 (*Eligible Cost Period*). Reconsideration awards made through the SVOG program do not impact the award expenditure or spend down dates, these dates are only determined by the issuance of an initial or supplemental award.

## ENVIRONMENTAL PROTECTION AGENCY

### ASSISTANCE LISTING 66.458 CAPITALIZATION GRANTS FOR CLEAN WATER STATE REVOLVING FUNDS

### ASSISTANCE LISTING 66.482 DISASTER RELIEF APPROPRIATIONS ACT (DRAA) HURRICANE SANDY 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.

#### II. PROGRAM PROCEDURES

The CWSRF program is established in each state by capitalization grants from the Environmental Protection Agency (EPA). The CWSRF provides loans and other types of financial assistance to qualified communities and local agencies. The CWSRF is a permanent revolving fund to provide loans and other assistance. 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 to receive a grant. Capitalization grant applications must 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) (Assistance Listing 66.468) capitalization grant to the CWSRF or an equivalent amount from the CWSRF to the DWSRF program.

The Disaster Relief Appropriations Act (Pub. L. No. 113-2) provided funds for awards to the states of New York and New Jersey for wastewater facilities impacted by Hurricane Sandy. EPA awarded these funds under Assistance Listing 66.482. Those funds are subject to all the compliance requirements that apply to Assistance Listing 66.458 except as indicated in III, "Compliance Requirements," of this program supplement.

On June 6, 2019, the "Additional Supplemental Appropriations for Disaster Relief Act, 2019," or ASADRA (Pub. L. No. 116-20), was signed into law. The law provided funds to Alabama, Alaska, California, Georgia, Florida, North Carolina, and South Carolina CWSRF programs for drinking water facilities impacted by Hurricanes Florence and Michael, Typhoon Yutu, and calendar year 2018 wildfires and earthquakes.

## Source of Governing Requirements

The CWSRF program is authorized under Title VI of the Clean Water Act (33 USC 1381 et seq.) (Act), the Disaster Relief Appropriations Act (Pub. L. No. 113-2), and the “Additional Supplemental Appropriations for Disaster Relief Act, 2019”, or ASADRA (Pub. L. No. 116-20). The implementing regulations are found in 40 CFR Part 35, Subpart K.

## Availability of Other Program Information

General information about the program is available on the EPA Clean Water State Revolving Fund home page (<https://www.epa.gov/cwsrf>).

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	Y	Y	N	N	N	N

### 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; (3) for developing and implementing estuary management plans under section 320 of the Act (33 USC 1383(c)); (4) for the construction, repair or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage; (5) for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water; (6) to any municipality, or intermunicipal, interstate, or state agency for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse; (7) for the development and implementation of watershed projects meeting the criteria set forth in section 122 of the Act; (8) to any municipality, or intermunicipal, interstate, or state agency for measures to reduce the energy consumption needs for publicly owned treatment works; (9) for reusing or recycling wastewater, stormwater, or subsurface drainage water; (10) for measures to increase the security of publicly owned treatment works; (11) to any qualified nonprofit entity, as determined by the EPA Administrator, to provide assistance to owners and operators of small and medium publicly owned treatment works to plan, develop, and obtain financing for eligible projects under this subsection, including planning, design, and associated preconstruction activities; and, to assist such treatment works in achieving compliance with the Act; and (12) to any qualified nonprofit entity, as determined by the Administrator, to provide assistance to an eligible individual (as defined in subsection (j)).

- (1) For the repair or replacement of existing individual household decentralized wastewater treatment systems; or
- (2) In a case in which an eligible individual resides in a household that could be cost-effectively connected to an available publicly owned treatment works, for the connection of the applicable household to such treatment works.

b. The allowable types of financial assistance under Assistance Listing 66.458 (33 USC 1383(d)) are:

- (1) Making loans 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);

- (5) Guaranteeing loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;
  - (6) To earn interest on fund accounts; and
  - (7) For the reasonable costs of administering the fund and conducting activities under this subchapter, except that such amounts shall not exceed 4 percent of all grant awards to such fund under this subchapter, \$400,000 per year, or one-fifth percent per year of the current valuation of the fund, whichever amount is greatest, plus the amount of any fees collected by the state for such purpose regardless of the source.
- c. Funds awarded under Assistance Listing 66.482 may be used only for projects to reduce flood damage risk and vulnerability or to enhance resiliency to rapid hydrologic change or a natural disaster (Pub. L. No. 113-2, Division A, Title X, 127 Stat. 31).
2. *CWSRF funds may be used by states for the reasonable costs of administering and managing the CWSRF (33 USC 1383(d)(7)).*

See III.G.3.a, “Matching, Level of Effort, Earmarking – Earmarking.”

3. *CWSRF funds may be used by states to provide additional subsidization in the form of principal forgiveness, grants, and negative interest loans to municipal, intermunicipal, interstate, or state agencies receiving CWSRF assistance.*

Additional subsidy may be provided to (a) implement a process, material, technique, or technology to address water or energy-efficiency goals; (b) mitigate stormwater runoff; (c) encourage sustainable project planning, design, and construction; or (d) a municipality that meets the state’s affordability criteria or seeks additional subsidization to benefit individual ratepayers in the residential user rate class who would otherwise experience significant financial hardship (33 USC 1383(i)(1)). See III.G.3.b, “Matching, Level of Effort, Earmarking – Earmarking.”

## **B. Allowable Cost/Cost Principals**

The cost principles of 2 CFR 200 Subpart E are applicable (as appropriate) to this award. If the state does not have a previously established indirect cost rate, the state will prepare and submit its indirect cost rate proposal in accordance with 2 CFR 200 Appendix VII. For CWSRF programmatic eligibilities, state CWSRF programs are required to follow 33 USC 1383(c) for assistance eligibilities.

## C. Cash Management

The state may draw cash from EPA through 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).

## 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 grant payment. If the state provides a match more than 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)).

### 2. Level of Effort

Not Applicable

### 3. Earmarking

- a. The maximum amount allowable for administering and managing the CWSRF is an amount equal to 4 percent of the cumulative amount of capitalization grant awards received (less any amounts used in previous years to cover administrative expenses), \$400,000, or one-fifth percent of the current valuation of the fund, whichever is the greatest. The valuation

of the fund is defined as the Total Net Position in the most recent year’s audited financial statements for the state CWSRF program. When the administrative expense of the CWSRF exceeds the largest of these amounts, the excess must be paid from sources outside the CWSRF (40 CFR section 35.3120(g)).

- b. The Disaster Relief Appropriations Act (Pub. L. No. 113-2, Division A, Title X, 127 Stat. 31) and ASADRA (Pub. L. No. 116-20), includes a requirement to provide subsidies in the amount shown in the table below.

The FY 2019, FY 2020, and FY 2021 appropriations (Pub. L. No. 116-6 and Pub. L. No. 116-94) require 10 percent of the capitalization grant be used for additional subsidy. This additional subsidy can go to any CWSRF borrower; however, only when such funds are provided as initial financing for an eligible recipient or to buy, refinance, or restructure the debt obligations of eligible recipients that were incurred after the date of enactment of the appropriation.

The Clean Water Act also allows additional subsidy if the amount appropriated for capitalization grants to all states in a fiscal year exceeds \$1,000,000,000. The additional subsidy allowed is based on the percentage over \$1,000,000,000 that is appropriated. For FY19, FY20, and FY21 a state may provide up to 30 percent for additional subsidy. This optional amount is in addition to the 10 percent required by the annual appropriation acts. In future years, if the appropriated amount is less than 30 percent of \$1,000,000,000, that percentage would be substituted for the 30 percent. This subsidy can be provided in the form of grants, principal forgiveness, or negative interest as specified in III.A.3, “Activities Allowed or Unallowed.”

<b>Disaster Relief Funds and ASADRA</b>	<b>FY 2019 Funds</b>	<b>FY 2020 Funds</b>	<b>FY 2021 Funds</b>
Not less than 20 percent and not more than 30 percent of the capitalization amount.	Not less than 10 percent and not more than 40 percent of the capitalization grant amount for recipients.	Not less than 10 percent and not more than 40 percent of the capitalization grant amount for eligible recipients. Additionally, the Water Infrastructure Fund Transfer Act (WIFTA) amendment allows states to transfer up to 5 percent of their total allotment of CWSRF capitalization grants	Not less than 10 percent and not more than 40 percent of the capitalization grant amount for eligible recipients.



Disaster Relief Funds and ASADRA	FY 2019 Funds	FY 2020 Funds	FY 2021 Funds
		as of 10/4/2020, to the DWSRF for threats to public health as a result of heightened exposure to lead. These funds are to be provided as subsidy in the form of principal forgiveness, grants, or negative interest). For the ASADRA funds, states are required to use not less than 20 percent, but not more than 30 percent as subsidy in the form of principal forgiveness, grants, or negative interest.	

- c. To the extent that there are sufficient eligible project applications, no less than 10 percent of appropriated funds shall be used for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities (Pub. L. No. 116-6 and Pub. L. No. 116-94).

**H. Period of Performance**

- 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. Funds made available for disaster relief activities under Assistance Listing 66.482 are available until expended (Pub. L. No. 113-2, Division A, Title X, 127 Stat. 31).

**IV. OTHER INFORMATION**

The audit focus is on a state’s CWSRF program rather than individual capitalization grants awarded to states by EPA.

*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 2 CFR section 200.502(a). These are subawards—not direct federal loans—and, therefore, neither 2 CFR sections 200.502(b) nor (d) apply when calculating the amount of federal funds expended.

It also is important to appropriately identify these CWSRF loans as subawards because of the impact on which federal agency is the cognizant or oversight agency. When completing the Form SF-SAC (also referred to as the Data Collection Form for Reporting on Audits of States, Local Governments and Non-profit Organizations, OMB Form 0348-0057), the subrecipient should indicate that a CWSRF loan received from the state is not a direct award by showing an “N” in Part III, Item 6(h).

### *Equivalency*

Equivalency projects/loans are funded with an amount equal to the capitalization grant and reported in the OMB Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System. These projects/loans are considered to be federal projects/loans. To achieve consistency in meeting program requirements and eliminate the possibility of over-reporting information under FFATA, equivalency projects/loans must meet all equivalency requirements: federal cross-cutters, single audit, architectural and engineering (A/E) procurement, disadvantage business enterprise (DBE), and signage.

While any of the sources of funds in the CWSRF may be used for equivalency projects/loans, it should be understood that these funds would be considered federal funds and that all disbursements for equivalency projects/loans must be entered into SEFA.

## ENVIRONMENTAL PROTECTION AGENCY

### ASSISTANCE LISTING 66.468 CAPITALIZATION GRANTS FOR DRINKING WATER STATE REVOLVING FUNDS

### ASSISTANCE LISTING 66.483 DISASTER RELIEF APPROPRIATIONS ACT (DRAA) HURRICANE SANDY 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.

#### 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.

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 some 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) (Assistance Listing 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.

The Disaster Relief Appropriations Act (Pub. L. No. 113-2) provided funds for awards to the states of New York and New Jersey for drinking water facilities impacted by Hurricane Sandy. EPA awarded these funds under Assistance Listing 66.483. Those funds are subject to all of the

compliance requirements that apply to Assistance Listing 66.468 except as indicated in III, “Compliance Requirements,” in this program supplement.

On June 6, 2019, Pub. L. No. 116-20, the “Additional Supplemental Appropriations for Disaster Relief Act, 2019,” or ASADRA, was signed into law. The law provided funds to Alabama, Alaska, California, Georgia, Florida, North Carolina, and South Carolina DWSRF programs for drinking water facilities impacted by Hurricanes Florence and Michael, Typhoon Yutu, and calendar year 2018 wildfires and earthquakes.

### **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) and the Disaster Relief Appropriations Act, 2013 (Pub. L. No. 113-2). The implementing regulations for the program can be found at 40 CFR Part 35, Subpart L.

### **Availability of Other Program Information**

Other general information about the program is available on the EPA Drinking Water State Revolving Fund home page (<https://www.epa.gov/dwsrf>).

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	Y	Y	N	N	N	N

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

a. A state DWSRF program may provide the following financial assistance to publicly or privately owned community water systems and nonprofit non-community water systems for eligible drinking water infrastructure projects (40 CFR sections 35.3520 and 35.3525):

- (1) Making loans for eligible projects (40 CFR section 35.3520(b).
- (2) Purchasing or refinancing existing debt obligations of municipal, intermunicipal and interstate agencies entered into on or after July 1, 1993. Purchase of local debt would have the expectation that the seller would repay the debt at the agreed upon terms.
- (3) Guarantee of or purchasing insurance for local debt obligations.
- (4) 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.
- (5) Funds awarded (all manner of assistance, both a loan or grant to a local entity) under Assistance Listing 66.483 may be used only for projects to reduce flood damage risk and vulnerability or to enhance resiliency to rapid hydrologic change or a natural disaster (Pub. L. No. 113-2, Division A, Title X, 127 Stat. 31).

b. A state may set aside DWSRF funds for the following designated activities (40 CFR section 35.3535):

- (1) Administrative expenses (including technical assistance).
- (2) Technical assistance to small water systems that regularly serve 10,000 or fewer persons (40 CFR section 35.3505).

- (3) State program management.
- (4) Local assistance and other state programs.

2. *Activities Unallowed*

As per 40 CFR 35.3520(d) through (f), a state DWSRF program may not provide assistance for:

- a. Dams or reservoirs, water rights, laboratory fees for monitoring, system operation and maintenance, or projects that are primarily fire protection. Water rights are listed as ineligible in DWSRF regulations, but a class deviation for water rights was signed in November of 2019. “Deviation from 40 CFR section 35.3520(e)(2)” [DWSRF Class Deviation for Water Rights--Dec 2019 \(epa.gov\)](#). This allows the use of DWSRF funds for Water rights if it addresses a public health objective of the Safe Drinking Water Act. EPA has the authority to allow deviations from EPA regulations that are not disallowed by law. In this case the Safe Drinking Water Act.
- b. Expansion projects pursued solely in anticipation of future growth.

**B. Allowable Cost/Cost Principals**

The cost principles of 2 CFR 200 Subpart E are applicable as appropriate, to this award. If the state does not have a previously established indirect cost rate, the state will prepare and submit its indirect cost rate proposal in accordance with 2 CFR 200 Appendix VII.

For DWSRF programmatic eligibilities, state DWSRF programs are required to follow 40 CFR 35.3520 for assistance eligibilities from the loan fund and 40 CFR 35.3535 for DWSRF set-aside eligibilities.

**C. Cash Management**

The state may draw cash through 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)).

## **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 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)).

### **2. Level of Effort**

Not Applicable

### **3. Earmarking**

- a. The allotment can be earmarked for set-aside activities as follows:
  - (1) *Administrative Expenses* – Not to exceed the higher of 4 percent of the allotment, \$400,000, or one-fifth of a percent of the fund's annual net position.
  - (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)). The cumulative allotment amount will be in state records as their total grants awarded. EPA will have a record of this as well.

- (4) *Local Assistance and Other State Programs* – Not to exceed 15 percent of the capitalization grant and no more than 10 percent of the grant is used on any one of the defined activities (40 CFR section 35.3535(e)).
- b. For 2018 and previous grants, 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)). Starting with the 2019 grants, states are required to use between 6 percent and 35 percent of their grant for disadvantaged assistance subsidy, as per the amendments from the American Water Infrastructure Act of 2018.
- c. EPA’s DWSRF appropriations include the following requirements:
  - (1) The Disaster Relief Appropriations Act (Pub. L. No. 113-2, Division A, Title X, 127 Stat. 31), FY 2019 appropriation and the FY 2020 appropriation each have requirements to provide subsidy in amounts found in the table below. This subsidy can be provided in the form of grants, principal forgiveness, or negative interest.

Disaster Relief Funds	FY 2019 Funds	FY 2020 and FY 2021 Funds
Not less than 20 percent and not more than 30 percent of the capitalization amount.	“20 percent of the capitalization grant amount mandatory additional subsidy, available to all DWSRF-eligible recipients, and an additional 6-35 percent additional subsidy available only to state-defined disadvantaged communities.”	“14 percent of the capitalization grant amount mandatory additional subsidy, available to all DWSRF-eligible recipients, and an additional 6-35 percent additional subsidy available only to state-defined disadvantaged communities. Additionally, the Water Infrastructure Fund Transfer Act ( <b>WIFTA</b> ) allows states, until 10/5/2020, to transfer up to 5 percent of their cumulative allotment of CWSRF capitalization grants to the DWSRF for threats to public health as a result of heightened exposure to lead. These funds are <b>to</b> be provided as subsidy in the form of principal forgiveness, grants, or negative interest.” For the <b>ASADRA</b> funds, states are required to use



Disaster Relief Funds	FY 2019 Funds	FY 2020 and FY 2021 Funds
		between 20 percent and 30 percent as subsidy in the form of principal forgiveness, grants, or negative interest.

- (2) The decision to maintain a category of projects for green infrastructure, water and energy efficiency, and other environmentally innovative activities is at the state’s discretion (Pub. L. No. 113-76, Pub. L. No. 113-235, and Pub. L. No. 114-113).

**H. Period of Performance**

- 1. 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 twelve quarters from the date of allotment of grant funds to the states. States must enter into binding commitments for an amount equal to each capitalization grant payment and accompanying state match that is deposited into the Fund within one year after the receipt of each grant payment. This does not apply to funds drawn for set-aside activities. 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).
- 2. Funds made available for disaster relief activities under Assistance Listing 66.483 are available until expended (Pub. L. No 113-2, Division A, Title X, 127 Stat. 31).

**IV. OTHER INFORMATION**

The audit focus is on a state’s DWSRF program rather than individual capitalization grants awarded to states by EPA.

*Subrecipients*

DWSRF amounts are awarded by EPA to states as grants. The states then make subawards in the form of loans to their 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 2 CFR section 200.502(a). These are subawards—not direct federal loans—and, therefore, neither 2 CFR sections 200.502(b) nor (d) apply when calculating the amount of federal funds expended.

It also is important to appropriately identify these DWSRF loans as subawards because of the impact on which federal agency is the cognizant or oversight agency. When completing the Form

SF-SAC (also referred to as the Data Collection Form), the subrecipient should indicate that a DWSRF loan received from the state is not a direct award by showing an “N” in Part III, Item 6(h).

### *Equivalency*

To achieve consistency in meeting program requirements and eliminate the possibility of over-reporting information under the Federal Funding Accountability and Transparency Act (FFATA), state DWSRF programs must use the same group of loans for the purpose of meeting federal cross-cutting, single audit, procurement, and Transparency Act reporting requirements (as per 40 CFR 35.3575). Equivalency projects/loans are funded with an amount equal to the capitalization grant. DWSRF set-aside activities are also considered federal expenditures. Auditors should be mindful that set-aside spending will not always trigger FFATA reporting based on the thresholds for reporting under the law. In addition, for states using the loan authority under the set-aside funds, it is possible those expenditures are repayment dollars from previous loans and should not be considered federal funds. Auditors should consult with the state to make that determination.

While any of the sources of funds in the DWSRF may be used for equivalency projects/loans, it should be understood that these funds would be considered federal funds once they are deemed equivalency dollars and that all disbursements for equivalency projects/loans must be entered into the SEFA. The SEFA should reflect equivalency dollars rather than actual cash draws from the Treasury to the state. Additionally, the SEFA will differ from the SF-425 form.

## DEPARTMENT OF ENERGY

### ASSISTANCE LISTING 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

To be eligible for a SEP award, a state must submit a SEP State Application to the Department of Energy (DOE). The State Application comprises two elements:

- a. 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.
- b. An Annual File, which includes a description of the energy efficiency and renewable energy programs and activities that the state intends to carry out during its program year (PY), with budget information and milestones for each project/activity, and an overall budget broken out by object class.

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, local governments, nonprofit organizations, other state agencies, and businesses.

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 under the Energy Policy and Conservation Act, as amended (42 USC 6321 et seq.).

SEP’s implementing program regulations are found at 10 CFR Part 420.

## Availability of Other Program Information

Additional details on SEP requirements can be found in the following State Energy Program Funding Opportunity Announcements:

1. DE-FOA-0001644 FY 2017  
<https://www.energy.gov/sites/prod/files/2017/10/f37/2017-sep-competitive-awards.pdf> or  
<https://www.energy.gov/eere/wipo/state-energy-program-fiscal-year-2017-competitive-funding-opportunity-announcement>
2. State Energy Program 2021 Administrative and Legal Requirements Document (ALRD) issued 1/19/2021  
[https://www.energy.gov/sites/prod/files/2021/01/f82/FY21-SEP\\_ALRD.pdf](https://www.energy.gov/sites/prod/files/2021/01/f82/FY21-SEP_ALRD.pdf)
3. State Energy Program 2021 State Energy Program PY21 Grant Application Instructions  
[https://www.energy.gov/sites/prod/files/2021/01/f82/SEP-Program-Notice-21-01\\_PY21-Application-Instructions.pdf](https://www.energy.gov/sites/prod/files/2021/01/f82/SEP-Program-Notice-21-01_PY21-Application-Instructions.pdf)

SEP also issues periodic program notices, which outline new policies and requirements. Program notices are available at <https://www.energy.gov/eere/wipo/state-energy-program-guidance>.

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	N	Y	N	Y	Y	N

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

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, which includes establishment of revolving loan funds (RLF) and loan loss reserves (LLR) to the

extent that the activities supported by the loans are eligible activities under the program (see III.A.1.b, below) (10 CFR 420.18(d));

- (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)).

- c. SEP funds may be used for administrative costs associated with the continued operation of an American Recovery and Reinvestment Act (ARRA)-funded RLF or LLR.

## 2. *Activities Unallowed*

SEP funds may not be used for the following (10 CFR section 420.18):

- 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.
- g. Loan guarantees or loan forgiveness.

## L. **Reporting**

### 1. **Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

### 2. **Performance Reporting**

This is a quarterly progress report. Key line items are:

- Milestones for each activity
  - Required Metrics, including quarterly outlays for each activity
- a. Progress Report <https://page.energy.gov/>

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**IV. OTHER INFORMATION**

Federal funds used to capitalize a RLF or fund an LLR are not subject to the limitation on the period of availability of federal funds for the ARRA award but continue to retain their federal character for the entire period of time that the funds are used for such purpose (i.e., at each revolution of funds). To ensure continuation of required reporting and DOE oversight of the federal requirements that apply to the RLF or LLR activity in perpetuity or as long as the grantee continues the activity, reporting responsibility for the RLF or LLR activities attributable to ARRA funds will fall under the annual SEP formula award. Additionally, grantees are required to continue to use the funds in accordance with the applicable federal requirements of the ARRA award. Therefore, if a grantee has established a RLF or LLR, auditors should include in their samples loans made from the fund during the audit period. Such transactions should be reviewed in the same manner as any other expenditure under the program.

Applicable guidance is available at

[https://www.energy.gov/sites/default/files/2020/11/f80/SEP\\_PROGRAM\\_NOTICE\\_10-008F\\_November\\_10\\_2020.pdf](https://www.energy.gov/sites/default/files/2020/11/f80/SEP_PROGRAM_NOTICE_10-008F_November_10_2020.pdf).



## DEPARTMENT OF ENERGY

### ASSISTANCE LISTING 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

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, and rental procedures. 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 US territories to the definition of “state.” As a result, DOE makes WAP awards to American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the US Virgin Islands. References to “state” in this program supplement include these entities. DOE also provides direct grants to select Native American tribes each year.

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. PVE-leveraged funds identified in the budget and incorporated into the DOE award (as part of the approved budget) must meet all DOE requirements, including allowability of costs, specified in the award. If such funds are not included in the approved budget, states have greater flexibility in how those funds are used.

#### 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), Consolidated Appropriations Act of 2021 (Pub. L. No. 116-260; December 27, 2020); Implementing regulations are published at 10 CFR Part 440.

#### Availability of Other Program Information

Program notices are available at [Weatherization Program Notices and Memorandums | Department of Energy](#).

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	N	N	Y	N	Y	Y	N

#### A. Activities Allowed or Unallowed

##### 1. *Activities Allowed*

- 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 to 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 expenses (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 the leveraging section of the State Plan and grant agreement (10 CFR section 440.18(d)(14)). Leveraging entails a state obtaining additional program-targeted nonfederal 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. 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 published in WAP program notices from the Energy Policy Act of 2005, Pub. L. No. 109-58 (42 USC 6865(c)(4); 10 CFR section 440.18(b)).

## 2. *Activities Unallowed*

- 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) Language introduced in Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, (h) AMENDING RE-WEATHERIZATION DATE.—Paragraph (2) of section 415(c) of the Energy Conservation and Production Act (42 USC 6865(c)) is amended to read as follows:

“(2) Dwelling units weatherized (including dwelling units partially weatherized) under this part, or under other Federal programs (in this paragraph referred to as ‘previous weatherization’), may not receive further financial assistance for weatherization under this part until the date that is 15 years after the date such previous weatherization was completed. This paragraph does not preclude dwelling units that have received previous weatherization from receiving assistance and services (including the provision of information and education to assist with energy management and evaluation of the effectiveness of installed weatherization materials) other than weatherization under this part or under other Federal programs, or from receiving non-Federal assistance for weatherization.”

## **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 Stat 146).

The poverty guidelines are issued each year in the *Federal Register* and HHS maintains a web page that provides the poverty guidelines ([2021 Poverty Guidelines | ASPE \(hhs.gov\)](#)).

- b. In addition, the following requirements apply:

A subgrantee may weatherize a building containing rental dwelling units using financial assistance for dwelling units eligible for weatherization assistance under [paragraph \(a\)](#) of this section, where:

- (1) The subgrantee has obtained the written permission of the owner or his agent;
- (2) Not less than 66 percent (50 percent for duplexes and four-unit buildings, and certain eligible types of large multi-family buildings) of the dwelling units in the building:
  - (i) Are eligible dwelling units, or
  - (ii) Will become eligible dwelling units within 180 days under a federal, state, or local government program for rehabilitating the building or making similar improvements to the building; and
- (3) The grantee has established procedures for dwellings which consist of a rental unit or rental units to ensure that:
  - (i) The benefits of weatherization assistance in connection with such rental units, including units where the tenants pay for their energy through their rent, will accrue primarily to the low-income tenants residing in such units;
  - (ii) For a reasonable period of time after weatherization work has been completed on a dwelling containing a unit occupied by an eligible household, the tenants in that unit (including households paying for their energy through their rent) will not be subjected to rent increases unless those

increases are demonstrably related to matters other than the weatherization work performed;

- (iii) The enforcement of [paragraph \(b\)\(3\)\(ii\)](#) of this section is provided through procedures established by the state by which tenants may file complaints, and owners, in response to such complaints, shall demonstrate that the rent increase concerned is related to matters other than the weatherization work performed; and
  - (iv) No undue or excessive enhancement shall occur to the value of the dwelling units.
- (4) [intentionally blank]
- (i) A building containing rental dwelling units meets the requirements of paragraph (b)(2), and paragraphs (b)(3)(ii) and (b)(3)(iv), of this section if it is included on the most recent list posted by DOE of Assisted Housing and Public Housing buildings identified by the US Department of Housing and Urban Development as meeting those requirements.
  - (ii) A building containing rental dwelling units meets the requirements of [paragraph \(b\)\(2\)](#), and [paragraph \(b\)\(3\)\(iv\)](#), of this section if it is included on the most recent list posted by DOE of Assisted Housing and Public Housing buildings identified by the US Department of Housing and Urban Development as meeting those requirements.
  - (iii) A building containing rental dwelling units meets the requirement of [paragraph \(b\)\(2\)](#) of this section if it is included on the most recent list posted by DOE of Low Income Housing Tax Credit buildings identified by the US Department of Housing and Urban Development as meeting that requirement and of Rural Housing Service Multifamily Housing buildings identified by the US Department of Agriculture as meeting that requirement.
  - (iv) For buildings identified under [paragraphs \(b\)\(4\)\(i\)](#), [\(ii\)](#) and [\(iii\)](#) of this section, states will continue to be responsible for ensuring compliance with the remaining requirements of this section, and states shall establish requirements and procedures to ensure such compliance in accordance with this section.
- (5) In order to secure the federal investment made under this part and address the issues of eviction from and sale of property receiving

weatherization materials under this part, States may seek landlord agreement to placement of a lien or to other contractual restrictions;

- (6) As a condition of having assistance provided under this part with respect to multifamily buildings, a State may require financial participation, when feasible, from the owners of such buildings. Such financial participation shall not be reported as program income, nor will it be treated as if it were appropriated funds. The funds contributed by the landlord shall be expended in accordance with the agreement between the landlord and the weatherization agency.
- (7) In devising procedures under [paragraph \(b\)\(3\)\(iii\)](#) of this section, States should consider requiring use of alternative dispute resolution procedures including arbitration.
- (8) A State may weatherize shelters. For the purpose of determining how many dwelling units exist in a shelter, a grantee may count each 800 square feet of the shelter as a dwelling unit or it may count each floor of the shelter as a dwelling unit.

## **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 nonprofit entity, or a Community Action Agency (CAA) (e.g., 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)).

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable

- b. *SF-271, Outlay Report and Request for Reimbursement and Construction Programs – Not Applicable*
- c. *SF-425, Federal Financial Report – Applicable*

## **2. Performance Reporting**

[DOE F 540.3](#) *WAP Quarterly Program Report (OMB Control No. 1910-5127) –*

This cumulative report is submitted online using the Performance and Accountability for Grants in Energy (PAGE) online tool. It is used in conjunction with the SF-425 (to ensure that information by funding source reconciles the information provided by function) and to determine energy savings (the product of the estimated per-home BTU Energy Savings Estimate in the approved State Plan and the actual production total) (10 CFR section 440.25).

*Key Line Items* – The following line items contain critical information:

- 1. *Grants Outlays – Funds Subject to DOE Program Rules*
  - B. *Outlays by Function – Total Outlays by Function*
- 2. *Grant Production –*
  - A. *Total Annual Energy Savings (final report only) (Note: this is the fourth quarter report)*

## **3. Special Reporting**

Not Applicable

## **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.



## DEPARTMENT OF EDUCATION CROSS-CUTTING SECTION

### INTRODUCTION

This section contains compliance requirements that apply to more than one Department of Education (ED) program (listed below) in the Supplement 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. The applicable programs in Part 4 reference this ED Cross-Cutting Section.

Note: For an area that a specific program did not select under the six requirement limitation, ED has removed its Assistance Listing from that area (or sub-area) of the cross-cutting section.

#### Assistance

Listing No.	Program Name	Listed as
<b>ESEA Programs</b>		
84.010	Title I Grants to Local Educational Agencies (LEAs)	Title I, Part A
84.011	Migrant Education—State Grant Program	MEP
84.282	Charter Schools	CSP
84.287	Twenty-First Century Community Learning Centers	21st CCLC
84.365	English Language Acquisition Grants	Title III, Part A
84.367	Supporting Effective Instruction State Grant	Title II, Part A
84.424	Student Support and Academic Enrichment Grants	Title IV, Part A
<b>Non-ESEA Programs</b>		
84.002	Adult Education—State Grant Program	Adult Education
84.027	Special Education—Grants to States (IDEA, Part B)	IDEA
84.173	Special Education—Preschool Grants (IDEA Preschool)	
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	

84.181	Special Education—Grants for Infants and Families with Disabilities	IDEA, Part C
84.425A	Education Stabilization Fund—State Educational Agency (Outlying Areas) (ESF-SEA I and II)	
84.425C	Governor’s Emergency Education Relief (GEER I and II) Fund	
84.425D	Elementary and Secondary School Emergency Relief (ESSER I and II) Fund	
84.425H	Education Stabilization Fund—Governors (Outlying Areas) (ESF-Governors I and II)	
84.425R	Emergency Assistance to Non-Public Schools (EANS) Program	
84.425U	American Rescue Plan Elementary and Secondary School Emergency Relief (ARP ESSER) Fund	
84.425V	American Rescue Plan Emergency Assistance to Non-Public Schools (ARP EANS)	
84.425X	American Rescue Plan-Outlying Areas State Educational Agency (ARP-OA SEA) Fund	

**References to the ESEA are to the ESEA, as amended by the Every Student Succeeds Act (ESSA).**

The ESEA was amended December 10, 2015, by the ESSA (Pub. L. No. 114-95).

**Education Stabilization Fund (ESF) Programs**

To prevent, prepare for, and respond to the Coronavirus Disease 2019 (COVID-19), Congress enacted three laws. In March 2020, it passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 748-284, which includes the ESF. Four CARES Act ESF programs are included in this Supplement: the Governor’s Emergency Education Relief (GEER I) Fund (Assistance Listing 84.425C); the Elementary and Secondary School Emergency Relief (ESSER I) Fund (Assistance Listing 84.425D); the Education Stabilization Fund—Governors (Outlying Areas) (ESF-Governors I) (Assistance Listing 84.425H); and the Education Stabilization Fund—State Educational Agency (Outlying Areas) (ESF-SEA I) (Assistance Listing 84.425A).

In December 2020, Congress passed the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, 2021, Pub. L. No. 116-260, which provided additional funds to the ESF. Five CRRSA ESF programs are included in this Supplement: the Governor’s Emergency Education Relief (GEER II) Fund (Assistance Listing 84.425C); the Elementary and

Secondary School Emergency Relief (ESSER II) Fund (Assistance Listing 84.425D); the Education Stabilization Fund–Governors (Outlying Areas) (ESF-Governors II) (Assistance Listing 84.425H); the Education Stabilization Fund–State Educational Agency (Outlying Areas) (ESF-SEA II) (Assistance Listing 84.425A); and the Emergency Assistance to Non-Public Schools (EANS) program (Assistance Listing 84.425.R).

In March 2021, Congress passed the American Rescue Plan Act of 2021 (ARP), Pub. L. No. 117-2, which provided additional funds to the ESF. Three ARP programs are included in this Supplement: the American Rescue Plan Elementary and Secondary School Emergency Relief (ARP ESSER) Fund (Assistance Listing 84.425U); the American Rescue Plan Emergency Assistance to Non-Public Schools (ARP EANS) (Assistance Listing 84.425V); and the American Rescue Plan-Outlying Areas State Educational Agency (ARP-OA SEA) Fund (Assistance Listing 84.425X).

### **Waivers and Expanded Flexibility**

Local educational agencies (LEAs) through their SEA, and schools through their LEA and SEA, may request waivers from ED of many of the statutory and regulatory requirements of programs authorized in the ESEA. In addition, some states have been granted authority to grant waivers of federal requirements under the Education Flexibility Partnership Act of 1999. See approved states at: <https://oese.ed.gov/offices/office-state-grantee-relations-evidence-based-practices/ed-flex/awards/>.

Due to the COVID-19 pandemic, ED invited SEAs to apply for certain fiscal waivers. A list of the invited waivers is available at:

- ESEA: [Guidance - Office of Elementary and Secondary Education](#)
- Adult Ed and Perkins: <https://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/tydings-covid-waiver-letter-aefta.pdf>
- IDEA: <https://www2.ed.gov/policy/speced/guid/idea/monitor/cssos-mfs-2018-waiver-authority-06-05-2020.pdf>

For certain programs, lists of waivers granted under the CARES Act waiver authority are listed in the *Federal Register*:

- Adult-Ed and Perkins: <https://www.federalregister.gov/documents/2020/11/05/2020-24537/notice-of-waiver-granted-under-the-coronavirus-aid-relief-and-economic-security-cares-act>
- ESEA: <https://www.federalregister.gov/documents/2020/05/18/2020-10563/notice-of-waivers-granted-under-section-3511-of-the-coronavirus-aid-relief-and-economic-security>

## 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”(except for certain ESF programs see program specific level of effort-maintenance of effort requirement); III.L.3, “Special Reporting;” and, III.N, “Special Tests and Provisions.” 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.

In recent years, the Office of Inspector General in ED has investigated a number of significant criminal cases related to the risk of misuse of federal funds and the lack of accountability of federal funds in public charter schools. Auditors should be aware that, unless an applicable program statute provides otherwise, public charter schools and charter school LEAs are subject to the requirements in this cross-cutting section to the same extent as other public schools and LEAs. Auditors also should note that, depending upon state law, a public charter school may be its own LEA or a school that is part of a traditional LEA.

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.

### I. PROGRAM OBJECTIVES

Program objectives for programs covered by this cross-cutting section are set forth in the individual program sections of this Supplement.

### II. PROGRAM PROCEDURES

#### A. Overview

##### 1. *ESEA Programs*

The ESEA requires an SEA to 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 8302 of the ESEA, a consolidated plan to ED for approval. Each SEA submitted a consolidated state plan. SEAs with approved consolidated state plans may require LEAs to submit consolidated plans or allow an LEA to submit a consolidated plan or individual program plans.

## **B. Subprograms/Program Elements**

### Unique Features of ESEA Programs That May Affect the Conduct of the Audit Subprograms/Program Elements

The following unique features may affect the conduct of an audit:

1. *Consolidation of Administrative Funds*

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. This also includes non-ESEA programs: the McKinney-Vento Homeless Assistance Act, ESSER, GEER (if administered by a SEA), and EANS.

2. *Schoolwide Programs*

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 purposes 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.

3. *Transferability*

SEAs and LEAs (with some limitations) may transfer up to 100 percent of their allotment from one or more applicable programs (Title II, Part A and Title IV, Part A for SEAs and LEAs; 21st CCLC for SEAs) to one or more of those programs or to other applicable programs: Title I, Part A; Title I, Part C; Title I, Part D; Title III, Part A; and Title V, Part B. Transferred funds are subject to all of the requirements, set-asides, and limitations of the programs into which they are transferred.

4. *Small Rural Schools Achievement Alternative Use of Funds*

Eligible LEAs may, after notifying the SEA, spend all or part of the formula funds they receive under two applicable programs (Title II, Part A and Title IV, Part A)

for local activities authorized under one or more of five applicable programs (Title I, Part A; Title II, Part A; Title III; Title IV, Part A; and 21st CCLC).

### Availability of Other Program Information

The ESEA, as reauthorized by the ESSA, is available with a hypertext index at <https://www.congress.gov/114/plaws/publ95/PLAW-114publ95.pdf>.

An ED *Federal Register* notice, dated July 2, 2004 (69 FR 40360-40365), indicating which federal programs may be consolidated in a schoolwide program, is available at <http://www.gpo.gov/fdsys/pkg/FR-2004-07-02/pdf/04-15121.pdf>.

A number of documents contain guidance applicable to the cross-cutting requirements in this section. Documents numbered 9–12 below, which were issued before enactment of the ESSA, are applicable to the extent they are not inconsistent with any changes made by ESSA. They include:

1. ESSA Fiscal Changes & Equitable Services (which includes guidance on Transferability Authority) (November 21, 2016) [ESSA Non Regulatory Guidance Fiscal and Equitable Service 11-21-2016 \(PDF\) \(ed.gov\)](#)  
Note: The information on Title I, Part A equitable services in this document is superseded by the nonregulatory guidance ED issued in October 2019. See below.
2. ESSA Schoolwide Guidance (September 29, 2016) <https://oese.ed.gov/files/2020/07/essaswpguidance9192016.pdf>
3. Title I, Part A of the ESEA: Providing Equitable Services to Eligible Private School Children, Teachers, and Families (October 7, 2019) <https://oese.ed.gov/files/2020/07/equitable-services-guidance-100419.pdf>
4. Informational Document on the Rural Education Achievement Program (REAP) (January 19, 2021) <https://oese.ed.gov/files/2021/01/19-0043-REAP-Informational-Document-final-OS-Approved-1.pdf>
5. Non-Regulatory Guidance: Early Learning in the Every Student Succeeds Act (November 2016) <https://oese.ed.gov/files/2020/07/essaelguidance10202016.pdf>
6. Within-District Allocations Under Title I, Part A of the Elementary and Secondary Education Act of 1965 (Draft) <https://oese.ed.gov/files/2020/03/Draft-Within-District-Allocations-Guidance-3-11-2020-1.pdf>
7. Providing Equitable Services to Students and Teachers in Non-Public Schools under the CARES Act Programs (Oct. 9, 2020) <https://oese.ed.gov/files/2020/10/Providing-Equitable-Services-under-the-CARES-Act-Programs-Update-10-9-2020.pdf>

8. Fact Sheet: State-Administered Programs under the ESEA and the Nationwide Waiver from the U.S. Department of Agriculture to Allow Meal Pattern Flexibility in the Summer Food Service Program and the National School Lunch Program Seamless Summer Option through June 2021 (January 2021)  
<https://oese.ed.gov/files/2021/05/Fact-sheet-on-USDA-meals-waivers-Jan-2021.pdf>
9. 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) <https://oese.ed.gov/files/2020/07/cguidedec2000.pdf>
10. Title IX, Part E Uniform Provisions Subpart 1—Private Schools: Equitable Services to Eligible Private School Students, Teachers, and Other Educational Personnel (March 2009) <https://oese.ed.gov/files/2020/07/equitableserguidance.doc>
11. Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, not Supplant; Carryover; Consolidating Funds in Schoolwide Programs; and Grantback Requirements (February 2008) <https://oese.ed.gov/files/2020/07/fiscalguid.pdf>
12. Letter to Chief State School Officers on Granting Administrative Flexibility for Better Measures of Success (September 7, 2012)  
<http://www2.ed.gov/policy/fund/guid/gposbul/time-and-effort-reporting.html?exp=3>

### III. COMPLIANCE REQUIREMENTS

If there has been a transfer of funds to a consolidated administrative cost objective 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 objective 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); MEP (84.011); CSP (84.282); 21st CCLC (84.287); Title III, Part A (84.365); Title II, Part A (84.367); Title IV, Part A (84.424). This section also applies to ESSER, GEER, EANS, and the ESF Outlying Areas program (84.425A, C, D, H R, U, V, and X).*

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 nonfederal 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 nonfederal programs; the establishment and operation of peer review mechanisms; the dissemination of information regarding model programs and practices; and technical assistance (Section 8201 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 8203 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 8201(c) and 8203(e) of ESEA (20 USC 7821(c) and 7823(e))).

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).

2. *Schoolwide Programs (LEAs)*

*ESEA programs in this Supplement to which this section applies are Title I, Part A (84.010); MEP (84.011); 21st CCLC (84.287); Title III, Part A (84.365); Title II, Part A (84.367); Title IV, Part A (84.424); ESSER & GEER (84.425C, D, and U). This section also applies to IDEA (84.027 and 84.173) and CTE (84.048).*

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 IV, “Other Information,” for guidance on the treatment of consolidated schoolwide funds for purposes of Type A program determination and presentation in the SEFA.

3. *Transferability (SEAs and LEAs)*

*ESEA programs in this Supplement to which this section applies are: 21st CCLC (84.287) (for SEAs only), Title II, Part A (84.367), and Title IV, Part A (84.424).*

SEAs may transfer up to 100 percent of the non-administrative funds allocated for state-level activities from applicable programs to one or more of the other listed



applicable programs, or to Title I, Part A (Assistance Listing 84.010); Title I, Part C (Assistance Listing 84.011); Title I, Part D (Assistance Listing 84.013); Title III, Part A (Assistance Listing 84.365A); and Title V, Part B (84.358). LEAs may transfer up to 100 percent of their allotments from an applicable program to the other listed applicable program, or to Title I, Part A (Assistance Listing 84.010); Title I, Part C (Assistance Listing 84.011); Title I, Part D (Assistance Listing 84.013); Title III, Part A (Assistance Listing 84.365A); and Title V, Part B (84.358).

See III.G.3.b, “Matching, Level of Effort, Earmarking – Earmarking,” in this cross-cutting section, 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 Title II, Part A (84.367) and Title IV, Part A (84.424).*

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 ten persons per square mile; and (b) serve only schools that are designated rural (locale code of 41, 42, or 43) by the National Center for Education Statistics (NCES), 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 programs for local activities authorized under one or more of the following five programs:

- a. Assistance Listing 84.010 Improving Basic Programs Operated by Local Educational Agencies (Title I, Part A)
- b. Assistance Listing 84.287 Twenty-First Century Community Learning Centers (Title IV, Part B)
- c. Assistance Listing 84.365 Language Instruction for English Learners and Immigrant Students (Title III)
- d. Assistance Listing 84.367 Supporting Effective Instruction (Title II, Part A)
- e. Assistance Listing 84.424 Student Support and Academic Enrichment (Title IV, Part A) (Section 5211(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. *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); MEP (84.011); CSP (84.282); 21st CCLC (84.287); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424). This section also applies to IDEA (84.027 and 84.173) (schoolwide programs only), CTE (84.048) (schoolwide programs only), and ESSER, GEER, and EANS (84.425C, D, R, U, and V) (consolidated administrative funds and schoolwide programs).*

- a. *Consolidated Administrative Funds:* An SEA or LEA that consolidates federal administrative funds is not required to keep separate records by individual program (Sections 8201(c) or 8203(e) of ESEA (20 USC 7821(c) or 7823(e))). The SEA or LEA may treat the consolidated administrative funds as a consolidated administrative cost objective.

Time-and-effort requirements with respect to consolidated administrative funds vary under different circumstances.

- (1) For an employee who works solely on the consolidated administrative cost objective, an SEA or LEA is not required to maintain records reflecting the distribution of the employee's salary and wages among the programs included in the consolidation.
- (2) For an employee who works in part on 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, an SEA or LEA must maintain time and effort distribution records in accordance with 2 CFR section 200.430(i)(1)(vii) that support the portion of time and effort dedicated to:
  - (a) The consolidated 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), ESSER, GEER, EANS (84.425 C,D,R,U, and V)); 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 at <https://oese.ed.gov/files/2020/07/fiscalguid.pdf>.

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, there is no distinction between staff paid with federal funds and staff paid with state or local funds. Under these circumstances, payment from the single consolidated schoolwide pool is sufficient to demonstrate that an employee works only on activities of the schoolwide program, and no other documentation is required.
- (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) For an employee who works solely on a single cost objective (e.g., 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), an LEA is not required to maintain records reflecting the distribution of the employee's salary and wages, including among the federal programs included in the consolidation, if applicable.
  - (b) For 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), an LEA must maintain time and effort distribution records in accordance with 2 CFR section 200.430(i)(1)(vii) that support 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. In a September 7, 2012, letter to Chief State School Officers, ED authorized SEAs to approve LEAs' use of a substitute system for time-and-effort reporting for employees whose salaries are supported by multiple cost objectives, but who work on a predetermined schedule. ED also provided guidance to clarify the meaning of a "single cost objective." For more detail, see *Letter to Chief State School Officers on Granting Administrative Flexibility for Better Measures of Success* (Sept. 7, 2012) (<https://www2.ed.gov/policy/fund/guid/gposbul/time-and-effort-reporting.html>).

## 2. *Indirect Costs*

*ESEA programs in this Supplement to which a restricted indirect cost rate applies are Title I, Part A (84.010); MEP (84.011); 21st CCLC (84.287); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424).*

*This section also applies to Adult Education (84.002); IDEA (84.027 and 84.173); CTE (84.048); and IDEA, Part C (84.181).*

A "restricted" indirect cost rate (RICR) must be used for programs administered by state and local governments and their governmental subgrantees that have a statutory requirement prohibiting the use of federal funds to supplant nonfederal funds. The programs listed above in this section have a non-supplanting requirement and therefore must have a restricted indirect cost rate.

Nongovernmental 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:

$$\text{RICR} = (\text{General management costs} + \text{Fixed costs}) / (\text{Other expenditures}).$$

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 cost principles in 2 CFR Part 200, Subpart E (34 CFR sections 76.560 and 76.563-76.569).

### 3. *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 2 CFR Part 200, Subpart E or as applicable.

- a. Separation leave costs (2 CFR section 200.431(b)).
  - b. Severance costs (2 CFR section 200.431(i)).
  - c. Post-retirement health benefit (PRHB) costs (2 CFR section 200.431(h)).
4. *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 2 CFR section 200.465(c).

### **C. Cash Management**

*ESEA programs in this Supplement to which this section applies are: CSP (84.282); 21st CCLC (84.287); and Title IV, Part A (84.424).*

*This section also applies to Adult Education (84.002); 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 ESSER, GEER, EANS, ESF – SEA.*

Note: This section applies only to ED 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 ED 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 Form 270, *Request for Title IV Reimbursement or Heightened Cash Monitoring 2 (HCM2)*, (OMB No. 1845-0089), 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 Form 270, as applicable.

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 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.

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

See individual program supplements for any matching requirements.

### **2. Level of Effort**

#### **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); Title III, Part A (84.365); 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. See also III.G.2 in the ESF program section for ESSER, GEER, and EANS (84.425C, D, R, U, and V) program-specific requirements in this Supplement for the state maintenance of effort provisions applicable to that program.*

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, an SEA must reduce an LEA’s allocation under a covered program if the LEA also failed to maintain effort in one or more of the five immediately preceding fiscal years 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 8521 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 suggested audit procedures for compliance contained in Part 3G for “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.

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

*MEP (84.011); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424). See III.G.2.2 – Level of Effort in the Title I, Part A (84.010) program-specific requirements in this Supplement for the supplement not supplant provisions applicable to that program.*

*General – 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 nonfederal sources for the education of participating students. In no case may an LEA use federal program funds to supplant funds from nonfederal sources (MEP, Section 1304(c)(2) of ESEA (20 USC 6394(c)(2)); Title III, Part A, Section 3115(g) (20 USC 6825(g)) (see additional information below); Title II, Part A, Section 2301 of ESEA (20 USC 6691)); and Title IV, Part A, Section 4110 (20 USC 7120)).*

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 nonfederal funds (or for Title III, Part A, other federal funds, as noted below) in the prior year.
- c. The SEA or LEA used MEP funds to provide services for participating children that the SEA or LEA provided with nonfederal 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 nonfederal funds had the federal funds not been available.

*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 the MEP, as identified in Title I of ESEA (sections 1118(d) and 1304(c)(2) of ESEA (20 USC 6321(d) and 6394(c)(2)); 34 CFR section 200.88).

Title I, Part C funds may only be used to address the needs of migratory children that are not addressed by services available from other **federal or nonfederal** programs (Section 1306(b)(2) of ESEA). *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 English learners and immigrant children and youth (Section 3115(g) of ESEA (20 USC 6825(g))).

### 3. Earmarking

#### a. Administration

*Title I, Part A (84.010) 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, as is the case for fiscal year (FY) 2019, 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 it could reserve for administration of Title I programs from FY 2021 funds if \$14 billion were appropriated for FY 2020. 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 Education* (May 23, 2003) (<https://oese.ed.gov/files/2020/07/seaguidanceforadjustingallocations.doc>) and page 9 of the ESSA Fiscal Changes & Equitable Services guidance (November 2016) ([ESSA Non Regulatory Guidance Fiscal and Equitable Service 11-21-2016 \(PDF\) \(ed.gov\)](#)).

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 8201(a) of ESEA (20 USC 7821(a)).

b. Transferability

*Title II, Part A (84.367); and Title IV, Part A (84.424).*

SEAs may transfer up to 100 percent of the non-administrative funds allocated for state-level activities from one or more of the programs listed above (as well as 21st CCLC) to one or more of those programs, or to Title I, Part A (84.010); MEP (84.011); Title I, Part D, Subpart 1 (84.013); Title III, Part A (84.365A); or Title V, Part B (84.358). LEAs may transfer up to 100 percent of their allotments from one or more of the programs listed above to one or more of those programs, or to Title I, Part A (84.010); MEP (84.011); Title I, Part D, Subpart 2 (84.013); Title III, Part A (84.365A); or Title V, Part B (84.358).

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.

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 5103(a) and (b) of ESEA (20 USC 7305b(a) and (b))).

**H. Period of Performance (All Grantees)**

*ESEA program in the Supplement to which this section applies are MEP (84.011); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424).*

*This section also applies to Adult Education (84.002); IDEA (84.027 and 84.173); CTE (84.048); and IDEA, Part C (84.181).*

*All ESEA and other programs as identified in the program documents except subrecipients under Career Technical Education (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 2019 appropriation initially became available on July 1, 2019; and may be obligated by the grantee and subgrantee through September 30, 2021 (Section 421(b) of GEPA (20 USC 1225(b)); 34 CFR sections 76.703 through 76.710). See note about invited waiver that pertains to this requirement under “Waivers and Expanded Flexibility.”

*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)). See note about invited waiver that pertains to this requirement under “Waivers and Expanded Flexibility.”

*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 as amended by the Strengthening Career and Technical Education Act for the 21st Century Act (Perkins V) ((20 USC 2301 et seq., as amended by Pub. L. No. 115-224) (20 USC 2353(b))).

*Consolidated Administrative Funds* – Under those ESEA programs that allow for the consolidation of administrative funds, such 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):

<b>IF AN OBLIGATION IS FOR –</b>	<b>THE OBLIGATION IS MADE –</b>
(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.

IF AN OBLIGATION IS FOR –	THE OBLIGATION IS MADE –
(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-award cost that was properly approved by the state under the 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 ends.

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 ends in an attempt to offset audit disallowances. The disallowed costs must be refunded.

**L. Reporting**

**1. Financial Reporting**

*Title I, Part A (84.010); MEP (84.011); 21st CCLC (84.287); Title III, Part A (84.365); Title II, Part A (84.367);*

- a. *SF-270, Request for Advance or Reimbursement – Applicable (using the G5 System)*
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs – Not Applicable*
- c. *SF-425, Federal Financial Report – Not Applicable*
- d. *Form 270, Request for Title IV Reimbursement or Heightened Cash Monitoring 2 (HCM2) (OMB No. 1845-0089) – Applicable only to institutions placed on reimbursement payment method or Heightened Cash Monitoring 2 by ED.*

**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 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 of the ESEA. To determine its expenditures under Title I of the ESEA in a schoolwide program, an LEA could calculate the percentage of funds that Title I contributed to the schoolwide program and then apply that percentage to the total expenditures in the schoolwide program. Other reasonable methods may also be used (Section 8101(12) of ESEA (20 USC 7801(12))).

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 8101(1) of ESEA (20 USC 7801(1))).

#### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## N. Special Tests and Provisions

### 1. Participation of Private School Children

*ESEA programs in this Supplement to which this section applies are Title I, Part A (84.010); MEP (84.011); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424).*

*This section also applies to ESSER I and GEER I (84.425C and D), as well as ESF-SEA, ESF II-SEA, ESF-Governor, ESF II-Governor, and ARP-OA SEA (84.425A, H, and X, respectively).*

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 (Assistance Listing 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(c) of the ESEA (20 USC 6315(c)). The amount of funds an LEA makes available for equitable services under Title I, Part A must be equal to the proportion of funds generated by private school children from low-income families who reside in participating public school attendance areas. An LEA must determine the proportional share available for services for eligible private school children based on the total amount of Title I funds received prior to any expenditures or transfers of funds within the program, such as reservations for administration, parental involvement, and district-wide activities (20 USC 6320(a)(4)(A)). LEAs determine the proportional share by multiplying the proportion of children from low-income families who attend private schools and live in participating Title I attendance areas by the LEA’s total Title I allocation (including any funds transferred into Title I). For more information, see Title I, Part A of the ESEA: Providing Equitable Services to Eligible Private School Children, Teachers, and Families (October 7, 2019) (<https://oese.ed.gov/files/2020/07/equitable-services-guidance-100419.pdf>).

For programs under Title VIII of the ESEA (Assistance Listing 84.011, 84.365, 84.367, and 84.424), ESF-SEA I (Assistance Listing 84.425A), and ESF-Governor I (Assistance Listing 84.425H), an agency, consortium, or entity 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, consortium, or entity makes any decision that affects the opportunity of eligible private school children, teachers, and other educational personnel to participate, the agency, consortium, or entity 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 (Section 8501 of ESEA (20 USC 7881); 34 CFR sections 299.6 through 299.9).

For programs under ESSER I and GEER I (Assistance Listing 84.425C and D), an LEA that receives funds under one or both of those programs must provide equitable services in the same manner as provided under section 1117 of Title I, Part A of the ESEA (20 USC 6320) (Assistance Listing 84.010) to students and teachers in private schools as determined in consultation with private school officials (section 18005(a) of the CARES Act). To meet this requirement, an LEA must determine the proportional share of ESSER I or GEER I funds available for equitable services in accordance with section 1117(a)(4)(A) of the ESEA (20 USC 6320(a)(4)(A)). Consistent with the guidance referenced below, under ESSER I and GEER I, the LEA in which a private school is located is responsible for providing equitable services to students and teachers in the school. With respect to the provision of services, in general all students and teachers in a private school are eligible to receive equitable services under ESSER I and GEER I. However, an LEA may limit eligibility to students who are low achieving and reside in a Title I public school attendance area in the LEA consistent with the Title I, Part A equitable services requirements in section 1117 of the ESEA. In addition, if a Governor (under GEER I) or an SEA (through the SEA reserve fund under ESSER I) targets funds for a specific purpose or population of public school students, an LEA may similarly target services for private school students. For more information, see questions 4 and 7–11 in Providing Equitable Services to Students and Teachers in Non-Public Schools under the CARES Act Programs (Oct. 9, 2020) (<https://oese.ed.gov/files/2020/10/Providing-Equitable-Services-under-the-CARES-Act-Programs-Update-10-9-2020.pdf>).

An LEA that receives funds under ESSER II or GEER II is not required to provide equitable services to students and teachers in private schools.

For programs under ESF-SEA, ESF II-SEA, ESF-Governor, ESF II-Governor, and ARP-OA SEA, SEAs and governors will ensure that equitable services, as determined through timely and meaningful consultation with non-public school officials, will be provided to students and teachers in non-public elementary and secondary schools in the same manner as provided under section 8501 of the ESEA.

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 the private school. The contract must be under the control of the public agency (Sections 1117(d), and 8501(d) of ESEA (20 USC 6320(d), and 7881(d); section 18005(b) of the CARES Act; 34 CFR sections 76.661, 200.64(b)(3), 200.67, and 299.9).

These compliance requirements also apply to transfers from *Title II, Part A (84.367)* and *Title IV, Part A (84.424)* (Section 5103(e)(2) of ESEA (20 USC 7305b(e)(2)), as provided in III.A.3, “Activities Allowed or Unallowed – Transferability”).

**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**

- a. Verify, by reviewing minutes of meetings and other appropriate documents, that the agency, consortium, or entity 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 the amount of funds available for equitable services in an LEA was determined by multiplying the proportion of private school children from low-income families residing in participating public school attendance areas by the LEA’s total Title I, Part A allocation.
- d. If an agency, consortium, or entity provides services to eligible private school students under an arrangement with a third party provider, verify that the agency, consortium, or entity retains proper administration and control by having a written contract that:
  - (1) Describes the services to be provided; and
  - (2) Provides that the agency, consortium, or entity retains ownership of materials, equipment, and property purchased with Federal I funds.
- e. For programs other than Title I, Part A, ESSER I, and GEER I, 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. Access to Federal Funds for New or Significantly Expanded Charter Schools**

*ESEA programs in this Supplement to which this section applies are Title I, Part A (84.010); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424).*

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 IV, Part C, of the ESEA (Section 4310(2) of ESEA (20 USC 7221i(2))). 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 five 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. For purposes of implementing the hold harmless protections in sections 1122(c) and 1125A(f)(3) of Title, Part A of ESEA for a new or expanding charter school LEA, an SEA must calculate a hold-harmless base for the prior year that, as applicable, reflects the new or expanding enrollment of the charter school LEA (Section 4306(c) of ESEA (20 USC 7221e(c))). For more detail, see pages 4–7 of the ESSA Fiscal Changes & Equitable Services guidance (November 2016) ([ESSA Non Regulatory Guidance Fiscal and Equitable Service 11-21-2016 \(PDF\) \(ed.gov\)](#)).

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 five 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 4306 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.
- g. For Title I, Part A, review documentation to determine whether the SEA applied section 4306(c) of the ESEA to calculate a hold-harmless base for the prior year that reflects the new or significantly expanded enrollment of the charter school LEA.

**3. Oversight and Monitoring Responsibilities with Respect to Charter Schools with relationships with Charter Management Organizations (SEAs/LEAs)**

*ESEA programs in this Supplement to which this section applies are Title I, Part A (84.010); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424).*

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: As stated earlier, in recent years, the Office of Inspector General in ED has investigated a number of significant criminal cases related to the risk of misuse of federal funds and the lack of accountability of federal funds in public charter schools. Auditors should be aware that, unless an applicable program statute provides otherwise, public charter schools and charter school LEAs are subject to the requirements in this cross-cutting section to the same extent as other public schools and LEAs. Auditors also should note that, depending upon state law, a public charter school may be its own LEA or a school that is part of a traditional LEA.

**Compliance Requirements** As grantees, SEAs/LEAs are responsible for overseeing and monitoring subrecipients, including charter schools with relationships with Charter Management Organizations (CMOs). The SEA/LEA must: (1) evaluate each subrecipient's risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining appropriate subrecipient monitoring (2 CFR section 200.331(b)); and (2) monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved (2 CFR section 200.331(d)).

Charter schools with relationships with CMOs that receive federal grant funds must comply with statutes authorizing the applicable grant program, regulations, the terms and conditions of their grant awards, and relevant department-issued guidance. Additionally, under Title 2 of the Code of Federal Regulations Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Grant Guidance), nonfederal entities that receive federal grants: (1) must establish and maintain effective internal controls over those funds and (2) should have internal controls that comply with the US Government Accountability Office (GAO) “Standards for Internal Control in the Federal Government” (Green Book), issued in November 1999 and updated in September 2014, or the “Internal Control – Integrated Framework,” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in 1992 and updated in May 2013. The Green Book and the COSO Internal Control – Integrated Framework (COSO framework) provide specific requirements for assessing and reporting on controls in the federal government.

Additional requirements applicable to nonfederal entities receiving federal funds include: (1) the Code of Federal Regulations (CFR) requirements regarding conflicts of interest, (2) guidance regarding related-party transactions in generally accepted accounting principles, and (3) the GAO Green Book and COSO framework guidance regarding segregation of duties applicable to charter schools with relationships with CMOs.

**Audit Objectives (SEA/LEA, depending on which entity is responsible for the oversight and monitoring of charter schools with relationships with CMOs)**

Determine whether the SEA/LEA is fulfilling its oversight and monitoring responsibilities with respect to charter schools with relationships with CMOs and whether the SEA/LEA has effective internal controls to mitigate identified risks.

**Suggested Audit Procedures (SEA/LEA, depending on which entity is responsible for oversight and monitoring of charter schools with relationships with CMOs)**

- a. Determine if the entity has subrecipient monitoring policies and procedures that include a review of charter schools with relationships with CMOs, including procedures to assess the risk posed by conflicts of interest, related party transactions, and insufficient segregation of duties.
- b. Determine whether the entity's subrecipient monitoring policies and procedures with regard to charter schools with relationships with CMOs have been implemented.
- c. Review documentation of subrecipient monitoring of charter schools with relationships with CMOs, including review of monitoring reports and follow-up activities to track the correction of identified noncompliance, such as completion of corrective action plans.
- d. Determine whether the entity has internal controls designed to provide reasonable assurance that charter schools with relationships with CMOs have effective controls to mitigate financial risks, provide for accountability over federal funds, and mitigate performance risks.

**IV. OTHER INFORMATION***1. Consolidation of Administrative Funds (SEAs and LEAs)*

*ESEA programs in this Supplement to which this section applies are Title I, Part A (84.010); MEP (84.011); CSP (84.282); 21st CCLC (84.287); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424).*

*This section also applies to ESSER, GEER, and EANS (84.425C, D, R, U, and V).*

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.

*2. Schoolwide Programs (LEAs)*

*ESEA programs in this Supplement to which this section applies are Title I, Part A (84.010); MEP (84.011); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424).*

*This section also applies to IDEA (84.027 and 84.173) and CTE (84.048).*

Since schoolwide programs are not separate federal programs, as defined in 2 CFR section 200.42, 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.

3. *Transferability (SEAs and LEAs)*

*ESEA programs in this Supplement to which this section applies are Title II, Part A (84.367) and Title IV, Part A (84.424).*

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.

4. *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 audit under 2 CFR Part 200, Subpart F, 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 (Assistance Listing 84.041) and programs under the Higher Education Act (i.e., the Family Federal Education Loan Program (Assistance Listing 84.032) and the other ED programs covered in the Student Financial Assistance Cluster in Part 5 of the Supplement).

## DEPARTMENT OF EDUCATION

### ASSISTANCE LISTING 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 (1) become literate and obtain the knowledge and skills necessary for employment and economic self-sufficiency; (2) obtain the education and skills that are necessary to become full partners in the educational development of their children and lead to sustainable improvements in the economic opportunities for their family; and (3) attain a secondary school diploma and transition to postsecondary education and training, including through career pathways. These grants also assist immigrants and other individuals who are English language learners in improving their reading, writing, speaking, and comprehension skills in English and mathematics and in acquiring an understanding of the American system of government, individual freedom, and the responsibilities of citizenship.

#### II. PROGRAM PROCEDURES

To receive funds, states must submit to the secretaries of Labor and Education, and have approved, a four-year unified or combined state plan (state plan) that covers the program, as well as certain other core programs required to be included in the plan under the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. No. 113-128). State plans must be modified at the end of the first two-year period and may be revised at other times when substantial changes in conditions occur. Funds are awarded to the state eligible agency each year in accordance with a statutory formula. In turn, the state eligible agency makes awards to eligible providers on a competitive basis, using the same competitive process for all eligible providers, and ensures that all eligible providers have direct and equitable access to apply and compete for funds. Local activities, implemented by eligible providers, include services or instruction in one or more of the following categories: adult education, workplace adult education and literacy activities, family literacy activities, English language acquisition activities, integrated English literacy and civics education, workforce preparation activities, and integrated education and training.

Eligible providers are organizations with demonstrated effectiveness in providing adult education and literacy activities and may include a local educational agency; a community-based organization or faith-based organization; a volunteer literacy organization; an institution of higher education; a public or private nonprofit agency; a library; a public housing authority; a nonprofit institution that has the ability to provide adult education and literacy services to eligible individuals; a consortium or coalition of the agencies, organizations, institutions, libraries, or authorities described above; and a partnership between an employer and an entity listed above.

#### Source of Governing Requirements

The program is authorized by the Adult Education and Family Literacy Act (AEFLA), Title II of WIOA (Pub. L. No. 113-128 (29 USC 3271 et seq.)).

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	Y	Y	N	N	N	Y	N

#### A. Activities Allowed or Unallowed

The state 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: adult education, workplace adult education and literacy activities, English language acquisition activities, integrated English literacy and civics education, workforce preparation activities, and integrated education and training (29 USC 3272(2) and 3321(b); 34 CFR section 463.30).

##### 1. State-Level Activities

State eligible agencies must use AEFLA funds for the following:

- a. Subgrants to eligible providers (29 USC 3302(a)(1) and 3321(a)).
- b. State administrative costs, including the development, and implementation of the state plan; consultation with other appropriate agencies, groups, and individuals in the development and implementation of AEFLA activities;



and coordination and non-duplication with related federal and state programs (29 USC 3301 and 3302(a)(3)).

- c. State leadership activities including the following required activities: (1) alignment of adult education and literacy activities with other WIOA core programs to implement the strategy identified in the state plan; (2) high-quality professional development programs; (3) technical assistance to eligible providers; and (4) monitoring and evaluation of adult education and literacy activities (29 USC 3302(a)(2) and 3303(a)(1)).

## 2. *Subrecipient Activities*

Subrecipient activities are described in the eligible provider's approved application. Eligible providers may also use funds for administrative costs (see III.G.3.b, "Matching, Level of Effort, Earmarking – Earmarking," for a limitation) (29 USC 3272(2), 3321(b), and 3323(a)(2)); 34 CFR sections 463.25, 463.26, and 463.30).

## **B. Allowable Costs/Cost Principles**

See Part 4, 84.000 ED Cross-Cutting Section.

## **C. Cash Management**

See Part 4, 84.000 ED Cross-Cutting Section.

## **E. Eligibility**

### **1. Eligibility for Individuals**

Eligible individuals are 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 are basic skills deficient, do not have a secondary school diploma or its recognized equivalent and have not achieved an equivalent level of education, or are English language learners (29 USC 3272(4)).

### **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. Each state eligible agency providing adult education and literacy services shall provide a nonfederal contribution of at least 25 percent of the total amount of funds expended for adult education and literacy activities in the state (29 USC 3302(b)(1)(B)).
- b. A state eligible agency serving an outlying area shall provide a nonfederal contribution equal to 12 percent of the total amount of funds for adult education and literacy activities in the outlying area, unless ED allows a smaller nonfederal contribution (29 USC 3302(b)(1)(A)).
- c. A state eligible agency's nonfederal contribution may be provided in cash or in-kind, fairly evaluated, and shall include only nonfederal funds that are used for adult education and literacy activities in a manner that is consistent with the purpose of AEFLA (29 USC 3302(b)(2)).

**2. Level of Effort****2.1 Level of Effort – Maintenance of Effort**

A state eligible agency may receive funds for any fiscal year if ED 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 state eligible agency for adult education and literacy activities, in the third preceding fiscal year (29 USC 3331(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) Funds used for grants and contracts for eligible providers shall not be less than 82.5 percent of the state eligible agency's grant funds (29 USC 3302(a)(1)).
  - (2) Funds used for corrections education and education for other institutionalized individuals shall not be more than 20 percent of

the 82.5 percent available for grants and contracts for eligible providers (29 USC 3302(a)(1) and 3305); 34 CFR Part 463, Subpart F).

- (3) Funds used for state leadership activities shall not exceed 12.5 percent of the state eligible agency's grant funds (29 USC 3302(a)(2) and 3303)).
  - (4) Funds used for necessary and reasonable administrative expenses of the state eligible agency shall not be more than 5 percent of the grant funds, or \$85,000, whichever is greater (29 USC 3302(a)(3)).
- b. *Subrecipients* – Eligible providers must use at least 95 percent of the funds received from the state eligible agency to carry out adult education and literacy activities unless a lower limit has been agreed to by the state eligible agency. Eligible providers may use up to 5 percent of their funds for noninstructional costs, including planning, administration, professional development, providing services in alignment with the local workforce development plan required under WIOA, and fulfilling certain one-stop partner responsibilities required by Section 121(b)(1)(A) of WIOA (this may include using funds to pay for infrastructure costs of one-stop centers in accordance with Section 121(b)(1)(A) of WIOA). In cases when the 5 percent limit is too restrictive, the eligible provider must negotiate with the state eligible agency to determine the adequate level of funds for noninstructional purposes (29 USC 3323; 34 CFR sections 463.25 and 463.26).

#### **H. Period of Performance**

See Part 4, 84.000 ED Cross-Cutting Section.

#### **M. Subrecipient Monitoring**

See 2 CFR 200.331 Requirements for Pass-through Entities.

#### **IV. OTHER INFORMATION**

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 ED Cross-Cutting Section for these requirements.

**DEPARTMENT OF EDUCATION****ASSISTANCE LISTING 84.010 TITLE I GRANTS TO LOCAL EDUCATIONAL AGENCIES (TITLE I, PART A OF THE ESEA)****I. PROGRAM OBJECTIVES**

The objective of this program is to improve the teaching and learning of children who are at risk of not meeting challenging state academic standards and who reside in areas with high concentrations of children from low-income families.

**II. PROGRAM PROCEDURES**

The US Department of Education (ED) provides funds under Title I, Part A (hereafter Part A) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA) (Pub. L. No. 114-95), 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) (Assistance Listing 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 ESEA (20 USC 6311), or (2) a consolidated state plan that includes Part A, in accordance with Section 8302 of the ESEA (20 USC 7842). Each SEA included Part A in a consolidated state plan. This plan, after approval by ED, remains in effect for the duration of the state's participation in Part A under the current ESEA authorization. The plan must be updated to reflect substantive changes.

In general, to receive Part A funds, LEAs must have on file with the SEA an approved plan that includes the descriptions required under Section 1112(b) of the ESEA (20 USC 6312(b)). In lieu of an individual program plan, however, an LEA may include Part A as part of a consolidated application submitted to the SEA under Section 8305 of the ESEA (20 USC 7845).

LEAs allocate 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 or a school that receives a waiver from the SEA 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 state 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).

## Source of Governing Requirements

This program is authorized by Title I, Part A of the ESEA, as amended by the ESSA (20 USC 6301 through 6339 and 6571 through 6576)). Program regulations are found at 34 CFR Part 200. The regulations in 34 CFR parts 76, 77, and 299 apply to this program.

## Availability of Other Program Information

A number of documents posted on ED's website contain information pertinent to the Part A requirements in this Compliance Supplement. They are:

1. Title I, Part A of the ESEA: Providing Equitable Services to Eligible Private School Children, Teachers, and Families (October 7, 2019)  
<https://oese.ed.gov/files/2020/07/equitable-services-guidance-100419.pdf>
2. Supplement not Supplant under Title I, Part A of the ESEA (June 2019)  
<https://oese.ed.gov/files/2020/07/snsfinalguidance06192019.pdf>
3. ESSA Fiscal Changes & Equitable Services (November 2016)  
<https://oese.ed.gov/files/2020/07/essaguidance160477.pdf>

Note: The information on Title I, Part A equitable services in this document is superseded by the document listed under #1 above <https://oese.ed.gov/files/2020/07/equitable-services-guidance-100419.pdf>

4. ESSA Schoolwide Guidance (September 2016)  
<https://oese.ed.gov/files/2020/07/essaswpguidance9192016.pdf>
5. Letter from the Secretary on Test Security (June 2011)  
<https://www2.ed.gov/policy/elsec/guid/secletter/110624.html>
6. Within-District Allocations Under Title I, Part A of the Elementary and Secondary Education Act of 1965 (March 2020 Draft for Public Comment)  
<https://oese.ed.gov/files/2020/03/Draft-Within-District-Allocations-Guidance-3-11-2020-1.pdf>
7. 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)  
<https://oese.ed.gov/files/2020/07/titlei-reform.pdf>

Note: Although the period of availability for Title I ARRA funds has expired, the information in this document about the use of Part A funds remains generally applicable.

8. Implementing Response to Intervention (RTI) using Title I, Title III, and CEIS (Coordinated Early Intervening Services) Funds (August 2009)  
<https://oese.ed.gov/files/2020/07/rti.pdf>

9. Early Learning in the Every Student Succeeds Act (October 2016)  
<https://oese.ed.gov/files/2020/07/essaelguidance10202016.pdf>
10. The Community Eligibility Provision and Selected Requirements Under Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended (Revised March 2015)  
<https://oese.ed.gov/files/2020/07/15-0011.doc>
11. Homeless Student Guidance (Updated August 2018)  
<https://oese.ed.gov/files/2020/07/160240ehcyguidanceupdated082718.pdf>
12. Opportunities and Responsibilities for State and Local Report Cards Under the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act (September 2019)  
<https://oese.ed.gov/files/2020/07/report-card-guidance-final.pdf>
13. Fact Sheet: State-Administered Programs under the ESEA and the Nationwide Waiver from the U.S. Department of Agriculture to Allow Meal Pattern Flexibility in the Summer Food Service Program and the National School Lunch Program Seamless Summer Option through June 2021 (January 2021)  
<https://oese.ed.gov/files/2021/05/Fact-sheet-on-USDA-meals-waivers-Jan-2021.pdf>
14. List of Invited Waivers during calendar years 2020 and 2021 due to the COVID-19 Pandemic  
<https://oese.ed.gov/files/2021/03/20-21-Accountability-Waiver-Template-Final.pdf>  
<https://oese.ed.gov/files/2021/07/20-21-Fiscal-Waiver-Template.pdf>  
<https://oese.ed.gov/files/2020/04/template-covid-fiscal-waiver-19-2020.pdf>

As noted in Section IV, auditors should ascertain from the audited SEAs and LEAs whether the SEA or the LEA or its schools are operating under any approved waivers.

15. Frequently Asked Question About Waivers Related to the Title I, Part A Carryover Limitation Under the ESEA Due to COVID-19  
<https://oese.ed.gov/files/2021/08/FAQs-on-Title-I-carryover-waivers-8-2021.pdf>

Additional information is provided in the “Availability of Other Program Information” part of Part 4, 84.000 ED Cross-Cutting Section.

### **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2,

“Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	Y	N	N	N	Y	Y	Y

#### **A. Activities Allowed or Unallowed**

See also Part 4, 84.000 ED Cross-Cutting Section.

##### *SEAs*

SEAs must use regular federal fiscal year (FY) 2021 funds to provide subgrants to LEAs through their FY 2021 LEA allocation process. SEAs may reserve funds for state administration and Direct Student Services and must reserve funds for school improvement activities in accordance with the statutory requirements (Title I, Sections 1003, 1003A, and 1004 of ESEA (20 USC 6303, 6303b (if applicable), and 6304). (See also III.G.3.a, “Matching, Level of Effort, Earmarking – Earmarking,” below, and ED Cross-Cutting Section, 84.000, III.G.3.a.)

#### **B. Allowable Costs/Cost Principles**

See Part 4, 84.000 ED Cross-Cutting Section.

#### **E. Eligibility**

##### **1. Eligibility for Individuals**

Not Applicable

## 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. Except as follows, the LEA must use that measure consistently across the district to rank all its school attendance areas according to their percentage of poverty. For measuring the number of children from low-income families in a secondary school, an LEA may use the same measure it uses for elementary schools or apply the average percentage of children from low-income families in the elementary schools that feed into the secondary school.

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 or, at its discretion, high schools at or above 50 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 only if (1) the school meets the Part A 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 the ESEA; 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)*

From its total Part A allocation and before reserving any funds for allowable activities or allocating Part A funds to participating public school attendance areas or schools, an LEA must reserve, to provide equitable services to eligible private school children, the proportional share generated by children from low-income families who reside in participating public school attendance areas and who attend private schools. For the purpose of determining the proportional share (equitable services section of III.N., “Special Tests and Provisions”), the LEA may use 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 from a survey of families of private school children, allowing such survey results to be extrapolated from a representative sample if complete actual data are unavailable. 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 school attendance 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 proportional share of Part A funds available to serve private school children. An LEA may count private school children from low-income families every year or every two years.

After reserving Part A funds to provide equitable services to eligible private school students, homeless children, children in local institutions for neglected children, and any other allowable reservations, an LEA must allocate Part A funds to each participating school attendance area or school, in rank order, on the basis of the number of public school children from low-income families residing in the area or attending the school.

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 public-school 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. 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.

(Title I, Section 1113(c) of the ESEA (20 USC 6313(c)) and Title I, Section 1117(a)(4) of ESEA (20 USC 6320(a)(4) ); 34 CFR sections 200.64(a)(2)-(3), 200.77 and 200.78)

c. *Serving Homeless Children in Participating and Nonparticipating Schools and Children in Local Institutions for Neglected or Delinquent Children*

- (1) Before allocating Part A funds to school attendance areas and schools and based on its total allocation, an LEA must reserve funds to provide services comparable to those provided to children in participating school attendance areas and schools to serve:
  - (a) Children in local institutions for neglected children; and
  - (b) Homeless children and youths, including providing educationally related support services to children in shelters and other locations where homeless children may live and services not ordinarily provided to other children served by Part A.
- (2) An LEA may reserve funds to provide services comparable to those provided to children in participating school attendance areas and schools to serve:
  - (a) Children in local institutions for delinquent children; and
  - (b) 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

ED allocates funds by formula for basic grants, concentration grants, targeted grants, and education finance incentive grants, through SEAs, to each eligible LEA for which the Bureau of the Census has provided data on the number of children from low-income families residing in the school attendance areas of the LEA (the “Census list”). If there is an LEA in a state that is not on the Census list (see III.G.3.a, “Matching, Level of Effort, Earmarking - Earmarking,” below), the SEA must determine that the LEA is eligible under each formula as follows:

- a. Basic grants – an eligible LEA must have at least 10 formula children (i.e., the Census estimate of low-income children, children in neglected facilities and in publicly supported foster homes, and children from families that receive an annual payment from the TANF program (Assistance Listing 93.558) that exceeds the federal poverty level) and the number of formula children must exceed 2 percent of the LEA’s total population of children ages 5 through 17.
- b. Concentration grants – an eligible LEA must be eligible for basic grants and the number of formula children must exceed 6,500 children or 15 percent of the LEA’s total population of children ages 5 through 17 population.
- c. Targeted grants – an eligible LEA must have at least 10 formula children and the number of those children must equal or exceed 5 percent of the LEA’s total population of children ages 5 through 17.
- d. Education finance incentive grants – an eligible LEA must have at least 10 formula children and the number of those children must equal or exceed 5 percent of the LEA’s total population of children ages 5 through 17.

(Title I, Sections 1124-1125A of ESEA (20 USC 6333-6337; 34 CFR section 200.71)

## G. Matching, Level of Effort, Earmarking

### 1. Matching

Not Applicable

### 2. Level of Effort

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

See Part 4, 84.000 ED Cross-Cutting Section.

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

See Part 4, 84.000 ED Cross-Cutting Section.

**Compliance Requirements** An LEA may use Part A funds only to supplement the funds that would, in the absence of the Part A funds, be made available from state and local sources for the education of students participating in a Part A program. In no case may an LEA use Part A funds to supplant funds from state and local sources (Section 1118(b)(1) of ESEA (20 USC 6321(b)(1))). An LEA may not be required to (1) identify that an individual cost or service supported with Part A funds is supplemental; or (2) provide services through a particular instructional method or in a particular instructional setting (Section 1118(b)(3) of ESEA (20 USC 6321(b)(3))).

To demonstrate compliance, an LEA must demonstrate that it has a methodology (e.g., through written procedures) and uses it to allocate state and local funds to each Title I school and ensures that the school receives all of the state and local funds it would otherwise receive if it were not receiving Part A funds (i.e., the LEA's methodology may not take into account a school's Title I status) (Section 1118(b)(2) (20 USC 6321(b)(2))). An LEA may use a combination of methodologies to allocate state and local funds to schools (e.g., use a different methodology for high schools than it uses for elementary schools). An LEA also may design its methodology to take into consideration grade span or school type, student enrollment size, or schools in need of additional funds to serve high concentrations of children with disabilities, English learners, or other such groups of students the LEA determines require additional support.

An LEA need not have a methodology if it has (1) only one school; (2) only Title I schools; or (3) a grade span that contains only one school, only non-Title I schools, or only Title I schools (i.e., no methodology is required for this grade span).

This requirement applies to both schoolwide program schools and targeted assistance schools. Thus, a Title I targeted assistance school is not required to use Part A funds to provide supplemental services to identified children or to identify that an individual cost or service supported with Part A funds is supplemental. Part A funds still must be used only for allowable activities (i.e., in a Title I targeted assistance school, Part A funds may be used only to serve students who are failing, or most at risk of failing, to meet challenging state academic standards) (see sections 1114 and 1115 of ESEA (20 USC 6314 and 6315)).

If an LEA reserves state and local funds for district-level activities (i.e., funds that it does not allocate through its methodology to schools), the LEA must conduct activities with those funds in a manner that does not take into account a school's Title I status. In addition, to the extent an

LEA retains state and local funds to implement activities that are required by federal, state, or local law, the LEA must use those funds in a manner that does not take into account a school's Title I status.

An 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 Part A (Section 1118(d) of ESEA (20 USC 6321(d)); 34 CFR section 200.79).

### **Audit Objectives**

#### *LEAs*

- a. Determine whether an LEA has a methodology for allocating state and local funds to each Title I school that ensures the school receives all of the state and local funds it would otherwise receive if it were not receiving Part A funds; (2) determine whether the LEA implemented its methodology; (3) if the LEA reserves state and local funds for district-level activities, determine whether the LEA conducts activities with those funds in a manner that does not take into account a school's Title I status.

#### *SEAs*

Verify that the SEA reviews LEA compliance with the Part A supplement not supplant provision (e.g., through sub-recipient monitoring).

### **3. Earmarking**

See also Part 4, 84.000 ED Cross-Cutting Section and the following:

- a. Allocation of funds to LEAs (SEAs)

ED provides LEA allocation tables to SEAs for basic grants, concentration grants, targeted grants, and education finance incentive grants based on LEA-level data from the Bureau of the Census (Census list).

- (1) If there is an LEA in a state that is not on the Census list (e.g., charter school LEAs), the SEA must adjust the initial allocations provided by ED for any eligible LEA that is not on the Census list (see III.E.3, "Eligibility - Eligibility for Subrecipients," above) (34 CFR section 200.72).
- (2) In making the adjustments, the SEA must ensure that no eligible LEA is reduced below its hold harmless level. An LEA's hold harmless level is 85, 90, or 95 percent of the amount it was

allocated in the preceding year depending on its percentage of formula children (34 CFR section 200.73).

- (3) In making the adjustments, the SEA must apply section 4306(c) of the ESEA, as amended by the ESSA, which requires the SEA, for purposes of implementing the hold-harmless protections in sections 1122(c) and 1125A(f)(3) of the ESEA for a newly opened or significantly expanded charter school LEA, to calculate a hold-harmless base for the prior year that reflects the new or significantly expanded enrollment of the charter school LEA (20 USC 7221e(c)). For more information see pages 4–7 in the ESSA Fiscal Changes & Equitable Services guidance (November 2016) (<https://www2.ed.gov/policy/elsec/leg/essa/essaguidance160477.pdf>).

b. Targeting school improvement funds (SEAs)

Each SEA must ratably reduce the allocations of LEAs and also follow the special rule described below to reserve for school improvement activities the greater of:

- Seven percent of the SEA’s FY 2021 Part A award; or
- The sum of the total amount that the SEA reserved for school improvement under section 1003(a) from its FY 2016 Part A award (generally, 4 percent of that award) and the amount of the SEA’s FY 2016 School Improvement Grants (SIG) allocation under section 1003(g).

Special rule: In reserving funds for school improvement, an SEA may not reduce an LEA’s Part A allocation below the prior year’s amount. If funds are insufficient to reserve the amount described in the two bullets above, the SEA is not required to reserve this amount. The special rule in section 1003(h) of the ESEA took effect beginning with FY 2018 Part A funds that ED awarded states on July 1, 2018 (<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title20-section6303&num=0&edition=prelim>).

Of the amount reserved, the SEA must allocate not less than 95 percent directly to LEAs on a formula or competitive basis to support school improvement activities in schools identified for comprehensive support and improvement under ESEA Section 1111(c)(4)(D)(i) of the ESEA or implementing targeted support and improvement plans under ESEA Section 1111(d)(2) of the ESEA. 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.

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 the ESEA (Title I, Section 1003(a)-(h) of ESEA (20 USC 6303(a)-(h)); 34 CFR section 200.100(a)).

c. Funds reserved for state administration (SEAs)

From the amount received by the SEA for Part A, to administer Part A, an SEA may reserve no more than the greater of 1 percent of what the SEA would have received for Part A, if the appropriation for parts A, C, and D of Title I were \$14 billion (as indicated on a state administrative allocation table that ED provides to SEAs) or \$400,000 (\$50,000 for outlying areas) (Title I, Section 1004 (20 USC 6304); 34 CFR section 200.100(b)).

d. Funds reserved for Direct Student Services (SEAs: optional)

After meaningful consultation with geographically diverse LEAs, an SEA may, but is not required to, reserve a maximum of 3 percent of its Part A allocation for direct student services (Title I, Section 1003A (20 USC 6303b)).

## **L. Reporting**

### **1. Financial Reporting**

See Part 4, 84.000 ED Cross-Cutting Section.

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

See Part 4, 84.000 ED Cross-Cutting Section.

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## **N. Special Tests and Provisions**

### **1. Participation of Private School Children**

See Part 4, 84.000 ED Cross-Cutting Section.

## 2. Access to Federal Funds for New or Significantly Expanded Charter Schools

See Part 4, 84.000 ED Cross-Cutting Section.

## 3. Annual Report Card, High School Graduation Rate

**Compliance Requirements** An SEA and its LEAs must report graduation rate data for all public high schools at the school, LEA, and state levels using the four-year adjusted cohort rate and, at an SEA's or LEA's discretion, one or more extended-year adjusted cohort rates. Graduation rate data must be reported both in the aggregate and disaggregated by the subgroups in Section 1111(c)(2) of the ESEA, homeless status, status as a child in foster care using a four-year adjusted cohort graduation rate (and any extended-year adjusted cohort rates) (ESEA sections 1111(h)(1)(C)(iii)(II) and 8101(23), (25) (20 USC 6311(h)(1)(C)(iii)(II) and 7801(23), (25))). Except as noted below, only students who earn a regular high school diploma may be counted as a graduate for purposes of calculating graduation rates. The term "regular high school diploma" means the standard high school diploma that is awarded to the preponderance of students in the state and that is fully aligned with the state standards (but not to alternate academic achievement standards for students with the most significant cognitive disabilities) or a higher diploma. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma (GED), certificate of completion, certificate of attendance, or similar lesser credential (ESEA, Section 8101(43) (20 USC 7801(43))). An SEA may, but is not required to, award a state-defined alternate diploma for students with the most significant cognitive disabilities who take an alternate assessment aligned with alternate academic achievement standards. That diploma must be standards based, aligned with the state's requirements for a regular high school diploma, and obtained within the time period for which the state ensures the availability of a free appropriate public education. If an SEA awards an alternate diploma, the SEA may count those students in its four-year and any extended-year adjusted cohort graduation rate, even if the student takes more than four years to receive the alternate diploma (ESEA, Section 8101(23)(A)(ii)(I)(bb), (25)(A)(ii)(I)(bb) (20 USC 7801(23)(A)(ii)(I)(bb), (25)(A)(ii)(I)(bb))).

To remove a student from the cohort, a school or LEA must confirm, in writing, that the student transferred out, emigrated to another country, transferred to a prison or juvenile facility, 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 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 (ESEA sections 1111(h)(1)(C)(iii)(II) and 8101(23), (25) (20 USC 6311(h)(1)(C)(iii)(II) and 7801(23), (25))).

**Audit Objectives** Determine whether SEAs and LEAs have implemented appropriate policies and procedures for documenting the removal of a student from the adjusted cohort.



### **Suggested Audit Procedures**

#### *SEAs*

Review SEA policies and procedures that ensure that LEAs are maintaining appropriate documentation to confirm when students have been removed from the adjusted cohort.

#### *LEAs*

Verify that the LEA maintains appropriate written documentation to support the removal of a student from the regulatory adjusted cohort (see the last paragraph under “3” above).

### **4. Assessment System Security – (SEAs/LEAs)**

**Compliance Requirements** SEAs, in consultation with LEAs, are required to establish and maintain an assessment system that is valid, reliable, and consistent with relevant professional and technical standards. Within their assessment system, SEAs must have policies and procedures to maintain test security and ensure that LEAs implement those policies and procedures (Title I, Section 1111(b)(2)(B)(iii) of the ESEA (20 USC 6311(b)(2)(B)(iii))).

**Audit Objectives** Determine whether SEAs and LEAs have implemented policies and procedures regarding test security for the assessments.

### **Suggested Audit Procedures**

#### *SEAs*

- a. Review SEA policies and procedures for ensuring that the SEA and LEAs implement test security measures.
- b. Verify that the SEA has implemented the relevant policies and procedures.

#### *LEAs*

- a. Ascertain that the LEA has policies and procedures for ensuring that the LEA and its schools implement test security measures.
- b. Verify that the LEA and its schools implemented test security measures, for example, by reviewing documentation and interviewing LEA officials and school administrators and teachers.

### **5. Oversight and Monitoring Responsibilities with Respect to Charter Schools with relationships with Charter Management Organizations (SEAs/LEAs)**

See Part 4, 84.000 ED Cross-Cutting Section.

#### **IV. OTHER INFORMATION**

Note: Certain compliance requirements that apply to multiple programs are discussed once in the ED Cross-Cutting Section of this Supplement (84.000) rather than being repeated in each individual program. When applicable, Section III references the ED Cross-Cutting Section for these requirements.

Also, as discussed in the ED Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements. This includes waivers of certain Part A requirements that ED invited SEAs to apply for due to the COVID-19 Pandemic. Auditors should ascertain from the audited SEAs and LEAs whether the SEA or the LEA or its schools are operating under any approved waivers.

**DEPARTMENT OF EDUCATION****ASSISTANCE LISTING 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) assist states in supporting high-quality and comprehensive educational programs and services during the school year and, as applicable, during summer or intersession periods, that address the unique educational needs of migratory children; (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 challenging state academic standards; (3) ensure that migratory children receive full and appropriate opportunities to meet the same challenging state academic standards that all children are expected to meet; (4) help migratory children overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit the ability of such children to succeed in school; and (5) help 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 local operating agencies (LOAs). LOAs may be (1) a local educational agency (LEA) to which an SEA makes a subgrant, (2) a public or private agency with which an SEA or the secretary makes an arrangement, or (3) an SEA if the SEA operates the state's migrant education program or projects directly.

The amount of funding an SEA receives annually depends, in part, on the number of eligible migratory children that the SEA determined reside within the state and the number of eligible migratory children who received MEP-funded services provided by the state during summer or intersession programs. 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 LOA, depending on which agency provides the services and where the records are maintained.

In general, only eligible migratory children may receive MEP services. A "migratory child" means a child or youth who made a qualifying move in the preceding 36 months as a migratory agricultural worker or migratory fisher; or with, or to join, a parent or spouse who is a migratory agricultural worker or a migratory fisher. A qualifying move is a move due to economic necessity (a) from one residence to another residence; and (b) from one school district to another, except in the case of a state that comprises a single school district, wherein a qualifying move is from one administrative area to another within such district, or in the case of a school district of more than 15,000 square miles, wherein a qualifying move is a distance of 20 miles or more to a temporary residence (Title I, Part C, Section 1309(2)(5)(20 USC 6399(2)(5)). The 34 CFR section 200.81 further defines the following key terms: "agricultural work or employment," "fishing work or employment," "temporary employment," "seasonal employment," "personal subsistence," and "qualifying work."

**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). 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), 34 CFR Part 76, and 34 CFR Part 299 also apply.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	Y	N	N	Y	Y	Y

**A. Activities Allowed or Unallowed**

See also Part 4, 84.000 ED Cross-Cutting Section.

*SEAs*

SEAs may use funds to operate the program directly or through contracts or subgrants to LEAs or other LOAs 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; (b) provide instructional and support services that address the identified needs of the eligible children (children (including, but not limited to, preschool services, academic and career counseling, and advocacy and outreach); and (c) to support such objectives through

related activities such as, but not limited to, professional development, parental involvement, and transfer of student records.

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, 6391(c), and 6396(b)); 34 CFR section 200.82).

#### *LEAs or Other LOAs*

LEAs or other LOAs use funds in accordance with the agreement with the SEA to (a) identify eligible migratory children and their needs; (b) provide instructional and support services that address the identified needs of the eligible children; and (c) to support such objectives through related activities such as, but not limited to, professional development, parental involvement, and transfer of student records.

*Schoolwide Programs (LEAs)* – Before a school chooses to consolidate MEP funds in its schoolwide program, the school must (1) use these funds, in consultation with parents of migratory children or organizations representing those parents, or both, first to meet the unique educational needs of migratory students that result from the effects of their migratory lifestyle, and those other needs that are necessary to permit these students to participate effectively in school; and (2) document that these needs have been met (Title I, Part C, Section 1306(b)(4) of ESEA (20 USC 6396); 34 CFR sections 200.86 and 200.29(c)(1)).

## **B. Allowable Costs/Cost Principles**

See Part 4, 84.000 ED Cross-Cutting Section.

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

Not Applicable

### **2. Level of Effort**

#### **2.1 Level of Effort – Maintenance of Effort (SEAs/LEAs)**

Not Applicable

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

See Part 4, 84.000 ED Cross-Cutting Section.

**3. Earmarking**

## a. Administration

See Part 4, 84.000 ED Cross-Cutting Section.

## b. Transferability

Not Applicable

**H. Period of Performance (All grantees)**

See Part 4, 84.000 ED Cross-Cutting Section.

**L. Reporting****1. Financial Reporting**

See Part 4, 84.000 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 Part 4, 84.000 ED Cross-Cutting Section.

b. *Consolidated State Performance Report, Part II, Migrant Child Counts*  
(OMB No. 1810-0614)(1) Counts of Migratory 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 MEP-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 LOAs 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 2019–2020, the migrant child count data to be audited is in Section 2.3.1 of the Consolidated State Performance Report, Part II on school year 2018–2019 submitted to ED in February 2020.

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 migratory child (Title I, Part C, Section 1309(2)(5) (20 USC 6399(2)(5)); 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 (see also III.N.4, “Special Tests and Provisions – Child Counts – Quality Control Process”) (34 CFR section 200.89(d)).

- (2) Reporting the number of eligible migratory children to the SEA (LEAs or other LOAs, and SEAs providing direct services)

LEAs or other LOAs, 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)(8) of ESEA (20 USC 6394(c)(8)); 34 CFR sections 76.730 and 76.731).

- (3) *Key Line Items* – The following line item contains critical information: Part II, Section 2.4, Education of Migratory Children (Title I, Part C), Table 2.4.1.1, Category 1 Child Count (Eligible Migratory Children, the line titled “Total,” and Table 2.4.2, Category 2 Child Count (Eligible Migratory Children Served by the MEP During the Summer/ Intersession Term), the line titled “Total” (information by age/grade level does not need to be tested).

#### 4. **Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

### N. **Special Tests and Provisions**

#### 1. **Participation of Private School Children (SEAs/LEAs)**

See Part 4, 84.000 ED Cross-Cutting Section.

## 2. Priority for Services

**Compliance Requirements** SEAs and LEAs or other LOAs must give priority for MEP services to migratory children who made a qualifying move within the previous one-year period; and are failing, or most at risk of failing, to meet the challenging state’s academic standards, or have dropped out of school (Title I, Part C, Section 1304(d) of ESEA (20 USC 6394(d)).

**Audit Objectives** (*SEAs providing services directly and LEAs or other LOAs*) Determine whether the SEA or LEA or other LOA 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 who made a qualifying move within the previous one-year period; and are failing, or most at risk of failing, to meet the challenging state’s academic standards, or have dropped out of school (priority children).

**Suggested Audit Procedures** (*SEAs providing services directly and LEAs or LOAs*)

- a. Review the SEA’s or LEA’s or other LOA’s procedures to identify those individual migratory children who made a qualifying move within the previous one-year period; and are failing, or are most at risk of failing, to meet the challenging state academic standards, or have dropped out of school. Such procedures must include an accurate definition of priority for services.
- b. Review the SEA or LEA’s or other LOA’s process for selecting children to receive MEP services.
- c. Select a sample of migratory children who were identified as “priority for services” 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.)
- d. Review the SEA’s or LEA’s or other LOA’s procedures to accurately document the eligible migratory children who were identified as being “priority for services,” and the services provided to those children.

## 3. Subgrant Process (SEAs)

**Compliance Requirements** SEAs may provide MEP services either directly, or through LEAs or other LOAs. When 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 (1) the numbers of migratory children, (2) the needs of migratory children, (3) 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 each of the required factors is left to the SEA’s discretion (Title I, Part C, sections 1301 and 1304(b)(5) of the ESEA (20 USC 6391 and 6394(b)(5))).



**Audit Objectives** 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 or recent (e.g., previous year, average of most recent two or three years) information.
- b. Takes into account the following: (1) numbers of migratory children; (2) needs of migratory children; (3) “priority for services” requirement in Section 1304(d) of ESEA; and (4) availability of funds from other federal, state, and local programs.

## **4. Child Counts – Quality Control Process**

**Compliance Requirements** SEAs must establish and implement a system of quality controls for the proper identification and recruitment of eligible migratory children on a statewide basis that includes at a minimum, the components specified in ED regulations. These components include 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 LOAs; examining each COE by qualified personnel to verify eligibility; validating that eligibility determinations were made properly, including prospective re-interviewing of a randomly selected sample of children determined to be migratory during the performance reporting period (34 CFR section 200.89(b)(2)); 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. SEAs are required to describe specific aspects of their quality control process in Section 2.4.3 of the Consolidated State Performance Report, Part II (See III.L.3.b., “Reporting – Special Reporting - Consolidated State Performance Report, Part II, Migrant Child Counts”). SEAs may require LEAs and other LOAs to submit information to the SEA and comply with specified quality control procedures (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 <https://www2.ed.gov/programs/mep/coe2017.docx>).

**Audit Objectives** Determine whether the SEA and LEAs and other LOAs (1) established and implemented a quality control process that meets the requirements of ED regulations, and (2) whether the process is accurately reported in the Consolidated State Performance Report, Part II.

### **Suggested Audit Procedures**

*SEAs*

- a. Verify that the SEA has a documented a quality control process that meets the requirements of ED regulations, including processes for annual prospective re-interviewing of a sample of children determined to be eligible for the MEP during the performance reporting period (September 1 to August 31).
- b. Ascertain whether the quality control process was actually conducted in the manner described.
- c. Verify that the SEA accurately reported the quality control process in Section 2.4.3 of the Consolidated State Performance Report, Part II.

*LEAs and Other LOAs*

- a. Determine if the LEAs and other LOAs were required to submit information to the SEA relating to Section 2.4.3 of the Consolidated State Performance Report, Part II, and if so, what information was required, the processes for obtaining it, and how quality was ensured.
- b. Ascertain whether the LEAs and other LOAs complied with the SEA's requirements relating to obtaining, processing, and submitting accurate data required for Section 2.4.3 of the Consolidated State Performance Report, Part II.

**DEPARTMENT OF EDUCATION****ASSISTANCE LISTING 84.027 SPECIAL EDUCATION—GRANTS TO STATES (IDEA, Part B)****ASSISTANCE LISTING 84.173 SPECIAL EDUCATION—PRESCHOOL GRANTS (IDEA Preschool)****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) that emphasizes special education and related services designed to meet their unique needs and prepares them for further education, employment, and independent living; (2) ensure that the rights of children with disabilities and their parents 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 to States for Education of Children with Disabilities program (IDEA, Part B) and the Preschool Grants for Children with Disabilities program (IDEA Preschool) provide grants to states to assist them in meeting these purposes (20 USC 1400 et seq.).

IDEA's Special Education—Grants to States program (IDEA, Part B) provides grants to states, and through them to LEAs, to assist them in providing special education and related services to eligible children with disabilities ages 3 through 21 (20 USC 1411). (The obligation to make FAPE available to children with disabilities ages 3 through 5 and 18 through 21 depends on state law. All states require that FAPE be made available to children with disabilities ages 3 through 5, and most states mandate FAPE through age 20 or 21.) IDEA's Special Education—Preschool Grants program (IDEA Preschool), 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 educational 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 ages 3 through 5 years residing in the state (20 USC 1419(b)).

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)).

## 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.). Implementing regulations for these programs are 34 CFR Part 300.

## Availability of Other Program Information

A number of documents posted on ED's website contain information pertinent to the IDEA, Part B requirements in this Compliance Supplement:

1. Office of Special Education programs (OSEP) Memorandum 19-03, *Procedures for Receiving a Federal Fiscal Year (FFY) 2019 Grant Award Under Part B of the Individuals with Disabilities Education Act (IDEA)*  
<https://osep.grads360.org/#communities/pdc/documents/17658>
2. OSEP Memorandum 10-5, *Maintenance of Financial Support under the Individuals with Disabilities Education Act*, dated December 2, 2009  
<http://www2.ed.gov/policy/speced/guid/idea/monitor/mfs-12-2-2009.pdf>
3. OSEP Memorandum 15-10, *Issuance of Guidance on the Final Local Educational Agency (LEA) Maintenance of Effort (MOE) Regulations under Part B of the Individuals with Disabilities Education Act (IDEA)*, dated July 27, 2015  
<https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/osepmemo1510leamoeqa.pdf>

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	Y	Y	N	N	Y	N

**A. Activities Allowed or Unallowed**

See also Part 4, 84.000 ED Cross-Cutting Section.

1. *SEAs*

Allowable activities for SEAs are subgranting funds to LEAs and state administration, and other state-level activities (see Section III.G.3, “Matching, Level of Effort, Earmarking – 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 (1) for services and aids that also benefit nondisabled children; (2) for early intervening services; (3) to establish and implement high-cost or risk-sharing funds; and (4) 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, 300.34, 300.39, 300.202, and 300.208).

- b. *IDEA Preschool* – An 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); 34 CFR section 300.800).

## **B. Allowable Costs/Cost Principles**

See also Part 4, 84.000 ED Cross-Cutting Section.

The use of IDEA funds by a state, for the acquisition of equipment, or the 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).

## **F. Equipment and Real Property Management**

Acquisition of equipment and construction or alteration of facilities by the IDEA Part B programs must meet the prior approval requirements in, and be consistent with, the IDEA-specific requirements in 20 USC 1404 and 1412(a)(10)(B); and 34 CFR sections 300.144 and 300.718.

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

Not Applicable

### **2. Level of Effort**

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

##### **a. SEAs – Maintenance of State Financial Support**

- (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 nonfederal 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); 34 CFR section 300.230).

An SEA may meet the maintenance of effort requirement by either a total or per capita amount. See OSEP Memorandum 19-03, *Procedures for Receiving a Federal Fiscal Year (FFY) 2019 Grant Award Under Part B of the Individuals with Disabilities Education Act (IDEA)*, page 3, section 3, Maintenance of State Financial Support. This guidance is available at <https://osep.grads360.org/#communities/pdc/documents/17658>.

For more information on the maintenance of financial support requirements for SEAs, see OSEP Memorandum 10-5, *Maintenance of Financial Support under the Individuals with Disabilities Education Act*, dated December 2, 2009. This guidance is available at (same as #1 Memo 10-5) <http://www2.ed.gov/policy/speced/guid/idea/monitor/mfs-12-2-2009.pdf>.

- (3) For the purposes of establishing an LEA's eligibility for an award for a fiscal year, the SEA must determine that the LEA meets the eligibility standard (see III.G.2.1.b.(2), "Eligibility Standard") (34 CFR section 300.203(a)).

b. LEAs – Local Maintenance of Effort

(1) General

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, LEAs must meet (1) the eligibility standard and (2) the compliance standard. These standards are described in detail below in paragraphs b(2) and b(3), respectively.

Allowances may be made for (a) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services 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 (i) has left the jurisdiction of the agency, (ii) has reached the age at which the obligation of the agency to provide a FAPE has terminated, or (iii) 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).

Appendix E of 34 CFR Part 300 provides LEA maintenance of effort calculation examples. For more information on the LEA maintenance of effort requirements, see OSEP Memorandum 15-10, *Issuance of Guidance on the Final Local Educational Agency (LEA) Maintenance of Effort (MOE) Regulations under Part B of the Individuals with Disabilities Education Act (IDEA)*, dated July 27, 2015. This guidance is available at <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/osepmemo1510leamoeqa.pdf>.



(2) Eligibility Standard

- (a) To meet the eligibility standard for an award for a fiscal year, the LEA must budget for the education of children with disabilities at least the same amount, from at least one of the following sources, as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available:
- (i) Local funds only;
  - (ii) The combination of state and local funds;
  - (iii) Local funds only on a per capita basis; or
  - (iv) The combination of state and local funds on a per capita basis.
- (b) When determining the amount of funds that the LEA must budget to meet the requirement, the LEA may take into consideration, to the extent the information is available, the exceptions and adjustment provided in 34 CFR sections 300.204 and 300.205 that the LEA:
- (i) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the LEA is budgeting; and
  - (ii) Reasonably expects to take in the fiscal year for which the LEA is budgeting.
- (c) Expenditures made from funds provided by the federal government for which the SEA is required to account to the federal government or for which the LEA is required to account to the federal government directly or through the SEA may not be considered in determining whether an LEA meets the eligibility standard (34 CFR section 300.203(a)).

(3) Compliance Standard

Except as provided in 34 CFR sections 300.204 and 300.205, funds provided to an LEA under IDEA, Part B must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA

from local funds below the level of those expenditures for the preceding fiscal year.

An LEA meets this standard if it does not reduce the level of expenditures for the education of children with disabilities made by the LEA from at least one of the following sources below the level of those expenditures from the same source for the preceding fiscal year, except as provided in 34 CFR sections 300.204 and 300.205:

- (i) Local funds only;
- (ii) The combination of state and local funds;
- (iii) Local funds only on a per capita basis; or
- (iv) The combination of state and local funds on a per capita basis.

Expenditures made from funds provided by the federal government for which the SEA is required to account to the federal government or for which the LEA is required to account to the federal government directly or through the SEA may not be considered in determining whether an LEA meets the compliance standard (34 CFR section 300.203(b)).

(4) Subsequent Years Rule

If, in the fiscal year beginning on July 1, 2013, or July 1, 2014, an LEA fails to meet the eligibility standard or compliance standard in effect at that time, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the LEA's reduced level of expenditures.

If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirements of 34 CFR sections 300.203(b)(2)(i) or (iii) and the LEA is relying on local funds only, or local funds only on a per capita basis, to meet the eligibility standard or compliance standard, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under 34 CFR sections 300.203(b)(2)(i) or (iii) in the absence of that failure, not the LEA's reduced level of expenditures.

If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of 34 CFR section 300.203(b)(2)(ii) or (iv) and the LEA is relying on the combination of state and local funds, or the combination of state and local funds on a per capita basis, to meet the eligibility standard or compliance standard, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under 34 CFR sections 300.203(b)(2)(ii) or (iv) in the absence of that failure, not the LEA's reduced level of expenditures (34 CFR section 300.203(c)).

(5) Consequence of Failure to Maintain Effort

If an LEA fails to maintain its level of expenditures for the education of children with disabilities in accordance with 34 CFR section 300.203(b), the SEA is liable in a recovery action under Section 452 of the General Education Provisions Act (20 USC 1234a) to return to the Department of Education, using nonfederal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures in accordance the compliance standard in that fiscal year, or the amount of the LEA's Part B subgrant in that fiscal year, whichever is lower (34 CFR section 300.203(d)).

(6) Adjustment to Local Fiscal Effort

For any fiscal year for which the federal allocation received by an 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) and 34 CFR section 300.205(a)). 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. If, in making its annual determinations, an SEA determines that an LEA is not meeting the requirements of Part B of the IDEA, including the targets in the state's performance plan, the SEA must prohibit the LEA from reducing its maintenance of effort under 20 USC 1413(a)(2)(C) for any fiscal year (20 USC 1413(a)(2)(C) and 1416(f); 34 CFR sections 300.205 and 300.608(a)).

## 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 under paragraphs 3.a. and b. below.

### a. IDEA, Part B (SEAs)

- (1) *Funds Set Aside for State 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 fiscal year (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; 34 CFR section 300.704(a)).
- (2) *Funds Set Aside for Other State-Level Activities:* The maximum amount a state may reserve for other 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 some portion of 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 (20 USC 1411(e)(2)(B); 34 CFR section 300.704(b)(3)).

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, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities;
- (g) to assist 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)(C); 34 CFR section 300.704(b)(4)).
- (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 other state-level activities: (a) to finance 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); 34 CFR section 300.704(c)).
- (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 the 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)(1) and (2); 34 CFR sections 300.705(a) and (b)).

- b. IDEA, Preschool Grants Program (SEAs)
- (1) *Reservation for State Activities.* Each state may reserve, for each fiscal year, not more than the maximum amount of funds that the secretary determines may be retained by the state for administration and other state-level activities (20 USC 1419(d); 34 CFR section 300.812).
- (a) *Funds Set Aside for State Administration:* An SEA may use not more than 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 Part B of 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 (20 USC 1419(e); 34 CFR section 300.813).
- (b) *Funds Set Aside for Other State-Level Activities:* SEAs shall use funds reserved for state activities that are not used for administration for:
- (i) 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 ages 3 through 5;
- (ii) direct services for children eligible for services under this program;
- (iii) activities at the state and local levels to meet the performance goals established by the state under 20 USC 1412(a)(15);
- (iv) 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;
- (v) providing early intervention services (which must include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills) in accordance with

Part C of the IDEA to children with disabilities who are eligible for services under section 619 of the IDEA until such children enter, or are eligible under state law to enter, kindergarten; or

- (vi) at the state's discretion, continuing service coordination or case management for families who receive services under Part C of the IDEA (20 USC 1419(f); 34 CFR section 300.814).

- (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.
  - (a) 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.)
  - (b) 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.
  - (c) If an SEA determines that an LEA is adequately providing a FAPE to all children with disabilities ages 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 ages 3 through 5 residing in the areas they serve. The SEA may also retain those funds for use at the state level to the extent the state has not reserved the maximum amount of funds it is permitted to reserve for state-level activities under 34 CFR section 300.812 (20 USC 1419(g); 34 CFR sections 300.815 through 300.817).

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 with disabilities in the jurisdiction of the LEA multiplied by the number of children with disabilities participating in the schoolwide program (20 USC 1413(a)(2)(D); 34 CFR section 300.206).

d. Adjustments of Base Payments to LEAs

- (1) If a new LEA is created within a state, the state must 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.
- (2) If one or more LEAs are combined into a single LEA, the state must combine the base allocation of the merged LEAs.
- (3) 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 must be redistributed among affected LEAs based on the relative numbers of children with disabilities currently provided special education by each affected LEA.
- (4) If an LEA received a base payment of zero in its first year of operation, the state must 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. Coordinated Early Intervening Services (LEAs)

An LEA can use not more than 15 percent of the amount of federal Part B funds the LEA receives for any fiscal year (less any amount by which it reduces its expenditures under 20 USC 1413(a)(2)(C)) (see III.G.2.1.b.(6) in this section), in combination with other funds, to develop and implement, 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); 34 CFR section 300.226).

## H. Period of Performance

See also Part 4, 84.000 ED Cross-Cutting Section.

**I. Procurement and Suspension and Debarment**

Further, acquisition of equipment and construction or alteration of facilities by the IDEA Part B programs must meet the prior approval requirements in, and be consistent with, the IDEA-specific requirements in 20 USC 1404 and 1412(a)(10)(B); and 34 CFR sections 300.144 and 300.718.

**IV. OTHER INFORMATION**

Certain compliance requirements that apply to multiple ED programs are discussed once in the ED Cross-Cutting Section of this Supplement (84.000) rather than being repeated in each individual program. Where applicable, Section III references the ED Cross-Cutting Section for these requirements.

## DEPARTMENT OF EDUCATION

### ASSISTANCE LISTING 84.032 FEDERAL FAMILY EDUCATION LOANS (GUARANTY AGENCIES)

#### I. PROGRAM OBJECTIVES

Nonprofit 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. FFEL program loans include 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 program 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 the guaranty agency and ED and ED may waive some of the compliance requirements as part of the agreement. If a VFA exists, the auditor should review the VFA and determine (1) which of the 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.

The SAFRA Act, Title II of 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 FFEL program. Therefore, since 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, have only been made under the Federal Direct Student Loans (Direct Loan) program (Assistance Listing 84.268) and will not be handled by guaranty agencies.

#### Source of Governing Requirements

The FFEL program is authorized by the Title IV, Part B of the Higher Education Act (HEA) of 1965, as amended (20 USC 1071 to 1087-4). Program regulations are located at 34 CFR Part 682.

## Availability of Other Program Information

To help borrowers burdened by debt during the COVID-19 emergency, ED announced an expansion of the pause on federal student loan interest and collections to all defaulted loans in the FFEL program. ED issued Dear Colleague Letter (DCL) [GEN-21-03](#) on May 12, 2021, with an update on May 24, 2021, entitled “Expansion of Collections Pause to Defaulted FFEL Program Loans Managed by Guaranty Agencies (Updated May 24, 2021).”

The pause has a significant impact on guaranty agency operations, including the compliance requirements covered by this compliance supplement, that auditors should be aware of. For instance:

- Interest is being retroactively reduced to zero percent back to March 13, 2020 through May 1, 2022.
- Guaranty agencies are not allowed to charge and retain collection cost for loan rehabilitation, and for those rehabilitations that occurred during the period, the guarantor must make adjustments on the account before it is transferred to the new holder for interest and collection cost charged.
- Guaranty agencies are allowed to charge 2.8 percent collection cost to borrowers for consolidation loans (change from 18.5 percent), and any previous charges must be refunded to the Direct Loan consolidating servicer to adjust the borrower accounts.
- Guaranty agencies must make adjustments to interest and involuntary payments to loans that defaulted on/after March 13, 2020; these loans must be transferred to ED under Special Mandatory Assignment.
- Guaranty agencies may transfer funds from the Federal Fund to the Operating Fund without prior permission from ED to reimburse themselves for lost revenue and to make refunds to borrowers. Guaranty agencies who received additional funds from ED must report that activity on their Annual Report.

[DCL GEN-21-03](#) was issued without specific completion timelines. Due to the pause extension, the three groupings of loans won't end until early summer 2022, so each population continues to evolve. At the time this Compliance Supplement was revised, the DCL was mid-implementation and the guidance and requirements are subject to change. Any updates to the DCL will be added to the original posting with a reference to an update.

Auditors are reminded that they should (1) perform reasonable procedures to ensure that the requirements subject to audit in the Compliance Supplement are current and to determine whether there are any additional provisions of federal awards relevant to the compliance requirements subject to audit that should be covered by the single audit, and (2) update or augment the requirements contained in the Compliance Supplement, as appropriate.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	N	N	N	N	N	N	N	N	Y	N	Y

**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 – Investments 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, and annually. Instructions for this report are available at <https://ifap.ed.gov/sites/default/files/attachments/2020-02/GAFRGuideFY19FINALSep2019.pdf>.

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 NSLDS Enrollment Reporting Guide that describes this level of detail is available at [https://ifap.ed.gov/sites/default/files/attachments/2019-12/NewNSLDSEnrollmentReportingGuide\\_0.pdf](https://ifap.ed.gov/sites/default/files/attachments/2019-12/NewNSLDSEnrollmentReportingGuide_0.pdf).

*Key Line Items* - The following are identified as key data elements:

1. *Social security number*
2. *First name*
3. *Date of birth*
4. *Original school code*
5. *Academic level*
6. *Current school code*
7. *Enrollment status code*
8. *Enrollment status date*
9. *Originating lender code*
10. *Loan guarantee date*

11. *Amount of guarantee*
12. *Current holder lender code*
13. *Date repayment entered*
14. *Loan status code*
15. *Loan status date*
16. *Outstanding principal*
17. *Amount of claim paid to lenders (principal and interest)*
18. *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.1, "Current Records," III.N.2, "Conditions of Reinsurance Coverage," III.N.3, "Death, Disability, Closed Schools, False Certifications, Unpaid Refunds, Bankruptcy, and Teacher Loan Forgiveness Claims," and III.N.8, "Federal Fund and Agency Operating Fund."

#### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

Not Applicable

### **N. Special Tests and Provisions**

#### **1. Current Records**

**Compliance Requirements** The guaranty agency shall maintain current, complete, and accurate 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, including status date, updated at least once every 10 business days (34 CFR section 682.414(a)).

**Audit Objectives** 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. Verify that the status date is not the date the claim was paid but the actual date of occurrence (i.e., date of death on NSLDS).
- c. Identify whether any backlog exists that is over 10 days old.
- d. Verify that there are no duplicate records for a given borrower.

## **2. Conditions of Reinsurance Coverage**

**Compliance Requirements** 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 that met the requirements of 34 CFR section 682.411 (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 submitted a request for payment 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:

- a. Did not exercise due diligence in collecting the loan in accordance with 34 CFR section 682.411 (34 CFR section 682.406(a)(3)).
- b. 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)).
- c. Did not file a default claim with the guaranty agency within 90 days of default (34 CFR section 682.406(a)(5)).

(Note: The guaranty agency shall reject the claim based on due diligence (34 CFR section 682.406(a)(3)) or timely filing violations (34 CFR section 682.406(a)(5)), unless it was cured by the lender in accordance with 34 CFR Part 682, Appendix D (34 CFR section 682.406(b))).

- d. 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:

- a. 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)).
- b. Did not pay the lender within 90 days of the date the lender filed the claim (34 CFR section 682.406(a)(8)).

**Audit Objectives** 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.
  - (3) Calculated and reported the loan amount using the appropriate rate on the Form 2000.

**3. 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). The rules applicable to joint consolidation loans to married borrowers and co-makers on a PLUS loan are 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 five 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)).

**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.
- c. Verify that the guarantor calculated and reported the claim amount using the appropriate rate on the Form 2000.

#### **4. Default Aversion Assistance**

**Compliance Requirements** Upon receipt of a complete request from a lender, received no 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 (34 CFR section 682.404(a)(2)(ii)). In consideration of such efforts, the guaranty agency receives a default aversion fee (34 CFR section 682.404(j)).

*Calculating the Fee* – A guaranty agency may transfer a default aversion fee from its Federal Fund to its Operating Fund equal to 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(j)).

**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.

## **5. 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(j) and 682.410(b)(6)).

Under DCL [GEN-21-03](#), guaranty agencies were directed to stop all collection efforts in March 2021 and return any involuntary amounts collected.

**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.

## **6. Federal Share of Borrower Payments**

**Compliance Requirements** 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" for the applicable reinsurance rate. The complement of the reinsurance percentage equals 100 minus the federal reinsurance rate), and
- b. Sixteen percent of borrower payments (34 CFR section 682.404(g)(1)(ii)).

A guaranty agency may not retain the equitable share on loans that have been repaid by a Federal Consolidation Loan.

For defaulted loans, which are repaid by a consolidation loan, under separate authority, agencies are allowed to retain only the amount of collection costs charged to the borrower and paid off by the consolidation loan. The amount that may be retained is as follows: The guaranty agency can charge up to 18.5 percent of the outstanding principal and interest on the defaulted loan; however, the secretary is entitled to the lesser of actual collection costs charged or 8.5 percent of principal and interest outstanding on the defaulted loan, except that the guaranty agency may not retain any portion of the collection costs paid by a consolidation loan that exceed 45 percent of the agency's total collections on defaulted loans that year (34 CFR sections 682.401(b)(18) 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 (two 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 Objectives** 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.

## **7. Assignment of Defaulted Loans to ED**

**Compliance Requirements** 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).

DCL [GEN-21-03](#) required that guaranty agencies pause assigning loans that it would have otherwise assigned until it receives instructions from ED to resume those assignments and also required that guaranty agencies transfer loans meeting certain criterion to ED. Eligible loans for transfer include those in “population 2” of the DCL which is defined as:

“Population 2 includes outstanding loans on which a default claim was paid on or after March 13, 2020 and on or prior to the end date for the pause for loans held by [ED], that are not subject to an active bankruptcy filing, and are in default on or after the date of this letter...”

**Audit Objectives** Determine whether the guaranty agency assigned to ED all loans that were required to be assigned by statute, regulation, or DCL GEN-21-03, unless assignment has been paused in accordance with DCL GEN-21-03.

### **Suggested Audit Procedures**

Review the guaranty agency’s aging of loans and identifications of loan populations to ascertain if the guaranty agency is holding loans that should be assigned to ED.

## **8. 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. Earnings from investments of the Federal Fund.
- f. Other receipts as specified in regulations (34 CFR section 682.419(b)).

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)), including for any purpose authorized by the secretary (see N. Special Test 14. Lost Revenue).

#### *Agency Operating Fund*

The guaranty agency shall deposit into the Operating Fund:

- a. Account maintenance fees.
- b. Default aversion fees.
- c. 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).
- d. Other receipts as specified in regulations (34 CFR section 682.423(b)).

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 (34 CFR section 682.423(c)).

Past problem areas concerning fund revenue and expense have included:

- a. Failure to credit funds received into the Federal Fund, including lock-box operations, within the specified period.
- b. Unauthorized expenses paid from the Federal Fund assets.
- c. Failure to report all credits to the Federal Fund on ED Form 2000.
- d. Use of the Federal Funds for other programs (e.g., Leveraging Educational Assistance Partnerships [LEAP] and state programs).
- e. 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.

### **9. Investments – Federal Fund**

**Compliance Requirements** 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 (such as pooled investments as part of a state investment program). Earnings from the Federal Fund are the sole property of the federal government (Section 422A(b) of the HEA (20 USC 1072a(b)); and DCLID: [99-G-316](#)).

**Audit Objectives** 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.

## 10. Collection Charges

**Compliance Requirements** 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).

An agency that is limited to the amount charged by ED must conform its charges to the limits in paragraph 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 loan that is

paid off by a Federal Consolidation Loan. 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. 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)((18)(iv) (34 CFR section 682.401(b)(18)) (see III.N.6, “Federal Share of Borrower Payments”).

- b. Borrowers who make the required nine voluntary and on-time payments within ten months and whose loans are then rehabilitated by sale to an eligible lender may not be charged more than 16 percent of the outstanding principal and interest on the loans being rehabilitated (20 USC 1078-6(a)(1)(D)(i)(II)(aa); 34 CFR section 682.405(b)(1)(vi)). A guaranty agency may not charge any collection costs to a borrower who timely enters into a loan rehabilitation agreement or other repayment agreement as discussed in paragraph c, below.
- c. A guaranty agency may not charge collection costs to a borrower who enters into a loan rehabilitation agreement or other 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)).
- d. For loans rehabilitated on or after March 13, 2020, DCL [GEN-21-03](#) requires that collection costs be reduced for loans considered “Population 3” which includes outstanding loans that were in default during the pandemic (regardless of when the claim was paid) and for which that default was resolved through rehabilitation or consolidation prior to March 13, 2020. The DCL states that:

“To provide parity with the treatment of loans held by [ED], a [guaranty agency] may not add collection costs to the loan when it is successfully rehabilitated but may reimburse itself for those costs....”

Therefore, borrowers charged collection costs during this time are owed a refund from the guaranty agency.

**Audit Objectives** 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. Determine if the guaranty agency has corrected borrower accounts for loans rehabilitated before May 12, 2021, during the Pandemic period.

### **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.
- c. Review methodology for determining loans in Population 3 as defined by DCL GEN-21-03, and if the guaranty agency has made the required corrections. If the guaranty agency has not made the required corrections, document the identification method of Population 3 and validate these amounts.

## 11. Enforcement Action

**Compliance Requirements** 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 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 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 Objectives** 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 to review to ascertain if they meet the regulatory criteria or an alternative methodology approved by the secretary.
- b. Review the 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 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.

## 12. Access to National Student Loan Data System (NSLDS)

**Compliance Requirements** Section 485B of HEA (20 USC 1092b) establishes 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 (<https://ifap.ed.gov/dear-colleague-letters/04-11-2005-gen-05-06-access-and-use-nslds-information>) *Access To and Use of NSLDS Information*, dated April 8, 2005, and expanded July 2009 in NSLDS Organization Access Process located at ([NSLDS Access](#)) [Subject: NSLDS Organization Access Process | Knowledge Center](#).

Each organization using the NSLDS 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 Objectives** 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.

## 13. Implementation of Dear Colleague Letter GEN-21-03 “Expansion of Collections Pause to Defaulted FFEL Program Loans Managed by Guaranty Agencies (Updated May 24, 2021)”

**Compliance Requirements** [Dear Colleague Letter GEN-21-03](#) required that all guaranty agencies identify three populations for all loans in its portfolio, stating as follows:

“On March 30, 2021, the U.S. Department of Education [ED] announced an expansion of the pause on federal student loan interest and collections on all defaulted loans in the FFEL Program that are managed by [guaranty agencies]. These flexibilities will be in place for the same period of time as the pause for loans held by [ED], which is currently slated to run through September 30, 2021.”

(Note: This “end date” was [updated to be through May 1, 2022](#), by the secretary.)

There are three populations of FFEL Program loans covered by the announcement:

- Population 1 includes outstanding loans on which a default claim was paid prior to March 13, 2020, that are not subject to an active bankruptcy filing, and are still in default as of the date of this letter;
- Population 2 includes outstanding loans on which a default claim was paid on or after March 13, 2020 and on or prior to the end date for the pause for loans held by ED, that are not subject to an active bankruptcy filing, and are in default on or after the date of this letter; and
- Population 3 includes outstanding loans that were in default during the pandemic (regardless of when the claim was paid) and for which that default was resolved through rehabilitation or consolidation prior to the date of this letter.

#### **Actions Required to be Taken by Guaranty Agencies for Population 1**

- Interest rates must be set to 0 percent;
- Payments received through Administrative Wage Garnishment (AWG), the Treasury Offset Program (TOP), and other forms of involuntary collection since March 13, 2020, must be refunded;
- Borrowers who made voluntary payments must be given the option for a refund of those payments;
- All forms of involuntary collection must be suspended;
- All collection attempts (including billings) must cease; and
- Borrowers with active rehabilitation agreements must be notified they are not required to make further payments to receive credit toward rehabilitation.

#### **Actions Required to be Taken by Guaranty Agencies for Population 2**

- All actions required for Population 1 loans;
- Deleting the guaranty agency’s trade line from a borrower’s credit report entirely; and

- Mandatory assignment of these loans to ED.

### **Actions Required to be Taken by Guaranty Agencies for Population 3**

- All actions required for Population 1 loans; and
- Sending financial adjustments and associated money to purchasing lenders (for loan rehabilitations) or ED (for loan rehabilitations or consolidations).

The DCL describes in detail each action that guaranty agencies must take and the applicable waivers of the Higher Education Act of 1965, as amended (HEA), and ED’s implementing regulations that ED will exercise to facilitate these actions.

**Audit Objectives** Determine whether the guaranty agency has implemented DCL GEN-21-03 provisions and identify areas of non-implementation. Validate those controls used to identify each population are acceptable, reasonable and use a standardized approach. Identify and document all assumptions made in this process.

### **Suggested Audit Procedures**

- a. Review and evaluate the guaranty agency’s methods for determining the population for all loans in its portfolio.
- b. Validate that all actions required for each loan populations were followed. Identify any areas of non-compliance.

## **14. Calculation of Lost Revenue**

**Compliance Requirements** Dear Colleague Letter [GEN-21-03](#) allows a guaranty agency to reimburse itself from the Federal Fund for lost revenue that will be realized as a result of the implementation of the Dear Colleague Letter. That reimbursement, however, will only cover “...the share of what a [guaranty agency] might have reasonably collected during the pandemic but for the suspension. Lost revenue calculations will need to be submitted to Federal Student Aid’s Office of Partner Participation and Oversight’s Financial Oversight Service Group.

Guaranty agencies may reimburse themselves for this lost revenue from the Federal Fund on a quarterly basis based on their good-faith estimates, and without the requirement for prior approval from Federal Student Aid as to lost revenue. When the suspension ends, ED will compare the total amount reimbursed to the amount of lost revenue as submitted by the guaranty agency, with an attendant over-/under-payment process.

ED is not setting specific requirements for the guaranty agency’s estimate of its lost collection revenues for the purposes of seeking reimbursement from the Federal Fund, but the estimate must be made in good faith and supported by the guaranty agency’s records.

**Audit Objectives** Determine whether the guaranty agency has estimated its lost revenue in accordance with DCL GEN-21-03 and any additional related guidance and confirm that the estimation is supported by the guaranty agency’s records.

#### **Suggested Audit Procedures**

- a. Review the guaranty agency’s methods for determining its lost revenue and ensure that it complies with DCL GEN-21-03 and any relevant guidance.
- b. Review the guaranty agency’s lost revenue estimate and confirm that it is supported by the guaranty agency’s records.

#### **IV. OTHER INFORMATION**

Some “statewide” entities are defined to include a guaranty agency under the FFEL Program (Assistance Listing 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 2 CFR section 200.518(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 “Assistance Listing 84.032 (FFEL – Guaranty Agencies).”

##### *Use of Third Party Servicers*

Some guaranty agencies hire third party servicers to administer FFEL Program functions. Third party servicers are required to obtain a financial statement audit and an examination-level compliance attestation engagement under the March 2000 Audit Guide: Audits of Guaranty Agency Servicers Participating in the Federal Family Education Loan Program (Guaranty Agency Servicer Audit Guide), issued by ED. Auditors of guaranty agencies 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 Guaranty Agency Servicer Audit Guide for the entire audit period of the guaranty agency. If the third party servicer has a different audit period, the auditor of the guaranty agency must determine that the most recently required audit of the third-party servicer under the Guaranty Agency Servicer 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 Guaranty Agency Servicer Audit Guide for the immediate subsequent audit period. The auditor of the guaranty agency 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 guaranty agency audit.

If the auditor excludes coverage of guaranty agency compliance requirements performed by a third party servicer, the *Report on Compliance for Each Major Federal Program and Report on Internal Control Over Compliance Required by Uniform Guidance* must clearly describe the compliance requirements for which coverage has been excluded, name the third party servicer that performed those compliance requirements, state that the third party servicer has obtained an

audit performed under the March 2000 Guaranty Agency Servicer Audit Guide issued by ED, and specify the period of that audit. 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 guarantee agency and/or the third party servicer, 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

### ASSISTANCE LISTING 84.032 FEDERAL FAMILY EDUCATION LOANS (LENDERS)

#### I. PROGRAM OBJECTIVES

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 also qualified 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 sold to another lender, repaid, or a claim is paid on the loan.

A lender (other than a school lender) 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 2 CFR Part 200, Subpart F. (For Schools that are Lenders, see guidance in IV, "Other Information.")

The SAFRA Act, Title II of 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 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 (Assistance Listing 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:

1. Dear Partner (Colleague) Letters <https://ifap.ed.gov/ilibrary/document-types/dear-colleague-letters>
2. Electronic Announcement <https://ifap.ed.gov/ilibrary/document-types/electronic-announcements>
3. FFEL Special Allowance Rates [FFEL Special Allowance Rates | Library | Knowledge Center](#)
4. FFEL Variable Interest Rates [FFEL Variable Interest Rates | Library | Knowledge Center](#)
5. Dear Colleague Letter FP-07-01 FFELP Loans Eligible for 9.5 Percent Minimum Special Allowance Rate <https://ifap.ed.gov/dear-colleague-letters/01-24-2007-fp-07-01-ffelp-loans-eligible-95-percent-minimum-special>
6. Dear Colleague Letter FP-07-06 Audit Requirements for 9.5 Percent Minimum Special Allowance Payment Rate <https://ifap.ed.gov/dear-colleague-letters/04-27-2007-fp-07-06-audit-requirements-95-percent-minimum-special-allowance>
7. Dear Colleague Letter FP 07-12 -Determination of Not-For-Profit Holder Status for SAP Billing <https://ifap.ed.gov/dear-colleague-letters/12-28-2007-fp-07-12-determination-not-profit-holder-status-sap-billing>
8. Dear Colleague Letter FP 08-10 The Higher Education Opportunity Act <https://ifap.ed.gov/sites/default/files/attachments/dpcletters/GEN0812FP0810AttachHEO ADCL.pdf>
9. Dear Colleague Letter FP 12-01 Loan Verification Certificate for Special Direct Consolidation Loans <https://ifap.ed.gov/dear-colleague-letters/01-20-2012-fp-12-01-subject-loan-verification-certificate-special-direct>
10. Dear Colleague Letter FP 12-02 LIBOR-Based SAP under the Consolidated Appropriations Act, 2012 <https://ifap.ed.gov/sites/default/files/attachments/2019-05/LIBORLenderBulletinFeb2012.pdf>
11. Dear Colleague Letter FP 12-03 Corrections to GEN-11-19/FP-11-01 Revised Loan Discharge Application: Unpaid Refund <https://ifap.ed.gov/dear-colleague-letters/11-22-2011-gen-11-19-subject-revised-loan-discharge-application-unpaid>
12. Dear Colleague Letter GEN-12-01 Changes Made to the Title IV Student Aid Programs by the Recently Enacted Consolidated Appropriations Act, 2012 <https://ifap.ed.gov/dear-colleague-letters/01-18-2012-gen-12-01-subject-changes-made-title-iv-student-aid-programs>

13. Dear Colleague Letter GEN-16-08, Approval of Servicemember Civil Relief Act (SCRA) Interest Rate Limitation Request for the Direct Loan and FFEL Programs  
<https://ifap.ed.gov/dear-colleague-letters/05-05-2016-gen-16-08-subject-approval-servicemember-civil-relief-act-skra>

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
N	N	N	N	N	Y	N	Y	N	Y	N	Y

#### G. Matching, Level of Effort, Earmarking

##### 1. Matching

Not Applicable

##### 2. Level of Effort

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

Not Applicable

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

For schools that are lenders, proceeds from special allowance payments and interest payments from borrowers, interest subsidies received from the US Department of Education (ED), and any other proceeds from the sale of or other disposition of loans (exclusive of return of principal, any financing costs incurred by the school to acquire funds to make the loans, and the cost of charging origination fees or interest rates at less than the fees or rates authorized by the HEA) must be used to supplement, not to supplant, nonfederal 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.10, “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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *Lender’s Interest and Special Allowance Request and Report (LaRS) (OMB No. 1845-0013)* – The LaRS is used by ED to calculate interest subsidies, special allowance payments due to lenders, and excess interest owed ED. 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. When 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. (As there are no new loans originated under the FFEL program, this part is limited to adjustments and cancellations of previously disbursed loans.)

*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 and/or the amount of excess interest owed to ED, 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 certain reasonability edits and instructs the lender 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. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions****1. Individual Record Review**

**Compliance Requirements** 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, loans that were repaid by a consolidation loan or loans, 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 Objectives** 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:

- a. All periods prior to the beginning of the repayment period;
- b. Any period when the borrower has an authorized deferment (34 CFR section 682.300); and
- c. During a period that does not exceed three consecutive years from the established repayment period start date on each loan under the income-based repayment plan and that excludes any period during which the borrower receives an economic

hardship deferment if the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's loan or on the qualifying portion of the borrower's Consolidation Loan.

#### *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:

- a. January 1, 1993, but prior to August 10, 1993;
- b. August 10, 1993, but prior to November 13, 1997, if the loan consolidates only subsidized Stafford loans; or
- c. 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 Servicemembers 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). Lenders must also limit interest billing to ED to an interest rate of no more than 6 percent for borrowers that qualify for SCRA interest rate cap (34 CFR 682.208(j)).

#### *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 0.0875 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 0.05167 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 Objectives** 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 on which the lender has claimed 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 Requirements**

##### *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 computes 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 on a loan 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)). 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). 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).

### *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. 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;
- b. 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;
- c. A not-for-profit entity described in section 501(c)(3) of the Code; or
- d. A trustee acting on behalf of a governmental or nonprofit 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); 34 CFR section 682.302(f)(3)).

Loans that are held by a governmental or nonprofit 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 nonprofit entity—

- a. 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;
- b. Is neither owned nor controlled, even in part, by a for-profit entity; and
- c. 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 nonprofit 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 nonprofit 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:

- a. The proceeds of a tax-exempt obligation originally issued prior to October 1, 1993;
- b. Collections or default payments by a guarantor on a loan acquired with the proceeds of such an obligation;
- c. Interest benefits or special allowance payments received on a loan acquired with the proceeds of such an obligation;
- d. The sale of a loan acquired with the proceeds of such an obligation; or
- e. 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 were 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:

- a. Was a unit of state or local government or a private nonprofit entity;

- b. Was not owned or controlled by, or under common ownership with, a for-profit entity; and
- c. 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:

- a. 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:
  - (1) 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
  - (2) The prior tax-exempt obligation used to acquire the loan is neither retired nor deceased with yield-restricted obligations;
- b. Financed by a tax-exempt obligation that, after September 30, 2004, has matured, been refunded, or is retired or deceased;
- c. 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);
- d. 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:

- a. The date a borrower's loan is repaid;
- b. The date a borrower's loan check is returned uncashed to the lender;
- c. The date the lender receives payment on a claim for loss on the loan;
- d. 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;

- e. 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;
- f. 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;
- g. 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); and
- h. 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 III.N.7, “Due Diligence by Lenders in the Collection of Delinquent Loans”). To reinstate reinsurance and other federal payments on the loan, the violation has to be “cured” (see III.N.9, “Curing Due-Diligence and Timely Filing Violations”). See Appendix D to 34 CFR Part 682 for more information.

**Audit Objectives** 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 qualified 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 nonprofit entity listed above held full beneficial ownership; and
  - (2) the lender was compensated by the governmental or nonprofit 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** 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 Objectives** 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 Requirements** 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 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at a school. PLUS 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 Objectives** 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 Requirements** Except in the case of payments made under an income-based repayment plan, 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*

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 Objectives** 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 in the case of prepayments, with 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 Requirements** 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:

- a. 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);
- b. Attempting telephone contact with the borrower;
- c. 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;
- d. 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
- e. 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).

*One 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.

*Sixteen 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:

- a. 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.
- b. 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. A successful effort to contact the borrower by telephone;
- b. 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
- c. 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):

- a. *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.
- b. *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.
- c. *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.
- d. *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.
- e. *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:

- a. 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.
- b. 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.
- c. 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 Objectives** 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 one 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 Requirements** 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 three 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 sections 682.402(g)(1) and 682.414(a)(4)(iii)).

TYPE OF CLAIM	TIMELY FILING REQUIREMENTS
<b>Default</b>	A lender must submit default claims to the guaranty agency within 90 days of the default.
<b>Death</b>	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.
<b>Total and Permanent Disability</b>	<p>Effective July 1, 2013, if a borrower, who is not a veteran, notifies the lender that the borrower claims to be totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR section 682.200(b), the lender must direct the borrower to notify the secretary of the borrower’s intent to submit an application for total and permanent disability discharge and provide the borrower with the information needed for the borrower to notify the secretary (34 CFR section 682.402(c)(2)).</p> <p>After the secretary receives the application described in 34 CFR section 682.402 (c)(2)(iv), the secretary notifies the holders of the borrower’s Title IV loans that the secretary has received a total and permanent disability discharge application from the borrower. The holders of the loans must notify the applicable guaranty agencies that the total and permanent disability discharge application has been received (34 CFR section 682.402(c)(2)(vi)).</p> <p>The secretary will notify the borrower and the borrower’s lenders whether the application for a disability discharge has been approved and will direct each</p>



TYPE OF CLAIM	TIMELY FILING REQUIREMENTS
	<p>lender to submit a disability claim to the guaranty agency so the loan can be assigned to the secretary. The lender must submit the claim to the guaranty agency within 60 days of the date the lender received notification from the secretary that the borrower is totally and permanently disabled (34 CFR sections 682.402(c)(3)(iii) and 682.402 (g)(2)(ii)).</p> <p>Effective July 1, 2013, if the borrower, who is a veteran, notifies the lender that the borrower claims to be totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR section 682.200(b), the lender must direct the veteran to notify the secretary of the veteran’s intent to submit an application for total and permanent disability discharge and provide the veteran with the information needed to apply for a total and permanent discharge to the secretary (34 CFR section 682.402(c)(9)).</p> <p>After the secretary receives the application described in 34 CFR section 682.402 (c)(2)(iv), the secretary notifies the holders of the veteran’s Title IV loans that the secretary has received a total and permanent disability discharge application from the borrower. The holders of the loans must notify the applicable guaranty agencies that the total and permanent disability discharge application has been received (34 CFR section 682.402(c)(9)(vi)).</p> <p>If the secretary approves the veteran’s total and permanent disability discharge application based on documentation from the Department of Veterans Affairs, the lender must submit a disability claim to the guaranty agency in accordance with 34 CFR section 402(g)(1) (34 CFR section 682.402(c)(9)(xii)(A)).</p> <p>The secretary will notify the veteran and the veteran’s lenders whether the application for a disability discharge has been approved and will direct each lender to submit a disability claim to the guaranty agency so the loan can be assigned to the secretary. The lender must submit the claim to the guaranty agency within 60 days of the date the lender received notification from the secretary that the veteran is totally and permanently disabled (34 CFR section 682.402(c)(9)(x) and 34 CFR 682.402 (g)(2)(ii)).</p>
<b>Closed School</b>	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.
<b>False Certification</b>	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.
<b>Bankruptcy</b>	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):

- a. The original or a true and exact copy of the promissory note.
- b. The loan application if a separate loan application was provided to the lender.
- c. 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.
- d. In the case of a disability claim, a copy of the certification of disability described in 34 CFR section 682.402(c)(2).
- e. 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.
- f. In the case of a false certification claim, the documentation described in 34 CFR section 682.402(e)(3).
- g. In the case of a bankruptcy claim:
  - (1) Evidence that a bankruptcy petition has been filed and all pertinent documents sent to or received from the bankruptcy court by the lender;
  - (2) An assignment to the guaranty agency of any proof of claim filed by the lender regarding the loan; and
  - (3) 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 Objectives** 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 Requirements** A due-diligence violation occurs when a lender does not perform a requirement (see III.N.8, “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.8, “Timely Claim Filings by Lenders or Servicers,” for timely filing requirements.

### *Cures for Due-Diligence Violations*

*Violations of six 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 six days or more (21 days or more for a transfer).

*Two or fewer violations of six 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 six 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):

- a. The receipt of one full payment as defined in 34 CFR Part 682, Appendix D, I.A,
- b. The receipt of a new repayment agreement signed by the borrower, or
- c. Successful completion of the requirements in 34 CFR Part 682, Appendix D, I.E.1.

**Audit Objectives** 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. Servicemembers Civil Relief Act

**Compliance Requirements** Effective July 1, 2016, FFEL lenders and lender-servicers must use the Defense Manpower Data Center’s (DMDC) Servicemembers Civil Relief Act (SCRA) website at least monthly to identify borrowers who are in military service status for the purpose of determining eligibility for a 6 percent interest rate cap under 34 CFR section 682.202(a)(8). Once a borrower’s status and service dates have been confirmed using the DMDC, the loan servicer must use the DMDC-generated certification information in lieu of requiring a request from the borrower and a copy of the servicemember’s military orders to support the borrower’s receipt of the SCRA interest rate limitation. A borrower may provide the loan holder with alternative evidence of military service status to demonstrate eligibility if the borrower believes that the information contained in the DMDC database is inaccurate or incomplete. When the loan servicer applies the SCRA’s interest rate limitation to a borrower’s account, it must notify the borrower in writing within 30 days that the interest rate on the loan has been changed (see Dear Colleague Letter GEN-16-08, May 5, 2016) (34 CFR section 682.208(j)).

**Audit Objectives** Determine whether eligible borrowers of FFEL loans received the benefit of the 6 percent interest rate cap provided by the SCRA.

### Suggested Audit Procedures

- a. Test a sample of loans to verify that FFEL lenders and lender-servicers used the DMDC’s SCRA website to identify borrowers eligible for the SCRA interest rate limit of 6 percent.
- b. Test sample of borrowers who were eligible for the SCRA interest rate cap to verify that they received the new rate of 6 percent only if their previous interest rate was greater than 6 percent.
- c. Test a sample of loans to verify that borrowers were notified in writing within 30 days that the interest rate was reduced to the SCRA limit of 6 percent.

## IV. OTHER INFORMATION

### *Selection of Major Programs When the Entity is a School That is a Lender under the FFEL Program*

Some schools hold 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 2 CFR Part 200, Subpart F, 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 Assistance Listing 84.032 FFEL - Lenders).”

For schools that are lenders, if the SFA Cluster is not selected as a major program, Assistance Listing 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 “Assistance Listing 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 2 CFR section 200.518(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 “Assistance Listing 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 a financial statement audit and compliance attestation engagement under the January 2011 *Lender Servicer Financial Statement Audit and Compliance Attestation Guide* (Lender Servicer 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 Servicer 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 Servicer 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 Servicer 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* must clearly describe the compliance requirements for which coverage has been excluded, name the third party servicer that performed those compliance requirements, state that the third party servicer has obtained an audit performed under the January 2011 Lender Servicer Audit Guide issued by ED, and specify the period of that audit. 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

### ASSISTANCE LISTING 84.041 IMPACT AID (Title VII of ESEA)

#### I. PROGRAM OBJECTIVES

The objective of the Impact Aid Program (IAP) under Title VII of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) (Pub. L. No. 114-95), 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 7002) (20 USC 7702) 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 7003) (20 USC 7703).

#### 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 7003 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 7002 of the ESEA are based on the estimated taxable 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 7003(d) of the ESEA, funds provided under sections 7002 and 7003 are considered general aid and generally have no restrictions on their expenditure. Under 2 CFR 200.101(e)(2), sections 7002 and 7003(b) are **not** subject to subparts C (pre-federal award), D (post federal award), or E (cost principles) of 2 CFR Part 200; therefore, ED generally has no basis to sustain findings related to these subparts for funds provided under sections 7002 and 7003(b) of the ESEA.

Any formula funds that are provided under Section 7007(a) of the ESEA to certain LEAs that received Section 7003 payments must be used for construction, as defined in the statute. Any discretionary construction grant funds that are provided under Section 7007(b) of the ESEA to certain LEAs that received Section 7002 or 7003 payments must be used for emergency repairs or modernization, as defined in the statute and regulations.

In fiscal years where the auditee expends only Section 7002 funds from the Impact Aid program, the auditor must exclude the amount of the 7002 Impact Aid expenditures from the determination of the Type A/B program threshold. See IV, “Other Information” below for additional information on major program determination and SEFA presentation.

#### Source of Governing Requirements

This program is authorized by sections 7001–7014 of the ESEA, as amended, which is codified at 20 USC 7701 through 7714. Implementing regulations are 34 CFR Part 222.



**Availability of Other Program Information**

Additional information on this program may be found at <http://www.ed.gov/about/offices/list/oese/programs.html> and at <https://impactaid.ed.gov/>.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	N	N	N	Y	N	Y

**A. Activities Allowed or Unallowed**

1. *Section 7003(d) – Federally Connected Children with Disabilities*

LEAs must use the payments provided under Section 7003(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 7003 of ESEA (20 USC 7703), 34 CFR section 222.53(c)).

2. *Section 7007 – Construction*

LEAs that receive payments under Section 7003 of the ESEA and that meet certain other statutory criteria may receive formula assistance under Section 7007(a) of the ESEA in any fiscal year that Congress appropriates funds under that section. LEAs must use the payments provided under Section 7007(a) for construction, as defined in Section 7013(3) of the ESEA. Under Section 7013(3), the term “construction” includes (a) preparing 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 servicing for such activities (sections 7007 and 7013(3) of ESEA (20 USC 7707 and 7713)). Certain LEAs that receive payments under Section 7002 or 7003 of the ESEA and that meet other statutory and regulatory criteria may receive discretionary grant assistance under Section 7007(b) of the ESEA. 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 7002 – Federal Property Payments and Section 7003(b) – Basic Support Payments*

Funds made available under sections 7002 and 7003(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**

The cost principles described in 2 CFR Part 200, Subpart E, apply only to Section 7003(d) (federally connected children with disabilities) and Section 7007 (construction) funds.

Under 2 CFR 200.101(e)(2), sections 7002 (federal property payments) and 7003(b) (basic support payments) are not subject to the cost principles described in Subpart E of 2 CFR Part 200.

**G. Matching, Level of Effort, Earmarking**

**1. Matching**

Not Applicable

**2. Level of Effort**

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

Not Applicable

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

Section 7003(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 7003(d). A reduction in the per-pupil amount of state aid for children with disabilities, including children counted under Section 7003(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 7003(d) funds (Section 7003(d) of ESEA (20 USC 7703(d)); 34 CFR section 222.54).

## **3. Earmarking**

Not Applicable

## **L. Reporting**

### **1. Financial Reporting**

Not Applicable

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

*Application for Impact Aid – Section 7003 (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. Please note: As a result of the public health emergency related to the coronavirus, the Impact Aid Coronavirus Relief Act (Pub. L. No. 116-211) provides LEAs the option for their fiscal year 2022 7003 application of using the same student count data from their fiscal year 2021 application or providing new student count data as prescribed in Section 7003. Membership and average attendance data should be tested. The auditor should use professional judgment when determining which categories to test, taking into account the relative materiality of the number of children reported in other categories. (Note: Eligible LEAs submit a separate application for Section 7002 or Section 7007(b) funding. The auditor is not expected to perform any tests with respect to the Section 7002 or Section 7007(b) applications.)

#### 4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

### N. Special Tests and Provisions

#### 1. Wage Rate Requirements

**Compliance Requirements** Section 7007 construction funds, as well as any section 7002 or 7003(b) funds spent for construction or minor remodeling, are subject to Wage Rate Requirements (20 USC 1232b).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

#### 2. Required Level of Expenditure

**Compliance Requirements** 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 7003(d) of the ESEA for that fiscal year. This is demonstrated by comparing the amount of Section 7003(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 paragraph a, above, by the ADA of the federally connected children with disabilities claimed by the LEA for the year.

If the amount of Section 7003(d) funds received or credited is greater than the amount calculated above, an overpayment equal to the excess Section 7003(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 7003(d) of ESEA (20 USC 7703(d)); 34 CFR section 222.53(d)).

**Audit Objectives** 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 of 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.

#### **IV. OTHER INFORMATION**

Given the nature of the Section 7002 funds, a recipient expending only Section 7002 funds would have no compliance requirements subject to testing for the Impact Aid program or would only be subject to the Wage Rate Requirements (20 USC 1232b) if 7002 funds were spent for construction or minor remodeling. Selecting the Impact Aid program as a major federal program in fiscal years where no (or only one) compliance requirements are subject to testing could result in the exclusion of other programs as major federal programs. Therefore, if a recipient had Impact Aid expenditures only from Section 7002 funds during its fiscal year, the auditor must exclude the amount of the 7002 Impact Aid expenditures from the determination of the Type A/B program threshold. If a recipient had Impact Aid expenditures from multiple sections, including Section 7002, the entire amount of Impact Aid expenditures should be considered when determining the Type A/B program threshold and the 7002 funds would only be subject to Wage Rate Requirements testing, if applicable. All Impact Aid expenditures, including Section 7002 funds excluded from the Type A/B program threshold, must be reported on the Schedule of Expenditures of Federal Awards.

**DEPARTMENT OF EDUCATION****ASSISTANCE LISTING 84.042 TRIO – STUDENT SUPPORT SERVICES****ASSISTANCE LISTING 84.044 TRIO – TALENT SEARCH****ASSISTANCE LISTING 84.047 TRIO – UPWARD BOUND****ASSISTANCE LISTING 84.066 TRIO – EDUCATIONAL OPPORTUNITY CENTERS****ASSISTANCE LISTING 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 cluster. The remaining two TRIO programs do not meet the funding threshold to be included in the Supplement. The five included programs are:

*Student Support Services (SSS)* program provides academic support services to low-income, first-generation, and individuals with disabilities to enable them to be retained in 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 educational success at the postsecondary level and encourages them to complete or reenter secondary school and undertake a program of postsecondary education. The TS program also publicizes the availability of student financial assistance for persons who seek to pursue a postsecondary education. TS also encourages persons who have not completed education programs at the secondary or postsecondary level to enter or reenter and complete these programs.

*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 information regarding financial and academic assistance available to individuals who desire to pursue a program of postsecondary education. EOC projects provide assistance to individuals in applying to admission to institutions that offer programs of postsecondary education, including assistance in preparing necessary

applications for use by admissions and financial aid officers. EOC projects also provide information to improve financial and economic literacy of participants.

*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 and are awarded for five years.

Eligible applicants for SSS and McNair grants are institutions of higher education or combinations of such institutions.

Eligible applicants for TS and EOC grants are institutions of higher education, public or private agencies, or organizations, including community-based organizations with experience in serving disadvantaged youth, secondary schools, and combinations of institutions and agencies.

Eligible applicants for UB grants are institutions of higher education, public and private agencies, or organizations, including community-based organizations with experience in serving disadvantaged youth, secondary schools, and combinations of institutions, agencies, and organizations. The UB program has three types of projects: regular, veterans, and math/science.

### **Source of Governing Requirements**

The federal TRIO programs are authorized by Title IV of the Higher Education Act of 1965, as amended (20 USC 1070a et seq.). The applicable regulations are at 34 CFR parts 643 (TS), 644 (EOC), 645 (UB), 646 (SSS), and 647 (McNair).

### **Availability of Other Program Information**

Other program information is available at <http://www2.ed.gov/about/offices/list/ope/trio/index.html>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not

being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	N	N	N	N	Y	N	Y

## A. Activities Allowed or Unallowed

### 1. Activities Allowed

#### a. UB Program

- (1) Services and activities a UB project must provide (see III.N.1, “Special Test and Provisions – Services that Student Support Services, Talent Search, Upward Bound or McNair Projects Must Provide”) include the following:
  - (a) Academic tutoring to enable students to complete secondary or postsecondary courses;
  - (b) Advice and assistance in secondary and postsecondary course selection;
  - (c) Assistance in preparing for college entrance exams and completing college admissions applications;
  - (d) Providing information on the full range of federal student financial aid programs and benefits and resources for locating public and private scholarships, and assistance in completing financial aid applications, including the Free Application for Federal Student Aid;
  - (e) Providing guidance on and assistance in reentering secondary school, alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma, or general educational development (GED) programs or postsecondary education;



- (f) Education or counseling services designed to improve the financial and economic literacy of students or the student's parents, including financial planning for postsecondary education; and
  - (g) Core curriculum instruction in mathematics through pre-calculus, laboratory science, foreign language, composition, and literature (required for projects that have received funds for at least two years, see III.N.2, "Special Test and Provisions - Core Curriculum Instruction in the Upward Bound Program") (34 CFR section 645.11).
- (2) Services and activities a UB project may provide include the following:
- (a) Exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth;
  - (b) Information, activities, and instruction designed to acquaint youth participating in the project with the range of career options available to the youth;
  - (c) On-campus residential programs;
  - (d) Mentoring programs involving elementary school or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons;
  - (e) Work-study positions where youth participating in the project are exposed to careers requiring a postsecondary degree;
  - (f) Programs and activities for participants who are limited-English proficient, from groups traditionally underrepresented in higher education, individuals with disabilities, homeless children or youths, participants in foster care or aging out of foster care or other disconnected participants; and
  - (g) Other activities designed to meet the purposes of the Upward Bound program in Math-Science or Veterans programs services to their participants as discussed in 34 CFR section 645.1 (34 CFR section 645.12).

b. *SSS Program*

- (1) Services and activities an SSS project must provide (see III.N.1, “Special Test and Provisions - Services that Student Support Services, Talent Search, Upward Bound or McNair Projects Must Provide”) include the following:
  - (a) Academic tutoring, directly or through other services provided by the institution, to enable students to complete postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects;
  - (b) Advice and assistance in postsecondary course selection;
  - (c) Information on the full range of federal student financial aid programs and benefits and resources for locating public and private scholarships, and assistance in completing financial aid applications (including the Free Application for Federal Student Aid);
  - (d) Education or counseling services designed to improve the financial and economic literacy of students;
  - (e) Activities designed to assist participants enrolled in four-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, graduate and professional programs; and
  - (f) Activities designed to assist students enrolled in two-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, a four-year program of postsecondary education (34 CFR section 646.4(a)).
- (2) Services and activities an SSS project may provide include:
  - (a) Individualized counseling for personal, career, and academic matters provided by assigned counselors;
  - (b) Information, activities, and instruction designed to acquaint students with the range of career options available to the students;
  - (c) Exposure to cultural events and academic programs not usually available to disadvantaged students;

- (d) Mentoring programs involving faculty or upper class students, or a combination thereof;
- (e) Securing temporary housing during breaks in the academic year for students who are or were formerly homeless children and youths and foster care youths;
- (f) Programs and activities that are specially 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, students who are foster care youth or other disconnected students;
- (g) Other activities designed to meet the purposes of the SSS program (34 CFR section 646.4(b)); and
- (h) 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 and, with the prior approval of the secretary, meals and lodging 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; (g) project evaluation; (h) grant aid to eligible students, under certain circumstances; and (i) temporary housing during breaks in the academic year for students who are homeless children, youths or were formerly homeless, and students who are foster care youth (34 CFR section 646.30).

c. *TS Program*

- (1) Services and activities a TS project must provide (see III.N.1, “Special Test and Provisions - Services that Student Support Services, Talent Search, Upward Bound or McNair Projects Must Provide”) include the following:

- (a) Connections for participants to high-quality academic tutoring services to enable the participants to complete secondary or postsecondary courses;
  - (b) Advice and assistance in secondary school course selection and, if applicable, initial postsecondary course selection;
  - (c) Assistance in preparing for college entrance examinations and completing college admission applications;
  - (d) Information on the full range of federal student financial aid programs and benefits (including federal Pell Grant awards and loan forgiveness) and on resources for locating public and private scholarships, and assistance in completing financial aid applications, including the Free Application for Federal Student Aid (FAFSA);
  - (e) Guidance and assistance in secondary school reentry, alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma, entry into GED programs, or entry into postsecondary education; and
  - (f) Connections for participants to education or counseling services designed to improve the financial and economic literacy of the participants or the participants' parents, including financial planning for postsecondary education (34 CFR section 643.4(a)).
- (2) Services and activities a TS project may provide include the following:
- (a) Academic tutoring, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects;
  - (b) Personal and career counseling or activities;
  - (c) Information and activities designed to acquaint youth with the range of career options available to them;
  - (d) Exposure to the campuses of institutions of higher education, as well as to cultural events, academic programs, and other sites or activities not usually available to disadvantaged youth;
  - (e) Workshops and counseling for families of participants served;

- (f) Mentoring programs involving elementary or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons;
- (g) Programs and activities that are specially designed for participants who are limited English proficient, from groups that are traditionally underrepresented in postsecondary education, individuals with disabilities, homeless children and youths, foster care youth, or other disconnected participants;
- (h) Other activities designed to meet the purposes of the TS program (34 CFR section 643.4(b)); and
- (i) Specific activities may include the following, if reasonably related to the objectives of the TS project:
  - (i) transportation, meals, and lodging with prior approval for visits to postsecondary educational institutions, participation in “College Day” activities, career field trips, and transportation to institutions of higher education, secondary schools not attended by the participants, or other locations at which the participant receives instruction that is part of a rigorous secondary school program of study; (ii) purchase of testing and test preparation materials; (iii) fees for college admissions applications and entrance examinations with the exceptions noted in 34 CFR section 643.30(c); (iv) in-service staff training; (v) rental of space, if space is not available at the site of the grantees and/or is not owned by the grantee; (vi) purchase, lease, or rental of computer hardware, computer software, and other equipment for students development, project administration, and recordkeeping; and (vii) tuition for a course that is part of a rigorous secondary school program of study (as defined in 34 CFR section 643.7, and recognized by ED) if the conditions of 34 CFR section 643.30(h) are met (34 CFR section 643.30).

d. *EOC Program*

Allowable services and activities under the EOC program include the following:

- (1) Public information campaigns designed to inform the community about opportunities for postsecondary education and training;
- (2) Academic advice and assistance in course selection;

- (3) Assistance in completing college admission and financial aid applications;
- (4) Assistance in preparing for college entrance examinations;
- (5) Education or counseling services designed to improve the financial and economic literacy of participants;
- (6) Guidance on secondary school reentry or entry to a GED program or other alternative education program for secondary school dropouts;
- (7) Individualized personal, career, and academic counseling;
- (8) Tutorial services;
- (9) Career workshops and counseling;
- (10) Mentoring programs involving elementary or secondary school teachers, faculty members at institutions of higher education, students, or any combinations of these persons;
- (11) Programs and activities that are specifically designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary education, participants who are individuals with disabilities, participants who are homeless children and youth, participants who are foster care youth, or other disconnected participants;
- (12) Other activities designed to meet the purposes of the EOC program (34 CFR section 644.4); and
- (13) Specific activities may include the following, if reasonably related to the objectives of the 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 section 644.30(c); (d) in-service staff training; (e) rental of space, if space is not available at the site of the grantees and/or is not owned by the grantee; and (f) purchase, lease, or rental of computer hardware, computer software, and other equipment for students development, project administration, and recordkeeping (34 CFR section 644.30).

e. *McNair Program*

- (1) Services and activities a McNair project must provide (see III.N.1, “Special Test and Provisions - Services that Student Support Services, Talent Search, Upward Bound or McNair Projects Must Provide”) include the following:
  - (a) Opportunities for research and other scholarly activities at the grantee institution or at graduate centers that are designed to provide students with effective preparation for doctoral study;
  - (b) Summer internships;
  - (c) Seminars and other educational activities designed to prepare students for doctoral study;
  - (d) Tutoring;
  - (e) Academic counseling; and
  - (f) Assistance to students in securing admission to and financial aid for enrollment in graduate programs (34 CFR section 647.4(a)).
- (2) Services and activities a McNair project may provide include the following:
  - (a) Education or counseling services designed to improve the financial and economic literacy of students, including financial planning for postsecondary education;
  - (b) Mentoring programs involving faculty members at institutions of higher education, students, or a combination of faculty members and students;
  - (c) Exposure to cultural events and academic programs not usually available to project participants;
  - (d) 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;
  - (e) Stipends of up to \$2,800 per year for students engaged in research internships, provided that the student has

completed the sophomore year of study at an eligible institution before the internship begins (see III.E.1.e, “Eligibility - Eligibility for Individuals”);

- (f) Necessary tuition, room and board, and transportation for students engaged in research internships during the summer;
- (g) Purchase, lease, or rental of computer hardware, computer software, or other equipment for student development, project administration, and recordkeeping; and
- (h) Other activities designed to meet the purposes of the McNair program (34 CFR sections 647.4(b) and 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 or for tuition, fees, stipends, and other forms of direct financial support for staff or participants, except for grant aid for participants (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. Meals for staff are also unallowable except as provided in 34 CFR sections 645.40 (d) and (m), and in 645.41(c) (34 CFR section 645.41).
- d. *TS Program* – TS funds cannot be used for (1) stipends and other forms of direct financial support for participants, or (2) application fees for financial aid (34 CFR section 643.31).
- e. *EOC Program* – EOC funds cannot be used for tuition, fees, stipends, and other forms of direct financial support for project participants (34 CFR section 644.31).
- f. *McNair Program* – McNair funds cannot be used for tuition, stipends, test preparation and fees, or any other form of student financial support to staff



or participants not expressly allowed under 34 CFR section 647.30 (see paragraphs 1.e.(2)(c) through (g), above) (34 CFR section 647.31(a)).

## **C. Cash Management**

See Part 4, 84.000 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 of 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 (\$6,345 for the 2020–2021 academic year) or be less than the minimum appropriated Pell Grant (\$639 for the 2020–2021 academic year) (20 USC 1070a-14(d)(1)).

#### **b. *TS Program – Eligible Participants***

An individual is eligible to participate in a TS 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) has completed five years of elementary education or is at least eleven years of age but not more than 27 years of age (an individual more than 27 years of age may participate in a TS project if there is no EOC in the area, or a veteran regardless of age); and (3) is enrolled in or has dropped out of any grade from six 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 of 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, a low-income individual, or an individual who has a high risk for academic failure; (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(f); 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 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. A veteran, regardless of age, is eligible to participate in an EOC project if he or she meets eligibility requirements (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 of 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(f); 34 CFR section 647.30).

**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-270, Request for Advance or Reimbursement* – Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *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 II, *Record Structure for Participant List*, fields:

- 15 Eligibility
- 17 First Enrollment Date (at grantee institution)
- 18 Date of First Project Service
- 19 College Grade Level (entry into project)
- 22 Participant Status (during academic year)
- 23 Enrollment Status (at end of the academic year)
- 24 Academic Standing
- 27 College Grade Level (at the end of the academic year)
- 31 Undergraduate Degree/Certificate Completed at Grantee Institution

- b. *Upward Bound, and Upward Bound Math-Science Programs Annual Performance Report (OMB No. 1840-0831)* – 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 II, *Record Structure for Participant List for Upward Bound and Upward Bound Math-Science Projects*, fields:

- 16 Eligibility (at time of initial selection)
- 17 At Risk: Reading Language Arts or Math Proficiency Not Achieved (at time of initial selection)
- 18 At Risk: Low Grade Point Average (at time of initial selection)
- 19 At Risk: Pre-Algebra or Algebra Course Not Successfully Completed by Beginning of 10th Grade (at time of initial selection)
- 20 Limited English Proficiency (at time of initial selection)
- 24 Date of First Project Service
- 25 Grade Level at First Service
- 27 Participant Status for reporting year
- 28 Participation Level for reporting year
- 29 Served by Another Federally Funded College Access Program for reporting year
- 30 Grade Level at the beginning of academic year being reported
- 37 Secondary School Retention and Graduation Objective – Numerator, for reporting year
- 45 Date of Last Project Service

- c. *Talent Search Annual Performance Report (OMB No. 1840-0826)* – Grantees must submit an annual performance report to ED each year of the project periods.

*Key Line Items* – The following line items and sections contain critical information:

- (1) Section II, *Demographic Profile of Project Participants and Listing of Target School*, subsections:

- A. Types of Participants Assisted
  - B. Participant Distribution by Eligibility
  - F. Veterans Served
  - G. Participants with Limited English Proficiency
  - J. TS participants also served during reporting year by another federally funded program
  - L. Target Schools
- (2) Section IV, *Educational Status of Talent Search Participants* (at end of the reporting period or the following fall), lines:
- A1. Persisted in school for the next academic year at the next grade level or graduated high school.
  - B1. Received regular secondary school diploma within standard number of years but did not complete a rigorous program of study.
  - C1. Enrolled in postsecondary education or notified of deferred enrollment columns (b) and (c).
- d. *Educational Opportunity Centers Program Annual Performance Report For Program Year (OMB Number 1840-0830)* – 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 II: *Demographic Profile of Project Participants, Target Schools, Invitational Priorities*

- H. EOC Participants also served during the reporting year by another federally funded program Section IV, *Educational Status of EOC Participants (at the end of the reporting period or for the following fall)*, lines:
    - A1. Received a secondary school diploma or its equivalent
    - B1. Completed a financial aid application
    - D2. Had a secondary school diploma or credential at the time of first service in the reporting year and enrolled in a postsecondary education program
- e. *Ronald E. McNair Post-Baccalaureate 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:

Section II, *Record Structure for Participant List*, fields:

15	Low-income
16	First-generation
17	Under-represented racial/ethnic group
18	First Postsecondary Education Enrollment Date
20	Project Entry Date
21	Grade Level at Project Entry
22	Participant Status (during academic year being reported)
23	Enrollment Status (during academic year being reported)

### 3. Special Reporting

Not Applicable

### 4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

## N. Special Tests and Provisions

### 1. Services that Student Support Services, Talent Search, Upward Bound or McNair Projects Must Provide

**Compliance Requirements** Recipients of TRIO Programs funded under SSS, TS, UB and McNair programs must provide specific services and activities. The services and activities that each program must provide are listed in III.A.1, “Allowable Activities,” above, and are as follows:

- a. UB Program (34 CFR section 645.11), see III.A.1.a.(1) above
- b. SSS Program (34 CFR section 646.4(a)), see III.A.1.b.(1) above
- c. TS Program (34 CFR section 643.4(a)), see III.A.1.c.(1) above
- d. McNair Program (34 CFR section 647.4(a)), see III.A.1.e.(1) above

A grantee must provide all of the required services in the applicable SSS, TS, UB, or McNair program regulations to its participants (either directly through the project or through another service provider, as permitted by the applicable regulations). However, not all participants may need all of the required services or may choose not to take advantage of them.

**Audit Objectives** Determine whether the required services were provided to SSS, TS, UB, or McNair participants.

### Suggested Audit Procedures

Review records of services received by participants, calendars, or logs of service providers (i.e., counselors or tutors) and expenditure records to verify that the required

services and activities were provided to participants.

## 2. Core Curriculum Instruction in the Upward Bound Program

**Compliance Requirements** UB projects that have received funding for a least two years must provide core curriculum instruction in mathematics through pre-calculus, laboratory science, foreign language, composition, and literature to its participants in the next and succeeding years. However, not all participants may need instruction in mathematics through pre-calculus, laboratory science, foreign language, composition, and literature, or may choose not to take advantage of this instruction (34 CFR section 645.11 (b)).

**Audit Objectives** Determine whether UB projects that have received funding for at least two years provided instruction in mathematics through pre-calculus, laboratory science, foreign language, composition, and literature in its core curriculum in the next and succeeding years.

### Suggested Audit Procedures

- a. Ascertain if the UB project has received funding for at least two years.
- b. Verify by reviewing participant files, records of services received by participants, expenditure records and class rosters or enrollment records that project participants have available core curriculum instruction in mathematics through pre-calculus, laboratory science, foreign language, composition, and literature in the next and succeeding years.

## 3. Minimizing Duplication of Services under the TS and UB Programs

**Compliance Requirements** To minimize the duplication of services and promote collaborations so that more students can be served, TS and UB projects are required to collaborate with other TRIO projects, Gaining Early Awareness and Readiness for Undergraduate programs (GEAR UP) projects (Assistance Listing 84.334), or projects from other programs serving similar populations that are serving the same target schools or target area (34 CFR sections 643.11(b) and 645.21(a)(4)).

In addition, the recipients of TS and UB grants are required to keep records, to the extent practicable, of any services TS or UB participants receive during the project year from another TRIO program or another federally funded program that serves populations similar to those served under the TS and UB programs (34 CFR sections 643.32(c)(5) and 645.43(c)(5)).

**Audit Objectives** Determine whether the TS or UB project: (1) collaborates with other TRIO projects, GEAR UP projects, or programs serving similar populations and the same target schools or target area to minimize the duplication of services and promote collaborations so that more students can be served; and (2) keeps records of any services TS or UB participants receive during the project year from another TRIO program or another federally funded program that serves populations similar to those served under the TS and UB programs.

**Suggested Audit Procedures**

- a. Review project files (e.g., approved application, Upward Bound Program Assurances, or Talent Search Program Assurances) for information on collaboration plans and documentation that demonstrates the plans were implemented (e.g., memoranda of understanding), and, for records of services received by participants and referrals from federally funded projects, high school counselors, and community-based organizations.
- b. Verify that the TS or UB grantee collaborates with entities operating projects or programs serving similar populations to minimize the duplication of services.
- c. Review and assess participant files, project databases, referrals from service providers, tutors, and instructors.
- d. Verify that the TS or UB project maintains records of services received by participants from another federal TRIO program or another federally funded program that serves similar populations.

**IV. OTHER INFORMATION**

1. Certain compliance requirements that apply to multiple ED programs, including the TRIO cluster, are discussed once in the ED Cross-Cutting Section of this Supplement (84.000) rather than being repeated in each individual program. Where applicable to the TRIO cluster requirements, references are made to the specific part of the ED Cross-Cutting Section.
2. A citizen, national, or permanent resident of the United States, includes a permanent resident of Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands (Palau), or resident of one of the Freely Associated States—the Federated States of Micronesia or the Republic of the Marshall Islands.



## DEPARTMENT OF EDUCATION

### ASSISTANCE LISTING 84.048 CAREER AND TECHNICAL EDUCATION—BASIC GRANTS TO STATES (Perkins V)

#### I. PROGRAM OBJECTIVES

On July 31, 2018, the president signed into law the Strengthening Career and Technical Education for the 21st Century Act (Pub. L. No. 115-224) (Perkins V), which reauthorized and amended the Carl D. Perkins Career and Technical Education Act of 2006. Perkins V provides grants to states and outlying areas to develop the academic knowledge and technical and employability skills of secondary students and postsecondary students by (1) building on the efforts of states and localities to develop challenging academic and technical standards and to assist students in meeting such standards; (2) promoting the development of services and activities that integrate rigorous and challenging academic and career and technical instruction, and that link secondary education and postsecondary education; (3) increasing state and local flexibility in providing services and activities designed to develop, implement and improve career and technical education; (4) conducting and disseminating national research and disseminating information on best practices that improve career and technical education programs and programs of study, services, and activities; (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; and (8) increasing the employment opportunities for populations who are chronically unemployed or underemployed, including individuals with disabilities, individuals from economically disadvantaged families, out-of-workforce individuals, youth who are in, or have aged out of, the foster care system, and homeless individuals.

#### II. PROGRAM PROCEDURES

##### A. Overview

Participating states must designate or establish a state board of career and technical education (defined in Perkins V as the “eligible agency” (Section 3(18) of Perkins V (20 USC 2302(3)(18)), and herein referred to as the “state”) to administer and supervise state career and technical education programs. In order to receive funds for any program year, the state must have an approved state plan for career and technical education or an approved combined state plan under the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. No. 113-128).

##### B. Allocation and Uses of Funds

The Department of Education (ED) allocates funds to the state based on a statutory formula described in Section 111 of Perkins V. From the amount allotted to the state

under Section 111 for any fiscal year, the eligible agency shall make available funds for the following statutorily prescribed programs and activities.

<b>Programs and Activities</b>	<b>Section of Perkins V</b>	<b>Statutory Amount of Section 111 Funds</b>
Secondary and postsecondary career and technical education programs	Section 112(a)(1)	Not less than 85 percent, of which not more than 15 percent of the 85 percent may be “reserved” under section 112(c)
State leadership activities	Section 112(a)(2)	Not more than 10 percent
State administration activities	Section 112(a)(3)	Not more than 5 percent, or \$250,000, whichever is greater

The state may operate these programs and activities directly and/or transfer funds through contracts or grants to other state agencies to administer one or more of them.

In administering secondary and postsecondary career and technical education programs under Section 112(a)(1) of Perkins V, the state makes grants to eligible recipients as defined in Section 3(21) of Perkins V (20 USC 2302(3)(21)). Eligible recipients submit applications to the state in order to receive funds, which are distributed by statutory formula.

The state and eligible recipients may use their funds for a wide range of CTE programs, activities, and services as described in law:

1. Secondary and postsecondary career and technical education programs – Section 135 of Perkins V (20 USC 2355);
2. State leadership activities – Section 124 of Perkins V (20 USC 2344);
3. State administration activities – Section 112(a)(3) of Perkins V (20 USC 2322)(a)(3)).

### **Source of Governing Requirements**

This program is authorized by the Carl D. Perkins Career and Technical Education Act of 2006, as amended by the Strengthening Career and Technical Education for the 21st Century Act (Perkins V) (20 USC 2301 et seq., as amended by Pub. L. No. 115-224).

### **Availability of Other Program Information**

Program and policy guidance applicable to the Perkins V requirements in this program supplement are available on the Perkins Collaborative Resource Network (PCRN) at <http://cte.ed.gov/>. The relevant documents are:

1. State allocations under Perkins V (under Grant Programs/State Allocations tab);
2. Guidance for the submission of state plans, revisions, budgets, and performance levels for Perkins V (under the Grant Programs/State Plans tab);

3. Guidance for the submission of Consolidated Annual Reports (CAR) under Perkins V (under the Accountability/CAR tab); and
4. Prior approval authority regarding program income for Perkins V eligible recipients (under Grant Programs/Program Non-Regulatory Guidance tab).

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	Y	Y	N	N	N	Y	N

#### A. Activities Allowed or Unallowed

1. *State-Level Activities*
  - a. State Leadership Activities – Required Uses. A state must use state leadership funds for supporting:
    - (1) Preparation for nontraditional fields in current and emerging professions, programs for special populations, and other activities that expose students, including special populations, to high-skill, high-wage, and in-demand occupations;

- (2) Individuals in state institutions, such as state correctional institutions, including juvenile justice facilities, and educational institutions that serve individuals with disabilities;
  - (3) Recruiting, preparing, or retaining career and technical education teachers, faculty, specialized instructional support personnel, or paraprofessionals, such as preservice, professional development, or leadership development programs;
  - (4) Technical assistance for eligible recipients; and
  - (5) Reporting on the effectiveness of such use of funds in achieving the goals described in sections 122(d)(2) and the state determined levels of performance described in sections 113(b)(3)(A) and reducing disparities or performance gaps as described in sections 113(b)(3)(C)(ii)(II).
- b. State Leadership Activities – Other Permissible Uses of Funds. In addition to the required State Leadership Activities (1)–(5) listed above, a state may use state leadership funds for a broad variety of permissive activities listed in Section 124(b) of Perkins V (20 USC 2344(b)). While not an exhaustive list, examples of allowable activities include;
- (1) Developing statewide programs of study;
  - (2) Establishing statewide articulation agreements aligned to approved programs of study;
  - (3) Supporting eligible recipients in eliminating inequities in student access to
    - (a) high-quality programs of study that provide skill development; and
    - (b) effective teachers, faculty, specialized instructional support personnel, and paraprofessionals;
  - (4) The creation, evaluation, and support of competency based curricula;
  - (5) Improvement of career guidance and academic counseling programs that assist students in making informed academic and career and technical education decisions, including academic and financial aid counseling;
  - (6) Support for career and technical student organizations;

- (7) Support for establishing and expanding work-based learning opportunities that are aligned to career and technical education programs and programs of study; and
      - (8) Other state leadership activities that improve career and technical education.
    - c. State Leadership Activities – Unallowed Uses. A state may not use state leadership funds for administrative costs unless expressly authorized under subsection (a) (Section 124(c) of Perkins V (20 USC 2344(c))).
    - 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) Ensuring compliance with all applicable federal laws;
      - (5) Providing technical assistance; and
      - (6) Supporting and developing state data systems relevant to the provisions of Perkins V (Section 112(a)(3) of Perkins V (20 USC 2322(a)(3))).
2. *Eligible recipient Activities*
  - a. Funds shall be used to develop, coordinate, implement or improve career and technical education programs to meet the needs identified in the comprehensive local needs assessment (described in Section 134(c) of Perkins V) at the secondary and postsecondary levels. The eligible recipient plan or approved application describes the specific activities to be carried out. Requirements for, and examples of, uses of funds are identified in Section 135(b), (c) and (d) of Perkins V (20 USC 2355(b)), (c), and (d)).
  - b. Perkins funds made available to eligible recipients shall be used to support career and technical education programs that are of sufficient size, scope, and quality to be effective and that—
    - (1) Provide career exploration and career development activities through an organized, systematic framework designed to aid students, including in the middle grades, before enrolling and while participating in a career and technical education program, in

making informed plans and decisions about future education and career opportunities and programs of study;

- (2) Provide professional development for teachers, faculty, school leaders, administrators, specialized instructional support personnel, career guidance and academic counselors, or paraprofessionals;
- (3) Provide within career and technical education the skills necessary to pursue careers in high-skill, high-wage, or in-demand industry sectors or occupations;
- (4) Support integration of academic skills into career and technical education programs and programs of study to support—
  - (a) CTE participants at the secondary school level in meeting the challenging state academic standards adopted under Section 1111(b)(1) of the Elementary and Secondary Education Act of 1965 by the state in which the eligible recipient is located; and
  - (b) CTE participants at the postsecondary level in achieving academic skills;
- (5) Plan and carry out elements that support the implementation of career and technical education programs and programs of study and that result in increasing student achievement of the local levels of performance established under Section 113; and
- (6) Develop and implement evaluations of the activities carried out with funds under this part, including evaluations necessary to complete the comprehensive needs assessment required under Section 134(c) and the local report required under Section 113(b)(4)(B).

### 3. *Schoolwide Programs*

See Part II.B.2 of the 84.000 ED Cross-Cutting Section.

## **B. Allowable Costs/Cost Principles**

See Part III.B. of 84.000 ED Cross-Cutting Section.

## **C. Cash Management**

See Part III.C. of 84.000 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 Eligible Recipients as Determined by the State****a. Secondary Career and Technical Education Programs**

- (1) The state determined eligible recipient status. An eligible recipient must be:
  - (a) 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 V;
  - (b) An area career and technical education school or an educational service agency that meets the requirements in Section 131(e) of Perkins V; or
  - (c) A consortium of LEAs that meets the requirements in Section 131(f) of Perkins V. (Section 3(21)(A) of Perkins V (20 USC 2302(3)(21)(A)) and sections 131(a), (e), and (f) of Perkins V (20 USC 2351(a), (e), and (f)))
- (2) The state must treat a secondary school funded by the Bureau of Indian Education (BIE) within the state as if such school were a LEA within the state for the purpose of receiving a distribution under Section 131 of Perkins V (Section 131(h) of Perkins V (20 USC 2351(h))).
- (3) 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 V (20 USC 2353(d))). For the definition of “charter school” applicable to Perkins V, see Section 4310 (20 USC 7221i) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) at <https://www2.ed.gov/documents/essa-act-of-1965.pdf>.

- (4) For any program year, 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:
- (a) Thirty 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 ESEA; or student membership data collected by the National Center for Educational Statistics through the Common Core of Data survey system; and
  - (b) Seventy 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 V (20 USC 2351(a))).
- (5) 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 V (20 USC 2351(f))).
- (6) 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 V (Section 131(c)(2) of Perkins V (20 USC 2351(c)(2))).
- (7) If the state reserves 15 percent or less pursuant to Section 112(a)(1) (20 USC 2322(a)(1)), it may distribute those funds on a competitive basis or through any alternative method (Section 133(a) of Perkins V (20 USC 2353(a))).



b. Postsecondary Career and Technical Education Programs

- (1) An eligible recipient must be an eligible institution, which is
  - (a) A consortium of two or more of the entities described in subparagraphs (B) through (F);
  - (b) A public or nonprofit private institution of higher education that offers and will use funds provided under this title in support of career and technical education courses that lead to technical skill proficiency, or a recognized postsecondary credential, including an industry-recognized credential, a certificate, or an associate degree except that, for the purpose of Section 132, the term “recognized postsecondary credential” as used in this subparagraph shall not include a baccalaureate degree;
  - (c) A local educational agency providing education at the postsecondary level;
  - (d) An area career technical educational school providing education at the postsecondary level;
  - (e) An Indian tribe, tribal organization, or tribal education agency that operates a school or may be present in the state;
  - (f) A postsecondary education institution controlled by BIE 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 USC 5301 et seq.) or the Act of April 16, 1934 (25 USC 5342 et seq.);
  - (g) A tribally controlled college or university; or
  - (g) An educational service agency (Section 3(20) of Perkins V (20 USC 2302(20))).
- (2) 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 BIE enrolled in programs meeting the requirements of Section 135 of Perkins V 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 V (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 institutions or consortia in accordance with Section 132, except as provided below (Section 132(c) of Perkins V (20 USC 2352(c))).

- (3) 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 V (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 V (20 USC 2352(a)(4))).
- (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 V (20 USC 2353(a))).

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

A state must match, from nonfederal 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 V (20 USC 2322 (b)))

### **2. Level of Effort**

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

Not Applicable

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

- a. The state and its eligible recipients may use funds for career and technical education activities that supplement, and not supplant, nonfederal funds expended to carry out career and technical education activities (Section 211(a) of Perkins V (20 USC 2391(a))). The examples of instances where supplanting is presumed to have occurred as described in Part III.G.2.2 of the 84.000 ED Cross-Cutting Section also apply to Perkins V.
- b. Notwithstanding the above paragraph, funds made available under Perkins V 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 224(c) of Perkins V (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 eligible recipients. A state may reserve no more than 15 percent of the 85 percent of funds to make grants for activities described in Section 135 of Perkins V (20 USC 2355) to eligible recipients in (a) rural areas; (b) areas with high percentages of CTE concentrators or CTE participants; and (c) areas with high numbers of CTE concentrators or CTE participants; and (d) areas with disparities or gaps in performance as described in Section 113(b)(3)(C)(ii)(II) (sections 112(a)(1) and (c) of Perkins V (20 USC 2322(a)(1) and (c))).
  - (2) *State Leadership Activities* – not more than 10 percent. Within the state leadership activities not more than 2 percent of the amount allocated to each state in Section 111 of Perkins V (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 V shall be made available for services that prepare individuals for nontraditional fields. Also, an amount must be made available for the recruitment of special populations to enroll in CTE programs, which must be not less than the lesser of an amount equal to 0.1 percent or \$50,000 (Section 112(a)(2) of Perkins V (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 V (20 USC 2322 (a)(3))).
- b. *Eligible recipients* – Eligible recipients 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 V (20 USC 2355(d))).

### H. Period of Performance

See Part III.H. of the 84.000 ED Crosscutting Section.

**M. State Monitoring of Eligible recipients**

1. Each state must evaluate annually, using the local adjusted levels of performance described in Section 113(b)(4) of Perkins V (20 USC 2323(b)(4)), the career and technical education activities of each eligible recipient receiving funds under sections 131 and 132 of Perkins V (Section 123(b)(1) of Perkins V (20 USC 2343(b)(1))).
2. The state determines whether a eligible recipient failed to meet at least 90 percent of an agreed upon local level of performance for any of the core indicators of performance described in Section 113(b)(4) of Perkins V for all CTE concentrators and, if so, required the eligible recipient to develop and implement the improvement plan required by Section 123(b)(2) of Perkins V (20 USC 2343(b)(2)).

**IV. OTHER INFORMATION**

Certain compliance requirements that apply to multiple ED programs, including Perkins V, are discussed once in the ED Cross-Cutting Section of this Supplement (84.000) rather than being repeated in each individual program. Where applicable to the Perkins V requirements, references are made to the specific part of the ED Cross-Cutting Section.

**DEPARTMENT OF EDUCATION****ASSISTANCE LISTING 84.126 REHABILITATION SERVICES–VOCATIONAL  
REHABILITATION GRANTS TO STATES****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 development 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, informed choice, and economic self-sufficiency so that such individuals may prepare for and engage in gainful employment.

**II. PROGRAM PROCEDURES****A. Overview**

Federal funds are distributed to the states on a formula basis. 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).

To receive funds under Title I of the Act, a state must submit, and have approved by the secretaries of Education and Labor, a Unified or Combined State Plan in accordance with Section 102 or Section 103, respectively, of the Workforce Innovation and Opportunity Act (WIOA) (29 USC 3112 and 3113). The Unified or Combined State Plan must include a VR services portion, which contains both assurances and descriptions that are required by Title I of the Act and the implementing regulations (34 CFR Part 361). The VR services portion of the Unified or Combined State Plan is one of the key bases of the Department of Education's, Rehabilitation Services Administration's monitoring of the state's administration of the VR program.

Services are provided directly by state VR agency staff, purchased from community-based vendors, or arranged to be provided by other public entities. Services identified in Section 103(a) of the Act (29 USC 723(a)), except those of an assessment nature, are provided in accordance with an Individualized Plan for Employment (IPE), which can be developed by the individual, or with assistance from others, including a qualified VR counselor employed by the state VR agency or, as appropriate, a disability advocacy organization. The services identified in the IPE are those determined by the individual and qualified VR counselor to be necessary for the individual to achieve an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. State VR agencies also may provide services to groups of individuals with disabilities, including students and youth with disabilities.

## **B. Other**

WIOA requires the VR program to collaborate with other workforce development, educational, and human resource programs in a one-stop service delivery system. WIOA'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 WIOA, including the state VR agency, are “required partners.” Each partner must enter into a Memorandum of Understanding (MOU) with the Local Workforce Development 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 operating costs of the system, including infrastructure costs and other shared costs of one-stop centers, 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 its operation. Each partner's resources may be used only for (1) services that are authorized under that partner's program and delivered to individuals who are eligible for those services; and (2) operating costs of the one-stop center, including infrastructure costs and shared services costs allocable to the partner's program.

In addition to the MOU required by WIOA, the Act requires that a state VR agency's VR services portion of the Unified or Combined 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.

### **Source of Governing Requirements**

The VR program is authorized by Title I of the Rehabilitation Act of 1973, as amended by Title IV of WIOA (29 USC 701 et seq.). Program regulations are found at 34 CFR Part 361.

### **Availability of Other Program Information**

The Rehabilitation Service Administration's (RSA) website contains information pertinent to the program. The following documents are most pertinent to the critical areas to be tested under the VR program:

1. Instructions for completing the Vocational Rehabilitation Financial Report (RSA-17) for the State Vocational Rehabilitation Services program (DCL-20-02)  
<https://rsa.ed.gov/sub-regulatory-guidance/instructions-vocational-rehabilitation-financial-report-rsa-17-dcl-20-02>

2. Period of Performance Frequently Asked Questions  
<https://rsa.ed.gov/sites/default/files/subregulatory/rsa-faq-period-of-performance-for-formula-grant-awards-03-21-2017.pdf>
3. One-Stop Infrastructure Costs Frequently Asked Questions  
<https://rsa.ed.gov/sites/default/files/subregulatory/rsa-faq-one-stop-infrastructure-costs-12-27-2016.pdf>

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	Y	N	Y	Y	N	N

#### A. Activities Allowed or Unallowed

##### 1. Services to Individuals

VR services provided under Section 103(a) of the Act (29 USC 723(a)) 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 individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Section 103(a) of the Act contains examples of the types of services that can be provided to individuals with disabilities under an IPE. In addition, state VR agencies may provide pre-

employment transition services, pursuant to Section 113 of the Act (29 USC 733), to students with disabilities, regardless of whether they have applied and been determined eligible for VR services. A student with a disability is not required to have an IPE to receive pre-employment transition services under Section 113 of the Act; however, a student with a disability must have an IPE if he or she needs other VR services that are beyond the scope of pre-employment transition services described in section 113 of the Act.

2. *Services to Groups*

The state VR agency may provide VR services that benefit a group of individuals with disabilities. Section 103(b) of the Act (29 USC 723(b)) describes those services state VR agencies may provide to groups of individuals with disabilities.

3. *Participation in a One-Stop Service Delivery System*

Any service or infrastructure cost charged to the VR program through its participation in the one-stop service delivery system must be allowable under the program's authorizing statute and regulations and allocable to the VR program, consistent with the MOU between the state VR agency and the Local Workforce Development Board. The MOU is the primary vehicle by which the state VR agency sets forth how it will participate in and share in the costs of operating the one-stop service delivery system.

The MOU identifies the resources the state VR agency will contribute to support a fair share of the one-stop system's common operating costs, including infrastructure and shared services costs. The amount provided must be proportionate to the use of the system and the relative benefits received by the program. VR agencies may provide contributions for infrastructure and shared services costs through cash, noncash, or third party in-kind contributions, in accordance with the MOU. Cash contributions are cash funds provided to the Local Workforce Development Board or its designee by one-stop partners, either directly or through an interagency transfer. Noncash contributions are expenditures incurred by one-stop partners on behalf of the one-stop center and goods or services contributed by a partner program and used by the one-stop center, fairly valued consistent with 2 CFR section 200.306. Third party in-kind contributions are contributions of space, equipment, technology, non-personnel services, or other like items to support the infrastructure costs associated with one-stop operations, contributed either directly to one-stop partners or on behalf of a specific partner. While the VR agency may provide third party in-kind contributions for the one-stop system, such contributions do not count as match under the VR program (29 USC 3151(b)(1)(A)(iv)); 34 CFR sections 361.23 and 361.60(b) and Subpart F).



4. *Administrative Costs for Pre-Employment Transition Services*

Administrative costs incurred while providing pre-employment transition services are allowable under the VR program but must be paid with other VR funds. States may not use any of the funds reserved in accordance with 29 USC 730(d)(1) for administrative costs, as defined in 29 USC 705(1), related to the provision of pre-employment transition services under Section 113 of the Act (29 USC 730(d)(2)).

**C. Cash Management**

See ED Cross-Cutting Section (84.000).

**H. Period of Performance**

Under section 111(a)(1) of the Rehabilitation Act, the Department pays to each state each federal fiscal year an amount equal to the federal share of the cost of providing VR services and administering the VR program. Consistent with the definition of “period of performance” at 2 CFR section 200.1 and the requirements governing information that must be contained in a GAN at 2 CFR section 200.211, the VR GAN specifies the beginning and end dates for each VR grant award. Therefore, state VR agencies may incur obligations or make expenditures under a grant award if they are incurred during the period of performance for that award. Any obligations or expenditures incurred outside of that period of performance would need to be paid with funds available from a different VR grant award.

**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 only for the provision of VR services and the administration of the VR services portion of the Unified or Combined State Plan under the state VR Services program. However, a state VR agency may use program income earned from the Social Security Administration for carrying out programs under Titles I, VI, or VII of the Act. Program income is considered earned when it is received (29 USC 728).

The state VR agency may use program income only as an “addition” to the federal award. The state VR agency may not use program income as a “deduction” to the federal award. To the extent that program income funds are available, the grantee must disburse those funds before requesting additional funds from ED (34 CFR section 361.63).

**L. Reporting****1. Financial Reporting**

- a. *SF 270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF 271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF 425, Federal Financial Report* – Applicable for grant awards issued before October 1, 2020
- d. *RSA-17, Vocational Rehabilitation Financial Report* – Applicable for grant awards issued on or after October 1, 2020

**2. Performance Reporting**

RSA-911, *Case Service Report (RSA 911) (OMB No. 1820 0508)*. The RSA-911 is a set of data elements that state VR agencies must submit to ED. The data elements obtained from state VR agency service records and case management systems document the application for and/or provision of VR services to individuals with disabilities, including program outcomes and demographic information. The RSA-911 data set instructions are available at <https://rsa.ed.gov/sites/default/files/subregulatory/pd-19-03.pdf>.

*Key Line Items* – Supporting documentation must be included in the service record or case management system for the data elements listed below. Dates reported in the case management system must match the supporting documentation. The following data elements contain critical information:

1. Date of Application (element 7)
2. Date of Eligibility Determination (element 38)
3. Date of Most Recent or Amended Individualized Plan for Employment (IPE) (element 398)
4. Start Date of Employment in Primary Occupation (element 350)
5. Employment Outcome at Exit (element 356)
6. Date of Exit (element 353)
7. Hourly Wage at Exit (element 359)

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**DEPARTMENT OF EDUCATION****ASSISTANCE LISTING 84.181 SPECIAL EDUCATION—GRANTS FOR INFANTS AND FAMILIES****I. PROGRAM OBJECTIVES**

The purposes of the Individuals with Disabilities Education Act (IDEA), Part C (Part C) state formula grant program are to (1) 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) facilitate the coordination of payment for early intervention services from federal, state, local, and private sources (including public and private insurance coverage); (3) 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; (4) enhance the capacity of state and local agencies and service providers to identify, evaluate, and meet the needs of all children, including historically underrepresented populations, particularly minority, low-income, inner-city, and rural children, and infants and toddlers in foster care; and (5) encourage states to expand opportunities for children under the age of 3 years who would be at risk of having substantial developmental delay if they did not receive early intervention services.

**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, and personnel development and contracting for or otherwise providing services to eligible children and their families.

The state designates a state 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 2 years of age, 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).

**Source of Governing Requirements**

These programs are authorized under 20 USC 1431 through 1445. Implementing regulations specific to this program are in 34 CFR Part 303.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	Y	Y	Y	N	N	N	N

#### A. Activities Allowed or Unallowed

See also Part 4, 84.000 ED Cross-Cutting Section.

Each state, in its IDEA Part C application, must include a description of the uses of funds for the fiscal year or years covered by the application, consistent with the requirements in 34 CFR sections 303.205 and 303.501. Generally, allowable activities 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 (in accordance with 34 CFR section 303.211) 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. A state may charge rent, occupancy, or space maintenance costs as a direct cost to its IDEA Part C grant award, only if it indicates so in Section IV.B.2, "Restricted Indirect Cost Rate/Cost Allocation Plan Information," of its IDEA Part C grant application and receives approval from ED in its grant award letter (34 CFR section 303.225(c)(3)).
8. Subject to approval by the governor, the State Interagency Coordinating Council may use IDEA Part C funds to (1) conduct hearings and forums; (2) reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives); (3) pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business (otherwise council members must serve without compensation from IDEA Part C funds); (4) hire staff; and (5) obtain the services of professional, technical, and clerical personnel as may be necessary to carry out the performance of its functions under Part C of the Act (20 USC 1441(d); 34 CFR section 303.603).

## **B. Allowable Costs/Cost Principles**

See also Part 4, 84.000 ED Cross-Cutting Section.

Further, under IDEA 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 those purposes (see 20 USC 1404, 1433, and 1438; 34 CFR sections 303.104 and 303.501).

**C. Cash Management**

See also Part 4, 84.000 ED Cross-Cutting Section.

**F. Equipment/Real Property Management**

Further, acquisition of equipment and construction or alteration of facilities by the IDEA Part C program must meet the prior approval requirements in, and be consistent with, the IDEA-specific requirements in 20 USC 1405 and 34 CFR section 303.104.

**G. Matching, Level of Effort, Earmarking****1. Matching**

Not Applicable

**2. Level of Effort****2.1 Level of Effort – *Maintenance of Effort***

Although the following 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.

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)(B); 34 CFR section 303.225(a)(2) and (b)).

Monies received from Medicaid reimbursements attributable to federal funds, a parent's private health insurance, or a parent or family fees paid under the state's system of payments are not included in "state and local funds" under the state's calculation of the level of effort under 34 CFR section 303.225(b) (34 CFR sections 303.520(d)(2), (d)(3), and (e)(3)).

If a state has enacted a state statute that meets the requirements in 34 CFR section 303.520(b)(2) regarding the use of private health insurance coverage to pay for early intervention services under Part C of the Act, the

state may reestablish a new baseline of state and local expenditures under 34 CFR section 303.225(b) in the next federal fiscal year following the effective date of the statute (34 CFR section 303.520(b)(3)).

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

Not Applicable

**3. Earmarking**

Not Applicable

**H. Period of Performance**

See also Part 4, 84.000 ED Cross-Cutting Section.

**I. Procurement and Suspension and Debarment**

Further, acquisition of equipment and construction or alteration of facilities by the IDEA Part C program must meet the prior approval requirements in, and be consistent with, the IDEA-specific requirements in 20 USC 1405 and 34 CFR section 303.104.

**IV. OTHER INFORMATION**

Certain compliance requirements that apply to multiple Department of Education (ED) programs are discussed once in the ED Cross-Cutting Section of this Supplement (84.000) rather than being repeated in each individual program. When applicable, Section III references to the ED Cross-Cutting Section for these requirements.



## DEPARTMENT OF EDUCATION

### ASSISTANCE LISTING 84.282 CHARTER SCHOOLS

#### I. PROGRAM OBJECTIVES

The objectives of the Expanding Opportunity Through Quality Charter Schools Program (CSP), authorized under Title IV, Part C of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), are to expand opportunities for all students, particularly traditionally underserved students, to attend charter schools and meet challenging state academic standards; provide financial assistance for the planning, program design, and initial implementation of public charter schools; increase the number of high-quality charter schools available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between charter schools and other public schools; encourage states to provide facilities support to charter schools; and support efforts to strengthen the charter school authorizing process.

#### II. PROGRAM PROCEDURES

##### A. Overview

The ESEA was reauthorized by the ESSA (Pub. L. No. 114-95) on December 10, 2015. In accordance with Section 4(a)(1)(B) of the ESSA and Section 4302(c) of the ESEA, as amended by the ESSA, CSP grants awarded in fiscal year (FY) 2016 and earlier years operate in accordance with the requirements of the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB). CSP grants awarded in FY 2017 and later years are subject to the provisions of the ESEA, as amended by the ESSA. The CSP encompasses multiple subprograms, including Grants to State Entities, Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer Grants), Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools, and National Dissemination Grants.

##### B. Grants to State Entities

Prior to FY 2017, CSP funds generally were awarded on a competitive basis to state educational agencies (SEAs) in states with statutes specifically authorizing charter schools. Beginning with new awards in FY 2017, eligible entities under the CSP are state entities (SEs), which consist of SEAs, state charter school boards, governors, and charter school support organizations. For CSP grants awarded in FY 2016 and earlier, SEAs were authorized to 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. For CSP grants awarded in FY 2017 and later years, an SE must use not less than 90 percent of CSP funds to award subgrants to eligible applicants to open and prepare for the operation of new charter schools; open and prepare for the operation of replicated high-quality charter schools; or to expand high-quality charters schools. An SE must also reserve not

less than 7 percent of funds to provide technical assistance to eligible applicants and authorized public chartering agencies.

### **C. Developer Grants and State Entity Subgrants**

As noted above, SEAs or SEs receiving a CSP grant are authorized to make subgrants to eligible applicants. If an eligible SEA or SE elects not to participate in this program, or its application is not approved, eligible applicants, including charter schools that operate in the state, may apply directly to the secretary for a grant. Prior to FY 2017, an eligible applicant (i.e., charter school developer or charter school) was 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 was authorized to apply to the SEA for funds to carry out dissemination activities if the charter school was in operation for at least three consecutive years and 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 could receive a dissemination grant or subgrant, whether or not the charter school applied for or received funds under the CSP for planning or implementation.

For CSP grants awarded in FY 2017 and later years, an eligible applicant may apply for a grant or subgrant to open and prepare for the operation of a new charter school; open and prepare for the operation of a replicated high-quality charter school; or to expand a high-quality charter school. An applicant is limited to receiving a grant or subgrant for a period of not more than five years, of which an eligible applicant may use not more than 18 months for planning and program design. An eligible applicant may not receive more than one grant or subgrant for each individual charter school for a five-year period, unless the eligible applicant demonstrates that such individual charter school has at least three years of improved educational results for students enrolled in the charter school, with respect to the elements described in section 4310(8)(A) and (D) of the ESEA, as amended by the ESSA. The CSP no longer authorizes separate grants or subgrants for dissemination activities.

### **D. Grants to Charter Management Organizations for the Replication or Expansion of High-Quality Charter Schools**

The Consolidated Appropriations Act, 2010 (Pub. L. No. 111-117, 123 Stat. 3264, December 16, 2009) authorized the secretary to make awards to nonprofit charter management organizations (CMOs) and other not-for-profit entities for the replication and expansion of successful charter school models. This authority was extended in subsequent appropriations acts through FY 2016. Similar authority is now codified in statute under the ESEA, as amended by the ESSA. Under the new law, the secretary is authorized to award competitive grants to nonprofit CMOs to enable them to open and prepare for the operation of one or more replicated high-quality charter schools or to expand one or more high-quality charter schools.

## **E. National Dissemination Grants**

Prior to FY 2017, CSP Grants for National Leadership Activities were awarded to support efforts by eligible entities to improve the quality of charter schools by providing technical assistance and other types of support on issues of national significance and scope. For CSP FY 2017 and later years, the CSP will award National Dissemination Grants on a competitive basis to support efforts by eligible entities to support the charter school sector and increase the number of high-quality charter schools available to our Nation's students by disseminating best practices regarding charters schools.

### **Source of Governing Requirements**

This program was authorized by Title V, Part B, Subpart 1 of the ESEA, as amended by NCLB (20 USC 7221-7221j), for awards made in FY 2016 and earlier years. CSP Replication and Expansion grants were authorized under the Department's appropriations acts from FY 2010, through FY 2016 (see e.g., Consolidated Appropriations Act, 2016 (2016 Appropriations Act) (Pub. L. No. 114-113)).

Beginning with FY 2017 grant awards, this program is authorized by Title IV, Part C of the ESEA, as amended by the ESSA (20 USC 7221-7221j). There are no program-specific regulations. However, 34 CFR Part 76, Subpart H prescribes 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.

The transition provisions under the ESEA, as amended by the ESSA, as clarified by the 2016 Appropriations Act, also apply.

### **Availability of Other Program Information**

Information on this program can be found in the following documents posted on ED's website:

1. Charter Schools Program, Nonregulatory Guidance (January 2014) at <http://www2.ed.gov/programs/charter/fy14cspnonregguidance.doc>;
2. Guidance on the Use of Funds to Support Preschool Education (December 2014) at <http://www2.ed.gov/programs/charter/csppreschoolfaqs.doc>; and
3. Dear Colleague Letter on Flexibility for Recipients of Charter Schools Program Grants in FY 2016 and Earlier (November 2017) at <https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-school-programs/state-entities/funding-and-legislation/>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then

determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	Y	N	N	Y	N	N	Y	N

**A. Activities Allowed or Unallowed**

See also Part 4, 84.000 ED Cross-Cutting Section.

1. *Use of Funds by SEAs*

Funds must be used to award subgrants to eligible applicants. For grants awarded under the ESEA, as amended by NCLB, 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. For grants awarded under the ESEA, as amended by the ESSA, funds may be used for administration, which may include providing technical assistance to subgrantees and authorized public chartering agencies. 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. *ESEA, as amended by NCLB*

- (1) 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)).

- (2) 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)).
- (3) 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)(B)).

b. *ESEA, as amended by the ESSA*

- (1) Each eligible applicant may use the funds in accordance with its approved application to open and prepare for the operation of a new charter school, open and prepare for the operation of a replicated high-quality charter school or expand a high-quality charter school.
- (2) In addition, an eligible applicant receiving a CSP grant or subgrant must use the funds for one or more of the following activities:
  - (a) Preparing teachers, school leaders, and specialized instructional support personnel, including through paying the costs associated with (A) providing professional

development; and (B) hiring and compensating, during the eligible applicant's planning period specified in the application for subgrant funds that is required under this section, one or more of the following:

- (i) Teachers
  - (ii) School leaders
  - (iii) Specialized instructional support personnel
- (b) Acquiring supplies, training, equipment (including technology) and educational materials (including developing and acquiring instructional materials).
  - (c) Carrying out necessary renovations to ensure that a new school building complies with applicable statutes and regulations, and minor facilities repairs (excluding construction).
  - (d) Providing one-time, startup costs associated with providing transportation to students to and from the charter school.
  - (e) Carrying out community engagement activities, which may include paying the cost of student and staff recruitment.
  - (f) Providing for other appropriate, non-sustained costs related to the activities described in subsection (b)(1) when such costs cannot be met from other sources.

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, for grants awarded under the ESEA, as amended by NCLB, 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). For grants awarded under the ESEA, as amended by the ESSA, funds may be used to open and prepare for the operation of new charter schools and replicated high-quality charter schools and expand high-quality charter schools.
- b. For grants awarded under the ESEA, as amended by NCLB, grant funds also 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, "Matching, Level of Effort, Earmarking –

Earmarking”), 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 Announcements issued in the *Federal Register* May 24, 2010 (75 FR 28789-28795); July 12, 2011 (76 FR 40890-40898); March 6, 2012 (77 FR 13304-13311); June 20, 2014 (79 FR 35323-35333); June 12, 2015 (80 FR 33499-33510); and May 10, 2016 (81 FR 28837-28847)).

**B. Allowable Costs/Cost Principles**

See Part 4, 84.000 ED Cross-Cutting Section.

**C. Cash Management**

See Part 4, 84.000 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 applicant” 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 ((20 USC 7221i(6)).
- b. A “charter school” is a public school that
  - (1) In accordance with a specific state statute authorizing the granting of charters to schools, is exempt from significant state or local rules that inhibit the flexible operation and management of public schools;

- (2) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;
  - (3) Operates in pursuit of a specific set of educational objectives determined by the authorized public chartering agency;
  - (4) Provides a program of elementary or secondary education, or both;
  - (5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;
  - (6) Does not charge tuition;
  - (7) Complies with federal civil rights laws;
  - (8) Is a school to which parents choose to send their children and admits students on the basis of a lottery, if more students apply than can be accommodated;
  - (9) Agrees to comply with the same federal and state audit requirements as do other elementary and secondary schools in the state, unless such requirements are specifically waived for the purpose of this program;
  - (10) Meets all applicable federal, state, and local health and safety requirements;
  - (11) Operates in accordance with state law;
  - (12) Has a written performance contract with the authorized public chartering agency in the state that includes a description of how student performance will be measured in charter schools pursuant to state assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and
  - (13) May serve children in early childhood education programs or postsecondary students. Under the ESEA, as amended by the ESSA, a charter school may automatically enroll students who are in the immediate prior grade of an affiliated charter school, as long as the charter school complies with the lottery requirement when admitting other students ((20 USC 7221i(2)).
- c. 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(5)).

- d. A “high-quality charter school” is a charter school that:
- (1) Shows evidence of strong academic results, which may include strong student academic growth, as determined by the state;
  - (2) Has no significant issues in the areas of student safety, financial and operational management, or statutory or regulatory compliance;
  - (3) Has demonstrated success in significantly increasing student academic achievement, including graduation rates where applicable, for all students served by the charter school; and
  - (4) Has demonstrated success in increasing student academic achievement, including graduation rates where applicable, for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, as amended by the ESSA (20 USC 7221i(8)).

#### **IV. OTHER INFORMATION**

Certain compliance requirements that apply to multiple ESEA programs are discussed once in the ED Cross-Cutting Section of this Supplement (84.000) rather than being repeated for each individual program. When applicable, Section III references the ED Cross-Cutting Section for these requirements. Also, as discussed in the ED Cross-Cutting Section, SEAs and LEAs, including charter school LEAs, may have been granted waivers from certain compliance requirements.

## DEPARTMENT OF EDUCATION

### ASSISTANCE LISTING 84.287 TWENTY-FIRST CENTURY COMMUNITY LEARNING CENTERS

#### I. PROGRAM OBJECTIVES

The objective of this program is to establish or expand community learning centers (Centers) that provide students with academic enrichment opportunities during non-school hours or periods when school is not in session (e.g., before school, after school, or during summer recess) to complement the students' regular academic program. 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 and offer families of participation students active and meaningful engagement in their child's education.

Under the 21st Century Community Learning Centers (21st CCLC) program, funds flow to state educational agencies (SEAs) by formula, based on each state's share of Title I, Part A funds. SEAs, in turn, use their allocations to make competitive subgrants to eligible entities, which consist of local educational agencies (LEAs), community-based organizations (CBOs), Indian tribes or tribal organizations, and other public or private entities, or consortia of two or more of such agencies, organizations, or entities.

#### II. PROGRAM PROCEDURES

##### Source of Governing Requirements

This program is authorized under Title IV, Part B of the Elementary and Secondary Education Act of 1965 (ESEA). Additional information regarding the ESEA is available at <http://www.ed.gov/essa>. A link to the text of the 21st CCLC program is included on page 183 at <https://www.gpo.gov/fdsys/pkg/BILLS-114s1177enr/pdf/BILLS-114s1177enr.pdf>.

##### Availability of Other Program Information

Due to the COVID-19 pandemic, the US Department of Education offered, through a waiver under section 8401 of the ESEA, flexibility in school year 2020–2021 to SEAs regarding the requirement in section 4201(b)(1)(A) of the ESEA, which requires a 21st CCLC program to operate “during nonschool hours or periods when school is not in session (such as before and after school or during summer recess).” Under the waiver, an SEA may permit subrecipients to provide supplemental activities when school is in session but students are not receiving in-person instruction, such as permitting a teacher to provide additional academic supports during remote learning. All other requirements for a 21st CCLC program continue to apply.

The letter inviting these waivers can be found here: <https://oese.ed.gov/files/2020/09/21st-CCLC-waiver-invitation-letter-FOR-POSTING.pdf>. The complete list of states that were

approved for this waiver can be found here: <https://oese.ed.gov/offices/office-of-formula-grants/school-support-and-accountability/21st-century-community-learning-centers/resources-21st-century-community-learning-centers/>.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	N	N	N	Y	Y	Y	N

**A. Activities Allowed or Unallowed**

See also Part 4, 84.000 ED Cross-Cutting Section.

1. *SEAs*

SEAs may use 21st CCLC program funds for the following:

- a. Competitive subawards (20 USC 7172(c)(1)).
- b. State administration (20 USC 7172(c)(2)):
  - (1) The administrative costs of carrying out its responsibilities under the program;

- (2) Establishing and implementing a peer review process for subgrant applications; and
  - (3) Awarding funds to eligible entities, in consultation with other state agencies responsible for administering youth development and adult education programs.
- c. State activities (20 USC 7172(c)(3))
- (1) Monitoring and the 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 that are applicants for, or recipients of, subawards under this program.
  - (5) Ensuring that any eligible entity that receives an award under this part from the state aligns the activities provided by the program with challenging state academic standards.
  - (6) Ensuring that any such eligible entity identifies and partners with external organizations, if available, in the community.
  - (7) Coordinating funds received under this part with other federal and state funds to implement high-quality programs.
  - (8) Providing a list of prescreened external organizations, as described under section 4203(a)(11) of the ESEA.
  - (9) Working with teachers, principals, parents, the local workforce, the local community, and other stakeholders to review and improve state policies and practices to support the implementation of effective programs.

2. *LEAs, CBOs, and Other Public or Private Entities (20 USC 7175)*

Subrecipients may use funds to carry out a broad array of activities during non-school hours or periods when school is not in session (e.g., before and after school, during summer recess) 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. Including tutoring

- services including those provided by senior citizen volunteers) and mentoring programs;
- b. Well-rounded education activities that enable students to be eligible for credit recovery or attainment;
  - c. Literacy education programs including financial literacy programs and environmental literacy programs;
  - d. Health and active lifestyle programs including nutritional education and regular, structured physical activity programs;
  - e. Services for individuals with disabilities;
  - f. Programs that provide after school activities for limited English proficient students that emphasize language skills and academic achievement;
  - g. Cultural programs;
  - h. Telecommunications and technology education programs;
  - i. Expanded library service hours;
  - j. Parenting skills program 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 and counseling programs;
  - m. Programs that build skills in science, technology, engineering, and mathematics (STEM);
  - n. Programs that partner with in-demand fields of the local workforce or build career competencies and career readiness and ensure that local workforce and career readiness skills are aligned with the Carl D. Perkins Career and Technical Education Act of 2006 (20 USC 2301 et seq.) and the Workforce Innovation and Opportunity Act (29 USC 3101 et seq.). Note that a subrecipient may provide one or more of these activities, consistent with the SEA's approved consolidated state plan and the subrecipient's 21st CCLC program application to the SEA.

Under 20 USC 7174(a)(2)a subrecipient may use funds to conduct authorized activities during the school day that—

- (1) Are part of an expanded learning program that provides students at least 300 additional program hours before, during, or after the traditional school day;
- (2) Supplement but do not supplant regular school day requirements; and
- (3) Are carried out jointly by an LEA receiving funds under Title I, Part A of the ESEA and another eligible entity and that propose to target services to students, and their families, who primarily attend schools: (1) implementing comprehensive or targeted support and improvement activities under section 1111(d) of the ESEA or other schools determined by an LEA to be in need of intervention and support to improve student academic achievement and other outcomes and (2) that enroll students who may be at risk for academic failure, dropping out of school, involvement in criminal or delinquent activities, or who lack strong positive role models.

**B. Allowable Costs/Cost Principles**

See Part 4, 84.000 ED Cross-Cutting Section.

**C. Cash Management**

See Part 4, 84.000 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**

An SEA may award 21st CCLC funds to an eligible entity, which means an LEA, CBO, Indian tribe or tribal organization (as such terms are defined in section 4 of the Indian Self-Determination and Education Act (25 USC 450b)), another public or private entity, or a consortium of two or more such agencies, organizations, or entities.

**J. Program Income**

1. See 2 CFR 200.307 Program Income located at [https://www.ecfr.gov/cgi-bin/text-idx?node=se2.1.200\\_1307&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?node=se2.1.200_1307&rgn=div8). An SEA that has received approval from ED to earn program income must:
  - a. Have a clearly delineated process to give prior approval to its subrecipients.
  - b. Have clearly stated what types of program income may be generated.
  - c. Have provided training to subrecipients on how to track and report the income earned.
  - d. Have made it explicitly clear that children may not be denied program participation based on ability to pay.
2. Subrecipients who have been granted prior approval per 2 CFR 200.307 to earn program income must:
  - a. Have documentation that prior approval to generate program income has been granted by the SEA.
  - b. Have articulated the types of program income they will generate.
  - c. Have provided training on how to track and report program income.
  - d. Ensure that they do not deny students access to the program based on their family's ability to pay.

**L. Reporting****1. Financial Reporting**

See Part 4, 84.000 ED Cross-Cutting Section.

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**M. Subrecipient Monitoring**

See 2 CFR 200.331 Requirements for Pass-through Entities located at <https://www.law.cornell.edu/cfr/text/2/200.331>.

**IV. OTHER INFORMATION**

Note: Certain compliance requirements that apply to multiple ED programs are discussed once in the ED Cross-Cutting Section of this Supplement (84.000) rather than being repeated in each individual program. Where applicable, Section III references the ED Cross-Cutting Section for these requirements. Further, the Other Information section in 84.000 also provides information that is relevant to this program.



**DEPARTMENT OF EDUCATION****ASSISTANCE LISTING 84.365 ENGLISH LANGUAGE ACQUISITION STATE 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 English learners (ELs) by helping them attain English proficiency and meet challenging state academic standards. The program also provides enhanced instructional opportunities for immigrant children and youths.

**II. PROGRAM PROCEDURES****A. Overview**

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 ELs 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 8302 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.

**B. Subprograms/Program Elements**

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 EL 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 8302 of the ESEA (20 USC 7842).

LEAs that receive immigrant subgrants use those funds to pay for enhanced instructional opportunities for immigrant children. LEAs receiving EL subgrants must support activities that increase the English proficiency and academic achievement of ELs by providing effective language instruction educational programs, supplemental activities, and professional development for teachers and school leaders relating to ELs (20 USC 6825). In addition, LEAs receiving subgrants under Part A of Title III are required to assess the English language proficiency of the ELs they serve (20 USC 6823). SEAs are required to develop statewide entrance and exit procedures for ELs and assist subgrantees in meeting the state's long-term goals for progress towards English language proficiency.

## Source of Governing Requirements

This program is authorized by Title III, Part A of the ESEA (20 USC 6821 through 6871, 7011 through 7014). There are no program regulations; however, the general ESEA requirements in 34 CFR Part 299 apply.

## Availability of Other Program Information

Other program information is available at <http://www2.ed.gov/programs/sfgp/index.html>.

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	Y	N	N	Y	Y	Y

### A. Activities Allowed or Unallowed

See also Part 4, 84.000 ED Cross-Cutting Section.

Certain compliance requirements which apply to multiple ESEA programs are discussed once in the ED Cross-Cutting Section of this Supplement (84.000) rather than being repeated in each individual program. When applicable, Section III references the ED Cross-Cutting Section for these requirements. Also, as discussed in the ED Cross-Cutting

Section, SEAs and LEAs may have been granted waivers from certain compliance requirements.

1. *SEAs*

SEAs must use funds under this program for the following purposes:

- a. To make subgrants (20 USC 6821(b)(1), 6824).
- b. State administration (20 USC 6821(b)(3)).
- c. One or more of the following state activities (20 USC 6821(b)(2)):
  - (1) Establishing and implementing statewide entrance and exit procedures for ELs.
  - (2) Professional development and other activities, which may include assisting personnel in meeting state and local certification and licensing requirements for teaching ELs.
  - (3) Planning, evaluation, administration, and interagency coordination related to LEA subgrants.
  - (4) Providing technical assistance and other forms of assistance to LEA subgrantees.
  - (5) Providing recognition, which may include providing financial awards, to subgrantees that have significantly improved EL achievement and progress in meeting the state ELP goal and academic standards.

2. *LEAs*

- a. LEAs receiving immigrant subgrants 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 and families 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 and families of immigrant children and youth by offering comprehensive community services.
- b. LEAs receiving EL subgrants use the funds for the following purposes, which, as stated may be required or discretionary:
- (1) Administrative costs (20 USC 6825(b)).
  - (2) *Required Activities* – An LEA is required to use EL subgrant funds to:
    - (a) Increase the English proficiency of ELs by providing effective language instruction educational programs that meet the needs of ELs and demonstrate success in increasing English proficiency and student academic achievement (20 USC 6825(c)(1)).
    - (b) Provide effective 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)).
    - (c) Provide and implement other effective activities that supplement language instruction educational programs, which must include parent, family, and community engagement activities, and may include coordination with related programs (20 USC 6825(c)(3)).

- (3) *Authorized Activities* – An LEA may, but is not required to, use EL subgrant funds for the following activities (20 USC 6825(d)):
- (a) Upgrading program objectives and effective instruction strategies.
  - (b) Improving the instruction program for ELs by identifying, acquiring, and upgrading curricula, instruction materials, educational software, and assessment procedures.
  - (c) Providing tutorials and academic or vocational education for ELs and intensified instruction.
  - (d) Developing and implementing effective preschool, 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 ELs.
  - (f) Providing community participation programs, family literacy services, and parent and family outreach and training activities to ELs and their families to improve the English language skills of ELs and to assist parents and families in helping their children to improve their academic achievement and becoming active participants in the education of their children.
  - (g) Improving the instruction of ELs, which may include ELs with disabilities, by providing for (i) the acquisition or development of educational technology or instructional materials; (ii) access to, and participation in, electronic networks for materials, training, and communication; and (iii) incorporation of these resources into curricula and programs.
  - (h) Offering early college, high school, or dual or concurrent enrollment courses designed to help ELs achieve success in postsecondary education.

**B. Allowable Costs/Cost Principles**

See Part 4, 84.000 ED Cross-Cutting Section.

**G. Matching, Level of Effort, Earmarking****1. Matching**

Not Applicable

**2. Level of Effort****2.1 Level of Effort – Maintenance of Effort**

See Part 4, 84.000 ED Cross-Cutting Section.

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

See Part 4, 84.000 ED Cross-Cutting Section.

**3. Earmarking**

*SEAs*

- a. SEAs can reserve up to 5 percent of their entire grant to carry out state activities and for administration (**Note:** Under the circumstances described in paragraph 3.a(2) an SEA can have a reservation for administration that exceeds 5 percent) (20 USC 6821(b)(2)):
  - (1) SEA's are authorized to reserve up to 2.5 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)).
  - (2) SEA reserved funds not used for administration can be used to carry out one or more of the state activities (see III.A.1.c) (20 USC 6821(b)(2)).
- b. 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 8305 of the ESEA (20 USC 7845) as follows (20 USC 6821, 6824(a)):
  - (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 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) *EL Subgrants* – SEAs are required by to use funds not used for state activities, SEA administration, or immigrant subgrants to award subgrants to LEAs to serve ELs. SEAs shall allocate EL subgrants to their LEAs on a formula basis. The formula is based on the number of ELs in schools served by a particular LEA as a percentage of the number of such ELs in the entire state. The SEA, however, shall not award a subgrant if the amount of the subgrant, under the statutory formula for EL subgrants, would be less than \$10,000 (20 USC 6824).

- c. *LEA Administrative Costs* – An LEA receiving an EL subgrant may use no more than 2 percent of that subgrant for administrative costs (20 USC 6825(b)).

## **H. Period of Performance**

See Part 4, 84.000 ED Cross-Cutting Section.

## **L. Reporting**

### **1. Financial Reporting**

See Part 4, 84.000 ED Cross-Cutting Section.

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

Not Applicable

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## **N. Special Tests and Provisions**

### **1. Participation of Private School Children**

See Part 4, 84.000 ED Cross-Cutting Section.

**2. Access to Federal Funds for New or Significantly Expanded Charter Schools**

See Part 4, 84.000 ED Cross-Cutting Section.



**DEPARTMENT OF EDUCATION****ASSISTANCE LISTING 84.367 SUPPORTING EFFECTIVE INSTRUCTION STATE GRANTS (formerly Improving Teacher Quality State Grants)****I. PROGRAM OBJECTIVES**

The objective of the Supporting Effective Instruction state grant program (formerly 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 Every Student Succeeds Act (ESSA) (Pub. L. No. 114-95), is to provide funds to state educational agencies (SEAs), and local educational agencies (LEAs) to: (1) increase student achievement consistent with the challenging state academic standards, (2) improve the quality and effectiveness of teachers, principals, and other school leaders, (3) increase the number of teachers, principals, and other school leaders who are effective in improving student academic achievement in schools, and (4) provide low-income and minority students greater access to effective teachers, principals, and other school leaders.

**II. PROGRAM PROCEDURES****A. Overview**

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 2101 of the ESEA (20 USC 6611) or (2) a consolidated application that includes the program, in accordance with Section 8302 of the ESEA (20 USC 7842).

**B. Equitable Service**

After timely and meaningful consultation with appropriate private school officials, SEAs and LEAs must provide services to teachers and other educational personnel in private schools on an equitable basis that address their needs under the program and are equitable to the level of services provided to teachers and other educational personnel in the SEA and LEA (see generally ESEA section 8501). For more information about equitable services for private school staff and when their participation is equitable, see *Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements Under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA)* available at <https://www2.ed.gov/policy/elsec/leg/essa/essaguidance160477.pdf>. See also Section G of *Non-Regulatory Guidance: Improving Teacher Quality State Grants ESEA Title II, Part A* available at <https://www2.ed.gov/programs/teacherqual/guidance.pdf>.

**Source of Governing Requirements**

This program is authorized by Title II, Part A, of the ESEA, as amended by the ESEA sections 2101-2104 (which is 20 USC 6611-6614). The program purpose and definitions in ESEA Title II, sections 2101 and 2102 (20 USC 6601 and 6602) also apply to this program.

While there are no program regulations, general ESEA requirements in 34 CFR parts 76, 77, and 299 apply. See also Part 4, 84.000 ED Cross Cutting Section.

**Availability of Other Program Information**

1. Building Systems of Support for Excellent Teaching and Leading – Non-Regulatory Guidance (September 27, 2016)  
<https://www2.ed.gov/policy/elsec/leg/essa/essatitleiipartaguidance.pdf>
2. Improving Teacher Quality State Grants – Non-Regulatory Guidance (October 5, 2006)  
<https://www2.ed.gov/programs/teacherqual/guidance.pdf>
3. Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements Under the Elementary and Secondary Education Act of 1965 (ESEA), as Amended by the Every Student Succeeds Act (ESSA) (November 21, 2016)  
<https://www2.ed.gov/policy/elsec/leg/essa/essaguidance160477.pdf>

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	Y	N	N	N	Y	Y	Y

## A. Activities Allowed or Unallowed

See also Part 4, 84.000 ED Cross-Cutting Section.

Certain compliance requirements that apply to multiple ESEA programs are discussed once in the Department of Education (ED) Cross-Cutting Section of this Supplement (84.000) rather than being repeated in each individual program. When applicable, Section III 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.

### 1. State Use of Funds

- a. Subgrants from SEAs to LEAs (ESEA Section 2101(c) (20 USC 6613(c)).
  - (1) SEAs must reserve not less than 95 percent of their Title II allocation for subgrants to LEAs (Section 2101(c)(1) of the ESEA).
  - (2) Additionally, SEAs may reserve not more than 3 percent of the amount reserved for subgrants to LEAs under Section 2101(c)(1) for one or more of the activities for principals or other school leaders described in Section 2101(c)(4). For more information, about this additional SEA reservation of funds, please see Part 3 of the *Non-Regulatory Guidance for Title II, Part A: Building Systems of Support for Excellent Teaching and Leading*, available at <https://www2.ed.gov/policy/elsec/leg/essa/essatitleiipartaguidance.pdf> (ESEA Section 2101(c)(3)).
  - (3) Additionally, SEAs may reserve not more than 2 percent of the state's total Title II, Part A state allocation to establish or expand teacher, principal, or other school leader preparation academies to prepare teachers, principals, and other school leaders to serve in high-need schools. For more information, please see the guidance described in A.1.a.ii, above (ESEA Section 2101(c)(4)(B)(xii)).
- b. State Administration and Activities – SEAs have the authority to set aside 5 percent of a state's total allocation to carry out statewide activities related to improving educator quality. Within this 5 percent, SEAs may use not more than 1 percent of their total Title II allocation for state administration Allowable state-level activities are identified in Section 2101(c)(4) of the ESEA. While not an exhaustive list, examples of allowable activities include:

- (1) Carrying out programs that establish, expand, or improve alternative routes for state certification of teachers, principals, or other school leaders;
- (2) Carrying out activities that focus on ensuring teachers have the necessary subject-matter knowledge and teaching skills, as demonstrated through measures determined by the state, and principals or other school leaders have the instructional leadership skills to help teachers teach and to help students meet such challenging state academic standards;
- (3) Reforming and teacher, principal, or other school leader certification, recertification, licensing, or tenure systems or preparation program standards and approval processes to ensure that they are aligned with such challenging state standards;
- (4) Developing, or assisting local educational agencies in, developing career opportunities and advancement initiatives that promote professional growth and emphasize multiple career paths; and
- (5) Developing, or assisting local educational agencies in developing, strategies that provide differential pay, or other incentives, to recruit and retain teachers in high-need academic subjects and teachers, principals, or other school leaders, in low-income schools and school districts (Section ESEA 2101(c)(4) (20 USC 6611(c)(4))).

## 2. *LEA Use of Funds*

After conducting meaningful consultation, as required by ESEA Section 2102(b)(3), LEAs may use funds for a broad range of activities designed to improve educator effectiveness that are identified in ESEA Section 2103(b). While not an exhaustive list, examples of allowable activities include:

- a. Providing “professional development” (as the term is defined in ESEA Section 8101(42) (20 USC 7801(42))) to teachers, instructional leadership teams, principals, or other school leaders that is focused on improving teaching and student learning and achievement;
- b. Developing and implementing initiatives to recruit, hire, and retain teachers, principals, and other school leaders;
- c. Providing training, technical assistance, and capacity-building in local educational agencies to assist teachers, principals, or other school leaders with selecting and implementing formative assessments, designing classroom-based assessments, and using data from such assessments to

improve instruction and student academic achievement carrying out initiatives that provide teacher, paraprofessional, principal, or other school leader advancement and professional growth, and an emphasis on leadership opportunities, multiple career paths, and pay differentiation. LEAs also may use funds to hire teachers to reduce class size (ESEA sections 2103(b) (20 USC 6613(b))).

**B. Allowable Costs/Cost Principles**

(All grantees) See Part 4, 84.000 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. LEAs apply to the SEAs for program funds. The amount of each LEA's allocation that an SEA provides is based solely on the following formula:

- (1) Twenty percent of the funds must be distributed to LEAs based on the relative numbers of individuals ages 5 through 17 who reside in the area the LEA serves (based on the most recent Census data, as determined by the secretary); and
- (2) Eighty percent of the funds must be distributed to LEAs based on the relative numbers of individuals ages 5 through 17 who reside in the area the LEA serves and who are from families with incomes below the poverty line (based on the most recent Census data, as determined by the secretary) (ESEA Section 2102(a)).

**G. Matching, Level of Effort, Earmarking**

**1. Matching (LEAs)**

Not Applicable

**2. Level of Effort**

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

(SEAs/LEAs) See also Part 4, 84.000 ED Cross-Cutting Section.

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

(SEAs/LEAs) See also Part 4, 84.000 ED Cross-Cutting Section.

**3. Earmarking**

See Part 4, 84.000 ED Cross-Cutting Section.

**L. Reporting****1. Financial Reporting**

See Part 4, 84.000 ED Cross-Cutting Section.

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**M. Subrecipient Monitoring**

See Part 4, 84.000 ED Cross-Cutting Section.

**N. Special Tests and Provisions****1. Participation of Private School Children (SEAs/LEAs)**

See also Part 4, 84.000 ED Cross-Cutting Section.

**2. Access to Federal Funds for New or Significantly Expanded Charter Schools**

See Part 4, 84.000 ED Cross-Cutting Section.

**IV. OTHER INFORMATION**

Funds under the Small, Rural School Achievement (SRSA) program (Assistance Listing 84.358A) may be used for activities allowed under other programs, including this program Title II, Part A.

Expenditures for allowable activities under Title II, Part A from funds awarded for the SRSA Funds Program should be included in the audit universe and total expenditures of Assistance Listing 84.358A (i.e., from the program from which they originated) for purposes of (1)

determining Type A programs and (2) completing the Schedule of Expenditures of Federal Awards (SEFA).

**DEPARTMENT OF EDUCATION****ASSISTANCE LISTING 84.424 STUDENT SUPPORT AND ACADEMIC ENRICHMENT PROGRAM****I. PROGRAM OBJECTIVES**

The objective of the Student Support and Academic Enrichment Grant program in Title IV, Part A of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the Every Student Succeeds Act (ESSA) (Pub. L. No. 114-95), is to provide funds to state educational agencies (SEAs) and local educational agencies (LEAs) to improve students' academic achievement by increasing the capacity of states, LEAs, schools, and local communities to: 1) provide all students with access to a well-rounded education; 2) improve school conditions for student learning; and 3) improve the use of technology in order to improve the academic achievement and digital literacy of all students.

**II. PROGRAM PROCEDURES**

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 4103 of the ESEA (20 USC 7113) or 2) a consolidated application that includes the program, in accordance with Section 8302 of the ESEA (20 USC 7842).

**Source of Governing Requirements**

This program is authorized by Title IV, Part A of the ESEA, as amended by the ESSA (Pub. L. No. 114-95) (20 USC 7101-7122). The program purpose and definitions in Title IV, Part A of the ESEA, sections 4101 and 4102 (20 USC 7111 and 7112) also apply to this program. While there are no program regulations, general ESEA requirements in 34 CFR Part 299 apply.

**Availability of Other Program Information**

- a. Student Support and Academic Enrichment Grants Non-Regulatory Guidance (October 21, 2016) <https://www2.ed.gov/policy/elsec/leg/essa/essassaegrantguid10212016.pdf>.
- b. Provisions in the Consolidated Appropriations Act of 2017 That Relate to the Title IV, Part A Student Support and Academic Enrichment Grant Program [https://safesupportivelearning.ed.gov/sites/default/files/ProvisionsConsolidatedAppropriationsAct2017\\_Title%20IVASSAE.pdf](https://safesupportivelearning.ed.gov/sites/default/files/ProvisionsConsolidatedAppropriationsAct2017_Title%20IVASSAE.pdf).
- c. Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements Under the Elementary and Secondary Education Act of 1965 (ESEA), as Amended by the Every Student Succeeds Act (ESSA) (November 21, 2016) <https://www2.ed.gov/policy/elsec/leg/essa/essaguidance160477.pdf>.



### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	Y	Y	N	N	N	N	Y

#### A. Activities Allowed or Unallowed

See also Part 4, 84.000 ED Cross-Cutting Section.

##### 1. State Use of Funds

- a. *Subgrants to LEAs* (Section 4104(a)(1) of the ESEA (20 USC 7114(a)(1))) – SEAs must reserve not less than 95 percent of their Title IV, Part A allocation for subgrants to LEAs.
- b. *State Administration* (Section 4104(a)(2) of the ESEA (20 USC 7114(a)(2))) – SEAs may reserve up to 1 percent of their Title IV, Part A allocation for administrative costs.
- c. *State Activities* (Section 4104(a)(3) of the ESEA (20 USC 7114(a)(3))) – States may reserve the remainder of funds not reserved for subgrants or administrative costs for state activities. Examples of allowable state-level activities are identified in Section 4104(b) of the ESEA and may include monitoring and providing technical assistance and capacity building to

LEAs; identifying and eliminating state barriers to the coordination and integration of programs, initiatives, and funding streams that meet the purposes of the program; and otherwise supporting LEAs in carrying out activities in the three Title IV, Part A program content areas: well-rounded education, safe and healthy students, and effective use of technology.

## 2. *LEA Use of Funds*

LEAs may use funds for a broad span of activities designed to improve student academic achievement by improving conditions for learning in three areas: well-rounded education (examples of allowable activities in section 4107 of the ESEA), safe and healthy students (examples of allowable activities in section 4108 of the ESEA), and effective use of technology (examples of allowable activities in section 4109 of the ESEA).

Under Section 4106(e)(2)(C)–(E) of the ESEA, an LEA or consortium of LEAs that receives \$30,000 or more in Title IV, Part A funds, must use:

- a. Not less than 20 percent of funds to support one or more of the activities authorized under section 4107 pertaining to well-rounded educational opportunities;
- b. Not less than 20 percent of funds to support one or more activities authorized under section 4108 pertaining to safe and healthy students; and
- c. A portion of funds to support one or more activities authorized under section 4109 pertaining to the effective use of technology, including an assurance that it will not use more than 15 percent of the funds reserved for this section for purchasing technology infrastructure as described in section 4109(b).

Under section 3511 of Division A of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, the Department provided authority for LEAs that receive \$30,000 or more to receive waivers of 1) the content area spending requirements in sections 4106(e)(2)(C), (D), and (E) – the requirements to use a minimum percentage of Title IV, Part A funds for activities under sections 4107, 4108, and 4109 for fiscal year (FY) 2019 funds and any available FY 2018 carryover funds; and 2) the spending limitation in section 4109(b) – the 15 percent limit on the use of funds under section 4109 to purchase technology infrastructure for FY 2019 funds and any available FY 2018 carryover funds.

## 3. *Transferability*

Funds under the Small Rural Schools Achievement (SRSA) Alternative Uses of Funds Program (Assistance Listing 84.358A) may be used for activities allowed under other programs, including this program. Expenditures under Assistance Listing 84.424 from funds awarded for the SRSA Alternative Uses of Funds

Program should be included in the audit universe and total expenditures of Assistance Listing 84.424 (i.e., from the program from which they originated) for purposes of (1) determining Type A programs, and (2) completing the Schedule of Expenditures of Federal Awards (SEFA).

See Part 4, 84.000 ED Cross-Cutting Section.

**B. Allowable Costs/Cost Principles**

(All grantees) See Part 4, 84.000 ED Cross-Cutting Section.

**C. Cash Management**

See Part 4, 84.000 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. LEAs or consortia of LEAs are the eligible subrecipients (section 4106(a)-(b) of the ESEA).
- b. LEAs apply to the SEAs for program funds. The amount of each LEA's allocation that an SEA provides is determined by formula in the same proportion as to the LEA's prior year's Title I, Part A allocation (Section 4105(a)(1) of the ESEA). In order to receive an allocation under Title IV, Part A, an LEA must have received a Title I, Part A allocation the previous fiscal year.
- c. However for the 2017–2018 school year, SEAs had the option of awarding subgrants on a competitive basis pursuant to authority provided in the 2017 Consolidated Appropriations Act, Pub. L. No. 115-31 available here: [https://safesupportivelearning.ed.gov/sites/default/files/ProvisionsConsolidatedAppropriationsAct2017\\_Title%20IVASSAE.pdf](https://safesupportivelearning.ed.gov/sites/default/files/ProvisionsConsolidatedAppropriationsAct2017_Title%20IVASSAE.pdf). Such competitive subgrants must be not less than \$10,000.

**G. Matching, Level of Effort, Earmarking**

**1. Matching (LEAs)**

Not Applicable

**2. Level of Effort****2.1 Level of Effort – Maintenance of Effort (SEAs/LEAs)**

Not Applicable

**2.2 Level of Effort – Supplement Not Supplant (SEAs/LEAs)**

See Part 4, 84.000 ED Cross-Cutting Section.

**3. Earmarking**

See Part 4, 84.000 ED Cross-Cutting Section.

**H. Period of Performance**

(All grantees) See Part 4, 84.000 ED Cross-Cutting Section.

**N. Special Tests and Provisions****1. Participation of Private School Children (SEAs/LEAs)**

See also Part 4, 84.000 ED Cross-Cutting Section.

**2. Access to Federal Funds for New or Significantly Expanded Charter Schools**

See Part 4, 84.000 ED Cross-Cutting Section.

**IV. OTHER INFORMATION**

See Part 4, 84.000 ED Cross-Cutting Section.

## DEPARTMENT OF EDUCATION

### ASSISTANCE LISTING 84.425 EDUCATION STABILIZATION FUND (ESF)

#### ESF INTRODUCTION

Note: This program is considered a “higher risk” program for 2022, pursuant to 2 CFR section 200.519(c)(2). Refer to the “Programs with Higher Risk Designation” section of Part 8, Appendix IV, Internal Reference Tables, for a discussion of the impact of the “higher risk” designation on the major program determination process.

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law on March 27, 2020 and provides \$30.75 billion for the Education Stabilization Fund (ESF) to prevent, prepare for, and respond to coronavirus, domestically or internationally. The Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act), was signed into law on December 27, 2020, and provided an additional \$81.88 billion for the ESF programs. Finally, the American Rescue Plan Act of 2021 (ARP Act) was enacted on March 11, 2021 and includes approximately \$165 billion for the ESF.

**Although funds from the CARES Act, CRRSA Act, and ARP Act were allocated to the US Department of Education (ED) under a single federal program (ESF), ED awarded or will award ESF funds to grantees under 23 subprograms (one subprogram, 84.425Q, was awarded only to for-profit institutions and therefore not included in this Compliance Supplement). An alphabetic character at the end of the 84.425 Assistance Listing Number (ALN) was used to delineate the specific subprogram. Each subprogram has its own funding requirements and compliance requirements.**

The ESF Compliance Supplement is broken down into two sections. Section 1 of the ESF Compliance Supplement identifies the objectives and compliance requirements of the subprograms generally focused on elementary and secondary education. Section 2 identifies the objectives and compliance requirements of the subprograms focused on higher education.

The table below identifies the subprograms included in each section by name and Assistance Listing Number with alphabetic character identifier. It also identifies the subprograms that are not included in the Compliance Supplement. For those subprograms not addressed in the Compliance Supplement, auditors must refer to Part 7 of the Compliance Supplement, “Guidance for Auditing Programs Not Included In This Compliance Supplement” and, where applicable, Notices Inviting Applications and other award documentation.

ESF Section	Assistance Listing No. with Alpha	Subprogram Name
<b>Section 1</b>		
	84.425A	Education Stabilization Fund–State Educational Agency (Outlying Areas) (ESF-SEA)
	84.425C	Governor’s Emergency Education Relief (GEER) Fund
	84.425D	Elementary and Secondary School Emergency Relief (ESSER) Fund
	84.425H	Education Stabilization Fund – Governors (Outlying Areas) (ESF-Governor)

ESF Section	Assistance Listing No. with Alpha	Subprogram Name
	84.425R	Coronavirus Response and Relief Supplemental Appropriations Act, 2021 – Emergency Assistance to Non-Public Schools (CRRSA EANS) program
	84.425U	American Rescue Plan - Elementary and Secondary School Emergency Relief (ARP ESSER)
	84.425V	American Rescue Plan - Emergency Assistance to Non-Public Schools (ARP EANS) program
	84.425X	American Rescue Plan–State Educational Agency (Outlying Areas) (ARP-OA SEA)
<b>Section 2</b>		
	84.425E	Higher Education Emergency Relief Fund (HEERF) Student Aid Portion
	84.425F	HEERF Institutional Aid Portion
	84.425J	HEERF Historically Black Colleges and Universities (HBCUs)
	84.425K	HEERF Tribally Controlled Colleges and Universities (TCCUs)
	84.425L	HEERF Minority Serving Institutions (MSIs)
	84.425M	HEERF Strengthening Institutions Program (SIP)
	84.425N	HEERF Fund for the Improvement of Postsecondary Education (FIPSE) Formula Grant
	84.425P	Institutional Resilience and Expanded Postsecondary Opportunity (HEERF IREPO)
	84.425S	HEERF Supplemental Assistance to Institutions of Higher Education (SAIHE) program
	84.425T	HEERF Supplemental Support Under American Rescue Plan (SSARP) Program
<b>Neither Section 1 nor Section 2</b>		
	84.425B	Discretionary Grants: Rethink K-12 Education Models Grants
	84.425G	Discretionary Grants: Reimagining Workforce Preparation Grants
	84.425W	American Rescue Plan – Elementary and Secondary School Emergency Relief –Homeless Children and Youth
	84.425Y	American Rescue Plan – American Indian Resilience in Education (AIRE)

#### IV. OTHER INFORMATION

##### Major Program Determination

**Many auditees will have received and expended funds under multiple ESF subprograms. For major program purposes, auditors must evaluate 84.425 in its entirety. All ESF subprogram expenditures, even those expenditures of subprograms not addressed in this ESF Compliance Supplement, must be considered as part of the ESF program for major program determination purposes.**

*Identifying Subawards on the SEFA and Data Collection Form*

For purposes of SEFA and Data Collection Form (Form SF-SAC) reporting, auditees should identify the individual subprogram(s) the funds were expended under, including each separate Assistance Listing Number (ALN) with the applicable alpha character. A total for the ESF in its entirety should also be provided. Auditees may need to determine which subprogram funds were expended through review of grant documents and inquiry of the source agency.

In order to identify more precisely subprogram expenditures, while also incorporating guidance issued by OMB on separately identifying COVID-19 expenditures, ED issued a memo to grantees on August 4, 2021, requesting that auditees include on the Federal Awards page of the Data Collection Form: (1) whether the program is novel coronavirus 2019 (COVID-19) relief assistance; and (2) the subprogram Assistance Listing Number alpha.

Therefore, to apply this requirement to the ESF subprograms, on the Federal Awards page of the Data Collection Form, under column c with the heading “Additional Award Identification,” include the phrase “COVID-19” to be consistent with OMB’s guidance in Appendix VII of the Compliance Supplement. Then place a comma (,) after COVID-19 and include the full Assistance Listing number and capitalized alpha character (A, B, C, etc.) (see example below).

**Figure:** The column to include this information on the Data Collection Form, Federal Awards page is circled in the figure below:

PART II: FEDERAL AWARDS										
1. Federal Awards Expended During Fiscal Period										
Schedule of Expenditures of Federal Awards										
Row Number (auto-generated)	CFDA #		Additional Award Identification <sup>1</sup>	Federal Program Name	Amount Expended	Cluster Name	Federal Program Total <sup>4</sup> (auto-generated)	Cluster Total <sup>5</sup> (auto-generated)	Loan Programs	
	Federal Awarding Agency Prefix <sup>1</sup>	CFDA Three-Digit Extension <sup>2</sup>							Loan/Loan Guarantee (loan)	If loan, the End of the Audit Period Outstanding Loan Balance <sup>6</sup>
					(S)		(S)	(S)	Y/N	(S)

Example: A grantee listing the program “Higher Education Emergency Relief Fund – Student Aid Portion” (ALN 84.425E) on the SEFA would complete the Federal Awards page of the Data Collection Form in the following manner:

	A	B	C	D
Row Number (auto generated)	Federal Awarding Agency Prefix	ALN Three- Digit Extension	Additional Award Identification	Federal Program Identification
1	84	425	COVID-19, 84.425E	COVID-19 - Education Stabilization Fund

*Note:* Please note the inclusion of “COVID-19, 84.425E” in column C for the COVID-19 Higher Education Emergency Relief Fund – Student Aid Portion subprogram.



**ESF SECTION 1 – ELEMENTARY AND SECONDARY EDUCATION****ASSISTANCE LISTING 84.425A EDUCATION STABILIZATION FUND – STATE EDUCATIONAL AGENCY (OUTLYING AREAS)****ASSISTANCE LISTING 84.425C GOVERNOR’S EMERGENCY EDUCATION RELIEF FUND****ASSISTANCE LISTING 84.425D ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND****ASSISTANCE LISTING 84.425H EDUCATION STABILIZATION FUND – GOVERNORS (OUTLYING AREAS)****ASSISTANCE LISTING 84.425R CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL APPROPRIATIONS ACT, 2021 – EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS (CRRSA EANS)****ASSISTANCE LISTING 84.425U AMERICAN RESCUE PLAN – ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF (ARP ESSER)****ASSISTANCE LISTING 84.425V AMERICAN RESCUE PLAN – EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS (ARP EANS)****ASSISTANCE LISTING 84.425X AMERICAN RESCUE PLAN – OUTLYING AREAS STATE EDUCATIONAL AGENCY (ARP-OA-SEA)****I. PROGRAM OBJECTIVES***CARES Act*

For each of the subprograms under the CARES Act, a recipient submitted a unique application in the form of a Certification and Agreement for Funding applicable to the program (see “Source of Governing Requirements”).

The objective of the GEER Fund (84.425C) is to provide local educational agencies (LEAs), institutions of higher education (IHEs), and other education-related entities with emergency assistance as a result of the Coronavirus Disease 2019 (COVID-19).

The objective of the ESSER Fund (84.425D) is to provide state educational agencies (SEAs) and LEAs, including charter schools that are LEAs, with emergency relief funds to address the impact that COVID-19 has had, and continues to have, on elementary and secondary schools across the nation.

The objective of the ESF-SEA (84.425A) and ESF-Governor Funds (84.425H) is to allocate funds to the Outlying Areas—American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands—for the purpose of providing SEAs and LEAs (ESF-

SEA) and SEAs, LEAs, IHEs, and other education-related entities (ESF-Governor) with emergency assistance to address the impact of COVID-19.

### *CRRSA Act*

For each of the subprograms funded under the CRRSA Act (ESSER II, GEER II, ESF II-SEA and ESF II-Governor), ED made awards as supplements to the CARES Act awards, and recipients were not required to submit another Certification and Agreement. ED made CRRSA EANS awards to each Governor with an approved Certification and Agreement. CRRSA EANS does not apply to the Outlying Areas.

The objective of the CRRSA EANS (84.425R) subprogram is to provide governors with a reservation of funds under the CRRSA Act to provide services or assistance to eligible non-public schools to address the impact that COVID-19 has had, and continues to have, on non-public school students and teachers in the state. The SEA administers the CRRSA EANS subprogram on behalf of the Governor.

### *ARP Act*

For each of the programs funded under the ARP Act (ARP ESSER, ARP EANS, and ARP-OA SEA), ED made new awards and included additional terms and conditions for the use of those funds.

The objectives of the ARP ESSER Fund (84.425U) and of the ARP-OA SEA Fund (84.425X) are to provide SEAs and LEAs with emergency relief funds to help schools return safely to in-person instruction, maximize in-person instructional time, sustain the safe operation of schools, and address the academic, social, emotional, and mental health impacts of the COVID-19 pandemic on the Nation's students.

The objective of the ARP EANS (84.425V) program is to provide governors with additional funds under the ARP Act to provide services or assistance to eligible non-public schools to address the impact that COVID-19 has had, and continues to have, on non-public school students and teachers in the state. Like CRSSA EANS, the SEA administers the ARP EANS program on behalf of the governor.

Note: For purposes of this Section 1 of the 2022 Compliance Supplement, references to the ESF are to the programs generally focused on elementary and secondary education, which are identified on page 1 of this Section.

Note: For purposes of this document, ESSER refers to ESSER I, ESSER II, and ARP ESSER funds, while ESSER I refers only to funds under the CARES Act; ESSER II refers only to funds under the CRRSA Act; and ARP ESSER refers only to funds under the ARP Act. ESF-SEA refers to ESF I-SEA and ESF II-SEA funds, while ESF I-SEA refers only to funds under the CARES Act; ESF II-SEA refers only to funds under the CRRSA Act; and ARP-OA SEA refers only to funds under the ARP Act. Finally, GEER refers to both GEER I and GEER II funds, while GEER I refers only to funds under the CARES Act and GEER II refers only to funds under the CRRSA Act. Similarly, ESF-Governor refers to both ESF I-Governor and ESF II-Governor funds, while ESF I-Governor refers only to funds under the CARES Act and ESF II-Governor

refers only to funds under the CRRSA Act. CRRSA EANS refers to funds under the CRRSA Act and ARP EANS refers to funds under the ARP Act.

## II. PROGRAM PROCEDURES

### *GEER Fund*

Under the GEER Fund, ED allocated funds to governors, as well as the mayor of the District of Columbia; 60 percent was based on each state’s population of individuals ages 5 through 24 and 40 percent was based on the number of children counted under section 1124(c) (indicators of poverty) of the Elementary and Secondary Education Act of 1965 (ESEA). The governor or mayor uses GEER funds to: (1) provide emergency support through grants to LEAs that the SEA deems to have been most significantly impacted by COVID-19; (2) provide emergency support through grants to IHEs serving students within the state that the governor determines have been most significantly impacted by COVID-19; and (3) provide support to any other IHE, LEA, or education-related entity within the state that the governor or mayor deems essential for carrying out emergency educational services. In order to receive GEER funds under the CARES Act, a governor submitted to ED a completed “Certification and Agreement.” The CRRSA Act authorized additional funding for the GEER Fund, which ED distributed as supplemental awards (GEER II). GEER I and GEER II are subject to all of the same requirements (with the exception of equitable services for LEAs under GEER II).

### *CRRSA EANS and ARP EANS*

Under the CRRSA EANS program, ED awarded grants by formula to each governor (or the mayor of the District of Columbia) with an approved “Certification and Agreement” to provide services or assistance to eligible non-public schools (for purposes of the CRRSA EANS program, an eligible non-public school is an elementary or secondary school that— is non-profit; is accredited, licensed, or otherwise operates in accordance with state law; was in existence prior to March 13, 2020, the date COVID-19 was declared a national emergency; and did not, and will not, apply for and receive a loan under the Small Business Administration’s Paycheck Protection Program (PPP) (15 USC 636(a)(37)) that is made on or after December 27, 2020. This limitation applies for as long as the non-public school is a participant in the CRRSA EANS program.) to address the impact that COVID-19 has had, and continues to have, on non-public school students and teachers in the state.

Under the ARP EANS program, ED awarded grants by formula to each governor (or the mayor of the District of Columbia) with an approved application to provide services or assistance to eligible non-public schools. The same eligibility requirements for non-public schools apply under the ARP EANS program as did under the CRRSA EANS program with one exception. Under the ARP EANS program, an SEA may provide services or assistance only to non-public schools that (1) enroll a significant percentage of students from low-income families and (2) are most impacted by COVID-19. Each state was required to identify in its application the threshold to be used in determining if a non-public school enrolls a significant percentage of students from low-income families and the factor or factors to be used in determining which non-public schools are most impacted by COVID-19. States’ approved applications may be found here:

<https://oese.ed.gov/arp-eans-awards/>.

A non-public school that participates in the CRRSA EANS or ARP EANS program is not a recipient of federal financial assistance, and therefore is not subject to requirements that apply to subrecipients (e.g., single audit requirements, SEFA reporting).

### *ESSER Fund*

Under ESSER I, ED allocated funds to each SEA by a formula based on the state’s fiscal year (FY) 2019 share of funds under Title I, Part A (84.010) of the ESEA. An SEA, in turn, allocated ESSER I funds to LEAs by formula based on FY 2019 Title I, Part A allocations. In order to receive an ESSER I allocation under the CARES Act, an SEA submitted to the Department a completed “Certification and Agreement.”

The CRSSA Act provided an additional \$54.3 billion for the ESSER Fund, which ED distributed as supplemental awards (ESSER II). These ESSER II awards to SEAs are in the same proportion as each State received funds under Title I, Part A of the ESEA for FY 2020. The SEA, in turn, allocated ESSER II funds to LEAs by formula based on FY 2020 Title I, Part A allocations.

ESSER I and ESSER II have the same Assistance Listing alpha number and are subject to virtually all of the same requirements, except for one main difference: an LEA that receives ESSER I funds under the CARES Act (Section 18005) must provide equitable services to students and teachers in the same manner as provided under section 1117 of Title I, Part A of the ESEA. ESSER II is not subject to the equitable services requirement; rather the CRRSA Act included \$2.75 billion for the separate CRRSA EANS program.

The ARP Act provided \$122 billion for the ESSER Fund, providing funds to SEAs and LEAs to meet the urgent needs of schools and students. On March 17, 2021, the Department awarded each State the first two-thirds of its ARP ESSER allocation. On April 21, 2021, ED released a State Plan template for the ARP ESSER Fund, which is designed to promote comprehensive planning by SEAs and LEAs. Once ED approved an SEA’s plan, it made the SEA’s remaining ARP ESSER allocation available to the SEA.

ARP ESSER allocations were based on the proportion that each State received under Title I, Part A of the ESEA for FY 2020. While ARP ESSER has a different alpha character (84.425U), it is subject to most of the same requirements as ESSER II except for the following: an SEA must reserve certain amounts of its ARP ESSER state-level funds for specific purposes, and an LEA that receives ARP ESSER funds must submit to the SEA an ARP LEA plan for the use of funds, must engage in meaningful stakeholder consultation when developing its ARP LEA plan, must submit and make publicly available a plan for the safe return to in-person instruction and continuity of services, and must reserve at least 20 percent of its ARP ESSER award to address learning loss.

### *ESF-SEA and ESF-Governor (Outlying Areas)*

Under the ESF-SEA Fund, ED allocated funds to SEAs in the Outlying Areas based on the same proportion that each Outlying Area received under Title I, Part A of the ESEA in the most recent fiscal year. By statute, ED used this same formula to make allocations to states under the ESSER Fund. In order to receive ESF I-SEA funds, an SEA submitted to ED a completed “Certification

and Agreement.” The ESF II-SEA funds were awarded to each Outlying Area under the same grant terms and conditions that applied to the ESF I-SEA funds.

Under the ESF-Governor Fund, ED allocated funds to governors in the Outlying Areas, with 60 percent of the award based on population ages 5 to 24 and 40 percent of the award based on the relative number of children counted under section 1124(c) (indicators of poverty) of the ESEA. By statute, ED used this same formula to make allocations to governors under the GEER Fund. In order to receive ESF I-Governor funds, governors submitted to ED a completed “Certification and Agreement.” The ESF II-Governor funds were awarded to each Outlying Area under the same grant terms and conditions that applied to the ESF I -Governor funds.

Under ARP-OA SEA, ED allocated funds to the SEAs in the Outlying Areas based on the same proportion as each Outlying Area received under Title I, Part A of the ESEA for FY 2020. ARP-OA SEA grant terms and conditions were attached to each SEA’s grant award notification. Each SEA received its full ARP-OA SEA allocation within 30 days of enactment of the ARP Act.

### **Source of Governing Requirements**

These programs are authorized, as applicable, by the CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), the CRRSA Act, Pub. L. No. 116-260 (December 27, 2020), and the ARP Act, Pub. L. No. 117-2 (March 11, 2021). The regulations in 34 CFR Part 76 (State-Administered Programs), 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), and 31 CFR Part 205 (Cash Management Improvement Act) apply to these programs.

On April 22, 2021, ED established requirements for the ARP ESSER Fund under section 2001 of the ARP Act. The requirements cover meaningful stakeholder consultation, LEA ARP ESSER plan requirements, and LEA plans for the safe return to in-person instruction and continuity of services, <https://www.federalregister.gov/documents/2021/04/22/2021-08359/american-rescue-plan-act-elementary-and-secondary-school-emergency-relief-fund>.

Additionally, on July 13, 2021, ED established final requirements for the ARP EANS program. The requirements clarified the statutory requirements applicable to the ARP EANS program, including the requirement to provide services or assistance to non-public schools that enroll a significant percentage of students from low-income families and are most impacted by COVID-19 (see <https://www.govinfo.gov/content/pkg/FR-2021-07-13/pdf/2021-14862.pdf>).

Finally, the application each SEA or governor completed and signed prior to receiving a grant award also form the basis of the governing requirements for those programs for which ED required Certification and Agreements or applications:

1. Certification and Agreement for Funding under the Education Stabilization Fund Program Elementary and Secondary School Emergency Relief Fund (ESSER I Fund) <https://oese.ed.gov/files/2020/04/ESSERF-Certification-and-Agreement-2.pdf>
2. Certification and Agreement for Funding under the Education Stabilization Fund Program Governor’s Emergency Education Relief Fund (GEER I Fund) <https://oese.ed.gov/files/2020/04/GEER-Certification-and-Agreement.pdf>

3. Certification and Agreement for Funding under the CRRSA Act Emergency Assistance to Non-Public Schools program (CRRSA EANS)  
[https://oese.ed.gov/files/2021/01/Final\\_EANS\\_CertificationandAgreement\\_FY21\\_1.11.21.pdf](https://oese.ed.gov/files/2021/01/Final_EANS_CertificationandAgreement_FY21_1.11.21.pdf)
4. Certification and Agreement for Funding under the Education Stabilization Fund-State Educational Agency Fund (ESF-SEA) <https://oese.ed.gov/files/2020/05/SEA-ESF-OA-Certification-and-Agreement.pdf>
5. Certification and Agreement for Funding under the Education Stabilization Fund-Governors Fund (ESF-Governor Fund) <https://oese.ed.gov/files/2020/05/Governors-ESF-OA-Certification-and-Agreement.pdf>
6. Application for Funding, Emergency Assistance to Non-Public Schools (EANS) program under the American Rescue Plan Act of 2021 (ARP Act)  
[https://oese.ed.gov/files/2021/07/ARP-EANS-Application-7.7.21\\_FINAL.pdf](https://oese.ed.gov/files/2021/07/ARP-EANS-Application-7.7.21_FINAL.pdf)
7. Approved State Applications for the Emergency Assistance to Non-Public Schools (EANS) program under the American Rescue Plan Act of 2021 (ARP Act)  
<https://oese.ed.gov/arp-eans-awards/>
8. State Plans for the American Rescue Plan Elementary and Secondary School Emergency Relief funds, <https://oese.ed.gov/offices/american-rescue-plan/american-rescue-plan-elementary-and-secondary-school-emergency-relief/stateplans/>

### **Availability of Other Program Information**

A number of documents posted on ED’s website provide clarity regarding the GEER Fund, ESSER Fund, EANS program, ESF-SEA Fund, and ESF-Governor Fund requirements in this Compliance Supplement.

#### *ESF*

1. Education Stabilization Fund Website <https://oese.ed.gov/offices/education-stabilization-fund/>
2. American Rescue Plan Website <https://oese.ed.gov/offices/american-rescue-plan/>
3. Frequently Asked Questions on the Maintenance of Effort Requirements Applicable to the CARES Act Programs – May 2020 <https://oese.ed.gov/files/2020/06/CARES-Act-Programs-Maintenance-of-Effort-FAQ.pdf>
4. Guidance on Maintenance of Effort Requirements and Waiver Requests under the Elementary and Secondary School Emergency Relief (ESSER) Fund and the Governor’s Emergency Education Relief (GEER) Fund – February 4, 2022 [MOE-Chart\\_with-waiver-FAQs\\_FINAL\\_2\\_4\\_2022\\_Update.pdf](https://oese.ed.gov/files/2022/02/MOE-Chart_with-waiver-FAQs_FINAL_2_4_2022_Update.pdf) (ed.gov)

5. Frequently Asked Questions - Elementary and Secondary School Emergency Relief Programs Governor's Emergency Education Relief Programs Use of Funds  
[https://oese.ed.gov/files/2021/05/ESSER.GEER\\_FAQs\\_5.26.21\\_745AM\\_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf](https://oese.ed.gov/files/2021/05/ESSER.GEER_FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf)

#### *GEER Fund*

1. Frequently Asked Questions about the Governor's Emergency Education Relief Fund (GEER Fund) <https://oese.ed.gov/files/2020/05/FAQs-GEER-Fund.pdf>) Website: <https://oese.ed.gov/offices/education-stabilization-fund/governors-emergency-education-relief-fund/>
2. Fact Sheet for GEER II [https://oese.ed.gov/files/2021/01/FINAL\\_-\\_GEER\\_FactSheet\\_1.8.21.pdf](https://oese.ed.gov/files/2021/01/FINAL_-_GEER_FactSheet_1.8.21.pdf)

#### *EANS Program*

1. Frequently Asked Questions, Emergency Assistance to Non-Public Schools (EANS) Program as authorized by the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act) and the American Rescue Plan Act of 2021 (ARP Act) <https://oese.ed.gov/files/2021/09/Final-EANS-FAQ-Update-9.17.21.pdf>
2. ARP EANS Final Requirements  
<https://www.federalregister.gov/documents/2021/07/13/2021-14862/american-rescue-plan-act-emergency-assistance-to-non-public-schools-program>

#### *ESSER Fund*

1. Frequently Asked Questions about the Elementary and Secondary School Emergency Relief Fund (ESSER Fund) <https://oese.ed.gov/files/2020/05/ESSER-Fund-Frequently-Asked-Questions.pdf>
2. Fact Sheet for ESSER II  
[https://oese.ed.gov/files/2021/01/Final\\_ESSERII\\_Factsheet\\_1.5.21.pdf](https://oese.ed.gov/files/2021/01/Final_ESSERII_Factsheet_1.5.21.pdf)
3. Fact Sheet for ARP ESSER [https://oese.ed.gov/files/2021/03/FINAL\\_ARP-ESSER-FACT-SHEET.pdf](https://oese.ed.gov/files/2021/03/FINAL_ARP-ESSER-FACT-SHEET.pdf)
4. Assurances for American Rescue Plan – Elementary and Secondary School Emergency Relief (ARP ESSER) Grant Award [https://oese.ed.gov/files/2021/03/ARP-ESSER-Grant-Award-Assurances\\_FINAL2.pdf](https://oese.ed.gov/files/2021/03/ARP-ESSER-Grant-Award-Assurances_FINAL2.pdf)
5. ARP ESSER Methodology and Allocation Table – March 17, 2021  
[https://oese.ed.gov/files/2021/03/FINAL\\_ARP-ESSER-Methodology-and-Table.pdf](https://oese.ed.gov/files/2021/03/FINAL_ARP-ESSER-Methodology-and-Table.pdf)
6. ARP ESSER Methodology and Allocation Table Revised – June 25, 2021  
[https://oese.ed.gov/files/2021/06/Revised-ARP-ESSER-Methodology-and-Allocation-Table\\_6.25.21\\_FINAL.pdf](https://oese.ed.gov/files/2021/06/Revised-ARP-ESSER-Methodology-and-Allocation-Table_6.25.21_FINAL.pdf)

7. Frequently Asked Questions – American Rescue Plan Elementary and Secondary School Emergency Relief (ESSER) Program – Maintenance of Equity (MOEquity) Requirements – December 29, 2021 [Maintenance-of-Equity-updated-FAQs\\_12.29.21\\_Final.pdf](#)
8. A Resources page, which includes links to Frequently Asked Questions documents as well as to materials used during technical assistance meetings or Office Hours <https://oese.ed.gov/offices/american-rescue-plan/american-rescue-plan-elementary-and-secondary-school-emergency-relief/resources/>

*ESF-SEA, ESF-Governor, and ARP OA-SEA*

1. Website: <https://oese.ed.gov/offices/education-stabilization-fund/outlying-areas/>
2. Frequently Asked Questions – Education Stabilization Fund-State Educational Agency (ESF-SEA) <https://oese.ed.gov/files/2020/09/ESF-SEA-Final-FAQs.pdf>
3. Frequently Asked Questions – Education Stabilization Fund-Governors (ESF-Governor) <https://oese.ed.gov/files/2020/09/ESF-Governor-Final-FAQs.pdf>
4. Frequently Asked Questions – Outlying Areas Education Stabilization Fund and American Rescue Plan Programs for State Educational Agencies & Outlying Areas Education Stabilization Fund Governors Program <https://oese.ed.gov/files/2021/11/ARP-OA-SEA-FAQs-FINAL.pdf>
5. Fact Sheet – American Rescue Plan Outlying Areas State Educational Agencies Fund (ARP-OA SEA) <https://oese.ed.gov/files/2021/11/ARP-OA-SEA-Fact-Sheet-FINAL.pdf>
6. State Educational Agency Plan for the American Rescue Plan Outlying Areas State Educational Agencies Fund [https://oese.ed.gov/files/2021/06/ARP-OA-SEA-Implementation-Plan-Template\\_Final.pdf](https://oese.ed.gov/files/2021/06/ARP-OA-SEA-Implementation-Plan-Template_Final.pdf)
7. ARP OA-SEA Allocation Table <https://oese.ed.gov/files/2021/04/ARP-OAs-Methodology-and-Table.docx>

### **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not



being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	N	N	Y	Y	Y

**A. Activities Allowed or Unallowed**

See Part 3, Section A, “Activities Allowed or Unallowed” for a general description of the compliance requirements, the related audit objectives, and suggested audit procedures.

Governors and SEAs must demonstrate that costs incurred by governors, SEAs, and subrecipients are allowable under the relevant statutory and regulatory provisions, assurances, and Certification and Agreement, and consistent with the purpose of the ESF, which is “to prevent, prepare for, and respond to COVID-19.” The Outlying Areas must ensure that expenditures under ESF-SEA and ESF-Governor are consistent with the allowable uses of funds set forth in the signed Certification and Agreement and that expenditures under ARP-OA-SEA are consistent with the grant conditions and assurances attached to the ARP-OA SEA Grant Award Notification (GAN).

*GEER Funds*

Under section 18002(c) of the CARES Act and Section 312 of the CRRSA Act, GEER I and GEER II funds may be used to:

1. Provide emergency support through grants to LEAs that the SEA deems have been most significantly impacted by coronavirus to support the ability of such LEAs to continue to provide educational services to their students and to support the on-going functionality of the LEA;
2. Provide emergency support through grants to IHEs serving students within the state that the governor determines have been most significantly impacted by coronavirus to support the ability of such institutions to continue to provide educational services and support the on-going functionality of the institution; and
3. Provide support to any other institution of higher education, LEA, or education-related entity within the state that the governor deems essential for carrying out

emergency educational services to students for authorized activities described in section 18003(d)(1) of the CARES Act or the HEA, the provision of childcare and early childhood education, social and emotional support, and the protection of education-related jobs.

### *ESF-Governor Funds*

Governors in the Outlying Areas may use ESF-Governor funds to:

1. Provide emergency support through grants to SEAs and, where applicable, to LEAs to address impacts of the coronavirus in elementary and secondary schools and to support the ability of these agencies to continue to provide educational services to their students and to support the ongoing functionality of the SEA and, where applicable, LEAs (note that SEAs may also subgrant funds received to LEAs);
2. Provide emergency support through grants to IHEs to address the impacts of the coronavirus on IHEs and to support the ability of such institutions to continue to provide educational services and support the ongoing functionality of the institutions; and
3. Provide support to any IHE, LEA, or education-related entity within the Outlying Area that the governor deems essential for carrying out emergency educational services to students, the provision of childcare and early childhood education, social and emotional support, and the protection of education-related jobs.

Governors may also use a reasonable and necessary amount of the ESF-Governor funds for administrative costs related to the allocation and management of the funds. Entities that receive ESF-Governor funds may also use a reasonable and necessary amount of the funds for administrative costs related to the management of the funds.

### *CRRSA EANS and ARP EANS Funds*

The CRRSA Act, Pub. L. No. 116-260 (December 27, 2020) authorizes the CRRSA EANS program. A non-public school may apply to receive services and assistance from the SEA to address educational disruptions resulting from COVID-19 for:

1. Supplies to sanitize, disinfect, and clean school facilities;
2. Personal protective equipment (PPE);
3. Improving ventilation systems, including windows or portable air purification systems;
4. Training and professional development for staff on sanitization, the use of PPE, and minimizing the spread of infectious diseases;
5. Physical barriers to facilitate social distancing;

6. Other materials, supplies, or equipment to implement public health protocols, including guidelines and recommendations from the Centers for Disease Control for reopening and operation of school facilities to effectively maintain health and safety of students, educators, and other staff;
7. Expanding capacity to administer coronavirus testing to effectively monitor and suppress the virus, to conduct surveillance and contact tracing activities, and to support other activities related to coronavirus testing for students, teachers, and staff;
8. Educational technology (including hardware, software, connectivity, assistive technology, and adaptive equipment) to assist students, educators, and other staff with remote or hybrid learning;
9. Redeveloping instructional plans, including curriculum development, for remote or hybrid learning or to address learning loss;
10. Leasing sites or spaces to ensure safe social distancing;
11. Reasonable transportation costs;
12. Initiating and maintaining education and support services or assistance for remote or hybrid learning or to address learning loss; or
13. Reimbursement for the expenses of any services or assistance described above that a non-public school incurred on or after March 13, 2020, except for the following:
  - Improvements to ventilation systems (including windows), except for portable air purification systems, which may be reimbursed.
  - Any expenses reimbursed through a loan guaranteed under the Paycheck Protection Program (15 USC 636(a)) prior to December 27, 2020.
  - Staff training and professional development on sanitization, the use of PPE, and minimizing the spread of COVID-19.
  - Developing instructional plans, including curriculum development, for remote or hybrid learning or to address learning loss.
  - Initiating and maintaining education and support services or assistance for remote or hybrid learning or to address learning loss.

An SEA may provide these services or assistance directly to a nonpublic school or through a contract with an individual, association, agency, or organization.

Control of funds for services or assistance provided to a non-public school under the CRRSA EANS program and title to materials, equipment, and property purchased with

CRRSA EANS funds, must be in a public agency, and a public agency must administer such funds, services, assistance, materials, equipment, and property. In addition, all services or assistance provided under the CRRSA EANS program must be secular, neutral, and non-ideological.

The above requirements also apply to the ARP EANS program except that under section 2002(b) of the ARP Act an SEA may not use ARP EANS funds to provide reimbursements to a non-public school for costs the school incurred to address the impact of COVID-19.

### *ESSER Funds*

LEAs may use ESSER funds for a wide range of activities to address needs arising from the coronavirus pandemic. Section 18003(d) of the CARES Act provides a list of allowable LEA ESSER I activities. Section 313(3) of the CRRSA Act includes “additional” LEA allowable uses of funds under ESSER II, in particular addressing learning loss; preparing schools for reopening; and testing, repairing, and upgrading projects to improve air quality in school buildings; however, all of these uses already are permitted under the CARES Act even though not explicitly listed. Section 2001(e) of the ARP Act further expands LEA allowable uses of funds under ARP ESSER to include providing mental health supports, including through the implementation of evidence-based full-service community schools; and developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention (CDC) on reopening and operating schools to effectively maintain the health and safety of students, educators, and other staff. ED has clarified that SEAs, LEAs and schools may use funding under ESSER I, ESSER II, and ARP ESSER to support a very wide range of activities, including activities indirectly linked to the impact of COVID-19, as outlined in the ED Volume 2 COVID Handbook, available at <https://www2.ed.gov/documents/coronavirus/reopening-2.pdf>, provided such uses are consistent with statutory requirements and the Uniform Guidance in 2 CFR Part 200.

LEAs may use ESSER funds to support:

1. Any activity authorized by the ESEA of 1965, including the Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act (20 USC 6301 et seq.), the Individuals with Disabilities Education Act (20 USC 1400 et seq.) (“IDEA”), the Adult Education and Family Literacy Act (20 USC 1400 et seq.), the Carl D. Perkins Career and Technical Education Act of 2006 (20 USC 2301 et seq.) (“the Perkins Act”), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 USC 11431 et seq.).
2. Coordination of preparedness and response efforts of LEAs with state, local, tribal, and territorial public health departments, and other relevant agencies to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.

3. Providing principals and others school leaders with the resources necessary to address the needs of their individual schools.
4. Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.
5. Developing and implementing procedures and systems to improve the preparedness and response efforts of LEAs.
6. Training and professional development for staff of the LEA on sanitation and minimizing the spread of infectious diseases.
7. Purchasing supplies to sanitize and clean the facilities of an LEA, including buildings operated by such agency.
8. Planning for and coordinating during long-term closures, including for how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under the IDEA (20 USC 1401 et seq.), and how to ensure other educational services can continue to be provided consistent with all federal, state, and local requirements.
9. Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the LEA that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.
10. Providing mental health services and supports.
11. Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.
12. Addressing learning loss among students, including low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, of the local educational agency, including by—
  - a. Administering and using high-quality assessments that are valid and reliable, to accurately assess students' academic progress and assist educators in meeting students' academic needs, including through differentiating instruction.

- b. Implementing evidence-based activities to meet the comprehensive needs of students.
  - c. Providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment.
  - d. Tracking student attendance and improving student engagement in distance education.
13. School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.
  14. Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement.
  15. Developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff.
  16. Other activities that are necessary to maintain the operation of and continuity of services in LEAs and continuing to employ existing staff of the LEA.

Note: For comprehensive information about allowable uses of funds under ESSER and GEER, please see Frequently Asked Questions Elementary and Secondary School Emergency Relief (ESSER) Programs Governor’s Emergency Education Relief (GEER) available at

[https://oese.ed.gov/files/2021/05/ESSER.GEER\\_FAQs\\_5.26.21\\_745AM\\_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf](https://oese.ed.gov/files/2021/05/ESSER.GEER_FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf).

Note: An LEA that receives ESSER I funds under the CARES Act (Section 18005) must provide equitable services to students and teachers in the same manner as provided under section 1117 of Title I, Part A of the ESEA. ESSER II and ARP ESSER are not subject to the equitable services requirement; rather the CRRSA Act and ARP Act include the separate EANS programs to address the needs of non-public school students and teachers. For more information about the major similarities and differences between ESSER I and ESSER II, see the Fact Sheet for ESSER II, available at

[https://oese.ed.gov/files/2021/01/Final\\_ESSERII\\_Factsheet\\_1.5.21.pdf](https://oese.ed.gov/files/2021/01/Final_ESSERII_Factsheet_1.5.21.pdf) and differences among ESSER I, ESSERII and ARP ESSER available at:  
[https://oese.ed.gov/files/2021/03/FINAL\\_ARP-ESSER-FACT-SHEET.pdf](https://oese.ed.gov/files/2021/03/FINAL_ARP-ESSER-FACT-SHEET.pdf).

*ESF-SEA Funds*

The Outlying Areas may use ESF-SEA funds for any of the following activities listed in section 18003(d) of the CARES Act:

1. Any activity authorized by the Elementary and Secondary Education Act of 1965 (ESEA), including the Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act (20 USC 6301 et seq.), the Individuals with Disabilities Education Act (20 USC 1400 et seq.) (IDEA), the Adult Education and Family Literacy Act (20 USC 1400 et seq.), the Carl D. Perkins Career and Technical Education Act of 2006 (20 USC 2301 et seq.) (the Perkins Act), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (McKinney-Vento) (42 USC 11431 et seq.).
2. Coordination of preparedness and response efforts of LEAs with state, local, tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.
3. Providing principals and others school leaders with the resources necessary to address the needs of their individual schools.
4. Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.
5. Developing and implementing procedures and systems to improve the preparedness and response efforts of LEAs.
6. Training and professional development for staff of the LEA on sanitation and minimizing the spread of infectious diseases.
7. Purchasing supplies to sanitize and clean the facilities of a LEA, including buildings operated by such agency.
8. Planning for and coordinating during long-term closures, including for how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under IDEA (20 USC 1401 et seq.) and how to ensure other educational services can continue to be provided consistent with all federal, state, and local requirements.
9. Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the LEA that aids in regular and substantive educational interaction between students and their classroom

instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.

10. Providing mental health services and supports.
11. Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.
12. Other activities that are necessary to maintain the operation of and continuity of services in LEAs and continuing to employ existing staff of the LEA.

#### *ARP-OA SEA Funds*

The Outlying Areas may use ARP-OA SEA funds for any of the following activities listed in section 2001(e) and (f) of the ARP Act:

1. Evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year programs, and ensure that such interventions respond to students' academic, social, and emotional needs and address the disproportionate impact of the coronavirus on the student subgroups described in section 1111(b)(2)(B)(xi) of the ESEA (20 USC 6311(b)(2)(B)(xi)), students experiencing homelessness, and children and youth in foster care.
2. Any activity authorized by the ESEA.
3. Any activity authorized by the IDEA.
4. Any activity authorized by the Adult Education and Family Literacy Act (AEFLA).
5. Any activity authorized by the Perkins Act.
6. Coordination of preparedness and response efforts of LEAs with state, local, tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.
7. Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.



8. Developing and implementing procedures and systems to improve the preparedness and response efforts of LEAs.
9. Training and professional development for staff of the LEA on sanitation and minimizing the spread of infectious diseases.
10. Purchasing supplies to sanitize and clean the facilities of an LEA, including buildings operated by such agency.
11. Planning for, coordinating, and implementing activities during long-term closures, including providing meals to eligible students, providing technology for online learning to all students, providing guidance for carrying out requirements under the IDEA and ensuring other educational services can continue to be provided consistent with all federal, state, and local requirements.
12. Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the LEA that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and children with disabilities, which may include assistive technology or adaptive equipment.
13. Providing mental health services and supports, including through the implementation of evidence-based full-service community schools.
14. Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, children with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.
15. Addressing the academic impact of lost instructional time among students, including low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, of the LEA, including by—
  - a. Administering and using high-quality assessments that are valid and reliable, to accurately assess students' academic progress and assist educators in meeting students' academic needs, including through differentiating instruction;
  - b. Implementing evidence-based activities to meet the comprehensive needs of students;
  - c. Providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment; and

- d. Tracking student attendance and improving student engagement in distance education.
16. School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.
17. Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement.
18. Developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the CDC for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff.
19. Other activities that are necessary to maintain the operation of and continuity of services in LEAs and continuing to employ existing staff of the LEA.
20. A reasonable and necessary amount for administrative costs and emergency needs, as determined by the SEA, to address issues responding to coronavirus.

## **B. Allowable Costs/Cost Principles**

See Part 3, Section B, “Allowable Costs/Cost Principles” for a general description of the compliance requirements, the related audit objectives, and suggested audit procedures.

1. For ESSER I, ESSER II, ARP ESSER, ESF I-SEA, ESF II-SEA, and ARP OA-SEA Funds, auditors should refer to the Cost Principles for States, Local Governments, and Indian Tribes.
2. For GEER I, GEER II, ESF I-Governor, and ESF II-Governor Funds, a governor (or the mayor of the District of Columbia) has broad discretion for awarding funds under these subprograms to states, local governments and Indian tribes, educational institutions, or nonprofit organizations. In order to determine which requirements apply, auditors should examine how each respective governor allocated the funds to subrecipients to determine which cost principles apply for each subrecipient.
3. The requirements in the Uniform Guidance apply to expenditures of ESSER, ESF-SEA, and ARP-OA SEA funds, including the requirements related to documenting personnel expenses in 2 CFR section 200.430(i). This would mean, for example, that an LEA maintains the records it generally maintains for salaries and wages, including for employees in leave status as permitted under CARES Act Section 18003(d)(12), except that an LEA must maintain time distribution

records (sometimes called “time and effort” reporting) if an individual employee is splitting their time between activities that may be funded under ESSER or GEER and activities that are not allowable under ESSER or GEER. However, there are very few situations when an employee of an LEA would perform multiple activities that are not allowable under ESSER or GEER, and thus would be required to maintain time distribution records, given that an LEA is authorized to use funds on “activities that are necessary to maintain the operation of and continuity of services in [an LEA] and continuing to employ existing staff of the [LEA]” in order to “prevent, prepare for, and respond to” the COVID-19 pandemic (Section 18003(d)(12)).

CARES Act Section 18003(d)(12) and CRRSA Act Section 315 authorize grantees to continue to pay employees and Section 18002(c)(3) of the CARES Act allows LEAs, SEAs, IHEs, and other subrecipients to use funds to protect education-related jobs; the authority includes paying staff who are on leave because schools are closed due to COVID-19. Accordingly, ESSER and GEER funds may be used for that purpose even in the absence of a policy that specifically addresses these circumstances.

## **F. Equipment/Real Property Management**

See Part 3, Section F, “Equipment/Real Property Management” for a general description of the compliance requirements, the related audit objectives, and suggested audit procedures.

Consistent with 2 CFR section 200.311 (real property), section 200.313 (equipment), and section 200.439 (equipment and other capital expenditures), ESF (with the exception of CRRSA EANS: 84.425R & ARP EANS: 84.425V) funds may be used for these purposes. Specifically, recipients and subrecipients may use ESF funds to purchase equipment. Capital expenditures for general and special purpose equipment purchases are subject to prior approval by ED or the pass-through entity. In addition, with prior approval by the ED or the pass-through entity, recipients and subrecipients may also use ESF funds to purchase real property, perform construction or minor remodeling, and for improvements to land, buildings, or equipment that meet the overall purpose of the ESF program, which is “to prevent, prepare for, and respond to” the COVID-19 pandemic.

If governors (or the Mayor of the District of Columbia), SEAs, and subrecipients propose to use ESF funds for construction, they must comply with any applicable requirements in 34 CFR section 76.600 and 34 CFR sections 75.600–75.617. Approved construction projects must also comply with all applicable Uniform Guidance requirements, as well as ED’s regulations regarding construction, that may be applicable, at 34 CFR section 76.600.

Please note that recipients and subrecipients may use ESF funds for minor remodeling without triggering the Department’s construction regulations in 34 CFR section 76.600 and 34 CFR sections 75.600–75.617. Minor remodeling means minor alterations in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor

remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, structural alterations to buildings, building maintenance, or repairs. See 34 CFR Part 77.1(b). For more information on requirements and flexibilities with regard to utilizing ESF funds for construction please see: [https://oese.ed.gov/files/2021/06/HVAC\\_Use-of-funds-F06-17-2021.pdf](https://oese.ed.gov/files/2021/06/HVAC_Use-of-funds-F06-17-2021.pdf) and <https://oese.ed.gov/files/2021/06/ARP-ESSER-Plan-Office-Hours-6.3.21.pdf>.

Recipients and subrecipients that use ESF funds for minor remodeling, renovation or construction contracts that are over \$2,000 and use laborers and mechanics must meet Davis-Bacon prevailing wage requirements. For information about the prevailing wages in the applicable region, see the Department of Labor (DOL) regional office: <https://www.dol.gov/agencies/whd/government-contracts/construction/regions>.

Any purchases with ESF funds in this category are subject to applicable inventory control, log maintenance, and disposition requirements consistent with Part 3, Section F, “Equipment/Real Property Management” of the Compliance Supplement.

Governors, SEAs, and subrecipients must receive prior approval for capital expenditures for equipment acquisition or improvements to land, buildings, or equipment.

1. For capital equipment or improvements to land, buildings, or equipment that were purchased with grant funds, the governor (or mayor of the District of Columbia) or SEA must receive prior approval from ED.
2. For capital equipment or improvements to land, buildings, or equipment that were purchased with grant funds, the governor or SEA, as the pass-through entity, must provide prior approval to subrecipients.
3. For construction, the pass-through entity must have considered applicable ED construction requirements as part of the pass-through entity’s prior approval process for construction. For example, if an LEA proposed renovating a school building to increase the filters or ventilation to its HVAC system, the pass-through entity must ensure compliance with applicable construction regulations (such as 34 CFR 75.609 (Safety and Health standards) and 75.616 (Energy Conservation))?

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

Not Applicable

### **2. Level of Effort**

State Maintenance of Effort (MOE) – SEA and Governor  
*ESSER II, GEER II, EANS, and ARP ESSER*

Under section 317 of the CRRSA Act, for FY 2022, a state that receives ESSER II, GEER II, or EANS funds under the CRRSA Act must:

- a. Maintain State support for elementary and secondary education in FY 2022 at least at the proportional level of the state’s support for elementary and secondary education relative to the state’s overall spending, averaged over FYs 2017, 2018, and 2019; and
- b. Maintain state support for higher education in FY 2022 at least at the proportional level of the state’s support for higher education relative to the state’s overall spending, averaged over FYs 2017, 2018, and 2019.

Under section 2004(a) of the ARP Act, a state that receives ARP ESSER funds must meet the above MOE requirement in *each* of FYs 2022 and 2023.

The CRRSA and ARP Acts have two MOE baselines:

- a. Elementary and secondary education baseline, which averages the percentages of total state spending that are used to support elementary and secondary education over the three baseline years (FYs 2017, 2018, and 2019).
- b. Higher education baseline, which averages the percentages of total state spending that are used to support higher education over the three baseline years (FYs 2017, 2018, and 2019).

Under the CRRSA Act: A state demonstrates MOE for FY 2022 by:

- a. Comparing the percentage of total state spending used to support elementary and secondary education in FY 2022 to the baseline percentage; and
- b. Comparing the percentage of total state spending used to support higher education in FY 2022 to the baseline percentage.

Under the ARP Act: A state demonstrates the above comparisons for both FY 2022 and FY 2023 relative to the baseline percentages.

Auditors should separately corroborate the amounts reported for state support for elementary and secondary education for FY 2022 and FY 2023 with data representing either actual state expenditure data or data representing final appropriated or allocated amounts. A state may rely on either set of data to meet this requirement. Similarly, auditors should corroborate the amounts reported for state support for higher education for FY 2022 and separately for FY 2023 with data representing either actual state expenditure data or data representing final appropriated or allocated amounts. A state may rely on either set of data to meet this requirement. A state must use data on actual state

expenditures to demonstrate overall spending, consistent with the statutory reference to “overall state spending.”

- For more information on how each state complies with the MOE requirements, including which funding sources a state must exclude when determining whether it has maintained effort, see Guidance on Maintenance of Effort Requirements and Waiver Requests under the Elementary and Secondary School Emergency Relief (ESSER) Fund and the Governor’s Emergency Education Relief (GEER) Fund ([https://oese.ed.gov/files/2021/04/MOE-Chart\\_with-waiver-FAQs\\_FINAL\\_4.21.21Update.pdf](https://oese.ed.gov/files/2021/04/MOE-Chart_with-waiver-FAQs_FINAL_4.21.21Update.pdf)).

### 3. Earmarking - SEA

#### *ESSER*

An SEA must allocate at least 90 percent of ESSER funds to LEAs using the statutorily prescribed formula. Under ESSER I and ESSER II, an SEA may, but is not required to, reserve up to 10 percent of its funds for emergency needs as determined by the SEA.

#### *ARP ESSER*

For ARP ESSER, under section 2001(f) of the ARP Act, each SEA must reserve: (1) at least 5 percent of ARP ESSER funds for evidence-based interventions that address the academic impact of lost instructional time (i.e., learning loss); (2) at least 1 percent of ARP ESSER funds for evidence-based summer enrichment programs; and (3) at least 1 percent of ARP ESSER funds for evidence-based comprehensive afterschool programs. The interventions that are implemented with the reserved funds must respond to students’ social, emotional, mental health, and academic needs and address the disproportionate impact of COVID-19 on students from low-income families, students of color, English learners, children with disabilities, students experiencing homelessness, children and youth in foster care, and migratory students and consistent with states’ approved ARP ESSER state plans.

The remainder, if any, of ARP ESSER funds not allocated to LEAs or reserved for mandatory set-asides or administrative costs (up to 3 percent, depending on the amount otherwise reserved) may be used for emergency needs as determined by the SEA to address issues responding to COVID-19.

Allowances for Administrative Costs:

- Under section 18001(e) of the CARES Act and section 313(e) of the CRRSA Act, an SEA may reserve up to half of one percent of its total ESSER I and ESSER II allocations for administrative costs, including both direct and indirect administrative costs. This reservation must come from

the portion of funds that the SEA reserves and not the funds that must be allocated to LEAs.

Under section 2001(f)(4) of the ARP Act, an SEA may reserve not more than half of one percent of the state’s total ARP ESSER award may be reserved for administrative costs, including both direct and indirect administrative costs. This reservation must come from the portion of funds that the SEA reserves for emergency needs and not the funds that must be allocated to LEAs or that must be reserved for specific purposes (i.e., learning loss, summer learning, and afterschool programming).

- Under section 312(d)(5) of the CRRSA Act, an SEA may reserve up to half of 1 percent of its total allocation or up to \$200,000, whichever is greater, to administer the EANS program. This allowance applies to both the CRRSA EANS and ARP EANS programs.
- Under the GEER Fund, a governor may charge as an expense to the GEER fund an amount that is reasonable and necessary to effectively administer the program consistent with cost principles in the Uniform Guidance.

#### *ARP-OA SEA*

Outlying Area SEAs must reserve (1) not less than 20 percent of their ARP-OA SEA allocation to carry out, directly or through subgrants or contracts, activities to address the academic impact of lost instructional time by supporting the implementation of evidence-based interventions; (2) a portion of their ARP-OA SEA allocation to carry out, directly or through subgrants to LEAs or through contracts, the implementation of evidence-based summer enrichment programs; and (3) a portion of their ARP-OA SEA allocation to carry out, directly or through subgrants to LEAs or through contracts, the implementation of evidence-based comprehensive afterschool programs.

## **L. Reporting**

### **1. Financial Reporting**

Not Applicable

### **2. Performance Reporting**

See Special Reporting below

### **3. Special Reporting**

- a. Annual Reporting – SEA/Governor

ESSER, GEER, and EANS grantees must submit an annual performance report (OMB No. 1810-0749 for ESSER; 1810-0748 for GEER; and 1810-0765 for EANS) with data on expenditures, planned expenditures, subrecipients, and uses of funds, including for mandatory reservations.

The CARES Act requires ESSER and GEER grantees to submit quarterly reports. This reporting requirement is satisfied through grantees' submission of the required monthly FFATA data through [FSRS.gov](https://fsrs.gov). This monthly subaward data reported by States, along with data on awards to States, are pulled into the [ESF Transparency Portal](#).

Depending on the time the audit is conducted, auditors should examine the annual report and reconcile that reported data with underlying documentation and the public quarterly reporting amounts to ensure accuracy.

#### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

### **M. Subrecipient Monitoring**

See Part 3, Section M, “Subrecipient Monitoring” for a general description of the compliance requirements, the related audit objectives, and suggested audit procedures.

### **N. Special Tests and Provisions**

#### **1. Wage Rate Requirements**

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section and Part 3, Section F, “Equipment/Real Property Management” for a general description of the compliance requirements, the related audit objectives, and suggested audit procedures.

#### **2. Participation of Private School Children**

See Part 4, 84.000 ED Cross-Cutting Section for requirements applicable to the participation of private school students under GEER I and ESSER I, as well as ESF-SEA, ESF-Governor, and ARP-OA SEA.

#### **3. Identifying Non-Public Schools under ARP EANS that Enroll a Significant Percentage of Students from Low-Income Families and are Most Impacted by the COVID-19 Emergency**

**Compliance Requirements** Under section 2002(a) of the ARP Act, services or assistance to nonpublic schools under the ARP EANS program are limited to “non-public schools that enroll a significant percentage of [students from low-income families] and are most impacted by the [COVID–19] emergency.” Related to these requirements, a governor, in his or her application for ARP EANS funds, was required to identify the



significant poverty percentage and factors of COVID-19 impact it would use, after approval by the secretary, to determine which non-public schools are eligible to receive services or assistance.

**Audit Objectives** Determine whether SEAs have implemented the significant poverty percentage and factors of COVID-19 impact in the governor’s approved application.

**Suggested Audit Procedures**

- a. Verify that the SEA implemented the relevant criteria to determine whether a non-public school enrolled a significant percentage of students from low-income families and was most impacted by COVID-19.

**ESF SECTION 2 – HIGHER EDUCATION  
(HIGHER EDUCATION EMERGENCY RELIEF FUND (HEERF))**

**ASSISTANCE LISTING 84.425E HEERF STUDENT AID PORTION**

**ASSISTANCE LISTING 84.425F HEERF INSTITUTIONAL PORTION**

**ASSISTANCE LISTING 84.425J HEERF HISTORICALLY BLACK COLLEGES AND  
UNIVERSITIES (HBCUs)**

**ASSISTANCE LISTING 84.425K HEERF TRIBALLY CONTROLLED COLLEGES  
AND UNIVERSITIES (TCCUs)**

**ASSISTANCE LISTING 84.425L HEERF MINORITY SERVING INSTITUTIONS  
(MSIs)**

**ASSISTANCE LISTING 84.425M HEERF STRENGTHENING INSTITUTIONS  
PROGRAM (SIP)**

**ASSISTANCE LISTING 84.425N HEERF FUND FOR THE IMPROVEMENT OF  
POSTSECONDARY EDUCATION (FIPSE) FORMULA GRANT**

**ASSISTANCE LISTING 84.425P HEERF INSTITUTIONAL RESILIENCE AND  
EXPANDED POSTSECONDARY OPPORTUNITY (IREPO) PROGRAM**

**ASSISTANCE LISTING 84.425S HEERF SUPPLEMENTAL ASSISTANCE TO  
INSTITUTIONS OF HIGHER EDUCATION (SAIHE) PROGRAM**

**ASSISTANCE LISTING 84.425T HEERF SUPPLEMENTAL SUPPORT UNDER  
AMERICAN RESCUE PLAN (SSARP) PROGRAM**

*Note on Applicability to Proprietary Institutions of Higher Education:* One subprogram, Assistance Listing 84.425Q, was awarded only to Proprietary Institutions of Higher Education and therefore is not included in this Compliance Supplement, which only applies to Public and Private Nonprofit Institutions of Higher Education. Proprietary Institutions, however, have a separate auditing requirement and may be required to submit an audit to ED using the Audit Guide developed by the ED Office of the Inspector General (OIG). Please see more information here: <https://www2.ed.gov/about/offices/list/oig/nonfed/proprietary.html>.

**I. PROGRAM OBJECTIVES**

The objective of the HEERF program is to use HEERF grant funds to “prevent, prepare for, and respond to coronavirus” through grants to eligible institutions. Each subprogram (denoted by separate Assistance Listing alpha) has specific funding requirements, as described below.

## II. PROGRAM PROCEDURES

### Overview

#### *Coronavirus Aid, Relief, and Economic Security Act (CARES Act) – HEERF I*

The CARES Act appropriated approximately \$14 billion to the Office of Postsecondary Education for HEERF (referred to herein as HEERF I subprograms or funding).

HEERF I funding was distributed via several different subprograms, which were continued for HEERF II and HEERF III. First, 90 percent (\$12.56 billion) under Section 18004(a)(1) of the CARES Act was distributed to institutions using a formula based on student enrollment, in which at least 50 percent must be reserved to provide students with emergency financial aid grants to help cover expenses related to the disruption of campus operations due to coronavirus (the “Student Aid Portion;” Assistance Listing 84.425E) and the remainder of which may be used to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus (the “Institutional Portion”; Assistance Listing 84.425F). A total of 7.5 percent (\$1.05 billion) under Section 18004(a)(2) of the CARES Act for grants for Historically Black Colleges and Universities (HBCUs), Tribally Controlled Colleges and Universities (TCCUs), and other Minority Serving Institutions (MSIs) as well as other institutions eligible for the Strengthening Institutions Program (SIP) under parts A and B of title III, parts A and B of title V, and Subpart 4 of Part A of title VII of the Higher Education Act of 1965, as amended (HEA), to address needs directly related to the coronavirus (Assistance Listings 84.425J, 84.425K, 84.425L, and 84.425M). Finally, a total of 2.5 percent (\$349 million) under Section 18004(a)(3) of the CARES Act for additional funds for institutions under Part B of title VII of the HEA, through the Fund for the Improvement of Postsecondary Education (FIPSE), to prioritize schools that received less than \$500,000 under other parts of Section 18004 (Assistance Listings 84.425N and 84.425P).

Any unobligated CARES Act Section 18004(a)(1) funds as of December 27, 2020, were repurposed for and have been included in the total funds under CRRSAA Section 314(a)(1).

#### *Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) – HEERF II*

The CRRSAA provides an additional \$22.7 billion for institutions through the HEERF (referred to herein as HEERF II subprograms or funding). Of this amount, over \$20 billion is available for supplements and new formula grants to assist public and private nonprofit colleges and universities in preparing for, preventing, and responding to coronavirus. Funding was appropriated for the existing (a)(1), (a)(2) and (a)(3) subprograms previously authorized under the CARES Act, with some changes.

Allocations to institutions under Section 314(a)(1) of CRRSAA (the analogous provision of Section 18004(a)(1) of the CARES Act) are based on a formula that includes the relative shares of Federal Pell Grant recipients, the relative shares of non-Pell Grant recipients, and the relative shares of Federal Pell and non-Pell Grant recipients exclusively enrolled in distance education prior to the coronavirus emergency.

The CRRSAA provides a minimum amount of funding that each institution must devote towards financial aid grants to students. In addition, funds allocated for students enrolled exclusively in distance education may be used only for financial aid grants to students.

For CRRSAA (a)(3) funds, ED created the Supplemental Assistance to Institutions of Higher Education (SAIHE) subprogram (Assistance Listing 84.425S) with seven categories (absolute priorities) of funding specified in a notice inviting applications and described in the CRRSAA (a)(3) SAIHE Certification and Agreement. Generally, institutions that receive grants under the SAIHE subprogram must use funds for either the allowable institutional uses or making additional emergency financial aid grants to students, as specified in the CRRSAA (a)(3) SAIHE Certification and Agreement.

### *American Rescue Plan (ARP) – HEERF III*

The ARP provides an additional \$39.6 billion for institutions through the HEERF (referred to herein as HEERF III subprograms or funding) with funding appropriated through existing subprograms previously authorized under the CRRSAA. The ARP, with some changes, is a continuation of the CRRSAA (a)(1), (a)(2), and (a)(3) subprograms.

The ARP established two new required uses of HEERF III institutional portion grant funds for public and private nonprofit institutions in which a portion of funds must be used to:

- (a) implement evidence-based practices to monitor and suppress coronavirus in accordance with public health guidelines; and
- (b) conduct direct outreach to financial aid applicants about the opportunity to receive a financial aid adjustment due to the recent unemployment of a family member or independent student, or other circumstances, described in section 479A of the HEA.

### **Source of Governing Requirements**

The main sources of governing requirements are the CARES Act, Pub. L. No. 116-136 (March 27, 2020); the CRRSAA, Pub. L. No. 116-260 (December 27, 2020); and the ARP, Pub. L. No. 117-2 (March 11, 2021).

In addition to the required [SF-424 form](#), a completed certification and agreement was the application used to award HEERF I funds under each Assistance Listing alpha. HEERF I grantees who received Institutional and/or Student Aid Portion funds received HEERF II grant awards automatically with a supplemental agreement attached. Eligible institutions that did not receive HEERF I Institutional and/or Student Aid Portion funds had to submit a certification and agreement as part of their applications for HEERF II funds. Similarly, HEERF II grantees who received Institutional and/or Student Aid Portion funds received HEERF III grant awards automatically with a supplemental agreement attached. Eligible institutions that did not receive HEERF II Institutional and/or Student Aid Portion funds had to submit a certification and agreement as part of their applications for HEERF III funds.

The certification and agreements and supplemental agreements help form the basis of the governing requirements for these subprograms:

1. Student Aid Portion (Assistance Listing 84.425E)

- a. [\*HEERF I – \(a\)\(1\) Student Aid Portion Certification and Agreement\*](#)
  - b. [\*HEERF II – \(a\)\(1\) Student Aid Portion Supplemental Agreement\*](#)
  - c. [\*HEERF II – \(a\)\(1\) Student Aid Portion Certification and Agreement \(Gold C&A\)\*](#)
  - d. [\*HEERF III – \(a\)\(1\) Student Aid Portion Supplemental Agreement\*](#)
  - e. [\*HEERF III – \(a\)\(1\) Student Aid Portion Certification and Agreement\*](#)
2. Institutional Portion (Assistance Listing 84.425F)
- a. [\*HEERF I – \(a\)\(1\) Institutional Portion Certification and Agreement\*](#)
  - b. [\*HEERF II – \(a\)\(1\) Institutional Portion Supplemental Agreement\*](#)
  - c. [\*HEERF II – \(a\)\(1\) Institutional Portion Certification and Agreement \(Blue C&A\)\*](#)
  - d. [\*HEERF III – \(a\)\(1\) Institutional Portion Supplemental Agreement\*](#)
  - e. [\*HEERF III – \(a\)\(1\) Institutional Portion Certification and Agreement\*](#)
3. (a)(2) Programs (Assistance Listings 84.425J, 84.425K, 84.425L, 84.425M)
- a. [\*HEERF I – \(a\)\(2\) Programs Certification and Agreement\*](#)
  - b. [\*HEERF II – \(a\)\(2\) Programs Supplemental Agreement\*](#)
  - c. [\*HEERF II – \(a\)\(2\) Programs Certification and Agreement \(Purple C&A\)\*](#)
  - d. [\*HEERF III – \(a\)\(2\) Programs Supplemental Agreement\*](#)
  - e. [\*HEERF III – \(a\)\(2\) Programs Certification and Agreement\*](#)
4. (a)(3) Programs (Assistance Listings 84.425N and 84.425S)
- a. [\*HEERF I – \(a\)\(3\) FIPSE Formula Certification and Agreement\*](#)
  - b. [\*HEERF I – \(a\)\(3\) IREPO Notice Inviting Applications \(NIA\)\*](#)
  - b. [\*HEERF II – \(a\)\(3\) SAIHE Certification and Agreement\*](#)
  - c. [\*HEERF III – \(a\)\(3\) SSARP Certification and Agreement\*](#)

Furthermore, the regulations in the Education Department General Administrative Regulations (EDGAR) 34 CFR parts 75, 77, 81, 82, 84, 86, 97, 98, and 99; the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (non-procurement) in 2 CFR Part 180, as adopted and amended as regulations of ED in 2 CFR Part 3485; and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200,

as adopted and amended as regulations of ED in 2 CFR Part 3474 (Uniform Guidance) also apply.

## Availability of Other Program Information

### Rulemaking for Student Eligibility

On May 14, 2021, ED [published its Final Rule \(FR\)](#) regarding eligibility to receive emergency financial aid grants to students under HEERF. It was effective the same day. The FR constitutes ED's binding final rule regarding student eligibility for HEERF assistance and amends ED's position to allow any individual who is or was enrolled (as defined in 34 CFR 668.2) at an eligible institution (as defined in 34 CFR 600.2) on or after March 13, 2020, the date of declaration of the national emergency concerning the novel coronavirus disease, to receive HEERF assistance.

### Frequently Asked Questions (FAQs) and Other Guidance

A number of documents posted on ED's [HEERF I website](#), [HEERF II website](#), and [HEERF III website](#) contain information pertinent to the compliance requirements described in this compliance supplement. ED strongly encourages auditors to regularly check the HEERF websites for updated FAQs and other pertinent guidance and reporting information. Earlier-released documents listed may also be applicable to later subprograms. The information below is current as of January 7, 2022:

#### *FAQs*

1. [ARP HEERF III FAQs](#) (May 11, 2021 and updated September 30, 2021) (this is the most comprehensive set of FAQs for the HEERF grant program)
2. [CARES Act HEERF Rollup FAQs](#) (Compilation of all five previously-released HEERF FAQ documents in one document) (updated November 20, 2020)
3. [CRRSAA HEERF II Section 314\(a\)\(1\) Frequently Asked Questions](#) (January 14, 2021 and updated March 19, 2021)
4. [HEERF Lost Revenue FAQs](#) (March 19, 2021)
5. [Using American Rescue Plan and Other Pandemic Relief Funds to Provide Incentives to Students to Get the COVID-19 Vaccination](#) (July 2021)

#### *Webinars*

6. HEERF Quarterly Reporting Webinar Information (November 2021)
  - a. [Quarterly Reporting PowerPoint Presentation](#) (November 16, 2021)
  - b. [Quarterly Reporting Tips](#) (November 16, 2021)

7. [Overview of HEERF funds in the American Rescue Plan for Public and Private Institutions](#) (June 2021)

*Other Materials*

8. [HEERF I and HEERF II Comparison Fact Sheet](#) (January 14, 2021 and updated March 19, 2021)
9. [HEERF Notice of Interpretation for Period of Allowable HEERF Expenses](#) (March 22, 2021)
10. [HEERF Period of Allowable Expenses Grant Records Notice](#) (March 19, 2021)
11. [Fund for the Improvement of Postsecondary Education; Supplemental Assistance to Institutions of Higher Education CRRSAA a3 NIA](#) (March 29, 2021)
12. [Fund for the Improvement of Postsecondary Education; Supplemental Support under American Rescue Plan](#) (SSARP) ARP a3 NIA (February 3, 2022)

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	Y	Y	N	Y	N	N

## A. Activities Allowed or Unallowed

Institutions must demonstrate that costs incurred are allowable under the relevant statutory provisions and consistent with the purpose of the ESF “to prevent, prepare for, and respond to coronavirus.” In general, the CARES Act authorized broad uses of HEERF funds, with specific standards for the different subprograms described below.

The CRRSAA expanded the allowable uses for supplemental awards and new awards made under Section 314(a)(1) of the CRRSAA. The expanded use of funds authority also applies to unexpended HEERF I funds as of December 27, 2020 (the date of enactment of the CRRSAA).

The ARP is largely a continuation of the CRRSAA subprograms but added two new required uses of HEERF III institutional portion grant funds for public and private nonprofit institutions and eliminated the institutional use of funds “to carry out student support activities authorized by the HEA that address needs related to coronavirus.”

Auditors are strongly encouraged to review the FAQ documents and guidance materials which provide specific examples that help interpret these statutory standards.

### *Emergency Financial Aid Grants to Students (Student Aid Portion)*

For the (a)(1) Student Aid Portion (Assistance Listing 84.425E), disbursements made under the Student Aid Portion are required to be made directly to students. ED’s [final rule](#) (Eligibility to Receive Emergency Financial Aid Grants to Students under the Higher Education Emergency Relief Programs, May 14, 2021) on student eligibility for HEERF states that all students who are or were enrolled in an institution of higher education on or after the date of the declaration of the national emergency due to the coronavirus (March 13, 2020) are eligible for emergency financial aid grants from the HEERF, regardless of whether they completed a FAFSA or are eligible for Title IV.

- HEERF I Student Aid Portion funds expended prior to December 27, 2020: These funds must be paid to the student “for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student’s cost of attendance, such as food, housing, course materials, technology, health care, and child care)” (CARES Act Section 18004(c)).
- HEERF II, and HEERF III, and HEERF I funds liquidated (spent) on or after December 27, 2020: These funds must be used to provide financial aid grants to students (including students exclusively enrolled in distance education), which may be used for “any component of the student’s cost of attendance or for emergency costs that arise due to coronavirus, such as tuition, food, housing, healthcare (including mental health care), or child care” (CRRSAA section 314(c)(3); ARP section 2003).



The CRRSAA and ARP requires that schools prioritize students with exceptional need, such as students who receive Pell Grants. However, students do not need to be Pell recipients or students who are eligible for Pell grants in order to receive a financial aid grant.

Beyond Pell eligibility, other types of exceptional need could include students who may be eligible for other federal or state need-based aid or have faced significant unexpected expenses either for themselves or that would affect their financial circumstances, such as the loss of employment, reduced income, or food or housing insecurity. In addition, the CRRSAA and ARP explicitly states that emergency financial aid grants to students may be provided to students exclusively enrolled in distance education provided they have exceptional need ([HEERF III FAQs](#) questions 11 and 12).

Institutions may not condition the receipt of financial aid grants to students on continued or future enrollment in the institution and may not require a student to consent to the application of the financial aid grants to satisfy a student's outstanding account balance as a condition of receipt of or eligibility for the financial aid grant. Institutions that add preconditions to receiving a financial aid grant that thwart this requirement may be subjected to oversight and corrective action.

For their HEERF I Student Aid Portion grant, institutions may use their remaining funds (as of December 27, 2020) to provide financial aid grants in the same way they can use their supplemental Student Aid Portion funds under the CRRSAA and ARP, including by providing such grants to students exclusively enrolled in distance education.

Institutions may use funds under the Institutional Portion to provide additional emergency financial aid grants to students. If an institution chooses to do so, then those funds are subject to the requirements described in the institution's applicable Student Aid Portion (ALN 84.425E) Certification and Agreement and/or Supplemental Agreement and the *Emergency Financial Aid Grants to Students (Student Aid Portion)* section above.

As it relates to expenditures under the HEERF II and HEERF III (a)(1) Student Aid Portion or for additional emergency financial aid grants made using other HEERF grant funds, auditors should determine (1) the institution had a documented plan to distribute funds to students, (2) that institutions prioritized grants to students with exceptional need, (3) that the institution did not place any restrictions on the expenditure of those funds beyond what is in the statute, above, (4) the institution expended the entirety of the Student Aid Portion grant on Emergency financial aid grants to students, and (5) that the institution did not reimburse itself for any costs or expenses previously issued to students.

*Institutional Costs (Institutional Portion, (a)(2), and (a)(3) Funds)*

- HEERF I Institutional Portion funds liquidated (spent) prior to December 27, 2020: For the (a)(1) Institutional Portion (Assistance Listing 84.425F), allowable expenditures incurred and liquidated prior to December 27, 2020 must have been “to cover any costs associated with significant changes to the delivery of

instruction due to the coronavirus, so long as such costs do not include payment to contractors for the provision of pre-enrollment recruitment activities; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship” (CARES Act Section 18004(c)).

Other allowable expenditures under the HEERF I Institutional Portion included additional emergency financial grants made to students (in accordance with the requirements of the Student Portion). Additionally, institutions also could have reimbursed themselves for refunds previously made to students on or after March 13, 2020, if those refunds were necessitated by significant changes to the delivery of instruction, including interruptions in instruction, due to the coronavirus. Please see questions 31 and 44 from the HEERF I CARES Act Rollup FAQs for more information. Generally, lost revenue was not a permissible expenditure under the HEERF I Institutional Portion.

- HEERF II, HEERF III, and HEERF I funds liquidated (spent) on or after December 27, 2020. Beginning December 27, 2020, any unused HEERF I Institutional Portion funds, new HEERF II Institutional Portion funds, HEERF III Institutional Portion Funds may be used to defray expenses associated with coronavirus (including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, and payroll) and to make additional financial grants to students (CRRSAA Section 314(c)(1-3); ARP Section 2003). HEERF I and HEERF II funds may also have been used to carry out student support activities authorized by the HEA that address needs related to coronavirus. The ARP eliminated this use of funds for HEERF III.

The following table describes this distinction:

<b>Institutional Portion of funds</b>	<b>Date</b>	<b>Uses of funds are specified in...</b>
<b>CARES Act HEERF I</b>	For allowable expenditures incurred on or after March 13, 2020 and liquidated (spent) prior to December 27, 2020.	CARES Act section 18004(c)
<b>CARES Act HEERF I</b>	For allowable expenditures incurred on or after March 13, 2020 and liquidated (spent) on or after December 27, 2020.	CRRSAA section 314(c)(1-3)
<b>CRRSAA HEERF II</b>	For allowable expenditures incurred on or after March 13, 2020.	CRRSAA section 314(c)(1- 3)
<b>ARP HEERF III</b>	For allowable expenditures incurred on or after March 13, 2020.	CRRSAA section 314(c)(1), (c)(3), and ARP section 2003(5)

*New required uses of ARP HEERF III Institutional Portion grant funds:* ARP created two new requirements that a portion of HEERF III institutional funds must be used (a) to implement evidence-based practices to monitor and suppress coronavirus in accordance with public health guidelines; and (b) conduct direct outreach to financial aid applicants about the opportunity to receive a financial aid adjustment due to the recent unemployment of a family member or independent student, or other circumstances, described in section 479A of the HEA (see [HEERF III FAQs](#) questions 21 and 28–35).

*HEERF I (a)(2) and (a)(3) subprograms:* For the HEERF I (a)(2) subprograms, (Assistance Listings 84.425J, 84.425K, 84.425L, and 84.425M) and HEERF I (a)(3) FIPSE Formula Grant (Assistance Listing 84.425N), funds “may be used to defray expenses, including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, payroll incurred by institutions and for grants to students for any component of the student’s cost of attendance (as defined under section 472 of the HEA), including food, housing, course materials, technology, health care, and child care” (CARES Act Sections 18004(a)(2) and 18004(a)(3)).

*HEERF II and HEERF III (a)(2) and (a)(3) subprograms:* New HEERF II (a)(2) and (a)(3) funds and new HEERF III (a)(2) and (a)(3) funds (under Assistance Listings 84.425J, 84.425K, 84.425L, and 84.425M and 84.425S) may also be used under the allowable uses of funds detailed in CRRSAA Section 314(c) above.

*Excise Tax for CRRSAA HEERF II:* Institutions that were required to pay an excise tax for tax year 2019 based on investment income under section 3968 of the Internal Revenue Code may only use their HEERF II funds for financial aid grants to students, or for sanitation, personal protective equipment, or other general health and safety expenses related to the coronavirus emergency, and such institutions’ allocations are reduced by 50 percent, unless a waiver has been obtained from ED (CRRSAA Section 314(d)(6)). The ARP eliminated this requirement for HEERF III funds.

*Construction and Real Property Expenditures under HEERF (a)(2) subprograms (Assistance Listings 84.425J, 84.425K, 84.425L, and 84.425M):* Under the Consolidated Appropriations Act, 2022 (Pub. L. No. 117-103), as of March 15, 2022, HEERF (a)(2) program subgrantees may expend their HEERF (a)(2) grant funds on construction and real property for projects that are connected to the purpose of the ESF program to “prevent, prepare for, and respond to coronavirus.” Any HEERF (a)(2) grantees taking advantage of this flexibility will have to receive approval from ED for their specific construction and real property projects supported by HEERF (a)(2) grant funds. HEERF (a)(2) grantees cannot use their (a)(2) grant funds on construction or real property associated with facilities related to athletics, sectarian instruction, or religious worship.

It is important to note that although not all compliance requirements are subject to audit this year, there are general requirements that all ED grantees funding construction and real property projects must follow. These include, but are not limited to, the following:

- All applicable Uniform Guidance requirements, including competitive procurement under [2 CFR §§ 200.317-200.327](#).
- ED’s regulations regarding construction, as applicable, in [34 CFR sections 75.600–75.617](#), including an assessment of the impact of any proposed construction on the environment and ensuring compliance with environmental standards.
- HEERF (a)(2) grantees funding construction contracts over \$2,000 must meet Davis-Bacon Act prevailing wage requirements. For information about the prevailing wages in the applicable region, see the Department of Labor (DOL) regional office: <https://www.dol.gov/agencies/whd/government-contracts/construction/regions>.
- The Copeland “Anti-Kickback” Act. More information available here: <https://www.dol.gov/agencies/whd/government-contracts/copeland-anti-kickback>.
- The Construction Program assurances contained in the [SF-424D form](#).

Please note that (a)(2) subprogram grantees may use HEERF grant funds for minor remodeling without triggering the requirements to follow [34 CFR sections 75.600–75.617](#) and receiving approval from ED. Minor remodeling means minor alterations in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, structural alterations to buildings, building maintenance, or repairs. See [34 CFR Part 77.1\(b\)](#) and [HEERF III FAQ](#) questions 23 and 24.

*IREPO Subprogram:* Under the IREPO subprogram (Assistance Listing 84.425P), the use of funds are specified in the [IREPO NIA](#) and the approved application for grant funds the applicant submitted as part of the program.

*SAIHE Subprogram:* Under the SAIHE subprogram (Assistance Listing 84.425S), depending on the absolute priority an institution applied for and received SAIHE grant funds under, the uses and limitations for that institutions’ SAIHE funds are specified in the [\(a\)\(3\) SAIHE Certification and Agreement](#).

*SSARP Subprogram:* Under the SSARP subprogram (Assistance Listing 84.425T), depending on the absolute priority an institution applied for and received SSARP grant funds under, the uses and limitations for that institutions’ SSARP funds are specified in the [\(a\)\(3\) SSARP Certification and Agreement](#).

*Grantees on Route or Stop Pay Status:* Additionally, some institutions’ grants may have been placed on Route Pay or Stop Pay Status as indicated by a notification the grantee would have received from ED. This requires ED approval of a spending plan prior to the

grantee drawing down funds or the submission of single requests with documentation. Auditors should ensure that in these circumstances that the grantee expended their HEERF grant funds consistent with the ED-approved spending plan or required documentation for single requests for funds.

## **B. Allowable Costs/Cost Principles**

See Part 3, Section B, “Allowable Costs/Cost Principles” for a general description of the compliance requirements, the related audit objectives, and suggested audit procedures.

The Uniform Guidance Cost Principles described in 2 CFR Part 200, Subpart E, apply to the HEERF subprogram. As described earlier, for the HEERF subprograms covered in this section, institutions generally have broad uses of funds. Some items of cost in Subpart E of the Uniform Guidance require prior approval under [2 CFR section 200.407](#) by ED. However, in its [HEERF II FAQs](#) published on January 14, 2021, and [HEERF III FAQs](#) published on May 11, 2021, ED waived prior approval for certain items of cost (as described in questions 20 and 45, respectively).

HEERF grant funds must not be used for:

- funding contractors for the provision of pre-enrollment recruitment activities;
- marketing or recruitment (see [HEERF III FAQs](#) question 27 for information on reengagement activities);
- endowments;
- capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship;
- senior administrator or executive salaries, benefits, bonuses, contracts, incentives, stock buybacks, shareholder dividends, capital distributions, and stock options, or any other cash or other benefit for a senior administrator or executive;
- religious worship, instruction, or proselytization or equipment or supplies to be used for religious worship, instruction, or proselytization; or
- construction or purchase of real property.

Please see also [HEERF III FAQs](#) question 22 for more information.

With the exception of HEERF (a)(2) grantees using their (a)(2) grant funds, grantees are prohibited from using HEERF funding for the acquisition of real property or construction under [34 CFR section 75.533](#). This includes using HEERF grant funds on capital projects, including deferred maintenance and capital improvement.

However, this general prohibition on construction and acquisition of real property does not extend to activities that meet the definition of “minor remodeling” under [34 CFR section 77.1](#). Minor remodeling means minor alterations in a previously completed building, for purposes associated with the coronavirus. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include permanent building construction, structural alterations to buildings, building maintenance, or repairs (see also [HEERF III FAQs](#) questions 23 and 24).

Reasonable direct administrative costs and indirect costs at an institution’s approved negotiated indirect cost rate may be charged against Assistance Listing 84.425F (the Institutional portion). An institution may not apply an indirect cost rate to its estimated amount of lost revenue.

No administrative costs and no indirect costs are allowed to be charged against Assistance Listing 84.425E (the Student Aid Portion), as CARES Act Section 18004(c), CRRSAA Section 314 (c)(3), and ARP 2003 require that these funds be used to provide emergency financial aid grants to students. All administrative costs must be reasonable and necessary and conform to Cost Principles described in 2 CFR Part 200 Subpart E of the Uniform Guidance (see [HEERF II FAQs](#) Question 18 and [HEERF III FAQs](#) questions 43 and 44).

### **C. Cash Management**

See Part 3, Section C, “Cash Management”. In addition to these basic cash management principles, for CRRSAA HEERF II and ARP HEERF III, the Certification and Agreements and/or Supplemental Agreements requires that Student Aid Portion (ALN 84.425E) should be disbursed within 15 calendar days of the drawdown from ED’s G5 grants system and Institutional Aid Portion, (a)(2), and (a)(3) funds (all other ALNs) should be disbursed within 3 calendar days of the drawdown from G5.

For lost revenue, the “obligation” occurs on the date the institution completes its estimate of its amount of lost revenue after the estimation period.

### **G. Matching, Level of Effort, Earmarking**

#### **1. Matching**

Not Applicable

#### **2. Level of Effort**

Not Applicable

### 3. Earmarking

Institutions must use no less than 50 percent of funds received under Section 18004(a)(1) of the CARES Act to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus. Conversely, institutions may use up to 50 percent of the funds they receive under Section 18004(a)(1) to “cover any costs associated with significant changes to the delivery of instruction due to the coronavirus so long as such costs do not include payment to contractors for the provision of pre-enrollment recruitment activities, including marketing and advertising; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship.” See <https://www2.ed.gov/about/offices/list/ope/heerfInstitutionalcertificationagreement42020v2a.pdf>.

Section 314(d)(5) of the CRRSAA requires institutions to provide at least the same amount of funding in financial aid grants to students as was required to be provided under its original Student Aid Portion HEERF I allocation amount. The minimum amount of CRRSAA Section 314(a)(1) funding that each institution must devote towards financial aid grants to students is represented in the “Student Aid Portion” (Assistance Listing 84.425E ) of their supplement of new Student Aid Portion award and included in the HEERF II Allocation Table.

Additionally, an institution that utilizes the expanded use of funds authority under the CRRSAA for its unspent HEERF I funds must ensure at least 50 percent of the funds it received under CARES Act section 18004(a)(1) (generally, its HEERF I Student Aid Portion award) is used for financial aid grants to students.

Under ARP, the amount of funds that a public and private nonprofit institution must devote to financial aid grants to students is the full amount allocated under the Student Portion (84.425E) subprogram of HEERF III.

The division of the (a)(1) funds into the Student Aid Portion and Institutional Portion was made by ED. Each were given as separate grant awards, the Student Aid Portion under Assistance Listing 84.425E and the Institutional Portion under Assistance Listing 84.425F.

The order of incurring costs which will be attributed to the Student Aid and Institutional portions is not relevant to the earmarking requirement but, rather, the relationships between these two portions must be met and measured by the end of the period of performance. Therefore, testing this requirement is only applicable at the end of the period of performance as defined below.

ARP created two new requirements that a portion of HEERF III institutional funds must be used (a) to implement evidence-based practices to monitor and suppress coronavirus in accordance with public health guidelines; and (b) conduct direct outreach to financial aid applicants about the opportunity to receive a

financial aid adjustment due to the recent unemployment of a family member or independent student, or other circumstances, described in section 479A of the HEA. As noted in Question 35 of the ARP HEERF III ARP FAQs, institutions must document how the amount of the HEERF grant spent on these two required activities was reasonable and necessary given the unique needs and circumstances of the institution (see HEERF III FAQs questions 21 and 28–35).

Under the SAIHE subprogram (Assistance Listing 84.425S), depending on the absolute priority an institution applied for and received SAIHE grant funds under, the uses and limitations for that institutions' SAIHE funds are specified in the (a)(3) SAIHE Certification and Agreement.

Under the SSARP subprogram (Assistance Listing 84.425T), depending on the absolute priority an institution applied for and received SSARP grant funds under, the uses and limitations for that institutions' SSARP funds are specified in the (a)(3) SSARP Certification and Agreement.

## H. Period of Performance

See Part 3, Section H, “Period of Performance.”

*Period of Performance:* In the CARES Act, CRRSAA, and ARP Certification and Agreements, all institutions were given one calendar year (12 months) from the date of award in their HEERF Grant Award Notifications (GAN) to complete the performance of their HEERF grants.

Institutions generally must expend their HEERF grant funds within one year from the date when ED processed the most recent obligation of funds for each specific grant. Thus, institutions that received a supplemental award under ARP have one year to spend all remaining HEERF I, HEERF II, and new HEERF III funds for each grant from the date their HEERF III supplemental award is made. The specific period of performance will be indicated in Box 6 of the institution's most recent GAN. (See [HEERF III FAQs](#) Question 39.)

*Pre-award Costs:* For CARES Act HEERF I awards, institutions were allowed to incur pre-award costs consistent with [2 CFR section 200.458](#) and [34 CFR section 75.263](#) on or after March 13, 2020, the date of the declaration of the national emergency due to the coronavirus, to the date of their HEERF grant award for their (a)(1) Institutional Portion, (a)(2), and (a)(3) funds as long as those expenditures would have been allowable if incurred after the date of the HEERF grant award.

For the (a)(1) Student Aid Portion, institutions were only able to refund themselves for institutionally-funded emergency grants to students that were made (1) for authorized expenses related to the disruption of campus operations due to coronavirus as set forth in Section 18004(c) of the CARES Act; (2) to students eligible to receive emergency financial aid grants under the CARES Act; and (3) on or after March 13, 2020, the date of the declaration of the national emergency due to the coronavirus.



For the HEERF II and HEERF III awards, funds may be used for all costs incurred on or after March 13, 2020.

## **I. Procurement and Suspension and Debarment**

See Part 3, Section I, “Procurement, Suspension, and Debarment.”

For those procurements supported by HEERF grant funds, auditors should determine if institutions sufficiently documented rationales and determinations in making any sole-source awards during the time of national emergency due to the coronavirus. Exceptions from the competitive procurement requirements of the Uniform Guidance may be accepted if institutions have documented that the public exigency or emergency would not permit a delay, in accordance with 2 CFR section 200.320(f)(2). A circumstance that may influence this determination is the length of time between the procurements and the emergency at issue. Specifically, exceptions are more likely to be acceptable the closer the procurement occurred to the March 13, 2020 declaration of the national emergency.

Given this FY22 Compliance Supplement covers grant activity from July 1, 2021 onward, it is unlikely that an institution would be able to utilize this previously-described flexibility from competitive procurement given the distance of July 1, 2021 from the beginning of the pandemic.

## **L. Reporting**

There are three components to reporting for HEERF: 1) public reporting on the (a)(1) Student Aid Portion; 2) public reporting on the (a)(1) Institutional Portion (a)(2) and (a)(3) subprograms (Quarterly Reporting Form), as applicable; and 3) the annual report.

The CARES Act 18004(e) and the CRRSAA 314(e) requires an institution receiving funds under HEERF I and HEERF II to submit a report to the secretary, at such time in such a manner as the secretary may require. While ARP does not explicitly identify procedures by which institutions must report on their uses of HEERF grant funds, ED exercises this reporting authority under 2 CFR section 200.328 and 2 CFR section 200.329.

Please see the [HEERF Reporting web page](#) for the latest information and guidance for annual and quarterly HEERF reporting.

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable

## 2. Performance Reporting

Not Applicable

## 3. Special Reporting

### a. Annual Reporting (all HEERF grantees)

ED will be collecting an annual report for HEERF grantees in April 2022 ([data elements here](#); [user guide here](#)). ED will share more information regarding this annual report, which will require institutions to report on their uses of HEERF I CARES Act funds, HEERF II CRRSAA funds, and HEERF III ARP funds in advance of the ARP annual reporting deadline.

Note: Auditors are reminded that they must use the framework outlined in Part 1 of this Compliance Supplement to perform reasonable procedures to ensure that the compliance requirements identified as subject to audit are current and to determine whether there are any additional provisions of federal awards relevant to the compliance requirements subject to the audit that should be covered.

### b. Quarterly Public Reporting for (a)(1) Institutional Portion, (a)(2), and (a)(3) funds (Assistance Listings 84.425F, 84.425J, 84.425K, 84.425L, 84.425M, 84.425N, 84.425S, 84.425T as applicable)

Pertinent Documents:

*CARES Act HEERF I (prior to May 13, 2021)*

- (1) [Word Document](#) | [PDF Document](#)
- (2) [Email to Grantees Regarding HEERF Reporting Requirements](#) (September 23, 2020)

*CARES Act HEERF I, CRRSAA HEERF II and ARP HEERF III (from May 13, 2021 – September 20, 2021)*

- (1) [Word Document](#) | [PDF Document](#)

*CARES Act HEERF I, CRRSAA HEERF II and ARP HEERF III Revised (from September 21, 2021 onward)*

- (1) [PDF Document](#)
- (2) HEERF Quarterly Reporting Webinar Information (November 2021)

- (a) [Quarterly Reporting PowerPoint Presentation](#) (November 16, 2021)
- (b) [Quarterly Reporting Tips](#) (November 16, 2021)
- (c) Updated Reporting FAQs (not available as of January 7, 2022)

The CARES, CRRSAA, and ARP institutional quarterly portion reporting requirements involve publicly posting completed forms on the institution's website.

The forms must be conspicuously posted on the institution's primary website on the same page the reports of the IHE's activities as to the emergency financial aid grants to students (Student Aid Portion) are posted.

Please see the form instructions (located on page three of the document) for more information regarding compliance.

Auditors should determine if an institution was both timely and accurate in publicly posting its Quarterly Reporting Form from October 30, 2020, onward and sample these quarterly public reports and reconcile the publicly reported amounts with underlying documentation to ensure accuracy.

ED understands that this information may be unique and challenging to audit, particularly because auditors are asked to verify information posted on a webpage which may not be accessible during audit fieldwork. For these public reporting requirements, auditors may accept as evidence of compliance, contemporarily produced emails, webmaster logs, or other relevant documentation establishing a good-faith indication that the institution posted the required information at approximately the timelines established by the public reporting requirements ([HEERF Grant Program Auditing Requirements](#), General Requirements and Information – All HEERF Grantees).

Please note that ED did not previously affirmatively indicate this reporting requirement was in place for HEERF II CRRSAA funds. As such, institutions may have until the end of the second calendar quarter, June 30, 2021, to post these retroactive reports if they have not already done so. Please see question 36 in the [HEERF III FAQs](#) for more information and the HEERF Quarterly Reporting FAQs (not yet available as of January 7, 2022).

- c. Quarterly Public Reporting for (a)(1) Student Aid Portion (Assistance Listings 84.425E)

*CARES Act HEERF I*

- (1) [HEERF Student Portion Public Reporting Requirement](#) (August 31, 2020; Federal Register notice revising the original May 6, 2020 [Electronic Announcement](#))

*CRRSAA and ARP HEERF II and III*

- (1) [Public Posting Requirement of Grant Information for Higher Education Emergency Relief Fund Grantees](#) (May 13, 2021; Federal Register notice)

For CARES, beginning on May 6, 2020, ED required institutions that received a HEERF I Section 18004(a)(1) Student Aid Portion award to publicly post certain information on their website no later than 30 days after award, and update that information every 45 days thereafter (by posting a new report). This was announced through an [electronic announcement \(EA\)](#).

On August 31, 2020, ED revised the EA by decreasing the frequency of reporting after the initial 30-day period from every 45 days thereafter to every calendar quarter. Grantees posting a 45-day report on or after August 31, 2020, should instead post a report every calendar quarter, with the first calendar quarter report due by October 10, 2020, and covering the period from after their last 45-day or 30-day report through the end of the calendar quarter on September 30, 2020.

On May 13, 2021, ED published an additional notice for student aid public reporting under CRRSAA and ARP, which requires that institutions publicly post certain information on their website. Institutions must publicly post their report as soon as possible, but no later than 30 days after the publication of the notice or 30 days after the date ED first obligated funds under HEERF I, II, or III to the institution for Emergency Financial Aid Grants to Students, whichever comes later. The report must be updated no later than 10 days after the end of each calendar quarter (September 30, and December 31, March 31, June 30).

Auditors should determine if an institution was both timely and accurate in publicly posting its Student Aid Portion Reports from May 6, 2020, onward and sample these public reports and reconcile the publicly reported amounts with underlying documentation to ensure accuracy ([HEERF Grant Program Auditing Requirements](#), General Requirements and Information – All HEERF Grantees).

As noted above, ED understands that this information may be unique and challenging to audit, particularly because auditors are asked to verify

information posted on a webpage which may not be accessible during audit fieldwork. For these public reporting requirements, auditors may will accept as evidence of compliance, contemporarily produced emails, webmaster logs, or other relevant documentation establishing a good-faith indication that the institution posted the required information at approximately the timelines established by our public reporting requirements.

Please note that ED did not previously affirmatively indicate this reporting requirement was in place for HEERF II CRRSAA funds. As such, institutions may have until the end of the second calendar quarter, June 30, 2021, to post these retroactive reports if they have not already done so. Please see question 36 in the [HEERF III FAQs](#) for more information.

*Key Line Items* – The following are identified as critical information for the Quarterly Public Reporting for Student Aid Portion:

1. Item #3: The total amount of Emergency Financial Aid Grants distributed to students under the CARES (a)(1) subprogram and the CRRSAA and ARP (a)(1) subprograms as of the date of submission (i.e., as of the initial report and every calendar quarter thereafter).
2. Item #4: The estimated total number of students at the institution that are eligible to receive Emergency Financial Aid Grants to Students under the CARES (a)(1) subprogram and the CRRSAA and ARP (a)(1) subprograms.
3. Item #5: The total number of students who have received an Emergency Financial Aid Grant to students under the CARES (a)(1) subprogram and the CRRSAA and ARP (a)(1) subprograms.
4. Item #6: The method(s) used by the institution to determine which students receive Emergency Financial Aid Grants and how much they would receive under the CARES (a)(1) subprogram and the CRRSAA and ARP (a)(1) subprograms.

In particular, auditors should examine whether the method(s) of distribution reported here are consistent with the method(s) that were actually employed by the institution to distribute emergency financial aid grants to students.

#### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

Not Applicable

**DEPARTMENT OF EDUCATION****ASSISTANCE LISTING 84.938 HURRICANE EDUCATION RECOVERY****I. PROGRAM OBJECTIVES**

The Bipartisan Budget Act (Division, B, Subdivision I, Title VIII of Pub. L. No. 115-123) (“the Bipartisan Budget Act of 2018”) authorized five grant programs to assist school districts and schools in meeting the educational needs of students displaced by hurricanes Harvey, Irma, and Maria, or wildfires in 2017 for which a major disaster or emergency has been declared, and to help schools that were closed as a result of the hurricanes or wildfires to reopen as quickly and effectively as possible. Title VIII, of Pub. L. No. 116-20, the “Additional Supplemental Appropriations for Disaster Relief Act, 2019” enacted June 6, 2019, authorized funding for additional “covered disasters or emergencies” related to hurricanes Florence and Michael, Typhoon Mangkhut, Super Typhoon Yutu, and wildfires, earthquakes, and volcanic eruptions occurring in calendar year 2018 and tornadoes and floods occurring in calendar year 2019 in those areas for which a major disaster or emergency has been declared under section 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5170 and 5190). See 132 Stat. 95.

In enacting these disaster relief legislative provisions, Congress modified the provisions of the Hurricane Education Recovery Act, Pub. L. No. 109-148 (HERA), which was enacted after hurricanes Katrina and Rita in 2006. The provisions of the K-12 programs in the modified authority are generally similar to those in the prior program legislation, except for references to eligible applicants, the names of the covered disasters and emergencies, and date-specific and timeframe references. These K-12 programs are (1) the Immediate Aid to Restart School Operations (Restart) program (Assistance Listing 84.938A), (2) the Assistance for Homeless Children and Youth (AHCY) program (Assistance Listing 84.938B), and (3) the Temporary Emergency Impact Aid for Displaced Students (Emergency Impact Aid or EIA) program (Assistance Listing 84.938C). The Bipartisan Budget Act of 2018 also funded two programs for institutions of higher education to provide assistance for students attending institutions of higher education in areas affected by covered disasters. These programs are (1) the Emergency Assistance to Institutions of Higher Education (Assistance Listing 84.938T) and (2) Defraying Costs of Enrolling Displaced Students (Assistance Listing 84.938S). See Section IV, Other Information for an explanation on the use of alpha suffixes added to the Assistance Listing number.

**A. Restart (Assistance Listing 84.938A)**

The Restart program is designed to support the provision of immediate services or assistance to local educational agencies (LEAs) and nonpublic schools in areas where a major disaster or emergency was declared under sections 401 and 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5170 and 5190) related to the consequences of hurricanes Harvey, Irma and/or Maria or the California wildfires in 2017 or hurricanes Florence and Michael, Typhoon Mangkhut, Super Typhoon Yutu, and wildfires, earthquakes, and volcanic eruptions occurring in calendar year 2018 and tornadoes and floods occurring in calendar year

2019 (“a covered disaster or emergency”). Funds will be used to assist school administrators and personnel in restarting school operations, re-opening schools, and re-enrolling students.

### **B. HCY (Assistance Listing 84.938B)**

The purpose of the AHCY program is to award grants to eligible state education agencies (SEAs) to enable them to provide financial assistance to LEAs serving homeless children and youth displaced by a covered disaster or emergency in order to address the educational and related needs of these students in a manner consistent with section 723 of the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act) and with section 106 of title IV of division B of Pub. L. No. 109-148.

### **C. Emergency Impact Aid (EIA) (Assistance Listing 84.938C)**

The purpose of the EIA program is to award grants to eligible SEAs to enable them to make emergency impact aid payments to eligible LEAs and eligible Bureau of Indian Education (BIE)-funded schools for the cost of educating during the 2017–2018 school year public and nonpublic school students displaced by hurricanes Harvey, Irma, and Maria, or the 2017 California wildfires or hurricanes Florence and Michael, Typhoon Mangkhut, Super Typhoon Yutu, and wildfires, earthquakes, and volcanic eruptions occurring in calendar year 2018 and tornadoes and floods occurring in calendar year 2019 for which a major disaster or emergency has been declared under sections 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5170 and 5190) (covered disaster or emergency).

## **II. PROGRAM PROCEDURES**

### **A. Restart**

The Department of Education (ED) provides Restart funds to SEAs affected by a covered disaster taking into consideration the number of public and nonpublic schools closed as a result of a covered disaster or emergency, and the number of students enrolled during the school year preceding the school year in which the covered disaster or emergency occurred in those schools. The SEAs use these funds to provide services and assistance to the LEAs and nonpublic schools located in their states. The services may be provided directly by the SEA, through contractual arrangements, or through subgrants to public agencies. The SEAs are required to consider (1) the number of school-aged children served by LEAs or nonpublic schools in the academic year preceding the academic year for which the services and assistance are provided, and (2) the severity of the impact of the hurricanes on the LEAs or nonpublic schools, and the extent of the needs in each LEA or nonpublic school.

An SEA is required to reserve an amount of these funds to be made available to nonpublic schools in the state affected by the applicable covered disaster or emergency that is not less than an amount that bears the same relation to the payment as the number of students in nonpublic elementary schools and secondary schools in the state bears to the total number of students in nonpublic and public elementary schools and secondary schools in the state. The number of students in such schools shall be determined by the most recent and appropriate data set for the school year prior to the year of the covered

disaster or emergency. The control of funds for the services and assistance provided to a nonpublic school under a Restart grant and title to materials, equipment, and property purchased with Restart funds, must be in a public agency (SEA or LEA), and a public agency (SEA or LEA) shall administer such funds, materials, equipment, and property and shall provide such services (or may contract for the provision of such services with a public or private entity).

LEAs or nonpublic schools desiring services or assistance under the Restart program must have submitted an application to the SEA at such time, in such manner, and accompanied by such information as the SEA may reasonably be required to ensure expedited and timely provision of services or assistance to the LEA or nonpublic school.

### **B. AHCY (Assistance Listing 84.938B)**

The Department of Education (ED) provides assistance to LEAs, through SEAs, to serve homeless children and youth displaced by hurricanes Harvey, Irma, and Maria, or the 2017 California wildfires for which a major disaster or emergency has been declared under sections 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5170 and 5190) (covered disaster or emergency). These services or activities may include identification, enrollment assistance, assessment and school placement assistance, transportation, coordination of school services, supplies, referrals for health, mental health, and other needs. ED disburses funds to SEAs based on the number of homeless children and youth enrolled as a result of displacement by a covered disaster or emergency and demonstrated need. SEAs will distribute the funds to LEAs to be spent consistent with the purposes of carrying out section 723 of the McKinney-Vento Homeless Assistance Act.

### **C. Emergency Impact Aid**

Funds are provided on the basis of statutory criteria and student count data supplied by SEAs and LEAs. LEAs provide counts to their SEA, which provides counts to ED. The SEA must provide student counts for all four quarters of the relevant school year on the numbers of displaced students enrolled in that LEA (in public and nonpublic schools) or BIE-funded school as of four different count dates, disaggregated by students who are children with disabilities, English learners who are not reported as children with disabilities, and all other displaced students.

ED makes payments to SEAs to enable them to make payments to LEAs as soon as possible, and LEAs must make payments to accounts on behalf of nonpublic students within 14 calendar days of receiving payments from their SEAs. When students enroll in different nonpublic schools on different quarterly count dates, LEAs need to ensure that payments for these students are directed to the correct accounts on their behalf.

SEAs and LEAs that meet the timelines specified in the Notice Announcing Availability of Funds may make upward or downward revisions to their initial child counts if they collect more accurate data than was available at the time of their initial application submission. The Notice will set out a date by which states must submit such amendments.



Generally, ED will make payments under EIA program as follows:

For each quarter, ED will provide each state with a payment equal to:

- a. \$2,125 multiplied by the number of displaced students who are not reported as children with disabilities or English learners determined by the state to be enrolled in public and nonpublic schools for that quarter, plus
- b. \$2,250 multiplied by the number of displaced students who are English learners (who are not reported as children with disabilities) determined by the state to be enrolled in public and nonpublic schools for that quarter, plus
- c. \$2,500 multiplied by the number of displaced students who are reported as children with disabilities (regardless of whether the students are English learners) determined by the state to be enrolled in public and nonpublic schools for that quarter.

The aggregate amount of EIA funds that ED may provide per displaced student for the 2017–2018 or 2018–2019 school year, as applicable, is:

- a. \$8,500 for each displaced student who is not reported as a child with a disability or English learner;
- b. \$9,000 for each displaced student who is reported as an English learner who is not reported as a child with a disability; and
- c. \$10,000 for each displaced student who is reported as a child with a disability (regardless of whether the student is an English learner).

The aggregate amount of a payment on behalf of a displaced student enrolled in a nonpublic school may not exceed the *lesser* of—

- a. \$8,500 for a student who is not reported as a child with a disability or English learner;
- b. \$9,000 for a student who is reported as an English learner;
- c. \$10,000 for a student who is reported as a child with a disability; or
- d. The cost of tuition and fees (and transportation expenses, if any) at the nonpublic school for the relevant school year. (See section 107(d)(2)(B) of the modified Act.)

## Sources of Governing Requirements

### *Program Source*

Restart (Assistance Listing 84.938A) Bipartisan Budget Act of 2018, Pub. L. No. 115-123 (February 9, 2018) and Title VIII, of Pub. L. No. 116-20, the “Additional Supplemental Appropriations for Disaster Relief Act, 2019” enacted June 6, 2019 (modifying provisions of the Hurricane Education Recovery Act, Pub. L. No. 109-148 (HERA), Section 102) (Section 102 of the modified Act) (2018 or 2019, as applicable)).

AHCY (Assistance Listing 84.938B) Bipartisan Budget Act of 2018, Pub. L. No. 115-123 (February 9, 2018) (modifying provisions of the Hurricane Education Recovery Act, Pub. L. No. 109-148 (HERA), Section 106) (Section 106 of the modified Act).

Emergency Impact Aid (Assistance Listing 84.938C) Bipartisan Budget Act of 2018, Pub. L. No. 115-123 (February 9, 2018) and Title VIII, of Pub. L. No. 116-20, the “Additional Supplemental Appropriations for Disaster Relief Act, 2019” enacted June 6, 2019 (modifying provisions of the Hurricane Education Recovery Act, Pub. L. No. 109-148 (HERA), Section 107) (Section 107 of the modified Act) (2018 or 2019, as applicable)).

ED has not issued specific program regulations, but the Education Department General Administrative Regulations (EDGAR) at 34 CFR parts 76, 77, 81, 86, 97, 98, and 99 also apply, as do the regulations applicable to the Title IV, HEA programs for funds awarded under those programs, subject to any waivers granted by the ED under the authority in the HERA.

### Availability of Other Program Information

A copy of the relevant section of the Bipartisan Budget Act may be found at: [Enclosure 1: 2018 Initial Application for the Immediate Aid to Restart School Operations \(Restart\) Program \(PDF\)](#).

A copy of the Additional Supplemental Appropriations for Disaster Relief Act, 2019 may be found at: <https://www.congress.gov/bill/116th-congress/house-bill/2157/text>. A copy of the HERA may be found at: <http://www.ed.gov/policy/elsec/guid/secletter/051230Bill.pdf>.

Additional information on this program may be found on the Internet at <https://www.ed.gov/disasterrelief>.

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not

being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	Y	N	N	N	N	Y	Y

**A. Activities Allowed or Unallowed**

1. *Restart*

Services and assistance allowable under this program, whether provided by the SEA, an LEA, or a public entity on behalf of a nonpublic school, must support the restart of operations in the re-opening of and the re-enrollment of students in elementary and secondary schools in areas affected a covered disaster or emergency. An SEA, LEA, or public entity can contract with private vendors to offer services and assistance under this program. Such services or assistance must provide for:

a. Allowable costs

- (1) Recovery of student and personnel data, and other electronic information;
- (2) Replacement of school district information systems, including hardware and software;
- (3) Financial operations;
- (4) Reasonable transportation costs;
- (5) Rental of mobile educational units and leasing of neutral sites or spaces;
- (6) Initial replacement of instructional materials and equipment, including textbooks;

- (7) Redeveloping instructional plans, including curriculum development;
- (8) Initiating and maintaining education and support services; and
- (9) Such other activities related to the purposes of the program that are approved by ED (Section 102(e)(1) of the modified Act).

b. Unallowable costs

Restart program funds may not be used for construction or major renovation of schools. However, funds may be used for minor renovation, repair, and minor remodeling of schools (Section 102(e)(3)(A) of the modified Act).

ED has approved the use of Restart funds for other activities related to the purposes of the program. Information on these activities, as well as examples of allowable activities under the other categories, is available on ED's website via frequently asked questions:

<https://www2.ed.gov/programs/restart/restart-faq-2019-program.pdf>.

An SEA, LEA, or public entity on behalf of a nonpublic school may use Restart program funds in coordination with other federal, state, or local funds available for the activities described above (Section 102(e)(2) of the modified Act).

2. *AHCY (Assistance Listing 84.938B)*

Funds under this program may be used to provide services to, and activities for, homeless children displaced by hurricanes Harvey, Irma, and Maria, or the 2017 California wildfires for which a major disaster or emergency has been declared under sections 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5170 and 5190) (covered disaster or emergency) consistent with Section 723 of the McKinney Vento Homeless Assistance Act. Funds may also be used to provide these services to, or activities for, non-displaced children made homeless by the covered disaster or emergency. These services or activities may include identification; enrollment assistance; assessment and school placement assistance; transportation; coordination of school services; supplies; and referrals for health, mental health, and other needs of homeless students displaced by the covered disaster or emergency.

3. *Emergency Impact Aid (EIA)*

- a. Allowable Uses of Funds for a Child Reported without a Disability or an English Learner.

LEAs, BIE-funded schools, or nonpublic schools may use EIA funds to provide instructional opportunities for displaced students without

disabilities who enroll in their schools and for expenses the recipient incurs in serving those displaced students. Allowable expenses are:

- (1) Paying the compensation of personnel, including teacher aides, in schools enrolling displaced students;
- (2) Identifying and acquiring curricular material and classroom supplies;
- (3) Acquiring or leasing mobile educational units or leasing sites and spaces;
- (4) Providing basic instructional services for displaced students, including tutoring, mentoring, or academic counseling;
- (5) Paying reasonable transportation costs;
- (6) Providing health and counseling services; and
- (7) Providing education and support services (Section 107(e) of the “modified Act”).

b. Allowable Uses of Funds for a Child Reported with a Disability

Recipients of funds under this program for displaced students who are children with disabilities may use those funds only to pay for special education and related services consistent with the IDEA. However, the law does not require that these funds be used to provide special education and related services only to students displaced by the covered disaster or emergency. They may become part of an LEA’s or school’s special education budget, and the LEA or school may use them to provide special education and related services to both displaced and other students who are children with disabilities, taking care to ensure that the special education needs of displaced students with disabilities are met.

Notwithstanding the requirement that payments be expended for special education and related services consistent with the IDEA, this program places no other obligation on nonpublic schools to administer any part of the IDEA.

The requirements that apply to the use of funds provided for displaced students who are children with disabilities are the same as those that apply to the LEAs use of funds provided under Part B of the IDEA. They include the requirement that the funds be used for the excess costs of providing special education and related services to children with disabilities, consistent with maintenance-of-effort and supplement, not supplant, requirements. Because these fiscal provisions have special meaning under the IDEA, distinct from the way these terms are applied under the ESEA, we advise you to consult with your state and local staff

who administer the IDEA if you need additional information on IDEA requirements. The applicable regulations regarding these requirements can be found at 34 CFR sections 300.202-300.208.c. Allowable Uses of Funds – General.

While the activities and services provided with EIA funds must be related to serving displaced students, there is no requirement that they be provided only to those students. For instance, one of the allowable activities under the law is provision of basic instructional services. There is no requirement that program funds be used to provide those services only to displaced students; rather, LEAs may use the funds to support regular classroom programs in which both displaced and other students participate. Similarly, the law authorizes the use of funds for reasonable transportation costs. LEAs are under no obligation use these funds to transport only displaced students. They may instead use the money to support their regular transportation budget, taking care to ensure that the transportation needs of displaced students are met.

c. **Unallowable Uses**

Costs for construction or major renovation are not allowable (Section 107(e)(3) of the modified Act).

**E. Eligibility**

**1. Eligibility for Individual**

Not Applicable

**2. Eligibility for Groups of Individuals or Areas of Service Delivery**

Not Applicable

**3. Eligibility for Subrecipients**

a. *Restart*

LEAs or nonpublic schools that serves an area in which a major disaster or emergency was declared under sections 401 and 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5170 and 5190) related to the consequences of hurricanes Harvey, Irma and/or Maria or the California wildfires in 2017 or hurricanes Florence and Michael, Typhoon Mangkhut, Super Typhoon Yutu, and wildfires, earthquakes, and volcanic eruptions occurring in calendar year 2018 and tornadoes and floods occurring in calendar year 2019 (“a covered disaster or emergency”) may apply for services or assistance under the program.

In determining which LEAs and schools should be served, the SEAs should consider (1) the number of school-aged children served by the LEA or nonpublic school in the academic year preceding the academic year for which the services or assistance are provided, and (2) the severity of the impact of on the covered disaster on the LEA or nonpublic school and the extent of the needs in each school in a declared major disaster area, per section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5170). For the purposes of this program, a nonpublic school means a nonpublic elementary or secondary school that is accredited or licensed or otherwise operates in accordance with state law and was in existence one week prior to the date the major disaster or emergency was declared for the area.

b. *Emergency Impact Aid*

LEAs and BIE-funded schools, including charter schools, in which a displaced student is enrolled, are eligible to participate in this program. An eligible nonpublic school is a nonprofit elementary or secondary school that is accredited or otherwise operates in accordance with state law, was in existence on the date that is one week prior to the date that the major disaster or emergency was declared for the area and serves at least one displaced student whose family has applied for assistance under the program. In addition, participating nonpublic schools must abide by certain civil rights requirements. A nonpublic school must also waive some or all of a displaced student's tuition or reimburse some or all of the tuition paid in order to receive funds under this program.

For purposes of determining eligibility, "displaced students," that is, the students for whom schools may receive payments, are those students who:

- Resided in the area of a covered disaster or emergency on the date that is one week prior to the date that the major disaster or emergency was declared for the area; and
- As a result of the covered disaster or emergency, enrolled in an elementary school or secondary school other than the school that the student was enrolled in, or was eligible to be enrolled in, on the date that is one week prior to the date that the major disaster or emergency was declared for the area.

Note that the definition may include a student who enrolled in another school in the same LEA as a result of the covered disaster or emergency. It does not include a student who remains enrolled in the same school but the school has changed location because of the disaster. It is possible, however, that a school in this situation will qualify for Restart program services or assistance. An LEA or BIE-funded school in those states

should consult with its SEA regarding the eligibility for Restart services or assistance.

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

Not Applicable

### **2. Level of Effort**

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

##### *Emergency Impact Aid*

The maintenance of effort requirements that apply to the use of the funds provided for displaced students reported with disabilities are the same as those that apply to the use of funds provided under Part B of the IDEA. See Assistance Listing 84.027, Special Education – Grants To States (IDEA, Part B), “Matching, Level of Effort, Earmarking – Level of Effort – Maintenance of Effort (SEAs/LEAs) (HERA, Section 107(e)(4)).

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

##### *Restart*

Services or assistance provided by this program shall be used to supplement, not supplant, any funds made available through the Federal Emergency Management Agency (FEMA) or through a state. However, if an SEA, LEA, or school has not received such other benefits by the time of application for assistance under this program, the SEA, LEA, or school may use program funds to supplant such funds until they are received, providing the SEA, LEA, or school agrees to repay all duplicative federal assistance received.

### **3. Earmarking**

##### *Emergency Impact Aid*

SEAs may not use more than one percent and LEAs may not use more than two percent of their respective allocations for administration of the program (Section 107 (h) of the modified Act).

## **M. Subrecipient Monitoring**

### **1. Emergency Impact Aid**

Nonpublic schools that access accounts for which parents applied on behalf of nonpublic students are not considered subgrantees of LEAs, as defined in 34 CFR



section 80.3. SEAs are responsible for monitoring the nonpublic schools with respect to applicable requirements, including ensuring that (1) a school's attestation regarding its enrollment of displaced students, as defined in section 107 of the modified Act, is adequately documented; (2) the school is an eligible nonpublic school as defined in section 107(b)(3) of the modified Act; and (3) the funds from accessed accounts are used only for allowable goods and services. An SEA is responsible for taking appropriate enforcement actions if it determines that a nonpublic school has not met any of these requirements (Section 107 of the modified Act).

Also see Part 4, 84.000 ED Cross-Cutting Section.

## **N. Special Tests and Provisions**

### **1. Public Control of Funds – Restart**

The control of funds provided for nonpublic schools must be in a public agency, and title to materials, equipment, and property purchased with such funds must also be retained by a public agency. ED has issued guidance on this requirement, which is available on ED's website (<https://www2.ed.gov/programs/restart/restartfaq042018.docx>; <https://www2.ed.gov/programs/restart/restart-faq-2019-program.pdf>).

Only a public agency or its contractor can provide services and administer such funds, materials, equipment, and property (Section 102(h)(3) of the modified Act).

## **IV. OTHER INFORMATION**

As part of audit planning, the auditor must determine for which of the six programs grant funds were awarded to the auditee. Some auditees have received grants under two or more of the six programs. As indicated above, compliance requirements vary among the programs. To help distinguish the individual programs, separate alpha suffixes were added to Assistance Listing 84.938 to distinguish the programs as follows:

- Restart (Assistance Listing 84.938A)
- AHCY (Assistance Listing 84.938B)
- Emergency Impact Aid (Assistance Listing 84.938C)

Where these suffixes are not clearly identified, the auditor will need to determine which program funds were expended through review of grant documents and inquiry of the auditee or grant/subgrant source agency.

Please see the redlined version of the HERA (Pub. L. No. 109-148) showing operational modifications made by the *Bipartisan Budget Act of 2018* (Pub. L. No. 115-123); the *Consolidated Appropriations Act of 2018* (Pub. L. No. 115-141); and the *Additional Supplemental Appropriations for Disaster Relief Act, 2019* (Pub. L. No. 116-20).

Covered Disasters for the 2018 Restart Program are: hurricanes Harvey, Irma, and Maria, or the 2017 California wildfires; covered disasters for the 2019 Restart Program are: hurricanes Florence and Michael, Typhoon Mangkhut, Super Typhoon Yutu, and wildfires, earthquakes, and volcanic eruptions occurring in calendar year 2018, and tornadoes and floods occurring in calendar year 2019 for which a major disaster or emergency has been declared under sections 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5170 and 5190).

Nonpublic schools that receive funds on behalf of displaced students under this program must comply with the modified Act's non-discrimination provision, which prohibits discrimination on the basis of race, color, national origin, religion, disability, or sex. (See section 107(m) of the modified Act.) Additionally, nonpublic schools receiving funds on behalf of displaced students under this program are recipients of federal financial assistance for the 2017–2018 school year, and are subject to the provisions of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972 ("Title IX"), Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act, which are enforced by the Department's Office for Civil Rights. See also the response to Question H-1 for further information about Title IX. More details on these requirements can be found on OCR's website (<http://www.ed.gov/about/offices/list/ocr/index.html>).

In addition, any entity that employs 15 or more employees is subject to Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race, color, national origin, religion, or sex, except that Title VII may not apply to the employment of individuals of a particular religion by a religious organization, such as a nonpublic religious school. Title VII is enforced by the Equal Employment Opportunity Commission.

Certain compliance requirements that apply to multiple programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000) rather than repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements.

## **GULF COAST ECOSYSTEM RESTORATION COUNCIL**

### **ASSISTANCE LISTING 87.051 GULF COAST ECOSYSTEM RESTORATION COUNCIL COMPREHENSIVE PLAN COMPONENT PROGRAM**

#### **I. PROGRAM OBJECTIVES**

The primary objective of this program, authorized by the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act), is to disburse funds to eligible entities for the purpose of restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast region using the best available science. Projects and programs must achieve one or more of the seven objectives listed in the Gulf Coast Ecosystem Restoration Council (RESTORE Council) Comprehensive Plan: (1) restore, enhance, and protect habitats, (2) restore, improve, and protect water resources, (3) protect and restore living coastal and marine resources, (4) restore and enhance natural processes and shorelines, (5) promote community resilience, (6) promote natural resource stewardship and environmental education, and (7) improve science-based decision-making processes.

#### **II. PROGRAM PROCEDURES**

The RESTORE Act established the Gulf Coast Restoration Trust Fund (Trust Fund) to hold 80 percent of the administrative and civil penalties paid by parties responsible for the Deepwater Horizon oil spill after July 6, 2012, plus interest on investments. Amounts in the Trust Fund are allocated among the five components: Direct Component, Comprehensive Plan Component, Spill Impact Component, National Oceanic and Atmospheric Administration RESTORE Act Science Program, and Centers of Excellence Research Grants Program. The RESTORE Council, whose members are the states of Alabama, Florida, Louisiana, Mississippi, and Texas; the Administrator of the US Environmental Protection Agency; and the secretaries of the US departments of the Interior, Commerce, Agriculture, Homeland Security, and Army (Federal Servicing Agencies), is responsible for administering the Comprehensive Plan Component and the Spill Impact Component (Assistance Listing 87.052).

Through the Comprehensive Plan Component, the RESTORE Council makes grants and enters into Interagency Agreements (IAAs) for ecological restoration of the Gulf Coast Region. Thirty percent of the penalties paid into the Trust Fund is used for grants and IAAs to support eligible activities proposed by the RESTORE Council members. Recipients of grants and IAAs may choose to make subawards to complete eligible activities, if approved by the RESTORE Council.

#### **Source of Governing Requirements**

The primary source of program requirements is the RESTORE Act (Subtitle F of Pub. L. No. 121-141) (33 USC 1321(t) and 33 USC 1321 note). Program implementing regulations are in 31 CFR Part 34.

#### **Availability of Other Program Information**

Other program information regarding grants and IAAs under the Comprehensive Plan

Component of the RESTORE Act is available at the RESTORE Council website at (<https://www.restorethegulf.gov>).

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	N	Y	Y	N	N	Y	Y

#### A. Activities Allowed or Unallowed

##### 1. *Activities Allowed*

All allowed activities must be included in, and conform to, the following:

- a. The activities set forth in the RESTORE Act at 33 USC 1321 (t)(1)(B)(i) and 33 USC 1321 (t)(1)(B)(ii);
- b. The priority criteria set forth in the RESTORE Act at 33 USC 1321 (t)(2)(D)(iii); and
- c. The description of the goals and objectives outlined in the RESTORE Council’s Comprehensive Plan, the approved Funded Priorities List Addendum(s) to such Comprehensive Plan, and the grant or subgrant agreement.

**B. Allowable Costs/Cost Principles**

As per 2 CFR Part 200 and Standard Terms and Conditions of each individual grant award.

**F. Equipment and Real Property Management**

As per 2 CFR Part 200 and Standard Terms and Conditions of each individual grant award.

**H. Period of Performance**

As per 2 CFR Part 200 and Standard Terms and Conditions of each individual grant award.

**I. Procurement and Suspension and Debarment**

The acquisition of land, or interests in land, can only be from a willing seller (31 CFR section 34.803(f)).

**M. Subrecipient Monitoring**

As per 2 CFR Part 200 and Standard Terms and Conditions of each individual grant award.

**1. Activities Unallowed**

Activities that were included in any claim for compensation presented after July 6, 2012, to the Oil Spill Liability Trust Fund authorized by 26 USC 9509 (31 CFR section 34.200(a)(3)) are unallowed.

**N. Special Tests and Provisions****1. Wage Rate Requirements**

Under the Comprehensive Plan Component, for contracts that exceed \$2,000 that are for the construction, alteration, or repair of treatment works as defined at 33 USC 1292(2), all laborers and mechanics employed by contractors and subcontractors must be paid wages at rates not less than those prevailing for the same type of work on similar construction in the immediate locality, as determined by the secretary of Labor, in accordance with the Wage Rate Requirements (33USC 1372).

See Wage Rate Requirements Cross-Cutting Section (page 4-20.001-4).

## **GULF COAST ECOSYSTEM RESTORATION COUNCIL**

### **ASSISTANCE LISTING 87.052 GULF COAST ECOSYSTEM RESTORATION COUNCIL OIL SPILL IMPACT PROGRAM**

#### **I. PROGRAM OBJECTIVES**

The primary objective of this program, authorized by the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act), is to disburse funds to eligible entities for the purpose of restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast region using the best available science in accordance with an approved State Expenditure Plan.

#### **II. PROGRAM PROCEDURES**

The RESTORE Act established the Gulf Coast Restoration Trust Fund (Trust Fund) to hold 80 percent of the administrative and civil penalties paid by parties responsible for the Deepwater Horizon oil spill after July 6, 2012, plus interest on investments. Amounts in the Trust Fund are allocated among the five components: Direct Component, Comprehensive Plan Component, Spill Impact Component, National Oceanic and Atmospheric Administration RESTORE Act Science Program, and Centers of Excellence Research Grants Program. The Gulf Coast Ecosystem Restoration Council (RESTORE Council) is responsible for administering the Comprehensive Plan Component (Assistance Listing 87.051) and the Spill Impact Component.

Through the Spill Impact Component, the RESTORE Council makes grants for the ecological and economic restoration of the Gulf Coast Region. Thirty percent of the penalties paid into the trust fund is divided among the five Gulf Coast States, the states of Alabama, Florida, Louisiana, Mississippi, and Texas, for eligible projects or programs contained in a State Expenditure Plan, which is submitted by the state and approved by the RESTORE Council chairperson. Recipients may choose to make subawards to complete eligible activities, if approved by the RESTORE Council.

#### **Source of Governing Requirements**

The primary source of program requirements is the RESTORE Act (Subtitle F of Pub. L. No. 121-141) (33 USC 1321(t) and 33 USC 1321 note). Program implementing regulations are in 31 CFR Part 34.

#### **Availability of Other Program Information**

Other program information regarding grants made under the Spill Impact Component of the RESTORE Act is available at the RESTORE Council website at <https://www.restorethegulf.gov>.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	N	Y	Y	N	N	Y	Y

#### A. Activities Allowed or Unallowed

##### 1. *Activities Allowed*

All activities must be included in, and conform to, the description in the goals and Comprehensive State Expenditure Plan, submitted to and approved by the RESTORE Council Chairperson, and the recipient’s grant or subgrant agreement. Activities must contribute to the overall economic and ecological recovery of the Gulf Coast and may include the following:

- a. Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region;
- b. Mitigation of damage to fish, wildlife, and natural resources;
- c. Implementation of a federally approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring;

- d. Workforce development and job creation;
- e. Improvements to or on state parks located in coastal areas affected by the Deepwater Horizon oil spill;
- f. Infrastructure projects benefitting the economy or ecological resources, including port infrastructure;
- g. Coastal flood protection and related infrastructure;
- h. Promotion of tourism in the Gulf Coast Region, including promotion of recreational fishing;
- i. Promotion of the consumption of seafood harvested from the Gulf Coast Region;
- j. Planning assistance;
- k. Administrative costs; and
- l. The nonfederal share of the cost of any project or program authorized by federal law that is also an eligible activity under the RESTORE Act (31 CFR sections 34.2, 34.200(b) and 34.201203).

**B. Allowable Costs/Cost Principles**

As per 2 CFR Part 200 and Standard Terms and Conditions of each individual grant award.

**F. Equipment and Real Property Management**

As per 2 CFR Part 200 and Standard Terms and Conditions of each individual grant award.

**H. Period of Performance**

As per 2 CFR Part 200 and Standard Terms and Conditions of each individual grant award.

**I. Procurement and Suspension and Debarment**

The acquisition of land, or interests in land, can only be from a willing seller (31 CFR section 34.803(f)).

**M. Subrecipient Monitoring**

As per 2 CFR Part 200 and Standard Terms and Conditions of each individual grant award.



1. **Activities Unallowed**

Activities that were included in any claim for compensation presented after July 6, 2012, to the Oil Spill Liability Trust Fund authorized by 26 USC 9509 (31 CFR section 34.200(a)(3)) are unallowable.

**N. Special Tests and Provisions**

**Wage Rate Requirements**

Under the Spill Impact Program, for contracts that exceed \$2,000 that are for the construction, alteration, or repair of treatment works as defined at 33 USC 1292(2), all laborers and mechanics employed by contractors and subcontractors must be paid wages at rates not less than those prevailing for the same type of work on similar construction in the immediate locality, as determined by the secretary of labor, in accordance with the Wage Rate Requirements (33 USC 1372).

See Wage Rate Requirements Cross-Cutting Section (page 4-20.001-4).

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****ASSISTANCE LISTING 93.044 SPECIAL PROGRAMS FOR THE AGING – TITLE III, PART B—GRANTS FOR SUPPORTIVE SERVICES AND SENIOR CENTERS, CARES ACT FOR SUPPORTIVE SERVICES UNDER TITLE III-B OF THE OLDER AMERICANS ACT, AND AMERICAN RESCUE PLAN FOR SUPPORTIVE SERVICES UNDER TITLE III-B OF THE OLDER AMERICANS ACT****ASSISTANCE LISTING 93.045 NUTRITION SERVICES FOR NUTRITION SERVICES UNDER TITLE III-C OF THE OLDER AMERICANS ACT, CARES ACT FOR NUTRITION SERVICES UNDER TITLE III-C OF THE OLDER AMERICANS ACT, AND AMERICAN RESCUE PLAN FOR NUTRITION SERVICES UNDER TITLE III-C OF THE OLDER AMERICANS ACT****ASSISTANCE LISTING 93.053 NUTRITION SERVICES INCENTIVE PROGRAM****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—
  - (1) respond to the needs and preferences of older individuals and family caregivers;
  - (2) facilitate the provision, by service providers, of long-term care in home and community-based settings; and
  - (3) 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—
  - (1) the need to plan in advance for long-term care; and
  - (2) 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 nonfederal 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 (NSIP)**

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. This program is included as part of this cluster because of its direct relationship to the nutrition services program.

## **II. PROGRAM PROCEDURES**

### **A. Overview**

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 nonprofit 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), 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.

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)).

AoA administers NSIP in cooperation with states, sub-state agencies, and other service providers. Under Sections 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 United States Department of Agriculture (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. (See also IV, "Other Information.")

## **B. 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.

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 reauthorized in 2020 by Pub. L. No. 116-131 is available at the AoA website at <https://acl.gov/about-acl/administration-aging>.

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	N	N	Y	Y	Y	N

**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)).

*Nutrition Services Incentive Program (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 multipurpose 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 ten years or more), alter, or renovate existing facilities or to construct new facilities to serve as multipurpose senior centers for not less than ten years after acquisition, or 20 years after completion of construction, unless waived by the assistant secretary for aging (42 USC 3030b).



*Nutrition Services Incentive Program (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)).

**G. Matching, Level of Effort, Earmarking**

**1. Matching**

**a. Title III Supportive Services and Nutrition Services and American Rescue Plan Supportive Services and Nutrition Services Grants**

(1) State – State Plan Administration

- (a) 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) State and Area Agencies – Area Plan Administration

State and 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).

- (a) *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.
- (b) *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.

(3) Service Provision

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 nonfederal match of at least 15 percent. One third of the required 15 percent match must come from state sources (42 USC 3029 (b)(2)). 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. Nutrition Services Incentive Programs (NSIP) Grants**

- (1) There is no match requirement.

**c. CARES Act Supportive Services and Nutrition Services Grants**

- (1) State – State Plan Administration

- (a) 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) State and Area Agencies - Area Plan Administration

State and 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).

- (a) *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.
- (b) *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.

- (3) Service Provision

There is no match requirement for services.

**2. Level of Effort**

*State* – The State Agency must spend for both services and administration at least the average amount of state funds it reported as spent under the state plan for these activities for the three previous fiscal years. If the State Agency reports as spent 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.3., “Reporting – Financial Reporting,” for the reporting requirement regarding maintenance of effort.

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

Not Applicable

**2.2 Level of Effort – *Supplement Not Supplant******Supportive Services and Senior Centers***

- a. Funds expended by a state or unit of general purpose local government (including an Area Agency on aging) to provide services shall supplement, and not supplant, any federal, state, or local funds (42 USC 3030d(d)).

***Nutrition Services***

- a. Not Applicable

**3. Earmarking****a. *State***

- (1) Overall expenditures for administration are limited to the greater of 5 percent (or \$300,000 or \$750,000 depending on the aggregate amount appropriated or a lesser amount for the US territories) of the overall allotment to a state under Title III unless a waiver is granted by the assistant secretary for 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 where the state calculates the 10 percent based 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 (5 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)).

**J. Program Income**

1. Service providers are required to provide an opportunity to individuals being served under all parts B and C services program to make voluntary contributions for services received. These voluntary contributions are to be added to the amounts made available for service provision 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. Semi-Annual Federal Financial Reports, SF-425, OMB No. 4040-0014
- b. Supplemental Form to the Financial Status Report for all AoA Title III Grantees, OMB No. 0985-0004

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

- a. Certification of Maintenance of Effort, OMB No. 0985-0009

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## **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).

## **IV. OTHER INFORMATION**

The NSIP program may include both cash payments to states 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 2 CFR section 200.40 definition of “federal financial assistance” and should be valued in accordance with 2 CFR

section 200.502(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 2 CFR section 200.510(b).

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 93.090 GUARDIANSHIP ASSISTANCE

#### I. PROGRAM OBJECTIVES

The objective of the Guardianship Assistance program is to help agencies authorized to administer Title IV-E programs to provide kinship guardianship assistance payments under Title IV-E of the Social Security Act, as amended, for relatives taking legal guardianship of children who have been in foster care.

#### II. PROGRAM PROCEDURES

The Guardianship 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). Funding is available (at the option of the Title IV-E agency) to the 50 states, the District of Columbia, Puerto Rico, and federally recognized Indian tribes, Indian tribal organizations, and tribal consortia (hereinafter referred to as tribes) with approved Title IV-E plans, based on a Title 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 Guardianship Assistance program provides federal matching funds to Title IV-E agencies with approved Title IV-E plans that provide ongoing assistance and/or nonrecurring payments to relatives who have assumed legal guardianship of eligible children for whom they previously cared for as foster parents and enter into a guardianship assistance agreement. This funding became available beginning on October 7, 2008, with the enactment of amendments to the Social Security Act through the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. No. 110-351). The state or tribal Title IV-E agency may implement and claim allowable guardianship assistance program costs beginning on the first day of the quarter in which an approvable Title IV-E plan amendment is submitted to ACF to implement the Guardianship Assistance program (45 CFR section 1356.20(d)(8)). The program is considered an open-ended entitlement program and allows the state (including the District of Columbia and Puerto Rico) or tribe to be funded at a specified percentage (federal financial participation (FFP)) for program costs for eligible children.

The designated Title IV-E agency for this program also administers ACF funding provided for other Title IV-E programs (e.g., Adoption Assistance (Assistance Listing 93.659); Foster Care (Assistance Listing 93.658) and John H. Chafee Foster Care Program for Successful Transition to Adulthood (Assistance Listing 93.674), as well as the Child Welfare Services (Assistance Listing 93.645) and Promoting Safe and Stable Families (Assistance Listing 93.556) programs (Title IV-B of the Social Security Act, as amended) (Assistance Listing 93.556) funds available to states and those tribes qualifying for at least a minimum grant of \$10,000), and the Social Services Block Grant program (Assistance Listing 93.667) (Title XX of the Social Security Act, as amended) (states only)). The Title IV-E agency may either directly administer the Guardianship Assistance program or supervise its administration by local level agencies. When the program is administered by a state, in accordance with the approved Title 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. When 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 Guardianship Assistance program is authorized by Title IV-E of the Social Security Act, as amended (42 USC 670 et seq.). Implementing regulations are at 45 CFR parts 1355, 1356, and 1357.

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 an approved Title 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 Guardianship Assistance program. This information may be accessed at <https://www.acf.hhs.gov/cb/laws-policies>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.



A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	Y	N	N	N	Y	N	N

**A. Activities Allowed or Unallowed**

1. *Kinship Guardianship Assistance Payments*

Funds may be expended for kinship guardianship assistance payments made on behalf of eligible children (see III.E.1, “Eligibility – Eligibility for Individuals”) in the amount (subject to limitations in this paragraph) and manner prescribed in a negotiated, written, and binding kinship guardianship assistance agreement entered into with the prospective relative guardian (42 USC 673(d)(1)(A)(i)). Kinship guardianship assistance payments are made to relative guardians (as defined in an approved Title IV-E plan) based on the circumstances of the relative guardian and the needs of the child (42 USC 673(d)(1)(B)(i)). Kinship guardianship assistance payments cannot exceed the amount of the foster care maintenance payment the child would have received in a foster family home; however, the amount of the payments may be up to 100 percent of the foster care maintenance payment rate that would have been paid on behalf of the child if the child had remained in a foster family home (42 USC 673(d)(2)).

2. *Administrative Costs*

- a. 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 methodologies (tribes) will identify which costs are allocated and claimed under this program (45 CFR section 1356.60(c)).
- b. Funds may be expended as specified in a kinship guardianship assistance agreement for the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child (if the child meets program eligibility requirements), to the extent the total cost does not exceed \$2,000 (42 USC 673(d)(1)(B)(iv)).
- c. Funds expended by the Title IV-E agency for guardianship placements (including nonrecurring costs) are considered an administrative

expenditure and are subject to the matching requirements in III.G.1.e (42 USC 674(a)(3)(E)).

3. *Training*

- a. 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. 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)).

4. *Demonstration Projects*

Under Section 1130 of the Social Security Act, Title IV-E agencies may be granted authority to operate a demonstration project as set forth in ACF-approved terms and conditions. Any such terms and conditions identify the specific provisions of the Social Security Act that are waived, the additional activities that are allowable, the scope and duration (which may not exceed a maximum of five total years unless specifically approved for further continuation) of the demonstration project and the methodology for determining cost neutrality (either a matched comparison group or a capped allocation) (42 USC 1320a-9 and Section 201 of Pub. L. No. 112-34).

**B. Allowable Costs/Cost Principles**

Both states and tribes are subject to the requirements of OMB Circular A-87 (2 CFR Part 225)/2 CFR Part 200, Subpart E, as implemented by HHS at 45 CFR Part 75. States also are subject to the cost allocation provisions and rules governing allowable costs of equipment of 45 CFR Part 95 (45 CFR sections 1355.57, 95.503, and 95.705).

**E. Eligibility**

**1. Eligibility for Individuals**

Kinship guardianship assistance payments may be paid on behalf of a child only if program eligibility is established through one of the following methods:

a. *General Eligibility*

All of the following requirements must be met to establish general eligibility:

- (1) The child was removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child (42 USC 673(d)(3)(A)(i)(I)).
- (2) The child was eligible for foster care maintenance payments under 42 USC 672 while residing for at least six consecutive months in the home of the prospective relative guardian (42 USC 673(d)(3)(A)(i)(II)).
- (3) The Title IV-E agency determined that being returned home or adopted are not appropriate permanency options for the child (42 USC 673(d)(3)(A)(ii)).
- (4) The Title IV-E agency determined that the child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child (42 USC 673(d)(3)(A)(iii)).
- (5) With respect to a child who has attained 14 years of age, the child has been consulted regarding the kinship guardianship arrangement (42 USC 673(d)(3)(A)(iv)).
- (6) The kinship guardianship assistance agreement must be a written and binding document entered into through negotiations with the prospective relative guardian and contain information concerning; the amount of, and manner in which, each kinship guardianship assistance payment will be provided under the agreement, and the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child (42 USC 673(d)(1)(A)(i) and 673(d)(1)(B)(i)).
- (7) A kinship guardianship assistance agreement that meets, or is amended to meet, all the requirements of 42 USC 673(d)(1) must be in place with a prospective relative guardian prior to the establishment of the legal guardianship. Payments may only begin once the relative guardian has committed to care for the child and has assumed legal guardianship for the child for whom they have cared as foster parents and for whom they have committed to care on a permanent basis (42 USC 671(a)(28) and 675(7)).
- (8) Any relative guardian must satisfactorily have met a criminal records check, including a fingerprint-based checks of national crime information databases (as defined in 28 USC 534(e)(3)(A)), and for checks described in 42 USC 671(a)(20)(B) on any relative guardian and any other adult living in the home of any relative

guardian, before the relative guardian may receive kinship guardianship assistance payments on behalf of the child (42 USC 671(a)(20)(C)).

- (9) Once a child is determined eligible to receive Title IV-E kinship guardianship assistance payments, he or she remains eligible in accordance with the terms of the kinship guardianship assistance agreement and the payments can continue until: (a) attainment of the age of 18 (or attainment of age 21 if the Title IV-E agency determines that the child has a mental or physical disability which warrants the continuation of assistance); (b) the Title IV-E agency determines that the relative guardian(s) is no longer legally responsible for the support of the child; (c) the Title IV-E agency determines the child is no longer receiving any support from the relative guardian(s); or (d) the occurrence of an event described in the kinship guardianship assistance agreement which requires suspension or discontinuation of kinship guardianship assistance payments (42 USC 673(a)(4)(A) and (B); 42 USC 673(d)(1) and Child Welfare Policy Manual section 8.5A Q/A#3).

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 Title IV-E agency may elect) (42 USC 675(8)(B)(iii)). This definition of a child will then permit payment of kinship guardianship assistance for a child who is over age 18 (where the Title 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) only if such a youth is part of an kinship guardianship 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 Title IV-E agency) be (a) completing secondary school (or equivalent); (b) enrolled in post-secondary or vocational school; (c) participating in a program or activity that promotes or removes barriers to employment; (d) employed 80 hours a month; or (e) incapable of any of these due to a documented medical condition (42 USC 675(8)(B)).

b. *Sibling Eligibility*

- (1) The child and any sibling of the eligible child (established under the General Eligibility requirements listed in paragraph E.1.a) may be placed in the same kinship guardianship arrangement if the state/tribal agency and the relative agree on the appropriateness of the arrangement for the siblings (42 USC 673(d)(3)(B)(i) and 42 USC 671(a)(31)).

- (2) Kinship guardianship assistance payments may be paid pursuant to a kinship guardianship assistance agreement (in accordance with requirements in paragraph E.1.a.(6)) on behalf of each sibling so placed. If kinship guardianship assistance payments are paid on behalf of the sibling, the Title IV-E agency must pay (in accordance with a kinship guardianship assistance agreement) the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed \$2,000. The sibling does not have to meet the eligibility criteria in 42 USC 673(d)(3)(A) to receive kinship guardianship assistance payments or for the legal guardian to be reimbursed for the nonrecurring expenses related to costs of the legal guardianship (42 USC 673(d)(3)(B)(ii)).
- (3) Siblings of an eligible child must also individually meet the requirements specified in paragraphs E.1.a.(7) and (9) (42 USC 671(a)(28); 675(7) 42 USC 673(a)(4)(A) and (B); and 42 USC 675(8)(B)).

c. *Title IV-E Guardianship Waiver Post-Demonstration Projects*

- (1) After the termination of a demonstration project relating to guardianship conducted by a state under Section 1130 of the Social Security Act, children who, as of September 30, 2008, were receiving assistance or services under the project are deemed to be eligible under the approved Title IV-E state plan for the same assistance and services under the same terms and conditions that applied during the conduct of the project (42 USC 674(g)).
- (2) Post-demonstration assistance and services to eligible children assisted in accordance with terminated guardianship related demonstration projects as noted in paragraph E.1.c.(1) is eligible for Title IV-E claiming whether or not the state opts to operate a Guardianship Assistance program pursuant to 42 USC 673(d) (42 USC 674(g)).

**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 percentage of required state/tribal funding and associated federal funding (“federal financial participation”) 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). 45 CFR section 92.24 is not applicable to this program (45 CFR sections 1355.30(c) and 1355.30(n)(1); 45 CFR section 201.5(e)). Tribes directly operating a Title IV-E program are permitted to use in-kind funds from any allowable third-party sources to provide up to the full required nonfederal share of administrative or training costs (42 USC 679c(c)(1)(D); 45 CFR section 1356.68(c)).
- b. *Kinship Guardianship Assistance Payments* – The percentage of Title IV-E funding in kinship guardianship assistance payments will be the FMAP percentage. This percentage varies by state and is available at <http://www.aspe.hhs.gov/health/fmap.htm> (42 USC 674(a)(1); 45 CFR section 1356.60(a)).

Separate tribal FMAP rates, which are based upon the tribe’s service area and population, apply to Guardianship Assistance program assistance 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 methodology for calculating tribal FMAP rates was provided through a final notice in the *Federal Register* that is available at <http://www.gpo.gov/fdsys/pkg/FR-2011-08-01/pdf/2011-19358.pdf>. Information on specific tribal FMAP rates for many tribes applicable for each fiscal year (FY) and a table where such rates can be calculated for unlisted tribes is posted on the Children’s Bureau’s website and is available at <https://www.acf.hhs.gov/cb/focus-areas/tribes>. The calculated FMAP rate for each tribe 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 Training* – The percentage of federal funding in expenditures for short- and long-term training at educational institutions of employees or prospective employees (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 75 percent in FY 2013 and thereafter (42 USC 674(a)(3)(B)).

e. *Administrative Costs*

(1) The percentage of federal funding for nonrecurring Title IV-E agency kinship guardianship placement expenditures (not to exceed \$2,000 for each kinship guardianship) is 50 percent (42 USC 674(a)(3)(E)).

(2) The percentage of federal funding of all other allowable administrative expenditures is 50 percent (42 USC 674(a)(3)(E)).

**2. Level of Effort**

Not Applicable

**3. Earmarking**

Not Applicable

**L. Reporting**

**1. Financial Reporting**

a. *SF-270, Request for Advance or Reimbursement* – Not Applicable

b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

c. *SF-425, Federal Financial Report* – Not Applicable

d. *Form 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 C and D (Guardianship Assistance Program))

Part 2, Prior Quarter Expenditure Adjustments – Guardianship Assistance, columns (a) through (d)

Part 3, Foster Care, Adoption Assistance and Guardianship Assistance  
Demonstration Projects, columns (a) through (e)

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.



**DEPARTMENT OF HEALTH AND HUMAN SERVICES****ASSISTANCE LISTING 93.095 HHS PROGRAMS FOR DISASTER RELIEF  
APPROPRIATIONS ACT–NON-CONSTRUCTION****ASSISTANCE LISTING 93.096 HHS PROGRAMS FOR DISASTER RELIEF  
APPROPRIATIONS ACT–CONSTRUCTION****I. PROGRAM OBJECTIVES**

The objectives of these programs are to assist in disaster response and recovery and other activities directly related to Hurricane Sandy.

**II. PROGRAM PROCEDURES****Covered Programs and Eligibility**

As described in the terms and conditions of the award, programs in this cluster may be used for purposes consistent with the following Department of Health and Human Services (HHS) programs:

- a. Head Start
- b. Social Services Block Grant
- c. Health services (including mental health services)
- d. Repair or rebuilding of nonfederal biomedical or behavioral research facilities

HHS may award grants, cooperative agreements, or contracts to eligible organizations in New York and New Jersey and, as applicable, in other states that were declared as major disaster jurisdictions by the Federal Emergency Management Agency (FEMA). These are as follows: the states of Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, Ohio, Pennsylvania, Rhode Island, Virginia, and West Virginia, and the District of Columbia.

**Source of Governing Requirements**

This funding is authorized by the Disaster Relief Appropriations Act, Division A (Pub. L. No. 113-2), Title VI and Title X, Chapter 8.

**Availability of Other Program Information**

Additional program information is available from the following websites:

<https://eclkc.ohs.acf.hhs.gov/policy/pi/acf-pi-hs-18-02> (Head Start)

<https://www.acf.hhs.gov/ocs/programs/ssbg/hurricane-sandy-supplemental-funds>  
(Social Services Block Grant)

<http://grants.nih.gov/grants/guide/notice-files/NOT-OD-13-106.html> (National Institutes of Health)

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	Y	N	N	Y	N	N

#### A. Activities Allowed or Unallowed

1. The terms and conditions of the award will provide the allowable uses of these funds.
2. Funds provided under Assistance Listings 93.095 and 93.096 may not result in duplication of benefits. If costs are reimbursed by FEMA, under a contract for insurance, or by self-insurance, they cannot be charged to the award (Pub. L. No. 113-2, Division A, 127 Stat. 11, 127 Stat. 34).
3. Funding subject to the Social Services Block Grant (SSBG) requirements may be used for health services, including mental health services, and for costs of renovating, repairing, and rebuilding health care facilities, child care facilities, or other social services facilities (Pub. L. No. 113-2, Division A, 127 Stat. 33).

**F. Equipment and Real Property Management**

The following specific requirements apply only to awards when the terms and conditions of the award identify funding subject to Head Start requirements found in 45 CFR Part 1309:

1. Head Start grantees are required to operate and maintain facilities, real property, modular units, and related assets to ensure their use for the funded project purpose(s) and to adequately protect the federal interest in such facilities, real property, and related assets (45 CFR Part 1309).
2. Real property acquired or constructed with Head Start funds or which has undergone major renovation with Head Start funds, may not be conveyed, transferred, assigned, mortgaged, leased, or otherwise encumbered or subordinated unless approved by ACF (45 CFR section 1309.21(b)).
3. A Head Start grantee must file a Notice of Federal Interest (also referred to as “reversionary 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)). For modular units, the Notice of Federal Interest must be posted in a conspicuous place on the modular unit (45 CFR section 1309.31).

**G. Matching, Level of Effort, Earmarking****1. Matching**

Any matching requirements will be indicated in the terms and conditions of the award.

**2. Level of Effort**

Not Applicable

**3. Earmarking**

Any earmarking requirements will be indicated in the terms and conditions of the award.

**H. Period of Performance**

Unless otherwise provided by statute or a waiver has been granted by the Office of Management and Budget (OMB), funds must be expended within 24 months of the beginning date of the period of performance (Pub. L. No. 113-2, Section 904(c)).

1. Funding subject to the SSBG requirements must be spent by September 30, 2017 (Pub. L. No. 113-2, 127 Stat. 33).
2. OMB granted the National Institutes of Health a waiver for construction and infrastructure projects. See Funding Opportunity Announcement RFA-OD-13-007 at <http://grants.nih.gov/grants/guide/rfa-files/RFA-OD-13-007.html>, Part 2. Full Text of Announcement, Section II. Award Information, Award Project Period: “The total project period may not exceed 5 years. Funds will be provided in a single award with a 60-month budget and project period.”

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

Not Applicable

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## **IV. OTHER INFORMATION**

Although funding for programs in this Hurricane Sandy Relief Cluster may be subject to the requirements of the Head Start (Assistance Listing 93.600) or SSBG (Assistance Listing 93.667) programs, they are separate from and, therefore, are not clustered with the Head Start or SSBG programs.

Awards from Assistance Listings 93.095 and 93.096 that are identified in the notice of award as Research and Development (R&D) should be shown on the Schedule of Expenditures of Federal Awards as R&D and should be audited with the R&D cluster rather than this Hurricane Sandy Relief Cluster.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****ASSISTANCE LISTING 93.153 COORDINATED SERVICES AND ACCESS TO RESEARCH FOR WOMEN, INFANTS, CHILDREN, AND YOUTH (RYAN WHITE HIV/AIDS PROGRAM PART D WOMEN, INFANTS, CHILDREN, AND YOUTH (WICY) PROGRAM)****I. PROGRAM OBJECTIVES**

The objective of this program is to provide family-centered care in an outpatient or ambulatory care setting (directly or through contracts or memoranda of understanding) for low income, uninsured, and medically underserved women, infants, children, and youth with HIV.

**II. PROGRAM PROCEDURES**

The Department of Health and Human Services (HHS) administers the Ryan White HIV/AIDS Program (RWHAP) Part D Coordinated Services for Women, Infants, Children, and Youth (WICY) through the Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau (HAB). The RWHAP Part D WICY programs provide family-centered outpatient or ambulatory care setting (directly or through contracts or memoranda of understanding) for low income, uninsured, and medically underserved women, infants, children, and youth with HIV. Recipients can also provide additional support services to patients and affected family members.

Grants under the RWHAP Part D WICY are awarded to public and nonprofit 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 recipient or through contractual agreements or memoranda of understanding with other service providers.

**Source of Governing Requirements**

The RWHAP Part D WICY is authorized under Section 2671 of Title XXVI of the PHS Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. No. 111-87) and is codified at 42 USC 300ff-71. The Minority AIDS Initiative (MAI) is authorized under Section 2693(b)(2)(D) of the PHS Act (42 USC 300ff-121(b)(2)(D)).

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. No. 116-136, 134 Stat. 562) provided one-time funding to help current RWHAP recipients prevent, prepare for, and respond to the novel coronavirus disease 2019 (COVID-19).

The RWHAP Part D WICY has no program-specific program regulations.

**Availability of Other Program Information**

Further information about the RWHAP Part D WICY is available at <http://www.hab.hrsa.gov/>.

Additional information on allowable uses of funds under the RWHAP Part D WICY is contained in policy notices and standards found at <http://www.hab.hrsa.gov/manageyourgrant/policiesletters.html>.

CARES Act information is available at <https://hab.hrsa.gov/program-grants-management/coronavirus-covid-19-response>.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	N	Y	Y	Y	N	N

#### 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. 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 the following support services for patients: (1) family-centered care, including case management; (2) referrals for additional services, including inpatient hospital services, treatment for substance abuse and mental health services, and other social and support services as appropriate; (3) additional services necessary to enable the patient to participate in the RWHAP Part D WICY, including services to recruit and retain youth with HIV; and (4) provision of information and education on opportunities to participate in HIV/AIDS-related clinical research (42 USC 300ff-71(b)). Affected family members (people not identified with HIV) may be eligible for RWHAP support services in limited situations, but these services for affected individuals must always benefit people with HIV. Examples include, but are not limited to, mental health services, and respite care. Services to non-affected family members who meet these criteria may not continue subsequent to the death of the RWHAP client. Refer to HAB Policy Clarification Notice #16-02: Ryan White HIV/AIDS Program Services: Eligible Individuals & Allowable Uses of Funds for further information on circumstances in which affected family members may be eligible to receive RWHAP funded support services.
  - c. Funds must be used for the establishment of a clinical quality management program to assess the extent to which HIV health services are consistent with the most recent Public Health Service guidelines for the treatment of HIV/AIDS and related opportunistic infections, and, as applicable, to develop strategies for ensuring that such services are consistent with the guidelines for improvement in the access to and quality of HIV health services (42 USC 300ff-71(f)(2)). Policy Clarification Notice #15-02 <https://hab.hrsa.gov/sites/default/files/hab/Global/HAB-PCN-15-02-CQM.pdf>.
  - d. Funds may be used for administrative expenses, which are defined as funds used by recipients for grant management and monitoring activities, including costs related to any staff or activity other than provision of services. Indirect costs included in a federally negotiated indirect rate are considered part of administrative costs (see III.G.3, “Matching, Level of Effort, Earmarking – Earmarking,” for a limitation on expenditures for administrative costs) (42 USC 300ff-71(f)(1), (h)(1), and (h)(2)). Funds may be used for administrative expenses; no more than 10 percent on administrative expenses.
2. *Activities Unallowed*
    - a. Funds may not be used for AIDS programs or to develop materials, designed to promote or encourage, directly, intravenous drug abuse or sexual activity, whether homosexual or heterosexual (42 USC 300ff-84).

- b. Funds may not be used to purchase sterile needles or syringes for the hypodermic injection of any illegal drug (Consolidated Appropriations Act, 2016 (Pub. L. No. 114-113), Division H, Title V, Section 520, and subsequent appropriations, as applicable). Other elements of syringe services programs may be allowable if in compliance with applicable HHS and HRSA-specific guidance.
- c. Funds may not be used to purchase or improve land or to purchase, construct, or make permanent improvement to any building (Funding Opportunity Announcement, Section IV.6).
- d. Funds may not be used to make cash payments to intended recipients of RWHAP services (Policy Clarification Notice #16-02, Ryan White HIV/AIDS Program Services: Eligible Individuals and Allowable Uses of Funds [https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN\\_16-02Final.pdf](https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN_16-02Final.pdf)).
- e. Charges that are billable to third party payors (e.g., private health insurance, prepaid health plans, Medicaid, Medicare, HUD, other RWHAP funding including ADAP).
- f. To directly provide housing or health care services (e.g., HIV care, counseling, and testing) that duplicate existing services.
- g. Pre-Exposure Prophylaxis (PrEP) or nonoccupational Post-Exposure Prophylaxis (nPEP) medications or the related medical services. As outlined in the June 22, 2016, RWHAP and PrEP program letter, the RWHAP legislation provides grant funds to be used for the care and treatment of PLWH, thus prohibiting the use of RWHAP funds for PrEP medications or related medical services, such as physician visits and laboratory costs. RWHAP Part D funds can be used toward Psychosocial Support Services, a component of family-centered care, which may include counseling and testing and information on PrEP to eligible clients' partners and affected family members, within the context of a comprehensive PrEP program.
- h. Fundraising expenses.
- i. Lobbying activities and expenses.
- j. International travel.

## **J. Program Income**

The Notice of Award provides guidance on the use of program income. The addition method is used for the Ryan White HIV/AIDS Program Part D. Program income must be used for activities described in III.A.1, "Activities Allowed."



**L. Reporting****1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 93.210 TRIBAL SELF-GOVERNANCE PROGRAM – IHS COMPACTS/FUNDING AGREEMENTS

#### I. PROGRAM OBJECTIVES

The objective of this program is to “improve and perpetuate the government-to-government relationship between Indian tribes and the United States and to strengthen tribal control over federal funding and program management” by enabling tribes to assume programs, services, functions, and activities (or portions thereof) (PSFAs) 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 self-governance authority within IHS. 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 PSFAs that the Self-Governance Tribe will carry out, the funds being transferred from Service Unit, Area and Headquarters levels in support of those PSFAs, 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 implementing ISDEAA Title V and establishing the IHS Tribal Self-Governance program are found at 42 CFR Part 137.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	N	Y	N	Y	N	N	N

#### A. Activities Allowed or Unallowed

1. Funds may be used to carry out and deliver the health services PSFA. The FA generally identifies the PSFAs to be performed or administered by the tribe (25 USC 458aaa-4(d)).
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 137.101(c)).
3. Funds may be used to meet matching or cost participation requirements under any other federal or nonfederal program; when used in this manner they are considered nonfederal funds (42 CFR section 137.217).

#### B. Allowable Costs/Cost Principles

1. A Self-Governance Tribe must apply the applicable OMB cost principles, 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 section 137.167).

2. For contract health services, the tribal compactor is the payer of last resort. Before seeking payment from the tribal compactor, the contract provider must first seek payment from all alternate resources, such as health care providers and institutions; health care programs including programs under the Social Security Act (i.e., Medicare or Medicaid); state or local health care programs; and private insurance. When 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(a)(2)).
  - (2) Non-Indian women pregnant with an eligible Indian's child are eligible for services. In cases when 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 six weeks after delivery) (42 CFR section 136.12(a)).
  - (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(a)).

- (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(a)).
  - (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(b)).
  - (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(b)).
  - (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(c)).
  - (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(d)).

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

Not Applicable

**3. Eligibility for Subrecipients**

Not Applicable

**H. Period of Performance**

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 PSFAs 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 is eligible to 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).

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 93.217 FAMILY PLANNING – SERVICES

#### I. PROGRAM OBJECTIVES

The purpose of the Family Planning – Services Project Grant (FPSPG) program is to provide funds for the 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 improve pregnancy outcomes, reduce infertility, and promote the health of females, males, and their families.

#### II. PROGRAM PROCEDURES

The FPSPG program is administered by the Office of the Secretary (OS)/Office of the Assistant Secretary for Health (OASH), a component of the Department of Health and Human Services (HHS). Within OS, the Office of Population Affairs is responsible for the program. The program has no statutory funds allocation formula: HHS makes discretionary grant awards the amounts of which are based on estimates of the amounts necessary for successful project performance.

Any public or nonprofit private entity in a state (which includes each of the 50 states, District of Columbia, Commonwealth of Puerto Rico, US Virgin Islands, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands) 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 voluntary and 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 at 42 CFR Part 59.

#### Availability of Other Program Information

Additional information is available on the HHS Office of Population Affairs website at <http://www.hhs.gov/opa/>.

#### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have

been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	N	N	N	Y	Y	N

**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 for adolescents. Services that may be funded for a particular project are identified in the grant application. They may include:

- (1) *Medical services* – These include providing information on all FDA-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 Title X 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 costs may never equal 100 percent nor be less than 90 percent (with certain exceptions). The federal and nonfederal 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

## **L. Reporting**

1. **Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable

- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

- c. *SF-425, Federal Financial Report* – Applicable

2. **Performance Reporting**

Not Applicable

3. **Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 93.224 HEALTH CENTER PROGRAM (COMMUNITY HEALTH CENTERS, MIGRANT HEALTH CENTERS, HEALTH CARE FOR THE HOMELESS, AND PUBLIC HOUSING PRIMARY CARE)

### ASSISTANCE LISTING 93.527 GRANTS FOR NEW AND EXPANDED SERVICES UNDER THE HEALTH CENTER PROGRAM

#### I. PROGRAM OBJECTIVES

The purpose of the Health Center Program (HCP) grants under the Health Center Program Cluster is to improve the health of the nation's underserved communities and vulnerable populations by ensuring continued access to comprehensive, culturally competent, quality primary health care services. HCP grants support a variety of community-based and patient-directed public and private nonprofit organizations that provide primary and preventive health care services to the nation's underserved.

#### II. PROGRAM PROCEDURES

The purpose of the HCP grants is to support the costs of operating health centers that serve medically underserved populations.

HCP 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 nonprofit organizations, including tribal, faith-based, and community-based organizations. Factors considered include the population to be served and the current availability of services in the geographical area to be served. Grantees may enter into service and care arrangements via contracts or other formal referral arrangements.

The authorizing statute for the HCP requires health centers to annually develop and submit to HRSA a budget that reflects expenses and revenues (including HCP grant(s)) necessary to accomplish the health center project service delivery plan. As such, the total budget must include projections from all revenue sources, including fees, premiums, and third party reimbursements reasonably expected to be received to support operations; and state, local, private, and other operational funding provided to the health center. The amount of the HCP grant funding to be provided by HRSA may not exceed the amount by which the projected cost of operations exceeds the projected non-grant revenue sources (42 USC 254(e)(5)(A), (k)(3)(D), and (k)(3)(I)(i) and 42 CFR section 51c.106).

#### Source of Governing Requirements

The HCP is authorized under Section 330 of the Public Health Service Act, as amended by Section 10503 of The Patient Protection and Affordable Care Act (Pub. L. No. 111-148). The statutory provisions are codified at 42 USC 254b. The implementing program regulations for Community Health Centers (CHCs) and Migrant Health Centers (MHCs) are codified at 42 CFR parts 51c and 56, respectively. The Health Care for the Homeless (HCH) and Public Housing Primary Care (PHPC) components do not have program-specific regulations.

The Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (Pub. L. No. 116-123) provided one-time funding to current Health Center Program award recipients to support preventing, preparing for, and responding to the novel coronavirus disease 2019 (COVID-19).

The Coronavirus Aid, Relief, and Economic Security Act (Pub. L. No. 116-136) provided one-time funding to current Health Center Program award recipients to support the detection of COVID-19 and/or the prevention, diagnosis, and treatment of COVID-19, including maintaining or increasing health center capacity and staffing levels during a coronavirus-related public health emergency.

Paycheck Protection Program and Health Care Enhancement Act (Pub. L. No. 116-139) provided one-time funding to support current Health Center Program award recipients and look-alikes to purchase, administer, and expand capacity for testing to monitor and suppress COVID-19. Health Center Program look-alikes are organizations that HRSA determines meet the requirements of the Health Center Program as well as requirements set forth in sections 1861(aa)(4) and 1905(l)(2)(B) of the Social Security Act. American Rescue Plan Act (Pub. L. No. 117-2) provided one-time funding to current Health Center Program award recipients and look-alikes to prevent, mitigate, and respond to coronavirus disease 2019 (COVID-19) and to enhance health care services and infrastructure.

### **Availability of Other Program Information**

Other program information is available from the BPHC website at <https://bphc.hrsa.gov/> and <https://bphc.hrsa.gov/programrequirements>.

Information on specific COVID-19 funding resources is available at <https://bphc.hrsa.gov/emergency-response/coronavirus-info>.

### **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	Y	Y	N	Y	N	Y

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

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, when 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)).
  - (10) Substance abuse services for grantees with HCH grants (42 USC 254b(h)(2)).
- 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)).
  - (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. *Activities Unallowed*

- a. Federal funds awarded under the HCP may not be expended for any abortion. These limitations do not apply to an abortion (1) if the pregnancy is the result of an act of rape or incest; or (2) in the case when a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed (Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260)).
- b. Federal funds awarded under the HCP may not be used to purchase sterile needles or syringes for the hypodermic injection of any illegal drug, provided that this limitation does not apply to the use of funds for elements of a program other than making such purchases if the relevant state or local health department, in consultation with the Centers for Disease Control and Prevention, determines that the state or local jurisdiction, as applicable, is experiencing, or is at risk for, a significant increase in hepatitis infections or an HIV outbreak due to injection drug use, and such program is operating in accordance with state and local law (Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260)).

## **B. Allowable Costs/Cost Principles**

Costs charged to federal funds under the HCP award funds must comply with the cost principles at 45 CFR Part 75, Subpart E, and any other requirements or restrictions on the use of federal funding.

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

## 2. Performance Reporting

Not Applicable

## 3. Special Reporting

*Uniform Data System (UDS) (OMB No. 0915-0193)* – This system comprises two separate sets of reports, the Universal Report and Grant Reports. The conditions for their use are:

- a. Grantees that receive a single grant under the HCP or that receive CHC funding only are required to complete the *Universal Report* only.
- b. Grantees that receive multiple awards (in addition to or other than CHC funding) must complete a *Universal Report* for the combined grants and individual *Grant Reports* for their HCH, MCH, and PHPC funding, if applicable.

See Uniform Data System (UDS) Resources for additional detail available at: <https://bphc.hrsa.gov/datareporting/reporting/index.html>. The Calendar Year 2021 UDS Reporting Manual is available at: <https://bphc.hrsa.gov/sites/default/files/bphc/datareporting/pdf/2021-uds-manual.pdf>.

*Key Line Items* – The following line items contain critical information:

Total accrued cost before donations and after allocation of overhead (Table 8A Line 17 Column c)

Total number of patients (Table 4 Line 6 Column a)

Total accrued medical staff and other medical cost after allocation of overhead excluding lab and x-ray cost (Table 8A, Line 1, Column c and Table 8A, Line 3, Column c)

Table 5, Line 8, Columns b and b2 (Total Physician Clinic and Virtual visits) and Table 5, Line 10a, columns b and b2 (Total NPs, PAs, and CNMs Clinic and Virtual visits)

Total accrued Health Center grant(s) drawn-down for the period from January 1 to December 31, of the calendar measurement year (Table 9E, Line 1g, Column a)  
Total accrued BPHC COVID-19 Supplemental grant draw-down from January 1 to December 31, of the calendar measurement year (Table 9E, Line 1q, Column a)

## 4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.



## N. Special Tests and Provisions

### 1. Sliding Fee Discounts

**Compliance Requirements** Health centers must prepare and apply a sliding fee discount schedule (SFDS) so that the amounts owed for health center services by eligible patients are adjusted (discounted) based on the patient's ability to pay as follows:

- a. Sliding fee discounts are applied to fees for health center services provided to all individuals and families with annual incomes at or below 200 percent of the Federal Poverty Guidelines (FPG);
- b. A full discount is applied to fees for health center services provided to individuals and families with annual incomes at or below 100 percent of the FPG, or the health center applies only a nominal charge;
- c. Fees for health center services are discounted based on gradations in family size and income for individuals and families with incomes above 100 and at or below 200 percent of the FPG; and
- d. No sliding fee discount is applied to fees for health center services provided to individuals and families with annual incomes above 200 percent of the FPG.

(42 USC 254(k)(3)(E), (F), and (G); 42 CFR sections 51c.303(e), (f), and (g); and 42 CFR sections 56.303(e), (f), and (g))

**Audit Objectives** Determine whether the health center has applied sliding fee discounts to patient charges consistent with its sliding fee discount schedule.

### Suggested Audit Procedures

- a. Review the health center's sliding fee discount schedule(s).
- b. Review a sample of financial records for patients treated during the audit period to determine whether patient charges were appropriately adjusted based on income and family size by applying the health center's sliding fee discount schedule. (Note: Auditors are not required to test any documentation used to establish or verify income.)

### 2. Compliance with Consolidated Appropriations Act

**Compliance Requirements** Federal funds awarded under the HCP may not be expended for any abortion. These limitations do not apply to an abortion (1) if the pregnancy is the result of an act of rape or incest; or (2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed (Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260)).

**Audit Objectives** Determine whether the health center (HC) performs abortions and if so, whether it has policies and procedures in place to ensure compliance with the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260).

**Suggested Audit Procedures**

- a. Inquire of the HC staff and examine the accounting records to determine whether any abortions were performed during the audit period. If no, no further procedures need be undertaken by the auditor.
- b. If abortions were performed during the period, determine whether policies and procedures are in place that address the appropriate use of federal funds awarded under the HCP, specifically related to ensuring that HCP grant funds are not used for abortion activities unless one of the exceptions in the Consolidated Appropriations Act described above is met. If no policies are in place, proceed to c. If policies are in place, proceed to d.
- c. If internal controls over compliance with the Consolidated Appropriations Act described above that preclude certain abortion activities are absent or likely to be ineffective, see the alternative procedures in 2 CFR section 200.514(c)(4), including assessing the control risk at the maximum and considering whether reporting is required because of ineffective internal control.
- d. Plan the testing of internal controls to support a low assessed level of control risk for compliance with the Consolidated Appropriations Act described above, which precludes certain abortion activities and perform the testing of internal control as planned.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 93.268 IMMUNIZATION COOPERATIVE AGREEMENTS

#### I. PROGRAM OBJECTIVES

The objective of the Immunization Cooperative Agreement 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 Cooperative Agreements program consists of two parts: discretionary Section 317 immunization funding and VFC financed with mandatory Medicaid (Assistance Listing 93.778) funding.

The objective of the discretionary Section 317 Immunization Cooperative Agreement 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 funding 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 cooperative agreement guidance, has identified the following areas of activity for programmatic emphasis and funding prioritization: reduce the number of indigenous cases of VPDs; ensure that all children 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 organizations 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. Grantees also are required to ensure that providers comply with the requirements of the VFC program. Other criteria, detailed in annual cooperative agreement 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 also not cover vaccination are eligible to receive VFC vaccine at federally qualified health centers or rural health clinics. The intent of the VFC program is to increase vaccination coverage levels by reducing financial barriers to

vaccination. The VFC program ensures that all eligible children receive the benefits of all recommended vaccines, thus strengthening immunity levels in their communities. The program also ensures that access to newly recommended vaccines for children in low-income and uninsured families does not lag behind that for children in middle- and upper-income families. In addition, the program helps to ensure that there is an adequate supply of routinely recommended vaccines when public health emergencies occur, including vaccine supply shortages.

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. 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 this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	Y	N	N	Y	N	Y

**A. Activities Allowed or Unallowed**

1. Discretionary Section 317 cooperative agreements 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 the following:
  - 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).

**L. Reporting****1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions****1. Control, Accountability, and Safeguarding of Vaccine**

**Compliance Requirements** 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 Objectives** Determine whether the grantee provides oversight of program-enrolled 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 program-enrolled providers that allows for sampling of provider's inventory records and assessment of storage procedures. Grantees are not required to sample the records of all providers.
- 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 the necessary follow-up procedures were followed if any deficiencies were identified.

## **2. Record of Immunization**

**Compliance Requirements** 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 Objectives** 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 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 should be treated by the grantee as expenditures under a federal award 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 considered as expenditures under a federal award for purposes of determining audit coverage and reporting for those entities.



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 93.423 WAIVERS FOR STATE INNOVATION FOR SECTION 1332 OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT (PPACA)

#### I. PROGRAM OBJECTIVES

The purpose of the State Innovation Waiver (1332 Waiver) is to permit states to pursue innovative strategies for providing their residents with access to high-quality, affordable health insurance while retaining the basic protections of the PPACA. The 1332 waivers allow states to implement innovative ways to provide access to quality health care that is at least as comprehensive and affordable as would be provided absent the waiver, provides coverage to a comparable number of residents of the state as would be provided coverage absent a waiver, and does not increase the federal deficit.

#### II. PROGRAM PROCEDURES

Section 1332 provides the secretaries of Health and Human Services (HHS) and the US Department of the Treasury (the Treasury) (collectively referred to in this document as “the Departments”) with the discretion to approve a state’s proposal to waive specific provisions of the PPACA, provided the proposal meets certain requirements (stated above). Upon receipt of an application, the Center for Consumer Information and Insurance Oversight’s (CCIIO) and Treasury’s Office of Tax Policy will coordinate the review and approval process with the Departments and applicable federal agencies (this may vary based on the type of application). The Centers for Medicare & Medicaid Services (CMS) CCIIO State Marketplace and Insurance Programs Group will provide coordination support, including management of the State Innovation Waiver mailbox. A state seeking a waiver should apply by submitting a completed application in electronic format to [stateinnovationwaivers@cms.hhs.gov](mailto:stateinnovationwaivers@cms.hhs.gov).

A State Innovation Waiver Cross-Component Work Group (1332 workgroup) includes subject matter experts and key contacts from the departments and other federal agencies, as needed, to examine the scope of each application. Each application is examined to certify that a waiver meets the guardrail requirements including the comprehensiveness standard (as required under the statute). While the 1332 workgroup does not have approval authority itself, it will ensure that the departments are involved at all levels of the application review process prior to rendering a final decision. Each waiver application is reviewed for completeness, and then approved or denied, as appropriate.

Once a state’s waiver application has been reviewed and approved, there is a coordinated grants management and oversight and monitoring process. The grant funding is inextricably linked to pass-through calculations, which are completed annually based on premium data that states must report back to the departments every year to fulfill regulatory oversight, monitoring, and compliance requirements.

Section 1332 pass-through funding is the foundation of 1332 waivers. The state is entitled to the equivalent of forgone exchange financial assistance (e.g., Premium Tax Credits) that the state would have received absent the waiver. This requires modeling both the waiver and non-waiver

health insurance markets in the state, specifically exchange premiums, and the resulting financial assistance the state would have received absent the waiver. This provides for little discretion related to the amount of pass-through funding and the grant award amount except to devise the most appropriate methodology to model the waiver and non-waiver markets in the state. State Innovation Waivers are available for effective dates beginning on or after January 1, 2017. Funds are available for expenditure by grantees for a period of up to five years effective on the date specified in the grant specific terms and conditions (STCs), and states have the option to extend their waiver program beyond the initial five-year period of performance.

### **Source of Governing Requirements**

The 1332 Waiver program is authorized by the PPACA (Pub. L. No. 111-148) (March 23, 2010), which was amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152). The Departments promulgated implementing regulations in 2012, which are codified at 45 CFR Part 155 (Health and Human Services) and 31 CFR Part 33 (Treasury), respectively.

### **Availability of Other Program Information**

1. CCIIO has published general program information, including guidance on application requirements on its website at [https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section\\_1332\\_State\\_Innovation\\_Waivers-.html](https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-.html).
2. CCIIO has also developed a checklist for Section 1332 State Innovation Waiver applications, including specific items applicable to high-risk pool/state-operated reinsurance program applications at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Checklist-for-Section-1332-State-Innovation-Waiver-Applications-5517-c.pdf>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	N	Y	N	Y	Y	N

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

- a. Individual awards are based on the waiver application approved by the Departments and are subject to the STCs in the Notice of Award (NoA). Activities are allowable as indicated in the grant STCs.
- b. 1332 waivers allow the state to waive certain provisions of PPACA and the Internal Revenue Code (IRC) to allow for state innovation. Activities are allowable (as approved in the waiver application approval process) that enable the state to:
  - (1) Modify or eliminate qualified health plan (QHP) certification and the exchanges as the vehicle for determining eligibility for subsidies and enrolling consumers in coverage.
    - (a) *Waives Part I of Subtitle D of the PPACA related to the establishment of QHPs.*
    - (b) *Waives Part II of Subtitle D of the PPACA related to the establishment of health insurance exchanges and related activities.*
  - (2) Modify the rules governing covered benefits and subsidies.
    - (a) *Waives Section 1402 of the PPACA related to cost-sharing subsidies to eligible individuals who purchase non-group health insurance through a health insurance exchange.*
    - (b) *Waives Section 36B of IRC related to premium tax credits to eligible individuals who purchase non-group health insurance through an exchange.*

- (3) Modify or eliminate penalties on large employers who fail to offer affordable coverage to their full-time employees.
  - (a) *Waives Section 4980H of the IRC shared responsibility requirement for large employers (employer mandate).*
  - (b) *Waives Section 5000A of the IRC related to the requirement for individuals to maintain health insurance coverage (individual mandate).*
- c. 1332 waiver funds may be used for all program services consistent with the four criteria or “guardrails” in the statute:
  - (1) *Comprehensive Coverage* – States must provide coverage that is “at least as comprehensive” as coverage absent the waiver.
  - (2) *Affordable Coverage* – States must provide “coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable” as coverage absent the waiver.
  - (3) *Scope of Coverage* – States must provide coverage to “at least a comparable number of residents” as would have been covered without the waiver.
  - (4) *Federal Deficit* – The waiver must not increase the federal deficit.
    - (a) 1332 waivers allow states to modify the rules regarding covered benefits, subsidies, insurance marketplaces, and individual and employer mandates **only** if they meet these statutory “guardrails.”
2. *Activities Unallowed*
  - a. 1332 waiver funds may not be used for any program activities that are beyond the scope of the “guardrails” or are not consistent with the state’s approved waiver application and the grant STCs.
  - b. Promotional items and capital or operating costs unassociated with the approved activities are not allowable.

## **B. Allowable Costs/Cost Principles**

1. Costs charged to federal funds under the 1332 Waiver program must comply with the cost principles at 45 CFR Part 75, Subpart E, and any other requirements or restrictions on the use of federal funding outlined in the grant STCs.
2. Grantees should supplement 1332 waiver funds with state funds or other sources of funding to implement the waiver program as needed. States are responsible for

making up any budget shortfalls to ensure that they fully implement the activities of their waiver program.

3. Grantees must comply with the HHS Grants Policy Statement and have approved documentation to prove pass-through funds were used for approved 1332 waiver activities. Sufficient evidence (as indicated in the approved waiver application) is required to substantiate any drawdown of funding from the Payment Management System (PMS).
4. Prospective and retroactive payments are allowed depending on the business model and grantee need in congruence with the STCs.
  - a. Grantees may make **prospective drawdowns** of funds prior to the completion of approved, funded activities after providing sufficient evidence of need when requesting to drawdown funds (as outlined in the waiver application).
  - b. Grantees may make **retroactive drawdowns** of funds as reimbursement for invoices received following completion of approved waiver activities (Reinsurance and Small Business Health Options program waivers fall under this category).
5. Agreed upon indirect costs are allowable using the current approved Negotiated Indirect Cost Rate Agreement.

### C. Cash Management

1. Under the 1332 Waiver program, funds awarded in a fiscal year are not required to be expended in that same fiscal year. Grantees may roll over unused funds awarded during the prior year for use in the following fiscal year for purposes of implementing the waiver program.
2. Grantees must comply with the HHS Grants Policy Statement and are required to maintain written policies and procedures to minimize the time elapsing between the transfer of funds from PMS and the disbursement of those funds by the recipient. The amount of time a grantee holds funds may not exceed three days. However, grantees are permitted to have access to the entire award amount in PMS until business needs dictate that they drawdown funds for the 1332 Waiver program.
3. Grantees must comply with the fiscal and budgetary reporting requirements and the grant STCs (SF424 and SF424a).
4. Unless otherwise specified in the grant STCs, grantees will request funds directly from PMS and are not able to hold drawdown funds in their bank account for longer than three days. All funds must either be distributed by the grantee or returned to the Treasury within three days.

5. Grantees are encouraged to use the cash-basis accounting method.
6. Grantees are not required to track the hourly wages of each employee that was paid by the grant vs. paid by program revenue. It is not a program requirement that these employees be tracked by the hour, but rather tracked by a percentage.

## **I. Procurement and Suspension and Debarment**

1. States must comply with the same policies and procedures they use for procurements from their nonfederal funds. Nonfederal entities other than states, including those operating federal programs as subrecipients of states, must follow the procurement standards set out in 2 CFR 200. They must use their own documented procurement procedures, which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal statutes and the procurement requirements identified in 2 CFR 200.
2. Nonfederal entities and contractors are subject to the non-procurement debarment and suspension regulations. Grantees must regularly monitor the System for Award Management (SAM) for suspensions and debarments prior to issuing any subawards or contracts. Any parties that are debarred, suspended, or otherwise excluded are ineligible for participation in federal assistance programs or activities.
3. Grantees must comply with the requirement to maintain an active SAM registration. This requires that grantees review and update Central Contractor Registration (CCR) information at least annually after the initial registration, and more frequently if required by changes in the information.

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-425, Federal Financial Report* – Applicable.

### **2. Performance Reporting**

As outlined in the grant STCs, grantees are required to submit both quarterly and annual reports that outline specific metrics and programmatic updates requested by the federal partners.

- a. *Quarterly Reporting* – Grantees are required to submit quarterly reports. At a minimum, these reports must highlight information on all ongoing operational challenges, as well as plans for, and results of, associated corrective action. This information is integral to calculating the state's pass-through funding amount and for ensuring the grantee's compliance with the statutory guard rails.

- b. *Annual Reporting* – Grantees are required to submit annual reports related to implementation of the waiver program no later than 90 days after the end of each waiver year. At a minimum, these reports must present an evaluation of the progress of the waiver, including a summary of the post-award forum, data in compliance with sections 1332(b)(1)(A)-(D) of the PPACA, and other information consistent with the grantee’s STCs.

### 3. **Special Reporting**

Depending on the 1332 waiver type, and as outlined in the grant STCs, grantees may be required to submit additional reports prior to pass-through funding determination and release.

- a. *Federal Periodic Review* – Grantees must participate in the annual federal periodic review, which serves as CMS’s formal review of the state’s annual reporting for the previous year. The review will be held virtually following the final review and approval of the annual report and will include all relevant stakeholders.
- b. *Post-Award Forum* – The grantee must convene a public forum no later than six months after the implementation date of a 1332 waiver, and annually thereafter, to solicit comments on the progress of the waiver. The forum provides a platform for the grantee to involve members of the public in both current and future developments of its 1332 waiver. The forum must also allow members of the public to offer ideas, insights, and provide comments. The grantee must include details on the forum in its quarterly report submission, as well as in its annual report submission. Additional requirements for the public forum are included in the grantee’s STCs.

### 4. **Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## M. **Subrecipient Monitoring**

1. The Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200) require pass-through entities to evaluate each subrecipient's risk of noncompliance in order to determine the appropriate monitoring level, monitor the activities of subrecipient organizations to ensure that the subaward is in compliance with applicable federal statutes and regulations and terms of the subaward, and verify that subrecipients are audited as required by Subpart F of the Uniform Guidance.

- a. Grantees must ensure that all requirements imposed by the federal government are flowed down to subrecipients so that the federal award is used in accordance with federal statutes, regulations, and the terms and conditions of the federal award.
- b. Grantees are also responsible for monitoring any additional requirements that its subrecipients must meet for the state to meet its own responsibility to HHS, including identification of any required financial and performance reports.



**DEPARTMENT OF HEALTH AND HUMAN SERVICES****ASSISTANCE LISTING 93.461 HRSA COVID-19 CLAIMS REIMBURSEMENT FOR THE UNINSURED PROGRAM AND THE COVID-19 COVERAGE ASSISTANCE FUND****I. PROGRAM OBJECTIVES**

Note: This program is considered a “higher risk” program for 2022, pursuant to 2 CFR section 200.519(c)(2). Refer to the “Programs with Higher Risk Designation” section of Part 8, Appendix IV, Internal Reference Tables, for a discussion of the impact of the “higher risk” designation on the major program determination process.

The HRSA COVID-19 Claims Reimbursement to Health Care Providers and Facilities for Testing, Treatment, and Vaccine Administration for the Uninsured program (HRSA COVID-19 Uninsured Program) and the COVID-19 Coverage Assistance Fund (HRSA COVID-19 CAF) are administered by the Health Resources and Services Administration (HRSA). The HRSA COVID-19 Uninsured Program provides claims reimbursements to eligible health care providers for conducting COVID-19 testing for the uninsured, treating uninsured individuals with a COVID-19 diagnosis, and administering FDA-authorized or FDA-licensed COVID-19 vaccines to uninsured individuals. The HRSA COVID-19 CAF provides COVID-19 vaccine administration fee claims reimbursement to eligible health care providers who provide COVID-19 vaccines to patients enrolled in health coverage that either does not cover vaccine administration fees or does cover the administration fees but has patient cost-sharing.

**II. PROGRAM PROCEDURES**

This program is administered as a claims reimbursement program for eligible health care providers. For the HRSA COVID-19 Uninsured Program, health care providers who have conducted COVID-19 testing or provided treatment for uninsured individuals with a COVID-19 diagnosis on or after February 4, 2020, or administered FDA authorized or FDA-licensed COVID-19 vaccines on or after December 14, 2020, can electronically request claims reimbursement through the program and will be reimbursed generally at Medicare rates, subject to available funding. This program does not provide coding guidance to providers. Rather, the program provides billing guidance to allow providers to identify and submit only claims eligible for reimbursement under this program, which is exclusively for reimbursing providers for COVID-19 testing of uninsured individuals, treatment for uninsured individuals when COVID-19 is the primary reason for treatment, and the administration of licensed or authorized COVID-19 vaccines to uninsured individuals.

Prior to paying claims, HRSA’s claims processing contractor performs procedures to identify and reject claims for patients with insurance coverage. If errors or additional coverage are found, the provider receives notice of rejection and may request reconsideration.

For the HRSA COVID-19 CAF, health care providers who have administered FDA authorized or FDA-licensed COVID-19 vaccines on or after December 14, 2020, for individuals whose insurance health plans either do not cover vaccination fees or cover them with patient cost-

sharing (underinsured individuals) can electronically request claims reimbursement through the program and will be reimbursed generally at Medicare rates, subject to available funding. Providers will be reimbursed at the national Medicare rate for vaccine administration, and for patient charges related to COVID-19 vaccination, including co-payments for vaccine administration, deductibles for vaccine administration, and co-insurance, subject to available funding. Prior to paying claims, HRSA's claims processing contractor performs procedures to identify and reject claims for patients who have insurance coverage. If errors or additional coverage are found, the provider receives notice of rejection and may request reconsideration.

For both the UIP and the CAF, steps involve voluntarily enrolling as a provider participant (recipient), signing attesting to the terms and conditions of the program, checking patient eligibility, submitting patient information, submitting claims electronically (subject to Medicare timely filing requirements), and receiving payment via direct deposit.

### **Source of Governing Requirements**

The HRSA COVID-19 Uninsured Program has the following two components:

1. Testing – The reimbursement for COVID-19 testing services is authorized via:
  - Families First Coronavirus Response Act (Pub. L. No. 116-127) (FFCRA) [Division A, Title V, Office of the Secretary, Public Health and Social Service Emergency Fund 134 Stat. 182]
  - Paycheck Protection Program and Health Care Enhancement Act (PPPHCA) (Pub. L. No. 116-139) [134 Stat. 626]

The FFCRA and PPPHCA “testing fund” was fully disbursed on February 17, 2021. As a result, the HRSA COVID-19 Uninsured Program reimbursement of COVID-19 testing services is subsequently authorized via:

- The Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. No. 116-136, 134 Stat. 563)
  - Paycheck Protection Program and Health Care Enhancement Act (PPPHCA) (Pub. L. No. 116-139)
  - Coronavirus Relief and Response Supplemental Appropriations Act (CRRSA) (Pub. L. No. 116-260)
  - The American Rescue Plan Act (ARPA) (Pub. L. No. 117-2)
2. Treatment and Vaccine Administration – The reimbursement for COVID-19 treatment services and vaccine administration is authorized via:
    - The Coronavirus Aid, Relief, and Economic Security CARES Act (Pub. L. No. 116-136, 134 Stat. 563)

- Paycheck Protection Program and Health Care Enhancement Act (PPPHCA) (Pub. L. No. 116-139)
- Coronavirus Relief and Response Supplemental Appropriations Act (CRRSA) (Pub. L. No. 116-260)

The HRSA COVID-19 CAF is authorized via:

- The Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. No. 116-136, 134 Stat. 563)
- Paycheck Protection Program and Health Care Enhancement Act (PPPHCA) (Pub. L. No. 116-139)
- Coronavirus Relief and Response Supplemental Appropriations Act (CRRSA) (Pub. L. No. 116-260)

Under the definition of federal financial assistance, claims paid under the HRSA COVID-19 Uninsured Program and the HRSA COVID-19 CAF are considered other financial assistance. Per the applicability table in 45 CFR section 75.101(b)(1), other financial assistance is not subject to the post federal award or cost principles requirements in 45 CFR Part 75, subparts C, D, and E, respectively, with the exception that 45 CFR section 75.303 (Internal Controls) and sections 75.351 through 75.353 (Subrecipient Monitoring and Management) are applicable.

Under the terms and conditions of the awards, the HRSA COVID-19 Uninsured Program and the HRSA COVID-19 CAF are subject to 45 CFR section 75.302 (Financial management and standards for financial management systems) and 45 CFR sections 75.361 through 75.365 (Record Retention and Access).

### **Availability of Other Program Information**

The following websites provide additional information about the HRSA COVID-19 Uninsured Program claims:

#### Overview

<https://www.hrsa.gov/CovidUninsuredClaim>

#### Frequently Asked Questions

<https://www.hrsa.gov/coviduninsuredclaim/frequently-asked-questions>

#### Terms and Conditions

<https://www.hrsa.gov/sites/default/files/hrsa/provider-relief/uninsured-program-terms-and-conditions-6-21.pdf>

The following websites provide additional information about the HRSA COVID-19 CAF:

Overview

<https://www.hrsa.gov/covid19-coverage-assistance>

Frequently Asked Questions

<https://www.hrsa.gov/covid19-coverage-assistance/frequently-asked-questions>

Resources

<https://covid19coverageassistance.ssiigroup.com/resources/resources.aspx>

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	N	N	N	N	N	N	Y

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

Required health services as described in the terms and conditions for uninsured individuals:

- a. Reimbursement of payments for COVID-19 testing and testing-related items for individuals who do not have any health care coverage at the time the services were rendered.
- b. Reimbursements of payments for COVID-19 treatment as determined by the program for individuals who do not have any health care coverage at the time the services were rendered.
- c. Reimbursements of payments for COVID-19 vaccine administration fee(s) as determined by the program for individuals who do not have any health care coverage at the time the services were rendered.

Required health services as described in the terms and conditions for underinsured individuals:

- a. Reimbursement for administering COVID-19 vaccinations to individuals with health plans that do not cover, or only partially cover, COVID-19 vaccine administration fees.

## 2. *Activities Unallowed*

As described in the terms and conditions.

- a. Funds provided will not be used to reimburse expenses that have been reimbursed from other sources or that other sources are obligated to reimburse. The recipient will not include costs for which payment was received in cost reports or otherwise seek uncompensated care reimbursement through federal or state programs for items or services for which payment was received.
- b. If the recipient subsequently receives reimbursement for any items or services for which the recipient requested Payment from the Provider Relief Fund, the recipient will return to HHS that portion of the Payment which duplicates payment or reimbursement from another source.
- b. (HRSA COVID-19 Uninsured Program only) If the recipient, prior to attesting to these terms and conditions, charged any uninsured individuals a fee for COVID-19 testing, testing-related items and services, treatment, or vaccine administration fees for which the recipient subsequently received a payment from this program, the recipient will communicate to the uninsured individuals they do not owe recipient any money for that care or treatment. If an uninsured individual paid the recipient for any portion of such care or treatment, the recipient must return the payment to the uninsured individual in a timely manner.
- c. (HRSA COVID-19 Uninsured Program only) Services not covered by traditional Medicare will also not be covered under this program. (For

Medicare coverage see:

<https://www.cms.gov/files/document/03052020-medicare-covid-19-fact-sheet.pdf>.) In addition, the following services are excluded: any treatment without a COVID-19 primary diagnosis, except for pregnancy when the COVID-19 code may be listed as secondary; hospice services; and outpatient prescription drugs.

## **B. Allowable Costs/Cost Principles**

While 45 CFR 75, Subpart E – Cost Principles do not apply to the HRSA COVID-19 Uninsured Program and the HRSA COVID-19 CAF, allowable costs charged to the HRSA COVID-19 Uninsured Program and the HRSA COVID-19 CAF must conform to, including the limitations and exclusions of, the terms and conditions.

## **E. Eligibility**

### **1. Eligibility for Individuals**

Services must be for individuals, who at the time the services were provided, were uninsured (UIP) or underinsured (CAF) as described in the terms and conditions.

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

Not Applicable

### **3. Eligibility for Subrecipients**

Not Applicable

## **N. Special Tests and Provisions**

### **1. Balance Billing**

**Compliance Requirements** Under the terms and conditions of the award the recipient will not engage in “balance billing” or charge any type of cost sharing for any COVID-19 testing, testing-related items and services provided, treatment, or vaccination administration fees for which the recipient receives a payment from this program. The recipient shall consider payment received under this program to be payment in full for such care or treatment. The recipient will not bill the patient for any remaining balance.

**Audit Objectives** Determine whether recipient complied with the requirement to reframe from “balance billing” or charging any type of cost sharing.

### **Suggested Audit Procedures**

- a. Review the recipients billing policies and procedures applicable to patients for which claim reimbursements were received.

- b. Perform procedures to identify client payments or third party billings for patients for which claim reimbursements were received.

#### **IV. OTHER INFORMATION**

Guidance documents on HRSA webpages on the [Official web site of the U.S. Health Resources & Services Administration | \(hrsa.gov\)](https://www.hrsa.gov) website, such as those listed under “Availability of Other Program Information,” are provided only to clarify the applicable laws, regulations, and terms and conditions. Such guidance documents do not create new compliance requirements. However, non-federal entities in substantial compliance with the guidance applicable in these guidance documents at the time of a transaction are considered in compliance with the underlying compliance requirements.

The time between claim submission and verification of allowable claims from the contractor is minimal, therefore, auditees should use the accounting principles applicable for the recipients accounting basis for reporting program expenditures.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 93.498 PROVIDER RELIEF FUND (PRF) AND AMERICAN RESCUE PLAN (ARP) RURAL DISTRIBUTION

#### I. PROGRAM OBJECTIVES

Note: This program is considered a “higher risk” program for 2022, pursuant to 2 CFR section 200.519(c)(2). Refer to the “Programs with Higher Risk Designation” section of Part 8, Appendix IV, Internal Reference Tables, for a discussion of the impact of the “higher risk” designation on the major program determination process.

The PRF and ARP Rural Distribution are administered by the Health Resources and Services Administration (HRSA) and support eligible health care providers in the battle against the COVID-19 pandemic. PRF provides relief funds to eligible providers of health care services and support for health care-related expenses or lost revenues attributable to coronavirus. ARP Rural Distribution addresses the disproportionate impact that COVID-19 has had on rural communities and rural health care providers. PRF and ARP Rural Distribution recipients must only use payments for eligible expenses, including services rendered, and lost revenues during the period of availability, as outlined in the table below. Providers must use a consistent basis of accounting to determine expenses. PRF and ARP Rural Distribution recipients may use payments for eligible expenses incurred prior to receipt of those payments (i.e., pre-award costs) dating back to January 1, 2020, so long as they are to prevent, prepare for, and respond to coronavirus.

	<b>Payment Received Period (Payments Exceeding \$10,000 in Aggregate Received)</b>	<b>Period of Availability</b>	<b>PRF and ARP Rural Portal Reporting Time Period</b>
Period 1	April 10, 2020 to June 30, 2020	January 1, 2020 to June 30, 2021	July 1, 2021 to September 30, 2021
Period 2	July 1, 2020 to December 31, 2020	January 1, 2020 to December 31, 2021	January 1, 2022 to March 31, 2022
Period 3	January 1, 2021 to June 30, 2021	January 1, 2020 to June 30, 2022	July 1, 2022 to September 30, 2022
Period 4	July 1, 2021 to December 31, 2021	January 1, 2020 to December 31, 2022	January 1, 2023 to March 31, 2023
Period 5	January 1, 2022 to June 30, 2022	January 1, 2020 to June 30, 2023	July 1, 2023 to September 30, 2023

#### II. PROGRAM PROCEDURES

The PRF and ARP Rural Distribution include the following components and may include additional components established after the date of this Supplement:

For the first phase of the PRF General Distributions, money was distributed proportionate to providers’ share of Medicare fee-for-service reimbursements in 2019. A portion of providers were automatically sent an advance payment based off the revenue data they submit in CMS cost



reports. Providers without adequate cost report data on file needed to submit their revenue information to the General Distribution Portal for additional funds.

For the second and third phases of the PRF General Distribution, Medicaid, Children's Health Insurance Program (CHIP), dental, assisted living, and behavioral health providers were eligible to apply for funds, along with Medicare providers paid under Phase 1 who qualified to receive additional funds.

For the fourth phase of the PRF General Distribution, consistent with the requirements included in the Coronavirus Relief and Response Supplemental Appropriation (CRRSA) Act (Pub. L. No. 116-260), PRF Phase 4 payments were based on providers' changes in operating revenues and expenses from July 1, 2020 to March 31, 2021. Phase 4 also included new elements specifically focused on equity, including reimbursing smaller providers for their changes in operating revenues and expenses at a higher rate compared to larger providers, and bonus payments based on the amount of services providers furnish to Medicaid/CHIP and Medicare beneficiaries. In addition, eligible applicants applied for the ARP Rural funds through the same Application and Attestation Portal that was available to apply for the Phase 4 General Distribution.

Funding for high-impact areas was distributed to hospitals in areas that were particularly impacted by the COVID-19 outbreak based on submission of the hospital's: Tax Identification Number, National Provider Identifier, total number of Intensive Care Unit beds as of April 10, 2020 and June 10, 2020, and total number of admissions with a positive diagnosis for COVID-19 from January 1, 2020 to April 10, 2020, and January 1, 2020 to June 10, 2020.

Funding for Indian Health Service/Tribal facilities was distributed on the basis of operating expenses. Prior to the availability of ARP Rural funding, funding for rural providers was distributed on the basis of operating expenses.

Funding for safety net hospitals was based on Centers for Medicare & Medicaid Services (CMS) cost report data.

Funding for children's hospitals was based on patient service revenue.

Funding for skilled nursing facilities and nursing homes was primarily based on the number of certified beds in the facility, and for the Nursing Home Infection Control Quality Incentive Program payments, data submission to the Centers for Disease Control and Prevention's (CDC) National Healthcare Safety Network (NHSN) Long-term Care Facility Component COVID-19 Module.

Most payments were sent out to providers without application, with requirement for recipients to accept the terms and conditions through an online portal or return funds. The Assistance Listing numbers were not provided at time of payments or included in initial terms and conditions.

### **Source of Governing Requirements**

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. No. 116-136, 134 Stat. 563)

Paycheck Protection Program and Health Care Enhancement Act (PPHCA) (Pub. L. No. 116-139, 134 Stat. 622)

Coronavirus Relief and Response Supplemental Appropriations (CRRSA) Act (Pub. L. No. 116-260)

The American Rescue Plan Act (ARPA) (Pub. L. No. 117-2)

Under the definition of federal financial assistance, PRF and ARP Rural Distributions are considered other financial assistance. Per the applicability table in 45 CFR section 75.101(b)(1), other financial assistance is not subject to the post federal award or cost principles requirements in 45 CFR Part 75, subparts C, D, and E, respectively, with the exception that 45 CFR section 75.303 (Internal Controls) and sections 75.351 through 75.353 (Subrecipient Monitoring and Management) are applicable.

Under the terms and conditions of the award, PRF and ARP Rural Distributions are subject to 45 CFR section 75.302 (Financial management and standards for financial management systems) and 45 CFR sections 75.361 through 75.365 (Record Retention and Access).

Additionally, under the terms and conditions of the award, PRF (Phase 4) and ARP Rural Distributions are subject to 45 CFR section 75.371 (Remedies for non-compliance) and 45 CFR sections 75.305(b)(8).

### **Availability of Other Program Information**

Provider Relief Fund Reporting Portal

<https://prfreporting.hrsa.gov/s/>

Assistance Listing for PRF and ARP Rural Distribution

<https://sam.gov/fal/7886e62bcc404c008669faf8227ffb6a/view>

The following webpages provide additional information about the PRF:

Provider Relief Fund General Information

<https://www.hrsa.gov/provider-relief/>

Provider Relief Fund Frequently Asked Questions

<https://www.hrsa.gov/provider-relief/faq/general>

General Distributions

Phase 1

<https://www.hrsa.gov/sites/default/files/hrsa/provider-relief/terms-and-conditions-provider-relief-30-b.pdf>

<https://www.hrsa.gov/sites/default/files/hrsa/provider-relief/terms-and-conditions-provider-relief-20-b.pdf>

## Phase 2

<https://www.hrsa.gov/sites/default/files/hrsa/provider-relief/terms-and-conditions-phase-2-general-distribution-relief-fund.pdf>

## Phase 3

<https://www.hrsa.gov/sites/default/files/hrsa/provider-relief/terms-and-conditions-phase-3-general-distribution-relief-fund.pdf>

## Phase 4

<https://www.hrsa.gov/sites/default/files/hrsa/provider-relief/terms-and-conditions-phase-4-general-distribution-relief-fund.pdf>

## Targeted Distribution

### COVID-19 High-Impact Payments

<https://www.hrsa.gov/sites/default/files/hrsa/provider-relief/terms-and-conditions-high-impact-relief-fund.pdf>

### Rural Payments

<https://www.hrsa.gov/sites/default/files/hrsa/provider-relief/terms-and-conditions-rural-relief-fund.pdf>

### Skilled Nursing Facilities and Nursing Homes Payments

<https://www.hrsa.gov/sites/default/files/hrsa/provider-relief/terms-and-conditions-skilled-nursing-facility-relief-fund.pdf>

<https://www.hrsa.gov/sites/default/files/hrsa/provider-relief/provider-relief-fund-nf-infection-control-payment-terms-and-conditions.pdf>

### Tribal Hospitals, Clinics, and Urban Health Centers Payments

<https://www.hrsa.gov/sites/default/files/hrsa/provider-relief/terms-and-conditions-indian-health-service-relief-fund.pdf>

### Safety Net Hospital and Children's Hospital Distributions

<https://www.hrsa.gov/sites/default/files/hrsa/provider-relief/terms-and-conditions-safety-net-relief-fund.pdf>

The following websites provide additional information about the ARP Rural Distribution

<https://www.hrsa.gov/provider-relief/future-payments/phase-4-arp-rural>

### ARP Rural Distribution Terms and Conditions

<https://www.hrsa.gov/sites/default/files/hrsa/provider-relief/terms-and-conditions-ARP-rural.pdf>

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	N	N	N	Y	N	N

#### A. Activities Allowed or Unallowed

1. *Activities Allowed (All distributions except Skilled Nursing Facility Infection Control Distribution)*

*Law (Pub. L. No. 116-136, 134 Stat. 563 and Pub. L. No. 116-139, 134 Stat. 622 and 623, Pub. L. No. 117-2)*

To prevent, prepare for, and respond to coronavirus and COVID-19, domestically or internationally, for necessary expenses to reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus. (Note: Auditors are not expected to test the funding reported as lost revenues to determine if it was expended only for federally defined allowable activities.)

That funds appropriated under this paragraph in this Act shall be available for building or construction of temporary structures, leasing of properties, medical supplies and equipment, including personal protective equipment and testing

supplies, increased workforce and trainings, emergency operation centers, retrofitting facilities, and surge capacity.

Payment means a pre-payment, prospective payment, or retrospective payment.

*Terms and Conditions*

- a. The recipient certifies that the payment will only be used to prevent, prepare for, and respond to coronavirus and COVID-19, and that the payment shall reimburse the recipient only for health care related expenses or lost revenues that are attributable to coronavirus and COVID-19.
- b. The recipient certifies that retaining the payment for at least 90 days without contacting HHS regarding remittance of those funds, is deemed to have accepted the Terms and Conditions.
- c. The recipient must provide or have provided after January 31, 2020, diagnoses, testing, or care for individuals with possible or actual cases of COVID-19. The Department of Health and Human Services (HHS) broadly views every patient as a possible case of COVID-19.

2. *Activities Allowed (Skilled Nursing Facility Infection Control Distribution)*

*Terms and Conditions*

Funds may only be used to reimburse the recipient for costs associated with the following items and services (“Infection Control Expenses”):

- a. Costs associated with administering COVID-19 testing, which means an in vitro diagnostic test defined in section 809.3 of title 21, *Code of Federal Regulations* (or successor regulations) for the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19, and the administration of such a test, that:
  - Is approved, cleared, or authorized under section 510(k), 513, 515, or 564 of the Federal Food, Drug, and Cosmetic Act (21 USC 360(k), 360c, 360e, 360bbb-3);
  - The developer has requested, or intends to request, emergency use authorization under section 564 of the Federal Food, Drug, and Cosmetic Act (21 USC 360bbb-3), unless and until the emergency use authorization request under such section 564 has been denied or the developer of such test does not submit a request under such section within a reasonable timeframe;
  - Is developed in and authorized by a state that has notified the secretary of HHS of its intention to review tests intended to diagnose COVID-19; or

- Other test that the secretary determines appropriate in guidance.
- b. Reporting COVID-19 test results to local, state, or federal governments.
  - c. Hiring staff, whether employees or independent contractors, to provide patient care or administrative support.
  - d. Expenses incurred to improve infection control, including activities such as implementing infection control “mentorship” programs with subject matter experts or changes made to physical facilities.
  - e. Providing additional services to residents, such as technology that permits residents to connect with their families if the families are not able to visit in person.
  - f. The recipient must provide or have provided after January 31, 2020, diagnoses, testing, or care for individuals with possible or actual cases of COVID-19.
3. *Activities Allowed (Rural distribution)*

*Terms and Conditions*

Funds may only be used to reimburse the provider(s) associated with the applicable subsidiary or billing TIN and cannot be transferred or allocated to another entity not associated with the subsidiary or billing TIN. Control and use of the Payment must be delegated to the Recipient that was eligible for and received the Payment.

4. *Activities Unallowed (All distributions)*

*Law (Pub. L. No. 116-136, 134 Stat. 563 and Pub. L. No. 116-139, 134 Stat. 622, Pub. L. No. 117-2)*

That these funds may not be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.

*Terms and Conditions*

Payments may not be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.

**B. Allowable Costs/Cost Principles**

While 45 CFR 75 Subpart E – Cost Principles do not apply to the PRF and the ARP Rural Distribution, charges to the PRF and the ARP Rural Distribution must be necessary, reasonable, accorded consistent treatment, and conform to the limitations and exclusions of the terms and conditions of the award. The PRF and ARP Rural

Distribution Frequently Asked Questions referenced under Availability of Other Information above provides additional guidance and examples.

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

#### *PRF Report*

Provider Relief Fund Reporting Portal (A Public Health Emergency Declaration-PRA Waiver Notice was issued January 14, 2021, applicable to the financial information collected by HRSA from eligible healthcare providers (<https://aspe.hhs.gov/public-health-emergency-declaration-pra-waivers>)).

The PRF reporting portal was launched on July 1, 2021 (<https://prfreporting.hrsa.gov/s/>); refer to the table in the Program Objective section for reporting time period(s). Auditors are expected to test this special reporting for fiscal years ending on or after June 30, 2021. Since the PRF and ARP Rural Distribution amounts to be reported on a recipient's Schedule of Expenditures of Federal Awards (SEFA) are based on the PRF report (see the Other Information section below), and since the PRF report is to be tested as part of the Reporting type of compliance requirement, auditors should consider delaying the commencement of the compliance audit of the PRF program until recipients have completed the PRF report.

*Key Line Items* – The following line items contain critical information (items are not numbered in report):

1. Nursing Home Infection Control Expenses for Payments Received During Payment Period for Payment Received Period
  - a. Total Nursing Home Infection Control Expenses – Cell that contains the aggregated total sum

2. Other Provider Relief Fund Expenses for Payments Received During Payment Period for Payment Received Period
  - a. Total Other Provider Relief Fund Expenses – Cell that contains the aggregated total sum
3. Calculation of Lost Revenues Attributable to Coronavirus
  - a. 2019 Actuals
    - (1) Total Column for Total Revenue/Net Charges from Patient Care (2019 Actuals) – Each cell by payer and the cell at the bottom of each quarter (Total revenue/Net Charges from Patient Care) and for each year, 2019, 2020, 2021 and 2022
  - b. 2020 Budgeted
    - (1) Total Column for Total Revenue/Net Charges from Patient Care (Budgeted) – Each cell at the bottom of each quarter (Total revenue/Net Charges from Patient Care) and for each year, 2020,2021, and 2022.
    - (2) Total Column for Total Revenue/Net Charges from Patient Care (Actuals) – Each cell by payer and the cell at the bottom of each quarter (Total revenue/Net Charges from Patient Care) and for each year, 2020 2021, and 2022.
  - c. Alternate Method of Calculating Lost Revenues Attributable to Coronavirus
    - (1) Each individual cell in the alternative method – audit back to the narrative and underlying supporting documentation. (Note: The auditor is not responsible for determining the reasonableness of the alternative method described in the narrative.)

#### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

#### **IV. OTHER INFORMATION**

Note: Since the PRF and ARP Rural Distribution amounts to be reported on a recipient's Schedule of Expenditures of Federal Awards (SEFA) are based on the PRF report (see Other Information below), and the PRF report is to be tested as part of the Reporting compliance requirement, auditors should consider delaying the commencement of the compliance audit of the PRF and ARP Rural Distribution program until recipients have completed the PRF report.



## 1. *Webpage Guidance*

Guidance documents accessed by links on the HRSA.gov website such as those listed under “Availability of Other Program Information” are provided only to clarify the applicable laws, regulations, and terms and conditions of the award and do not create new compliance requirements. However, nonfederal entities in substantial compliance with the guidance applicable in these guidance documents are considered in compliance with the underlying compliance requirements.

## 2. *Schedule of Expenditures of Federal Awards (SEFA) Reporting*

SEFA reporting amounts for this program (including both expenditures and lost revenues) are based upon the PRF report that is required to be submitted to the HRSA reporting portal (described in “L.3 Special Reporting;” <https://prfreporting.hrsa.gov/s/>). Therefore, it is first important to understand the HRSA PRF and ARP Rural Distribution reporting requirements, which are summarized in the following table.

For the PRF and Rural Distribution it is the last day a provider can use the funds (end of the period of availability), which drives inclusion of the PRF amount on the Schedule of Expenditures for Federal Awards (SEFA) in a Single Audit report.

	<b>Payment Received Period (Payments Exceeding \$10,000 in Aggregate Received)</b>	<b>Period of Availability</b>	<b>PRF Portal Reporting Time Period</b>	<b>Fiscal Year Ends (FYE) to include each PRF Period on the Schedule of Expenditures for Federal Awards (SEFA) Reporting</b>
Period 1	April 10, 2020 to June 30, 2020	January 1, 2020 to June 30, 2021	July 1, 2021 to September 30, 2021	Fiscal Year End (FYE) of June 30, 2021 through June 29, 2022
Period 2	July 1, 2020 to December 31, 2020	January 1, 2020 to December 31, 2021	January 1, 2022 to March 31, 2022	FYE of December 31, 2021 through FYEs December 30, 2022.
Period 3	January 1, 2021 to June 30, 2021	January 1, 2020 to June 30, 2022	July 1, 2022 to September 30, 2022	FYE of June 30, 2022 through June 29, 2023
Period 4	July 1, 2021 to December 31, 2021	January 1, 2020 to December 31, 2022	January 1, 2023 to March 31, 2023	FYE of December 31, 2022 through FYEs June 29, 2023.
Period 5	January 1, 2022 to June 30, 2022	January 1, 2020 to June 30, 2023	July 1, 2023 to September 30, 2023	FYE of June 30, 2023, guidance will be included in 2023 Compliance Supplement

### **Summary of SEFA Reporting of PRF for Fiscal Year Ends (FYE) Covered by the 2022 Compliance Supplement**

For FYEs of June 30, 2022, and through FYEs of December 30, 2022 recipients should report in the SEFA, the expenditures and lost revenues from the **Period 2 and Period 3** PRF report.

For a FYE of December 31, 2022 and through FYEs of June 29, 2023, recipients should report in the SEFA, the expenditures and lost revenues from both the **Period 3** and **Period 4** PRF reports.

For FYEs on or after June 30, 2023, SEFA reporting guidance related to **Period 4** and **Period 5** will be provided in covered under the 2023 Compliance Supplement.

### 3. *Defining the Entity to be Audited*

The reporting entity required for PRF and ARP Rural Distribution reporting purposes may not align to the reporting entity as defined for financial reporting purposes. It is important to note that the required PRF level of reporting has no bearing on the application of the requirements in 2 CFR 200.514 for defining the entity to be audited for single audit purposes. Thus, for single audits that include PRF and ARP Rural Distribution, the Single Audit must cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered federal awards during such audit period, provided that each such audit must encompass the financial statements and schedule of expenditures of federal awards for each such department, agency, and other organizational unit, which must be considered to be a nonfederal entity.

As a best practice, the recipients may wish to include a footnote disclosure on the SEFA to identify which providers by TIN are included in the audit.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 93.499 LOW-INCOME HOUSEHOLD WATER ASSISTANCE PROGRAM

#### I. PROGRAM OBJECTIVE

Congress established the Low-Income Household Water Assistance Program (LIHWAP) as part of the federal government's response to the COVID-19 pandemic. This emergency formula grant program is designed to target assistance to those households with the lowest incomes that pay a high proportion of household income for water and wastewater services. The federal grant is awarded to states, territories and Indian Tribes who will issue funds on behalf of eligible, applicant households to owners or operators of public water systems or treatment works to reduce arrearages of and rates charged to such households for those services.

States, territories, and Indian tribes—the LIHWAP grantees—shall, as appropriate and to the extent practicable, use existing processes, procedures, policies, and systems in place to provide assistance on behalf of low-income households, particularly in coordination with the federal Low Income Home Energy Assistance Program (LIHEAP), except where otherwise noted. Grantees shall provide LIHWAP benefits according to the following priorities: (1) households whose services are disconnected due to non-payment, (2) households whose services are facing an imminent disconnection due to non-payment, and (3) households with only a current bill due (no past due/arrearage amount). Grantees must ensure that benefits and other interventions are sufficient to ensure restoration and/or continuity of services.

#### II. PROGRAM PROCEDURES

##### A. LIHWAP Formula Grants

The US Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Community Services (OCS), administers LIHWAP at the federal level. LIHWAP 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) that received fiscal year (FY) 2021 LIHEAP funding were eligible to serve as recipients of direct funding from ACF.

Each grantee is responsible for designing and implementing its own LIHWAP within broad federal guidelines. Grantees must administer their LIHWAP according to their ACF approved plan, and any amendments, and in conformance with the federal ACF Mandatory General Terms and Conditions and the LIHWAP Specific Terms and Conditions. Grantees must establish appropriate systems and procedures to prevent, detect and correct waste, fraud, and abuse, by clients, vendors, and administering agencies.

In order to receive funding, each grantee was required to submit a LIHWAP implementation plan that served as the grantee's application for federal funding and describes how the grantee's LIHWAP will be administered, including a set of program

integrity questions in which the grantee must describe the systems in place to detect and deter fraud, waste, and abuse in its LIHWAP program.

All grantees must have allowed for public participation in the development of their annual plans prior to submission to ACF.

### **Source of Governing Requirements**

LIHWAP was authorized under the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260) and the American Rescue Plan Act of 2021 (Pub. L. No. 117-2).

LIHWAP is subject to all of 45 CFR Part 75, which is the HHS implementation of 2 CFR Part 200, commonly known as the Office of Management and Budget's Uniform Administrative Guidance.

In addition, LIHWAP grantees must administer their LIHWAP according to their respective Plans that they submitted to HHS. Grantees are permitted to submit revised LIHWAP plans within a reasonable amount of time after making significant changes to their policies and/or procedures referenced in their plans.

Grantees must also abide by the [LIHWAP Specific Terms and Conditions](#) and the [ACF General Mandatory Grant Terms and Conditions](#). Both sets of Terms and Conditions can be found here: <https://acf.hhs.gov/grants/mandatory-formula-block-and-entitlement-grants>.

### **Availability of Other Program Information**

The ACF LIHWAP web page (<https://www.acf.hhs.gov/ocs/programs/lihwap>) provides general information about this program, including a section on Policy and Guidance.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	Y	Y	N	N	Y	Y	N

**B. Allowable Costs/Cost Principles**

1. *Allowable Costs*

Grantees must provide the bill payment benefits directly to the owners or operators of public water systems or treatment works on behalf of specific, approved households with accounts with such providers.

Benefits on behalf of households are limited to credits to the households’ accounts to pay towards arrearages, current and/or future water charges (e.g., a credit to the account). This can include payment towards reconnection fees, late payment fees, and other fees to the extent they are charged to the recipient household in the same fashion as any other account holder with the water provider (no discrimination in fees charged to program recipients or low income customers).

Funds must not be used towards infrastructure purchases, repairs or improvements (e.g., repair or replacement of toilets, pipes, and other related equipment). Funding must not be used towards in-kind benefits to the household.

A reasonable amount of funds may be used for related program outreach and eligibility intake activities.

2. *Cost Principles*

All of 45 CFR Part 75 applies to this program. Of particular note, grantees must establish and maintain accurate central office cost allocation plans in addition to negotiated indirect cost agreements (see 45 CFR section 75.416).

## **E. Eligibility**

### **1. Eligibility for Individuals**

Grantees must provide benefit payments to water/wastewater companies on behalf of households that are income eligible based on either (a) one or more individuals are receiving assistance from the LIHEAP, TANF, SSI, SNAP benefits, or certain needs-tested veterans' benefits; or (b) total household income that does 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 must give priority to those households with the highest home water and wastewater costs or needs in relation to income and household size. This includes targeting households with vulnerable members, including a senior (60 years or older), a young child (5 years or younger), and/or a disabled member (disabled defined by the grantee).

Households whose water bills are included in their rent are eligible for program benefits to the extent the household pays rent and provides adequate documentation to show water is provided by the landlord. Payments on behalf of renters must still be made to the owners or operators of public water systems or treatment works, those payments must reduce arrearages of and rates charged to the landlord's account, and the landlord must pass the benefit in full to eligible households in the form of lower rent payments. Grantees must establish consumer protections, such as by issuing two-party checks, sufficient to ensure that the water provider correctly credits the account and that the landlord credits the household's rent bill to reflect the LIHWAP benefit amount.

Grantees must provide funds to owners or operators of public water systems or treatment works ("owners or operators") to reduce arrearages of and rates charged to eligible households for such services. For all payments to owners or operators on behalf of individual households, the grantee must establish procedures to:

- a. notify, or require the owner or operator to notify, each participating household of the amount of assistance paid on its behalf;
- b. assure that the owner or operator will charge the eligible household, in the normal billing process, the difference between the actual amount due and the amount of the payment made by the LIHWAP grant;
- c. assure that any agreement the grantee enters into with an owner or operator under this paragraph will contain provisions to assure that no household receiving assistance under this grant will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements;

- d. ensure that the provision of payments to the owner or operator remains at the option of the grantee, in consultation with local subgrantees; and
- e. ensure that the owner or operator provides written reconciliation and confirmation on a regular basis that benefits have been credited appropriately to households and their services have been restored on a timely basis or disconnection status has been removed if applicable.

Households that rely entirely on well water and/or septic service are ineligible for assistance under this program, unless they qualify for a special other water service such as delivered water under extenuating circumstances.

**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.

**G. Matching, Level of Effort, Earmarking**

**1. Matching**

Not Applicable

**2. Level of Effort**

Not Applicable

**3. Earmarking**

The following limitations apply to LIHWAP formula grants:

a. *Administrative Costs*

- (1) No more than 15 percent of a state's LIHWAP funds for each appropriation (Pub. L. No. 116-260 and Pub. L. No. 117-2) may be used for administrative costs, including both direct and indirect costs. This limitation applies, in the aggregate, to administrative costs at both the state and subrecipient levels. This cap must not be exceeded by supplementing with other federal funds.

## H. Period of Performance

Period of Performance/Obligation Period: The LIHWAP formula grant funds payable to the grantee in federal fiscal year 2021 must be obligated by the grantee by September 30, 2023. Funds not obligated by September 30, 2023, must be returned to ACF.

Per 45 CFR section 75.2, the term “obligation” is defined as: “when used in connection with a non-federal entity's utilization of funds under a federal award, *obligations* means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-federal entity during the same or a future period.”

Expenditure: Grantees must expend (liquidate) the funds, based upon prior valid obligations, no later than 90 calendar days after the close of FY 2023 (i.e., by December 31, 2023).

## L. Reporting

### 1. Financial Reporting

- a. *SF-425, Federal Financial Report* – Applicable – due 90 days after the close of each federal fiscal year

45 CFR 75.2 also defines the term “expenditures” to mean: “charges made by a non-Federal entity to a project or program for which a federal award was received.

- (1) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.
- (2) For reports prepared on a cash basis, expenditures are the sum of:
  - (a) Cash disbursements for direct charges for property and services;
  - (b) The amount of indirect expense charged;
  - (c) The value of third-party in-kind contributions applied; and
  - (d) The amount of cash advance payments and payments made to subrecipients.
- (3) For reports prepared on an accrual basis, expenditures are the sum of:
  - (a) Cash disbursements for direct charges for property and services;
  - (b) The amount of indirect expense incurred;
  - (c) The value of third-party in-kind contributions applied; and



- (d) The net increase or decrease in the amounts owed by the non-Federal entity for:
  - (i) Goods and other property received;
  - (ii) Services performed by employees, contractors, subrecipients, and other payees;
  - (iii) Programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.”

## **2. Performance Reporting**

*LIHWAP Quarterly Performance and Management Data Report (OMB-No-0970-0578)* – All grantees will need to submit this report within 30 days after the close of each federal quarter beginning with FY 2022 (e.g., January 31, 2022 for the October 1, 2021 through December 31, 2021 quarter). The brief report will ask a few questions about grantee progress, barriers, and training and technical assistance needs.

*LIHWAP Annual Performance and Management Data Report (OMB No -0970-0578)* – All grantees will need to submit this report by December 31st following each federal fiscal year (e.g., December 31, 2021 for FY 2021 obligations and expenditures and December 31, 2022 for FY 2022 obligations and expenditures, and December 31, 2023 for FY 2023 obligations and expenditures). The report includes key performance indicators such as the number and types of households assisted, the average benefit amount provided to households, and performance measures related to targeting assistance to high water burden households (i.e., households that incur the greatest water bills in relation to household income).

## **3. Special Reporting**

Not Applicable

## **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## **M. Subrecipient Monitoring**

### **1. Assess subrecipient risk**

Evaluate each subrecipient’s risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring, per 45 CFR section 75.352.

## 2. *Monitor subrecipients*

Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved per 45 CFR 75.352(d). Pass-through entity monitoring of the subrecipient must include: (1) reviewing financial and performance reports required by the pass-through entity; (2) following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means; and (3) issuing a management decision for audit findings pertaining to the federal award provided to the subrecipient from the pass-through entity as required by 45 CFR section 75.521.

## IV. OTHER INFORMATION

Grantees must follow the specific LIHWAP Terms and Conditions associated with the grant awards. They include a number of provisions related to consumer protections, etc. They are accessible here:

<https://www.acf.hhs.gov/sites/default/files/documents/LIHWAP%20Terms%20and%20Conditions%20for%20States.pdf>.

They are also bound by the General Mandatory Terms and Conditions, which are posted here:

[https://www.acf.hhs.gov/sites/default/files/documents/general\\_terms\\_and\\_conditions\\_2019\\_final.pdf](https://www.acf.hhs.gov/sites/default/files/documents/general_terms_and_conditions_2019_final.pdf).

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****ASSISTANCE LISTING 93.545 CONSUMER OPERATED AND ORIENTED PLAN  
[CO-OP] PROGRAM****I. PROGRAM OBJECTIVES**

The purpose of the Consumer Operated and Oriented Plan (CO-OP) program is to foster the creation of qualified nonprofit health insurance issuers to offer qualified health plans in the individual and small group markets in the states in which the issuers are licensed to offer such plans. These CO-OPs are consumer-governed, private, nonprofit health insurers.

**II. PROGRAM PROCEDURES**

At the federal level, the CO-OP program is administered by the Department of Health and Human Services, through the Centers for Medicare and Medicaid Services (CMS)/Center for Consumer Information and Insurance Oversight (CCIIO). In addition to improving consumer choice and plan accountability, the CO-OP program also seeks to promote integrated models of care and enhance competition in the Health Insurance Exchanges established under sections 1311 and 1321 of the Affordable Care Act (ACA).

Established under Section 1322 of the ACA, the CO-OP program provides loans to capitalize eligible prospective CO-OPs with a goal of having at least one CO-OP in each state, although the statute permits the funding of multiple CO-OPs in any state, provided that there is sufficient funding to capitalize at least one CO-OP in each state.

Solvency loans are loans provided by CMS to a loan recipient in order to meet state solvency and reserve requirements, and start-up loans are loans provided by CMS to a loan recipient for costs associated with establishing a CO-OP. Both types of loans must be used consistent with the loan agreement and applicable statutory and regulatory requirements. Solvency loans are structured in a manner that ensures that the loan amount is recognized by state insurance regulators as “surplus notes” pursuant to National Association of Insurance Commissioners Statutory Statement of Accounting Principles No. 41 (SSAP 41) so that the proceeds of the loans may be counted as assets and contribute to the state-determined capitalization reserve requirements or other solvency requirements (rather than debt) as specified in the insurance regulations for the state in which the loan recipient will offer a CO-OP qualified health plan. Several, but not all, start-up loans to loan recipients have also been structured as surplus notes in the years subsequent to first issuance on a case-by-case basis using specified criteria. For both types of loans, the loan recipient must make loan payments in accordance with the approved repayment schedule in the loan agreement until the loan is paid in full consistent with state reserve requirements, solvency regulations, and requisite surplus note arrangements. For the Start-up Loans, interest accrues from the date of drawdown on the loan amounts that have been drawn down and not yet repaid by the loan recipient. For Solvency Loans, interest accrues in a manner consistent with the requirements of SSAP 41, and/or any applicable state law or regulation. The interest rate for each loan is determined based on the date of award.

Information on what happens when loan recipients fail to make loan payments and conversions can be found in 45 CFR section 156.520 or under 42 USC 18042.

**Source of Governing Requirements**

The CO-OP program is authorized by the Patient Protection and Affordable Care Act (Pub. L. No. 111-148, which was enacted on March 23, 2010), which was amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152). The two laws are collectively referred to as the “Affordable Care Act.” Section 1322 of the ACA created the Consumer Operated and Oriented Plan program, which is codified at 42 USC 18042, and program regulations are found at 45 CFR sections 156.500 through .520 (45 CFR Part 156, Subpart F– Consumer Operated and Oriented Plan program).

**Availability of Other Program Information**

Additional information is available on the CCIIO website at <http://cciio.cms.gov/> or at <http://www.cms.gov/CCIIO/Programs-and-Initiatives/Insurance-Programs/Consumer-Operated-and-Oriented-Plan-Program.html>.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/ Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	N	N	N	N	N	N	N	N	Y	N	N

**A. Activities Allowed or Unallowed**1. *Activities Allowed*

In accordance with the loan agreement, these include the following categories and specified limitations:

- a. Start-up loan funds must only be used in accordance with the Business Plan and the Start-Up Loan Disbursement Plan.
- b. For both types of loans, the borrower must use the loan funds only for the following purposes: costs identified in the Business Plan and Disbursement plans, and costs associated with establishing the CO-OP as an operating business.
- c. Costs associated with the initial operations of a CO-OP, including the following:
  - (1) Renting space for issuer administrative operations.
  - (2) Renting or developing information technology systems.
  - (3) Renting or developing provider networks.
  - (4) Hiring a management team with adequate insurance expertise and other administrative personnel.
  - (5) Hiring counsel and consultants to assist with state insurance laws and other licensure requirements.
  - (6) Negotiating and contracting with providers and vendors.
  - (7) Hiring actuaries.
  - (8) Conducting community and prospective member education and educating CO-OP members on the rights and responsibilities of member governance.
  - (9) Developing strategic plans to build enrollment.
  - (10) Establishing and participating in a private purchasing council.
  - (11) Paying for the initial costs of operational and administrative staff.
- d. Cost associated with establishing and maintaining capital and surplus for borrower (including Risk-Based Capital Reserves) consistent with state solvency requirements.

- e. Costs associated with providing information to members regarding their coverage, rights, and responsibilities.

## 2. *Activities Unallowed*

- a. Start-up loan funds cannot be used to pay for costs associated with purchase of land and construction of facilities, including clinical facilities.
- b. Start-up loan funds cannot be used for clinical expenses, such as medical services providers' salaries or payments; provider clinical space; clinical equipment; administrative staff associated with clinical functions; and clinical equipment (excluding clinical information technology).
- c. Borrowers cannot use any part of the loan funds for any of the following purposes or activities:
  - (1) To carry on propaganda or other activities attempting to influence legislation at the federal, state, or local level of government.
  - (2) To conduct marketing. "Marketing" for this purpose means activities that promote the purchase of a specific health care plan or explain a product's benefit structure to a specific customer. However "marketing" does not include activities related to community outreach, membership development, and membership education.
  - (3) To meet the matching requirements of any other federal program.
  - (4) To cover or pay excessive executive compensation as determined by the lender in its sole but reasonable discretion.
  - (5) To fund activities unrelated to CO-OP planning and establishment, including, but not limited to, staff retreats and promotional giveaways.
  - (6) To pay for services described in Section 1303(b)(1)(B)(i) of the ACA, which states "Abortions for which public funding is prohibited....The services described in this clause are abortions for which the expenditure of federal funds appropriated for the Department of Health and Human Services is not permitted, based on the law as in effect as of the date that is 6 months before the beginning of the plan year involved."

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable

- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs – Not Applicable*
- c. *SF-425, Federal Financial Report – Not Applicable*
- d. *CMS-10392, Monthly Reporting Requirements (OMB No. 0938-1139)*
- e. *CMS-10392, Quarterly Financial Statement or Annual Financial Statement (OMB No. 0938-1139) – Attachment 4, National Association of Insurance Commissioners (NAIC) Quarterly Statement and Annual Statement: Financial Statement Underwriting and Investment Exhibit Part 3 – Analysis of Expenses*

## **2. Performance Reporting**

*CMS-10392, Semi-annual Progress Report (OMB No. 0938-1139), Attachment 1, CO-OP Program Semi-Annual Progress Report Access Database*

*Key Line Items* – The following sections contain critical information:

- 1. Changes to the Bylaws
- 2. Licensure and Accreditation
- 3. Member Control and Board Elections
- 4. Ethics, Conflict of Interest, and Disclosure Standards for Board of Directors and Executive Officers; Limitation on Government and Issuer Participation
- 5. Consumer Focus
- 6. Standards for Health Plan Issuance and Plan Management
- 9. Updated Business Plan
- 10. Financial Information
- 11. Agents and Brokers

## **3. Special Reporting**

Not Applicable

## **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

#### **IV. OTHER INFORMATION**

CO-OPs are required to execute promissory notes for both the start-up and solvency loans. Prior loans have continuing compliance requirements. Therefore, the full outstanding balance on the notes must be considered federal awards expended, included in determining Type A programs, and reported as loans on the Schedule of Expenditures of Federal Awards in accordance with 2 CFR Part 200, Subpart F. Since the loan agreements require audited financial statements, CO-OPs may not elect a program-specific audit and must have an annual single audit.



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 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, tribal organizations, and tribal consortia (hereafter “tribe”) 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, family reunification, and adoption promotion and support services.

#### II. PROGRAM PROCEDURES

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 (1) child welfare services under Title IV-B, subparts 1 and 2; (2) a child welfare staff development and training plan; (3) 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 (4) 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 five-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 to states are based on the number of children in the states who received supplemental nutrition assistance program benefits in the previous three years. Grants may also be made to tribes that qualify from reserved funds 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 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 629f. Implementing program regulations are published at 45 CFR parts 1355 and 1357.

**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 PSSF program. This information may be accessed at <https://www.acf.hhs.gov/cb/laws-policies>.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

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Y	Y	Y	N	N	Y	Y	N	N	Y	N	N

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

- a. 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 nonprofit auspices (45 CFR section 1357.10(c)).

- b. 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)):
- (1) 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, when possible;
  - (2) 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;
  - (3) Service programs designed to provide follow-up care to families to whom a child has been returned after a foster care placement;
  - (4) Respite care of children to provide temporary relief for parents and other caregivers (including foster parents);
  - (5) 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;
  - (6) Infant safe haven programs to provide a way for a parent to safely relinquish a newborn infant at a safe haven designated pursuant to a state law; and
  - (7) Case management services designed to stabilize families in crisis such as transportation, assistance with housing and utility payments, and access to adequate health care.
- c. 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); increase parents' confidence and competence in their parenting abilities; afford children a stable and supportive family environment; strengthen parental relationships and promote healthy marriages and otherwise enhance child development, including through mentoring. Beginning on February 9, 2018, and thereafter, services may also be provided to support and retain foster families so they can provide quality family-based settings for

children in foster care. Family support services may include (42 USC 629a(a)(2); 45 CFR section 1357.10(c)):

- (1) 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;
- (2) Respite care of children to provide temporary relief for parents and other caregivers;
- (3) Structured activities involving parents and children to strengthen the parent-child relationship;
- (4) Drop-in centers to afford families opportunities for informal interaction with other families and with program staff;
- (5) 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
- (6) Early developmental screening of children to assess the needs of such children, and assistance to families in securing specific services to meet these needs.

- d. 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 and to ensure the strength and stability of the reunification. For periods prior to October 1, 2018, these services may have been provided only during the 15-month period that began on the date the child, pursuant to 42 USC 675(5)(F), was considered to have entered foster care.

For periods beginning on October 1, 2018, and later, family reunification services may be provided on behalf of a child in foster care without a time limit. Additionally, in the case of a child who has been returned home, these services and activities may also be provided, but shall only be provided during the 15-month period that begins on the date that the child returns home.

The services and activities for family reunification services are the following (42 USC 629a(a)(7)):

- (1) Individual, group, and family counseling;
  - (2) Inpatient, residential, or outpatient substance abuse treatment services;
  - (3) Mental health services;
  - (4) Assistance to address domestic violence;
  - (5) Services designed to provide temporary child care and therapeutic services for families, including crisis nurseries;
  - (6) Peer-to-peer mentoring and support groups for parents and primary caregivers;
  - (7) Services and activities designed to facilitate access to and visitation of children by parents and siblings; and
  - (8) Transportation to or from any of the services and activities described above.
- e. 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)).
- f. 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, "Matching, Level of Effort, Earmarking – Earmarking," for a limitation on the amount of administrative costs.
- g. Program costs, which 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)).

2. *Activities Unallowed*

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 Title IV-B agency's contribution may be in cash, donated funds, and nonpublic third party in-kind contributions (45 CFR section 1357.32(d)).

**2. Level of Effort**

**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 nonfederal 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 nonpublic third party in-kind contributions, the “supplement not supplant” requirement is limited to nonfederal 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, “Matching, Level of Effort, Earmarking – Earmarking,” 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 (42 USC 629f(4)(B)(ii)).

### **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 <https://www.acf.hhs.gov/cb/resource/pi1009>). This provision is not applicable to tribes per exemption authority (42 USC 629b(b)(2)(A)); 45 CFR section 1357.50(f)(1)(iii)).
- 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. This provision is not applicable to tribes per exemption authority (42 USC 629b(b)(2)(A)); 45 CFR section 1357.50(f)(1)(i)).
- c. A state shall use the special allocation provided pursuant to Pub. L. No. 112-34 to support monthly caseworker visits with children who are in foster care with a primary emphasis on activities designed to improving caseworker decision making on the safety, permanency, and well-being of foster children and on activities designed to increase retention, recruitment and training of caseworkers (42 USC 629f(b)(4)(B)(i)). The limitation on the use of federal funds for administrative costs described in paragraph G.3.b also applies to this special allocation.

## **H. Period of Performance**

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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable.

- c. *SF-425, Federal Financial Report* – Applicable (expenditure reporting only).

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 93.558 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

#### 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; to end dependence of needy parents on government benefits by promoting job preparation, work, and marriage; to prevent and reduce out-of-wedlock pregnancies, including establishing prevention and reduction goals; and to encourage the formation and maintenance of two-parent families.

#### II. PROGRAM PROCEDURES

##### A. Overview

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 US Virgin Islands, Guam, and American Samoa) must periodically submit a state plan containing specified information and assurances.

##### 1. *States*

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 TANF’s predecessor programs. The SFAG is a fixed amount to the state subject to reductions based on any penalties assessed. In addition, SFAG amounts will be adjusted for any federally recognized Indian tribes within the state that operate separate tribal TANF programs. States have significant flexibility in designing programs and determining eligibility requirements within broad federal parameters. While states have flexibility and discretion, there are provisions to ensure accountability for results, including requirements for reporting data on expenditures and individuals receiving benefits under the program, and monetary penalties for failure to meet programmatic requirements such as work participation requirements.

The federal TANF block grant program also has an annual cost-sharing requirement, known as maintenance-of-effort (MOE). A state must spend each fiscal year at least 80 percent of its historic state expenditures to provide benefits and services to eligible clientele. If the state meets both its required minimum overall (“all-family”) and two-parent work participation rates for a federal fiscal year (FFY), then the required MOE spending level decreases to 75 percent of its FFY 1994 historic state expenditures. “Historic state expenditures” means the state’s FFY 1994 share of expenditures in the former Aid to Families with

Dependent Children (AFDC), EA, AFDC-Related Child Care, Transitional Child Care, At-Risk Child Care, and JOBS programs. States may not use more than 15 percent of the total amount of countable expenditures for the fiscal year for administrative activities.

2. *Tribes*

Tribal Family Assistance Plans (TFAP) are developed for a three-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 FFY 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.

As also stated in IV, “Other Information - Tribal TANF Grantees under a Pub. L. No. 102-477 Demonstration Project (477),” audits of Indian tribal governments with Tribal TANF in their approved 477 plan must follow the guidance in the 477 Cluster found in the Department of the Interior’s section of Part 4 for this Supplement.

**B. Funding**

1. *States*

States have options for how to expend federal grant funds and state MOE funds. Certain statutory and regulatory requirements apply depending on whether the source of the funding for a service or benefit is federal funds alone, state MOE funds, or a combination of the two. For this reason, this supplement explains requirements based on how the state reports expenditures for a given service or benefit.

- a. *Federal Only* – A state should report an expenditure as “federal only” when it uses only federal grant funds, without including any MOE funds.
- b. *Commingled Federal/State* – A state should report an expenditure as “commingled” when it uses both federal grant and MOE funds for the benefit or service. Commingled funding of a service or benefit means that the expenditure is subject to all federal funding restrictions, TANF requirements, and MOE limitations, or the most restrictive of these if they conflict.
- c. *Segregated State* – A state should report an expenditure as “segregated state” if it uses MOE funds in the TANF program operated by the state and uses no federal grant funds for the benefit or service.

- d. *Separate State Program* – A state should report an expenditure as funded by a “separate state program” if it reports state expenditures as MOE as part of a program, 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, 45 CFR section 260.33 explains the circumstances under which certain state tax relief provisions would count as expenditures.

## 2. *Tribes*

Similar to states, tribes have options for how to expend federal grant funds and, where applicable, state MOE funds. Certain statutory and regulatory requirements apply depending on whether the source of the funding for a service, or benefit, is federal funds alone, state MOE funds, or a combination of the two. For this reason, throughout this supplement, we explain requirements based on how the tribe reports expenditures for a given service or benefit.

- a. *Federal Only* – A tribe should report an expenditure as “federal only” when it uses only federal grant funds, without including any state-donated MOE funds or tribal funds that are expended in the TANF program operated by the tribe.
- b. *Commingled Federal/State-donated MOE* – A tribe should report an expenditure as “commingled” when it uses both federal grant and state-donated MOE funds for the benefit or service. Commingled funding of a benefit or service means that the expenditure is subject to all federal funding restrictions and state MOE limitations, or the most restrictive of these if they conflict.
- c. *Segregated Tribal* – A tribe should report an expenditure as “segregated tribal” if it uses state MOE funds expended separately in the TANF program operated by the tribe and uses no federal grant funds for the benefit or service. See IV., “Other Information,” for guidance on state MOE expended by tribes.

### **American Rescue Plan Act of 2021**

**On March 11, 2021, the president signed the American Rescue Plan Act of 2021 into law (Pub. L. No. 117-2). It establishes the Pandemic Emergency Assistance Fund (PEAF) in section 403(c) of the Social Security Act (the Act). The PEAF provides funding to states (which includes the District of Columbia), tribes administering a TANF program, and five US territories (Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands) to assist needy families impacted by the Coronavirus Disease 2019 (COVID-19) pandemic.**

## 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 are codified at 42 USC 601-619.

The governing regulations for states are those in 45 CFR parts 260–265. Regulations for tribal TANF are in 45 CFR Part 286.

All state and all tribal TANF programs are subject to the provisions in the HHS implementation of 2 CFR Part 200 at 45 CFR Part 75.

## 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 federally or state-declared disaster. TANF-ACF-PI-2007-08 is available at <https://www.acf.hhs.gov/ofa/resource/policy/pi-ofa/2007/200708/pi200708>.

Other general program information regarding the state and tribal TANF programs is available from the Office of Family Assistance (OFA) website at <https://www.acf.hhs.gov/ofa/programs>.

TANF-ACF-PI-2021-02, dated April 9, 2021, *The Pandemic Emergency Assistance Fund*, provides initial guidance to state, tribal, and territorial agencies administering the TANF program, and other eligible territories, regarding the newly established PEAFF.

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	Y	N	N	N	Y	Y	Y

**A. Activities Allowed or Unallowed**

This program refers 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 (typical for all requirements).

1. *States*

a. Federal Only

- (1) 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 Title 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)).
- (2) A state may transfer up to 30 percent of its total of current fiscal year funds (not prior fiscal year funds carried into the current fiscal year) received under the SFAG to carry out programs under the Social Services Block Grant (Title XX) (Assistance Listing 93.667) and/or the Child Care and Development Block Grant (Assistance Listing 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 TANF contingency funds under 42 USC 603(b) nor pandemic emergency assistance funds under 42 USC 603(c) (Pub. L. No. 117-2) may be transferred under this authority (42 USC 604(d)). The poverty guidelines are issued each year in the *Federal Register* and HHS

maintains a website that provides the poverty guidelines (<https://aspe.hhs.gov/poverty-research>). When transferred, the funds are subject to the rules of the program to which they are transferred (within statutory restrictions) and should be audited under that program. Please refer to Part IV Item 1, “Transfers out of TANF.”

b. 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)).

c. Federal Only, Commingled Federal/State, Segregated State, Separate State Program

- (1) A state may use funds 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 (Note: In the following sections of this program supplement, these are referenced as TANF purposes 1, 2, 3, and 4, respectively):
  - (a) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
  - (b) End dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
  - (c) 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
  - (d) Encourage the formation and maintenance of two-parent families.
- (2) 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)).

- (3) A state may use funds 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)).
- (4) A state may use funds to implement an electronic benefits transfer system (42 USC 604(g)).
- (5) A state may use funds 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).
- (6) 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 that 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)).

d. Prohibition on Use of Federal TANF and State MOE funds for Juvenile Justice Services

See IV, "Other Information," for area of risk of non-compliance for juvenile justice services.

2. Tribes

a. Federal Only

- (1) A tribe may use funds for expenditures for activities that are not permissible under 42 USC 601, but for which the state or tribe was authorized to use Title 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.

- (2) Tribes may not transfer any federal TANF funds to the Social Services Block Grant (Title XX) (Assistance Listing 93.667) or the Child Care and Development Block Grant (Assistance Listing 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)).
- b. Federal Only, Commingled Federal/State-donated MOE, Segregated Tribal
- (1) A tribe may use funds 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 (Note: In the following sections of this program supplement, these are referenced as TANF purposes 1, 2, 3, and 4, respectively):
    - (a) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
    - (b) End dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
    - (c) 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
    - (d) Encourage the formation and maintenance of two-parent families.
  - (2) 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)).
  - (3) A tribe may use funds 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)).
  - (4) A tribe may use funds to implement an electronic benefits transfer system (42 USC 604(g)).



- (5) A tribe may use funds 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).
- (6) 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)).
- (7) 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 <https://www.acf.hhs.gov/ofa/resource/policy/pi-ofa/2005/pi2005-2htm> (45 CFR section 286.35(a)(1)).
- (8) 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))).

### 3. *Pandemic Emergency Assistance Fund*

#### a. All grantees

- (1) States, tribes, and territories (grantees) may use funds to provide certain non-recurrent, short-term (NRST) benefits (described below). Additionally, they may use funds for administrative costs (up to a 15 percent cap for states and territories and up to the negotiated cap for tribes).

- (2) For the purposes of PEAFF, NRST benefits mean cash payments or other benefits that meet the regulatory definition (45 CFR 260.31(b)(1)), but are limited to those that fall into the specific expenditure reporting category mentioned in the legislation (line 15 of the [ACF-196R](#) (PDF), the state financial reporting form for the TANF program). In other words, for this fund, NRST benefits, like all NRSTs under TANF, must: be designed to deal with a specific crisis situation or episode of need; not be intended to meet on-going needs; and not extend beyond four months; **and** (as explained in the instructions for reporting on line 15 of the ACF-196R) NRSTs paid for with PEAFF funds: must only include expenditures such as emergency assistance and diversion payments, emergency housing and short-term homelessness assistance, emergency food aid, short-term utilities payments, burial assistance, clothing allowances, and back-to-school payments; and may **not** include tax credits, child care, transportation, or short-term education and training.

## E. Eligibility

### 1. Eligibility for Individuals

The state or tribal plan provides the specifics on the state or tribal area's definition of financially needy which the state or tribal area uses in determining eligibility. 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. States

- (1) Federal Only, Commingled Federal/State, Segregated State, and Separate State Program
  - (a) 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 MOE-funded benefits, services, or "assistance" regardless of the TANF purpose that the expenditure is reasonably calculated to accomplish (see III.A.1.c, "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 Social Security Act or some other definition applicable in state law provided the state can articulate a rational 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 and 602(a)(1)(B)(iii), 42 USC 609(a)(7)(B)(IV), and 42 USC 608(a)(1), 619(2); 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(1), “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.1.c., “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.1.c., “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).

- (b) 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 United States 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 United States 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 United States 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-funded public benefit or a MOE-funded public benefit to otherwise qualified aliens (including nonimmigrants and individuals paroled in the US for less than a year in the case of a non-commingled 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 five years after the date of entry into the United States 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 five-year bar has expired for a qualified alien entering the United States 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 United States 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 five years (8 USC 1613(a)). The five-year bar begins either on the date of the alien's entry into the United States as a qualified alien or on the date the alien residing in the United States becomes a qualified alien, whichever is later. If the alien entered the United States 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 five-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)).

(2) Federal Only and Commingled Federal/State

- (a) 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, Level of Effort, Earmarking – Earmarking,” for testing the limits related to the number of exemptions.)

- (b) A state may not provide assistance to an individual who is under age 18, is unmarried, has a minor child at least twelve 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)).
- (c) 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)).
- (d) 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)).
- (e) 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 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)).

- (f) A state may not use funds to provide cash assistance to an individual during the ten-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)).
  - (g) 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)).
- (3) Federal Only, Commingled Federal/State, Segregated State
- (a) A state shall require that, as a condition of providing assistance, a member of the family assign to the state the rights the family member may have for support from any other person. This assignment may not exceed the amount of assistance provided (42 USC 608(a)(3)).
  - (b) 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 in 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).
  - (c) 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).

b. 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 the Pandemic Emergency Assistance Fund**

- a. The recipients of PEAFF-funded NRSTs must be financially needy families with children but they do not necessarily have to be eligible for TANF cash assistance. A grantee has the flexibility to determine what needy means for each NRST and may wish to set a higher standard than it does for TANF cash assistance, such as aligning with SNAP or Medicaid income eligibility criteria.
- b. The Income Eligibility Verification System (IEVS) does apply to the PEAFF, as it is funded under Title IV-A; however, tribes are not subject to the IEVS requirements.

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

Not Applicable

**4. Eligibility for Subrecipients**

Not Applicable



## G. Matching, Level of Effort, Earmarking

### 1. Matching

Not Applicable

### 2. Level of Effort

#### 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 MOE for TANF, whether such state funds are expended as commingled federal/state, segregated state, or separate state program funds.

- a. *State 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 – 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)).

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 TANF 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. Any MOE expenditures above this required amount are referred to as “excess MOE.”

Except as provided in paragraph b, immediately below, 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, cash donations by non-governmental third parties (e.g., a non-profit organization, corporation, or other private party), or the value of third-party in-kind contributions. A state's records must show that all the costs are verifiable and meet all applicable requirements in 45 CFR sections 263.2 through 263.6. Third parties must be aware of and agree with the state's intentions and, accordingly, the state's records must include an agreement between the state and the third party permitting the state to count the expenditure toward its MOE requirement (42 USC 609(a)(7)(A) and 609(a)(7)(B)(i)(I); 45 CFR sections 263.1 and 263.2(e)).

Effective October 1, 2008 (i.e., FY 2009 awards), states may claim only *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 under 45 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 <https://www.acf.hhs.gov/ofa/programs/tanf/policy>).

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 of 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.

Section 409(a)(7)(B)(iv)(IV) of the Social Security Act prohibits states from counting toward their MOE requirement expenditures made as a condition of receiving federal funds, unless allowed under Title IV, part A of the Social Security Act.

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, the 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 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., 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). Additional information on application of the "new spending test" for new or additional expenditures may be found in TANF-ACF-PI-2016-04 (<https://www.acf.hhs.gov/ofa/resource/tanf-acf-pi-2016-04>).

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 (Assistance Listing 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 Assistance Listing 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 <https://www.acf.hhs.gov/ofa/programs/tanf/policy>).

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(1), "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)).
- e. *Prohibition on Use of Federal TANF and State MOE funds for Juvenile Justice Services* – See IV, "Other Information" for area of risk of non-compliance for juvenile justice services.

## 2.2 Level of Effort – Supplement Not Supplant

### 1. *Pandemic Emergency Assistance Fund*

States, tribes and territories (grantees) may use funds to provide certain non-recurrent, short term (NRST) benefits (described below). Additionally, they may use funds for administrative costs (up to a 15-percent cap for states and territories and up to the negotiated cap for tribes). All grantees must use funds to supplement, and not supplant, other federal, state, tribal, territorial, or local funds.

## 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, and contingency 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 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).

d. *Pandemic Emergency Assistance Fund*

Grantees may use funds for administrative costs, within limitations. For states (including the District of Columbia) and territories, the law provides a 15 percent cap on administrative expenditures. For tribes, the same cap will apply to administrative costs in the PEAFF that a tribe negotiated for administrative costs in its approved tribal TANF plan.

**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)).**

## L. Reporting

### 1. Financial Reporting

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable to states (cash status only)
- d. *ACF-196T, Tribal TANF Financial Report Form (OMB No. 0970-0345)* – Applicable to tribes; Not Applicable to states. This form is not applicable to tribes 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.
- e. *ACF-196R, TANF Financial Report (OMB No. 0970-0446)* – States are required to submit this report quarterly, beginning in FY 2015, in lieu of the 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 regular TANF grant funds and Contingency Fund expenditures. See TANF-ACF-PI-2014-02, available at <http://www.acf.hhs.gov/programs/ofa/resource/tanf-acf-pi-2014-02>, for more information.

- f. 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)).

See IV, “Other Information,” for additional guidance on territories’ spending levels.

## 2. Performance Reporting

- a. ACF-199, *TANF Data Report (OMB No. 0970-0338)* and ACF-343, *Tribal TANF Data Report (OMB No. 0970-0215)* (65 FR 8545, Appendix A, February 18, 2000)

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.

### *State 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)).

*Key Line Items* – The following ACF-199 (TANF Data Report) 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:

1. 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*
  
2. 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*
  
3. 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*
  
4. 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 when one- and two-parent families are combined). HHS may penalize the tribe by a maximum of 5 percent of the TFAG for the first violation of this provision. The penalty increases by an additional 2 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).

*Key Line Items* – The following ACF-343 (Tribal TANF Data Report) line items contain critical information used in making a determination of a tribe’s Work Participation Rates.



1. 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. 0970-0338)* – This report is submitted quarterly beginning with the first quarter of FFY 2000.

*Key Line Items* – The following line items contain critical information:

1. Section One – Family-Level Data
  - Item 9      *Type of Family for Work Participation*
  - Item 15     *Receives Subsidized Child Care*
2. 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*
3. 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*
4. 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 electronically through the On-Line Data Collection (OLDC) System.

*Key Line Items* – The following 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 24, columns (B) plus (C) of the 4th quarter ACF-196R *TANF Financial Report*; or line 17, column (B) of the ACF-196-TR, *Territorial Financial Report*.

- b. Each grantee must submit form ACF-196P (OMB No. 0970-0510) to report expenditures for the Pandemic Emergency Assistance Fund within 90 days of the end of each federal fiscal year.

*Key Line Items* – The following line items contain critical information:

1. *Administrative Costs (listed as “Administration” on the form)*
2. *Non-Recurrent, Short-Term Benefits*

#### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

#### **N. Special Tests and Provisions**

Special Tests and Provisions one through five apply to a state’s TANF program, not to a Tribal TANF program.

##### **1. Child Support Non-Cooperation**

**Compliance Requirements** 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 5 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 Objectives** Determine whether, after notification by the state Title 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 Title 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 (SSA) for all applicants at the first opportunity (see *Federal Tax Return Information* below).
- d. Information from the US Citizenship and Immigration Services 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 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 2 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 Objectives** 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, SSA (excluding federal tax return information, as discussed in the compliance requirements), the US Citizenship and Immigration Services, 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 Requirements** 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 1 percent and not more than 5 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 Objectives** 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. Lack of Child Care for Single Custodial Parent of Child under Age Six**

**Compliance Requirements** If an individual is a single custodial parent caring for a child under the age of 6, 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 5 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 Objectives** 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 6.

#### **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 6.
- 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 Requirements** 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 (a) determine whether its work activities may count for participation rate purposes; (b) determine how to count and verify reported hours of work; (c) identify who is a work-eligible individual; and (d) 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 1 percent and not more than 5 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 Objectives** 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.

#### IV. OTHER INFORMATION

##### 1. *Transfers out of TANF*

As described in III.A.1.a (2), "Activities Allowed or Unallowed," states (not tribes) may transfer a limited amount of federal TANF funds into the Social Services Block Grant (Title XX) (Assistance Listing 93.667) and the Child Care and Development Block Grant (Assistance Listing 93.575). These transfers are reflected in lines 2 and 3 of both the quarterly *TANF Financial Report* ACF-196R, 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.

##### 2. *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*."

Tribes may choose to 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 2 CFR Part 200, Subpart F. However, the state-donated MOE is not considered federal awards expended by the tribe.

##### 3. *Tribal TANF Grantees under a Pub. L. No. 102-477 Demonstration Project (477)*

Audits of Indian tribal governments with tribal TANF in their approved 477 plan must follow the guidance in the 477 Cluster found in the Department of the Interior's section of Part IV of this Supplement.

##### 4. *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 (Assistance Listing 93.658); Adoption Assistance (Assistance Listing 93.659) and Independent Living (Assistance Listing 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)).

5. *Prohibition on Use of Federal TANF and State MOE funds for Juvenile Justice Services*

ACF has identified juvenile justice services expenditures as an area of risk for non-compliance and issued a Program Instruction (TANF-ACF-PI-2015-02) (<http://www.acf.hhs.gov/ofa/resource/tanf-acf-pi-2015-02>) to remind TANF jurisdictions that federal TANF and state MOE funds must not be used to provide juvenile justice services, except where authorized under prior law, as explained in the program instruction.



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 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

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 OCSE.

The state program is an open-ended entitlement program that allows the state to be funded at the federal financial participation (FFP) rate of 66 percent for eligible program costs. Under the tribal program, tribes receive funding for a specified percentage of program costs (during the first three-year period, federal grant funds equal to 90 percent, and for all periods following the initial three-year period 80 percent).

State child support agencies are required to conduct self-reviews of their programs (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). 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 (Assistance Listing 93.558), the Medicaid program (Assistance Listing 93.778), and the Foster Care (Title IV-E) program (Assistance Listing 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.

Both the state and tribal programs are subject to the administrative requirements of 45 CFR Part 92 or 2 CFR Part 200, as implemented by HHS at 45 CFR Part 75, depending on when the award was made. Both state and tribal programs also are subject to the OMB cost principles under 2 CFR Part 225 – Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87) or 45 CFR Part 75, Subpart E, depending on when the award was made. However, with the exception of 45 CFR section 75.202, the guidance in Subpart C of 45 CFR Part 75 does not apply to federal awards to carry out Title IV-D of the Social Security Act (45 CFR section 75.101(e)). The state program also is subject to 45 CFR Part 95.

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 this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	Y	N	N	N	Y	N

**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 agreements with appropriate courts and law enforcement officials in accordance with the requirements of 45 CFR section 302.34, and associated administration and short-term training of staff (see paragraph A.2.b, below, for costs of agreements that are unallowable under state programs) (45 CFR section 304.21(a)(state programs); 45 CFR sections 309.145(a)(3)(iii) and 309.145(m) (tribal programs)).

## b. State Programs

- (1) 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).
- (2) Federal financial participation (FFP) is available for services and activities that are necessary and reasonable to carry out the Title IV-D state plan. This change reflects 45 CFR Part 75, Subpart E Cost Principles, which all state child support agencies must use in determining allowable costs for work performed under federal grants (45 CFR section 304.20(a)(1)).

- (3) FFP is available for bus fare and other minor transportation expenses to allow participation of parents in child support proceedings and related activities such as genetic testing appointments (45 CFR section 304.20(b)(3)(v)).
- (4) FFP is available to increase pro se access to adjudicative and alternative dispute resolution processes in IV-D cases related to the provision of child support services (45 CFR section 304.20(b)(3)(vi)).
- (5) FFP for educational and outreach activities intended to inform the public, parent and family members, and young people who are not yet parents about the Child Support Enforcement program, responsible parenting and co-parenting, family budgeting, and other financial consequences of raising children when the parents are not married to each other (45 CFR section 304.20(b)(12)).

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 Title 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 Title 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 nonfederal third party sources, including other tribes, tribal organizations, state agencies, and private organizations, that are directly related to operating a Title 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 Title IV-D actions.
- (6) Costs of guardians ad litem in Title 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 in accordance with Section 1912(a)(2) of the Act (42 USC 1396k).
- (5) The following costs associated with agreements 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 agreements that do not meet the requirements of 45 CFR section 303.107 (45 CFR section 304.21(b)).
- (6) FFP is not available for purchased support enforcement services which are not secured in accordance with 304.22 (45 CFR section 304.23(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.

*Tribal Programs*

The federal share of program costs is 90 percent for the first three 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 Performance**

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)).

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 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 and replacement designees with funds to assist refugees in attaining economic self-sufficiency as soon as possible after their initial placement in United States communities. (The term “refugee” is used to mean an individual who meets the immigration status or category requirements under 45 CFR 400.43.)

#### II. PROGRAM PROCEDURES

##### Overview

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 and Medical Assistance (CMA) and (2) Refugee Support Services (RSS).

##### A. Source of Governing Requirements

The Refugee and Entrant Assistance program is governed under the following authorities:

- The Refugee Act of 1980 (Pub. L. No. 96-212) (8 USC 1522), as amended by the Refugee Education Assistance Act of 1980 (Pub. L. No. 96-422), Refugee Assistance Amendments of 1982 (Pub. L. No. 97-363), and 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 Vietnam 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 Vietnam 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) (22 USC 7101), as amended by the Trafficking Victims Protection Reauthorization Act of 2003 (Pub. L. No. 108-193) and 2005 (Pub. L. No. 109-164), and Section 107(b)(1)(F) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Pub. L. No. 110-457), insofar as they

state that a victim of a severe form of trafficking in persons, potential child victims, and certain other specified family members shall be eligible for federally funded or administered benefits and services to the same extent as a refugee.

- Section 525, Title V, Division G, Pub. L. No. 110-161 in relation to Iraqi and Afghan aliens granted special immigrant status under Section 101(a)(27) of the Immigration and Nationality Act and their eligibility for resettlement assistance and other benefits available to refugees admitted under Section 207 of the Immigration and Nationality Act; and Sections 1244, Pub. L. No. 110-181 Section 602(b), Title VI, Division F, Pub. L. No. 111-8, regarding the special immigrant status of certain Iraqis and certain Afghans, respectively, as amended by Section 8120, Title VIII, Pub. L. No. 111-118.

Program regulations are at 45 CFR Part 400.

In addition to the HHS implementation of the A-102 Common Rule and the cost principles in 2 CFR Part 225 (Office of Management and Budget Circular A-87) and 2 CFR Part 200 at 45 CFR Part 75, this program also is subject to 45 CFR Part 95, subparts E (Cost Allocation Plans) and F (Automatic Data Processing Equipment and Services Conditions for Federal Financial Participation (FFP)).

Additional information is available on the ORR website at <https://www.acf.hhs.gov/orr>.

## **B. Subprograms/Program Elements**

### *1. Cash and Medical Assistance Grants*

CMA grants are made to states following submission of annual program estimates. CMA grants have four major cost components:

- Refugee Cash Assistance (RCA)
- Refugee Medical Assistance (RMA), including Refugee Medical Screening (RMS)
- Unaccompanied Refugee Minor (URM) programming
- Program Administration (overall state Planning and Coordination)

A state may administer the RCA program as a publicly administered program or may form a public/private partnership (PPP) by engaging nonprofit organizations to deliver assistance. A publicly administered RCA program must follow the TANF rules on financial eligibility and payment levels unless the state receives an approved waiver under 45 CFR 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 the content of its PPP plan upon ORR approval. Benefits and services to RDs are not based on a publicly administered RCA model or state's TANF program, but instead are governed by ORR's PPP requirements.

a. *Refugee Cash Assistance Eligibility*

(1) *Eligibility Criteria*

Eligibility for RCA is limited to refugees who meet all of the following criteria:

- (a) They have resided in the United States less than the RCA eligibility period (currently eight months) determined by the ORR director in accordance with 45 CFR 400.211 (45 CFR 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 400.51 and 400.53).
- (c) They meet the financial eligibility requirements of the applicable type of RCA program: AFDC-type (45 CFR 400.45), public/private (45 CFR 400.59), or publicly administered (45 CFR 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 departments of State or Justice (45 CFR 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, as defined by the director (45 CFR 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 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 400.77 and 400.82(a)).

- (2) Benefit payments in a state-administered AFDC-type RCA program must be based on the AFDC rate (45 CFR 400.45(f)(2)). Benefit payments in a state-administered TANF-type RCA program must be based on the TANF rate (45 CFR 400.66(a)). Benefit payments in a public/private RCA program may neither exceed the rate described in 45 CFR 400.60(a), nor be less than the state's TANF payment rate (45 CFR 400.60(b)).

b. *Refugee Medical Assistance Eligibility*

(1) *Eligibility Criteria*

Eligibility for RMA is limited to refugees who meet one of the following sets of conditions:

- (a) They are not eligible for Medicaid or Children's Health Insurance Program (CHIP) but currently receive RCA (45 CFR 400.100(d)); or
- (b) They meet all of the following criteria:
  - (i) They have met the same time eligibility requirement as for RCA (see paragraph E.1.b.(1)(a), above).
  - (ii) They are determined ineligible for Medicaid or CHIP (45 CFR 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 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 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 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 400.79 or a plan for an unaccompanied minor in accordance with 45 CFR 400.112.
  - (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 United States less than the time eligibility period will become eligible for RMA for the remainder of the time eligibility period (45 CFR 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 400.100(c)).
  - (3) 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 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 400.106). A state may provide medical screening to a refugee provided the screening is in accordance with requirements prescribed by ORR and with written approval from ORR (45 CFR 400.107).
- c. *Unaccompanied Refugee Minor Assistance Eligibility*
  - (1) A person must meet the definition of an unaccompanied minor (45 CFR 400.111).
  - (2) A URM remains eligible for assistance until he/she (a) is reunited with a parent; (b) is united with a nonparental adult to whom legal

custody or guardianship has been granted; or (c) has reached the age of 18, or older if the state's Title IV-B plan so prescribes (45 CFR 400.113).

2. *Refugee Support Services Grants*

Beginning in FY 2018, Refugee Social Services funding was renamed to RSS. RSS grants are made to states following submission of an Annual Service Plan. RSS grants are allocated to states by formula according to each state's percentage of the national refugee and entrant population for up to 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. Under RSS, four set-aside grants are issued, Refugee School Impact (RSI) and Services to Older Refugees (SOR), Youth Mentoring (YM), and Refugee Health Promotion (RHP) to provide services to specific refugee populations. RSI targeted population is refugee school-age children 5–18 years of age. SOR targeted population is 60 and older. YM targeted population is individuals between the ages of 15–24. RHP targeted population is refugees in need of health and well-being support.

a. *Refugee Support Services Eligibility*

- (1) In providing support services, the state must serve refugees in the following order of priority listed under 45 CFR 400.147:
  - (a) All refugees who have resided in the United States 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 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 United States for more than 60 months (45 CFR 400.152(b)).

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	N	Y	N	N	Y	Y	N

**A. Activities Allowed or Unallowed**

CMA program funds are to be used to pay for:

1. *Refugee Cash Assistance (RCA)* – monthly cash benefits for refugees who do not meet the eligibility requirements of the TANF (Assistance Listing 93.558) or Supplemental Security Income (SSI) Assistance Listing 96.006) programs (45 CFR 400.53) (see III.E.1, “Eligibility – Eligibility for Individuals”).
2. *Refugee Medical Assistance (RMA)* – medical assistance to refugees who do not meet all eligibility requirements for Medicaid (Assistance Listing 93.778) and CHIP (Assistance Listing 93.767) and medical screening to RMA-eligible refugees (45 CFR 400.100) (see III.E.1, “Eligibility – Eligibility for Individuals”).
3. *Refugee Medical Screening* – A state may charge refugee medical screening costs to RMA if part of the state Plan approved by the ORR director (45 CFR 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 400.94 or 400.100 and may be charged to

RMA. 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 under 45 CFR 400.94 and 400.100 (45 CFR 400.107).

4. *Unaccompanied Refugee Minor (URM) 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) (45 CFR 400.113) (see III.E.1, "Eligibility – Eligibility for Individuals").
5. *Program Administration* – A state may claim against its CMA grant the reasonable, necessary, and allocable administrative costs:
  - a. Associated with providing RCA, RMA, including medical screening, and assistance and services to unaccompanied refugee minors (45 CFR 400.207).
  - b. Incurred by the local resettlement agencies for providing cash assistance under the public/private RCA program (45 CFR 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 CFR 400.13(c)).

RSS program funds are to be used to pay for:

- Employability Services
  - Other Services
  - Refugee School Impact (RSI) Set-aside Services
  - Services to Older Refugees (SOR) Set-aside Services
  - Youth Mentoring (YM) Set-aside Services
  - Refugee Health Promotion (RHP) Set-aside Services
1. *Employability Services* – A state may provide the following employability services through the RSS grant:
    - a. Employment services, including development of a family self-sufficiency plan and individual employment plan, job development, job search, and job placement (45 CFR 400.154(a));
    - b. Aptitude and skills testing, employability assessment (45 CFR 400.154(b));

- c. On-the-job training at the employment site (45 CFR 400.154(c));
  - d. English language training with emphasis on job-related language skills (45 CFR 400.154(d));
  - e. Vocational training when part of an employability plan (45 CFR 400.154(e));
  - f. Skills recertification (45 CFR 400.154(f));
  - g. Child care when necessary for job retention/acceptance or participation in an employability service (45 CFR 400.154(g));
  - h. Transportation when necessary for job retention/acceptance or participation in an employability service (45 CFR 400.154(h));
  - i. Translation and interpreter services when necessary for job retention/acceptance or participation in an employability service (45 CFR 400.154(i));
  - j. Case management services directed toward a refugee's attainment of employment as soon as possible after arrival in the United States (45 CFR 400.154(j)), and
  - k. Assistance in obtaining employment authorization documents (45 CFR 400.154(k)).
2. *Other Services* – A state may offer other support services, which may include:
- a. Information and referral services (45 CFR 400.155(a));
  - b. Outreach services designed to familiarize refugees with available services and facilitate access to them (45 CFR 400.155(b));
  - c. Social adjustment services including emergency services, health-related services, and home management services (45 CFR 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 400.155(d) through 155(g));
  - e. Any other service approved by the ORR director that is aimed at helping the refugee attain economic self-sufficiency, family stability, or community integration (45 CFR 400.155(h)); and
  - f. Citizenship and naturalization preparation services (45 CFR 400.155(i)).

3. *Refugee School Impact Services* – A state may provide School Impact Services, which may include, but are not limited to:
  - a. Specialized services and support for eligible youth, which may include English as a Second Language classes, tutoring, newcomer, or transitional programs, after school and summer programs, mentoring, behavioral health supports, and programming that supports integration.
  - b. Support for families learning to navigate the US education system, which may include school-specific orientation for both families and students, navigators or cultural brokers, and language access.
  - c. Capacity development for school systems, including education and training for staff around the unique and varied needs of refugees and access to necessary resources. Examples of this allowance may include specialized trainings for school staff, ensuring language access by offering translated documentation, interpretation, and specialized staff dedicated to working with the population.
  
4. *Services to Older Refugees* – A state may provide Services to Older Refugees, which may include, but are not limited to :
  - a. Helping older ORR-eligible populations access mainstream aging services in the community such as information about supportive services, nutrition services, meal delivery, elder abuse, senior community centers, and intergenerational activities.
  - b. Providing older ORR-eligible populations with appropriate services that are not available in the communities, such as interpretation and translation services.
  - c. Creating opportunities for older ORR-eligible populations to live independently as long as possible, including transportation, home care, adult day care, and respite care.
  - d. Developing opportunities for older ORR-eligible populations to connect with their communities to avoid isolation, such as mental health support, community navigators, and opportunities for engagement in social and cultural activities.
  - e. Assisting older ORR-eligible populations on the path to citizenship, especially those at risk of losing Supplemental Security Income or other federal benefits, to naturalize. Services may include civics instruction, counseling, and application assistance.



5. *Youth Mentoring* – A state may provide YM activities, which may include:
  - a. Development of social and life skills.
  - b. Helping youth to learn American culture while maintaining and celebrating the youth’s cultural heritage.
  - c. Providing opportunities for social engagement with peers.
  - d. Providing information about opportunities to participate in civic and community services activities.
  - e. Supporting youth in learning English, math, and other skills.
  - f. Providing academic support, such as helping with homework, and assisting with transitions in school such as the transition between middle school and high school or high school to post-secondary education.
  - g. Helping youth with career development including skill building, resume drafting, worker’s rights, and training opportunities.
  - h. Supporting youth in developing health and financial literacy.
6. *Refugee Health Promotion* – A state may provide Refugee Health Promotion activities, which may include:
  - a. Health education classes and targeted health outreach to individuals.
  - b. Medical and mental health navigation and support.
  - c. Adjustment groups, skill-building networks, or peer support meetings.

**B. Allowable Costs/Cost 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 (see III.A.5, “Activities Allowed or Unallowed”), 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 45 CFR 400.2) may be allocated to the state’s CMA grant; and administrative costs of managing

the services component of the program must be charged to the RSS grant (45 CFR 400.13).

States must track activities, services, and costs for set-aside programs (RSI, SOR, YM, and RHP) separately from other RSS activities, services, and costs.

## **E. Eligibility**

### **1. CMA and RSS General Eligibility requirements for individuals**

- a. Clients must have either refugee, asylee, Cuban/Haitian entrant, or Amerasian documented status (45 CFR 400.43), be Iraqis or Afghans with Special Immigrant Visas, or, if trafficking victims, must have received a certification or eligibility letter from ACF's Office on Trafficking in Persons (OTIP). Those meeting this status will be collectively referred to as "refugees."
- b. A client's eligibility period generally begins on the date he/she arrived in the United States (45 CFR 400.203(a) and 400.204(a)). The eligibility period for asylees begins from the date the person receives a final grant of asylum. The eligibility for a Cuban or Haitian entrant begins from the date the individual was paroled as an entrant. The eligibility period for victims of trafficking begins from the date the person received a certification or eligibility letter from ACF/OTIP.

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

Not Applicable

### **3. Eligibility for Subrecipients**

Not Applicable

## **H. Period of Performance**

### **1. CMA**

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 URM 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 URM services, must be expended by the end of the FFY following the FFY in which the grant was awarded (45 CFR 400.210(a)).

## 2. *Refugee Support Services*

A state must obligate its Refugee Support 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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271 – Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable (RSS)
- d. *ORR-2, CMA Quarterly Report on Expenditures and Obligations* – Applicable (CMA)

### 2. **Performance Reporting**

ORR-6, *Performance Report (OMB No. 0970-0036)* – A state is required to submit the ORR-6, Performance Report, on a semi-annual and annual reporting basis. The report contains a narrative and statistical information on program performance for cash assistance, medical assistance, medical screening, the provision of services to unaccompanied minors, and support services. The current ORR-6 was approved by OMB and all descriptions, schedules, and reporting timelines described here are according to the approved ORR-6.

Because the goal of the US refugee resettlement program is self-sufficiency through employment, the ORR-6 captures performance outcomes for various economic self-sufficiency indicators. In addition to the ORR-6, states submit an Annual Outcomes Goal Plan (AOGP) which documents the goals states aim to attain each year while also on the outcomes from the previous year. Critical outcome reporting includes: the number of employable refugees who enter employment, the number of refugees who terminate from federal cash assistance programs, the number who reduce their level of federal cash assistance, the number who enter full-time employment with health benefits, hourly wage, and the number of refugees who retained employment for at least 90 days. Schedules B and C of the ORR-6 allow states to report progress on meeting these goals on a semi-annual basis, and the AOGP allows states to report on the previous year's goal attainment.

Other factors that are critical to assessing the performance of grantees are the timeliness in which they submit reports to ORR, as well as the accuracy of the data reported. Assessment of the state's internal processes for the collection and

verification of data they receive from subgrantees is a critical component of this analysis.

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**IV. OTHER INFORMATION**

Note: In instances where a state has elected to withdraw from the program, ORR has the authority to select a nonprofit agency to administer the program as a Replacement Designee (RD) 45 CFR 400.301(c). The term “state” will be used throughout this document to refer to both state governments and replacement designees.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 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 latter three components are only administered when funding for those programs is available and allocated to them.

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

##### A. LIHEAP Block Grants

The US Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Community Services, administers LIHEAP 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 income-eligible households in the tribal service area as a percentage of the income-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.

Under the block grant philosophy, each grantee is responsible for designing and implementing its own LIHEAP program, within very broad federal guidelines. Grantees must administer their LIHEAP programs according to their approved plan and any amendments and in conformance with their own implementing rules and policies. Grantees must establish appropriate systems and procedures to prevent, detect and correct waste, fraud and abuse, by clients, vendors, and administering agencies.

In order to receive funding, each grantee is required to submit annually a LIHEAP Plan which is an application that describes how the grantee's LIHEAP will be administered, including a set of program integrity questions in which the grantee must describe the systems in place to detect and deter fraud, waste, and abuse in its LIHEAP program.

State grantees are required to hold a public hearing each year on the proposed plan for the upcoming 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.

### **B. 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 LIHEAP grantees 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.

### **C. Leveraging Incentive Awards**

Of the funds appropriated for LIHEAP each year, HHS is allowed to earmark a portion to reward those LIHEAP grantees that have acquired nonfederal 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 with nonfederal resources. Grant awards in the current federal fiscal year are based on leveraging activities carried out during the previous federal fiscal year. Leveraging grants are subject to special terms and conditions, which are specified in the grant awards. In order to receive the leveraging grant, current LIHEAP grantees must submit a Leveraging Report detailing leveraged resources, when ACF solicits such Leveraging Report. Grantees must keep sufficient documentation, or have access to it, to support the calculations in the report.

### **D. Residential Energy Assistance Challenge Program**

Of the funds appropriated for leveraging incentive awards, HHS may set aside a portion for the REACH program. The REACH program makes competitive grants to LIHEAP grantees to help LIHEAP-eligible households reduce their energy vulnerability. The purposes of REACH are to (1) minimize health and safety risks that result from high energy burdens on low-income households, (2) prevent homelessness as a result of inability to pay energy bills, (3) increase efficiency of energy usage by low-income families, and (4) target energy assistance to individuals who are most in need. REACH grants are optional to current LIHEAP grantees that submit a separate REACH Plan (when solicited by ACF). State and territory grantees that are awarded REACH grants must administer their REACH grants through community-based organizations. REACH grants are subject to special terms and conditions, which are specified in the grant awards ([42 USC section 8626 b](#)).

## Source of Governing Requirements

LIHEAP 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. Requirements specific to LIHEAP are in 45 CFR sections 96.80 through 96.89. LIHEAP is also subject to 45 CFR Part 75, which is the HHS implementation of 2 CFR Part 200, commonly known as the Office of Management and Budget's Uniform Administrative Guidance. According to 45 CFR section 75.101(d), the requirements in Subpart C, Subpart D, and Subpart E do not apply to LIHEAP except for section 75.202 of Subpart C and sections 75.351 through 75.353 of Subpart D. In addition, grantees are to administer their LIHEAP according to the statutorily required Plans that they submitted to HHS. Grantees are permitted to submit revised LIHEAP Plans within a reasonable amount of time after making significant changes to their policies and/or procedures referenced in their Plans.

As discussed in Appendix I to the Supplement, "Federal Programs Excluded from the A-102 Common Rule and Portions of 2 CFR Part 200," grantees are to use the fiscal policies (including obligation and expenditure of funds) that apply to their own funds in administering LIHEAP. Procedures must be adequate to ensure the proper disbursement 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 web page (<https://www.acf.hhs.gov/ocs/low-income-home-energy-assistance-program-liheap>) provides general information about this program.

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
N	N	Y	Y	N	Y	Y	N	N	Y	Y	N

**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 (42 USC 8624(b)(2)). Grantees must give priority to those households with the highest home energy costs or needs in relation to income and household size (42 USC 8624(b)(5)).

**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 nonprofit 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 terms and conditions described in the award.

**a. *Planning and Administrative Costs***

- (1) No more than 10 percent of a state's LIHEAP funds 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. This cap may not be exceeded by supplementing with other federal funds (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) Although as indicated in III.A.5, leveraging incentive award funds may not be used for planning and administrative costs, they may be added to the base on which the maximum amount allowed for planning and administration is calculated according to the federal fiscal year in which the leveraging funds are obligated (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 beginning April 1st, 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 5 percent of the 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. 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 2 percent or \$100 on such activities (45 CFR section 96.87(c)(1)).

## **H. Period of Performance**

- 1. At least 90 percent of the LIHEAP block grant funds payable to the grantee must be obligated in the federal fiscal year in which they are awarded. 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 federal 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).
- 2. Leveraging incentive award funds and REACH funds must be obligated in the federal fiscal year in which they are awarded or the following federal 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)).
- 3. 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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

- c. *SF-425, Federal Financial Report* – Applicable

## 2. Performance Reporting

*LIHEAP Performance Data Form (OMB No 0970-0449)* – State grantees must submit this report by January 31st regarding the prior federal fiscal year. The first section of the report is the Grantee Survey that covers sources and allocation of funding. The rest of the report is regarding performance metrics, mostly related to home energy burden targeting and reduction, as well as the continuity of home energy service.

## 3. Special Reporting

- a. *LIHEAP Carryover and Reallotment Report (OMB No. 0970-0106)* – Grantees must submit this report no later than 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 and any type of LIHEAP assistance (heating, cooling, crisis, and weatherization); and (2) the number of households served that contained young children, elderly, or persons with disabilities, or any vulnerable household for each component. Territories with annual allotments of less than \$200,000 and all Indian tribes are required to report only on the number of households served for each program component (42 USC 8629; 45 CFR section 96.82).

*Key Line Items* – The following line items contain critical information:

1. *Section 1* – LIHEAP Assisted Households
2. *Section 2* – LIHEAP Applicant Households

## 4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

#### **IV. OTHER INFORMATION**

As described in Part 4, Social Services Block Grant (SSBG) program (Assistance Listing 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

### ASSISTANCE LISTING 93.569 COMMUNITY SERVICES BLOCK GRANT

#### I. PROGRAM OBJECTIVES

The objective of the Community Services Block Grant (CSBG) is to provide assistance to states and local communities, working through a network of community action agencies and other neighborhood-based organizations, for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient (particularly families who are attempting to transition off a state program carried out under part A of Title IV of the Social Security Act) and (1) to provide services and activities having a measurable and potential major impact on causes of poverty in the community or those areas of the community where poverty is a particularly acute problem; (2) to provide activities designed to assist low-income participants, including the elderly poor, to: (a) secure and retain meaningful employment; (b) attain an adequate education; (c) make better use of available income; (d) obtain and maintain adequate housing and a suitable living environment; (e) obtain emergency assistance through loans or grants to meet immediate and urgent individual and family needs, including health services, nutritious food, housing, and employment-related assistance; (f) remove obstacles and solve problems which block the achievement of self-sufficiency; (g) achieve greater participation in the affairs of the community; and (h) make more effective use of other related programs; (3) to provide on an emergency basis for the provision of such supplies and services, nutritious foodstuffs, and related services, as may be necessary to counteract conditions of starvation and malnutrition among the poor; and (4) to coordinate and establish linkages between governmental and other social services programs to assure the effective delivery of such services to low-income individuals.

In addition to the CSBG block grants to states, the Office of Community Services funds additional discretionary projects for technical assistance include the Center of Excellence (COE) for Human Capacity and Community Transformation (HCCT), eleven Regional Performance and Innovation Consortia (RPIC), a Learning Communities Resource Center, and a Legal Training and Technical Assistance Center.

#### II. PROGRAM PROCEDURES

CSBG 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 nonprofit organizations (and, in special circumstances, public organizations) that plan, develop, implement, and evaluate local programs. These instructions are provided for audits of states as defined by the CSBG Act at 42 USC 9902(5), for audits of eligible entities as defined by the CSBG Act at 42 USC 9902(1) and audits of other subrecipients expending CSBG funds. Eligible entities are those entities that were in place the day before October 27, 1998, or as designated by the process codified at 42 USC

9909. For all practical purposes, eligible entities are those entities identified in the state CSBG plan that are designated to receive a portion of at least 90 percent of the CSBG funds provided to a state. Auditors may obtain the state plan from the state or review the contract/grant provided by the state to the entity to determine if they are an eligible entity or other subrecipient. For tribes and tribal organizations that receive CSBG as part of the Pub. L. No. 102-477 demonstration projects, refer to the 477 cluster at 4-15.025 for testing guidance. For tribes and tribal organizations that receive CSBG funding directly from the federal government, the auditor should use the testing guidance for the states.

**Source of Governing Requirements**

CSBG was reauthorized under the Community Opportunities, Accountability, and Training and Education Act of 1998 (Pub. L. No. 105-285) and is codified at 42 USC 9901 et seq. 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 75 (the HHS implementation of 2 CFR Part 200). 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 this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	N	Y	N	N	N	Y	Y

**A. Activities Allowed or Unallowed**1. *Activities Allowed*

- a. *States*: States are required to distribute at least 90 percent of CSBG funds to eligible entities, see Special Tests and Provisions for testing of the amounts distributed to these entities. States may use retained funds to achieve CSBG 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; and
  - (8) Administrative functions (42 USC 9901 and 9907(b)).
- b. *Eligible Entities and Other Subrecipients*: Eligible entities and other subrecipients may use CSBG funds for any programs, services, or other activities related to achieving the broad goals of CSBG, 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; and
      - (6) Plan, coordinate, and develop linkages among public (federal, state, and local), private, and nonprofit resources, including religious organizations, to improve their combined effectiveness in ameliorating poverty (42 USC 9901, 42 USC 9907(1)).
    - c. Supplemental funds appropriated by the Coronavirus Aid, Relief, and Emergency Services (CARES) Act (Pub. L. No. 116-136) may be used for allowable CSBG purposes to prevent, prepare for, and respond to the coronavirus. In responding to the coronavirus, CSBG grantees may consider the economic impact of the coronavirus.
  2. *Activities Unallowed: Applicable to States and Eligible Entities/Other Subrecipients*
    - 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 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**

1. *States:* CSBG is exempt from the provisions of OMB cost principles at the state level. As a block grant, state cost principles requirements apply to CSBG at the state level. However, states must apply OMB administrative cost principles (45 CFR Part 75, Subpart E) to subgrantees receiving CSBG funds (42 USC 9916(a)(1)(B)), 45 CFR 75.101(d)(1)).
2. *Eligible Entities and Other Subrecipients:* Eligible entities and other subrecipients of CSBG funds are subject to the cost principles in the Uniform Administrative Requirements in 45 CFR Part 75, Subpart E.



## **E. Eligibility**

### **1. Eligibility for Individuals or Households**

- a. *States:* 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 website (<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)).

Update: The CARES Act allows a state to adopt a revised poverty guideline but it may not exceed 200 percent of the HHS-determined poverty guidelines. This permission is in effect for fiscal years 2020 and 2021.

- b. *Eligible Entities/Other Subrecipients:* The official poverty guidelines 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 website (<http://aspe.hhs.gov/poverty/>). The CSBG Act, at 42 USC 9902(2), grants the state the authority to adopt a revised poverty threshold but it may not exceed 125 percent of the HHS-determined poverty guidelines. Audit procedures should be designed to test whether recipients of CSBG services meet the federal poverty guidelines, or a more restrictive poverty threshold established by a state.

Update: The CARES Act allows a state to adopt a revised poverty guideline but it may not exceed 200 percent of the HHS-determined poverty guidelines. This permission is in effect for fiscal years 2020 and 2021.

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

Not Applicable

### **3. Eligibility for Subrecipients**

Not applicable to eligible entities and other subrecipients.

## **H. Period of Performance**

1. *States:* 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. *Eligible Entities:* 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 9 section 9907(a)(2)).

- a. Note: The CSBG Act, at 42 USC 9907(a)(3), requires states to recapture and redistribute unused CSBG funds. However, this provision has been overridden by annual appropriations law by requiring states to carryforward unused funds to be used by the specific entity. Auditors should determine the legal requirements for the period under review.

## **M. Subrecipient Monitoring**

### *1. States*

States must conduct full on-site reviews of each eligible entity 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)). Audit tests should be designed to test whether the state:

- (1) Has performed a full onsite monitoring of each eligible entity within the past three years;
- (2) Has completed a full onsite monitoring of a newly designated entity immediately after the completion of the first year in which the entity received CSBG funds;
- (3) Has conducted appropriate follow up reviews if necessary; and
- (4) Has conducted other reviews as appropriate, including reviews of entities with programs that have had other federal, state, or local grants terminated for cause.
- (5) 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) receive an improvement plan from the subgrantee within 60 days; and (4) not later than 30 days after receiving the improvement plan either approve it or specify the reasons why it cannot be approved (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)).

## 2. *Eligible Entities/Other Subrecipients*

If eligible entities or other subrecipients of CSBG use a subaward to achieve the objectives of CSBG, the eligible entities and other subrecipients are required to comply with the provisions of 45 CFR 75.351 through 75.353 (45 CFR 75.101(d)).

**Audit Objectives** To determine if the eligible entity or other subrecipient complied with the subrecipient monitoring and management requirements.

### **Suggested Audit Procedures**

- a. Select a sample of CSBG sub-awards or contracts during the period.
- b. Examine the procedures performed to determine if the subrecipient/contractor determination was made in accordance with 45 CFR 75.351.
- c. Examine the contract or sub-award to determine if the eligible entity or other subrecipient communicated the required information as detailed in 45 CFR 75.352(a).
- d. For the sub-awards and contracts that were determined to be subrecipients, review the procedures for compliance of 45 CFR 75.352(b) through (h) to determine that there is reasonable assurance that the CSBG funds were adequately protected, and services were provided to the community as expected.

## N. **Special Tests and Provisions**

### 1. **States: 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 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.

### **Suggested Audit Procedures**

- a. Determine the state's procedures for issuance of subgrant awards or contracts, including any standards for administrative lead time.
- 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.

### **2. Tri-Partite Board Compliance – Only Applicable to Eligible Entities**

The CSBG Act at 42 USC 9910(a), requires nonprofit organizations administer CSBG through a board comprising:

- One-third (1/3) of the members be elected representatives in the community or their designee (the elected official must be holding office on the date of selection). There is a provision that allows for appointed government officials, or their designee, to be counted in meeting this requirement.
- Not fewer than one-third (1/3) of the board members are chosen in a democratic selection process adequate to assure that these members of the board are representative of the low-income individuals and families served. Additionally, each low-income representative must reside in the neighborhood served.
- The remaining board members are officials and members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

The CSBG Act at 42 USC 9910(b), requires that public organizations administer CSBG through a Tri-Partite board. This board shall have members selected by the organization and shall be composed so as to assure that no less than one-third (1/3) of the members are chosen in accordance with democratic selection procedures adequate to assure that these members:

- Are representative of low-income individuals and families served in the neighborhood served;
- Reside in the neighborhood served; and
- Are able to actively participate in the development, planning, implementation, and evaluation of the programs funded by CSBG; or

- The statute allows states to specify, in the alternative, another mechanism for public organizations to assure decision making and participation by low-income individuals in the development, planning, implementation, and evaluation of programs funded by CSBG.

The CSBG Act does not provide for a grace period for eligible entities to get into compliance, though it is not prohibited by the Act. There are provisions within the Act that prevent the state from delaying or stopping funding or de-designating an eligible entity without providing technical assistance and the opportunity to correct deficiencies. For this reason, the states are encouraged to develop a policy or procedure that allows a grace period to fill Tri-Partite board vacancies.

**Compliance Requirements** Eligible entities must comply with the Tri-Partite board requirement. If an eligible entity has vacancies during the audit period that reduce the representation of low-income communities or public elected/appointed officials, that exceed the length of time permitted by the state, the auditor should report a finding. If the state has not elected to create a policy or procedure to permit a reasonable amount of time to fill a vacancy, the auditor should report a finding for any vacancy during the period that reduced the required representation below the required threshold.

**Audit Objectives** To determine if the eligible entity maintained a Tri-Partite board during the audit period.

#### **Suggested Audit Procedures**

- a. Obtain the board rosters, including the areas of representation at the beginning and end of the audit period.
- b. For any changes in the board roster, inquire of organization management the dates of the changes.
- c. Obtain the policy or procedure communicated by the state to the eligible entity for adherence to the Tri-Partite board requirement.
- d. Determine if the low-income or public representation vacancies exceeded the length of time permitted by the state.

## **IV. OTHER INFORMATION**

### *Transfers*

As described in Part 4, Social Services Block Grant (SSBG) program (Assistance Listing 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 are subject to the requirements of the CSBG 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.

*McKinney-Vento Homeless Assistance Programs and Corporation for National and Community Service AmeriCorps Programs*

Since FY 2009, the appropriations acts providing funds for the McKinney-Vento Homeless Assistance programs has included language authorizing grantees under those programs to use other federal funds as match unless prohibited by the statute of the other program. OCS has determined that the CSBG Act does not prohibit the use of CSBG funds as match for the McKinney-Vento Homeless Assistance programs and the Corporation for National and Community Service' AmeriCorps programs. Any CSBG funds claimed as match for these Homeless Assistance programs must be used for CSBG purposes and in accordance with the CSBG requirements.

*Tribal CSBG Grantees under a Pub. L. No. 102-477 Demonstration Project (477)*

Audits of Indian tribal governments with the CSBG program in their approved 477 Plan will follow Version 2 reporting and, therefore, must follow the guidance in the 477 Cluster found in the Department of the Interior's section of Part 4 of this Supplement. See the "Note" at the beginning of the 477 Cluster for additional information.

*2019 CSBG Disaster Supplemental*

In federal fiscal year 2019, Congress appropriated additional CSBG funds under the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Pub. L. No. 116-20). These funds are to be issued to states to address the consequences of hurricanes Florence and Michael, Typhoon Mangkhut, Super Typhoon Yutu, and wildfires and earthquakes occurring in calendar year 2018 and tornadoes and floods occurring in calendar year 2019 in those areas for which a presidential disaster has been declared. These funds are to be reported on the Schedule of Expenditures of Federal Awards as CSBG funds, though the states and entities are required to account for these expenditures separately. CSBG Disaster Supplemental funds are subject to the requirements of the CSBG and the additional requirement that these funds must be used to address needs directly resulting from the presidentially declared disaster. CSBG Disaster Supplemental funds, when expended, 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 of CSBG Disaster Supplemental funds should be shown as expenditures of this program when such amounts are expended.

*2020 CARES Act Supplemental*

In federal fiscal year 2020, Congress appropriated additional CSBG funds under the CARES Act (Pub. L. No. 116-136). These funds are to be issued to states, tribes, and territories to prevent, prepare for, and respond to coronavirus. These funds are to be reported on the Schedule of Expenditures of Federal Awards as CSBG funds, though the states and entities are required to account for these expenditures separately in their own accounting records. CSBG CARES Supplemental funds are subject to the requirements of the CSBG and the additional requirement

that these funds must be used to prevent and prepare for the coronavirus and to respond to the impact of the coronavirus. CSBG CARES Supplemental funds, when expended, 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 of CSBG CARES Supplemental funds should be shown as expenditures of this program when such amounts are expended.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 93.489 CHILD CARE DISASTER RELIEF

### ASSISTANCE LISTING 93.575 CHILD CARE AND DEVELOPMENT BLOCK GRANT

### ASSISTANCE LISTING 93.596 CHILD CARE MANDATORY AND MATCHING FUNDS OF THE CHILD CARE AND DEVELOPMENT FUND

#### I. PROGRAM OBJECTIVES

The Child Care and Development Fund (CCDF) provides funds to states, territories, and Indian tribes (tribes) 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.

#### II. PROGRAM PROCEDURES

The Office of Child Care (OCC), Administration for Children and Families (ACF), Department of Health and Human Services (HHS), administers the CCDF. The CCDF consists of three distinct funding sources: Discretionary Fund (Assistance Listing 93.575), Mandatory Fund (Assistance Listing 93.596), and Matching Fund (Assistance Listing 93.596). Some states, territories, and tribes are also eligible for Child Care Disaster Relief funds (Assistance Listing 93.489); these funds may be used for any allowable CCDF activity as well as for construction or renovation of child care facilities to support recovery from specified federally declared disasters and emergencies. Additionally, under the Temporary Assistance for Needy Families (TANF) program (Assistance Listing 93.558), a state may transfer TANF funds to CCDF and, if so, the funds transferred in are treated as Discretionary Funds (42 USC 604(d); 45 CFR section 98.54(a)).

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, territories, and tribes, and is effective for a three-year period. For states, the current three-year plan covers FY2019–2021. For tribes, the current three-year plan covers FY2020-2022 (see “Source of Governing Requirements” below for more context).

Following ACF approval of the plan, funds are awarded to a Lead Agency based on statutory/regulatory formulas. The Lead Agency is the designated state, territorial or tribal entity that is accountable for administering the CCDF program. 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 state and territory Lead Agencies offer parents certificates for the purchase of child care services), grantees have flexibility in designing programs and offering services. For example, CCDF funds may be used in collaborative efforts with Head Start (Assistance Listing 93.600), including Early Head Start, 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/Early



Head Start and the CCDF is strongly encouraged by sections 640(g)(1)(D) and (E), 640(h), 641(d)(2)(H)(v), and 642(e)(3) of the Head Start Act in the provision of full working day, full calendar year comprehensive services. In order to implement such collaborative programs, which share, for example, space, equipment or materials, grantees may layer several funding streams so that seamless services are provided.

#### *Pub. L. No. 102-477*

Tribes may operate the CCDF program under a consolidated Pub. L. No. 102-477 project. Pub. L. No. 102-477 refers to the Indian Employment, Training, and Related Services Demonstration Act of 1992, which was amended by the Indian Employment, Training, and Related Services Consolidation Act of 2017 (Pub. L. No. 106-568). The purpose of this initiative is to provide for the integration of employment, training, and related services to improve the effectiveness of those services. Under Pub. L. No. 102-477, funds received from a program must be used and spent in accordance with the applicable rules for that program, subject to any waivers granted by the Secretary of HHS. Tribes participating under a Pub. L. No. 102-477 project submit consolidated plans and reports to the Department of the Interior, which serves as the lead federal agency for Pub. L. No. 102-477. The separate 477 Cluster is applicable for an audit of an Indian tribal government's approved 477 Plan. See IV, "Other Information" – Tribal CCDF grantees under a Pub. L. No. 102-477 Project (477).

### **Source of Governing Requirements**

The Discretionary Fund (Assistance Listing 93.575) is authorized by the CCDBG Act of 1990, as amended (most recently by the CCDBG Act of 2014 (Pub. L. No. 113-186), discussed further below), and codified at 42 USC 9857 et seq. The Mandatory and Matching Funds (Assistance Listing 93.596) are authorized under section 418 of Title IV-A of the Social Security Act as amended and codified at 42 USC 618. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. No. 116-136) and the Consolidated Appropriations Act of 2021 and Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA Act) of 2021 (Pub. L. No. 116-260) both provide supplemental appropriations to prevent, prepare for, and respond to the coronavirus. The American Rescue Plan Act (ARP Act) (Pub. L. No. 117-2) (<https://www.congress.gov/public-laws/117th-congress>) provided supplemental funds for child care stabilization to support the child care sector during and after the COVID-19 public health emergency as well as additional supplemental appropriations that can be used for broader CCDF purposes and are not limited to addressing coronavirus impacts. The Child Care Disaster Relief funds (Assistance Listing 93.489) are appropriated by the Supplemental Appropriations for Disaster Relief Act of 2019 (Pub. L. No. 116-20). The CCDF (i.e., Assistance Listings 93.575, 93.596, and 93.489) is subject to the regulations at 45 CFR parts 98 and 99.

The CCDBG Act of 2014 made a number of substantive changes to program requirements, including provisions related to eligibility of children, consumer education, and health and safety (including monitoring inspections and criminal background checks). For provisions that were effective upon enactment of the CCDBG Act of 2014, states and territories were required to complete implementation based on a reasonable interpretation of the law by September 30, 2016, unless the state or territory submitted and received approval for a temporary extension under a

waiver (Note: a copy of any approval letter may be obtained from the state or territory Lead Agency). Some provisions had later effective dates specified in the law.

On September 30, 2016, HHS published a final rule to update the CCDF regulations at 45 CFR parts 98 and 99 based on the reauthorized Act. States and territory Lead Agencies had until October 1, 2018, to comply with most provisions of the rule that went beyond the state's/territory's reasonable interpretation of the Act. States and territory Lead Agencies not in compliance by that deadline were placed on corrective action plans or, for certain background check provisions, received time-limited waiver extensions.

The reauthorized Act did not address how most of its provisions apply to tribal Lead Agencies, so this was clarified in the final rule. Under the rule, tribal Lead Agencies are subject to a tiered set of requirements based on the size of their CCDF funding allocation. For the FY2020–FY2022 CCDF plan cycle, the allocation size was based on the FY 2016 allocation. Tribes had until the start of the FY 2020–2022 tribal plan period (i.e., October 1, 2019) to comply with the new provisions (with the exception of the quality expenditure requirements that apply to all tribes beginning in FY 2017). Tribes not in compliance by that date may be under corrective action periods.

Since March 2020, many state, territory, and tribal Lead Agencies requested and received temporary waivers from a variety of CCDF requirements (e.g., background check components, provider inspections, health and safety requirements, and fiscal requirements such as obligation and liquidation deadlines) due to extraordinary circumstances resulting from the impact of coronavirus.

Other than 2 CFR section 200.202 and sections 200.330 through 200.332, as implemented by 45 CFR sections 75.202 and 75.351 through 75.353, CCDF is not subject to the post federal award or cost principles requirements in 2 CFR Part 200, subparts D and E, respectively, or the associated HHS implementing regulations at 45 CFR Part 75.

### **Availability of Other Program Information**

OCC's website (<https://www.acf.hhs.gov/occ>) provides general information on this program.

For guidance on CCDF CARES Act funding, see Information Memorandum 2020-01 at <https://www.acf.hhs.gov/occ/policy-guidance/ccdf-discretionary-funds-appropriated-cares-act-public-law-116-136-passed-law>

For guidance on CCDF CRRSA Act funding, see Information Memorandum 2021-01 at <https://www.acf.hhs.gov/occ/policy-guidance/ccdf-discretionary-funds-appropriated-crrsa-act-public-law-116-260-signed-law>

For guidance on CCDF ARP Act supplemental funding, see Information Memorandum 2021-03 at <https://www.acf.hhs.gov/occ/policy-guidance/ccdf-acf-im-2021-03>

For guidance on CCDF ARP Act stabilization funding, see Information Memorandum 2021-02 at <https://www.acf.hhs.gov/occ/policy-guidance/ccdf-acf-im-2021-02>

For FAQs on CCDF COVID supplemental funding, see:  
<https://www.acf.hhs.gov/occ/faq/stabilizing-child-care-and-covid-19-faqs>

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

Note: To address program monitoring risk associated with the CCDF Stabilization grants added to this program as part of the ARP Act, OMB has authorized HHS to add “Reporting” as a compliance requirement subject to audit. This requirement will be included as an additional requirement in the supplement until the CCDF Stabilization grants are fully expended.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	Y	Y	N	N	Y	Y	Y

**A. Activities Allowed or Unallowed**

1. *Activities Allowed for CCDF Funds Other Than ARP Act Stabilization Funds*
  - a. Funds may be used for child care services in the form of certificates, grants, or contracts (42 USC 9858c(c)(2)(A)).
  - b. Funds may be used for activities that improve the quality or availability of child care services, consumer education, and parental choice (42 USC 9858e).

- c. Funds may be used for activities that improve access to child care services, including the use of procedures to permit enrollment of homeless children (after an initial eligibility determination) while required documentation is obtained; training and technical assistance on identifying and serving homeless children and their families; and specific outreach to homeless families (42 USC 9858c(c)(3)(B)(i)).
- d. Funds may be used for any other activity that the Lead Agency deems appropriate to (a) promote parental choice; (b) provide comprehensive consumer education information to help parents and the public make informed choices about child care services and promote involvement by parents and family members in the development of their children in child care settings; (c) deliver high-quality, coordinated early childhood care and education services to maximize parents' options and support parents trying to achieve independence from public assistance; (d) improve the overall quality of child care services and programs by implementing the health, safety, licensing, training and oversight standards established in the CCDBG Act and in state law and regulations; (e) improve child care and development of participating children; and (f) increase the number and percentage of low-income children in high-quality child care settings (42 USC 9857 and 9858c(c)(3)(B)).
- e. Improvements or upgrades to a facility which are not specified under the definitions of construction or major renovation (see III.A.2.c(1) below) may be considered minor remodeling and are, therefore, allowed as follows:
  - (1) For other than sectarian organizations, funds may be used for the minor remodeling of child care facilities
  - (2) 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)).
- f. Supplemental funds appropriated by the CARES Act (Pub. L. No. 116-136) and the CRRSA Act (Pub. L. No. 116-260) may be used for allowable CCDF purposes to prevent, prepare for, and respond to the coronavirus. For example, funds from both of these supplemental appropriations may be used to provide continued payments and assistance to child care providers in the case of decreased enrollment or closures related to coronavirus, and to assure that they are able to remain open or reopen.
- g. Additional supplemental discretionary funds provided by the ARP Act (other than the stabilization funds) are not limited to addressing coronavirus but can be spent for any allowable CCDF uses.

2. *Activities Allowed for CCDF ARP Act Stabilization Funds*

- a. States, territories, and tribes shall use stabilization funds appropriated by the ARP Act (Pub. L. No. 117-2) to make awards to child care providers to support the stability of the child care sector during and after the COVID-19 public health emergency. Child care providers may use stabilization funds to cover the following expenses: (A) personnel costs, including payroll and salaries or similar compensation for an employee (including any sole proprietor or independent contractor), employee benefits, premium pay, or costs for employee recruitment and retention; (B) rent (including rent under a lease agreement) or payment on any mortgage obligation, utilities, facility maintenance or improvements, or insurance; (C) personal protective equipment, cleaning and sanitization supplies and services, or training and professional development related to health and safety practices; (D) purchases of or updates to equipment and supplies to respond to the COVID–19 public health emergency; (E) goods and services necessary to maintain or resume child care services; and (F) mental health supports for children and employees.

3. *Activities Unallowed*

- a. 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)).
- b. 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)).
- c. 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)).
  - (1) “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).
  - (2) *Exception:* Tribal Lead Agencies 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.

- (3) *Exception:* State, territory, and tribal Lead Agencies may use Child Care Disaster Relief Funds (Assistance Listing 93.489) for renovating, repairing, or rebuilding child care facilities with ACF approval (Pub. L. No. 116-20).

## **B. Allowable Costs/Cost Principles**

As indicated in Appendix I to the Supplement, “Federal Programs Excluded from the A-102 Common Rule and Portions of 2 CFR Part 200,” grantees (Lead Agencies) 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).

## **E. Eligibility**

### **1. Eligibility for Individuals**

*Eligibility for Children Receiving CCDF Subsidies.* 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 Lead Agency in its approved Plan. A Lead Agency is the designated state, territorial, or tribal entity to which the CCDF grant is awarded and that is accountable for administering the CCDF program.

- a. For state Lead Agencies and territory Lead Agencies, and for those tribal Lead Agencies with allocations of at least \$250,000, 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. Lead Agencies may choose to provide services during periods of job search. Tribal Lead Agencies may elect to use state or tribal median income (42 USC 9858n(4); 45 CFR sections 98.20(a) and 98.81(b)). Tribal Lead Agencies also have the option for categorical eligibility (considering any Indian child within the service area eligible for services) if the tribe’s median income is below 85 percent of the state median income, provided that services go to those with the highest need.

State, territory, and tribal Lead Agencies may use supplemental funds appropriated by the CARES Act (Pub. L. No. 116-136), the CRRSA Act (Pub. L. No. 116-260), and the ARP Act (Pub. L. No. 117-2) to provide child care assistance to health care sector employees, emergency responders, sanitation workers, and other workers deemed essential during the response to the coronavirus, without regard to the income eligibility requirements. The Lead Agency may define which workers are considered essential in accordance with any relevant state, territorial, and tribal laws or policies.

- b. State Lead Agencies, territory Lead Agencies, as well as those tribal Lead Agencies with allocations of at least \$250,000, must establish minimum 12-month eligibility periods before re-determining eligibility of CCDF families and must consider a child to be eligible between eligibility re-determinations, regardless of (1) changes in income (as long as income does not exceed 85 percent of state/territory/tribal median income); or (2) temporary changes in participation in work, training, or education activities. If a parent experiences a non-temporary loss of job, education, or training that affects eligibility, Lead Agencies have the option—but are not required—to terminate assistance prior to the next re-determination (i.e., prior to the end of the minimum 12-month eligibility period). However, if a Lead Agency exercises this option, the Lead Agency must provide (prior to terminating the subsidy) a period of continued assistance of at least three months to allow parents to engage in job search, resume work, or attend an education or training program as soon as possible. States and territories must have implemented these eligibility provisions by September 30, 2016, unless the state or territory requested and received approval for a temporary extension under a waiver (42 USC 9858c(c)(2)(N)).
- c. Because a child meeting eligibility requirements at the most recent eligibility determination or re-determination is considered eligible between re-determinations as described in paragraph b. above, any payment for such a child shall not be considered an error or improper payment due to a change in the family's circumstances (45 CFR sections 98.21(a)(4) and 98.68(c)(2)). There is no federal requirement for Lead Agencies to recoup CCDF overpayments, except in instances of fraud as defined by the Lead Agency (45 CFR section 98.68(b)(2)).
- d. States and territories must have procedures to permit enrollment of homeless children (after an initial eligibility determination) while required documentation is obtained. States and territories must also have a grace period that allows children experiencing homelessness and children in foster care to receive services while providing families a reasonable time to take any necessary action to comply with immunization and health and safety requirements.
- e. State Lead Agencies, territory Lead Agencies, as well as those tribal Lead Agencies with allocations of \$250,000 or more, must 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 (42 USC 9858c(c)(3)(B)(i); 45 CFR section 98.45(k)). Lead Agencies may exempt families meeting criteria established by the Lead Agency from making copayments and must establish a payment rate schedule for child care providers caring for subsidized children (45 CFR section 98.45). State, territory, and tribal Lead Agencies may use supplemental funds appropriated by the CRRSA Act (Pub. L. No. 116-

260) for costs of providing relief from copayments and tuition payments for families and for paying that portion of the child care provider's costs ordinarily paid through family copayments.

- f. State Lead Agencies, territory Lead Agencies, as well as those tribal Lead Agencies with allocations of \$250,000 or more, must, to the extent practicable, implement enrollment and eligibility policies that support the fixed costs of providing child care services by delinking provider reimbursement rates from an eligible child's occasional absences, for example by paying based on a child's enrollment rather than attendance or paying for a specified amount of absences (42 USC 9858c(c)(2)(S), 45 CFR 98.45(1)(2)). Lead Agencies are not required to limit authorized child care services strictly based on the work, training, or educational schedule of the parent(s) or the number of hours the parent(s) spend in work, training, or educational activities (45 CFR section 98.21(g)).

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

The award of CCDF funds to a 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 (42 USC 9858m(c)(5); 45 CFR section 98.80(d)).

## **3. Eligibility for Subrecipients**

Lead agencies determine eligibility for any subrecipients used to implement portions of the CCDF program, such as entities implementing quality improvement activities.

## **4. Eligibility for Child Care Providers Receiving CCDF ARP Act Stabilization Funds**

States, territories, and tribes shall use stabilization funds appropriated by the ARP Act (Pub. L. No. 117-2) to make payments to qualified child care providers to support the stability of the child care sector during and after the COVID-19 public health emergency. To be qualified to receive stabilization funds, a provider on the date of application for the award must either be: (1) open and available to provide child care services, or (2) closed due to public health, financial hardship, or other reasons relating to the COVID-19 public health emergency. In addition, the provider must either (1) be eligible to serve children who receive CCDF subsidies at the time of application for stabilization funds, or (2) be licensed, regulated, or registered in the state, territory, or tribe as of March 11, 2021, and meet applicable state and local health and safety requirements at the time of application for stabilization funds.

Child care providers include centers, family child care providers, and other providers that meet the qualifying eligibility criteria. Child care stabilization funds included in the ARP Act are for the benefit of qualified child care providers and are considered payments made to beneficiaries of a federal program.



Qualified providers receiving ARP Act Stabilization funds are therefore not categorized as “sub-recipients” as defined at 45 CFR 75.2 but instead as beneficiaries. The Single Audit Act requirements at 45 CFR Subpart F and the sub-recipient monitoring requirements at 45 CFR 75.352 do not apply to beneficiaries.

In their application for stabilization funds, a child care provider must certify:

1. That the provider will, when open and providing services, implement policies in line with guidance and orders from corresponding state, territorial, tribal, and local authorities and, to the greatest extent possible, implement policies in line with guidance from the Centers for Disease Control and Prevention (CDC).
2. For each employee, the provider must pay at least the same amount in weekly wages and maintain the same benefits for the duration of the stabilization funding.
3. The provider will provide relief from copayments and tuition payments for the families enrolled in the provider’s program, to the extent possible, and prioritize such relief for families struggling to make either type of payment.

Lead Agency must maintain documentation for child care providers receiving ARP Act stabilization funds to verify that child care providers met eligibility criteria, and that the providers gave the required certifications as part of their applications for funding.

## **G. Matching, Level of Effort, Earmarking**

The matching and MOE requirements apply only to the Matching Fund (Assistance Listing 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 Performance”). The matching and MOE amounts are reported on the CCDF Financial Report (ACF-696) (see III.L., “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 (Assistance Listing 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 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). The ARP Act (Pub. L. No. 117-2) increased the amount of matching funds and waived the matching requirement on the increased portion of funds for FY 2021 and FY 2022. Information about matching fund amounts and other CCDF allocation amounts can be found at <https://acf.hhs.gov/occ/grant-funding/ccdf-funding-allocations>.

- 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 (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. Level of Effort

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

If a state requests Matching Funds (Assistance Listing 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*

The annual appropriations law for CCDF Discretionary Funds (Assistance Listing 93.575), the CARES Act (Pub. L. No. 116-136), and the CRRSA Act (Pub. L. No. 116-260) all specify that funds shall be used to supplement, not supplant State general revenue funds for child care assistance for low-income families. Funds appropriated by the ARP Act (Pub. L. No. 117-2) shall be used to supplement and not supplant other federal, state, and local public funds expended to provide child care services for eligible individuals.

## 3. Earmarking

- a. *Administrative Earmark* – A state/territory Lead Agency may not spend on administrative costs more than five percent of total CCDF awards

expended (i.e., the total of Assistance Listings 93.575, 93.596, and 93.489 with the exception of any ARP Act stabilization funds and of any Disaster Relief funds spent on construction and renovation) and any state expenditures for which Matching Funds (Assistance Listing 93.596) are claimed (42 USC 9858c(c)(3)(C); Pub. L. No. 116-20; 45 CFR section 98.52).

Tribal Lead Agencies are allowed 15 percent of the amount expended under Assistance Listings 93.575, 93.596, and 93.489 (with the exception of any ARP Act stabilization funds and of any Disaster Relief funds spent on construction and renovation) for administrative costs. Tribes with at least 50 children under age 13 are provided a base amount, 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 base amount 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. For FY 2017 and later fiscal years, the base amount was \$30,000 (45 CFR sections 98.61(c), 98.83(h), and 98.83(i)).

The administrative costs maximum applies to all CCDF expenditures in the aggregate, including supplemental CCDF funding provided by the CARES Act (Pub. L. No. 116-136), the CRRSA Act (Pub. L. No. 116-260), and the ARP Act (Pub. L. No. 117-2), excluding the stabilization funds provided by ARP.

The following activities are not considered administrative costs (45 CFR section 98.54(b)):

- (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.

Child care stabilization funds provided by the ARP are not subject to the CCDF administrative cost limitation. Rather, a state or territory that receives these funds shall reserve not more than 10 percent to administer stabilization funds, provide technical assistance and support for applying for and accessing the funding opportunity, publicize the availability of the funds, carry out activities to increase the supply of child care, and provide technical assistance to help child care providers. A tribal lead agency may reserve up to 20 percent of stabilization funds for these activities.

- b. *Quality Earmark* – For FY 2018 and FY 2019, states and territory Lead Agencies must spend on quality activities, as provided in the state/territorial plan, not less than eight percent of CCDF funds expended (i.e., the total of Assistance Listings 93.575, 93.596, and 93.489 with the exception of any CARES Act, CRRSA Act, and ARP Act, and of any Disaster Relief funds spent on construction and renovation) and any state expenditures for which Matching Funds (Assistance Listing 93.596) are claimed (45 CFR section 98.53). This amount rises to nine percent for FY 2020 and succeeding fiscal years. States and territory Lead Agencies must spend at least an additional three percent on quality improvement for infants and toddlers (45 CFR section 98.50(b)).

All tribal Lead Agencies must spend at least seven percent on quality activities for FY 2018 and FY 2019, and this amount rises to eight percent for FY 2020 and FY 2021. Tribal Lead Agencies with CCDF allocations of \$250,000 and higher must spend at least an additional three percent on quality improvement for infants and toddlers starting in FY 2019. The base amount (discussed in paragraph 3.a above, *Administrative Earmark*) is not included in the amount against which the quality earmark is calculated (45 CFR sections 98.53(a), and 98.83(g)).

Quality spending requirements do not apply to supplemental funds provided by the CARES Act (Pub. L. No. 116-136), the CRRSA Act (Pub. L. No. 116-260), and the ARP Act (Pub. L. No. 117-2).

- c. *Direct Spending Earmarks*
- (1) From the aggregate amount of Discretionary funds (Assistance Listing 93.575) and Disaster Relief funds (Assistance Listing 93.489) provided for a year (with the exception of any CARES Act, CRRSA Act, and ARP Act, and of any Disaster Relief funds used for construction or major renovation), state Lead Agencies, territory Lead Agencies, as well as those tribal Lead Agencies with allocations of at least \$250,000 must reserve funds for administrative costs (described in paragraph 3.a above, *Administrative Earmark*) and the minimum amount required for quality activities (described in paragraph 3.b above, *Quality Spending Earmark*).

- (2) From the remainder, the Lead Agency must use not less than 70 percent to fund direct services. In addition, states and territories must spend not less than 70 percent of the Mandatory and federal and state share of Matching funds (Assistance Listing 93.596) to provide child care assistance to families who: (1) receive Temporary Assistance for Needy Families (TANF) assistance; (2) are attempting through work activities to transition off TANF; and (3) are at risk of becoming dependent on TANF (45 CFR section 98.50(e) and (f)).
- (3) Direct spending requirements do not apply to supplemental funds provided by the CARES Act (Pub. L. No. 116-136), the CRRSA Act (Pub. L. No. 116-260) and the ARP Act (Pub. L. No. 117-2).

## **H. Period of Performance**

1. Discretionary Funds (Assistance Listing 93.575) 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 (Assistance Listing 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 (Assistance Listing 93.596). If no Matching Funds are requested for the fiscal year, then the Mandatory Funds (Assistance Listing 93.596) are available until liquidated (45 CFR section 98.60(d)).
3. Mandatory Funds (Assistance Listing 93.596) for territories 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.
4. Mandatory Funds (Assistance Listing 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)).
5. Matching Funds (Assistance Listing 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)).
6. Child Care Disaster Relief Funds (Assistance Listing 93.489) not used for construction or renovation 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 (Pub. L. No. 116-20).
7. Child Care Disaster Relief Funds (Assistance Listing 93.489) used for construction or renovation must be obligated by the end of the fourth fiscal year after award and expended by the end of the fifth fiscal year after award (Pub. L. No. 116-20).

For example, availability periods for grant year 2021 funds awarded on any date in FY 2021 (October 1, 2020 through September 30, 2021):

<b>If Source of Obligation Is –</b>	<b>Obligation must Be Made by End of –</b>	<b>Obligation must Be Liquidated by End of –</b>
FY 2021 Discretionary (Assistance Listing 93.575)	FY 2022 (i.e., by 9/30/2022)	FY 2023 (i.e., by 9/30/2023)
FY 2021 Mandatory (State) (Assistance Listing 93.596)	FY 2021 (i.e., by 9/30/2021 but ONLY if Matching Funds are used)	No requirement for liquidation by a specific date
FY 2021 Mandatory (Territories) (Assistance Listing 93.596)	FY 2021 (i.e., by 9/30/2021)	FY 2022 (i.e., by 9/30/2022)
FY 2021 Mandatory (Tribes) (Assistance Listing 93.596)	FY 2022 (i.e., by 9/30/2022)	FY 2023 (i.e., by 9/30/2023)
FY 2021 Matching (Assistance Listing 93.596)	FY 2021 (i.e., by 9/30/2021)	FY 2022 (i.e., by 9/30/2022)
FY 2021 Child Care Disaster Relief— Not Used for Construction or Renovation (Assistance Listing 93.489)	FY 2022 (i.e., by 9/30/2022)	FY 2023 (i.e., by 9/30/2023)
FY 2021 Child Care Disaster Relief— Used for Construction or Renovation (Assistance Listing 93.489)	FY 2024 (i.e., by 9/30/2024)	FY 2025 (i.e., by 9/30/2025)

TANF funds (Assistance Listing 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)).

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)).

Supplemental funds provided under the CARES Act (Pub. L. No. 116-136), the CRRSA Act (Pub. L. No. 116-260), and the ARP Act (Pub. L. No. 117-2) have specific obligation and liquidation timeframes that are outlined below:

	<b>Obligation must Be Made by End of –</b>	<b>Obligation must Be Liquidated by End of –</b>
FY 2020 Discretionary supplemental funds provided under the CARES Act (Pub. L. No. 116-136) (Assistance Listing 93.575)	FY 2022 (i.e., by 9/30/2022)	FY 2023 (i.e., by 9/30/2023)
FY 2021 Discretionary supplemental funds provided under the CRRSA Act (Pub. L. No. 116-260) (Assistance Listing 93.575)	FY 2022 (i.e., by 9/30/2022)	FY 2023 (i.e., by 9/30/2023)
FY 2021 Discretionary supplemental funds provided under the ARP Act (Pub. L. No. 117-2) (Assistance Listing 93.575)	FY 2023 (i.e., by 9/30/2023)	FY 2024 (i.e., by 9/30/2024)
FY 2021 Child care stabilization funds provided by the ARP Act (Pub. L. No. 117-2) (Assistance Listing 93.575)	FY 2022 (i.e., by 9/30/2022)	FY 2023 (i.e., by 9/30/2023)

**L. Reporting**

**1. Financial Reporting**

ACF-696, *Child Care and Development Fund Financial Report (OMB No 0970-0510)* is due quarterly from states and territories. The ACF-696T, *Child Care and Development Fund Financial Report for Tribes (OMB No. 0970-0510)* 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-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)).

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**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. The contents of the written agreement may vary based on the role the subrecipient is asked to assume or the type of product undertaken, but must include, at a minimum, tasks to be performed, a schedule for completing tasks, a budget which itemizes categorical expenditures, and indicators or measures to assess performance. 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 Requirements** As part of their CCDF plans, Lead Agencies must certify that procedures are in effect (e.g., monitoring and enforcement) to ensure that providers serving children who receive subsidies comply with all applicable health and safety requirements. This includes verifying and documenting 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 health and safety. These requirements must address eleven specific areas—including first aid and CPR, safe sleeping practices, and administration of medication—and child care workers must be trained in these areas (42 USC 9858c(c)(2)(I); 45 CFR section 98.41).

**Audit Objectives** 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, including any monitoring and enforcement procedures, for ensuring child care provider compliance with relevant health and safety requirements for those providers serving children who receive subsidies. This review should include, at a minimum, relevant information in the Lead Agency's CCDF Plan.
- c. Review a sample of Lead Agency files for child care providers serving children who receive subsidies to verify that the Lead Agency followed its procedures for ensuring child care provider compliance with relevant state health and safety requirements, including training requirements.

### 2. Fraud Detection and Repayment

**Compliance Requirements** 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 Objectives** 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 the Lead Agency followed its procedures related to authenticating that a payment was actually fraudulent and as applicable recover payment.

### **3. Tribal Lead Agencies - Protection of Federal Interest in Real Property and Facilities**

**Compliance Requirements** CCDF can only be used for construction or major renovation of child care facilities in two instances: (1) a tribal Lead Agency that is approved to use CCDF for construction or major renovation; or (2) a state, territory, or tribal Lead Agency that is approved to use Disaster Relief funds (Assistance Listing 93.489) for construction or major renovation. The requirements for construction and renovation of child care facilities by tribal Lead Agencies are described in 45 CFR section 98.84. As required by this section, OCC established uniform procedures in program instruction CCDF-ACF-PI-2016-05, "Procedures for Requests for Tribal Lead Agencies to Use Child Care and Development Fund (CCDF) Funds for Construction or Renovation of Child Care Facilities" (<https://www.acf.hhs.gov/occ/resource/ccdf-acf-pi-2016-05>). The requirements for using Disaster Relief funds (Assistance Listing 93.489) for construction and renovation are described in program instruction CCDF-ACF-PI-2019-06.

Facilities activities (construction, major renovation, and disposition) are initiated through the submission of Form SF-429 (cover sheet) and applicable Attachments B (*Request to Acquire, Improve or Furnish*) or C (*Disposition or Encumbrance Request*).

In instances where federal interest provisions apply, at the commencement of construction or major renovation of a facility with CCDF funds, the tribal Lead Agency must record a Notice of Federal Interest in the appropriate official records of the jurisdiction in which the facility will be located (unless the facility will be located on tribal lands held in trust by the US government). In the case of Disaster Relief funds (Assistance Listing 93.489), federal interest is limited to 10 years, and does not apply to privately-owned family child care homes. The full requirements for the protection of the federal interest are described in program instructions CCDF-ACF-PI-2016-05 and CCDF-ACF-PI-2019-06.

**Audit Objectives** Determine whether the federal interest in real property and facilities is protected by the required Notice of Federal Interest and language content and the required prior written approvals were obtained from ACF.

### Suggested Audit Procedures

- a. Review the appropriate documentation (e.g., Lead Agency's general ledger accounts and the meeting minutes of its governing body) and inquire of the tribal Lead Agency's management to identify if any of the following transactions, which are subject to the requirements for protecting the federal interest, occurred during the audit period and, if so, that the required prior written approvals were obtained from ACF:
  - (1) Construction or major renovation of a facility, including a modular unit.
  - (2) Sale, lease, or encumbrance, such as a mortgage of real property or a facility (including modular units).
  - (3) Changes in approved use of facilities.
- b. For construction, or major renovation during the audit period, ascertain if the Notice of Federal Interest was required, and if so, whether it was properly recorded in the locality's official real property records and, for a modular unit, if this Notice was properly posted in a conspicuous place. A Notice is not required for a facility on tribal lands held in trust by the US government; however, there is still a federal interest in any facility constructed or renovated with CCDF funds.
- c. Review the Notices of Federal Interest and mortgage agreements and other security instruments executed during the audit period to ascertain if the documents include the required language content.
- d. For sales, leases, and encumbrances and property used for a different purpose during the audit period, review the change in use to ascertain if the tribal Lead Agency obtained and complied with the requirement for ACF prior written approval.

#### 4. Child Care Provider Eligibility for ARP Act Stabilization Funds

**Compliance Requirements** To be qualified to receive ARP Act stabilization funds, a provider on the date of application for the award must either be: (1) open and available to provide child care services, or (2) closed due to public health, financial hardship, or other reasons relating to the COVID-19 public health emergency. In addition, the provider must either (1) be eligible to serve children who receive CCDF subsidies at the time of application for stabilization funds, or (2) be licensed, regulated, or registered in the state, territory, or tribe as of March 11, 2021 and meet applicable state and local health and safety requirements at the time of application for stabilization funds. In their application for stabilization funds, a child care provider must certify:

- a. That the provider will, when open and providing services, implement policies in line with guidance and orders from corresponding state, territorial, tribal, and local authorities and, to the greatest extent possible, implement policies in line with guidance from the CDC.

- b. For each employee, the provider must pay at least the same amount in weekly wages and maintain the same benefits for the duration of the stabilization funding.
- c. The provider will provide relief from copayments and tuition payments for the families enrolled in the provider's program, to the extent possible, and prioritize such relief for families struggling to make either type of payment.

**Audit Objectives** Determine whether Lead Agencies ensure that child care providers receiving ARP Act stabilization funds meet eligibility criteria, including providing required certifications.

#### **Suggested Audit Procedures**

- a. Review a sample of Lead Agency documentation for child care providers receiving ARP Act stabilization funds to verify that child care providers met eligibility criteria, and that the providers gave the required certifications as part of their applications for funding.

## **IV. OTHER INFORMATION**

### *Funding Sources Within the CCDF Cluster*

In federal fiscal year 2019, Congress appropriated additional CCDF funds under the Supplemental Appropriations for Disaster Relief Act of 2019 (Pub. L. No. 116-20). In federal fiscal year 2020, Congress appropriated additional CCDF funds under the CARES Act (Pub. L. No. 116-136). In fiscal year 2021, Congress appropriated additional CCDF funds under the CRRSA Act (Pub. L. No. 116-260) and the ARP Act (Pub. L. No. 117-2). The ARP funds included both supplemental CCDF funds and child care stabilization funds. Although there are some differences in the rules governing each funding source, expenditures of funds from all of these sources should be included in the audit universe for CCDF Lead Agencies and the total expenditures of the CCDF Cluster for purposes of (1) determining Type A programs and (2) completing the Schedule of Expenditures of Federal Awards (SEFA). However, CCDF Lead Agencies are required to account for these expenditures separately in their own accounting records. Furthermore, a footnote on the SEFA showing amounts by funding source (CCDBG, CCDF Mandatory and Matching, CCDF Disaster Relief, CCDF CARES, CCDF CRRSA, CCDF ARP supplemental, CCDF ARP child care stabilization funds) in the CCDF Cluster is encouraged.

### *Transfer of Funds to CCDF*

Under the TANF program (Assistance Listing 93.558), a state may transfer TANF funds to CCDF and the funds transferred are treated as Discretionary Funds under CCDF. 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.

*Tribal CCDF Grantees under a Pub. L. No. 102-477 Project*

Audits of Indian tribal governments with tribal CCDF in their approved 477 Plan with reporting under Version 2 forms (75 FR 57970 (September 26, 2014)) must follow the guidance in the 477 Cluster found in the Department of the Interior's section of Part 4 of this Supplement.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****ASSISTANCE LISTING 93.356 HEAD START DISASTER RECOVERY FROM HURRICANES HARVEY, IRMA, AND MARIA****ASSISTANCE LISTING 93.600 HEAD START****CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (CARES ACT)****CONSOLIDATED APPROPRIATIONS ACT, 2021 (CAA)****AMERICAN RESCUE PLAN ACT OF 2021 (ARP)****I. PROGRAM OBJECTIVES**

The objective of the Assistance Listing 93.600 Head Start program (including Early Head Start and Early Head Start-Child Care Partnerships) is to promote school readiness of low-income children (including American Indians, Alaska Natives, and migrant and seasonal farm workers) by enhancing children's cognitive, social, and emotional development.

The objective of the Assistance Listing 93.356 disaster recovery is to provide for Head Start expenses directly related to the consequences of 2017 hurricanes Harvey, Irma, and Maria, including making payments under the Head Start Act.

The objective of CARES Act funding in the amount of \$750,000,000 appropriated for the Office of Head Start (OHS) is to pay the costs associated with Head Start program actions and activities undertaken to prevent, prepare for, and respond to the impacts of the coronavirus.

The objective of CAA funding in the amount of \$250,000,000 appropriated for OHS is to pay the costs associated with Head Start program actions and activities undertaken to prevent, prepare for, and respond to the impacts of the coronavirus.

The objective of ARP funding in the amount of \$1,000,000,000 appropriated for OHS is not limited to actions and activities undertaken to prevent, prepare for, and respond to the coronavirus and may also be used for the same objective as Assistance Listing 93.600, to promote school readiness of low-income children (including American Indians, Alaska Natives, and migrant and seasonal farm workers) by enhancing children's cognitive, social, and emotional development.

CARES Act, CAA, and ARP funding was awarded in an amount that bears the same ratio to the portion available for allocation as the number of enrolled children served by the Head Start agency bears to the number of enrolled children served by all Head Start agencies.

Comprehensive services are provided to enrolled children, pregnant women, and their families, which include health, nutrition, social, and other services determined to be necessary by family needs assessments, in addition to education and cognitive development services.

## II. PROGRAM PROCEDURES

The OHS, Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS), administers the Head Start program and disaster recovery funds.

Services for children ages 3–5 are funded by a Head Start award and services for pregnant women and children ages 0–3 are funded by an Early Head Start award. Early Head Start services may include those delivered through a partnership with existing child care centers or family child care homes under funding specially designated as an Early Head Start – Child Care Partnership award. Grantees may receive one-time awards, primarily for health and safety-related facility improvement activities.

Comprehensive center-based or home-based services are provided to enrolled children, pregnant women, and their families. These include health, nutrition, social, and other services determined to be necessary by a family needs assessment, in addition to education and cognitive development services. Services are designed to be responsive to each child's and family's ethnic, cultural, and linguistic heritage.

OHS makes Head Start awards to local public, nonprofit agencies, and for-profit entities known as Head Start Agencies (HSA). The awards are made for a period not-to-exceed five years. A HSA may enter into an agreement with a delegate agency (subrecipient) for delivery of Head Start services; however, the HSA (pass-through entity) retains legal and fiscal responsibility for the grant. Delegate agencies may be public, nonprofit, or for-profit organizations. HSAs must establish and implement procedures for the ongoing monitoring of each delegate agency (42 USC 9836a(d) and 45 CFR sections 1303.30 and 32).

Assistance Listing 93.356 funds may be used for allowable Head Start expenditures as specified in the terms and conditions of the grant award.

CARES Act and CAA funds may be used to pay the costs associated with Head Start program actions and activities undertaken to prevent, prepare for, and respond to the impacts of the coronavirus.

### Source of Governing Requirements

The Head Start program is authorized under the Improving Head Start for School Readiness Act of 2007 (Pub. L. No. 110-134 (42 USC 9831-9852)).

On September 7, 2016, OHS promulgated new regulations governing program operations, referred to as the Head Start Program Performance Standards (HSPPS) (45 CFR parts 1301 through 1305). HSPPS became effective beginning November 7, 2016, although some provisions are deferred as noted in the regulations and two sections (45 CFR 1302.90(b)(1) and 45 CFR 1302.53(b)(2)) until September 30, 2019, and a request for further deferral until September 30, 2020, is under consideration. The full implementing program regulations are 45 CFR parts 1301 through 1305.

Assistance Listing 93.356 was established based on appropriations in the Bipartisan Budget Act of 2018 (Pub. L. No. 115-123, 132 Stat. 93) and supplemental appropriations for fiscal year ending September 30, 2018 (Pub. L. No. 116-20).

Requirements for use of CARES Act funds to prevent, prepare for, and respond to the coronavirus were established by The Coronavirus Aid, Relief, and Economic Security (CARES) Act, 2020 (Pub. L. No. 116-136).

Requirements for use of CAA funds to prevent, prepare for, and respond to the coronavirus were established by the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260).

Requirements for use of ARP funds were established by the American Rescue Plan Act of 2021 (Pub. L. No. 117-2).

### **Availability of Other Program Information**

The Early Childhood Learning and Knowledge Center (ECKLC) (<http://eclkc.ohs.acf.hhs.gov/hslc>) is the OHS website that provides information about the Head Start program. ECKLC also provides information specific to Assistance Listing 93.356 in ACF-IM-HS-17-02, dated September 20, 2017, *Disaster Recovery from 2017 Hurricanes* and ACF-PI-HS-18-02, dated April 9, 2018, *Hurricanes Harvey, Irma, and Maria Disaster Assistance Funds and information about Head Start programs, COVID-19, and available funding to prepare for, respond to, and recover from the coronavirus.*

### **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	N	N	N	N	Y	Y	Y

**A. Activities Allowed or Unallowed**

1. Funds may be used for the following program services consistent with HSPPS:
  - 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. Ensuring that programs have qualified staff that promote the language skills and literacy growth of children and that provide children with a variety of skills that have been identified, through scientifically based reading research, as predictive of later reading achievement (42 USC 9835(a)(5)(B)(iv));
- h. Increasing the duration of 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));
- i. Improving community-wide strategic planning and needs assessments and collaboration efforts, including outreach (42 USC 9835(a)(5)(B)(vi));
- j. Transporting children safely except that not more than 10 percent of designated quality improvement funds may be used for transportation costs (42 USC 9835(a)(5)(B)(vii) and 45 CFR Part 1310);
- k. 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));
- l. Correcting areas of noncompliance or deficiencies and developing quality improvement plans (42 USC 9836a(e));
- m. 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 HSA; and ensuring the necessary membership on the governing body (42 USC 9837(c)(1));

- n. 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 HSA's effectiveness and progress in meeting program goals and objectives as well as in implementing and complying with HSPPS (42 USC 9836a(g));
  - o. 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));
  - p. Provision of family needs assessments that include consultation with parents (including foster parents, grandparents, and kinship caregivers) (42 USC 9837(b)(7));
  - q. Outreach and information to parents of limited English proficient children in an understandable and uniform format (42 USC 9837(b)(11));
  - r. 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));
  - s. Implementation of a research-based early childhood curriculum (42 USC 9837(f)(3)); and
  - t. In the case of an 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 that no financial assistance shall be extended in any case in which the costs of developing and administering a program exceed 15 percent of the total costs, including the required nonfederal contributions to such costs. The term "development and administrative costs" means costs incurred in accordance with an approved Head Start budget that do not directly relate to the provision of program component services, as described under paragraph 1, above (42 USC 9839(b) and 45 CFR section 1301.32 (a)).
  3. With ACF prior written approval, HSAs may use funds 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 of existing facilities, and purchase of vehicles used for programs conducted at the Head Start facilities (42 USC 9839(f) and (g)). *Major renovation* means any individual or collection renovation that has a cost

equal to or exceeding \$250,000. It excludes minor renovations and repairs except when they are included in a purchase application (45 CFR section 1305.2).

4. Funds may not be used by HSAs 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. HSAs and delegate agencies must use funds from USDA's Child and Adult Care Food Program (Assistance Listing 10.558) as the primary source of payment for children's nutritional services (meals and snacks). Head Start funds may be used only to cover those allowable costs not covered by USDA (45 CFR section 1302.44(b)).
6. Funds may be used for professional medical and oral health services when no other funding source is available. When funds are used for such services, HSAs and delegate agencies must have written documentation of their efforts to access other available sources of funding (45 CFR section 1302.42(e)(2)).
7. Additional requirements for awards made under Assistance Listing 93.356:
  - a. The terms and conditions of the award specify the allowable Head Start expenditures for which the funds must be used. ACF-PI-HS-18-02 lists the following types of allowable expenses.
    - (1) Facilities
    - (2) Materials, Supplies, and Equipment
    - (3) Program Operations
    - (4) Additional Health, Mental Health, Dental, and Nutrition Services
    - (5) Training and Technical Assistance (T/TA)
    - (6) Disaster Recovery Expenses Incurred Prior to Availability of Funds
  - b. HSAs are eligible to submit more than one application for disaster recovery funds and may receive multiple awards depending on the type of funds requested and complexity (e.g., facilities) of funded projects.

- c. Funds may not be used to pay for costs that are reimbursed by the Federal Emergency Management Agency (FEMA), under a contract for insurance, or by self-insurance. HSAs must advise ACF in writing of the receipt of such funds and reimburse ACF for any costs incurred under the award that are subsequently reimbursed by FEMA, under a contract for insurance or self-insurance. HSAs may submit Head Start disaster recovery applications during the pendency of FEMA requests and insurance claims (Pub. L. No. 115-123, 132 Stat. 93).
8. Additional requirements for awards made from CARES Act and CAA funds:
  - a. [ACF-PI-HS-20-04](#) describes the funding process and allowable use of CARES Act and CAA funds. Grantees are afforded broad discretion to utilize CARES Act and CAA funds to respond to COVID-19 in consideration of community circumstances and programmatic needs.
  - b. Extensive guidance to grantees to support their response to the coronavirus has been provided by OHS through its official website, the Early Childhood Learning and Knowledge Center (ECLKC), at the following link: <https://eclkc.ohs.acf.hhs.gov/about-us/coronavirus/ohs-covid-19-updates>.

## **B. Allowable Costs/Cost Principles**

1. Costs meet general criteria for allowability, including being necessary and reasonable for the performance of the federal award, allocable thereto and adequately documented (45 CFR sections 75.403, 75.404, and 75.405).
2. Shared and indirect costs attributable to common or joint use of personnel, 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)).
3. Federal funds (including charges to indirect cost pools) may not be used to pay any part of the compensation of an individual employed by a HSA, if such compensation, including nonfederal funds, exceeds an amount equal to the rate payable for level II of the Executive Schedule under section 5313 of title 5, United States Code (42 USC 9848(b)).

## **F. Equipment and Real Property Management**

1. Real property, equipment, and intangible property, that are acquired or improved with a federal award must be held in trust by the nonfederal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The HHS awarding agency may require the nonfederal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a federal award and that use and

disposition conditions apply to the property (45 CFR section 75.323 and 45 CFR section 1303 – Subpart E).

2. Real property acquired or improved under a federal award must be used for the authorized purpose so long as it is needed for that purpose, during which time the HSA may not dispose of, replace or encumber the property without prior ACF approval (45 CFR section 75.318; 45 CFR section 75.308(c)(1)(xi)).
3. Equipment acquired under a federal award must be used for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project. A HSA may not dispose of, replace, or encumber title to equipment without prior ACF approval (45 CFR section 75.319; 45 CFR section 75.308(c)(1)(xi)).
4. Property records must be maintained for equipment acquired under a federal award that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of federal participation in the project costs for the federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

*SF-429 – Real Property Status Report and SF-429-A General Reporting (OMB No. 4040-0016)*. These forms are filed annually based upon the end of the budget period. The annual SF-429 is required for all grantees and must indicate whether the grantee has reportable real property. If so, a separate SF-429-A must be completed for each parcel of real property reported and accompany the annual SF-429.

*Key Line Items* –The following line items contain critical information:

*SF-429*

1. *Federal Agency and Organizational Element to Which Report is Submitted*
2. *Federal Grant(s) or Other Identifying Number(s) Assigned by Federal Agency(ies)*
3. *Recipient Organization Name*
- 4b. *EIN*
7. *Report End Date*

*SF-429-A*

13. *Period and type of Federal interest*
- 14a. *Description of Real Property*
- 14b. *Address of Real Property*
- 14f. *Real Property Cost*

Any nonfederal match associated with facilities activities becomes part of the federal share of the facility (45 CFR section 1303.44(c) and 45 CFR section 1305.2 definition of federal interest).

- 14g. *Has a deed, lien, covenant, or other related documentation been recorded to establish federal interest in this real property?*
- 14h. *Has federally required insurance coverage been secured for this real property?*
15. *Has a significant change occurred with the real property, or is there an anticipated change expected during the next reporting period?*

**Note:** If the response to the question is “Yes,” but only in anticipation of an expected change, the auditor is not expected to review this line item.

16. *Real Property Disposition Status*

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## M. Subrecipient Monitoring

HSAs 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)).

## N. Special Tests and Provisions

### 1. Protection of Federal Interest in Real Property and Facilities

**Compliance Requirements** Head Start uses specific terms related to real property and facilities, which are defined at 45 CFR section 1305.2, including construction, facility, federal interest, major renovation, and modular unit.

Facilities activities (purchase, construction, major renovation, subordination of a federal interest, refinancing, and disposition) are initiated through the submission of Form SF-429 (cover sheet) and applicable attachments B (*Request to Acquire, Improve or Furnish*) or C (*Disposition or Encumbrance Request*).

With written prior approval from ACF, a HSA may use Head Start funds to purchase, construct, or renovate (major) a facility, including using Head Start funds to pay ongoing purchase costs which include principal and interest on approved loans (45 CFR sections 1303.40 through 1303.44).

A HSA that uses Head Start funds to purchase real property or purchase, construct, or renovate (major) a facility appurtenant to real property (either owned or leased) must record a Notice of Federal Interest (also referred to as “reversionary interest”) (45 CFR sections 1303.46). The Notice of Federal Interest must include the required language content from 45 CFR section 1303.47(a) and be properly recorded in the official real property records for the jurisdiction where the facility is or will be located. A similar Notice of Federal Interest is required for leased facilities on land the HSA does not own (45 CFR section 1303.47(b)).

A HSA that uses Head Start funds to purchase or renovate (major) a modular unit must post a Notice of Federal Interest which includes the required language content in clearly visible locations on the exterior and the interior of the modular unit (45 CFR sections 1303.46(b)(4) and 47(c)).

A HSA cannot mortgage, use as collateral for a credit line or for other loan obligations, or sell or transfer to another party, a facility, real property, or a modular unit it has purchased, constructed, or renovated (major) with Head Start funds, without the prior written approval of ACF (45 CFR sections 1303.48 and 1303.51). A HSA must include specific language in any mortgage agreement or other security instrument that encumbers

real property or a modular unit constructed or purchased with Head Start fund to ensure protection of ACF interests (45 CFR section 1303.49).

A HSA must have written approval from ACF before it can use real property, a facility, or a modular unit subject to federal interest for a purpose other than that for which the HSA's application was approved (45 CFR section 1303.48(b)).

**Audit Objectives** Determine whether the federal interest in real property and facilities is protected by the required Notice of Federal Interest and language content and the required prior written approvals were obtained from ACF.

### **Suggested Audit Procedures**

- a. Review the HSA's general ledger accounts and the meeting minutes of its governing body and inquire of HSA management to identify if any of the following transactions, which are subject to the requirements for protecting the Federal interest, occurred during the audit period and, if so, that the required prior written approvals were obtained from ACF:
  - (1) Purchase of real property or purchase, construction, or major renovation of a facility, including a modular unit.
  - (2) Sale, lease, or encumbrance, such as a mortgage of real property or a facility (including modular units).
  - (3) Changes in approved use of facilities.
- b. For purchase, construction, or major renovation during the audit period, ascertain if the required Notice of Federal Interest was properly recorded in the locality's official real property records and, for a modular unit, if this notice was properly posted on the exterior and interior of the modular unit.
- c. Review the notices of federal interest and mortgage agreements and other security instruments executed during the audit period to ascertain if the documents include the required language content.
- d. For sales, leases, and encumbrances and property used for a different purpose during the audit period, review the change in use to ascertain if the HSA obtained and complied with the requirement for ACF prior written approval.

## **2. Program Governance**

**Compliance Requirements** OHS has found a high correlation between HSAs that fail to comply with the program governance requirements and HSAs that have serious fiscal problems, which puts both the HSA and the Head Start programs they administer at risk.

The governing body has legal and fiscal responsibility for the HSA. The HSA governing body must include not less than one member with a background and expertise in fiscal



management or accounting and not less than one licensed attorney familiar with issues that come before the governing body. If the types of persons described above are not available to serve as members of the governing body, the governing body must use a consultant, or another individual(s) with relevant expertise who must work directly with the governing body (42 USC 9837(c)(1)(B)).

A HSA must share accurate and regular financial information with the governing body and the policy council, including monthly financial statements, including credit card expenditures and the financial audit (42 USC 9837(d)(2)(A) and (E)).

The governing body's responsibilities include approving financial management, accounting, and reporting policies, and compliance with laws and regulations related to financial statements, including the

- a. approval of all major financial expenditures of the agency;
- b. annual approval of the operating budget of the agency;
- c. selection (except when a financial auditor is assigned by the state under state law or is assigned under local law) of independent financial auditors; and
- d. monitoring of the agency's actions to correct any audit findings and of other action necessary to comply with applicable laws (including regulations) governing financial statement and accounting practices (42 USC 9837(c)(1)(E)(iv)(VII)(aa) through (dd)).

The auditee has provided training and technical assistance to the governing body and policy council to support understanding of financial information provided to them and support effective oversight of the Head Start award (42 USC 9837(d)(3)).

**Audit Objectives** Determine whether the entity complied with the program governance requirements for (a) composition and qualifications of board members, (b) providing financial information to the governing body and policy council, and (c) providing training to the governing body and policy council.

### **Suggested Audit Procedures**

1. Identify the HSA's governing body member who is an attorney and ascertain if that individual is licensed and has the required familiarity with issues that come before the governing body, or that the governing body used a consultant, or another individual with relevant expertise with the required qualifications who worked directly with the governing body.
2. Identify the HSA's governing body member with fiscal management or accounting expertise and ascertain if that individual has the required background and expertise or that the governing body used a consultant, or another individual with the required qualifications who worked directly with the governing body.

3. Ascertain if the HSA shared the required monthly financial information with the governing body and the policy council.
4. Determine whether the HSA has established written policies and procedures that identify major financial expenditures approvable by the governing body. If the HSA does not have written policies and procedures that identify or define major financial expenditures determine whether the HSA has an identifiable practice for identifying major financial expenditures submitted for approval to the governing body. Ascertain if written policies and procedures or an identifiable procedure exists and whether the policy, procedure or practice was followed by the HSA. If no such policy, procedure or practice exists and no governing body minutes reflect approval of expenditures identified as major financial expenditures, the auditor should determine that major financial expenditures are not submitted to the governing body for approval.
5. Governing body minutes or similar records should also reflect approval of all funding applications (Head Start and disaster recovery), selection of the independent auditor, attention to corrective action on audit findings and the annual report to the public.
6. Ascertain if the governing body of the HSA approved major financial expenditures and the budget, selected the independent auditors, and monitored corrective action on audit findings.
7. Ascertain if governing body and policy council members have received training and technical assistance related to their fiscal responsibilities.

#### **IV. OTHER INFORMATION**

For purposes of evaluation of this new Head Start cluster for major program determination purposes, the cluster cannot be considered to have been audited in one of the prior two years unless the expenditures of the new program were less than or equal to 25 percent of the Type A threshold.

Monitoring of HSAs and delegate agencies by OHS has identified the following areas of risk for deficiencies in internal controls and noncompliance.

##### **B. Allowable Costs/Cost Principles**

1. Many Head Start grantees, such as community action agencies, have multiple funding streams and few revenue sources other than federal awards. Federal programs only cover costs that are reasonable, allowable, and allocable for the accomplishment of the program objectives leaving the entity with limited options to cover unallowable costs.
2. The Head Start program often provides the largest proportion of the overall funding of HSAs and funds are immediately available to be drawn down in the Payment Management System. These factors create a risk that shared costs are over-allocated or

- billed entirely to Head Start. In some cases, costs of shared central services, such as equipment, information and communications systems, and rent are charged entirely to Head Start when the costs should be allocated to all programs that benefit.
3. A large portion of Head Start costs are payroll and grantees may fail to maintain adequate documentation of shared staff time or charge those costs based on the application budget rather than reconciling to actual hours worked. For example:
    - a. A teacher working for both Head Start and Child Care or a director for multiple programs erroneously charged entirely to Head Start.
    - b. Double charging the same costs by including them in the indirect cost rate and direct charging them through allocation (e.g., administrative staff).
    - c. Large dollar costs charged through journal entries to move costs between programs or between program years without adequate support.
    - d. Rent charged at full fair market value instead of depreciation or use allowance under capital or related party leases.
  4. Transactions with related parties resulting in excessive charges. For example, in the area of professional services (e.g., financial services, information technology, mental health professionals, and nutrition consultants), grantees awarding contracts to related parties without competitive procurement or paying rental rates in excess of fair market value.
  5. Applicable only to expenditures charged to Assistance Listing 93.356:
    - a. Failure to notify ACF of FEMA or insurance proceeds or reimbursements for expenses already funded with Head Start disaster recovery funds.
    - b. Failure to obtain required prior written approval from ACF for purchase, construction, or major renovation of facilities. Major renovation means any individual or collection renovation that has a cost equal to or exceeding \$250,000. It excludes minor renovations and repairs except when they are included in a purchase application (45 CFR section 1305.2).
    - c. Failure to document costs and their relationship to the consequences of hurricanes Harvey, Irma, Maria, and allowability based on the specific terms and conditions of the award.
  6. Applicable only to CARES Act and CAA funds:
    - a. Failure to maintain documentation to demonstrate that the use of CARES Act and CAA funds was related to the coronavirus.

- b. Expenses charged to CARES Act and CAA funds awarded by OHS also charged to another federally financed program.
- c. CARES Act and CAA funds are subject to certain fiscal flexibilities established by OHS and continuing through December 31, 2020, described in [ACF-IM-HS-20-03](#). See, in particular, paragraphs 5 and 6 regarding allowable costs.
- d. CARES Act and CAA funds must be spent in accordance with cost principles described in 45 CFR Part 75, Subpart E taking into account the unique circumstances affecting spending decisions during COVID-19. Per 45 CFR Part 75, Subpart E CARES Act and CAA funds may 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.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 93.645 STEPHANIE TUBBS JONES CHILD WELFARE SERVICES PROGRAM

#### I. PROGRAM OBJECTIVES

The purpose of the Stephanie Tubbs Jones Child Welfare Services (CWS) program is to promote state and tribal flexibility in the development and expansion of a coordinated child and family services program that utilizes community-based agencies and ensures that 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 (1) Child Welfare Services, services promoting safe and stable families under Title IV-B, subpart 2; (2) a child welfare staff development and training plan; (3) 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; (4) 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 five-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.

#### 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.

**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 CWS program. This information may be accessed at <https://www.acf.hhs.gov/cb/laws-policies>.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	Y	N	N	Y	N	N

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

a. Funds may be used for the following purposes (42 USC 621):

- (1) Protecting and promoting the welfare of all children;
- (2) Preventing the abuse, neglect, or exploitation of children;
- (3) Supporting at-risk families through services that allow children to remain with their families or return to their families in a timely manner;

- (4) Promoting the safety, permanence, and well-being of children in foster care and adoptive families; and
  - (5) Providing training, professional development, and support to ensure a well-qualified workforce.
- b. Funds may be used for administrative costs, subject to the limitation in III.G.3.b, “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) ((42 USC 622(b)(14) and (c) and 624(e)).

2. *Activities Unallowed*

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**

Funds are federally reimbursed at 75 percent of allowable expenditures. The Title IV- B agency’s contribution may be in cash, donated funds, and nonpublic third party in-kind contributions (42 USC 623 and 45 CFR section 1357.30(e)(1)). The Federal Financial Participation rate may be reduced (and the state matching rate increased by a corresponding amount) based on a determination that the state failed to meet performance standards for caseworker visits with children in foster care in the preceding federal fiscal year (FFY) (see III.L.2, “Performance Reporting” below). The Children’s Bureau notifies states of any adjustment to the matching requirements through correspondence to the state agency. (Tribes are not subject to the caseworker visit data requirements.)

**2. Level of Effort**

Not Applicable

**3. Earmarking**

- a. 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 (42 USC 622(b)(14) and (c) and 624(e)).

- b. A state may not use federal funds under Title IV-B, subpart 1 for child care, foster care maintenance or adoption assistance payments in excess of the amount of Title IV-B, subpart 1 funds it spent on these activities from such payments for FY 2005 (42 USC 624(c)). This limitation is not applicable to tribes.
- c. A state cannot use more than the amount it spent in FY 2005 using nonfederal funds on foster care maintenance payments as match for the Title IV-B, subpart 1, program (42 USC 624(d)). This limitation is not applicable to tribes.

## **H. Period of Performance**

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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

### **2. Performance Reporting**

States are required to annually collect and report data on monthly caseworker visits with children in foster care. This report addresses established specific performance requirements as follows:

- a. *For FFY 2015 and each FFY thereafter:* The total number of visits made by caseworkers on a monthly basis to children in foster care during a fiscal year must not be less than 95 percent of the total number of such visits that would occur if each child were visited once every month while in care.
- b. *For FFY 2012 and each FFY thereafter:* At least 50 percent of the total number of monthly visits made by caseworkers to children in foster care during a fiscal year must occur in the child's residence.

States failing to meet any one of the above performance requirements in a FFY will be subject to a reduction in the rate of Federal Financial Participation (FFP) for Title IV-B, subpart 1 expenditures in the subsequent FFY in proportion to the amount that the state failed to reach the applicable requirement (section 424(f) of the Act). The full federal allotment will remain available to the state, but the state must increase its match rate to access the full federal allotment.



The requirements for caseworker visitation reporting are addressed in Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Children’s Bureau (CB) Program Instructions (PIs). The reporting element requirements are covered in Program Instruction ACYF-CB-PI-12-01 available through a link as follows:  
<https://www.acf.hhs.gov/cb/resource/pi1201>.

The annual monthly caseworker visitation data submission procedures are addressed through an annual program instruction covering multiple program information reports. The latest issuance of this guidance to states is through Program Instruction ACYF-CB-PI-19-02 available through a link as follows:  
<https://www.acf.hhs.gov/cb/resource/pi1902>.

The information on the caseworker visitation reporting procedures are included under “Section C. 2015–2019 Final Report Requirements, 7. Statistical and Supporting Information, d. Monthly Caseworker Visit Data,” on page 17 of that PI.

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 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 Title IV-E agency and need temporary placement and care outside their homes.

#### II. PROGRAM PROCEDURES

##### Overview

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, the US Virgin Islands, and federally recognized Indian tribes, Indian tribal organizations, and tribal consortia with approved Title IV-E plans, based on a Title 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 Foster Care program provides federal matching funds to Title IV-E agencies with approved Title IV-E plans for maintenance assistance payments to provide safe and stable out-of-home care to eligible children placed in qualifying foster care settings. The program also provides matching funds for child placement and other administrative or training costs associated with serving these children and others determined to be candidates for the Title IV-E Foster Care program or those either found to be at-risk of becoming or identified as a sex trafficking victim.

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 (Assistance Listing 93.659); Guardianship Assistance (Assistance Listing 93.090) at agency option and John H. Chafee Foster Care Program for Successful Transition to Adulthood (Assistance Listing 93.674), as well as Child Welfare Services (Assistance Listing 93.645) and Promoting Safe and Stable Families (Assistance Listing 93.556) programs (Title IV-B of the Social Security Act, as amended) (Assistance Listing 93.556) funds available to states and those tribes qualifying for at least a minimum grant of \$10,000); and the Social Services Block Grant program (Assistance Listing 93.667) (Title XX of the Social Security Act, as amended) (states only)). The Title IV-E agency may either directly administer the Foster Care program or supervise its administration by local level agencies. When the program is administered by a state, in accordance with the approved Title 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. When 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 Preventing Sex Trafficking and Strengthening Families Act (Pub. L. No. 113-183) and the Family First Prevention Services Act (Pub. L. No. 115-123). Implementing regulations are at 45 CFR parts 1355, 1356, and 1357.

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 Title IV-E plan.

The regulations at 45 CFR Part 75 specifying uniform administrative requirements, cost principles, and audit requirements for HHS awards are applicable to the Foster Care program. However, in accordance with 45 CFR sections 75.101(e)(1)(iii) and 75.101(e)(2), except for 45 CFR section 75.202, the guidance in Subpart C of 45 CFR Part 75 does not apply.

### **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 at <https://www.acf.hhs.gov/cb/laws-policies>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	N	N	N	N	Y	Y	Y

**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 Title 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 a child care 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. Beginning October 1, 2018, Title IV-E agencies may claim Title IV-E foster care maintenance payments and administrative costs consistent with 45 CFR 1356.60(c) for a child placed with a parent in a licensed residential family-based treatment facility for substance abuse for up to 12 months (42 USC 672(j) and 672(a)(2)(C)).
- 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)). 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)).
- d. Funds may be expended for short-term training of (1) relative guardians; (2) state/tribe-licensed or state/tribe-approved child welfare agencies

providing services to children receiving Title IV-E assistance; (3) child abuse and neglect court personnel; (4) agency, child or parent attorneys; (5) guardians ad litem; and (6) court appointed special advocates (42 USC 674(a)(3)(B B)).

- e. 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)).
- f. 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 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)).
- g. Funds may be expended for activities defined as sex trafficking administrative activities (see list of examples below). These activities are meant to combat sex trafficking on behalf of any child or youth in the placement, care, or supervision of the Title IV-E agency who is at-risk of becoming a sex trafficking victim or who is identified as a sex trafficking victim. Such children do not need to be Title IV-E eligible and include those who are not removed from home; those who have run away from foster care and are under age 18 or such higher age elected under Section 475(8) of the Social Security Act; and youth who are not in foster care who are receiving services under the John H. Chafee Foster Care Program for Successful Transition to Adulthood (Assistance Listing 93.674) and at the option of the agency, youth under age 26 who were or were never in foster care (42 USC 671(a)(9), USC 671(a)(34), and 671(a)(35)).

Examples of activities allowable as sex trafficking administration include

- developing and implementing policies and procedures to identify, document in agency records, and determine appropriate services for victims of sex trafficking
- conducting sex trafficking screenings and documenting victims of sex trafficking in agency files

- determining appropriate services for individuals identified as such victims, including referrals to services
- completing reports required for law enforcement and ACF of children or youth who the agency identifies as being a sex trafficking victim
- developing and implementing protocols to locate and assess children missing from foster care, including screening the child to identify if the child is a possible sex trafficking victim

Since the Title IV-E agency is not limited to performing the activities described above on behalf of individuals meeting Title IV-E eligibility requirements, application of a Title IV-E foster care participation rate is not needed in allocating these allowable administrative costs to the Title IV-E Foster Care program (42 USC 671(a)(9) and (a)(34), as amended by Pub. L. No. 113-183, and the Child Welfare Policy Manual section 8.1 Q/A#7).

- h. To the extent that allowable activities constituting training and administrative costs are allocated to the program through application of a Title IV-E participation rate (sometimes called the eligibility, penetration, or discount rate), this rate must be calculated by dividing the number of Title IV-E foster care eligible children by the total number of children in foster care pursuant to the definition of foster care in 45 CFR section 1355.20. The numerator is comprised of the total number of children in foster care determined to meet all Title IV-E eligibility requirements. A Title IV-E agency may also include in the numerator otherwise eligible children placed with relatives pending foster family home approval or licensure (for the lesser of the average time it takes to license a foster home or 12 months) and children moving from a facility that is not licensed to one that is for up to one month pursuant to Section 472(i)(1) of the Social Security Act. The denominator comprises the total number of children who are in foster care, including those that are Title IV-E eligible and those that are not or have not yet been determined Title IV-E eligible. Any methodology for claiming administrative costs, including the calculation of the participation rate described above, must be a part of the state's approved cost allocation plan or a tribe's approved cost allocation methodology (42 USC 672(i) and 674(a)(3), 2 CFR Part 225 or 45 CFR Part 75, as applicable, in accordance with 45 CFR section 75.110, 45 CFR section 95.507(b)(4), 45 CFR section 1355.20, and Child Welfare Policy Manual section 8.1C Q/A#8).
- i. 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).

- j. Funds may be expended for costs related to design, implementation, and operation of a statewide or tribal automated child welfare information system (S/TACWIS) that received any required ACF approval by July 31, 2016, or a comprehensive child welfare information system (CCWIS), which receives any required ACF approval on or after August 1, 2016. Funds for S/TACWIS costs are available only for expenditures made prior to or during the transition period of August 1, 2016 through July 31, 2018. Funds are available for CCWIS qualifying costs for expenditures made on or after August 1, 2016 (45 CFR sections 1355.52, 1355.56, 1355.57, 1356.60(e) and 95.611).
- k. Under Section 1130 of the Social Security Act, Title IV-E agencies may be granted authority to operate a demonstration project as set forth in ACF-approved terms and conditions. Any such terms and conditions applicable to the program identify the specific provisions of the Social Security Act that are waived, the additional activities deemed allowable, and the scope and duration (which may not exceed a maximum of five total years unless specifically approved for further continuation) of the demonstration project. All demonstration project operational activities, excluding project evaluation, must end no later than September 30, 2019. The demonstration project must remain cost neutral to the federal government, as provided for in a methodology contained in the approved project terms and conditions involving either a matched comparison group or a capped allocation (42 USC 1320a–9 and Section 201 of Pub. L. No. 112-34).

Allowable activities for which funds may be expended under an approved demonstration project are as follows:

- (1) Costs incurred prior to project implementation for the development of the project that are included in an approved Developmental Cost Plan (42 USC 1320a–9 and Section 201 of Pub. L. No. 112-34).
- (2) Costs incurred at any point during the project lifespan for project evaluation in accordance with an approved Project Evaluation Plan (42 USC 1320a–9 and Section 201 of Pub. L. No. 112-34).
- (3) Costs for otherwise Title IV-E allowable program activities provided as part of the operation of a demonstration project (i.e., to the extent that geographic and Title IV-E funding category components are included in the scope of the approved project) on behalf of Title IV-E eligible children to the extent that the approved cost neutrality limit or payment schedule (if applicable) is not exceeded (42 USC 1320a–9 and Section 201 of Pub. L. No. 112-34).

- (4) Costs for approved specified project intervention activities performed as part of the operation of a demonstration project on behalf of designated children and families (including those approved activities cited as otherwise Title IV-E unallowable) to the extent that the approved cost neutrality limit or payment schedule (if applicable) is not exceeded (42 USC 1320a-9 and Section 201 of Pub. L. No. 112-34).
- (5) Costs for other activities performed throughout the jurisdiction of the Title IV-E agency deemed as allowable through specifically approved Title IV-E waiver provisions (including those approved activities cited as otherwise Title IV-E unallowable) to the extent that the approved cost neutrality limit or payment schedule (if applicable) is not exceeded (42 USC 1320a-9 and Section 201 of Pub. L. No. 112-34).

## 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).
- c. Costs of conducting investigations of allegations of sex trafficking or other forms of child abuse or neglect or for providing social services, such as counseling or treatment, to victims of sex trafficking or other children or youth (Child Welfare Policy Manual section 8.1 Q/A#7).

## **B. Allowable Costs/Cost Principles**

Both states and tribes are subject to the requirements of 2 CFR Part 200, Subpart E, as implemented by HHS at 45 CFR Part 75. States also are subject to the cost allocation provisions and rules governing allowable costs of equipment of 45 CFR Part 95 (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 six 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 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 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 twelfth 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, 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 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) Voluntary Placement

- (a) *Agreement* – A voluntary placement agreement must be entered into by a parent or legal guardian of the child who is a relative specified in Section 406(a) (as in effect on July 16, 1996) and from whose home the child was removed (42 USC 672(a)(2)(A)(i); 45 CFR section 1356.22(a)). A voluntary placement agreement entered into between a youth age 18 or older and the Title IV-E agency can meet the removal criteria in Section 472(a)(2)(A)(i) of the Social Security Act. In this situation, the youth age 18 or older is able to sign the agreement as his/her own guardian (Program Instruction ACYF-CB-PI-10-11 dated July 9, 2010, section B).
- (b) *Best interests of the child determination* – 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 Title IV-E agency administering the approved Title IV-E plan or any other public agency under a valid agreement with the cognizant Title IV-E agency (42 USC 672(a)(2)).
- c. A child (except if in placement (new or an existing placement) on or after October 1, 2018, with a parent residing in a licensed residential family-based treatment facility for substance abuse) 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)).

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 of age (as the Title IV-E agency may elect) remains eligible as a child when the youth meets prescribed conditions for continued maintenance payments. For a youth age 18 or older, who is entering or re-entering foster care after attaining age 18 consistent with the criteria above, AFDC eligibility is based on the youth without regard to the parents/legal guardians or others in the assistance unit in the home from which the youth was removed as a younger child (e.g., a child-only case). A youth over age 18 must also (as elected by the Title 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) and Program Instruction ACYF-CB-PI-10-11 dated July 9, 2010, section B).

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, Question and Answer No. 24 of the Child Welfare Policy Manual).

- d. Beginning October 1, 2018, a child placed with a parent residing in a licensed residential family-based treatment facility for substance abuse who meets all the Title IV-E foster care eligibility requirements except the AFDC eligibility requirements in sections 472(a)(1)(B) and (3) of the Social Security Act shall be eligible for Title IV-E foster care maintenance payments for a period of not more than 12 months. The recommendation for such placement must be specified in the child's case plan before the placement. The treatment facility must provide, as part of the treatment for substance abuse, parenting skills training, parent education, and individual and family counseling and these services must be provided under an organizational structure and treatment framework that involves understanding, recognizing, and responding to the effects of all types of trauma and in accordance with recognized principles of a trauma-informed approach and trauma-specific interventions to address the consequences of trauma and facilitate healing. Although the treatment facility must be licensed, there is no requirement that it meet the Title IV-E licensing and background check requirements for a child care institution. Eligibility is limited for a period of not more than 12 months to foster care maintenance payments which includes such things as the cost of providing food, clothing, shelter, and daily supervision. Since a licensed residential family-based treatment facility for substance abuse is not a child care institution, the Title IV-E foster care maintenance payments may not

include the costs of administration and operation of the facility. Title IV-E agencies may claim administrative costs during the 12-month period consistent with 45 CFR 1356.60(c) for the administration of the Title IV-E program, which includes such things as case management (42 USC 672(a)(2)(C) and 672(j)).

- e. 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 that 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)).
  
- f. Beginning October 1, 2019 (or the elected delayed effective date of up to two years), limitations on Title IV-E foster care maintenance payments are applicable for new placements made in a child care institution if that facility does not meet specified setting requirements. A “specified setting”, as per Section 472(k) of the Social Security Act (Act) includes only those child care institutions as follows:
  - (1) A qualified residential treatment program (QRTP) as defined in Section 472(k)(4) of the Act.
  - (2) A setting specializing in providing prenatal, post-partum, or parenting supports for youth.
  - (3) In the case of a child who has attained 18 years of age, a supervised setting in which the child is living independently.
  - (4) A setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, sex trafficking victims, in accordance with section 471(a)(9)(C) of the Act.

A QRTP placement must also meet additional requirements to avoid Title IV-E funding limitations as follows:

- (5) An assessment to determine the appropriateness of such placement must be completed by a “qualified individual” within 30 days after the placement as per Section 475A(c)(1) of the Act. If this deadline is not met, no foster care maintenance payments may be claimed for the duration of the placement (including those for the first two weeks of care) on behalf of the child.
- (6) A court determination on the appropriateness of this placement must be made within 60 days of the start of each such placement. If this deadline is not met, foster care maintenance payments on behalf of the child may be Title IV-E claimed for only the first 60 days of the placement.
- (7) If the required assessment determines that the placement of a child in a QRTP is not appropriate, a court disapproves such a placement under Section 475A(c)(2) of the Act, or other circumstances exist where the child is transitioning from a QRTP placement to another setting further Title IV-E foster care maintenance payments claiming is limited, as per Section 472(k)(3)(B) of the Act, to the period necessary to transition, up to 30 days after the cited action takes place.

If the placement in a child care institution does not meet the requirements for a specified setting, Title IV-E foster care maintenance payments are limited to covering a two-week period for each placement. Payments for any continuous child care institution placements with a start date prior to the effective date for Section 472(k)(2) of Act are not time limited.

Otherwise allowable administrative costs for an eligible child placed in a child care institution may be Title IV-E claimed for the period of such placement regardless of whether the facility meets the specified setting requirements (42 USC 672(k) and 42 USC 675A(c)).

- g. Beginning October 1, 2019 (or the elected delayed effective date of up to two years for Section 472(k) of the Act), the definition of a foster family home is revised from the one in federal regulations at 45 CFR 1355.20(a) to include only the home of an individual or family that meets requirements as follows:
  - (1) Is licensed or approved by the Title IV-E agency in the state in which it is situated as a foster family home.
  - (2) Is licensed or approved by a tribal authority with respect to a foster family home on or near an Indian Reservation, or a tribal authority of a tribal Title IV-E agency with respect to a foster family home in the tribal Title IV-E agency's service area
  - (3) Meets the standards established for the licensing or approval.

- (4) Provide care for not more than six children in foster care. This limitation may be exceeded, at the option of the Title IV-E agency as requested, for any of the reasons specified at Section 472(c)(1)(B)(i-iv) of the Act.
- (5) The individual(s) in whose care a child has been placed in foster care reside in the home with the child and the Title IV-E agency has determined such individual(s) as being:
  - (a) Licensed or approved to be a foster parent; and
  - (b) Deemed capable of adhering to the reasonable and prudent parent standard; and
  - (c) Providing 24-hour substitute care for children placed away from their parents or other caretakers.

A foster family home may not then include “group homes, agency-operated boarding homes or other facilities licensed or approved for the purpose of providing foster care...” as previously permitted in federal regulations at 45 CFR 1355.20(a) if that facility is not the home of an individual or family where the foster parent resides (42 USC 672(c)(1)).

- h. 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, 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 on October 1, 2009.

The statutory provisions apply to all prospective foster parents who are newly licensed or approved after the Title IV-E agency’s authorized date



for implementation of the fingerprint-based background check provisions. Title IV-E agencies may also require that certain other adult individuals living in the home be subject to a criminal records check. The completion or lack of completion of criminal records checks for persons other than prospective foster parents does not, however, impact Title IV-E eligibility (42 USC 671(a)(20)(B); Pub. L. No. 109-248, Section 152(c)(2); 45 CFR sections 1356.30(b) and (c); and the Child Welfare Policy Manual section 8.4F Q/A#4).

- i. A Title 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 five 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)(B); Pub. L. No. 109-248, Section 152(c)(2) and (3)).
- j. 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)). Effective October 1, 2018, unless a legislative delay is approved, the safety considerations in the child-care institution licensing file must consist of proof that criminal background checks, including fingerprint-based criminal records checks of national crime information databases (as defined in section 534(f)(3)(A) of Title 28, United States Code) and child abuse and neglect registry checks for all adults working at the child-care institution were conducted. Title IV-E agencies may use alternative procedures to conduct these criminal records and child abuse registry checks. However, if the agency elects to use an alternate procedure, such procedures must still provide for conducting both checks on every adult working in the institution and the agency must describe in its approved Title IV-E Plan why alternative procedures for conducting the checks are appropriate for the agency (42 USC 671(a)(20)(D)).
- k. 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 671(a)(15) to prevent the need for, or if, necessary to pursue, removal of the child from the home.
  - (b) The Title IV-E agency has made, not less often than every six months, a determination (or redetermination) as to whether the child remains at imminent risk of removal from the home (42 USC 672(i)(2)).
  - (c) Pre-placement administrative costs may be paid on behalf of a child determined to be a candidate for foster care only if all of the following requirements are met:
    - (i) A child who is a potentially Title IV-E eligible child is at imminent risk of removal from the home and the Title IV-E agency is either pursuing the removal of the child from the home or providing reasonable efforts to prevent the removal in accordance with Section 471(a)(15) of the Social Security Act (42 USC 672(i)(2)(A)).

- (ii) No earlier than the month in which the Title IV-E agency has made and documented a determination that the child is a candidate for foster care as evidenced by at least one of the following (section 8.1D, Question and Answer No. 2 of the Child Welfare Policy Manual):
  - (A) A defined case plan, which clearly indicates that absent effective preventive services, foster care is the planned arrangement for the child.
  - (B) An eligibility determination form which has been completed to establish the child's eligibility under Title IV-E. Eligibility forms used to document a child's candidacy for foster care should include evidence that the child is at serious risk of removal from home.
  - (C) Evidence of court proceedings in relation to the removal of the child from the home, in the form of a petition to the court, a court order, or a transcript of the court's proceedings. These proceedings include those where the Title IV-E agency is required to obtain a judicial determination sanctioning or approving such an attempt to prevent removal with respect to reasonable efforts or initiates efforts to obtain the judicial determinations related to the removal of a child from home.
- (iii) The Title IV-E agency determines that the planned out-of-home placement for the child will be a foster care setting (section 8.1D, Question and Answer No. 11 of the Child Welfare Policy Manual).
- (iv) In order to claim child specific candidate administrative costs, the Title IV-E agency may either (section 8.1C, Question and Answer No. 3 of the Child Welfare Policy Manual):
  - (A) individually determine those children who are Title IV-E foster care candidates and claim 100 percent of the child specific

allowable administrative costs incurred on behalf of these children, or

- (B) allocate costs to benefiting programs considering a determination both of candidacy for foster care and of potential Title IV-E eligibility; using a Title IV-E foster care participation rate is one acceptable means of allocation.
- (v) The Title IV-E agency re-determines at least every six months that the child remains at imminent risk of removal from the home. If the Title IV-E agency does not make this determination at the six-month point, it must cease claiming administrative costs on behalf of the child (42 USC 672(i)(2)(B) and section 8.1D, Question and Answer No. 5 of the Child Welfare Policy Manual).
- (vi) Candidate administration on behalf of eligible children is limited to any allowable Title IV-E administrative cost that comports with or is closely related to one of the listed activities at 45 CFR section 1356.60(c)(2). The costs of investigations, physical or mental examinations or evaluations and services related to the prevention of placement are not foster care administrative costs and are therefore not reimbursable (section 8.1B, Question and Answer No. 1 of the Child Welfare Policy Manual).

## 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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable

- d. *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:

1. *Part 1, Expenditures, Estimates and Caseload Data*, columns (A) through (D) (sections A and E (Foster Care Program))
2. *Part 2, Prior Quarter Expenditure Adjustments – Foster Care*, columns (A) through (E)
3. *Part 3, Foster Care, Adoption Assistance and Guardianship Demonstration Projects*, columns (A) through (F)

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions**

**1. Payment Rate Setting and Application**

**Compliance Requirements** Title IV-E agencies establish payment rates for maintenance payments (e.g., payments to foster parents, child care institutions or directly to youth). Payment rates may also be established for Title IV-E administrative expenditures (e.g., payments to child placement agencies or other contractors, which may be either subrecipients or vendors) and for other services. Payment rates must provide for proper allocation of costs between foster care maintenance payments, administrative expenditures, and other services in conformance with the cost principles. The Title IV-E agency's plan approved by ACF must provide for periodic review of payment rates for foster care maintenance payments at reasonable, specific, time-limited periods established by the Title IV-E agency to ensure the rate's continuing appropriateness for the administration of the Title IV-E program (42 USC 671(a)(11); 45 CFR section 1356.21(m)(1); 45 CFR section 1356.60(a)(1) and (c)).

**Audit Objectives** Determine whether (1) the Title IV-E agency reviewed foster care maintenance payment rates for continued appropriateness in accordance with its established periodicity schedule; (2) the Title IV-E agency established foster care maintenance and administrative expenditure payment rates which provide only for costs which are necessary for the proper and efficient administration of the program and which are for allowable costs (i.e., reasonable, allowable, and properly allocated in compliance with the applicable cost principles and program requirements); and (3) charges to the program were based upon the established payment rates properly applied and the charges to the program were properly classified as foster care maintenance payments or administrative expenditures.

### **Suggested Audit Procedures**

- a. Identify the Title IV-E agency's schedule for the required periodic review to determine the continued appropriateness of amounts paid as foster care maintenance payments and ascertain if the current foster care maintenance payment rates were last reviewed and adjusted in accordance with the Title IV-E agency established schedule.
  - b. Review the Title IV-E agency's policies and procedures for establishing foster care maintenance and administrative expenditure payment rates to ascertain if these policies and procedures will properly determine that the costs charged to the program based upon these payment rates will be allowable.
  - c. Test a sample of Title IV-E foster care maintenance and administrative expenditure payment rates to ascertain if the rates have been properly calculated in accordance with the Title IV-E agency's policies and procedures to ensure only allowable costs are charged to the program.
  - d. Test a sample of Title IV-E foster care rate-based maintenance payments to ascertain if they were based upon the established payment rates per the Title IV-E agency's rate schedule and that these rates were properly applied to ensure that only costs allowable as maintenance payments were charged to the program.
  - e. Test a sample of Title IV-E foster care rate based administrative expenditures to ascertain if they were based upon the established payment rates per the Title IV-E agency's rate schedule and that these rates were properly applied to ensure that only costs allowable as administrative expenditures were charged to the program.
- 2. Operation of a Foster Care Demonstration Project (Applicable Only for Title IV-E Agencies with ACF Approval to Operate a Foster Care Demonstration Project)**

**Compliance Requirements** Those Title IV-E agencies that receive approval to operate a foster care demonstration project for a specified period of time must do so in accordance with ACF-approved terms and conditions that define the operational parameters and the waivers granted. The funding for operation of such a project is subject to a cost neutrality limit that is calculated either through an experimental design (involving experimental

group cases and either a control or matched comparison group process) or an established capped allocation table for identified populations (including agency-wide) in specific funding categories.

All Title IV-E agencies that operate a foster care demonstration project are also simultaneously continuing to operate the traditional (non-demonstration) foster care program for some portion of the agency's service population and/or funding. Operation of a foster care demonstration project, therefore, includes both the continuation of assistance payments and, where applicable, administration or training under the existing approved Title IV-E Plan and provision of project interventions or other waiver-based services for an identified population. Demonstration project operational costs, to the extent that they provide payments, administration or training that is allowable for traditional Title IV-E foster care funding, must be in compliance with all applicable Title IV-E requirements (unless waived) and are subject to separate identification as part of financial reporting. Funding is also available, subject to separate ACF approvals, for the costs of demonstration project developmental and evaluation costs.

**Audit Objectives** Determine for those Title IV-E agencies with an approved operational foster care demonstration project whether (1) the Title IV-E agency properly tracked and classified those costs consisting of demonstration project operational, developmental, or evaluation costs; (2) the Title IV-E agency separately identified those project operational costs that are reportable as Title IV-E allowable costs (without a waiver) from other project operational costs; (3) the Title IV-E agency properly identified the applicable project operational cost neutrality limits and cumulative project operational costs for each relevant funding category; and (4) the Title IV-E agency properly tracked and classified those costs consisting of Title IV-E foster care (non-demonstration) costs.

### **Suggested Audit Procedures**

- a. Determine whether a Title IV-E agency is operating a foster care demonstration project and, if so, review the applicable terms and conditions as approved by ACF.
- b. Review the Title IV-E agency's cost tracking procedures for segregating costs properly classified as a component of the approved foster care demonstration project as developmental costs, evaluation costs, or operational costs.
- c. Test a sample of Title IV-E claims (current quarter and any prior quarter adjustments) reported on Form CB-496 Part 3 designated as foster care demonstration project developmental or evaluation costs to determine that the claims are properly classified and reported and that they comply with applicable approvals.
- d. Test a sample of Title IV-E claims (current quarter and any prior quarter adjustments) reported on Form CB-496 Part 3 designated as foster care demonstration project operational costs in each of the funding categories reported to determine that the claims are properly classified as project operational costs

based on (1) the funding category is within the scope of the project’s operational costs, (2) the type of cost, (3) the population served, and (4) the applicable period.

- e. Test a sample of Title IV-E claims (current quarter and any prior quarter adjustments) reported on Form CB-496 Part 3 designated as foster care demonstration project operational costs in each of the funding categories reported to determine that the claims are properly reported as either “Title IV-E Operations” costs (i.e., Title IV-E allowable without the approved demonstration project) or as “Project Intervention and Other Waiver Based Expenditures” (i.e., Title IV-E allowable only with the approved demonstration project).
- f. Review the Title IV-E agency’s Form CB-496 Part 3 reported “Cumulative Cost Neutrality Limit” (for the current quarter and the next quarter estimate) in applicable funding categories to ensure that it is consistent with a calculation through the applicable period as designated in the demonstration project’s approved terms and conditions or, if applicable, an ACF approved quarterly payment schedule.
- g. Review the Title IV-E agency’s Form CB-496 Part 3 reported “Currently Reported and Cumulatively Funded Operational Costs” (for the current quarter and the next quarter estimate) in applicable funding categories to ensure that it is consistent with a calculation through the applicable period based on any such claims submitted on reports for previous periods.
- h. Test a sample of Title IV-E claims (current quarter and any prior quarter adjustments) reported on Form CB-496 Part 1 as foster care (non-demonstration) costs in each of the funding categories identified in the project’s approved terms and conditions as included within project operational costs to determine that the claims are properly classified as outside of project operational costs based on (1) specific exclusions contained in the project’s approved terms and conditions, (2) the type of cost, (3) the population served, and (4) the applicable period.



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 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

##### A. Overview

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 ongoing subsidy and/or nonrecurring payments to parents who adopt eligible children with special needs and enter into an adoption assistance agreement.

Funding is provided to the 50 states, the District of Columbia, Puerto Rico, and the US Virgin Islands. 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 Title 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 Title IV-E agency to Title 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 Title IV-E training expenditures. In addition, the program authorizes federal matching funds for Title IV-E agencies that reimburse the nonrecurring 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 Title IV-E agency for this program also administers ACF funding provided for other Social Security Act programs (e.g., Foster Care (Assistance Listing 93.658), Guardianship Assistance (Assistance Listing 93.090) at agency option and John H. Chafee Foster Care Program for Successful Transition to Adulthood (Assistance Listing 93.674) programs (Title IV-E of the Social Security Act); Child Welfare Services (Assistance Listing 93.645) and Promoting Safe and Stable Families (Assistance Listing 93.556) programs (Title IV-B of the Social Security Act, as amended) (Assistance Listing 93.556 funds available to states and those tribes qualifying for at least a minimum grant

of \$10,000); and the Social Services Block Grant program (Assistance Listing 93.667) (Title XX of the Social Security Act, as amended) (states only)). The Title IV-E agency may either directly administer the Adoption Assistance program or supervise its administration by local level agencies. When the program is administered by a state, in accordance with the approved Title 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. When 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.

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 Income (SSI) program. In cases when 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)).

An adoption assistance agreement is a written agreement between the prospective adoptive parents, the Title 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 Title 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.

## **B. Other**

### *Adoption Savings*

Title IV-E agencies are required to enter into an adoption assistance agreement with the prospective adoptive parents of any child who meets specified criteria by applying differing, and less restrictive, program eligibility criteria (specified in III.E.1.a.(1)(a) and (c), “Eligibility - Eligibility for Individuals,” of this program supplement). This results in some number of children who, under previously applied program eligibility criteria, would not have been determined as Title IV-E eligible, but who will now be determined as Title IV-E eligible for adoption assistance. Each Title IV-E agency is required to calculate and spend an amount equal to any savings in Title IV-E agency expenditures as a result of applying the differing program eligibility criteria for a FFY for services permitted under Title IV-B or IV-E. These nonfederal funds are a component of this program and are hereafter referred to as “adoption savings.”

Beginning in FFY 2015, each Title IV-E agency is required to annually calculate and report on adoption savings. The calculation must be in accordance with procedures established by the Children's Bureau. The report must identify the methodology used to calculate the savings, how savings are spent, and on what services.

### **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 Preventing Sex Trafficking and Strengthening Families Act (Pub. L. No. 113-183) and the Family First Prevention Services Act (Pub. L. No. 115-123). Implementing regulations are published at 45 CFR parts 1355 and 1356.

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 Title IV-E Plan.

The regulations at 45 CFR Part 75 specifying uniform administrative requirements, cost principles, and audit requirements for HHS awards are applicable to the Adoption Assistance program. However, in accordance with 45 CFR sections 75.101(e)(1)(iii) and 75.101(e)(2), except for 45 CFR section 75.202, the guidance in Subpart C of 45 CFR Part 75 does not apply.

### **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 at <https://www.acf.hhs.gov/cb/laws-policies>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	Y	N	N	N	Y	N	N

**A. Activities Allowed or Unallowed**

1. *Adoption Assistance Subsidies*

Funds may be expended for adoption assistance subsidy payments made on behalf of eligible children (see III.E.1, “Eligibility – Eligibility for Individuals”) in accordance with a written and binding adoption assistance agreement. 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 (in accordance with the Title IV-E agency’s rate schedule) the child would have received in a foster family home; however, the amount of the subsidy payments may be up to 100 percent of that 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 methodologies (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 Title 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 Title IV-E agency for adoption placements (including nonrecurring costs) are considered an administrative expenditure and are subject to the matching requirements in III.G.1.e, “Matching, Level of Effort, Earmarking – Matching” (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 (1) relative guardians; (2) state/tribe-licensed or state/tribe-approved child welfare agencies providing services to children receiving Title IV-E assistance; (3) child abuse and neglect court personnel; (4) agency, child or parent attorneys; (5) guardians ad litem; and (6) court appointed special advocates (42 USC 674(a)(3)(B)).
- 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)).

### 4. *Demonstration Projects*

Under Section 1130 of the Social Security Act, Title IV-E agencies may be granted authority to operate a demonstration project as set forth in ACF-approved terms and conditions. Any such terms and conditions applicable to the program identify the specific provisions of the Social Security Act that are waived, the additional activities that are deemed as allowable, and the scope and duration (which may not exceed a maximum of five total years unless specifically approved for further continuation) of the demonstration project. The demonstration project must remain cost neutral to the federal government, as provided for in a methodology contained in the approved project terms and conditions involving either a matched comparison group or a capped allocation (42 USC 1320a-9 and Section 201 of Pub. L. No. 112-34).

**B. Allowable Costs/Cost Principles**

Both states and tribes are subject to the requirements of OMB cost principles in 2 CFR Part 200, Subpart E, as implemented by HHS at 45 CFR Part 75. States also are subject to the cost allocation provisions and rules governing allowable costs of equipment of 45 CFR Part 95 (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 the following requirements are met:

- (1) Categorical Eligibility

- (a) Applicable 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 multi-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 subsequent FYs through FY 2017, the age to apply the revised “applicable child” program rules decreases by two years. The applicable age for agreements entered into in FY 2018 through FY 2024 is dependent on the date of the agreement. For agreements entered into in FY 2018 between October 1 and December 31, 2017, children of any age may be eligible according to the revised criteria in FY 2018. However, for agreements entered into between January 1, 2018 and June 30, 2024, only those children who turn 2 or older in the FY the agreement is entered into may be eligible according to the revised criteria. As of July 1, 2024, a child of any age covered by a newly entered into agreement will meet the applicable child definition (see applicable age table below) (42 USC 673(e)(1)(B)).

<b>In the case of fiscal year:</b>	<b>The applicable age is:</b>
2010	16
2011	14
2012	12
2013	10
2014	8
2015	6
2016	4
2017	2
2018 (through December 31, 2017)	Any age
2019 to 2023	2
2024 (through June 30, 2024)	2
2024 (July 1, 2014 or later)	Any age
2025 (or fiscal years thereafter)	Any age

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 nonrecurring expenses under 42 USC 673(a)(1)(B)(i)) (i.e., an “applicable child” who is not a citizen or resident of the United States and was either adopted outside the United States or brought to the United States 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 Title 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 Title 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 the medical or disability requirements for SSI and the Title 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 Title 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 on October 1, 2009.

The statutory provisions apply to all prospective adoptive parents who are newly approved after the Title IV-E agency's authorized date for implementation of the fingerprint-based background check provisions. Title IV-E agencies may also require that certain other adult individuals living in the adoptive home be subject to a criminal records check. The completion or lack of completion of criminal records checks for persons other than prospective adoptive parents does not, however, impact Title IV-E eligibility (42 USC 671(a)(20)(B); Pub. L. No. 109-248, Section 152(c)(2); 45 CFR sections 1356.30(b) and (c); and the Child Welfare Policy Manual section 8.4F Q/A#4).

- (f) The prospective adoptive parent(s) and any other adult living in the home who has resided in the provider home in the preceding five 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)(B); 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 Title IV-E agency determines that the child has a mental or physical disability which warrants the continuation of assistance); (ii) the Title IV-E agency determines that the parent is no longer legally responsible for the support of the child; or (iii) the Title 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 of age (as the Title 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 (when the Title 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 Title 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 may be a separate document or part of an agreement for state/tribe or federal adoption assistance payment or services (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 agreement was signed at the time of, or prior to, the final decree of adoption and claims must be filed with the Title IV-E agency within two years of the date of the final decree of adoption (45 CFR section 1356.41(e)(2)).

- (4) The state or tribe has determined that the child is a child with special needs (45 CFR section 1356.41(d)).
- (5) The child has been placed for adoption in accordance with applicable state or tribal laws (45 CFR section 1356.41(d)).
- (6) The child need not meet the categorical eligibility requirements at Section 473(a)(2) (45 CFR section 1356.41(d)).
- (7) 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

## **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/A#2 8/16/02). The matching and cost sharing provisions of 45 CFR section 92.24/45 CFR section 75.306 do not apply to this program (45 CFR sections 1355.30(c) and 1355.30(n)(1); 45 CFR section 201.5(e)).

However, for program expenditures made in FY 2012 and thereafter, tribes receiving Title IV-E are permitted to use in-kind funds from any allowable third party sources to provide up to the full required nonfederal share of administrative or training costs (42 USC 679c(c)(1)(D), 45 CFR section 1356.68(c)).

- 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 at <http://www.aspe.hhs.gov/health/fmap.htm> (42 USC 674(a)(1); 45 CFR section 1356.60(a)).

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 methodology for calculating tribal FMAP rates was provided through a final notice in the *Federal Register* that is available at <http://www.gpo.gov/fdsys/pkg/FR-2011-08-01/pdf/2011-19358.pdf>. Information on specific tribal FMAP rates for many tribes applicable for each FY and a table where such rates can be calculated for unlisted tribes is posted on the Children's Bureau's website and is available at <https://www.acf.hhs.gov/cb/focus-areas/tribes>. The calculated FMAP rate for each tribe 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 (1) relative guardians; (2) state/tribe-licensed or state/tribe-approved child welfare agencies providing services to children receiving Title IV-E assistance; (3) child abuse and neglect court personnel; (4) agency, child or parent attorneys; (5) guardians ad litem; and (6) court appointed special advocates is 75 percent in FY 2013 and thereafter (42 USC 674(a)(3)(B)).
- 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 nonrecurring cost expenditures is 50 percent for Title 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. Level of Effort

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

A Title IV-E agency is required to spend an amount equal to any savings (hereafter referred to as “adoption 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 for any services that may be provided under Title IV-B or IV-E (42 USC 673(a)(8)) as follows:

- a. For periods prior to FFY 2015, Title IV-E agencies had the flexibility to determine the methodology for calculating adoption savings and were not required to provide a specific accounting of adoption savings funds to ACF.
- b. Effective October 1, 2014, all Title IV-E agencies must:
  - (1) Calculate the adoption savings (if any) resulting from the application of differing program eligibility rules (42 USC 673(a)(2)(A)(ii)) to all applicable children for a fiscal year, using a methodology specified by ACF or an alternate methodology proposed by the Title IV-E agency and approved by ACF (42 USC 673(a)(8)(A) as amended by Pub. L. No. 113-183 and Program Instruction ACYF-CB-PI-15-06, dated May 22, 2015).
  - (2) Report (see III.L.1.d, “Reporting – Financial Reporting,” of this program supplement) annually to ACF (i) the methodology used to make the calculation of adoption savings, without regard to whether any savings are found; (ii) the amount of any annual adoption savings; and (iii) how such adoption savings are spent, accounting for and reporting the spending separately from any other spending reported to ACF under Title IV-B or IV-E ((42 USC

673(a)(8)(B) as amended by Pub. L. No. 113-183 and Program Instruction ACYF-CB-PI-15-09, dated December 2, 2015).

- (3) Adoption savings must be expended for services that may be provided under the Title IV-B or IV-E programs; at least 30 percent of which must be spent on post-adoption services, post-guardianship services and services to support positive permanent outcomes for children at risk of entering foster care. At least two-thirds of the 30 percent must be spent on post-adoption and post-guardianship services (42 USC 673(a)(8)(D)(i) as amended by Pub. L. No. 113-183).
- (4) There is no requirement that adoption savings be expended in the same FFY for which they are calculated. Title IV-E agencies must, however, use adoption savings to supplement and not supplant any federal or nonfederal funds used to provide any service under Title IV-B or IV-E (42 USC 673(a)(8)(D)(ii), as amended by Pub. L. No. 113-183). (**Note:** The auditor would be required to test compliance with the earmarking requirements of paragraph (b)(3) only during the audit period in which the Title IV-E agency reports (or expects to report) in its annual report (see paragraph (b)(2)) that the earmarking percentages have been met for one or more FFYs for which they are applicable).

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

Not Applicable

## 3. Earmarking

Not Applicable

## L. Reporting

### 1. Financial Reporting

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *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.

Beginning with the FFY 2015 reporting period, the Annual Adoption Savings Calculation and Accounting Report, CB-496 Part 4, must be submitted to provide information on the calculation and expenditure of adoption savings. The CB-496 Part 4 is due once a year with the CB-496 quarterly submission for the fourth quarter of the FFY. This report captures adoption savings calculations based on utilization of the Children's Bureau methodology, or an approved alternate methodology, and relevant CB-496 Part 1 reported expenditures submitted on quarterly reports for the current FFY.

A separate calculation of adoption savings is required for the current FFY (Column A) and for prior reported FFYs (Column B). The current FFY calculation considers title IV-E Adoption Assistance claims reported on Form CB-496 Part 1 quarterly submissions for the current FFY as current quarter amounts and any prior-quarter adjustment of expenditures (increasing or decreasing) identified (Part 2, Column D) as for applicable periods within the current FFY. The prior reported FFYs calculation considers any relevant reported prior-quarter adjustment of expenditures (increasing or decreasing) submitted on a Form CB-496 Part 1 report for quarterly periods within the current FFY but identified (Part 2, Column D) as applicable to periods in prior FFYs subject to adoption savings reporting.

The CB-496 Part 4 also contains a report of the expenditure of adoption savings for the current reporting FFY. The report separately identifies amounts expended during the current reporting FFY (Column A) and amounts spent in an earlier FFY subject to adoption savings reporting (Column B), but either not previously reported or adjusted from a previously reported amount.

The CB-496 Part 4 report further contains information on cumulative (beginning with FFY 2015) calculated and expended adoption savings amounts.

*Key Line Items* – The following line items contain critical information:

1. *Part 1, Expenditures, Estimates and Caseload Data*, columns (A) through (D) (sections B and D (Adoption Assistance Program))
2. *Part 2, Prior Quarter Expenditure Adjustments – Adoption Assistance*, columns (A) through (E)



3. *Part 3, Foster Care, Adoption Assistance and Guardianship Assistance Demonstration Projects*, columns (A) through (F)
4. *Part 4, Annual Adoption Savings Calculation and Accounting Report*, columns (A) through (C)

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 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

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.

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.

#### 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 75 (the HHS implementation of 2 CFR Part 200) 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 to this Supplement, "Federal Programs Excluded from the A-102 Common Rule and Portions of 2 CFR Part 200," states are to use the fiscal policies that apply to their own funds in administering SSBG. Procedures must be adequate to ensure 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).

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	Y	N	N	Y	Y	N

#### A. Activities Allowed or Unallowed

##### 1. *Activities Allowed*

- a. 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, seniors, individuals with developmental or physical disabilities, and individuals facing substance use disorders (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)).

- b. 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)).
- c. 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 (Assistance Listing 93.991); Block Grants for Prevention and Treatment of Substance Abuse (Assistance Listing 93.959); Maternal and Child Health Services Block Grant to the states (Assistance Listing 93.994); Low-Income Home Energy Assistance (Assistance Listing 93.568); and Community Services Block Grant (93.569) (42 USC 1397a(d); 45 CFR section 96.72).

## 2. *Activities Unallowed*

Funds may not be used for:

- a. 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) (Assistance Listing 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 substance use disorder 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)).
- j. The state may not use the amount transferred in from TANF (Assistance Listing 93.558) for programs, services or activities for individuals, children, or their families whose incomes exceed the 200 percent of the federal poverty guidelines. The official poverty guideline is revised annually by HHS (42 USC 604(d)(3)(A) and 9902(2)). 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/>). Additional information on this transfer in is provided in IV, "Other Information."

## **B. Allowable Costs/Cost Principles**

The Omnibus Budget Reconciliation Act of 1981 authorized the SSBG. In 45 CFR 75.101(d)(1), this award has been exempted from most of the cost principles (Subpart E) of the Uniform Administrative Requirements. This applies to states, territories, and subrecipients.

The HHS block grant rules allow block grantees to obligate and expend SSBG funds in accordance with the laws and procedures applicable to the obligation and expenditure of their own funds at 45 CFR 96.30(a). States and territories may apply their own accounting standards on subrecipients, apply the Uniform Administrative Requirements, or allow subrecipients to use their own policies and procedures.

**States and Territories.** For audits of states and territories, auditors should design tests to assure that the SSBG funds are treated in accordance with the state or territory accounting standards.

**Subrecipients.** For audits of subrecipients, auditors should determine which rules apply to the organization in grant or contract agreements. Auditors should design tests to determine that the auditee is in compliance with the applicable rules.

## H. Period of Performance

SSBG funds must be expended by the state in the fiscal year allotted or in the succeeding fiscal year (42 USC1397a(c)).

## L. Reporting

### 1. Financial Reporting

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

### 2. Performance Reporting

#### Post-Expenditure Report

The 42 USC 1397e requires states and territories to submit to the federal administering agency, the Office of Community Services, an annual Post Expenditure Report no later than six months following the close of the fiscal year.

#### *Key Line Item*

- The number of eligible individuals who received services paid for in part or in whole with federal funds under the SSBG.

#### **Suggested Audit Procedures**

**States and Territories.** Auditors should design a test to select a sample of individuals that received services directly from the state or territory. These tests should include:

- Tests to determine that there is evidence that the individual received the service(s).
- Tests to determine that the individual was eligible for the services within that state.

**Subrecipients.** Auditors should determine the income eligibility threshold established by the state. Auditors should obtain the reports provided to the state. Auditors should select a sample of services reported. These tests should include:

- Tests to determine that there is evidence that the individual received the service(s).
- Tests to determine that the individual was eligible for the services within that state.

### **3. Special Reporting**

Not Applicable

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## **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/ACF-196R, 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.

### *Consolidation of Grants to the Insular Islands*

Insular areas, including the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, may apply for a consolidated grant under 45 CFR Part 97. A consolidated grant award administratively combines allocations from two or more programs into one award. An insular area may apply for a consolidated grant in lieu of filing an individual application for any eligible.

*LIHWAP Performance Data Form (OMB No-XXXX)*

The application process requires grantees to specify the amount of funds proposed for consolidation and the titles of the programs that are the sources of funds that are to be consolidated in their SSBG Intended Use Plan and Pre-Expenditure Report. Requests are reviewed by the program office and approval is recommended to the Office of Grants Management for processing.

Funds awarded under a consolidated grant must adhere to the statute and regulations of the SSBG program. Programs eligible for consolidation are specified in 45 CFR Part 97.



**DEPARTMENT OF HEALTH AND HUMAN SERVICES****ASSISTANCE LISTING 93.671 FAMILY VIOLENCE PREVENTION AND SERVICES/DOMESTIC VIOLENCE SHELTER AND SUPPORTIVE SERVICES****I. PROGRAM OBJECTIVES**

The purpose of this program is to assist states and Native American tribes (including Alaska Native Villages), tribal organizations (tribes) and territories in efforts to increase public awareness about, and primary and secondary prevention of family violence, domestic violence, and dating violence; and assist states and tribes in efforts to provide immediate shelter and supportive services for victims of family violence, domestic violence, or dating violence, and their dependents.

**II. PROGRAM PROCEDURES**

The Family Violence Prevention and Services Act (FVPSA) is designed to assist states in their efforts to support the establishment, maintenance, and expansion of programs and projects to: (1) prevent incidents of family violence, domestic violence, and dating violence; (2) provide immediate shelter, supportive services, and access to community-based programs for victims of family violence, domestic violence, or dating violence, and their dependents; and (3) provide specialized services for children exposed to family violence, domestic violence, or dating violence, including victims who are members of underserved populations (45 CFR 1370.10(a)).

The FVPSA states and tribal formula grant funds shall be used to identify and provide subawards to eligible entities for programs and projects within the state that are designed to prevent incidents of family violence, domestic violence, and dating violence by providing immediate shelter and supportive services; grant use may include paying for the operating and administrative expenses of the facilities for a shelter for adult and youth victims of family violence, domestic violence, or dating violence, and their dependents; and may be used to provide prevention services to prevent future incidents of family violence, domestic violence, and dating violence (42 USC 10408(a) and 42 USC 10408(b)(1)(A)).

To be eligible for funds, each state and tribe must submit an annual application. States and tribes are required to develop and submit a plan detailing the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence, domestic violence, and dating violence; to provide immediate shelter, supportive services, and access to community-based programs for victims of family, domestic, and dating violence, and their dependents; and to provide specialized services for children exposed to family, domestic, or dating violence, including victims who are members of underserved populations. This plan should look at all the needs across the state to help it distribute funding, conduct outreach, and provide training and technical assistance as appropriate with all its available resources

*State Formula Grants*

State are required to distribute no less than 95 percent of the funds awarded to it from FVPA to eligible entities for approved activities. No more than 5 percent may be used for costs related to administration, monitoring, or oversight.

Each state's grant award shall be \$600,000 with the remaining funds allotted to each state based on the ratio of the population of all states (42 USC 10405(a)(2)).

### *Tribal Formula Grants*

Ten percent of the amount appropriated to FVPSA is allocated to tribal programs according to 42 USC 10403(a)(1) of FVPSA that is not reserved under 42 USC 10403(a)(2)(A)(i).

### **Source of Governing Requirements**

The FVPSA program is authorized under 42 USC 10408 for states and 42 USC 10401 for tribes and implementing regulations at 45 CFR 1370.

On March 11, 2021, [the American Rescue Plan Act of 2021](#) was signed into law, which provided a total of \$152 million to State and Tribal Domestic Violence and Shelter Programs. The funds were awarded in FFY 2021 and are available until September 30, 2025.

### **Availability of Other Program Information**

Additional information can be found in the Notice of Funding Opportunities (NOFO) and Program Information (PI) Memorandums issued by the Family Violence Prevention and Services Program Office, specifically:

- Standing Announcement for Family Violence Prevention and Services/Domestic Violence Shelter and Supportive Services/Grants to Native American Tribes (including Alaska Native Villages) and Tribal Organizations – [HHS-2021-ACF-ACYF-FVPS-1961](#)
- Standing Announcement for Family Violence Prevention and Services/Domestic Violence Shelter and Supportive Services/Grants to States – [HHS-2021-ACYF-FVPS-1962](#)
- Program Instruction: 2021 American Rescue Plan – Supplemental COVID-19 Funds ([ACF-PI-FVPSA-21-01, issued May 20, 2021](#))
- Program Instruction: 2021 American Rescue Plan – Supplemental COVID-19 Testing, Vaccine Access, Mobile Health Units Access Funds ([ACF-PI-FVPSA-21-03, issued October 25, 2021](#))
- Program Instruction: 2021 American Rescue Plan – Supplemental COVID 19 Funds - Rape Crisis Centers and Sexual Assault Programs ([ACF-PI-FVPSA-21-4, issued October 29, 2021](#))
- Program Instruction: 2021 American Rescue Plan – Supplemental COVID 19 Funds – Culturally Specific; Sexual Assault; Domestic Violence; Community-Based ([ACF-PI-FVPSA-21-05, issued October 29, 2021](#))

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	Y	N	N	N	N	Y	N

#### A. Activities Allowed or Unallowed

##### 1. *Activities Allowed*

a. State and tribal funds may be used for the following activities – but not limited to these activities:

- (1) Provision of immediate shelter and related supportive services to adult and youth victims of family violence, domestic violence, or dating violence, and their dependents, on a regular basis, including paying for the operating and administrative expenses of the facilities for such shelter ([42 USC 10408\(b\)\(1\)\(A\)](#));
- (2) Assistance in developing safety plans and supporting efforts of victims of family violence, domestic violence, or dating violence to make decisions related to their ongoing safety and well-being ([42 USC 10408\(b\)\(1\)\(B\)](#));

- (3) Provision of individual and group counseling, peer support groups, and referral to community-based services to assist family violence, domestic violence, and dating violence victims, and their dependents, in recovering from the effects of the violence (42 USC 10408(b)(1)(C));
- (4) Provision of services, training, technical assistance, and outreach to increase awareness of family violence, domestic violence, and dating violence, and increase accessibility to services (42 USC 10408(b)(1)(D));
- (5) Provision of culturally and linguistically appropriate services (42 USC 10408(b)(1)(E));
- (6) Provision of services for children exposed to family violence, domestic violence, or dating violence, including age-appropriate counseling, supportive services, and services for the non-abusing parent that support that parent's role as a caregiver, which may, as appropriate, include services that work with the non-abusing parent and child together (42 USC 10408(b)(1)(F));
- (7) Provision of advocacy, case management services, and information and referral services concerning issues related to family, domestic, or dating violence intervention and prevention, including the following: (1) assistance in accessing related federal and state financial assistance programs; (2) provision of legal advocacy to assist victims and their dependents; (3) provision of medical advocacy, including referrals for appropriate health care (including mental health, alcohol, and drug abuse treatment), but not to include reimbursement for any health care services; (4) assistance locating and securing safe and affordable permanent housing and homelessness prevention services; (5) provision of transportation, child care, respite care, job training and employment services, financial literacy services and education, financial planning, and related economic empowerment services; and (6) provision of parenting and other educational services for victims and their dependents (42 USC 10408(b)(1)(G)); and
- (8) Provision of prevention services, including outreach to underserved populations (42 USC 10408(b)(1)(H)); Additional detail or "bullets."

American Rescue Act Plan Supplement grant funds may be used to:

- (1) **Prevent:** Activities that assist domestic violence survivors by providing supportive services, shelter options, and supplies, which will reduce the exposure and risk of COVID-19.

- (2) **Prepare:** Activities that include assessing needs of survivors during the COVID-19 public health emergency. Activities that provide training, information, and assistance necessary to ensure the continuity of domestic violence services. Assessing the capacity of local domestic violence programs' and tribes' emergency operation plans and plans to address the needs of survivors and reduce the exposure and risk of COVID-19. Please note that the provision of remote services continues to be an allowable activity.
- (3) **Respond:** Activities and technical assistance for ensuring the continuity of domestic violence services during the COVID-19 public health crisis which includes responding to issues including adapting to fluctuating needs and circumstances. Please note that the provision of remote services continues to be an allowable activity.

- b. Funds may be used for administrative costs, subject to the limitation in III.G.3.a, "Matching, Level of Effort, Earmarking – Earmarking."

## 2. *Activities Unallowed*

Funds may not be used to purchase or construction of facilities.

## 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 entities for state subawards under 42 USC section 10408(c): To be eligible to receive a subaward from a state, an entity shall be—

- (1) a local public agency, or a nonprofit private organization (including faith-based and charitable organizations, community-based organizations, tribal organizations, and voluntary associations) that assists victims of family violence, domestic violence, or dating violence, and their dependents, and has a documented history of effective work concerning family violence, domestic violence, or dating violence; or

- (2) a partnership of two or more agencies or organizations that includes (i) an agency or organization described in paragraph (1), and (ii) an agency or organization that has a demonstrated history of serving populations in their communities, including providing culturally appropriate services.

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

Grants funded by the states will meet the matching requirements in 42 USC section 10406(c)(4). No grant shall be made to any entity other than a state or tribe unless the entity agrees that, with respect to the cost to be incurred by the entity in carrying out the program or project for which the grant is awarded, the entity will make available (directly or through donations from public or private entities) nonfederal contributions in an amount that is not less than \$1 for every \$5 of federal funds provided under the grant. The nonfederal contributions required may be in cash or in kind.

A tribe as defined in 42 USC section 10402(5), or tribal consortium comprised of tribes, is exempt from the match requirement under the FVPSA State Grant Program. Any entity other than a state or Indian tribe that receives FVPSA funding as a sub-recipient to provide the services specified in 42 USC 10408(b)(1)(A) – (H) (including training and technical assistance), must provide no less than a 20 percent match.

American Rescue Plan Act Supplemental Funds: There is no matching requirement for state or tribal grantees for the ARP supplemental grant funds.

### **2. Level of Effort**

Not Applicable

### **3. Earmarking**

- a. States may use no more than 5 percent for costs related to administration, monitoring, or oversight, including the cost to attend required FVPSA grantee meetings.

This requirement applies to the American Rescue Act Plan Supplemental grant funds for states, tribes and territories.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 93.676 UNACCOMPANIED ALIEN CHILDREN PROGRAM

#### I. PROGRAM OBJECTIVES

The objective of the Unaccompanied Alien Children Program is to provide for the care and placement of unaccompanied alien children who are apprehended by the US Department of Homeland Security, Immigration, and Customs Enforcement agents, Border Patrol agents, or other federal law enforcement agencies and transferred into the custody of the Office of Refugee Resettlement pending resolution of their claims for relief under US immigration law case or release to parent, adult family members or another responsible adult sponsor.

#### II. PROGRAM PROCEDURES

The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS), administers this program. ORR enters into cooperative agreements with nonfederal entities to provide temporary shelter and other child welfare-related services to unaccompanied alien children in ORR custody. Residential care services begin once an unaccompanied alien child (UAC) arrives at an ORR facility and ends when the UAC is released from ORR custody to a sponsor, turns 18 years of age, or the UAC's immigration case results in a final disposition of removal from the United States. Residential care and other child welfare-related services are provided by state-licensed residential care programs in the least restrictive setting appropriate for the UAC's age and needs.

#### Source of Governing Requirements

This program is authorized under the Homeland Security Act of 2002 (Pub. L. No. 107-296) (6 USC 279).

#### Availability of Other Program Information

An ORR policy guide is on the ORR website (<https://www.acf.hhs.gov/orr>) at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied>.

#### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not

being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	Y	Y	N	Y	Y	N

**A. Activities Allowed or Unallowed**

Funds may only be used for activities and categories listed in the approved budget to provide temporary shelter and other child welfare-related services for the care of an UAC placed with the nonfederal entity by ORR.

**B. Allowable Costs/Cost Principles**

1. Less-than-arm’s-length leasing arrangements exceeding allowable costs. Grantees may lease facilities from parties with which they have a less-than-arm’s-length relationship but are limited in what amount they may charge based on 45 CFR 75.465(b) and (c). Under these limitations, only costs of ownership such as depreciation, maintenance costs, taxes, and insurance are allowable. Common arrangements that fall within these restrictions are leases with parent or affiliated organizations, leases with partially or wholly-owned subsidiaries, and leases where the lessor is an entity that is partially or wholly-owned by individuals who are executives, board members, or employees of the grantee organization.
2. Excessive charges for facility expenditures related to leasing agreements. Grantees that lease facilities under an arm’s length arrangement are unable to incur and charge ownership type costs to the grant. This includes normal costs of ownership such as depreciation, maintenance costs, taxes, and insurance.

The portion of arm’s length leases, in which the grantee is required to pay any combination of property taxes, property insurance, and maintenance/repair costs (also referred to as single, double, or triple net leases) separate from the base rental amount, are unallowable for the purposes of reimbursement eligibility under the federal award.

Costs associated with leasing arm’s length facilities are limited to fair market rental fees as explained in 45 CFR 75.465(a).



3. Improper direct charging of costs related to the acquisition, construction, or major capital improvements of real property. Funding under this program cannot be directly used for any of these purposes. Expenses such as direct charges of acquisition costs, mortgage principal and interest payments, and direct charges for alterations to real property which are considered major capital improvements\* and required to be capitalized and depreciated under GAAP, are unallowable as direct charges to UAC awards (except based on explicit written prior approval from the grants official at the awarding agency). Only depreciation properly calculated (see 45 CFR 75.436), recorded, and supported by the grantee organization in accordance with GAAP may be charged to UAC awards.

\*Major capital improvements are those alterations and renovations (A&R) which exceed \$150,000. The UAC grants may pay for up to an aggregate of \$150,000 in “minor” alterations and renovations (those that are not major), per parcel, per project period. Further information is available at the ACF Property Guidance site: <https://www.acf.hhs.gov/grants/real-property-and-tangible-personal-property>.

4. Related party transactions improperly categorized by the grantee. Procurements that are issued to parent/subsidiary/affiliated organizations where the relationship falls within the definition of less-than-arm’s-length when there is a real or apparent conflict of interest cannot be considered competitively awarded as defined by 45 CFR 75.327(c). Consequently, it is improper to categorize these transaction types under the contract budget line item and include additional revenue in excess of actual expenditures incurred (i.e., profit). These transactions should be treated under the original nature of the work performed (i.e., salaries, supplies) and charged based on the actual expenditures incurred and evidenced by the grantee.
5. Budgeted costs are being utilized as the basis for estimated drawdown of funds and completing required reporting to ACF. Amounts approved under budget line items in grant awards are not automatically approved for drawdown. Drawdowns and the related reporting of expenditures to ACF via the Standard Form (SF)-425, “Federal Financial Report,” must be based on actual expenditures incurred. Additionally, SF-425 reporting must be based on the entity’s basis for accounting (e.g., cash or accrual).
6. Cost categories which are not always clearly direct or indirect by nature (administrative staff, depreciation) and therefore could easily be charged as either under this program are in some instances being charged as both. Costs may be charged as either direct or indirect, but not both, in accordance with 45 CFR 75.412.
7. Record retention non-compliance regarding facility files/depreciation schedules. An organization’s records pertinent to a federal award must be retained for a period of three years from the date of submission of the final expenditure report in accordance with 45 CFR 75.361. Therefore, records related to depreciation

expense (purchase settlements, appraisals, construction invoices, useful life determinations) charged to a federal award for such events as the acquisition (through any method, including donation) and major A&R of real property must be maintained for the life of the period that depreciation is being expensed.

8. Prior written approval is required for the expenditures outlined in 45 CFR 75.407. The grantee must request prior approval in writing to ACF before obligating or incurring the costs. Requests for prior approval must be explicit enough so that ACF can identify the purpose and cost of the expenditure. Approval of budgets that include general budgetary descriptions and budget line-item totals are insufficient. Additionally, grantees must receive written approval from an authorized member of ACF. A lack of response is not, in itself, approval.

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable
- d. *SF-428 Tangible Personal Property Report* – Submission within 90 days of project period end (close-out of the award) including all applicable attachments

### **2. Performance Reporting**

- a. *SF-PPR ACF, Performance Progress Report*  
Applicable

### **3. Special Reporting**

Not Applicable

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 93.686 ENDING THE HIV EPIDEMIC: A PLAN FOR AMERICA

#### I. PROGRAM OBJECTIVES

The objective of this program is to reduce new Human Immunodeficiency Virus (HIV) infections in the United States to fewer than 3,000 per year by 2030. To achieve this objective, the program provides financial and technical resources to the 39 Ryan White HIV/AIDS Program (RWHAP) Part A funded Eligible Metropolitan Areas (EMAs) or Transitional Grant Areas (TGAs) whose service area includes one or more of the identified 48 HIV high burden counties and the EMAs of Washington, DC, and San Juan, PR; the RWHAP Part B funded states identified as having a rural HIV burden (Alabama, Arkansas, Kentucky, Mississippi, Missouri, Oklahoma, and South Carolina); and the RWHAP Part B Program of the state of Ohio on behalf of Hamilton County. These resources are awarded to the indicated RWHAP Part As and Bs to implement strategies, interventions, approaches, and core medical and support services to reduce new HIV infections in the United States.

#### II. PROGRAM PROCEDURES

The Department of Health and Human Services (HHS) leads the planning efforts for the Ending the HIV Epidemic: A Plan for America initiative (EHE) which is implemented through the Health Resources and Services Administration (HRSA) and other HHS Agencies. While the EHE initiative is a multi-agency effort, the program procedures outlined in this Compliance Supplement are only applicable to assistance awards issued and managed by HRSA's Bureau of HIV/AIDS.

Under this program, cooperative agreements are awarded annually to 39 RWHAP Part A funded Eligible Metropolitan Areas (EMAs) or Transitional Grant Areas (TGAs) whose service area includes one or more of the identified 48 HIV high burden counties and the EMAs of Washington, DC, and San Juan, PR; seven RWHAP Part B funded states identified as having a rural HIV burden (Alabama, Arkansas, Kentucky, Mississippi, Missouri, Oklahoma, and South Carolina); and the RWHAP Part B Program of the state of Ohio on behalf of Hamilton County. (For a complete list of EHE initiative eligible jurisdictions visit: <https://www.hrsa.gov/grants/find-funding/hrsa-20-078> and download Notice of Funding Opportunity-HRSA 20-078.)

HRSA assesses the technical merit of each funding application through an objective review process. Application instructions and critical indicators for review criteria are provided to inform applicants and reviewers of proposal expectations and standards for evaluation. Competing applications are reviewed by nonfederal reviewers for technical merit recommendations. Applications are reviewed and evaluated against the following criteria: (1) Need; (2) Response; (3) Evaluative Measures; (4) Impact; (5) Resources and Capabilities; and (6) Support Requested. The highest ranked applications receive consideration for award within available funding ranges.

Applicants must describe how proposed activities will expand access to HIV care and treatment in the targeted jurisdictions to treat people with HIV rapidly and to effectively reach sustained viral suppression. Additionally, applicants must demonstrate how their proposed strategy will respond quickly to HIV cluster detection efforts for those people with HIV needing care and treatment.

Jurisdictions funded under the EHE initiative use assistance resources in conjunction with the RWHAP parts A and B systems of HIV care and treatment to develop, implement, and/or enhance innovative approaches to engage people with HIV who are newly diagnosed, not in care, and/or not virally suppressed, as well as to provide rapid access to a comprehensive continuum of high quality care and treatment services. This program is designed to provide additional funding to EHE initiative jurisdictions to deliver HIV care and treatment services and systems enhancements to meet the goals of the initiative. Technical assistance and systems coordination services are also provided to jurisdictions to assist the recipients on (1) implementation of work plan activities, innovative approaches, and interventions, (2) coordinating and integrating their initiative plans, funding sources, and programs with the existing HIV care delivery systems, and (3) identifying existing and new stakeholders to build capacity and advance progress in achieving the goals of the initiative.

Funded jurisdictions may use a variety of service delivery mechanisms. Jurisdictions may provide some or all services directly or through subaward agreements with other service providers/subrecipients.

### **Source of Governing Requirements**

The EHE initiative is authorized under Section 311(c) (42 USC 243(c)) and title XXVI (42 USC 300ff-11 et seq.) of the Public Health Service Act.

The EHE initiative has no specific program regulations.

### **Availability of Other Program Information**

Further information about the EHE initiative is available at <http://www.hab.hrsa.gov/>.

Information on allowable uses of funds under the RWHAP is contained in policy notices and standards found at <http://www.hab.hrsa.gov/manageyourgrant/policiesletters.html>. However, due to the unique nature of this funding, EHE initiative recipients will have the opportunity to implement a broader approach to addressing HIV in their communities than what exists in services authorized by the RWHAP legislation. Notice of Funding Opportunity HRSA-20-078 ([https://grants.hrsa.gov/2010/Web2External/Interface/Common/EHBDisplayAttachment.aspx?dm\\_rtc=16&dm\\_attid=81272b5b-dc96-4828-97db-67a83536da45](https://grants.hrsa.gov/2010/Web2External/Interface/Common/EHBDisplayAttachment.aspx?dm_rtc=16&dm_attid=81272b5b-dc96-4828-97db-67a83536da45)) provides additional information regarding the use of these funds, including which of the RWHAP statutory requirements are applicable to this funding.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2,

“Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	N	Y	Y	Y	Y	N

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

- a. Funds may be used to support EHE initiative services and infrastructure associated with a broader approach to addressing HIV in the community than exists in services authorized by the RWHAP legislation. For example, the only requirement for determining eligibility is that the individual has an HIV diagnosis. There is no requirement that individuals served are low-income or that initial eligibility is documented prior to services being provided. Initiative services (e.g., linkage to care) are services and activities that do not fit neatly within the RWHAP service categories. These services may be innovative and creative with a focus on ending the HIV epidemic. HRSA prior approval is required for use of funds outside of existing allowable RWHAP costs and service categories. Infrastructure activities are associated with the development and expansion of data systems. This may include technical assistance on the type, design, and building of new data systems, bridging existing systems to achieve data integration, improving data entry to decrease burden and increase accuracy, training of staff and providers on collecting and using data, and employing experts to provide accurate and in-depth data analysis.

- b. Funds may be used to support core medical services for eligible clients. Core medical services encompass the following services: (1) outpatient and ambulatory health services; (2) AIDS Drug Assistance Program treatments defined under 42 USC 300ff-26; (3) AIDS pharmaceutical assistance; (4) oral healthcare; (5) early intervention services described in 42 USC 300ff-51(e); (6) health insurance premium and cost sharing assistance for low-income individuals in accordance with 42 USC 300ff-15; (7) home healthcare; (8) medical nutrition therapy; (9) hospice services; (10) home and community-based health services as defined under 42 USC 300ff-14(c); (11) mental health services; (12) substance abuse outpatient care; and (13) medical case management, including treatment adherence services. Core medical and support services are important to assist in the diagnosis of HIV infection, linkage to care for people with HIV, retention in care, and the provision of HIV treatment. Services must relate to HIV diagnosis, care, and support, and must adhere to established clinical practice standards consistent with [HHS HIV clinical treatment guidelines](#). However, to increase innovation and to ensure access to the hardest-to-reach populations, there is no requirement to expend 75 percent of the award on core medical services (PCN 16-02, [https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN\\_16-02Final.pdf](https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN_16-02Final.pdf).)
- c. Funds may be used to pay the costs of providing support services that are needed for people with HIV to achieve their medical outcomes. These services include, but are not limited to, outreach services, nonmedical case management, medical transportation, translation, and referrals for healthcare and support services. Support services are subject to approval of the secretary of HHS or designee (PCN 16-02, [https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN\\_16-02Final.pdf](https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN_16-02Final.pdf)).
- d. Funds may be used for administrative expenses. However, no more than 10 percent of the award can be used for administrative expenses. Administrative expenses at the recipient level are activities related to: routine grant administration and monitoring activities, including the receipt and disbursement of program funds, the development and establishment of reimbursement and accounting systems, the preparation of routine programmatic and financial reports, compliance with grant conditions and audit requirements; and all activities associated with the recipient's contract award procedures; the development of requests for proposals, contract proposal review activities, negotiation and awarding of contracts, monitoring of contracts through telephone consultation, written documentation or onsite visits, reporting on contracts, and funding reallocation activities.

Administrative expenses at the subrecipient level include: (1) usual and recognized overhead activities, including established indirect rates for

agencies; (2) management oversight of specific programs funded under the EHE initiative; and (3) other types of program support such as quality assurance, quality control, and related activities (exclusive of clinical quality management (PCN-01,

[Treatment of Costs under the 10% Administrative Cap for Ryan White HIV/AIDS Program Parts A, B, C, and D \(hrsa.gov\)](#)).

- e. Funds may be used for the establishment of a clinical quality management (CQM) program to assess the extent to which medical services that are provided to patients are consistent with the most recent HHS HIV clinical treatment guidelines and related opportunistic infections, and, as applicable, 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. However, no more than 5 percent of the award can be used for clinical quality management expenses. For further guidance on CQM, refer to PCN 15-02, <https://hab.hrsa.gov/sites/default/files/hab/Global/clinicalqualitymanagementpcn.pdf>.
- f. Funds may be used for planning and evaluation activities. Planning and evaluation cost are associated with stakeholder engagement and process and outcome evaluation activities. Planning and evaluation costs may not exceed 10 percent of the grant award. Collectively, recipient administration and planning and evaluation cost may not exceed 15 percent of the grant award (42 USC 300ff-28(b)(4)).

## 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-15(a)(6) and 300ff-27(b)(7)(f)).
- b. Funds may not be used to purchase sterile needles or syringes for the hypodermic injection of any illegal drug (Consolidated Appropriations Act, 2016 (Pub. L. No. 114-113), Division H, Title V, Section 520, and subsequent appropriations, as applicable. Other elements of syringe services programs may be allowable if in compliance with applicable HHS and HRSA-specific guidance. For further guidance on use of HRSA funds on syringe services programs, see <https://www.hiv.gov/sites/default/files/hhs-ssp-hrsa-guidance.pdf>.
- c. Funds may not be used to purchase or improve land or to purchase, construct or make permanent improvement to any building (42 USC

300ff-14(i) and 300ff-22(f)). (Minor alterations and renovations to an existing facility to make it more suitable for the purposes of the award program are allowable with prior HRSA approval.)

- d. Funds may not be used to contract with or grant financial assistance to any providers of care that do not have a participation agreement under the state plan approved under title XIX of the Social Security Act, or, if not qualified to receive payments under such state plan (42 USC 300ff-14(g)).
- e. Funds may not be used to support clinical research.
- f. Funds may not be used to purchase Pre-Exposure Prophylaxis (PrEP) medications and related medical services or Post-Exposure Prophylaxis (PEP), as the person using PrEP or PEP does not have HIV and therefore not eligible for EHE initiative-funded or RWHAP-funded medication. For further guidance, see the HAB Program Letter on PrEP at [https://hab.hrsa.gov/sites/default/files/hab/Global/prepletter062216\\_0.pdf](https://hab.hrsa.gov/sites/default/files/hab/Global/prepletter062216_0.pdf).
- g. Funds may not be used to support international travel.
- h. Funds may not be used to make cash payments to intended recipients of services (42 USC 300ff-14(i) and 300ff-22(f)).

## **B. Allowable Costs/Cost Principles**

Costs charged to federal funds under this program must comply with the cost principles at 45 CFR Part 75, Subpart E, and any other requirements or restrictions on the use of federal funding.

## **J. Program Income**

The Notice of Award provides guidance on the use of program income. The addition method is used for EHE initiative award recipients. Program income must be used for activities described in III.A.1, “Activities Allowed.”

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable



**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****ASSISTANCE LISTING 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. CHIP is a joint federal and state program that provides health coverage to uninsured children in families with incomes too high to qualify for Medicaid, but too low to afford private coverage. See [Children's Health Insurance Program \(CHIP\) | Medicaid](#) for published guidance and information. 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.

**II. PROGRAM PROCEDURES****A. Overview**

The following paragraphs are intended to provide a high-level, overall description of how CHIP generally operates. It is not practical to provide a complete description of program procedures because CHIP 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*

Title XXI authorizes grants to states that initiate and expand health insurance programs for uninsured, low-income children. CHIP is administered by the states but is jointly funded by the federal government and 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. States can design their CHIP program in one of three ways:

1. **Separate CHIP:** a program under which a state receives federal funding to provide child health assistance to uninsured, low-income children that meets the requirements of section 2103 of the Act.
2. **Medicaid expansion CHIP:** a program under which a state receives federal funding to expand Medicaid eligibility to optional targeted low-income children that meets the requirements of section 2103 of the Act.
3. **Combination CHIP:** a program under which a state receives federal funding to implement both a Medicaid expansion and a separate CHIP.

Each state is provided an annual CHIP allotment. States must provide matching funds to get their federal funding allotment. 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.

To be eligible for funds under this program, states must submit a state child health plan (CHIP state plan). CHIP state plans and amendments to those plans are approved by CMS on behalf of the secretary of the Department of Health and Human Services. The amendments are reviewed by an intra-departmental team, which must decide whether to approve or disapprove the amendment within a 90-day period. This “90-day clock” can be stopped by CMS sending the state a formal written request for additional information from the state and can be restarted at the same point when a response is formally received from the state. Copies of CHIP state plans are available on Medicaid.gov at <https://www.medicaid.gov/chip/state-program-information/index.html>.

Pursuant to section 2107(e)(1)(B) of the Act, cross referencing Title XIX requirements at 1902(a)(25) of the Act, states must take reasonable measures to determine the legal liability of third parties to pay for services furnished under the CHIP state plan. Such reasonable measures could include:

- Collect health insurance information during the initial eligibility application process and the redetermination process.
- Conduct diagnosis and trauma code edits to identify specific codes which could denote trauma related injury.
- Conduct data exchanges with:
  - state wage information collection agencies,
  - SSA wage and earnings files,
  - state title IV-A agencies,
  - state motor vehicle accident report files, and
  - state workers' compensation or Industrial Accident Commission files.

### *Waivers*

The state may apply for a waiver of CHIP federal requirements under section 1115 of the Act. Waivers are intended to provide the flexibility needed to enable states to try experimental, pilot, or demonstration projects that, in the judgment of the secretary, are likely to assist in promoting the objectives of the CHIP program. Where approved by the secretary, and subject to specific safeguards for the protection of beneficiaries and the program, waivers allow exceptions to CHIP state plan requirements and permit the state to implement innovative programs or activities on a time-limited basis, permit states to

try new or different approaches to the efficient and cost-effective delivery of health care services to children or adapt their programs to the special needs of particular areas or groups of beneficiaries. The secretary will approve only demonstration projects that are consistent with key principles of the CHIP statute. States' waiver authority is found at section 2107(e)(2)(A) of the Act (42 USC 1397gg(e)(2)(A)), which extends to CHIP the Medicaid waiver authority at section 1115 of the Act (42 USC 1315).

#### *Addendum for the Public Health Emergency (PHE)*

Medicaid and the CHIP play critical roles in helping states and territories respond to public health emergencies (PHEs) and disasters, including the outbreak of the Novel Coronavirus Disease 2019 (COVID-19). Over the course of the COVID-19 PHE, state Medicaid and CHIP agencies adopted many flexibilities offered by the CMS to respond effectively to local outbreaks, including changes to modify eligibility requirements and benefit packages. In addition, states made program changes to comply with the requirements of the Families First Coronavirus Response Act (FFCRA) (Pub. L. No. 116-127), as amended by the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. No. 116-136). Section 6008 of the FFCRA provides states with a temporary 6.2 percentage increase to the Federal Medical Assistance Percentage (FMAP) under section 1905(b) of the Act for certain Medicaid expenditures if states meet certain conditions, including a continuous enrollment requirement for most Medicaid beneficiaries who were enrolled in the program as of or after March 18, 2020. The temporary FMAP increase and accompanying requirements are not applicable to separate CHIP programs.

CMS provided for program flexibilities and federal matching funds for certain services that should be considered when planning single audits, as described below. In some instances, certain audit steps compliance requirements may not be relevant during this review period in light of the flexibilities offered to states. The flexibilities are unique to individual states and follow the typical documentation process, including CMS approval of state plans and waivers, in accordance with regulations and guidance. During the Public Health Emergency for COVID-19, which is available online at <https://www.medicaid.gov/state-resource-center/downloads/covid-19-tech-factsheet-ifc-433400.pdf>, provides additional information on these changes. Further details were also provided by CMS stakeholder calls following issuance of the IFC. Transcripts of these calls are available at <https://www.medicaid.gov/resources-for-states/disaster-response-toolkit/coronavirus-disease-2019-covid-19/index.html>.

It is important for auditors to be aware of the requirements and flexibilities implemented by the state Medicaid or CHIP agency in response to the COVID-19 PHE so that a state is not determined to be out of compliance with requirements that would have been in place absent the PHE.

#### **Background**

On January 31, 2020, the secretary of Health and Human Services (HHS) declared a PHE, effective as of January 27, 2020, for the entire United States to aid the nation's health care community in responding to COVID-19. On March 13, 2020, the president declared the ongoing COVID-19 pandemic of sufficient severity and magnitude to

warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121-5207 (the “Stafford Act”), with a retroactive effective date of March 1, 2020. Since the initial declaration, the PHE has been renewed several times, with the latest renewal effective January 14, 2022, for an additional 90 days. During a PHE or disaster, CMS can rely on various legal authorities to grant states emergency flexibilities critical to ensuring that states can respond to the crisis expeditiously to protect and serve the general public.

On December 22, 2020, CMS issued State Health Official (SHO) letter #20-004, entitled Planning for the Resumption of Normal State Medicaid, CHIP, and Basic Health Program (BHP) Operations Upon Conclusion of the COVID-19 Public Health Emergency (<https://www.medicaid.gov/federal-policy-guidance/downloads/sho20004.pdf>). This SHO letter provided guidance on returning to regular operations, including ending temporary authorities when the PHE concludes, making temporary changes permanent where legally permissible and otherwise appropriate, ending the expiring FFCRA provisions, and addressing pending eligibility and enrollment actions that developed during the PHE. As the PHE has been extended, both states and stakeholders raised concerns about the additional time that will be needed for states to address the growing backlog of work. Based on this feedback, the December 2020 guidance was updated and a new SHO letter #21-002 was issued on August 13, 2021, which revised timelines and requirements (<https://www.medicaid.gov/federal-policy-guidance/downloads/sho-21-002.pdf>). States should have documentation available to describe the temporary changes made to their programs in response to the PHE as well as their plans for returning to normal operations following the PHE.

Some of the major areas to note include the following:

a. Telehealth

Federal telehealth requirements provide states with significant flexibility, and states have broad variability in their approaches to incorporating telehealth into their Medicaid and CHIP programs. CMS also recognizes that, in many circumstances, states have adopted Medicaid and CHIP telehealth policies that mirror Medicare telehealth policies, for which regulatory flexibilities have been provided during the COVID-19 PHE. To assist states with understanding the flexibilities regarding Medicaid and CHIP telehealth policy as it relates to COVID-19, CMS issued a COVID-19 Telehealth Toolkit, which was updated on October 14, 2020, that highlighted policy and operational questions that a state may consider when designing their approach (State Medicaid & CHIP Telehealth Toolkit, *Policy Considerations for States Expanding Use of Telehealth - COVID-19 Version* <https://www.medicaid.gov/medicaid/benefits/downloads/medicaid-chip-telehealth-toolkit.pdf>) (State Medicaid & CHIP Telehealth Toolkit, *Policy Considerations for States Expanding Use of Telehealth - COVID-19 Version*: Supplement #1. <https://www.medicaid.gov/medicaid/benefits/downloads/medicaid-chip-telehealth-toolkit-supplement1.pdf>). To support health care delivery while minimizing face-to-face encounters during the COVID-19 PHE, many states have significantly accelerated

adoption of telehealth, including through telephonic modalities, across a wide variety of disciplines.

b. Beneficiary Eligibility and Enrollment

States are facing a number of challenges due to the ongoing COVID-19 PHE that will leave many states with large volumes of pending eligibility and enrollment actions when the PHE ends. Different states have utilized different eligibility and enrollment flexibilities available during the PHE. As each state determines which flexibilities to maintain and which flexibilities to end, states are expected to develop an operational plan that documents and tracks compliance, including the timelines for making changes to application and renewal processing and verifications. Additional information is provided in SHO letter #21-002 on planning for the resumption of normal operations at the conclusion of the PHE, which is available on Medicaid.gov at <https://www.medicaid.gov/federal-policy-guidance/downloads/sho-21-002.pdf>.

The flexibilities afforded to states as they respond to the PHE related to beneficiary eligibility and enrollment could lead to unintended vulnerabilities and risks. CMS reiterates the importance of states considering the appropriate program integrity activities related to beneficiary eligibility and enrollment.

c. Managed Care

As previously described in CMS guidance (<https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf>), if a benefit or other identified flexibility is covered under a state plan, waiver, or demonstration, CMS encourages states to amend their managed care plan contracts, if not already included, to extend the same flexibilities to the managed care plans during the COVID-19 PHE. States may also amend their managed care contracts and assess if changes are needed to capitation rates to account for the COVID-19 PHE.

d. Other Benefits and Changes

In response to the COVID-19 PHE, many states have implemented emergency measures to ensure that Medicaid and CHIP beneficiaries continue to have access to essential health services. Specific to CHIP, states have submitted disaster relief state plan amendments (SPAs) to suspend, add, and revise policies that could prevent enrollees from accessing needed care during the PHE.

*Payment Error Rate Measurement (PERM) Program*

The PERM program is utilized by HHS to calculate national improper payment rates in Medicaid and CHIP. The regulations at 42 CFR Part 431, Subpart Q, specify requirements for estimating improper payments in Medicaid and CHIP. The PERM program annually measures the national Medicaid and CHIP improper payment rates and uses a 17-state, three-year rotation process. The national Medicaid and CHIP improper payment rates include findings from the most recent three cycle

measurements so that all states are captured in one rate. The national improper payment rates are comprised of three components: fee-for-service, managed care, and eligibility. States are expected to issue corrective action plans to address the root cause of errors and deficiencies.

### **Source of Governing Requirements**

This program is authorized by Section 4901(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 and made 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.

The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. No. 111-3) reauthorized CHIP through fiscal year (FY) 2013. The Patient Protection and Affordable Care Act (ACA) (Pub. L. No. 111-148) reauthorized CHIP through 2019 and extended CHIP funding through FY 2015. The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. No. 114-10) extended CHIP funding through FY2017. Most recently, Congress extended federal funding for the CHIP through September 30, 2027, through the Helping Ensure Access for Little Ones, Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable Act (referred to as the HEALTHY KIDS Act and included in Pub. L. No. 115-120) and the Advancing Chronic Care, Extenders, and Social Services Act (referred to as the ACCESS Act and included in Pub. L. No. 115-123).

The Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260) established a new requirement to extend full Medicaid eligibility to citizens of the Freely Associated States who are living in the United States under the Compacts of Free Association (COFA).

This program is subject to the requirements of 45 CFR Part 75 (the HHS implementation of 2 CFR Part 200) and 45 CFR Part 95.

### **Availability of Other Program Information**

States and other interested parties can access information on the department's policies on this and other issues at <http://www.medicaid.gov/>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program

supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	Y	Y	N	N	Y	N	Y

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

States have general flexibility in allocating their individual allotments toward activities needed to operate the CHIP (section 2105 of the Act (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; expenditures for translation or interpretation services in connection with the enrollment of, retention of, and use of services under Title XXI by individuals for whom English is not their primary language (as found necessary by the secretary for the proper and efficient administration of the state plan); and other reasonable costs incurred by the state to administer the plan (42 USC 1397ee).

**Managed Care**

A state may use managed care for the delivery of some or all its CHIP benefits and services for either all or a subset of the CHIP populations served under the CHIP state plan. Under managed care, the delivery of benefits and services are through contracted arrangements between state CHIP agencies and managed care plans that accept a set per member per month (capitation) payment for the services.

States must comply with the managed care regulations at 42 CFR Part 457, Subpart L, for utilization of a managed care delivery system. These regulations



align CHIP rules with those of other health insurance coverage programs, such as Medicaid and the Marketplace, to reflect how states purchase managed care for beneficiaries and to strengthen the consumer experience and key consumer protections.

CHIP managed care guidance can be found at <https://www.medicaid.gov/chip/managed-care/index.html>.

### **Health Services Initiatives (HSI)**

Under section 2105(a)(1)(D)(ii) of the Act (42 USC 1397ee(a)(1)(D)(ii)), states have the option to develop state-designed HSIs that improve the health of low - income and targeted low-income children. Under implementing regulations at 42 CFR 457.10, HSIs must include activities that protect the public health, protect the health of individuals, improve or promote a state's capacity to deliver public health services, or strengthen the human and material resources necessary to accomplish public health goals related to improving the health of children. HSIs may also be directed at low-income pregnant women or parents; however, HSIs may only provide services for adults if the project directly improves the health of children.

Federal funding for HSIs is expended from a state's available CHIP allotment for a fiscal year. Under section 2105(c)(2)(A) of the Act (42 USC 1397ee(c)(2)(A)), claims for HSIs and certain other expenditures such as administrative expenses cannot exceed 10 percent of the total amount of title XXI funds claimed by the state each quarter. States must fund all CHIP state plan benefits before using allotment for HSIs.

HSIs are implemented through an amendment to the CHIP state plan. States' approved HSI programs are described in section 2.2 of the CHIP state plan template. HSI budget information is provided at section 9.10 of the CHIP state plan.

CHIP HSI guidance can be found at <https://www.medicaid.gov/federal-policy-guidance/downloads/cib090420.pdf>.

### **Premium Assistance**

A state may pay premiums for employer sponsored insurance on behalf of a CHIP beneficiary if it is cost effective to do so. When providing premium assistance, states must ensure that children have access to all mandatory benefits provided under the CHIP state plan, and that they are not required to incur greater out-of-pocket costs for premiums, deductibles, co-payments, or similar cost sharing charges than under the CHIP state plan. Individual state premium assistance programs are described in the CHIP state plan.

2. *Activities Unallowed*

Federal funds may not be expended under the CHIP state plan to pay for any abortion or to assist in the purchase, in whole or in part, of health benefit 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 (Section 2105(e) of the Act (42 USC 1397ee(c)(7))).

**B. Allowable Costs/Cost Principles**

1. CHIP regulations under 42 CFR 457.628(a) make the Medicaid requirements at 42 CFR 433.50 through 433.74 regarding sources of nonfederal share and Health Care-Related Taxes and Provider Related Donations applicable to CHIP in the same manner as they apply to state Medicaid programs. Before calculating the amount of FFP, 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 care providers or related entities (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 (Section 1903(w) of the Act (42 USC 1396b(w)); 42 CFR 433.57).
  - (a) "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 CHIP 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) the donating provider, (2) providers furnishing the same class of items and services as the donating provider, or (3) any related entity (42 CFR 433.58(d) and 433.66(b)).
  - (b) Permissible health care-related taxes are those taxes that are broad-based; uniformly applied to a class of health care items, services, or providers; and do not hold a taxpayer harmless for the costs of the tax. A tax program for which CMS has granted a waiver may also be considered permissible health care-related taxes. Health care-related taxes that do not meet these requirements are impermissible health care-related taxes (42 CFR 433.68(b)).

These provisions apply to the 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 Act (42 CFR 433.50(c)).

2. The 42 CFR 457.628(b) makes 45 CFR Part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards (except as specifically excepted) applicable to the CHIP program.
3. The 42 CFR 457.1203 requires each Medicaid managed care plan to calculate and report a MLR for rating periods starting on or after July 1, 2017 and require each CHIP managed care plan to calculate and report a MLR for rating periods in CHIP managed care contracts as of the state fiscal year beginning on or after July 1, 2018. If a state elects to mandate a minimum MLR, that minimum MLR must be at least 85 percent. The regulation cross-references 42 CFR 438.8(e)(4), which incorporates the standards adopted for the private insurance market MLR (45 CFR 158.150) for the treatment of fraud prevention expenses in the numerator of the MLR calculation. The MLR is reported for a rating period, using data from that rating period.

With regard to capitation rate setting for CHIP managed care plans, under 42 CFR 457.1203(a), states must use payment rates based on public or private payment rates for comparable services for comparable populations, consistent with actuarially sound principles as defined at Section 457.10. In addition, for both Medicaid and CHIP managed care plans, the rates must be developed so that the managed care plan is projected to meet an 85 percent MLR (42 CFR 457.1203(c)(1)).

#### **E. Eligibility**

Auditors may 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, eligible individuals and presumptively eligible individuals may be combined with III.A, “Activities Allowed or Unallowed” and III.B, “Allowable Costs/Cost Principles” such as, was the service incurred during the period the individual was eligible to receive benefits and was the provider paid the correct amount for the service billed.

The state verifies the financial and nonfinancial factors of eligibility, with two exceptions described below, by checking electronic data sources in accordance with federal requirements at 42 CFR 457.380 and state requirements (as documented in the CHIP state plan, verification plan, and eligibility manual). The state is required (as described at 42 CFR 457.965) to maintain facts in the case file to support the eligibility determination. When data sources used by the state are not available to the auditor, or information is not required to be available for the period under audit, auditors would not be expected to test verification other than the requirement to maintain information in the case file. For states that accept applicant self-attestation for household size or income, and do not require further verification or documentation, the auditors are not expected to test beyond the requirements of the state.

The exceptions to the verification process described above are eligibility determinations made by an Exchange, either the Federally-facilitated Exchange (FFE) or a State-based

Exchange (SBE), elements of a determination made by an express lane agency, and presumptive eligibility determinations made by qualified entities. In states that have an agreement with the FFE or SBE, through which the Exchange determines CHIP eligibility, the state relies on the verifications conducted by the Exchange and auditors are not expected to test verification. When express lane eligibility is used, the CHIP agency relies upon elements of a determination made by an express lane agency. For presumptive eligibility determinations, the qualified entity accepts attestation of all needed information and states may not require verification or documentation of any eligibility criteria. When testing a presumptive eligibility determination, auditors are not expected to test verification.

## 1. Eligibility for Individuals

### a. Eligibility Determination

- (1) Eligibility for CHIP is based on the application of modified adjusted gross income and household definition, in addition to other permissible eligibility standards, for example standards relating to geographic area, age (up to, but not including age 19), and insurance status. In addition to meeting these standards, in order to be eligible for CHIP, a child must be uninsured (determined ineligible for Medicaid and not covered through a group health plan or creditable health insurance, a citizen or meet immigration requirements, a resident of the state, and eligible within the state's CHIP income range, based on family income, and any other specified rules in the CHIP state plan) see <https://www.medicaid.gov/chip/eligibility/index.html>. 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 a higher household income without covering children with a lower household income, nor deny eligibility based on a child having a preexisting medical condition. States are required to include in their CHIP state plans a description of the standards used to determine the eligibility of targeted low-income children. CHIP state plans should be consulted for specific information concerning individual eligibility requirements (42 CFR 457.315 and 457.320, 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 its CHIP state plan (Section 2112(b) of the Act).

- (2) CHIP beneficiaries must either be US citizens or qualified noncitizens (aliens). 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, or unless the state has adopted the option to provide coverage to these lawfully residing children, as authorized under Section 214 of CHIPRA (42 USC 1396b(v)(4)(ii)). 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 457.320(b)(6)).

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, including lawfully residing COFA migrants, 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 (codified at section 2107(e)(1)(N) of the Act, cross referencing section 1903(v)(4) of the Act (42 USC 1396b(v)(4)).

The Extending Government Funding and Delivering Emergency Assistance Act (Pub. L. No. 117-43) provided that Afghan evacuees who enter the United States as parolees or with a Special Immigrant Visa are eligible for CHIP to the same extent as refugees, for a limited time period, provided that they meet all other eligibility requirements. Additional information is provided in the November 1, 2021 fact sheet on Health Coverage Options for Afghan Evacuees at <https://www.medicaid.gov/medicaid/eligibility/downloads/hlth-cov-option-afghan-evac-fact-sheet.pdf>.

- (3) States must accept applications submitted online, by telephone, via mail, or in person. This includes electronic, telephonically recorded, and handwritten signatures. The CHIP agency must have facts in the case record to support the agency's eligibility determination, including a record of verification of income and citizenship or satisfactory immigration status for each individual. The state must provide notice of its decision concerning eligibility and provide timely and adequate notice of the basis for discontinuing assistance (42 CFR sections 457.330, 457.340).

- (4) States are directed, at 42 CFR 457.340(d), to determine eligibility promptly and without undue delay. The determination of eligibility may not exceed 45 days (42 CFR 435.912).
- (5) Regulations 42 CFR 457.348 and 457.350 require coordination between the CHIP agency and other insurance affordability programs, including an Exchange. Typically, electronic accounts must be transferred from the CHIP agency to the Exchange and vice versa. States utilizing the FFE must enter into an agreement in which the FFE makes either a determination or an assessment of CHIP eligibility and sends the individual's electronic account to the agency for enrollment (FFE determination) or a final determination and enrollment (FFE assessment). Additional information may be found in the July 25, 2016 CMCS Informational Bulletin on Coordination of Eligibility and Enrollment between Medicaid, CHIP and the Federally Facilitated Marketplace (FFM or "Marketplace") (<https://www.medicaid.gov/sites/default/files/federal-policy-guidance/downloads/cib072516.pdf>).
- (6) When determining eligibility for a child, the CHIP agency may rely on elements of a determination made by an express lane agency (as defined in Section 4 of the CHIP state plan template) as to whether a child satisfies one or more requirements of CHIP eligibility. The CHIP agency may use an income determination from an express lane agency without regard to differences in budget unit, income disregards, deeming, or other differences in methodology between the express lane agency and CHIP. Auditors are not expected to test verification of express lane determinations relied upon by the CHIP Agency. This policy is set out at sections 2107(e)(1)(H) and 1902(e)(13) of the Act (42 USC 1397gg(e)(1)(H) and 1396a(e)(13) respectively); more information is available in state Health Official Letter #10-003, issued on February 4, 2010 (<https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SHO10003.pdf>).

b. Eligibility Verification

- (1) States must request information from reliable electronic data sources, including other agencies in the state and other state and federal programs to the extent that such information is determined useful in verifying the financial eligibility of an individual. As described in the state's verification plan and in state policies and procedures, this may include information from agencies such as the state Wage Information Collection Agency, the Social Security Administration, and the Internal Revenue Service. States may also use information related to eligibility or enrollment from other state

programs such as the Supplemental Nutrition Assistance Program. If information provided by or on behalf of an individual is reasonably compatible with information obtained from the electronic data sources, as described in the state's verification plan, then the agency must determine or renew eligibility based on such information and may not require the individual to provide any further documentation. If the information is not reasonably compatible, then the agency must provide the individual with a reasonable period of time to explain the discrepancy or furnish additional information (42 CFR 457.380; 42 CFR 435.952).

- (2) States may choose to accept self-attestation of information needed to determine or renew eligibility except with respect to income and citizenship or immigration status. When self-attestation is accepted, further information, including documentation, cannot be required from the individual. In such cases, the auditor would not be expected to test documentation other than required by the state. States must follow the requirements described at 42 CFR 457.380 for verification and documentation of income and citizenship and immigration status.

c. Periodic Renewal

As required at 42 CFR 435.916 and 42 CFR 457.343, states must renew enrollees' CHIP eligibility once every 12 months and no more frequently than once every 12 months. When renewing eligibility, states must first attempt to renew based on reliable information available to the agency without requiring information from the individual. If sufficient information is not available to complete a renewal, or if the state has information that suggests that the beneficiary is ineligible, the state must provide the beneficiary with a prepopulated renewal form and inform the individual of any additional information or documentation needed to determine eligibility. Additional information may be found in the CMCS Informational Bulletin on Medicaid and Children's Health Insurance Program (CHIP) Renewal Requirements issued on December 4, 2020 ([Medicaid and Children's Health Insurance Program Renewal Requirements](#)).

d. Presumptive Eligibility

Presumptive eligibility (PE) is a state option to facilitate enrollment and immediate access to services for children who are likely eligible for CHIP without having to wait for a full application to be processed. CHIP regulations at 42 CFR 457.355 outline the requirements for establishing a program of presumptive eligibility for children. The options elected by each state are described in the CHIP state plan.

When electing the PE option, states designate qualified entities, such as health care providers, community-based organizations, and schools to make PE determinations. These qualified entities are trained on the state's PE screening process and state-specific requirements for PE. In many states, qualified entities also help individuals to complete the full application process. A qualified entity is responsible for collecting and recording all information necessary to make a PE determination.

To be determined presumptively eligible, an individual must meet the basic requirements of eligibility as a targeted low-income child, including household income at or below the standard established by the state. In addition to the basic requirements of the eligibility group, states may, but are not required to, consider state residency and US citizenship or eligible immigration status when making a PE determination. Other information that would be collected on a full application, cannot be required for a PE determination. In addition, individuals attest to all information needed for a PE determination. States may not require verification or documentation of any eligibility criteria as a condition of presumptive eligibility.

The PE period begins the day on which the qualified entity makes the PE determination. The end date varies depending on whether or not the individual submits a CHIP application. If the individual submits a CHIP application by the last day of the month following the month in which PE was determined, the PE period will continue until full CHIP eligibility is either approved or denied. If the individual does **not** submit a CHIP application, the PE period ends on the last day of the month following the month in which PE was determined. States must adopt reasonable standards regarding the number of PE periods that will be authorized for an individual.

**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 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 1905(b) of the Act Medicaid FMAP rate from 100, taking 30 percent of the difference, and then adding it to the



1905(b) Medicaid FMAP rate. The Enhanced FMAP for CHIP is generally about 15 percentage points higher than the Medicaid rate. For example, if a state has a 50% match rate for Medicaid, they may have a 65% match rate for CHIP. The Enhanced FMAP is calculated in accordance with section 2105(b) of the Act, 42 USC 1397ee(b), which provides that the Enhanced FMAP for a state shall not exceed 85 percent except during the periods of October 1, 2015 through September 30, 2019, where the enhanced FMAP was increased by 23 percentage points (not to exceed 100 percent) and October 1, 2019 through September 30, 2020, where the enhanced FMAP is reduced to an increase of 11.5 percentage points (not to exceed 100 percent). The increase to the enhanced FMAP does not apply to certain categories of expenditures as described in the last sentence of 42 USC 1397ee(b). Calculated FMAPs and enhanced FMAPs may be found at [Federal Register: Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2021 Through September 30, 2022](#) (42 USC 1397ee(a) and (b)). Because the EFMAP under section 2105(b) of the Act is calculated using the 1905(b) FMAP as a “base,” in general, any fluctuations to the 1905(b) FMAP amount for a period will affect the EFMAP determination under 2105(b) of the Act for such period unless otherwise precluded in statute.

- b. A qualifying state as described under section 2105(g) of the Act, 42 USC 1397ee(g) may elect to be paid from the state’s allotment for any of FYs 2009 through 2027, 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 (section 2105(g)(4) of the Act (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. Level of Effort

### 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. The maintenance of effort (MOE) provisions at section 2105(d)(3) and sections 1902(a)(74) and 1902(gg)(2) of the Act (42 USC

1397ee(d)(3) and 1396a(a)(74) and (gg)(2)) specify that as a condition of receiving federal funding for CHIP or Medicaid (with certain exceptions), states must maintain Medicaid and CHIP “eligibility standards, methodologies, and procedures” for children that are no more restrictive than those in effect on March 23, 2010. The MOE requirement was first implemented under the American Recovery and Reinvestment Act (ARRA) and extended by the Patient Protection and Affordable Care Act (ACA). Section 3002 of the Helping Ensure Access for Little Ones, Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable Act (referred to as the HEALTHY KIDS Act and included in Pub. L. No. 115-120) extends the MOE requirements for children in CHIP and Medicaid through FY 2023, and Section 50101 of the Advancing Chronic Care, Extenders and Social Services Act (referred to as the ACCESS Act and included in Pub. L. No. 115-123), extends the MOE requirements for children in CHIP and Medicaid through FY 2027. Section 3002 of the HEALTHY KIDS Act amends the MOE provisions such that starting in FY 2020 and through FY 2027, the MOE provision is applicable to children in families with incomes that do not exceed 300 percent of the FPL. States with eligibility levels above 300 percent of the Federal Poverty Level (FPL) will have the option of maintaining or reducing existing coverage levels to 300 percent FPL at that time.

## **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; (d) expenditures for translation and interpretation services in connection with the enrollment, retention, and use of services under Title XXI by individuals for whom English is not their primary language (as found necessary by the secretary for the proper and efficient administration of the CHIP state plan); and (e) 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 CHIP 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 Performance**

The availability of allotment amounts determined under section 2104(m) of the Act for FY 2009 and each fiscal year thereafter, shall remain available for expenditure by the state through the end of the succeeding fiscal year as provided under section 2104(e) of the Act. (i.e., the year of award and one subsequent fiscal year) (42 USC 1397dd(e)).

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable for cash status; Not Applicable for expenditure reporting
- d. *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:

1. *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. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## N. Special Tests and Provisions

### 1. Provider Eligibility (Screening and Enrollment)

**Compliance Requirements** In order to receive CHIP payments, CHIP providers must: (1) be licensed in accordance with federal, state, and local laws and regulations to participate in the CHIP program (42 CFR 457.900); (2) screened and enrolled in accordance with 42 CFR Part 455, Subpart E (sections 455.400 through 455.470); and make certain disclosures to the state (42 CFR 457.990(a), cross referencing 455.107). CHIP managed care network providers are subject to the same disclosure, screening, enrollment, and termination requirements that apply to Medicaid fee-for-service providers in accordance with 42 CFR Part 438, Subpart H. Guidance was provided to states in the Medicaid Provider Enrollment Compendium (MPEC) at <https://www.medicaid.gov/sites/default/files/2021-05/mpec-3222021.pdf> to enroll CHIP providers into their Medicaid programs to ensure that they meet federal requirements. Providers who have been barred from participation by the OIG exclusion list are not eligible to be enrolled in the CHIP program (42 CFR 457.990, 42 CFR 455 Subpart E). Lists may be found at [https://oig.hhs.gov/exclusions/?utm\\_source=oigNewsletter&utm\\_medium=oig-nl-nav&utm\\_campaign=leie-nl](https://oig.hhs.gov/exclusions/?utm_source=oigNewsletter&utm_medium=oig-nl-nav&utm_campaign=leie-nl).

**Audit Objectives** Determine whether CHIP providers of medical services have the required medical licenses and are eligible to participate in CHIP in accordance with federal, state, and local laws and regulations.

#### Suggested Audit Procedures

- a. Obtain an understanding of the CHIP state plan's provisions for licensing and entering into agreements with providers.
- b. Select samples from both CHIP fee-for-service providers and managed care network providers to ascertain if the:
  - (1) The provider is screened, licensed, and enrolled in accordance with the CHIP state plan and the requirement of 42 CFR 455 Subpart E.
  - (2) The provider complied with the requirements of the CHIP state plan.
  - (3) The provider was not on the OIG's exclusion list at the time the services were provided.

### 2. Refunding of Federal Share of CHIP Overpayments to Providers

**Compliance Requirements** Federal regulations at 42 CFR 457.628 make the regulations at CFR 433.312 through 433.322 regarding overpayments applicable to CHIP. CMS rules at 42 CFR 433 Subpart F describe the requirements SMAs are to follow related to refunding the federal share of Medicaid overpayments made to providers. Pursuant to 1903(d)(2)(C) of the Act (42 USC 1396b), states have up to one (1) year from the date of

discovery of the overpayment to recover or attempt to recover the overpayment before the federal share must be refunded to CMS via Form CMS-64 Summary, Line 9C1- Fraud, Waste & Abuse Amounts, regardless of whether recovery is made from the provider, for which the federal share must be refunded to CMS via Form CMS-21 Summary, Line 4 - Adjustments Decreasing Claims - Collections. The state must credit the federal share to CMS as outlined under 42 CFR 433.320(a)(2) either in the quarter in which the recovery is made or in the quarter in which the one-year period following discovery ends, whichever is earlier, with limited exceptions. Under 42 CFR 433.316(d), for overpayments resulting from fraud, if not collected within one year of discovery, the SMA has until 30 days after the final judgment of a judicial or administrative appeals process to return the federal share.

Additionally, in accordance with 42 CFR 433.320(a)(4), the state will be charged interest for any non-recovered, non-refunded overpayment amounts. Any appeal rights extended to a provider does not extend the date of discovery (42 CFR 433.316(h)).

The repayment of the federal share is not required in cases where the state is unable to obtain recovery because the provider has filed for bankruptcy or the provider is otherwise out of business as outlined in 42 CFR 433.318.

The 42 CFR 433.320(c)(1) allows for downward adjustment previously credited to CMS if it is properly based on the approved CHIP state plan, federal law and regulations governing Medicaid, and the appeals resolution process specified in state administrative policies and procedures. States are not able to enter into settlement agreements with providers that reduces the federal share of the overpayment in order to avoid the expense of litigation. The Departmental Appeals Board (DAB) decision No. 1391 from February 19, 1993 (<https://www.hhs.gov/sites/default/files/static/dab/decisions/board-decisions/1993/dab1391.html>), addressed overpayment settlements between the states and providers. This decision affirmed that states may not reduce the federal share by settling overpayment receivables for less than the actual amount of the overpayment based on anticipated success in litigation or made simply to avoid administrative costs or litigation expenses.

For managed care, SMAs are required per 42 CFR 438.608(d)(1) to specify in each managed care contract how recoveries of provider overpayments must be treated. The refunding of the federal share of any overpayment recovered by an MCP is dependent on the retention policy outlined in the contract between the state and the MCP as required under 42 CFR 438.608(d)(1). If the state requires the MCP to refund overpayments to the state, the state must refund the federal share of that overpayment to CMS in accordance with the regulations at 42 CFR 433.312. The state must apply the FMAP rate in effect at the time the overpayment was made to determine the amount to be refunded to CMS.

**Audit Objectives** Determine whether the SMA reported and returned CHIP provider overpayments in accordance with federal requirements.

### **Suggested Audit Procedures**

- a. Review applicable federal laws and regulations, including 1903(d)(2)(C) of the Act (42 USC 1396b), 42 CFR 433 Subpart F, and the Departmental Appeals Board Decision No. 1391.
- b. Obtain an understanding of the process to identify overpayments.
- c. Obtain managed care contract(s) to determine how recoveries made by managed care plans to providers are treated.
- d. Perform tests to ascertain if the federal share has been returned accurately in accordance with federal laws and regulations, including ensuring the full amount was refunded and any downward adjustment was made.

### **3. Medical Loss Ratio (MLR)**

**Compliance Requirements** For all contracts, the state must ensure that each managed care organization (MCO), prepaid inpatient health plan (PIHP), and prepaid ambulatory health plan (PAHP) submits a report with the data elements specified in 42 CFR 457.1203(e), cross-referencing 42 CFR 438.8(k) and 438.8. The report should contain the required 13 data elements in the regulation, reflect the correct reporting years, and contain an attestation of accuracy regarding the calculation of the MLR. The state should have a method to indicate when the report(s) are due from plans and should not accept multiple submissions from plans unless the capitation rates are revised retroactively.

**Audit Objectives** Determine whether the state's oversight of the content and submission of MLR reports meets the federal requirements.

### **Suggested Audit Procedures**

- a. Perform procedures to ascertain if the state obtained the required MLR reports;
- b. Verify the 13 required elements are included;
- c. Verify the reporting period covered is 12 months;
- d. Verify the report contains an attestation statement to address accuracy;
- e. Ascertain if the state did not permit plans to submit multiple MLR reports for a specific reporting year except when a state had retroactive changes to capitation payments.

### **4. Managed Care Financial Audit**

**Compliance Requirements** Two types of audits are required for managed care:

1. Audited Financial Reports – The contract with each MCO, PIHP, and PAHP must require them to submit to the state audited financial reports specific to the

Medicaid contract on an annual basis. The audit must be conducted in accordance with generally accepted accounting principles and generally accepted auditing standards (42 CFR 438.3(m)).

2. Periodic Audits – Effective no later than for rating periods for contracts starting on or after July 1, 2017, the state must periodically, but no less frequently than once every three years, conduct, or contract for an independent audit of the accuracy, truthfulness, and completeness of the encounter and financial data submitted by, or on behalf of each MCO, PIHP, and PAHP and post the results of these audits on its website (42 CFR Part 438, Subpart H (as adopted in CHIP at 42 CFR 457.1285); May 6, 2016, *Federal Register* (81 FR 27497); OMB No. 0938-0920)).

**Audit Objectives** Determine whether the required audits were conducted and the audit reports for the Periodic Audits were posted on the state’s website.

#### **Suggested Audit Procedures**

- a. Review the state’s policies and operating procedures for obtaining audited financial reports, conducting these required audits, and for posting the Periodic Audits on the state’s website.
- b. Perform tests to ascertain if: (1) the state obtained annually the required Audited Financial Reports from each MCO, PIHP, and PAHP; and (2) the independent auditor’s reports on the financial report stated the audit was conducted in accordance with generally accepted auditing standards.
- c. Perform tests to ascertain if: (1) the state conducted or contracted for the required Periodic Audits for each MCO, PIHP, and PAHP at least once in the most recent three year period; and (2) the audits were posted on the state’s website.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****ASSISTANCE LISTING 93.775 STATE MEDICAID FRAUD CONTROL UNITS****ASSISTANCE LISTING 93.777 STATE SURVEY AND CERTIFICATION OF HEALTH CARE PROVIDERS AND SUPPLIERS (Title XVIII) MEDICARE****ASSISTANCE LISTING 93.778 MEDICAL ASSISTANCE PROGRAM (Medicaid; Title XIX)**

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 payments that should not have been made or that were made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. This includes payments for services provided to ineligible providers, payments for an ineligible service, duplicate payments, payments for services not received, payments for ineligible or unenrolled individuals, claims that do not have necessary documentation, and payments that do not account for credit for applicable discounts.

**I. PROGRAM OBJECTIVES**

Note: This program is considered a “higher risk” program for 2022, pursuant to 2 CFR section 200.519. Refer to the “Programs with Higher Risk Designation” section of Part 8, Appendix IV, Internal Reference Tables, for a discussion of the impact of the “higher risk” designation on the major program determination process.

**Medical Assistance Program**

The Social Security Amendments of 1965 created Medicaid by adding Title XIX to the Social Security Act, 42 USC 1396 et seq. Under the program, the federal government provides matching funds to states to enable them to provide medical assistance to residents who meet certain eligibility requirements. The objective is to help states provide medical assistance to residents whose incomes and resources are insufficient to meet the costs of necessary medical services. Medicaid serves as the nation's primary source of health coverage for low-income populations.

States are not required to participate. Those that do must comply with federal Medicaid laws under which each participating state administers its own Medicaid program, establishes eligibility standards, determines the scope and types of services it will cover, and sets the rate of payment. Eligibility requirements vary from state to state, and because someone qualifies for Medicaid in one state, it does not mean he or she will qualify in another. The federal Centers for Medicare & Medicaid Services (CMS) monitors the state-run Medicaid programs and establishes requirements for service delivery, quality, funding, and eligibility standards.

While not precluding an auditor from determining that the Medicaid cluster qualifies as a low-risk program (if 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. In addition, even though the state Medicaid Fraud Control Units (MFCUs) and State Survey and Certification of Health Care Providers and Suppliers have substantially fewer federal expenditures than Medicaid, 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.

### **Medicaid Fraud Control Units (MFCUs)**

Under section 1902(a)(61) of the Social Security Act, states are required as part of their Medicaid state plans to maintain a MFCU, unless the secretary of HHS waives the requirement after making the determination that a MFCU would not be cost-effective because minimal fraud exists in connection with the provision of covered services to eligible individuals under the state plan and that beneficiaries under the plan will be protected from abuse and neglect in connection with the provision of medical assistance under the plan without a MFCU. The primary mission of the MFCUs is to investigate and prosecute fraud by Medicaid providers, to review and investigate complaints alleging abuse or neglect of patients in Medicaid-funded health care facilities, and, as an optional authority, to review and investigate complaints of patient abuse or neglect in board and care facilities or involving Medicaid beneficiaries in non-institutional and other settings. States are required to refer to the MFCU all cases of suspected provider fraud.

### **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 Medicare program are in compliance with regulatory health and safety standards and conditions of participation/coverage. For certain types of providers, compliance with these health and safety standards are also required as a condition of Medicaid participation, and the Medicaid program contributes to program costs accordingly.

## **II. PROGRAM PROCEDURES**

### **A. Overview**

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 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 United States territories: the US Virgin Islands, Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana

Islands. Medicaid operates through state Medicaid agencies, with states paying providers of medical services directly or through the use of managed care plans. Participating providers must accept the Medicaid payment amount as payment in full. Federal law and regulation set forth mandatory and optional eligibility groups and services. States are required to cover mandatory eligibility groups and services and may elect to cover optional groups and services. Within these broad federal rules, each state decides eligible beneficiary groups, types and range of services, payment levels for services, and administrative and operating procedures. CMS administers the Medicaid program in cooperation with state governments. CMS oversees state operations through its organization consisting of a headquarters and field offices. CMS uses technical assistance extensively to promote improvements in state operation of the program, and compliance with federal rules, as well as enforcement mechanisms as the agency deems appropriate. The HHS Office of Inspector General (OIG) is the agency responsible for the federal oversight of the state MFCUs. As stated in 42 CFR 1007.5, a key requirement of the governing regulations is that a unit must be a single identifiable entity of the state government. In order to receive the federal grant funds necessary to sustain their operations, the MFCUs must submit a reapplication for federal assistance to the OIG on an annual basis.

The State Survey and Certification of Health Care Providers and Suppliers program is administered by CMS in a manner similar to Medicaid and includes an approved state plan that addresses federal requirements.

#### *Medicaid State Plans*

States administer the Medicaid program under a CMS-approved state plan for each state. The Medicaid state plan is a comprehensive written statement submitted by the State Medicaid Agency (SMA) 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 references the applicable federal regulation and statute for each requirement.

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 availability of federal financial participation. The state plan must specify a single state agency (hereinafter referred to as the "State Medicaid Agency – SMA") 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 SMA to administer or supervise the administration of the state plan and make rules and regulations that it follows in administering the plan or that are binding upon local agencies that administer the plan.

The state plan also describes methodologies to pay providers for covered care and services under the Medicaid program. The payment methodologies must be clear and auditable to ensure that payments are disbursed only to qualified providers, in the appropriate amount, for medically necessary services covered by the Medicaid program

and provided to eligible beneficiaries under a fee-for-service arrangement. Payments must also be based on claims that are adequately supported by medical records, and payments must not be duplicated.

At any time, a state may propose changes to the state plan through a state plan amendment (SPA). A state submits a SPA to CMS when a state proposes to modify its state plan to make changes to its Medicaid program design, policies, or operational approach. States must submit SPAs to CMS to reflect changes in federal and state law, regulation, policy, or court decisions. Federal and state governments use the SPA process to negotiate and agree on the terms of the amendment. The SPA submission is reviewed by CMS to determine whether the proposal meets federal requirements. If more information is required to determine whether the proposal can be approved, CMS sends the state a request for additional information (RAI) within 90 days after receipt of the SPA. States have 90 days from the issuance of the RAI to provide a response to CMS. If the state does not respond within this 90-day period, CMS may choose to disapprove the SPA. Once the state submits the requested information, a new 90-day review clock begins and CMS must decide to approve or disapprove the SPA. While CMS maintains state submission records, copies of approved SPAs are available on CMS' Medicaid.gov website <https://www.medicaid.gov/state-resource-center/medicaid-state-plan-amendments/index.html> or can be obtained from the SMA. More information about SPA and 1915 waiver processing can also be found at Medicaid.gov at <https://www.medicaid.gov/state-resource-center/spa-and-1915-waiver-processing/index.html>.

In accordance with an approved state plan or approved waiver (see the Waivers and Demonstrations section below), CMS makes quarterly grant awards to the state to cover the federal share of Medicaid expenditures for services and program administration. The grant award authorizes the state to draw federal funds as needed to pay the federal portion, as determined through the application of the Federal Medical Assistance Percentage (FMAP) or other applicable federal matching rate set by statute, of approved Medicaid expenditures. The amount of the quarterly grant is initially determined on the basis of quarterly budget estimates submitted by the SMA on the Form CMS-37. Thirty days after the end of the quarter, states must submit the Form CMS-64, which includes expenditures and recoveries and other items that reduce expenditures for the quarter and prior period expenditures. Quarterly, CMS reviews the state's expenditures for accuracy and allowability, then CMS issues a finalization grant reconciling the initial grant award determined on the basis of budget estimates to the actual expenditures reported on the Form CMS-64. The amounts reported on the Form 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 (MBES) to electronically submit the Form CMS-37 and Form CMS-64 directly to CMS.

#### *Waivers and Demonstrations*

The SMA may apply for a waiver of federal requirements, subject to CMS approval. The most common modes to waive federal requirements are under the authority of section

1115 called demonstrations and waivers under section 1915 of the Social Security Act (the Act). Additionally, section 1115(a) demonstration authority permits states to request federal financial participation for costs that would not otherwise be included as expenditures under section 1903 of the Act, and to request waiver authority of requirements under section 1902(a) of the Act.

Section 1115(a) demonstrations and section 1915 waivers are intended to provide the flexibility needed to enable states to test new or different approaches to the efficient and cost-effective delivery of health care services, or to adapt their programs to the special needs or groups of beneficiaries. Demonstrations and waivers are not interchangeable. However, both of them allow exceptions to state plan requirements and permit a state to implement innovative programs or activities on a time-limited basis, subject to specific safeguards for the protection of beneficiaries and the program, and provided that there is an evaluation of the program.

Actions that states may take if waivers of section 1915 of the Act are obtained include, but are not limited to: (1) implementing a primary care case-management system or a specialty physician system; (2) designating an entity to act as a central broker in assisting Medicaid beneficiaries to choose among competing health care plans; (3) limiting 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; and (4) including as medical assistance, under its state plan, home and community-based services (HCBS) furnished to beneficiaries who would otherwise need inpatient care that is furnished in a hospital, nursing facility or other institutional settings, and is reimbursable under the state plan. A state may also obtain a waiver of statutory requirements to provide an array of HCBS, 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 approved SPAs are available on CMS' Medicaid.gov website <https://www.medicaid.gov/state-resource-center/medicaid-state-plan-amendments/index.html>. More information about SPA and 1915 waiver processing can also be found at Medicaid.gov at <https://www.medicaid.gov/state-resource-center/spa-and-1915-waiver-processing/index.html>. The section 1115 demonstrations main page is located at <https://www.medicaid.gov/medicaid/section-1115-demonstrations/index.html>. Lists of states 1115 demonstrations can be found at <https://www.medicaid.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/index.html>.

Actions that states may take within the confines of a section 1115 demonstration include, but are not limited to: (1) removing barriers to coverage and care; (2) sharing with beneficiaries (through the provision of additional services) cost-savings made possible through the beneficiaries' use of more cost effective medical care; (3) enhancing alignment between Medicaid policies and commercial health insurance products to facilitate smoother beneficiary transition; and (4) advancing innovative delivery system and payment models to strengthen provider network capacity and drive greater value for Medicaid.

### *Beneficiary Eligibility*

Beneficiary eligibility for Medicaid is generally based on financial (e.g., income and resources, as applicable) and non-financial (e.g., age, pregnancy, disability, and citizenship/immigration status, as applicable) criteria. Income eligibility is most often expressed in terms of a percent of the Federal Poverty Level (FPL), which is defined and updated by the HHS on an annual basis. Resources may include things such as savings, non-home property, stocks, and other non-cash assets.

States must cover mandatory eligibility groups. States may provide coverage to members of optional groups and medically needy individuals (i.e., individuals who are eligible for Medicaid after deducting medical expenditures from their income). The eligibility groups covered in a state and the eligibility criteria are specified in the state plan. The state plan will also describe the income methodology used for determining eligibility.

States must provide payment for Medicare premiums and cost-sharing for certain older adults and people with disabilities who are entitled to Medicare Part A, and whose income and resources do not exceed specified standards (Section 1902(a)(10)(E)) of the Act (42 USC 1396a(a)(10)(E)). There are four mandatory eligibility groups, collectively called the Medicare savings program eligibility groups, each of which has its own eligibility requirements and coverage limitations. Depending on the group, the medical assistance available ranges from payment of all Medicare premiums and cost-sharing expenses to payment of only the Medicare Part A or Part B premiums.

The state plan will specify if determinations of eligibility are made by agencies other than the SMA and will define the relationships and respective responsibilities of the SMA and the other agencies. States must allow individuals and families to apply online, by telephone, via mail, or in person and must require that all initial applications be signed under penalty of perjury. Electronic signatures, including those that are telephonically recorded, and handwritten signatures transmitted via any other electronic method, must be accepted. The state agency must have facts in the case record to support the agency's eligibility determination, including a record of citizenship or immigration status verification for each individual. The state must provide notice of its decision concerning eligibility and provide timely and adequate notice of the basis for denial or terminating assistance (42 CFR sections 431.17, 431.210, 431.211, 435.907, 435.914, 435.917, 435.918; 42 USC 1320b-7).

### *Services*

Medicaid expenditures include payments for services rendered to eligible beneficiaries, such as hospitalizations, prescription drugs, nursing home stays, outpatient hospital care, and physicians' services. A listing of mandatory and optional Medicaid benefits can be found at <https://www.medicaid.gov/medicaid/benefits/list-of-benefits/index.html>. For a Medicaid 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 a managed care plan, such as an insurance company, to arrange for or provide medical services. The state pays a risk-based periodic fixed rate per person (capitation payment) to the managed care plan for each beneficiary enrolled in that plan; the capitation payment is paid without regard to the actual medical services utilized by each beneficiary for the time period covered by the payment. There are three types of managed care plans that can be paid capitation rates: managed care organizations, prepaid inpatient health plans, and prepaid ambulatory health plans (42 CFR 438.2). Managed care plans are required to provide covered services in accordance with the managed care plan's contract with the state and pursuant to federal regulations at 42 CFR Part 438.

Medicaid expenditures also include administration and training, the State Survey and Certification Program, and the establishment and operation of state MFCUs.

#### *Addendum for the Public Health Emergency (PHE)*

Medicaid and the Children's Health Insurance Program (CHIP) play critical roles in helping states and territories respond to public health emergencies (PHEs) and disasters, including the outbreak of the Novel Coronavirus Disease 2019 (COVID-19). Over the course of the COVID-19 PHE, state Medicaid and CHIP agencies adopted many flexibilities offered by the CMS to respond effectively to local outbreaks, including changes to modify eligibility requirements and benefit packages, ensure access to home and community-based services (HCBS), and support health care providers' access by adjusting enrollment and screening processes. In addition, states made program changes to comply with the requirements of the Families First Coronavirus Response Act (FFCRA) (Pub. L. No. 116-127), as amended by the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. No. 116-136). Section 6008 of the FFCRA provides states with a temporary 6.2 percentage increase to the Federal Medical Assistance Percentage (FMAP) under section 1905(b) of the Act for certain Medicaid expenditures if states meet certain conditions, including a continuous enrollment requirement for most Medicaid beneficiaries who were enrolled in the program as of or after March 18, 2020.

CMS provided for program flexibilities and federal matching funds for certain services that should be considered when planning single audits, as described below. In some instances, certain compliance requirements may not be relevant during this review period in light of the flexibilities offered to states. The flexibilities are unique to individual states and follow the typical documentation process, including CMS approval of state plans and waivers, in accordance with regulations and guidance. Note that [CMS guidance](#) on COVID-related flexibilities is updated regularly, and auditors should reference the latest CMS guidance available on Medicaid.gov at [Tools and Checklists for States | Medicaid](#). It is important for auditors to be aware of the requirements and flexibilities implemented by the state Medicaid or CHIP agency in response to the COVID-19 PHE so that a state is not determined to be out of compliance with requirements that would have been in place absent the PHE. In addition, to be eligible to receive the increased federal matching percentage (FMAP) funding, states were required to maintain the enrollment of all Medicaid beneficiaries who were enrolled as of or after March 18, 2020, through the end

of the month in which the PHE ends, with certain exceptions. This requirement, described at section 6008(b)(3) of the FFCRA, is often referred to as the continuous enrollment requirement. The continuous enrollment requirement does not impact a state's obligation to continue to conduct renewals of eligibility and to act on changes in beneficiary circumstances, but it does prohibit a state from disenrolling a beneficiary who is determined ineligible, except under certain circumstances.

Initial CMS guidance on section 6008(b)(3) of the FFCRA prohibited states both from disenrolling a beneficiary and from making any changes to the benefits available to a beneficiary or to a beneficiary's required cost-sharing or, in the case of institutionalized beneficiaries, to their financial responsibility for the cost of care under the post-eligibility treatment of income (PETI) rules. If a beneficiary became ineligible for one group and eligible for another group with greater financial responsibility or lesser benefits, the state was required to maintain the beneficiary's coverage in the original eligibility group. Likewise, if a beneficiary reached age 21, and would no longer be eligible for the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit, the state was required to continue to provide EPSDT services to the beneficiary when medically necessary.

CMS issued an interim final rule with comment (CMS-9912-IFC), effective November 2, 2020, that provided states with greater flexibility in implementing the continuous enrollment requirement. This rule is effective prospectively and does not apply to periods prior to November 2, 2020. Under the new regulation at 42 CFR 433.400, in order to claim the temporary FMAP increase, states must maintain the Medicaid enrollment of validly enrolled beneficiaries in one of three tiers of coverage (minimum essential coverage (MEC), non-MEC coverage that includes testing and treatment for COVID-19, and non-MEC with limited benefits); states are permitted to make changes to beneficiary coverage, cost-sharing and PETI without violating the condition in section 6008(b)(3) of the FFCRA. While the IFC became effective on November 2, 2020, it will take time for states to implement the necessary system and operational changes to begin transitioning beneficiaries between eligibility groups and adjusting beneficiaries' financial responsibilities as appropriate. Depending on the flexibilities adopted and the extent of the impact on state systems and processes, some states will need more time than others to implement the necessary changes. The CMS-9912-Interim Final Rule with Comment Factsheet on Updated Policy for Maintaining Medicaid Enrollment during the Public Health Emergency for COVID-19, which is available online at <https://www.medicaid.gov/state-resource-center/downloads/covid-19-tech-factsheet-ifc-433400.pdf>, provides additional information on these changes. Further details were also provided by CMS stakeholder calls following issuance of the IFC; transcripts of these calls are available at [Podcast and Transcripts | CMS](#).

### *Background*

On January 31, 2020, the secretary of Health and Human Services (HHS) declared a PHE, effective as of January 27, 2020, for the entire United States to aid the nation's health care community in responding to COVID-19. On March 13, 2020, the president declared the ongoing COVID-19 pandemic of sufficient severity and magnitude to

warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121-5207 (the “Stafford Act”), with a retroactive effective date of March 1, 2020. Since the initial declaration, the PHE has been renewed several times, with the latest renewal effective as of January 14, 2022 in the authoritarian context of China , for an additional 90 days. During a PHE or disaster, CMS can rely on various legal authorities to grant states emergency flexibilities critical to ensuring that states can respond to the crisis expeditiously to protect and serve the general public.

On December 22, 2020, CMS issued State Health Official (SHO) letter #20-004, entitled Planning for the Resumption of Normal State Medicaid, Children’s Health Insurance Program (CHIP), and Basic Health Program (BHP) Operations Upon Conclusion of the COVID-19 Public Health Emergency (<https://www.medicaid.gov/federal-policy-guidance/downloads/sho20004.pdf>).

This SHO letter provided guidance on returning to regular operations, including ending temporary authorities when the PHE concludes, making temporary changes permanent where legally permissible and otherwise appropriate, ending the expiring FFCRA provisions, and addressing pending eligibility and enrollment actions that developed during the PHE. As the PHE has been extended, both states and stakeholders raised concerns about the additional time that will be needed for states to address the growing backlog of work. Based on this feedback, the December 2020 guidance was updated and a new SHO letter #21-002 was issued on August 13, 2021, which revised timelines and requirements (<https://www.medicaid.gov/federal-policy-guidance/downloads/sho-21-002.pdf>). States should have documentation available to describe the temporary changes made to their programs in response to the PHE, as well as their plans for returning to normal operations following the PHE.

Some of the major areas to note include the following:

1. *Telehealth*

Federal telehealth requirements provide states with significant flexibility, and states have broad variability in their approaches to incorporating telehealth into their Medicaid and CHIP programs. CMS also recognizes that in many circumstances, states have adopted Medicaid and CHIP telehealth policies that mirror Medicare telehealth policies, for which regulatory flexibilities have been provided during the COVID-19 PHE. To assist states with understanding the flexibilities regarding Medicaid and CHIP telehealth policy as it relates to COVID-19, CMS issued a COVID-19 Telehealth Toolkit, which was updated on October 14, 2020, that highlighted policy and operational questions that a state may consider when designing their approach (State Medicaid & CHIP Telehealth Toolkit, *Policy Considerations for States Expanding Use of Telehealth - COVID-19 Version* <https://www.medicaid.gov/medicaid/benefits/downloads/medicaid-chip-telehealth-toolkit.pdf>) (State Medicaid & CHIP Telehealth Toolkit, *Policy Considerations for States Expanding Use of Telehealth - COVID-19 Version: Supplement #1*



<https://www.medicaid.gov/medicaid/benefits/downloads/medicaid-chip-telehealth-toolkit-supplement1.pdf>). To support health care delivery while minimizing face-to-face encounters during the COVID-19 PHE, many states have significantly accelerated adoption of telehealth, including through telephonic modalities, across a wide variety of disciplines.

## 2. *Beneficiary Eligibility and Enrollment*

States are facing a number of challenges due to the ongoing COVID-19 PHE that will leave many states with large volumes of pending eligibility and enrollment actions when the PHE ends. Different states have utilized different approaches to implement the continuous enrollment requirement and the eligibility and enrollment flexibilities available during the PHE. For example, some states adopted the optional eligibility group for COVID-19 testing (extended under the American Rescue Plan (Pub. L. No. 117-2) to include treatments for COVID-19) and other states adopted new income and/or resource disregards under the state plan for the period of the PHE. As each state determines which flexibilities to maintain and which flexibilities to end, states are expected to develop an operational plan that documents and tracks compliance, including the timelines for making changes to application and renewal processing and verifications. Additional information is provided in SHO letter #21-002 on planning for the resumption of normal operations at the conclusion of the PHE, which is available on Medicaid.gov at <https://www.medicaid.gov/federal-policy-guidance/downloads/sho-21-002.pdf>.

The flexibilities afforded to states as they respond to the PHE related to beneficiary eligibility and enrollment could lead to unintended vulnerabilities and risks. CMS reiterates the importance of states considering the appropriate program integrity activities related to beneficiary eligibility and enrollment. When considering statutory changes and other beneficiary eligibility waivers and flexibilities, CMS particularly encourages states to consider FFCRA requirements for the 6.2 percentage increase FMAP and other related provisions, as described below, when designing program integrity actions.

## 3. *Managed Care*

As previously described in CMS guidance <https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf>, if a benefit or other identified flexibility is covered under the Medicaid state plan, Medicaid waiver, or a state demonstration, CMS encourages states to amend their managed care plan contracts, if not already included, to extend the same flexibilities to managed care plans (MCPs) during the COVID-19 PHE. States may also amend their managed care contracts and assess if changes are needed to capitation rates to: (1) reflect temporary increases in Medicaid fee-for-service (FFS) provider payment rates where an approved state directed payment requires plans to pay FFS rates; (2) require MCPs to make certain retainer payments allowable under existing authorities to certain habilitation and personal care providers; and (3) utilize state

directed payments, when in compliance with 42 CFR 438.6(c) and CMS guidance, to require MCPs to temporarily enhance provider payment under the MCP contract.

States must obtain prior approval from CMS to contractually require MCPs to make state directed payments to providers; in addition to other requirements specified in 42 CFR 438.6(c), such state-directed payments must be tied to the delivery of services under the contract. To help mitigate the impacts of the COVID-19 PHE, in May 2020, CMS provided a framework through a CMCS Informational Bulletin for states to use in developing state directed payments (<https://www.medicaid.gov/federal-policy-guidance/downloads/cib051420.pdf>). In addition, on January 8, 2021, CMS released additional guidance that discusses enhanced program integrity in the use of state directed payments, such as requiring additional documentation and justification from states as to their rationale for incorporating state directed payments through means other than adjustments to the base capitation rates as part of the preprint review (<https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/smd21001.pdf>).

#### 4. *Other Benefits and Changes*

In response to the COVID-19 PHE, many states have implemented emergency measures to ensure that Medicaid and CHIP beneficiaries continue to have access to essential health services. States have submitted disaster relief state plan amendments (SPAs), 1915(c) waiver Appendix K amendments, and requests for flexibilities under section 1115(a) demonstrations to suspend, add, and revise policies that could prevent enrollees from accessing needed care during the PHE.

American Rescue Plan Act of 2021 (ARP) section 9817 provides qualifying states with a temporary 10 percentage point increase to the federal medical assistance percentage (FMAP) for certain Medicaid expenditures for home and community-based services (HCBS) beginning April 1, 2021 and ending March 31, 2022. CMS released State Medicaid Director SMD letter #21-003, <https://www.medicaid.gov/federal-policy-guidance/downloads/smd21003.pdf>, on May 13, 2021, to provide guidance to states on the implementation of section 9817 of the ARP. As described in SMD #21-003, states must comply with two program requirements to receive the increased FMAP for HCBS expenditures: (1) federal funds attributable to the increased FMAP must be used to supplement existing state funds expended for Medicaid HCBS in effect as of April 1, 2021; and (2) states must use the state funds equivalent to the amount of federal funds attributable to the increased FMAP to implement or supplement the implementation of one or more activities to enhance, expand, or strengthen HCBS under the Medicaid program. CMS requires participating states to submit both an initial and quarterly HCBS spending plan and narrative to CMS on the activities that the state has implemented and/or intends to implement to enhance, expand, or strengthen HCBS under the Medicaid program to demonstrate that the state is supplementing, but not supplanting, existing state funds expended for Medicaid HCBS.

## **B. Control Systems**

### *Utilization Control and Program Integrity*

The state plan must provide methods and procedures to safeguard against unnecessary or improper utilization of care and services.

In addition, the state must have (1) methods of determining criteria for identifying suspected fraud cases; (2) methods for investigating these cases; and (3) procedures, developed in cooperation with legal authorities, for referring credible allegation of fraud cases to law enforcement officials. Credible allegations of provider fraud must be referred to the state MFCU or an appropriate law enforcement agency in states with no certified MFCU.

### *Inpatient Hospital and Long-Term Care Facility Audits*

States are required to establish, as part of the state plan, standards and methodologies for reimbursing inpatient hospital and long-term care facilities based on payment rates that represent the cost to operate such facilities efficiently and economically and provide services to Medicaid beneficiaries. The SMA must provide for the filing of uniform cost reports by each participating provider. These cost reports are used by the SMA to aid in the establishment of payment rates. The SMA 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 SMA in ensuring that established payment rates are proper.

### *Automated Data Processing (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 Standards for Attestation Engagements (AT) Section 801, Reporting on Controls at a Service Organization Service Organization Control (SOC) 1 type 2 report from its service

organization (if the state has a service organization). A SOC 1 type 1 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 SOC 1 type 2 report differ according to each individual service organization's operations; however, in every instance, the type 2 report procedures assess the sufficiency of the design of an organization's controls and test their effectiveness. A number of commonly covered areas include:

- a. Control Environment
- b. Systems Development and Maintenance
- c. Logical Security
- d. Physical Access
- e. Computer Operations
- f. Input Controls
- g. Output Controls
- h. Processing Controls

#### *Medicaid–Enterprise Systems*

The MES are the set of required mechanized claims processing and information retrieval systems, including the eligibility and enrollment systems and other supporting systems, unless this requirement is waived. CMS provides general systems guidelines (42 CFR 433.110 through 433.131) but does not provide detailed system requirements or specifications for states to use in the development of MES systems. As a result, these systems will vary from state to state. The system may be maintained and operated by the state or a contractor overseen by the state.

A module of the MES is normally used to process payments for most Medicaid services. The Operations Management business area supports the Claims Receipt, Claims Adjudication, and Point-of-Service subsystems to process provider claims for Medicaid care and services to eligible medical assistance recipients. Many edits and controls are generally implemented to identify aberrant billing practices for follow-up by the state. The state plan will describe the administration of each state's claims-processing subsystems.

The state may use other MES modules, or other systems, to process some or all Medicaid payments, such as claims from state agencies (e.g., state-operated intermediate care facility for individuals with intellectual disabilities (ICF/IID) and certain selected types of

claims). The claims payments processed these ways may be material to the Medicaid program.

### **C. Related Programs**

#### *Medicare Savings Program*

The Medicare Buy-In Program, which includes QMB (Qualified Medicare Beneficiary), SLMB (Specified Low-Income Medicare Beneficiary), QI (Qualified Individual), and Qualified Disabled and Working Individuals (QDWI), commonly referred to as the Medicare savings program, is designed to protect low-income Medicare beneficiaries from the significant and growing costs required to cover Medicare premiums, deductibles, coinsurance, and copayments. 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/or cost-sharing amounts for individuals who are financially eligible.

The QMB program serves individuals with modest assets with combined incomes that do not exceed 100 percent of the federal poverty level. For example, in 2021 the asset limit for the QMB program is \$7,970/individual and \$11,960/couple and the monthly income limits in 2021 are \$1,094/individual and \$1,472/couple for all states excluding Alaska and Hawaii. If individuals are eligible for the QMB program, the state Medicaid program pays their Medicare Part B premiums as well as Medicare Part A premiums for those who are not eligible for premium-free Part A, and their Medicare deductibles, coinsurance, and copayments.

For individuals with slightly higher incomes, the SLMB program pays only the Part B premium. To be eligible for the SLMB program, an individual must have income that exceeds 100 percent but is less than 120 percent of the federal poverty level. The SLMB program has the same asset limits as the QMB program.

The QI program also pays only the Part B premium. The QI program serves individuals with income at or above 120 percent but less than 135 percent of the federal poverty level. The QI program has annual allotments for each state. The QI program has the same asset limits as the QMB program.

QDWI program pays the Part A premium for working disabled persons under 65 who lost their premium-free Part A when they went back to work. These individuals are eligible for the QDWI program if their income does not exceed 200 percent of the federal poverty level and their resources do not exceed two times the SSI resource limit.

#### *Indian Health Care*

Federal Medicaid statute includes several protections specific to American Indians and Alaska Natives (AI/AN). These include:

- a. Special treatment for certain AI/AN financial interests—as described at 42 CFR 435.603(e)(3), certain types of AI/AN income are excluded when determining household income based on modified adjusted gross income (MAGI).
- b. Protections related to the imposition of enrollment fees, premiums, and cost sharing charges—as described at 42 CFR 447.56(a)(1)(x), AI/ANs cannot be charged any enrollment fees or premiums if they are eligible to receive items or services furnished by an Indian health care provider, and they are exempt from all cost sharing if they are both eligible to receive and have received items or services furnished by an Indian health care provider or through referral under contract health services (CHS), now, Purchased Referred Care (PRC). In addition, 42 CFR 447.56(c)(2) prohibits any cost sharing-related reduction in payment due under Medicaid to the Indian health care provider serving an AI/AN (i.e., a state must pay these providers the full Medicaid payment rate for furnishing the service).
- c. Managed care protections – Network and coverage requirements related to AI/AN protections within managed care are codified at 42 CFR 438.14(b). These protections address network adequacy, access, claims payment, and disenrollment for AI/AN beneficiaries.
- d. Requirements for payment to Indian Health Service (IHS) and tribal facilities – States receive 100 percent FMAP for Medicaid services provided to AI/ANs through an IHS or tribal facility. Per SHO letter #16-002, states receive 100 percent FMAP for services provided to AI/ANs by non-IHS/tribal providers when a care coordination agreement is in place between an IHS/tribal facility and a non-IHS provider, and other requirements of the SHO letter are met. Payment methodologies, including rates, for all services provided by IHS/tribal facilities and non-IHS/tribal providers are described in the Medicaid state plan. CMS was scheduled to begin enforcing, effective January 1, 2021, the requirement prohibiting IHS and Tribal facilities from claiming Medicaid reimbursement under the clinic services benefit at 42 CFR 440.90 (including at the IHS All Inclusive Rate) for services provided outside of the “four walls” of the facilities. Recognizing the need to focus limited resources on addressing the COVID-19 PHE, CMS extended a grace period previously granted to permit such claims through October 31, 2021; a CMCS Informational Bulletin issued on October 4, 2021, further extended this grace period to nine months after the COVID-19 PHE ends (<https://www.medicaid.gov/sites/default/files/2021-10/cib10421.pdf>).

#### *Payment Error Rate Measurement (PERM) Program*

The PERM program is utilized by HHS to calculate national improper payment rates in Medicaid and CHIP. The regulations at 42 CFR Part 431, Subpart Q, specify requirements for estimating improper payments in Medicaid and CHIP. The PERM program annually measures the national Medicaid and CHIP improper payment rates and uses a 17-state three-year rotation process. The national Medicaid and CHIP improper payment rates include findings from the most recent three cycle measurements so that all states are captured in one rate. The national improper

payment rates are comprised of three components: fee-for-service, managed care, and eligibility. States are expected to issue state-specific corrective action plans to address the root cause of errors and deficiencies.

### *Medicaid Eligibility Quality Control (MEQC) Program*

The regulations at 42 CFR Part 431, Subpart Q, specify the requirements for the MEQC program, which is designed to reduce erroneous expenditures by monitoring the accuracy of eligibility determinations, and work in conjunction with the PERM program. The MEQC program requires each state to conduct a MEQC pilot in the two years between the state's PERM review periods and report case findings to CMS and implement corrective actions to address all errors and technical deficiencies found to ensure continuous oversight of both Medicaid and CHIP state eligibility determinations. States have flexibility to review error prone areas identified through their PERM findings and must review areas not reviewed under the PERM program, such as denials and terminations.

## **Source of Governing Requirements**

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.

The Families First Coronavirus Response Act (Pub. L. No. 116-127), as amended by section 9811 of the American Rescue Plan (Pub. L. No. 117-2).

Awards under the Medical Assistance Program (Assistance Listing 93.778) are 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 200, Subpart E.

Federal requirements for the establishment and continued operations of the MFCUs are contained in 42 USC 1396b(a)(6), 1396b(b)(3), and 1396b(q); and 42 CFR Part 1007.

This program is subject to the requirements of 45 CFR Part 75 (the HHS implementation of 2 CFR Part 200) and 45 CFR Part 95.

## **Availability of Other Program Information**

The HHS OIG issues fraud alerts, some of which relate to the Medicaid program. These alerts are available from the HHS OIG home page, Special Fraud Alerts section (<https://oig.hhs.gov/compliance/alerts/index.asp>).

Up-to-date program information, including State Medicaid Director and State Health Official letters, is available through Medicaid.gov at <http://www.medicaid.gov/Federal-Policy-Guidance/Federal-Policy-Guidance.html>.

Up-to-date information on Medical Loss Ratio is available at <https://www.medicaid.gov/medicaid/managed-care/guidance/medical-loss-ratio/index.html>.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	Y	N	N	N	Y	N	Y

#### General Audit Approach for Medicaid Payments

To be allowable, Medicaid costs for medical services must be (1) covered by the state plan or CMS approved waivers/demonstrations; (2) reviewed by the state consistent with the state’s documented procedures and system for determining medical necessity of claims; (3) properly coded; and (4) paid at the rate allowed by the state plan. Furthermore, beneficiaries must be eligible (or presumptively eligible) at the time of service, whether covered under fee-for-service or managed care. Additionally, Medicaid costs must be net of beneficiary cost-sharing obligations and 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 (i.e., are allowable under the state plan) without relying upon the systems and internal controls. Examples of complexities include:

1. Dependence upon large and complex ADP systems to process the large volume of Medicaid transactions for fee for services arrangements.
2. Medical services are normally provided directly to an eligible beneficiary without prior approval by the state.
3. Medical service providers normally determine the scope and medical necessity of the services.
4. Notice to the state that a service was rendered is after-the-fact when a claim for payment is issued.
5. Payments systems do not include a review of original detailed documentation supporting the claim prior to payment.
6. Complex payment structures for various medical services may exist, including significance of proper coding of services for fee for service (e.g., billing by diagnosis-related groupings (DRG)). Managed care and waiver based programs are dependent on the respective SPA and resulting agreements with the providers. Managed care programs are dependent on the authority for the program and the contracts with the managed care plans.
7. Payment rates and policies differ among service types and delivery methods, such as fee for service arrangements, managed care, and waivers (e.g., inpatient hospital, physicians, prescription drugs and drug rebates, and risk-based capitation payments for a specific set of covered services).
8. State contracts with third parties, such as managed care plans, to provide or arrange for services for all or part of beneficiary care. Managed care plans have contracts with providers to create a network. Managed care plan may also subcontract with other managed care plans and/or administrative services organizations to delegate some of their contractual obligations.

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 section 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 MES); and (4) MES claims processing and other modules normally include 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 SMA. The following table indicates the major types of Medicaid services (i.e., excludes administrative expenses) 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
Managed Care Waiver	X	X	X	X
Home and Community Based Waiver Program	X		X	

Each of the above Medicaid payment types is tested for compliance with applicable laws and regulations under one of the following: III.A, “Activities Allowed or Unallowed;” III.B, “Allowable Costs/Cost Principles;” or III.E.1, “Eligibility – Eligibility for Individuals.” Based on the assessed level of control risk, the auditor should design appropriate tests of the allow-ability of Medicaid payments, which may include a sample of medical claims. Given the complexity of medical records, if medical claims are sampled, the auditor should consider engaging the assistance of specialists in the medical community to assist in the review. The auditor may consider using the same specialists used by the state. Appropriate privacy measures must be taken to protect health information (i.e., medical claims).

#### A. Activities Allowed or Unallowed

1. *Summary* – FFP funds can be used only for Medicaid benefit payments (as specified in the state plan, federal regulations, or an approved waiver/demonstration), expenditures for administration and training, expenditures for the State Survey and Certification Program, and expenditures for the establishment and operation of state MFCUs (42 CFR 435.10, 440.210, 440.220, and 440.180). Payments may only be made to providers determined by the SMA to be eligible to participate in the Medicaid program. See III.N.4., “Provider Eligibility (Screening and Enrollment)” for related testing.
2. *Case Management Services* – Medicaid case management services may fall under the category of an administrative expense or as an optional medical state plan benefit. 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. Services, programs, and providers to which the individual is gaining access do not have to be specifically medical in nature and may include services for securing shelter, personal needs, and so forth (e.g., services provided by community mental health boards, county offices of aging). Case management services are 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 (covered under a periodic payment (usually monthly) for each beneficiary) or risk-based managed care, 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 (section 1915(g) of the Act (42 USC 1396n(g)); 42 CFR Part 434).

Administrative case management – Services must be assessed as a Title XIX benefit (e.g., outreach services provided by public school districts to Medicaid recipients).

Case Management/targeted case management provided as an optional state plan service – Services must be provided to an eligible Medicaid recipient, and must include: a comprehensive assessment and periodic reassessment of individual needs, development (and periodic revision) of a care plan that is based on the information collected through the assessment, making referrals to help the eligible individual obtain needed services and monitoring to ensure that the care plan is implemented and services are meeting the individual's needs.

3. *Managed Care* – A state may obtain a waiver of statutory requirements under 1915(a) or (b) waivers, or amend its state plan under 1932(a) authority, or use 1115(a) demonstration authority, in order to develop a managed care delivery system that is intended to more effectively address the health care needs of its population. For example, a waiver/SPA/Demonstration may involve the use of managed care plans for the delivery of some or all Medicaid benefits for selected beneficiaries. Managed care plans use networks of 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 beneficiaries for the proper period and use the proper rate cell, and the capitation rates must be actuarially sound. Generally, FFS Medicaid should not pay claims for services that are covered by managed care plan contract. States should ensure that capitated payments to managed care plans are discontinued when a beneficiary is no longer enrolled in a plan. All Medicaid managed care guidance can be found at <https://www.medicaid.gov/medicaid/managed-care/guidance/index.html>.

Examples of payment risks in Medicaid managed care can exist at the state level plan level, and the network provider level. At the state level, inaccurate state payments can be made to plans/managed care organizations because of inaccurate data or because the rate setting includes costs that should be excluded when calculating and setting payment rates.

4. *Medicaid Health Insurance Premiums* – A state may pay premiums for employer sponsored insurance or private group health insurance, on behalf of a Medicaid beneficiary, if it is cost effective to do so. When providing premium assistance, states must ensure that participating beneficiaries have access to all benefits available to other Medicaid beneficiaries, and that they are not required to incur greater out-of-pocket costs for premiums, deductibles, co-payments, or similar cost sharing charges than other Medicaid beneficiaries. A state's policy related to premium assistance is described in the Medicaid state plan.

5. *Disproportionate Share Hospital* – FFP is available for payments to qualifying 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. Section 1923 of the Act limits DSH payments on a state-wide basis to annual DSH allotments and on a hospital-specific basis to each qualifying hospital's uncompensated care costs. Section 1923(j) of the Act (42 USC 1396r(4) (*OMB PRA 0938-0746*)) also requires each state to obtain, and submit to CMS, an annual independent certified audit of their Medicaid DSH program.
6. *Home and Community-Based Services (HCBS)* – A state may obtain a waiver of statutory requirements to provide an array of HCBS which may permit an individual to avoid institutionalization primarily through 1915(c) of the Act (42 CFR Part 441, Subpart G). States may also offer HCBS under their state plan under authority provided by section 1915(i) of the Act. States must operate their HCBS programs in accordance with certain “assurances,” including three assurances related to quality of care. To meet these assurances, states must demonstrate that they have systems to effectively monitor the adequacy of service plans, the qualifications of providers, and the health and welfare of beneficiaries.
7. *Medicare Part B Buy-In* – 42 CFR 431.625(d)(1) specify  
FFP funds are available for state payment of
  - Medicare Part B premiums for cash assistance recipients (SSI/SSP) and “deemed” cash recipients;
  - Part A or B premiums, deductibles, coinsurance, and copays for QMBs; and
  - Part B premiums for SLMBs and QIs.FFP is not available for state payment of Part B premiums for other categories of Medicaid for individuals 65 years old and older or who have blindness and disability.

## **B. Allowable Costs/Cost Principles**

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 third party liability is established after the claim is paid, reimbursement from the third party should be sought (section 1915 of the Act 42 USC 1396k; 42 CFR 433.135 through 433.154).
2. Before calculating the amount of FFP, 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 care providers or related entities

(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. The requirements for provider-related donations and health care-related taxes are specified in section 1903(w) of the Act and implementing regulations at 42 CFR 433 Subpart B.

These provisions apply to the 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 433.50(c)).

3. Section 1927 of the Act (42 USC 1396r-8) requires manufacturers that wish to have their covered outpatient drugs covered by Medicaid to enter into an agreement with CMS under which the manufacturers agree to pay rebates for drugs dispensed and paid for by state Medicaid agencies under the state plan (“rebate agreement”). Those rebates are shared between the state and federal governments. Claims are submitted on a National Council of Prescription Drug Program (NCPDP) transaction using a National Drug Code (NDC) or a medical claim transaction using either Healthcare Common Procedure Coding System (HCPCS) or revenue codes in the authoritarian context of China. In addition to identifying the claims that are for covered outpatient drugs (CODs), the units need to be appropriate to the definition of the rebate program. Within 30 days of state invoicing, manufacturers are required to pay the rebate or provide the state with written notice of disputed units not paid because of discrepancies found.

In addition, to receive FFP states must invoice for covered outpatient single source and certain multiple (top 20 multiple source drugs as published by the secretary) source physician-administered drugs (42 USC 1396r-8(a)(7)), states must also provide for collection and submission of such utilization data using the NDC pursuant to Section 1927 (a)(7) of the Act and codified under 42 CFR 447.520. Physician-administered drugs include both injectable and non-injectable drugs. They are typically administered by medical professionals in physicians’ offices, clinics, or hospital outpatient departments.

Generally, in order for payment to be available for covered outpatient drugs, drug manufacturers are required to have entered into a rebate agreement and meet various product and price reporting requirements, in addition to paying rebates. As part of the product and price reporting requirements, manufacturers must certify to CMS all covered outpatient drugs and, on a quarterly basis, are required to provide their average manufacturer’s price and their best price for each covered outpatient drug, as applicable. 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 SMA must provide drug utilization data to manufacturers, including drug utilization data of those Medicaid beneficiaries enrolled in managed care plans.

4. In the “Medicaid and Children’s Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions

Related to Third Party Liability” final rule, published in the *Federal Register* on May 6, 2016 (81 FR 27498), CMS adopted medical loss ratio (MLR) requirements for Medicaid and CHIP managed care programs. The state must require each Medicaid managed care plan to calculate and report a MLR for rating periods starting on or after July 1, 2017; and require each CHIP managed care plan to calculate and report a MLR for rating periods in CHIP managed care contracts as of the state fiscal year beginning on or after July 1, 2018. If a state elects to mandate a minimum MLR, that minimum MLR must be at least 85 percent. The regulation, at 42 CFR 438.8(e)(4), incorporates the standards adopted for the private insurance market MLR (45 CFR 158.150) for the treatment of fraud prevention expenses in the numerator of the MLR calculation. The MLR is reported for a rating period, using data from that rating period.

With regard to capitation rate setting for Medicaid managed care plans, under 42 CFR sections 438.4 and 438.5, several requirements exist: (1) states must provide all the validated encounter data, FFS data (as appropriate), and audited financial reports to be served by the managed care organization (MCO), prepaid inpatient health plan (PIHP) or prepaid ambulatory health plan (PAHP) to the actuary developing the capitation rates for at least the three most recent and complete years prior to the rating period, (2) the rates must be approved by CMS, which uses the services and expertise of the Office of the Actuary, and (3) the rate adjustments must be approved and valid. In addition, for Medicaid and CHIP managed care plans, the rates must be developed so that the managed care plan is projected to meet an 85 percent MLR (42 CFR 438.4(b)(9) and 457.1203(c)(1)).

5. *Non-Disproportionate Share Hospital Supplemental Payments* – States make supplemental payments to hospitals and other providers such as nursing homes and physician groups that serve high-cost Medicaid beneficiaries. The upper payment limit (UPL) against which non-disproportionate share hospital supplemental payments are measured is codified at 42 CFR 447.272 for Institutional Services and 42 CFR 447.321 for Outpatient Hospital and Clinic Services.
6. *Non-Risk Contracts* – Non-risk contracts are defined in 42 CFR 438.2 as contracts between a state and a PIHP or PAHP under which the contractor (1) is not at financial risk for changes in utilization or for costs incurred under the contract that do not exceed the upper payment limits specified in 42 CFR 447.362 of this chapter; and (2) may be reimbursed by the state at the end of the contract period on the basis of the incurred costs, subject to the specified limits.

## **E. Eligibility**

As discussed in the General Audit Approach for Medicaid Payments, the auditor may coordinate 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, eligible individuals and presumptively eligible individuals are combined with III.A, “Activities Allowed or Unallowed” and III.B,

“Allowable Costs/Cost Principles” such as, was the service incurred during the period the individual was eligible to receive benefits and was the provider paid the correct amount for the service billed.”

The state verifies the financial and nonfinancial factors of eligibility, with the exceptions described below, by checking electronic data sources in accordance with federal requirements at 42 CFR 435.948 through 435.956 and state requirements (as documented in the state plan, verification plan and eligibility manual). The state is required (as described at 42 CFR 435.914) to maintain facts in the case file to support the eligibility determination. When data sources used by the state are not available to the auditor, or information is not required to be available for the period under audit, auditors would not be expected to test verification other than the requirement to maintain information in the case file. For states that accept applicant self-attestation for certain factors of eligibility such as household composition, and do not require further verification or documentation, the auditors are not expected to test beyond the requirements of the state.

The exceptions to the verification process described above are eligibility determinations made by an Exchange, either the Federally Facilitated Exchange (FFE) or a State-based Exchange (SBE), elements of a determination made by an express lane agency, and presumptive eligibility determinations made by qualified entities. In states that have delegated eligibility determinations to the FFE or a SBE, the state relies on the verifications conducted by the Exchange and auditors are not expected to test verification. When express lane eligibility is used, the SMA relies upon elements of the determination made by an express lane agency. For presumptive eligibility determinations, the qualified entity accepts attestation of all needed information and states may not require verification or documentation of any eligibility criteria. When testing a presumptive eligibility determination, auditors are not expected to test verification.

## **1. Eligibility for Individuals**

To participate in Medicaid, federal law requires states to cover certain groups of individuals. Examples of these mandatory eligibility groups are Infants and Children under Age 19, Pregnant Women, and Individuals Receiving Supplemental Security Income (SSI). States may also elect to extend coverage to optional groups of individuals. Examples of optional eligibility groups are Individuals Needing Treatment for Breast or Cervical Cancer, Optional State Supplement Recipients, and Family Opportunity Act Children with a Disability. The Families First Coronavirus Response Act (Pub. L. No. 116-127), as amended by section 9811 of the American Rescue Plan (Pub. L. No. 117-2), established a new optional Medicaid eligibility group at section 1902(a)(10)(A)(ii)(XXIII) of the Act (42 USC 1396a(a)(10)(A)(ii)(XXIII)) for individuals who are uninsured; this eligibility group is available only during the period of the COVID-19 PHE and coverage under the group is limited to testing and treatment for COVID-19. In addition, states have the option to provide coverage to medically needy individuals who have income and/or resources that exceed the eligibility standards otherwise applicable to such individuals. Mandatory, optional, and medically

needy coverage options are described at 42 CFR Part 435, subparts B, C, and D and the options elected by a state are detailed in its Medicaid state plan.

Eligibility for Medicaid includes both financial and nonfinancial requirements and each eligibility group can have its own specific standards. Financial eligibility for most individuals is based on MAGI, which is described at 42 CFR 435.603. MAGI-based income is calculated using the financial methodologies defined in section 36B of the Internal Revenue Code with certain exceptions, such as the exclusion of certain types of AI/AN income (described above) and special rules for individuals who do not expect to file taxes or to be claimed as a tax dependent (non-filer rules). MAGI-based financial eligibility determinations include only an income test; states cannot apply a resource test when determining eligibility based on MAGI.

Certain groups of individuals are excepted from the use of MAGI. MAGI-excepted individuals are described at 42 CFR 435.603(j) and include individuals whose eligibility does not require a determination of income by the agency, such as individuals who are eligible based on their receipt of SSI; individuals whose eligibility for Medicaid is determined based on being age 65 or older or having blindness or a disability (often referred to as aged, blind or disabled, or ABD); and individuals being evaluated for coverage as medically needy.

When making non-MAGI financial eligibility determinations, states generally apply the income and resource methodologies of the most closely associated cash assistance program. For most individuals, the SSI financial eligibility methodology would be applied, including SSI rules related to both income and resources, in accordance with 42 CFR 435.601 and 435.602. Most MAGI-excepted eligibility determinations include a resource (sometimes called “asset”) standard. However states have flexibility to modify resource standards by disregarding certain types or amounts of resources.

Certain nonfinancial requirements, such as age limitations, pregnancy, or parent/caretaker requirements, apply only to specific eligibility groups. Other non-financial requirements apply to all eligible individuals. Medicaid beneficiaries must generally be residents of the state in which they are receiving Medicaid, and they must be either US citizens or qualified non-citizens (referred to as aliens in the statute). Many 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 was granted the qualified alien immigration status, unless the alien is exempt from the five-year waiting period under 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, subject to the five-year waiting period under 8 USC 1613. States also have the option to provide Medicaid coverage to lawfully residing pregnant women and children under age 21 in accordance with 42 USC 1396b(v)(4), which provides coverage to all lawfully present non-citizens



who are otherwise eligible for Medicaid, including during the five-year waiting period, for those otherwise subject to it under 8 USC 1613. 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.

The Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260) established a new requirement effective December 27, 2020, for states to extend full Medicaid eligibility to citizens of the Freely Associated States (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau) living in the United States under the Compacts of Free Association (COFA). Additional information is provided in SHO letter #21-005 regarding Medicaid Eligibility for COFA Migrants available at <https://www.medicaid.gov/sites/default/files/2021-10/sho21005.pdf>.

The Extending Government Funding and Delivering Emergency Assistance Act (Pub. L. No. 117-43) provided that Afghan evacuees who enter the United States as parolees or with a Special Immigrant Visa are eligible for Medicaid or CHIP to the same extent as refugees, for a limited time period, provided that they meet all other eligibility requirements. Additional information is provided in the November 1, 2021 fact sheet on Health Coverage Options for Afghan Evacuees at <https://www.medicaid.gov/medicaid/eligibility/downloads/hlth-cov-option-afghan-evac-fact-sheet.pdf>.

To facilitate immediate access to services for individuals who are likely Medicaid eligible, without having to wait for a final eligibility determination to be made, states may establish a program of PE. Under this option, the state authorizes certain health care providers, schools, and/or other outside entities (referred to as “qualified entities”) to screen for Medicaid eligibility and immediately enroll individuals who appear to be eligible. PE is time limited and ends within two months unless the individual submits a full Medicaid application.

The processes used by states to determine and renew eligibility for Medicaid must comply with certain federal requirements, which are described at 42 CFR Part 435, Subpart J. State processes for presumptive eligibility are described at 42 CFR Part 435, Subpart L. However, states have flexibility within this framework to establish processes that meet the unique needs of their state. Specific requirements to be considered when auditing eligibility determinations for individuals include:

- a. Eligibility Determination
  - (1) States must accept applications submitted online, by telephone, via mail, or in person. This includes electronic, telephonically recorded, and handwritten signatures. The SMA must have documentation in the case record to support the agency’s eligibility determination, including a record of verification of income and citizenship or satisfactory immigration status for each individual.

The state must provide notice of its decision concerning eligibility and provide timely and adequate notice of the basis for denial or termination of assistance (section 1137(d) of the Act 42 USC 1320b-7(d); 42 CFR 435.907, 435.914, 435.917, 431.17, 431.211, 431.213, 431.214).

- (2) Federal law requires that certain types of information be collected during the application process. As a condition of eligibility, each individual seeking Medicaid must furnish his or her Social Security number (SSN) as described at 42 CFR 435.910. If the individual does not recall his/her SSN or has not been issued an SSN, the state must assist the individual in obtaining or applying for an SSN. This requirement does not apply if the individual (a) is not eligible to receive an SSN, (b) does not have an SSN and may be issued an SSN only for a valid non-work reason, or (c) refuses to obtain a SSN because of well-established religious objections.
- (3) States are directed, at 42 CFR 435.912, to determine eligibility promptly and without undue delay. For individuals applying for Medicaid on the basis of disability, the determination of eligibility may not exceed 90 days. For all other applicants, the determination of eligibility may not exceed 45 days.
- (4) The 42 CFR 435.1200 requires coordination between SMAs and other insurance affordability programs, including an Exchange. Typically, electronic accounts must be transferred from the Medicaid/CHIP agency to the Exchange and vice versa. States utilizing the FFE must enter into an agreement in which the FFE makes either a determination or an assessment of MAGI Medicaid/CHIP eligibility and sends the individual's electronic account to the SMA for enrollment (FFE determination) or a final determination and enrollment (FFE assessment). Additional information may be found in the July 25, 2016, CMCS Informational Bulletin on Coordination of Eligibility and Enrollment between Medicaid, CHIP, and the Federally Facilitated Marketplace (FFM or "Marketplace") <https://www.medicaid.gov/federal-policy-guidance/downloads/cib072516.pdf>.
- (5) When determining eligibility for a child, SMAs may rely on elements of a determination made by an express lane agency (as defined in section 2.1(e) of the Medicaid state plan) as to whether a child satisfies one or more requirements of Medicaid eligibility. The SMA may use an income determination from an express lane agency without regard to differences in budget unit, income disregards, deeming, or other differences in methodology between the express lane agency and Medicaid. Auditors are not expected

to test verification of express lane determinations relied upon by the SMA. Additional information may be found in section 1902(e)(13) of the Act (42 USC 1396a(e)(13)) and SHO letter #10-003 issued on February 4, 2010.

b. Eligibility Verification

- (1) States must request information from reliable electronic data sources, including other agencies in the state and other state and federal programs to the extent that such information is determined useful in verifying the financial eligibility of an individual. As described in the state's verification plan for MAGI determinations, and in state policies and procedures for both MAGI and non-MAGI determinations, this may include information from agencies such as the State Wage Information Collection Agency, the Social Security Administration, and the Internal Revenue Service. States may also use information related to eligibility or enrollment from other state programs such as the Supplemental Nutrition Assistance Program. For MAGI determinations, if information provided by or on behalf of an individual is reasonably compatible with information obtained from the electronic data sources, as described in the state's verification plan, then the agency must determine or renew eligibility based on such information and may not require the individual to provide any further documentation. If the information is not reasonably compatible, then the agency must provide the individual with a reasonable period of time to explain the discrepancy or furnish additional information (42 CFR 435.948 and 435.952).
- (2) States may choose to accept self-attestation of information needed to determine or renew eligibility except with respect to income, SSN, and citizenship or immigration status. When self-attestation is accepted, further information, including documentation, cannot be required from the individual. In such cases, the auditor would not be expected to test documentation other than required by the state. States must follow the requirements described at 42 CFR 435.948 through 435.956 for verification and documentation of income and citizenship and immigration status.
- (3) Asset Verification Program – Section 1940 of the Act (42 USC 1396w) requires states to have a mechanism in place to verify assets, through access to information held by financial institutions, for purposes of determining or renewing Medicaid eligibility when an asset test is applicable for aged, blind, and disabled Medicaid applicants or beneficiaries.

c. Periodic Renewal

As required at 42 CFR 435.916, states must renew MAGI-based determinations of eligibility once every 12 months and no more frequently than once every 12 months. For non-MAGI beneficiaries, states must renew eligibility at least once every 12 months as described in the Medicaid state plan. When renewing eligibility, states must first attempt to renew based on reliable information available to the agency without requiring information from the individual. If sufficient information is not available to complete a renewal, or if the state has information that suggests that the beneficiary is ineligible, the state must provide the beneficiary with a renewal form and inform the individual of any additional information or documentation needed to determine eligibility. For MAGI-based determinations, the renewal form must be prepopulated with the most recent and reliable information known to the agency. Consistent with regulations at 42 CFR 435.930(b), the agency must continue to furnish Medicaid to beneficiaries who have returned their renewal form and all requested documentation unless and until they are determined to be ineligible for eligibility under all groups covered by the state. Additional information may be found in the CMCS Informational Bulletin on Medicaid and Children's Health Insurance Programs (CHIP) Renewal Requirements issued on December 4, 2020 (<https://www.medicaid.gov/federal-policy-guidance/downloads/cib120420.pdf>).

d. Presumptive Eligibility

States have the option to establish PE for specific eligibility groups, as described at 42 CFR Part 435 Subpart L. In general, states must provide PE for pregnant women and children before extending PE to most other MAGI-based eligibility groups. The options elected by each state are described in the Medicaid state plan.

When electing the PE option, states designate qualified entities, such as health care providers, community-based organizations, and schools to make PE determinations. These qualified entities are trained on the state's PE screening process and state-specific requirements for PE. In many states, qualified entities also help individuals to complete the full application process. A qualified entity is responsible for collecting and recording all information necessary to make a PE determination.

To be determined presumptively eligible, an individual must meet the basic requirements of an eligibility group for which PE is available. For example, to be presumptively eligible for the Infants and Children Under Age 19 group, the individual must be a child aged 18 or younger and must have household income at or below the standard established by the state for this group. When determining income, states may use a simplified

method such as gross income. In addition to the basic requirements of the eligibility group, states may, but are not required to, consider state residency and US citizenship or eligible immigration status when making a PE determination. Other information that would be collected on a full application, cannot be required for a PE determination. In addition, individuals attest to all information needed for a PE determination. States may not require verification or documentation of any eligibility criteria as a condition of presumptive eligibility.

The PE period begins the day on which the qualified entity makes the PE determination. The end date varies depending on whether or not the individual submits a Medicaid application. If the individual submits a Medicaid application by the last day of the month following the month in which PE was determined, the PE period will continue until full Medicaid eligibility is either approved or denied. If the individual does not submit a Medicaid application, the PE period ends on the last day of the month following the month in which PE was determined. States must adopt reasonable standards regarding the number of PE periods that will be authorized for an individual.

e. Eligibility for Inmates of Public Institutions

As described in subdivision (A) in the matter following section 1905(a)(30) of the Act (42 USC 1396d(a)(30)) the provision of FFP for inmates of public institutions (in this case, correctional institutions) is limited to inpatient services furnished to inmates when they are patients in a medical institution. To implement this payment exclusion, states historically terminated the eligibility and enrollment of beneficiaries when they entered a correctional institution. However, section 1001 of the **Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (Pub. L. No. 115-271)** added a new paragraph (84) to section 1902(a) of the Act (42 USC 1396a), which (1) prohibits states from terminating the Medicaid eligibility of an “eligible juvenile” who becomes an inmate of a public institution, (2) requires states to process applications submitted by incarcerated youth, and (3) requires states to redetermine the Medicaid eligibility of eligible juveniles before their release from a public institution. State Medicaid Director letter #21-002 (available at <https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/smd21002.pdf>) describes the options available to states to suspend eligibility or benefits rather than terminating Medicaid eligibility, and it describes the requirements for renewals, notices, fair hearings and other related matters.

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

Not Applicable

### **3. Eligibility for Sub-recipients**

Not Applicable

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

The state is required to pay part of the costs of providing Medicaid services and part of the costs of administering the program. The percentage of federal funding is determined based on the amount of the expenditure and the application of the FMAP that is determined for each state using a formula set forth in section 1905(b) of the Act (42 USC 1396d), or other applicable federal matching rates specified by the statute. In particular, the matching rates for states' administrative expenditures authorized by the Act are found in section 1903(a) of the Act (42 USC 1396b).

### **2. Level of Effort**

American Rescue Plan Act of 2021 (ARP) Section 9817. To demonstrate compliance with the requirement to supplement, not to supplant existing state funds expended for Medicaid HCBS, states must: not impose stricter eligibility standards, methodologies, or procedures for HCBS programs and services than were in place on April 1, 2021; preserve covered HCBS, including the services themselves and the amount, duration, and scope of those services, in effect as of April 1, 2021; and maintain HCBS provider payments at a rate no less than those in place as of April 1, 2021. These requirements are commonly referred to as "maintenance of effort" (MOE) requirements for ARP section 9817.

Please note that these requirements do not supersede other statutory or regulatory requirements that apply to section 1915(c) waivers, or other requirements under other provisions authorizing HCBS, including requirements set forth in Special Terms and Conditions under section 1115 demonstrations and managed care authorities under which states are delivering HCBS. For example, if states have implemented temporary changes to HCBS eligibility, covered services, and/or payment rates through the Appendix K template for section 1915(c) waivers, a disaster relief state plan amendment for section 1915(i) or (k) programs, or an Attachment K for HCBS services under a section 1115 demonstration, states are expected to retain those changes for as long as allowable under those authorities (e.g., according to the end date approved under an Appendix K but no later than six months post PHE). However, CMS will not apply penalties or non-compliance restrictions on the receipt of the increased FMAP once the authority for those temporary changes has expired or if the state needs to implement changes to comply with other federal statutory or regulatory requirements.

### **3. Earmarking**

A state waiver may contain an earmarking requirement.

**L. Reporting****1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable for expenditure reporting for the administrative costs of the state MFCUs; not applicable for expenditure reporting all other components of the cluster
- d. *CMS-64, Quarterly Statement of Expenditures for the Medical Assistance Program (OMB No. 0938-1265)* – Required to be used in lieu of the SF-425, Federal Financial Report (for all components of the cluster other administrative costs of the state MFCUs), prepared quarterly, and submitted electronically to CMS within 30 days after the end of the quarter. Various provisions of the Act provide for an FMAP that is increased either permanently, or temporarily. Lines and forms on the CMS-64 that reflect these increases present more risk than others. States must report expenditures on the CMS-64 that reflect the date of payment, not the date of service, to obtain the correct FMAP (see 42 CFR 430.30(c)).

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**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. In addition, the state must have (1) methods of determining criteria for identifying suspected fraud cases; (2) methods for investigating these cases; and (3) procedures, developed in cooperation with legal authorities, for referring credible allegations of fraud cases to law enforcement officials (42 CFR parts 455, 456, and 1002). Credible allegations of provider fraud must

be referred to the state MFCU or an appropriate law enforcement agency in states with no certified MFCU (42 CFR Part 455.21). See Special Test #6, MFCU.

The SMA 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 SMA may conduct this review directly or may contract with an independent entity (42 CFR 456.5, 456.22 and 456.23).

In addition, the SMA as required per Section 1902(a)(68) – [42 USC 1396a(a)(68)] False Claims Education must ensure that providers and contractors receiving or making payments of at least \$5 million annually under a state's Medicaid program have (a) established written policies for all employees (including management) about the Federal False Claims Act, whistleblower protections, administrative remedies, and any pertinent state laws and rules; (b) included as part of these policies detailed provisions regarding detecting and preventing fraud, waste, and abuse; and (c) included in any employee handbook a discussion of the False Claims Act, whistleblower protections, administrative remedies, and pertinent state laws and rules.

**Audit Objectives** 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 credible allegations of fraud cases to law enforcement officials. Consider testing in conjunction with Special Test #6, MFCU.

### **Suggested Audit Procedures**

- a. Obtain the procedures used by the SMA to conduct utilization reviews and identify suspected fraud.
  - (1) Evaluate 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: (a) professional certification, license, or specialized training; (b) the reputation and standing of licensed medical professionals in the view of peers if relevant; and (c) experience in the type of tasks to be performed.
  - (2) Ascertain if the personnel performing the utilization review and identifying suspected fraud are organized sufficiently independent of other Medicaid operations to objectively perform their function.
  - (3) Ascertain if the SMA or independent entity's sampling plan was properly designed and executed.
- b. Test a sample of the cases examined by SMA or the independent entity and ascertain if such examinations were in accordance with the SMA'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.

## 2. Inpatient Hospital and Long-Term Care Facility Audits

**Compliance Requirements** The SMA pays for inpatient hospital services and long-term care facility services through the use of rates that are economic and efficient and are in accordance with the state plan. To the extent the state pays reconciled costs, the SMA must provide for the filing of uniform cost reports for each participating provider in order to establish payment rates. The SMA 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 447.253).

**Audit Objectives** Determine whether the SMA performed inpatient hospital and long-term care facility audits as required and established in the state plan.

### Suggested Audit Procedures

- a. Review the state plan and SMA 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, determine if the sampling plan was carried out as planned.
- c. Select a sample of audits and ascertain if the audits were in compliance with the SMA's audit procedures.

## 3. ADP Risk Analysis and System Security Review

**Compliance Requirements** SMAs must establish and maintain a program for conducting periodic risk analyses to ensure that appropriate and cost effective safeguards are incorporated into new and existing systems. SMAs must perform risk analyses whenever significant system changes occur. SMAs 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 SMA shall maintain reports on its biennial ADP system security reviews, together with pertinent supporting documentation, for HHS on-site reviews (45 CFR 95.621).

**Audit Objectives** Determine whether the SMA has performed the required ADP risk analyses and system security reviews.

### Suggested Audit Procedures

- a. Review the SMA's policies and procedures, and document the frequency, timing, and scope of ADP security reviews. This should include any Service Organization Control (SOC) 1 type 2 reviews following statement on Standards for Attestation

Engagements (AT) Section 801, Reporting on Controls at a Service Organization that may have been performed on outside processors (service organizations).

- b. Evaluate 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 to determine if findings were identified and what actions the SMA took to address the findings.

#### 4. Provider Eligibility (Screening and Enrollment)

**Compliance Requirements** In order to receive Medicaid payments, providers must: (1) be licensed in accordance with federal, state, and local laws and regulations to participate in the Medicaid program (42 CFR 431.107 and 447.10; and Section 1902(a)(9) of the Act (42 USC 1396a(a)(9)); (2) screened and enrolled in accordance with 42 CFR Part 455, Subpart E (sections 455.400 through 455.470); and make certain disclosures to the state (42 CFR Part 455, Subpart B, sections 455.100 through 455.106). Medicaid managed care network providers are subject to the same disclosure, screening, enrollment, and termination requirements that apply to Medicaid fee-for-service providers in accordance with 42 CFR Part 438, Subpart H. States must also follow guidance issued in the Medicaid Provider Enrollment Compendium (MPEC) at <https://www.medicaid.gov/sites/default/files/2021-05/mpec-3222021.pdf> to enroll providers into their Medicaid programs.

Providers who have been barred from participation by the OIG exclusion list are not eligible to be enrolled in the Medicaid program (see 42 CFR 455.436). Lists may be found at [https://oig.hhs.gov/exclusions/?utm\\_source=oigNewsletter&utm\\_medium=oig-nl-nav&utm\\_campaign=leie-nl](https://oig.hhs.gov/exclusions/?utm_source=oigNewsletter&utm_medium=oig-nl-nav&utm_campaign=leie-nl).

**Audit Objectives** Determine whether Medicaid providers of medical services have the required medical licenses and are eligible 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 samples from both Medicaid fee-for-service providers and managed care network providers to ascertain if:
  - (1) The provider is screened, licensed, and enrolled in accordance with the state plan and the requirement of 42 CFR 455 Subpart E.

- (2) The agreement with the provider complies with the requirements of the state plan, including the disclosure requirement of 42 CFR 455 Subpart B.
- (3) The provider complied with the requirements of the state plan, including the disclosure requirements of 42 CFR 455 Subpart B and Section 1.4 of the MPEC at <https://www.medicaid.gov/sites/default/files/2021-05/mpec-3222021.pdf>.
- (4) The provider was not on the OIG's exclusion list at the time the services were provided.

## 5. Provider Health and Safety Standards

**Compliance Requirements** Providers must meet the prescribed health and safety standards for hospital, nursing facilities, and ICF/IID (42 CFR Part 442). The standards may be modified in the state plan.

**Audit Objectives** Determine whether the state ensures that hospitals, nursing facilities, and ICF/IID 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 providers who received payments for each provider type (i.e., hospitals, nursing facilities, and ICF/IID) and ascertain if the SMA has documentation that the provider has met the prescribed health and safety standards.

## 6. Medicaid Fraud Control Unit (MFCU)

**Compliance Requirements** States are required as part of their Medicaid state plans to maintain a MFCU, unless the HHS secretary determines that a MFCU would not be cost-effective. States must have an agreement between the MFCU and the SMA, which includes methods of coordination and procedures for referring potential fraud, including potential fraud arising in managed care networks.

**Audit Objectives** Determine whether the state ensures credible allegations of fraud or other criminal violations are referred to the MFCU, or in jurisdictions without a MFCU, to another office with authority to prosecute cases of provider fraud, and to ensure that the state accurately reports overpayment recoveries resulting from MFCU activities on the CMS-64 in accordance with sections 1903(d)(2)(C) and (D) of the Act. Consider testing in conjunction with Special Test #1, Utilization Control and Program Integrity.

### Suggested Audit Procedures

- a. Ascertain if the state has a MFCU and, if not, it has received a waiver from the

HHS secretary and has alternate policies and procedures in place to detect Medicaid fraud and abuse.

- b. Examine the current memorandum of understanding (MOU) between the MFCU and state and ascertain whether the MOU for the MFCU and state comply with the requirements of sections 455.21(c) and 1007.9(d)
- c. Obtain an understanding of the state's policies and procedures that ensure credible allegations of provider fraud is identified and referred to an office with authority to prosecute such cases.
- d. Select a sample of cases with identified credible allegations of provider fraud 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.
- e. Obtain records of overpayments and other monetary recoveries identified as a result of MFCU activities and ascertain whether the recoveries were appropriately reported in each applicable quarter for the corresponding quarter on the CMS-64.

## **7. Refunding of Federal Share of Medicaid Overpayments to Providers**

**Compliance Requirements** The 42 CFR 433 Subpart F outlines the requirements SMAs are to follow related to refunding the federal share of Medicaid overpayments made to providers. Pursuant to 1903(d)(2)(C) of the Act (the Act) (42 USC 1396b), states have up to one (1) year from the date of discovery of the overpayment to recover or attempt to recover the overpayment before the federal share must be refunded to CMS via Form CMS-64 Summary, Line 9C1- Fraud, Waste & Abuse Amounts, regardless of whether recovery is made from the provider. The state must credit the federal share to CMS as outlined under 42 CFR 433.320(a)(2) either in the quarter in which the recovery is made or in the quarter in which the one-year period following discovery ends, whichever is earlier, with limited exceptions. Under 42 CFR 433.316(d), for overpayments resulting from fraud, if not collected within one year of discovery, the SMA has until 30 days after the final judgment of a judicial or administrative appeals process to return the federal share.

Additionally, in accordance with 42 CFR 433.320(a)(4), the state will be charged interest for any non-recovered, non-refunded overpayment amounts. Any appeal rights offered to the provider does not extend the date of discovery per 42 CFR 433.316(h).

The repayment of the federal share is not required in cases where the state is unable to obtain recovery because the provider has filed for bankruptcy or the provider is otherwise out of business as outlined in 42 CFR 433.318.

The 42 CFR 433.320(c)(1) allows for downward adjustments previously credited to CMS if it is properly based on the approved state plan, federal law and regulations governing Medicaid, and the appeals resolution process specified in state administrative policies and procedures. States are not able to enter into settlement agreements with providers that reduces the federal share of the overpayment in order to avoid the expense of litigation.

The Departmental Appeals Board (DAB) decision No. 1391 from February 19, 1993 (<https://www.hhs.gov/sites/default/files/static/dab/decisions/board-decisions/1993/dab1391.html>), addressed overpayment settlements between the states and providers. This decision affirmed that states may not reduce the federal share by settling overpayment receivables for less than the actual amount of the overpayment based on anticipated success in litigation or made simply to avoid administrative costs or litigation expenses.

For managed care, SMAs are required per 42 CFR 438.608(d)(1) to specify in each managed care contract how recoveries of provider overpayments must be treated. The refunding of the federal share of any overpayment recovered by an MCP is dependent on the retention policy outlined in the contract between the state and the MCP as required under 42 CFR 438.608(d)(1). If the state requires the MCP to refund overpayments to the state, the state must refund the federal share of that overpayment to CMS in accordance with the regulations at 42 CFR 433.312. The state must apply the FMAP rate in effect at the time the overpayment was made to determine the amount to be refunded to CMS.

**Audit Objectives** Determine whether the SMA reported and returned Medicaid provider overpayments in accordance the federal requirements.

### **Suggested Audit Procedures**

- a. Review applicable federal laws and regulation, including 1903(d)(2)(C) of the Act (42 USC 1396b), 42 CFR 433 Subpart F, and the Departmental Appeals Board Decision No. 1391.
- b. Obtain an understanding of the process to identify overpayments.
- c. Obtain managed care contract(s) to determine how recoveries made by MCPs to providers are treated.
- d. Perform tests to ascertain if the federal share has been returned accurately in accordance with federal laws and regulations, including ensuring the full amount was refunded and any downward adjustments were made.

### **8. Medicaid National Correct Coding Initiative (NCCI)**

**Compliance Requirements** Effective October 1, 2010, SMAs were required to incorporate NCCI methodologies into the state Medicaid programs pursuant to the requirements of Section 6507 of the Affordable Care Act (section 1903(r) of the Act).

The purpose of the NCCI Program is to promote correct coding, prevent coding errors, prevent code manipulation, reduce improper payments and reduce the paid claims improper payment rate. The Annual Report to Congress – Medicare and Medicaid Integrity Programs – Fiscal Year 2018 (<https://www.cms.gov/files/document/medicare-and-medicare-integrity-program-fy-2018-annual-report.pdf>) reported that the NCCI program saved at least \$626.1 million in Medicare in FY 2018.

In paying applicable Medicaid claims, states' MES are required to completely and correctly implement the following six Medicaid NCCI methodologies to ensure that only proper payments of procedures are reimbursed.

- a. NCCI Procedure-to-Procedure (PTP) edits for practitioner and ambulatory surgical center (ASC) claims.
- b. NCCI PTP edits for outpatient hospital services, including emergency department, observation care, and outpatient hospital laboratory services.
- c. Medically Unlikely Edit (MUE) units of service (UOS) edits for practitioner and ASC services.
- d. MUE UOS edits for outpatient hospital services including emergency department, observation care, and outpatient hospital laboratory services.
- e. MUE UOS edits for durable medical equipment (DME) billed by providers.
- f. NCCI PTP edits for durable medical equipment (added in October 2012).

States are also required to use:

- all four components of each Medicaid NCCI methodology;
- the most recent quarterly Medicaid NCCI edit files for states;
- the Medicaid NCCI edits in effect for the date of service on the claim line or claim;
- the claim-adjudication rules in the Medicaid NCCI methodologies; and
- all modifiers for Healthcare Common Procedure Coding System (HCPCS) codes and Current Procedural Terminology (CPT) codes needed for the correct adjudication of applicable Medicaid claims.

The NCCI Medicaid Policy Manual and the NCCI Medicaid Technical Guidance Manual contain additional requirements for implementation of the NCCI methodologies.

The Medicaid NCCI methodologies must be applied to Medicaid fee-for-service claims submitted with, and reimbursed on the basis of, HCPCS codes and CPT codes. This includes claims reimbursed on a fee-for-service basis in state Medicaid Primary Care Case Management managed care programs. Application of NCCI methodologies to fee-for-service claims processed by other entities, including limited benefit plans or Managed Care Organizations, is not required; however, if SMAs require the application of NCCI methodologies to fee-for-service claims processed by such entities, then such entities must meet NCCI program requirements, including compliance with the NCCI Medicaid Policy Manual and the NCCI Medicaid Technical Guidance Manual.

**Audit Objectives** To determine whether SMAs have implemented the required six NCCI methodologies and met the NCCI program requirements, as described in the NCCI Medicaid Policy Manual and the NCCI Medicaid Technical Guidance Manual.

### **Suggested Audit Procedures**

- a. Ascertain if each of the six NCCI methodologies have been implemented.
- b. Ascertain if the SMA downloaded the correct quarterly files from the Medicaid Integrity Institute and implemented in their system timely.
- c. Process test claims to ascertain if:
  - (1) SMAs implemented NCCI edits as automated edits;
  - (2) SMAs apply edits in the required order;
  - (3) SMAs correctly denied payment for all units of service on test claims that trigger medically unlikely edits;
  - (4) SMAs correctly used medically unlikely edits on test claims with date spans;
  - (5) SMAs followed NCCI program requirements for using modifiers for test claims for procedure-to-procedure edits;
  - (6) SMAs are paying for services that should have been denied by NCCI edits by using test claims; and
  - (7) SMAs are incorrectly denying payment for services; by using test claims.
- d. Ascertain if the SMA has Confidentiality Agreement(s) in place as required by the Technical Guidance Manual, sections 7.1.1 and 7.1.2.

## **9. Medical Loss Ratio (MLR)**

**Compliance Requirements** For all contracts, the state must ensure that each MCO, PIHP, and PAHP submits a report with the data elements specified in 42 CFR sections 438.8(k) and 438.8(n). The report should contain the required 13 data elements in the regulation, reflect the correct reporting years, and contain an attestation of accuracy regarding the calculation of the MLR. The state should have a policy and procedure to indicate when the report(s) are due from plans and should not accept multiple submissions from plans unless the capitation payments are revised retroactively.

**Audit Objectives** Determine whether the state's oversight of the content and submission of MLR reports meets the requirements.

**Suggested Audit Procedures**

- a. Perform procedures to ascertain if the state obtained the required MLR reports;
- b. Verify the 13 required elements are included;
- c. Verify the reporting period covered is 12 months;
- d. Verify the report contains an attestation statement to address accuracy;
- e. Ascertain if the state did not permit plans to submit multiple MLR reports for a specific reporting year except when a state had retroactive changes to capitation payments.

**10. Managed Care Financial Audit**

**Compliance Requirements** Two types of audits are required for managed care:

1. Audited Financial Reports – The contract with each MCO, PIHP, and PAHP must require them to submit to the state an audited financial report specific to the Medicaid contract on an annual basis. These audits must be conducted in accordance with generally accepted accounting principles and generally accepted auditing standards (42 CFR section 438.3(m)).
2. Periodic Audits – Effective no later than for rating periods for contracts starting on or after July 1, 2017, the state must periodically, but no less frequently than once every three years, conduct, or contract for an independent audit of the accuracy, truthfulness, and completeness of the encounter and financial data submitted by, or on behalf of each MCO, PIHP, and PAHP and post the results of these audits on its website (42 CFR section 438.602(e) and (g); May 6, 2016, *Federal Register* (81 FR 27497); OMB No. 0938-0920).

**Audit Objectives** Determine whether the required audits were conducted and the audit reports for the Periodic Audits were posted on the state’s website.

**Suggested Audit Procedures**

- a. Review the state’s policies and operating procedures for obtaining audited financial reports, conducting these required audits and for posting the Periodic Audits on the state’s website.
- b. Perform tests to ascertain if: (1) the state obtained annually the required Audited Financial Reports from the MCO, PIHP, and PAHP; and (2) the independent auditor’s report on the financial report stated the audit was conducted in accordance with generally accepted auditing standards.
- c. Perform tests to ascertain if: (1) the state conducted or contracted for the required Periodic Audits for the-MCO, PIHP, and PAHP at least once in the



most recent three year period; and (2) the audits were posted on the state's website.

## 11. External Quality Review Organization (EQRO)

**Compliance Requirements** The SMA must ensure that each managed care organization is evaluated annually on quality, timeliness, and access to the health care services by an EQRO. The state must ensure that the EQRO conducting such reviews is competent and independent (42 CFR 438 Subpart E, 42 CFR 438.354).

**Audit Objectives** Determine whether the SMA has ensured the EQRO's conducting the annual reviews meet the requirements for competence and independence.

### Suggested Audit Procedures

- a. For states with managed care perform procedures to ascertain if:
  - (1) The SMA's policies and procedures meet the requirement to ensure the EQROs are competent and independent.

## IV. OTHER INFORMATION

### *Portion of Medicaid (Title XIX) Expenditures Claimed at CHIP Enhanced FMAP*

As described in Part 4, CHIP (Assistance Listing 93.767), III.A.1, "Activities Allowed or Unallowed," certain qualifying states meeting the criteria provided in section 2105(g) of the Social Security Act, 42 USC 1397ee(g), may opt to receive the CHIP enhanced FMAP for certain Medicaid program expenditures. For certain qualifying states that choose this option, the enhanced portion of such expenditures (that is, the portion that is equal to the difference between the CHIP enhanced FMAP and the standard Medicaid FMAP) is funded by their available CHIP allotments. Qualifying states were permitted to use up to 20 percent of their CHIP allotment to fund the enhanced portion of such Medicaid expenditures for allotments through the fiscal year 2008 CHIP allotment and up to 100 percent of their available CHIP allotments beginning with the fiscal year 2009 CHIP allotment. The qualifying states, determined by CMS under section 2105(g) of the Act, 42 USC 1397ee(g) 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 that have been identified in audit findings both as noncompliance and material weaknesses: If these items are identified, the auditors should determine if further review is appropriate.

## 1. Beneficiary Eligibility Determinations

Findings related to internal control deficiencies for eligibility determinations include:

- eligibility determination and renewal were not performed timely and/or performed within the timeliness standards;
- eligibility determinations are not made accurately;
- lack of internal controls over obtaining adequate documentation to support eligibility determinations, when applicable;
- eligibility system data was not accurate;
- beneficiary information was not verified according to the state's verification plan;
- program staff did not have sufficient knowledge of program requirements and policies due to high turnover and/or a lack of training; and
- MEQC review staff were not functionally and physically separate from both the eligibility determination staff and the Medicaid policy staff.

## 2. Medicaid Claims Processing

Findings related to significant weaknesses in Medicaid claims processing include:

- 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;
- 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);
- review of cost report and recoupment of rate adjustments were not timely.

## 3. Other areas of weaknesses identified include:

- 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 was in file or in the state MES;

- inadequate internal control related to implementation of MES module;
- inadequate internal control regarding user access to the MES modules, including terminated employees' user access rights; and
- MES module was not programmed and updated timely and accurately with proper information.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****ASSISTANCE LISTING 93.870 MATERNAL, INFANT, AND EARLY CHILDHOOD HOME VISITING GRANT PROGRAM****I. PROGRAM OBJECTIVES**

The goals of the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) programs are to (1) strengthen and improve the programs and activities carried out under Title V of the Social Security Act, (2) improve coordination of services for at-risk communities, and (3) identify and provide comprehensive services to improve outcomes for families who reside in at-risk communities.

The MIECHV programs include grants to states and six jurisdictions (District of Columbia, Puerto Rico, US Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands). Per Section 511(h)(2)(B) of the Social Security Act (42 USC 711(h)(2)(B)), nonprofit organizations with an established record of providing early childhood home visiting programs or initiatives in a state or several states are eligible for funding to provide services in states that are not participating in the programs. The legislation requires that awardees demonstrate improvement in six benchmark areas: improved maternal and newborn health; prevention of child injuries, child abuse, neglect, or maltreatment, and reduction of emergency department visits; improvement in school readiness and achievement; reduction in crime or domestic violence; improvement in family economic self-sufficiency; and improvements in the coordination and referrals for other community resources and supports.

These programs are intended to 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**

The Health Resources and Services Administration (HRSA) administers the MIECHV programs in partnership with the Administration for Children and Families (ACF), with awards under this Assistance Listing number made by HRSA (ACF awards are made under Assistance Listing 93.508). HRSA and ACF are Operating Divisions of the Department of Health and Human Services (HHS).

Grants are awarded to states, the District of Columbia, Puerto Rico, Guam, the US Virgin Islands, the Commonwealth of the Northern Mariana Islands, and America Samoa to conduct needs assessments, and to those entities and nonprofit organizations providing services in states that are not participating in the programs, to 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, voluntary, evidence-based home visiting services to pregnant women and families with young children from birth to age 5. Nonprofit organizations are required to carry out the program based on the needs assessment conducted by the state.

Also, to the greatest extent practicable, nonprofit organizations are subject to the program requirements that apply to states (e.g., coordination with other programs under Title V of the Social Security Act and the 10 percent limitation on costs associated with administering the award).

### **Source of Governing Requirements**

These programs are authorized under the Social Security Act, Title V, 511(c) (42 USC 711(c)), as amended by the Bipartisan Budget Act of 2018 (Pub. L. No. 115-123), Title VI, Subtitle A.

### **Availability of Other Program Information**

The HRSA Maternal and Child Health Bureau website provides general information on this program at <http://mchb.hrsa.gov/programs/homevisiting/>.

The Notices of Funding Opportunity (NOFO) under Assistance Listing 93.870 include HRSA-21-050 (formula grants), HRSA-17-102, and HRSA-17-101. These may be found online at <https://grants.hrsa.gov/webexternal/fundingOpp.asp>. The NOFOs also are available in the archives at <https://www.grants.gov/> through an advanced search using Assistance Listing 93.870.

HHS launched Home Visiting Evidence of Effectiveness (HomVEE) to conduct a thorough and transparent review of the home visiting research literature and provide an assessment of the evidence of effectiveness for home visiting programs models that target families with pregnant women and children from birth to age 5. Information on this process and a list of the 19 evidence-based models can be found at <https://homvee.acf.hhs.gov/HRSA-Models-Eligible-MIECHV-Grantees>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	N	Y	Y	Y	Y	N

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

As specified in the NOFOs, funds may be used to:

- a. identify unmet needs and target at-risk communities; based on the most recent and approved statewide needs assessment, or as updated to meet the requirement set forth in section 50603 of the Bipartisan Budget Act of 2018.
- b. develop the infrastructure and capacity needed to implement and sustain evidence-based maternal, infant, and early childhood home visiting programs in those communities; and
- c. provide home visiting services to eligible families (home visiting is defined as an evidence-based program, implemented in response to findings from a needs assessment, that includes home visiting as a primary service delivery strategy (excluding programs with infrequent or supplemental home visiting), and is offered on a voluntary basis to pregnant women or children birth to age 5 targeting the participant outcomes in the legislation which include improved maternal and child health, prevention of child injuries, child abuse, or maltreatment, and reduction of emergency department visits, improvement in school readiness and achievement, reduction in crime or domestic violence, improvements in family economic self-sufficiency, and improvements in the coordination and referrals for other community resources and supports).

2. *Activities Unallowed*

As stated in the NOFOs, funds may not be used to support the delivery or costs of direct medical, dental, mental health, or legal services; however, some limited

direct services may be provided (typically by the home visitor) to the extent required in fidelity to an evidence-based model approved for use.

**B. Allowable Costs/Cost Principles**

Costs charged to federal funds under this program must comply with the cost principles at 45 CFR Part 75, Subpart E, and any other requirements or restrictions on the use of federal funding.

**J. Program Income**

The Notice of Award provides guidance on the use of program income. The addition method is used for this program.

**L. Reporting**

**1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

Part 3.L for audit guidance.

**M. Subrecipient Monitoring**

1. The HHS Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards (45 CFR Part 75) requires pass-through entities: (1) to evaluate each subrecipient's risk of noncompliance in order to determine the appropriate monitoring level; (2) monitor the activities of subrecipient organizations to ensure that the subaward is in compliance with applicable federal statutes and regulations and terms of the subaward; and (3) verify that subrecipients are audited as required under this guidance. Specifically, the grantee must conduct monitoring activities in accordance with sections 75.351 through 75.353 of Subpart D of 45 CFR Part 75.

2. Grantees must ensure that all requirements imposed by the federal government are passed down to subrecipients so that the HHS award is used in accordance with federal statutes, regulations, and the terms and conditions of the award.



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 93.914 HIV EMERGENCY RELIEF PROJECT GRANTS (RYAN WHITE HIV/AIDS PROGRAM PART A)

#### 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 people with HIV and those who have AIDS (as reported to and confirmed by the Centers for Disease Control and Prevention (CDC)). 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, supplemental project-based funding, and formula-based Minority AIDS Initiative (MAI) funding is provided to eligible metropolitan areas (EMAs) and transitional grant areas (TGAs) to develop, organize, and operate health and support services programs for people with HIV 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 and will continue to receive such assistance unless they fail to meet the legislative requirements related to unobligated balances.

#### II. PROGRAM PROCEDURES

The Health Resources and Services Administration (HRSA), a component of the Department of Health and Human Services (HHS), administers the HIV emergency relief programs. Eligibility for Ryan White HIV/AIDS Program (RWHAP) Part A grants depends, in part, on the number of confirmed AIDS cases within a statutorily specified “metropolitan area.” The secretary of HHS uses the Office of Management and Budget’s (OMB) census-based definitions of a Metropolitan Statistical Area (MSA) in determining the geographic boundaries of a RWHAP metropolitan area. HHS relies on the OMB geographic boundaries in effect when a jurisdiction was or is (if newly eligible) initially funded under RWHAP Part A. A metropolitan area is not eligible if it does not have an overall population of 50,000 or more.

HRSA uses data reported to and confirmed by CDC to determine eligibility. An EMA is a metropolitan area for which there has been reported to, and confirmed by, the director of the CDC a cumulative total of more than 2,000 cases of AIDS for the most recent five calendar-year periods for which data are available. A TGA is a metropolitan area for which there has been reported to, and confirmed by, the director of the CDC a cumulative total of at least 1000, but fewer than 2000, cases of AIDS during the most recent period of five calendar years for which data are available. MAI funding is awarded using a formula that is based on the distribution of HIV/AIDS cases among racial and ethnic minorities.

After subtracting the amount available for MAI project assistance, HRSA must make at least two-thirds (66 2/3 percent) of the appropriated amount available for the EMAs' and TGAs' formula allocation and award the remainder as supplemental funding on the basis of demonstrated need and other factors. EMAs and TGAs are funded from the formula, supplemental, and MAI allocation on the basis of a single application and a combined award.

Funds are made available to the chief elected official of the EMA or TGA 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 fiscal year (FY) 2007 and beyond are exempt from the requirement to establish and use an HIV health services planning council but must provide a process for obtaining community input as prescribed in the RWHAP Part A legislation.

Consistent with funding and service priorities established through the public planning process, the receiving jurisdiction uses the funds to provide assistance to public entities or private nonprofit or for-profit entities to deliver or enhance HIV/AIDS-related core medical and support services and, within established limits, for associated administrative and clinical quality management activities. Administrative activities include EMA or TGA oversight of service provider performance and adherence to their subrecipient obligations. Most of these service providers are nonprofit organizations.

### **Source of Governing Requirements**

This program is authorized under sections 2601–2610 of Title XXVI of the Public Health Service Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. No. 111-87) and is codified at 42 USC 300ff-11 through 300ff-20. The MAI is authorized under Section 2693(b)(2)(A) of the Public Health Service Act, 42 USC 300ff- 121(b)(2)(A).

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. No. 116-136, 134 Stat. 562) provided one-time funding to help current RWHAP recipients prevent, prepare for, and respond to the novel coronavirus disease 2019 (COVID-19).

All HRSA awards are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements at 45 CFR Part 75. As per 45 CFR parts 75.201 and 301, recipients may use a fixed-award instrument to obtain services based on a reasonable estimate of actual cost and based on performance and results related to improvement of program outcomes.

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/>.

Additional information on allowable uses of funds under this program is contained in policy notices and standards found at <http://www.hab.hrsa.gov/manageyourgrant/policiesletters.html> and <http://hab.hrsa.gov/manageyourgrant/files/fiscalmonitoringparta.pdf>.

CARES Act information is available at <https://hab.hrsa.gov/program-grants-management/coronavirus-covid-19-response>.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	N	N	N	Y	N	Y	N

#### A. Activities Allowed or Unallowed

##### 1. *Activities Allowed*

Funds may be used only for core medical services, support services, clinical quality management, and administrative expenses (42 USC 300ff-14(a)).

- a. Core medical services with respect to people with HIV (including co-occurring conditions (i.e., one or more adverse health conditions of an individual with HIV, 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-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 people with HIV to achieve their medical outcomes (those outcomes affecting the HIV-related clinical status of an individual with HIV) (for example, respite care for persons caring for people with HIV, 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. Clinical quality management means assessing the extent to which HIV health services provided to patients under the grant are consistent with the most recent Public Health Service guidelines for the treatment of HIV/AIDS and related opportunistic infections, and as applicable, developing strategies for ensuring that such services are consistent with the guidelines for improvement in the access to and quality of HIV health services (42 USC 300ff-14(h)(5)(A)). Policy Clarification Notice #15-02, <https://hab.hrsa.gov/sites/default/files/hab/Global/CQM-PCN-15-02.pdf>.
- d. Administrative expenses at the recipient level include (1) activities related to routine grant administration and monitoring (for example, development of applications, receipt and disbursement 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) and 300ff-12(b)).
- e. Subrecipient administrative expenses include usual and recognized overhead activities, including those that are reimbursed through approved indirect cost rates; 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)(4)).

## 2. *Activities Unallowed*

- a. 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)).

- b. 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)).
- c. Funds may not be used to make cash payments to intended recipients of RWHAP services (42 USC 300ff-14(i)) and Ryan White HIV/AIDS Program Services: Eligible Individuals and Allowable Uses of Funds, Policy Clarification Notice #16-02, [https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN\\_16-02Final.pdf](https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN_16-02Final.pdf).
- d. Funds may not be used to purchase sterile needles or syringes for the hypodermic injection of any illegal drug (Consolidated Appropriations Act, 2016, Division H, Title V, Section 520 (Pub. L. No. 114-113) and subsequent appropriations, as applicable). Other elements of syringe services programs may be allowable if in compliance with applicable HHS and HRSA-specific guidance.
- 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).

## **E. Eligibility**

### **1. Eligibility for Individuals**

Eligible beneficiaries are low-income individuals or families of people with HIV. 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)).

The requirement related to people with HIV is waived for the COVID-19 CARES Act funding only in the extremely limited instances of household members living with RWHAP clients, and only for COVID-19 testing and the provision of personal protective equipment (PPE). Part D recipients are able to use funds for this purpose in the absence of a waiver (section 2683 of the PHS Act).

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

Not Applicable

### **3. Eligibility for Subrecipients**

The EMA or TGA may make funds available to public or private nonprofit 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)).

### **J. Program Income**

The Notice of Award provides guidance on the use of program income. The addition method is used for this program. Program income must be used for activities described in III.A.1, “Activities Allowed.”

### **M. Subrecipient Monitoring**

1. The HHS Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards (45 CFR Part 75) requires pass-through entities: (1) to evaluate each subrecipient’s risk of noncompliance in order to determine the appropriate monitoring level; (2) to monitor the activities of subrecipient organizations to ensure that the subaward is in compliance with applicable federal statutes and regulations and terms of the subaward; and (3) to verify that subrecipients are audited as required under this guidance. Specifically, the grantee must conduct monitoring activities in accordance with sections 75.351 through 75.353 of Subpart D of 45 CFR Part 75.
2. Grantees must ensure that all requirements imposed by the federal government are passed down to subrecipients so that the HHS award is used in accordance with federal statutes, regulations, and the terms and conditions of the award.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 93.917 HIV CARE FORMULA GRANTS (RYAN WHITE HIV/AIDS PROGRAM PART B)

#### I. PROGRAM OBJECTIVES

The objective of this program is to assist states and territories in improving the quality, availability, and organization of healthcare and support services for low-income, uninsured, and underinsured people with Human Immunodeficiency Virus (HIV).

#### II. PROGRAM PROCEDURES

The Department of Health and Human Services (HHS) administers the Ryan White HIV/AIDS Program (RWHAP) Part B through the Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau (HAB). Grants are awarded annually, on a formula basis, to all 50 states, the District of Columbia, Puerto Rico, 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, HAB. 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 six specified program components: (1) HIV care consortia, (2) home and community-based care, (3) health insurance continuation program, (4) provision of treatments, (5) state direct services, and (6) Minority AIDS Initiative (MAI). This includes the state's plans for the AIDS Drug Assistance Program (ADAP). ADAP funding is provided to the state as a separate formula amount in addition to the base formula grant amount and can only be used for ADAP services.

States may use a variety of service delivery mechanisms. States may provide some or all services directly or may enter into subawards with local HIV care consortia, associations of public and nonprofit healthcare and support service providers, and community-based organizations that plan, develop, and deliver services for low-income, uninsured, and underinsured people with HIV. The state also may delegate some of its authority to monitor provider agreements to a "lead agency" (fiscal agent), with specific responsibilities contained in a formal agreement between the state and that agency. Finally, the state may provide subawards to healthcare or other service providers.

#### Source of Governing Requirements

The RWHAP Part B formula grant program is authorized under Sections 2611-2623 of Title XXVI of the Public Health Service Act as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. No. 111-87) and codified at 42 USC 300ff-21 through 300ff-31b. The MAI is authorized under Section 2693(b)(2)(B) of the Public Health Service Act, 42 USC 300ff-121(b)(2)(B).

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. No. 116-136, 134 Stat. 562) provided one-time funding to help current RWHAP recipients prevent, prepare for, and respond to the novel coronavirus disease 2019 (COVID-19).

There are no regulations specific to the RWHAP Part B.

### Availability of Other Program Information

Further information about the RWHAP Part B is available at <http://www.hab.hrsa.gov>.

Additional information on allowable uses of funds under this program is contained in policy notices and standards found at <http://hab.hrsa.gov/program-grants-management/policy-notices-and-program-letters> and <http://hab.hrsa.gov/sites/default/files/hab/Global/fiscalmonitoringpartb.pdf>.

CARES Act information is available at <https://hab.hrsa.gov/program-grants-management/coronavirus-covid-19-response>.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	Y	N	N	Y	N	Y	N



**A. Activities Allowed or Unallowed**1. *Activities Allowed*

- a. Grant funds (and required matching funds) may be used for core medical services, support services, planning and evaluation, clinical quality management, and administrative expenses (42 USC 300ff-22(a); 42 USC 300ff-28(b)).
  - (1) Core medical services with respect to people with HIV (including the co-occurring conditions of the individual) means (1) outpatient and ambulatory health services; (2) AIDS Drug Assistance program treatments; (3) AIDS pharmaceutical assistance; (4) oral healthcare; (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 healthcare; (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)).
  - (2) Support services means services that are needed for people with HIV to achieve their medical outcomes (those outcomes affecting the HIV-related clinical status of people with HIV) (for example, respite care for persons caring for people with HIV, outreach services, medical transportation, linguistic services, referrals for healthcare 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)).
  - (3) Clinical quality management means assessing the extent to which HIV health services provided to patients under the grant are consistent with the most recent Public Health Service guidelines for the treatment of HIV/AIDS and related opportunistic infections, and as applicable, developing strategies for ensuring that such services are consistent with the guidelines for improvement in the access to and quality of HIV health services (42 USC 300ff-28(b)(3)(E)(i) and Policy Clarification Notice #15-02, <https://hab.hrsa.gov/sites/default/files/hab/Global/HAB-PCN-15-02-CQM.pdf>).
  - (4) Administrative expenses at the recipient level include activities related to (1) routine grant administration and monitoring (for example, development of applications, receipt and disbursement 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) planning and evaluation activities (42 USC 300ff-28(b)(3)(C)).
- (5) Subrecipient administrative expenses include usual and recognized overhead activities, including those that are reimbursed through approved indirect cost rates; 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)).
- b. 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 RWHAP Part B, with priority given to activities related to providing therapeutics (42 USC 300ff-26(g)). To assess whether a state or subrecipient is giving priority to activities related to providing therapeutics, the state (or subrecipient) should be able to demonstrate, that, before undertaking any type of activities other than ADAP purchases for medications or insurance that are allowed under paragraph 1.a. above, it (1) has no waiting list for ADAP services; (2) the ADAP formulary includes the required classes of HIV antiretroviral medications and opportunistic infection-related medications; and (3) the financial eligibility to access the ADAP is established at no less than 200 percent of the federal poverty level (the poverty guidelines are available at <https://aspe.hhs.gov/poverty-guidelines> and are also published each year in the *Federal Register*).
- c. Rebates may be used for allowable RWHAP Part B services that exceed the recipient's RWHAP Part B implementation work plan. Rebates are not part of the recipient's RWHAP Part B award, and, therefore, are not subject to the 10 percent administrative cost cap, the planning and evaluation cost cap, clinical quality management cost cap, nor to the requirement to spend 75 percent on core medical services (see III.G.3.b and h, "Matching, Level of Effort, and Earmarking – Earmarking" below). Rebates can be used to meet both a recipient's state matching and maintenance of effort (MOE) requirements (42 USC 300ff-26(g) and Policy Clarification Notice #15-04 Utilization and Reporting of Pharmaceutical Rebates, [https://hab.hrsa.gov/sites/default/files/hab/Global/pcn\\_15-04\\_pharmaceutical\\_rebates.pdf](https://hab.hrsa.gov/sites/default/files/hab/Global/pcn_15-04_pharmaceutical_rebates.pdf)).

## 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 cash payments to intended recipients of RWHAP services. Where direct provision of the service is not possible or effective; store gift cards, vouchers, coupons, or tickets that can be exchanged for a specific service or commodity (e.g., food or transportation) must be used. Recipients are advised to administer voucher and store gift card programs in a manner which assures that vouchers and store gift cards cannot be exchanged for cash or used for anything other than the allowable goods or services, and that systems are in place to account for disbursed vouchers and store gift cards (42 USC 300ff-28(b)(6) and Ryan White HIV/AIDS Program Services: Eligible Individuals and Allowable Uses of Funds, Policy Clarification Notice #16-02, [https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN\\_16-02Final.pdf](https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN_16-02Final.pdf)).
- c. 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/territory 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)).
- d. Funds may not be used for inpatient hospital services, or nursing home or other long-term care facilities (42 USC 300ff-24(c)(3)).
- e. 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/territory under Title XIX of the Social Security Act (Medicaid) (42 USC 300ff- 25(b)).
- f. Funds may not be used to develop materials designed to promote or encourage, directly, intravenous drug use or sexual activity, whether homosexual or heterosexual (42 USC 300ff-84).
- g. Funds may not be used to purchase sterile needles or syringes for the hypodermic injection of any illegal drug (Consolidated Appropriations Act (Pub. L. No. 114-113), 2016, Division H, Title V, Section 520 and subsequent appropriations, as applicable). Other elements of syringe

services programs may be allowable if in compliance with applicable HHS and HRSA-specific guidance.

- h. ADAP rebates cannot be shared with other entities including, but not limited to, RWHAP Part A recipients, high-risk insurance pools, Marketplace plans, Medicaid, or any other state or federal program (42 USC 300ff- 31(b)).
- i. International travel.

## **E. Eligibility**

### **1. Eligibility for Individuals**

- a. To be eligible to receive assistance in the form of therapeutics, an individual must have a medical diagnosis of HIV/AIDS and be (1) a low-income individual (as defined by the state), (2) a resident of the state, and (3) uninsured or underinsured (42 USC 300ff-26(b)).
- b. The requirement to serve only people with HIV is waived for the COVID-19 CARES Act funding only in the extremely limited instances of household members living with Ryan White HIV/AIDS Program clients, and only for COVID-19 testing and the provision of personal protective equipment (PPE). Part D recipients are able to use funds for this purpose in the absence of a waiver (42 USC 300ff-83).

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

A state must use Emerging Communities funding in the geographic area specified as an Emerging Community, as defined in 42 USC 300ff-30(d)—a metropolitan area for which there has been reported to and confirmed by the Centers for Disease Control and Prevention a cumulative total of at least 500, but fewer than 1,000, cases of AIDS during the most recent period of five calendar years for which such data are available (42 USC 300ff-32(b)(1) and 300ff-30).

### **3. Eligibility for Subrecipients**

- a. To receive funding from the state under a consortium agreement, an applicant consortium must agree to provide, directly or through agreements with other service providers, essential health services, and essential 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)(5)) to meet identified service needs following a consultation process (42 USC 300ff-23(c)(2)).

- b. 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 one percent of the aggregate number of national cases of HIV/AIDS in the two-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 Nonfederal Matching	Ratio of Nonfederal to Federal Expenditures
First	16 2/3	\$1 nonfederal/\$5 Federal
Second	20	\$1 nonfederal/\$4 Federal
Third	25	\$1 nonfederal/\$3 Federal
Fourth and subsequent	33 1/3	\$1 nonfederal/\$2 Federal

- b. All recipients are subject to a matching requirement for ADAP supplemental funds in an amount equal to \$1 for every \$4 of federal funds (42 USC 300ff-28(a)(2)(F)(ii)(III)). Those recipients that are required to match the base formula funds may request and receive a waiver from this additional matching requirement.
- c. Activities Waived (specific to fiscal year (FY) 2020 CARES Act (Pub. L. No. 116-136)).

The requirements that recipients with more than one percent of national HIV cases must match the award, and that recipients match the ADAP supplemental award are waived for the COVID-19 CARES Act funding. 42 USC 300ff-83.

### 2. Level of Effort

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

The state/territory will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the state/territory for the one-year period preceding the fiscal year for which the state/territory is applying for RWHAP Part B funds (42 USC 300ff-27(b)(7)(E)).

The requirement that the recipient must maintain expenditures for HIV-related activities at a level which is not less than the level of expenditures for such activities during the one-year period preceding the fiscal year for which the applicant is applying to receive the grant is waived for the COVID-19 CARES Act funding (42 USC 300ff-83).

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

Funds awarded under a grant must supplement and not supplant other funds available to the entity for the provision of early intervention services for the fiscal year involved (42 USC 300ff-22(d)(2)(B)).

## **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 amounts received under the grant for administration (42 USC 300ff-28(b)(3)(A)).
- c. A state may not use more than a total of 15 percent of the amounts received for the combined costs for administration and planning and evaluation (42 USC 300ff-28(b)(4)). States and territories that receive a minimum allotment (between \$50,000 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 subrecipients may not exceed 10 percent of the total amount of grant funds subawarded by the state (without regard to whether particular entities spend more than 10 percent for such purposes) (42 USC 300ff-28(b)(3)(B)).
- e. Unless waived by the secretary, for the purpose of providing health and support services to women, youth, infants, and children with HIV, 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 RWHAP 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-22(e)). This information is provided to the state by HRSA with reporting requirements (i.e., annual progress report) as listed on the Notice of Award (NoA). Recipients demonstrate compliance with the WICY expenditure requirement in their annual progress report and may request a waiver as part of the annual progress report.

The requirement that the recipient must allocate funding in accordance with WICY ratios is waived for the COVID-19 CARES Act funding (42 USC 300ff-83).

- 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 specific amount for ADAP will be provided in the grant agreement. Of the specific amount 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)).

The statutory limitation on the use of ADAP funds to 5 percent for access, adherence, and monitoring is waived for the COVID-19 CARES Act funding, permitting allocations for these activities (42 USC 300ff-83).

- g. A state shall establish a clinical 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, planning and evaluation, and a clinical quality management program shall be used to provide core medical services to eligible people with HIV (including services regarding the co-occurring conditions of those individuals) (42 USC 300ff-22(b)).

The requirement that the recipient must spend at least 75 percent of the amount remaining after reserving amounts for administration, planning and evaluation, and/or clinical quality management on core medical services is waived for the COVID-19 CARES Act funding (42 USC 300ff-83).

## **J. Program Income**

1. The NoA provides guidance on the use of program income. Generally, the addition method is used for this program; program income may also be used to

satisfy all or part of the state matching requirements. Program income must be used for activities described in III.A.1, “Activities Allowed.”

2. The terms and conditions of award under the RWHAP Part B regarding program income do not apply to drug rebates. Rather, drug rebates must be used as specified in III.A.1.b and c, “Activities Allowed or Unallowed – Activities Allowed.”

#### **M. Subrecipient Monitoring**

1. HHS Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards (45 CFR Part 75) requires pass-through entities: (1) to evaluate each subrecipient’s risk of noncompliance in order to determine the appropriate monitoring level; (2) monitor the activities of subrecipient organizations to ensure that the subaward is in compliance with applicable federal statutes and regulations and terms of the subaward; and (3) verify that subrecipients are audited as required under this guidance. Specifically, the grantee must conduct monitoring activities in accordance with sections 75.351 through 75.353 of Subpart D of 45 CFR Part 75.
2. Grantees must ensure that all requirements imposed by the federal government are passed down to subrecipients so that the HHS award is used in accordance with federal statutes, regulations, and the terms and conditions of the award.



**DEPARTMENT OF HEALTH AND HUMAN SERVICES****ASSISTANCE LISTING 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 the Ryan White HIV/AIDS Program (RWHAP) Part C Early Intervention Services (EIS) is to provide outpatient, high-quality, early intervention services and primary care related to the Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS).

**II. PROGRAM PROCEDURES**

The Department of Health and Human Services (HHS) administers the RWHAP Part C EIS through the Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau (HAB). Grants are awarded to public and nonprofit private entities, including federally qualified health centers under Section 1905(1)(2)(B) of the Social Security Act (42 USC 1396d (1)(2)(B)).

Grants also are awarded to (1) grantees under Section 1001 (regarding family planning) other than states, (2) comprehensive hemophilia diagnostic and treatment centers, (3) rural health clinics, (4) health facilities operated by or pursuant to a contract with the Indian Health Service, (5) community-based organizations, clinics, hospitals, and other health facilities that provide early intervention services to those people with HIV, or (6) nonprofit private entities that provide comprehensive primary care services to populations at risk for HIV/AIDS, including faith-based and community-based organizations. 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 RWHAP Part C EIS enables provision of a comprehensive primary health care and support services in an outpatient setting, including (1) HIV counseling and testing, (2) periodic medical evaluation, clinical, and diagnostic services, (3) provision of therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising with HIV/AIDS; and (4) referrals to appropriate providers of health care and support services. RWHAP Part C EIS recipients work with their community and public health partners to improve outcomes across the HIV care continuum so that individuals diagnosed with HIV are linked and engaged in care and started on antiretroviral therapy (ART) as early as possible.

Minority AIDS Initiative (MAI) funds are provided to recipients based on the percentage of the RWHAP Part C EIS populations served within racial/ethnic minority communities.

Services may be provided directly by the recipient or through contractual agreements with other service providers/subrecipients.

## Source of Governing Requirements

The RWHAP Part C EIS is authorized under sections 2651–2667 of Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. No. 111-87) and is codified at 42 USC 300ff-51 through 300ff-67. The MAI is authorized under Section 2693(b)(2)(C) of the Public Health Service Act (42 USC 300ff-121(b)(2)(C)).

The Coronavirus Aid, Relief, and Economic Security Act (Pub. L. No. 116-136, Division B, Title VIII) (CARES Act) provided one-time funding to help current RWHAP recipients prevent, prepare for, and respond to the novel coronavirus disease 2019 (COVID-19).

The RWHAP Part C EIS has no specific program regulations.

## Availability of Other Program Information

Further information about the RWHAP Part C EIS is available at <http://www.hab.hrsa.gov/>.

Additional information on allowable uses of funds under the RWHAP Part C EIS is contained in policy notices and standards found at <http://www.hab.hrsa.gov/manageyourgrant/policiesletters.html>.

CARES Act information is available at <https://hab.hrsa.gov/program-grants-management/coronavirus-covid-19-response>.

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	Y	Y	Y	Y	N	N

**A. Activities Allowed or Unallowed**

*1. Activities Allowed*

- a. Funds may be used for counseling (whether or not associated with HIV 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 clinical and diagnostic services regarding HIV/AIDS and periodic medical evaluations of individuals with HIV. Funds also may be used for providing therapeutic measures for preventing and treating the deterioration of the immune system and related conditions (including STD, hepatitis C, and tuberculosis) (42 USC 300ff- 51(e)(1)(D) and (E)).
- c. Funds may be used to refer people with HIV to providers of health and support services, as appropriate. This includes recipients of funding under the RWHAP Part A and Part B for the provision of health and support services; biomedical research facilities of institutions of higher education that offer experimental treatment for such disease; community-based organizations or other entities that provide such treatment; and, in the case of pregnant women, recipients of funding under RWHAP Part D (42 USC 300ff-51(e)(1)(C) and -51(e)(2)(A-C)).
- d. At least 75 percent of funds must be used for core medical services for an individual with HIV, including the co-occurring conditions of the individual. Core medical services encompass the following services: (1) outpatient and ambulatory health services; (2) AIDS Drug Assistance Program treatments defined under 42 USC 300ff-26; (3) AIDS pharmaceutical assistance; (4) oral healthcare; (5) early intervention services described in 42 USC 300ff-51(e); (6) health insurance premium and cost sharing assistance for low-income individuals in accordance with 42 USC 300ff-15; (7) home health care; (8) medical nutrition therapy; (9) hospice services; (10) home and community-based health services as

defined under 42 USC 300ff-14(c); (11) mental health services; (12) substance abuse outpatient care; and (13) medical case management, including treatment adherence services (42 USC 300ff-51(b)(1)(A) and 51(c)).

The requirement that the recipient must spend at least 75 percent of the amount remaining after reserving amounts for administration, planning and evaluation, and/or clinical quality management on core medical services is waived for the COVID-19 CARES Act funding. Sections 2604(c), 2612(b), and 2651(c) of the PHS Act.

- e. Funds may be used to pay the costs of providing support services that are needed for people with HIV to achieve their medical outcomes. These services include, but are not limited to, outreach services, nonmedical case management, medical transportation, translation, and referrals for healthcare and support services. Support services are subject to approval of the secretary of HHS or designee (42 USC 300ff-51(b)(1)(B) and 51(d)).
- f. Funds may be used for the establishment of a clinical quality management program to assess the extent to which medical services that are provided to patients are consistent with the most recent Public Health Service guidelines for the treatment of HIV/AIDS and related opportunistic infections, and, as applicable, 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-64 (g)(5)). Policy Clarification Notice #15-02, <https://hab.hrsa.gov/sites/default/files/hab/Global/HAB-PCN-15-02-CQM.pdf>.
- g. Funds may be used for administrative expenses; no more than 10 percent on 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. Funds may not be used to fund AIDS programs or to develop materials, designed to promote or encourage, directly, intravenous drug abuse or sexual activity, whether homosexual or heterosexual (42 USC 300ff-84).
- d. Funds may not be used to purchase sterile needles or syringes for the hypodermic injection of any illegal drug (Consolidated Appropriations Act, 2016 (Pub. L. No. 114-113), Division H, Title V, Section 520, and subsequent appropriations, as applicable). Other elements of syringe services programs may be allowable if in compliance with applicable HHS and HRSA-specific guidance.
- 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)).
- f. Funds may not be used to purchase or improve land or to purchase, construct, or make permanent improvement to any building (42 USC 300ff-64(g)(1)).
- g. Payments for clinical research.
- h. Payments for nursing home care.
- i. Pre-Exposure Prophylaxis (PrEP) or Post-Exposure Prophylaxis (nPEP) medications or medical services. As outlined in the June 22, 2016 RWHAP and PrEP program letter, the RWHAP legislation provides grant funds to be used for the care and treatment of People Living with HIV/AIDS (PLWH), thus prohibiting the use of RWHAP funds for PrEP medications or related medical services, such as physician visits and laboratory costs. However, RWHAP Part C recipients and subrecipients may provide prevention counseling and information, which should be part of a comprehensive PrEP program.
- j. International travel.
- k. Funds may not be used to make cash payments to intended recipients of RWHAP services (42 USC 300ff-28(b)(6) and Ryan White HIV/AIDS Program Services: Eligible Individuals and Allowable Uses of Funds, Policy Clarification Notice #16-02, [https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN\\_16-02Final.pdf](https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN_16-02Final.pdf)).

## **B. Allowable Costs/Cost Principles**

Costs charged to federal funds under this program must comply with the cost principles at 45 CFR Part 75, Subpart E, and any other requirements or restrictions on the use of federal funding.

**J. Program Income**

The Notice of Award provides guidance on the use of program income. The additional method is used for RWHAP Part C EIS. Program income must be used for activities described in III.A.1, “Activities Allowed.”

**L. Reporting****1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 93.958 BLOCK GRANTS FOR COMMUNITY MENTAL HEALTH SERVICES

#### I. PROGRAM OBJECTIVES

The objective of the Community Mental Health Services Block Grant (MHBG) 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 ensure 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

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. MHBG-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; (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); (4) collecting and reporting an estimate of the incidence and prevalence in the state of serious mental illness among adults and serious emotional disturbance among children; and (5) staffing and training for mental health services providers necessary to implement the state plan.

MHBG 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.

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. The 45 CFR Part 96 provides regulations for the general administrative requirements for the covered block grant programs. These regulations are in lieu of the general administrative requirements included in 45 CFR Part 75 (the HHS implementation of 2 CFR Part 200). Section 75.202 and sections 75.351 through 75.353 of Subpart D, and Subpart F of 45 CFR 75 are applicable to the MHBG. In addition, states are to administer the MHBG program according to the plans that they submitted to SAMHSA.

States are to use the fiscal policies that apply to their own funds in administering MHBG. Procedures must be adequate to ensure the proper disbursement 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 MHBG program, within very broad federal guidelines. States must administer their MHBG 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 nonrecurring 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 nonrecurring expense exclusion.

## III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.



A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	Y	N	N	Y	Y	N

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

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. Twenty-four-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. *Activities Unallowed*

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 nonfederal funds as a condition for the receipt of federal funding; or
- e. Provide financial assistance to any entity other than a public or nonprofit 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 to this Supplement, “Federal Programs Excluded from the A-102 Common Rule and Portions of 2 CFR Part 200,” MHBG is exempt from the provisions of OMB cost principles. State cost principles requirements apply to MHBG (45 CFR section 96.30).

## **C. Cash Management**

SAMHSA will make payments at such times and in such amounts to each state from its awards in advance or by way of reimbursement in accordance with section 203 of the Intergovernmental Cooperation Act (42 USC 4213) and Treasury Circular No. 1075 (31 CFR Part 205) (45 CFR section 96.12).

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

Not Applicable

### **2. Level of Effort**

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

- a. The state shall for each fiscal year maintain aggregate state expenditures for community mental health services 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 nonrecurring 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)) (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

- a. 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)).
- b. States must allocate 10 percent of grant funds awarded for FFY 2018 to implement programs showing strong evidence of effectiveness for individuals with a diagnosis of Early Serious Mental Illness or a first episode psychosis only (Pub. L. No. 114-113 (129 Stat. 2609) and MHBG 10 Percent Set-Aside Guidance February 8, 2016, (<http://www.samhsa.gov/grants/block-grants/resources>)).

## H. Period of Performance

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-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

### 2. Performance Reporting

Not Applicable

### 3. Special Reporting

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**M. Subrecipient Monitoring**

The state must conduct monitoring activities in accordance with sections 75.351 through 75.353 of Subpart D of 45 CFR 75.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ASSISTANCE LISTING 93.959 BLOCK GRANTS FOR PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

#### I. PROGRAM OBJECTIVES

The objective of the Substance Abuse Prevention and Treatment Block Grant (SABG) 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 SABG is the primary tool the federal government uses to fund state SA prevention and treatment programs. While the SABG 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

The Substance Abuse and Mental Health Services Administration (SAMHSA), an operating division of the Department of Health and Human Services (HHS), administers the SABG 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 US Virgin Islands, and the Red Lake Band of Chippewa Indians. The states generally subaward funds for the provision of services to public and nonprofit organizations. Service providers may include for-profit organizations, but for-profits may not receive financial assistance.

Examples of SABG activities are:

1. *Alcohol Treatment and Rehabilitation* – Direct services to patients experiencing primary problems for alcohol, such as community outreach, detoxification, outpatient counseling, residential rehabilitation, hospital based care (not inpatient hospital services), abuse monitoring, vocational counseling, case management, central intake, and program administration.
2. *Drug Treatment and Rehabilitation* – Direct services to patients experiencing primary problems with illicit 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.
3. *Primary Prevention Activities* – Education, counseling, and other activities designed to reduce the risk of substance abuse.

The SABG 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 SABG 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. SABG statutory “set asides” were established to fund programs targeting special populations, such as services for substance using pregnant women and women with dependent children, and, in certain “designated states,” for screening for human immunodeficiency virus (HIV).

The 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-21-66) 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.

### **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-21-67). The implementing regulations are published at 45 CFR Part 96. Those regulations include general administrative requirements for the covered block grant programs in 45 CFR sections 96.46 through 96.120. Specific SABG requirements are included in 45 CFR sections 96.121 through 96.137. Section 75.202 and sections 75.351 through 75.353 of Subpart D, and Subpart F of 45 CFR 75 are applicable to the SABG. With the exceptions noted, 45 CFR 75.101(d) exempts SABG from the general administrative requirements of 45 CFR Part 75.

States are to administer their SABG programs according to the plan that they submitted to SAMHSA. States are to use the fiscal policies that apply to their own funds in administering the SABG. Procedures must be adequate to assure the proper disbursement 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 nonrecurring 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 nonrecurring expense exclusion.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	Y	N	N	Y	Y	N

#### A. Activities Allowed or Unallowed

##### 1. *Activities Allowed*

- a. SABG funds may be expended to provide for a wide range of activities to prevent and treat substance abuse and may be expended to deal with the abuse of alcohol, the use or abuse of illicit drugs, the abuse of licit drugs, and the use or abuse of tobacco products as identified in the Overview section above (sections 1921 to 1954 of the PHS Act, 42 USC 300x-21–300x-35; 58 FR 17062 No. 60, March 1993).
- b. The state may use grant funds 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 \$4,000 (45 CFR section 96.129).

## 2. *Activities Unallowed*

- a. 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)).
- b. 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)).
- c. 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)).
- d. The state shall not use grant funds to satisfy any requirement for the expenditure of nonfederal funds as a condition for the receipt of federal funding (42 USC 300x-31(a); 45 CFR section 96.135(a)(4)).
- e. Grant funds may not be used to provide financial assistance (i.e., a subgrant) to any entity other than a public or nonprofit 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)).
- f. The state shall not expend grant funds to purchase sterile needles or syringes for the hypodermic injection of any illegal drug, provided that such limitation does not apply to the use of funds for elements of a program other than making such purchases if the relevant state or local health department, in consultation with the Centers for Disease Control and Prevention, determines that the state or local jurisdiction, as applicable, is experiencing, or is at risk for, a significant increase in hepatitis infections or an HIV outbreak due to injection drug use, and such program is operating in accordance with state and local law (42 USC



300ee-5; 45 CFR section 96.135 (a)(6); and Pub. L. No. 114-113, Division H, Title V, Section 520).

- g. Grant funds may not be used to enforce state laws regarding sale of tobacco products to individuals under the age of 18, except that grant funds may be expended from the primary prevention set-aside of SABG 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)).
- h. 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 specified in Appendix I to this Supplement, “Federal Programs Excluded from the A-102 Common Rule and Portions of 2 CFR Part 200,” SABG is exempt from the provisions of the OMB cost principles. State cost principles requirements apply to SABG.

## **C. Cash Management**

SAMHSA will make payments at such times and in such amounts to each state from its awards in advance or by way of reimbursement in accordance with section 203 of the Intergovernmental Cooperation Act (42 USC 4213) and Treasury Circular No. 1075 (31 CFR Part 205) (45 CFR section 96.12).

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

Not Applicable

### **2. Level of Effort**

#### **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. Section 8002(c)(3) of the 21st Century Cures Act (Pub. L. No. 114-255 repealed section 1924(d) of Title XIX, Part B, Subpart II of the Public Health Service Act (42 USC 300x-24(d)). State and jurisdictions are no longer required to demonstrate compliance with the maintenance of effort requirement regarding tuberculosis and human immunodeficiency virus.

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

- a. The Block Grant will not be used to supplant state funding of alcohol and other drug prevention and treatment programs (45 CFR section 96.123(a)(10)).

## **3. Earmarking**

- a. The state shall expend not less than 20 percent of SABG 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 (i.e., any state whose cases of Acquired Immunodeficiency Syndrome (AIDS) is 10 or more per 100,000 individuals (as indicated by the number of such cases reported to and confirmed by the Centers for Disease Control and Prevention for the most recent calendar year for which data are available)), 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 (EIS HIV) 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 sections 96.128(a)(1), (b), and (d)). Note: The applicable percentage is based on the percent change in a current year allotment to the base year

allotment under the Alcohol, Drug Abuse and Mental Health Services (ADMS) Block Grant. Any “designated state” whose percentage change in allotment is greater than 5 percent is required to obligate and expend 5 percent of the SABG allotment for the applicable federal fiscal year (FFY) to establish one or more projects designed to provide EIS HIV at the site(s) at which individuals are receiving SA treatment.

In FFY 2011, SAMHSA amended the EIS HIV program policy to allow states that were previously considered a “designated state” during any of the three prior FFYs for which a state was applying for a grant and whose AIDS case rates dropped below the AIDS case rate threshold, to opt to continue to set aside 5 percent of the award amount for EIS HIV. Such states are authorized to obligate and expend 5 percent of SABG funds for EIS HIV in accordance with section 1924(b)(4) and 45 CFR section 96.128(a)(2).

- 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 Performance**

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- 270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

### **2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**M. Subrecipient Monitoring**

The state must conduct monitoring activities in accordance with sections 75.351 through 75.353 of Subpart D of 45 CFR 75.

**IV. OTHER INFORMATION**

As described in Part 4, Social Services Block Grant (SSBG) program (Assistance Listing 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

### ASSISTANCE LISTING 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 ensure 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 16 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

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 pre-established 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 nonprofit 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 75 (the HHS implementation of 2 CFR Part 200).

**Availability of Other Program Information**

Further information about this program is available at <http://www.mchb.hrsa.gov/>.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	Y	N	N	Y	N	N

**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 nonprofit 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**

The MCH Block Grant program is exempt from the provisions of the OMB cost principles. State cost principles requirements apply to the MCH Block Grant program.

**G. Matching, Level of Effort, Earmarking****1. Matching**

For every four dollars of federal funds expended, States must match three dollars of nonfederal funds (42 USC 703(a)).

**2. Level of Effort****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 Performance**

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)).



**L. Reporting****1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

*Maternal and Child Health Services Block Grant 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:

1. *Form 2* – MCH Budget/Expenditure Details
2. *Form 3a* – Budget and Expenditure Details by Types of Individuals Served
3. *Form 3b* – Budget and Expenditure Details by Types of Services
4. *Form 4* – Number and Percentage of Newborns and Others Screened, Cases Confirmed and Treated
5. *Form 5a* – Count of Individuals Served By Title V
6. *Form 5b* – Total Percentage of Populations Served by Title V
7. *Form 6* – Deliveries and Infants Served by Title V and Entitled to Benefits under Title XIX

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**IV. OTHER INFORMATION**

Federal funds from other block grant programs (e.g., Social Services Block Grant (Assistance Listing 93.667) and Preventive Health and Health Services Block Grant (Assistance Listing 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.

**AMERICORPS**  
**(Corporation for National and Community Service)**

**ASSISTANCE LISTING 94.006 AMERICORPS STATE AND NATIONAL**

**I. PROGRAM OBJECTIVES**

The AmeriCorps State and 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 State and National programs, AmeriCorps (the operating name of the Corporation for National and Community Service (CNCS)) allots 35.3 percent to State Service Commissions, 1 percent for Indian tribes, and 1 percent for the US territories. After setting aside the aforementioned funds, the remaining funds are distributed competitively by AmeriCorps—either to State Commissions for their subgrantees or directly to eligible nonfederal entities that will operate in two or more states. The State Commissions do not directly operate programs. State Commissions subgrant funds to organizations to operate community service programs within their states.

In addition to grants to fund AmeriCorps State and National programs, State Commissions also receive grants from AmeriCorps to support their administrative and training and technical assistance operations. These grants are made under programs titled State Commission Support Grants (Assistance Listing 94.003) and Commission Investment Fund Grants (Assistance Listing 94.008), which are not included in Part 4 of the Supplement.

AmeriCorps State and National grant recipients operate programs that recruit and train individuals as AmeriCorps members. Full-time AmeriCorps members receive a living allowance and are eligible for health insurance (if they are not otherwise covered while participating in the program), and childcare benefits (if they meet specific income thresholds). After the grant recipient operating a program certifies that an AmeriCorps member has satisfactorily and successfully completed the required term of service, the AmeriCorps members are eligible for the Segal AmeriCorps Education Award, which is held in the National Service Trust, and which may be used to repay qualified student loans or, qualified education costs. As directed under 42 USC 12606, AmeriCorps records the federal liability for an AmeriCorps member's education benefit at the time AmeriCorps awards a grant to an entity, based on a present value discount formula. Upon application from the AmeriCorps member and verification from the lender or educational institution, AmeriCorps' National Service Trust transmits the funds to the lender or institution. AmeriCorps members who successfully complete a term of service may also be eligible to have the National Service Trust pay qualified student loan interest that accrued during the period of their AmeriCorps member service.

## Source of Governing Requirements

The AmeriCorps State and National program is authorized under the National and Community Service Act of 1990 (42 USC 12501 et seq.), as amended, and the implementing regulations in 45 CFR parts 2510, 2520–2554, and 2555.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	Y	N	N	N	N	Y	Y

#### A. Activities Allowed or Unallowed

##### 1. *Activities Allowed*

Funding is provided to carry out a community 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, evaluations, and reimbursement of grantee administrative costs (42 USC 12572, 12574, 12581, 12581a, 12583, and 12594; 45 CFR sections 2520 to 2524; 2540; and 2550).

## 2. *Activities Unallowed*

AmeriCorps grant funds may **not** be used for any of the following:

- a. Attempting to influence legislation;
- b. Organizing or engaging in protests, petitions, boycotts, or strikes;
- c. Assisting, promoting, or deterring union organizing;
- d. Impairing existing contracts for services or collective bargaining agreements;
- e. Engaging in partisan political activities or other activities designed to influence the outcome of an election to any public office;
- f. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
- g. Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
- h. Providing a direct benefit to—
  - (1) A business organized for profit;
  - (2) A labor union;
  - (3) A partisan political organization;
  - (4) A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the [Internal Revenue Code of 1986](#) except that nothing in this section shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative;
  - (5) An organization engaged in the religious activities described in paragraph (g) of this section, unless Corporation assistance is not used to support those religious activities; and

- i. Conducting a voter registration drive or using Corporation funds to conduct a voter registration drive;
- j. Providing abortion services or referrals for receipt of such services; and
- k. Such other activities as the Corporation may prohibit (45 CFR section 2520.65).

## **B. Allowable Costs/Cost Principles**

Administrative Costs, generally: No more than 5 percent of assistance provided by AmeriCorps 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)).

Allowable Direct and Indirect Costs: AmeriCorps grantees must comply with the cost principles in 2 CFR Part 200, including cost allocation requirements in 2 CFR 200.405, in determining costs that may be funded with AmeriCorps grant funds. AmeriCorps grantees for whom AmeriCorps is the cognizant agency for indirect costs can establish an indirect cost rate; additional instructions to grantees can be found in annual “AmeriCorps State and National Grants Terms and Conditions” at <https://americorps.gov/grantees-sponsors>.

## **E. Eligibility**

### **1. Eligibility for Individuals**

#### *a. National Service Member Enrollment*

The following form is submitted electronically to AmeriCorps for each AmeriCorps member and is used by AmeriCorps 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 AmeriCorps to ensure that the universe of forms submitted, as provided by the entity, is complete and matches the roster provided by AmeriCorps. Rosters may be obtained by contacting the National Service Trust at [Trustcomm@cns.gov](mailto:Trustcomm@cns.gov).

National Service Enrollment Form (OMB No. 3045-0006) – This form is used by AmeriCorps to enroll participants in the National Service Trust. Enrollment is the process through which a grantee notifies AmeriCorps 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.

The following line item contains critical information:

- (1) *Part I* – AmeriCorps member enrollment information that may be helpful to ensure compliance is verification of the first name, last name, middle initial, and date of birth (which are all contained in Part I).

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

Not Applicable

**3. Eligibility for Subrecipients**

All requirements are passed through to subrecipients.

**G. Matching, Level of Effort, Earmarking**

**1. Matching**

- a. Statute superseded by Section (c), below.
- b. Unless AmeriCorps grants a waiver, the grant recipient's required share of program costs under a cost-reimbursement grant, 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 five years or more (45 CFR sections 2521.60 and 2521.80). The timetable is included in 45 CFR section 2521.60(a), although annual appropriations legislation, as specified in Section (c), below, has modified the overall match requirement for the first three years. Other requirements that govern matching are included in 45 CFR sections 2521.35, 2521.40, 2521.45, and 2521.50.
- c. Pursuant to annual appropriations legislation, grant recipients 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. Grantees may apply for and receive a waiver of the overall matching requirements under 45 CFR section 2521.70 (Pub. L. No. 115-245, Division B, Title IV, Section 402, Sept. 28, 2018).
- d. Matching requirements do not apply to fixed-amount grants and Education Award Only program grants (42 USC 12581(1)(4) and 12581a(c)).
- e. AmeriCorps has, under a limited scope, waived certain matching cost requirements on some grants due to challenges associated with COVID-19. This waiver applies to certain grants awarded in fiscal years 2019,

2020, and 2021 (more information can be found on the AmeriCorps website at this link: <https://americorps.gov/coronavirus/ameri-corps-state-national-questions>).

## **2. Level of Effort**

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

Not Applicable

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

Funds provided by AmeriCorps 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 state and national programs (42 USC 12633).

## **3. Earmarking**

Not Applicable

## **M. Subrecipient Monitoring**

Applicable

## **N. Special Tests and Provisions**

### **1. Living Allowances**

#### **Compliance Requirements**

- a. 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 a wage or a salary and must not be treated as such. The installment payments of living allowances are not dependent upon the actual number of hours spent on service and, unless waived, should be distributed in equal payments across the term of 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 Volunteers in Service to America (VISTA) volunteers, another type of AmeriCorps program. For particular program years,



the limits on the living allowances for full-time service members are as follows (42 USC 4955 and 12594; 45 CFR section 2522.240):

NOFO Year	Minimum Allowance	Maximum Allowance
2016	\$12,530	\$25,060
2017	\$12,630	\$24,930
2018	\$13,732	\$27,464
2019	\$13,992	\$27,984
2020	\$14,279	\$28,558
2021	\$16,000	\$32,000
2022	\$16,502	\$33,004

- b. The minimum and maximum living allowance amounts are listed on the AmeriCorps website. The living allowance amounts can be found in the individual Notice of Funding Opportunity or Availability for the specific grant competition. Previous Notices of Funding Availability/Opportunity for AmeriCorps State and National grant competitions dating back to 2006 are located at this link: <https://americorps.gov/partner/funding-opportunities>. If additional assistance is required, please contact the Office of Audit and Debt Resolution at AmeriCorps Headquarters at [AuditResolution@cns.gov](mailto:AuditResolution@cns.gov).
- c. Professional Corps programs allow individuals who are professionals to serve as AmeriCorps members. The compensation from their service site location may exceed the maximum living allowance amount but may not be lower than the minimum. Grant recipients operating a Professional Corps program may not use AmeriCorps funds to pay Professional Corps members' compensation (42 USC 12594(c); 45 CFR section 2522.240).
- d. A living allowance is not required for individuals serving in positions where the service commitment is less than 1700 hours. However, if a living allowance is provided, it must not exceed the maximum living allowance amount published in the Notice of Funding Opportunity for the position. AmeriCorps establishes pro-rated maximum living allowance amounts for each less-than-1700-hour position (42 USC 12593 and 12594; 45 CFR sections 2522.220 and 2522.240).
- e. Education Award only programs are not required to provide a living allowance, but if a living allowance is provided, it must comply with the maximum requirements set forth above (42 USC 12581a(c)).

**Audit Objectives** Ensure Full time AmeriCorps members are being paid living allowance amounts that fall within minimum and maximum living allowance amounts for the appropriate year as well as in accordance with amounts listed in member agreements.

**Suggested Audit Procedures** Auditors may request documentation supporting total living allowance amounts that full time members are eligible for and comparing them to the minimum and maximum amounts, as well as member agreements which list living allowance amounts and payroll records to determine amounts members are paid.

## 2. National Service Criminal History Checks

### Compliance Requirements

*For National Service Criminal History Checks Conducted on Persons Beginning Work or Service On or After May 1, 2021:*

All three checks below must be conducted, reviewed, and an eligibility determination made by the grant recipient or subrecipient before a person begins to work or serve on an NSCHC-required grant.

- National Sex Offender Public Website nationwide check
- state of residence and state of service criminal history check(s)
- FBI fingerprint-based check

Review individual NSCHC grant records to determine compliance with the regulations (electronic and/or paper copies are acceptable).

Required documentation includes:

- Evidence that all required components (NSOPW, state(s), and FBI checks) were completed and on file ([34T45 CFR §2540.206](#)).
  - All required components (NSOPW, state(s), and FBI) were conducted on time ([34T45 CFR §2540.205](#)) and documentation reflects evidence of when checks were reviewed (adjudicated) and considered when making an eligibility determination.
- All required components (NSOPW, state(s), and FBI checks) were conducted through sources authorized by AmeriCorps ([34T45 CFR §2540.204](#)) and are consistent with the sources described in the grant recipient's adopted NSCHC policies and procedures.
- Evidence that NSOPW results include searches from all states, territories, and Indian tribes ([34T45 CFR §2540.204](#)).
- Evidence that First and Last Names used on name-based checks reflect the current name of the individual.
  - Documents used to determine an individual's first and last name must be consistent with sources described in the grant recipient's adopted NSCHC policies and procedures ([34TRefer to agency NSCHC manual for guidance on name-based checks](#)).

- Documentation of consent from the candidate to conduct state and FBI checks ([45 CFR §2540.206](#)) and of notice provided to the candidate that selection into the program is contingent upon the organization’s review of the individual’s NSCHC component results, if any ([45 CFR §2540.206](#)).
- Documentation that the candidate is eligible to serve/work if a vendor returns a “do not recommend” result for the candidate ([45 FR §2540.206](#)).
  - Note: A vendor’s adjudication recommendation not to “recommend” the candidate indicates that the selecting organization needs more information before it can make a final determination as to the fitness of the individual to work or serve. It does not mean that an individual is ineligible for work or service.
  - Grant recipients must maintain adequate documentation of the process implemented to make an eligibility determination and may include a contemporaneously dated memo to the file documenting determination of the individual’s eligibility.

*For National Service Criminal History Checks Conducted on Persons Working or Serving in Positions Prior to May 1, 2021, Who Continued Working or Serving in a Position on or After November 1, 2021:*

Prior to May 1, 2021, some individuals only required a two-part check consisting of:

- (1) A nationwide name-based search of the National Sex Offender Public Website (NSOPW); and
- (2) Either:
  - (a) A name- or fingerprint-based search of the statewide criminal history registry in the person’s state of residence and in the state where the person will serve/work; or
  - (b) A fingerprint-based FBI criminal history check.

Grant recipients were given until November 1, 2021 to ensure NSCHC records for individuals falling under this category are compliant with the three-part check. Individuals requiring an additional check under the NSCHC Rule, effective May 1, 2021, will have been cleared to work or serve under the grant with only two of the three checks. This is permissible. Individuals that fall into this timeframe are required to have all three National Service Criminal History Checks conducted, reviewed, and an eligibility determination made by the grant recipient or subrecipient by November 1, 2021.

Review individual NSCHC grant records to determine compliance with the regulations (electronic and/or paper copies are acceptable). Refer to section 2.a. for a list of documentation requirements.

For the purposes of this compliance element, auditors may elect not to test NSCHC records for individuals who began work or service **prior to May 1, 2021 and exited from work or service prior to November 1, 2021**, since the former NSCHC regulations apply to those individuals.

#### *Waivers and Pre-Approved Waivers*

AmeriCorps may waive provisions of NSCHC for good cause, or for any other lawful basis. Certain Pre-Approved Waivers exist that any grantee may use without additional written approval from AmeriCorps. Refer to the NSCHC Manual found on <https://americorps.gov/grantees-sponsors/history-check>. In addition, individual, grant-level waivers may be approved for grantees on a case-by-case basis. Grantees with waivers receive written approval from AmeriCorps that document the waived provisions of the NSCHC regulations and should be made available to auditors during testing.

Eligibility Criteria: An individual in a covered position is ineligible to serve or work if the individual:

- is registered or required to be registered on a sex offender registry;
- has been convicted of murder, as defined by 18 USC 1111;
- refuses to consent to a criminal registry check; or
- makes a false statement in connection with a grantee's inquiry concerning the individual's criminal history.

Reference: 45 CFR 2540.202; 72 FR 48574, August 24, 2007; 77 FR 60922, October 5, 2012.

#### **Definitions**

##### **(1) Covered Positions (45 CFR section 2540.201)**

Individuals in covered positions are AmeriCorps members or AmeriCorps grant-funded staff who receive a grant-funded salary, stipend, living allowance, education award, or other remuneration whether funded with AmeriCorps-provided funds or used to meet the grant matching requirement.

(2) **Designated Sources**

- (a) National Sex Offender Public Website (NSOPW) (45 CFR section 2540.204)

NSOPW checks must be sourced from either [www.NSOPW.gov](http://www.NSOPW.gov) or AmeriCorps approved vendor, Truescreen, with an AmeriCorps-affiliated Truescreen account.

- (b) State (45 CFR section 2540.204)

Grantees must use either the AmeriCorps-approved state repository to conduct state checks or AmeriCorps approved vendor, Truescreen, with an AmeriCorps-affiliated Truescreen account in accordance with the Pre-Approved Alternative Search Procedure for Truescreen. The list of AmeriCorps-approved state repositories can be found in the Using NSOPW and State Repositories Manual, available at <https://americorps.gov/grantees-sponsors/history-check>.

- (c) FBI (45 CFR section 2540.2034)

Grantees must use either the AmeriCorps-approved state repository to conduct FBI checks or AmeriCorps approved vendor, Fieldprint, with a AmeriCorps-affiliated Fieldprint account. The list of AmeriCorps-approved state repositories can be found in the Using NSOPW and State Repositories Manual, available at <https://americorps.gov/grantees-sponsors/history-check>

**Audit Objectives** To ensure that required National Service Criminal History Checks are completed in accordance with AmeriCorps regulations (i.e., completing the required checks and making an eligibility determination within the required timelines and documenting them correctly).

**Suggested Audit Procedures** Auditors may request documentation of a grant recipient's or subrecipient's written processes and practices for conducting National Service Criminal History Checks (NSCHC) as well as documentation of a selected testing sample of individual NSCHC grant records for staff and members working or serving under the grant to determine completion of all required checks and evidence that an eligibility determination has been made by the grant recipient or subrecipient prior to the person beginning work or service on an NSCHC-required grant. For more information on which grant types and individuals fall under the NSCHC requirement, please reference "NSCHC Manual" under the NSCHC Guidance section, Appendix B: "Who is Required to Conduct NSCHC?" graphic (<https://americorps.gov/grantees-sponsors/history-check>).

**AMERICORPS**  
**(Corporation for National and Community Service)**

**ASSISTANCE LISTING 94.011 FOSTER GRANDPARENT PROGRAM**

**ASSISTANCE LISTING 94.016 SENIOR COMPANION PROGRAM**

**I. PROGRAM OBJECTIVES**

Foster Grandparent Program grants are awarded to allow adults, ages 55 and older, to serve as mentors, tutors, and supportive adults to 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 adults, ages 55 and older, 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 social contact to the outside world, Senior Companions often fulfill essential human needs of vulnerable older persons. Senior Companions may also assume the duties of informal caretakers for short periods of time to give the caretakers a respite from their duties.

**II. PROGRAM PROCEDURES**

AmeriCorps (the operating name of the Corporation for National and Community Service (CNCS)) awards Foster Grandparent Program grants 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 grantees (also referred to as sponsors) are legally responsible for all programmatic and fiscal aspects of the project and may not delegate or contract these responsibilities to another entity. Also, the grantees have no subgrantees (subrecipients) (42 USC sections 5011(a) and 5013(a); 45 CFR sections 2551.22 and 2552.22).

In both programs, participants ages 55 and older serve from five 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 are eligible to receive the same training, supervision, and other support services and cost reimbursements (other than the stipend) available to participants who receive stipends (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 to AmeriCorps for Foster Grandparent or Senior Companion grants, and AmeriCorps 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 are found in 45 CFR parts 2551 and 2552.

**III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	Y	N	N	N	Y	N	Y

**A. Activities Allowed or Unallowed**

1. *Stipends*

Grant funds may be used for stipends for participants who meet income levels set by AmeriCorps (42 USC 5011(a) and (d) and 5013(a) and (b); 45 CFR sections 2551.43, 2551.44, 2552.43, and 2552.44).

2. *Direct and Administrative Costs*

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. *Non-stipended Foster Grandparents and Senior Companions*

No federal or required nonfederal 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. *Unallowed Activities*

Foster Grandparent and Senior Companion grant funds may not be used for the following purposes:

a. *Political activities*

- (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office, or any voter registration activity.
- (2) No project shall be conducted in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a matter supporting or resulting in the identification of such project with:
  - (a) Any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election; or
  - (b) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or
  - (c) Any voter registration activity, except that voter registration applications and nonpartisan voter registration information may be made available to the public at the premises of the sponsor. But in making registration applications and nonpartisan voter registration information available, employees of the sponsor shall not express preferences or seek to influence decisions concerning any candidate, political party, election issue, or voting decision.
- (3) The sponsor shall not use grant funds in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except:



- (a) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests any volunteer in, or employee of such a program to draft, review or testify regarding measures or to make representation to such legislative body, committee or member; or
  - (b) In connection with an authorization or appropriations measure directly affecting the operation of the Senior Companion or Foster Grandparent Program.
- b. *Non-displacement of employed workers.* A Senior Companion or Foster Grandparent shall not perform any service or duty or engage in any activity which would otherwise be performed by an employed worker or which would supplant the hiring of or result in the displacement of employed workers or impair existing contracts for service.
- c. *Compensation for service*
  - (1) An agency or organization to which National Senior Service Corps (NSSC) volunteers are assigned or which operates or supervises any NSSC program shall not request or receive any compensation from NSSC volunteers or from beneficiaries for services of NSSC volunteers.
  - (2) This section does not prohibit a sponsor from soliciting and accepting voluntary contributions from the community at large to meet its local support obligations under the grant or from entering into agreements with parties other than beneficiaries to support additional volunteers beyond those supported by AmeriCorps.
  - (3) A Senior Companion or Foster Grandparent volunteer station may contribute to the financial support of the Senior Companion or Foster Grandparent Program. However, this support shall not be a required precondition for a potential station to obtain Senior Companion or Foster Grandparent service.
  - (4) If a volunteer station agrees to provide funds to support additional Senior Companions/Foster Grandparents or pay for other Senior Companion/Foster Grandparent support costs, the agreement shall be stated in a written Memorandum of Understanding. The sponsor shall withdraw services if the station's inability to provide monetary or in-kind support to the project under the Memorandum of Understanding diminishes or jeopardizes the project's financial capabilities to fulfill its obligations.

- (5) Under no circumstances shall a Senior Companion or Foster Grandparent receive a fee for service from service recipients, their legal guardian, members of their family, or friends.
- d. *Labor and anti-labor activity.* The sponsor shall not use grant funds directly or indirectly to finance labor or anti-labor organization or related activity.
- e. *Fair labor standards.* A sponsor that employs laborers and mechanics for construction, alteration, or repair of facilities shall pay wages at prevailing rates as determined by the secretary of labor in accordance with the Davis-Bacon Act, as amended, 40 USC 276a.
- f. *Nondiscrimination.* A sponsor or sponsor employee shall not discriminate against a Senior Companion on the basis of race, color, national origin, sex, age, religion, or political affiliation, or on the basis of disability, if the Senior Companion or Foster Grandparent with a disability is qualified to serve.
- g. *Religious activities*
- (1) A Senior Companion/ Foster Grandparent or a member of the project staff funded by AmeriCorps shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of his/her duties.
- (2) A sponsor or volunteer station may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use AmeriCorps funds to support any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part.
- h. *Nepotism.* Persons selected for project staff positions shall not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is written concurrence from the Advisory Council or community group established by the sponsor under subpart B of this part, and with notification to AmeriCorps.

(45 CFR section 2551.121 and 2552.121)

**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; 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. 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 eligibility requirements related to having a specific determination of physical, mental and emotional capability do not apply to AmeriCorps Seniors' awards made on or after January 31, 2019.

The annual income eligibility levels for all areas are available at the AmeriCorps website (<https://americorps.gov/grantees-sponsors>) by accessing the link for "Foster Grandparent Program grantees" or "Senior Companion Program grantees." You may also contact the Office of Audit and Debt Resolution at [AuditResolution@cns.gov](mailto:AuditResolution@cns.gov). Stipends for Foster Grandparents and Senior Companions are currently \$3.00 per hour. This may be increased by AmeriCorps from time to time (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, 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).

For awards made on or after January 31, 2019, participants may serve from five to 40 hours per week.

**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 nonfederal entity is required to contribute at least 10 percent of the total cost of a project from nonfederal 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)).

AmeriCorps has, under a limited scope, waived certain matching cost requirements on some grants due to challenges associated with COVID-19. This waiver applies to certain grants awarded in fiscal years 2019, 2020, and 2021. (More information can be found on the AmeriCorps website at this link: <https://americorps.gov/coronavirus/americorps-seniors-questions>.)

**2. Level of Effort**

Not Applicable

**3. Earmarking**

Not Applicable

**L. Reporting****1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## N. Special Tests and Provisions

### 1. National Service Criminal History Checks

**Audit Objectives** To ensure that required National Service Criminal History Checks are completed in accordance with AmeriCorps regulations (i.e., completing the required checks and making an eligibility determination within the required timelines and documenting them correctly).

**Suggested Audit Procedures** Auditors may request documentation of a grant recipient's written processes and practices for conducting National Service Criminal History Checks (NSCHC) as well as documentation of a selected testing sample of individual NSCHC grant records for staff and members working or serving under the grant to determine completion of all required checks and evidence that an eligibility determination has been made by the grant recipient prior to the person beginning work or service on an NSCHC-required grant. For more information on which grant types and individuals fall under the NSCHC requirement, please reference "NSCHC Manual" under NSCHC Guidance section, Appendix B: "Who is Required to Conduct NSCHC?" graphic (<https://americorps.gov/grantees-sponsors/history-check>).

a. *For National Service Criminal History Checks Conducted on Persons Beginning Work or Service On or After May 1, 2021:*

All three checks below must be conducted, reviewed, and an eligibility determination made by the grant recipient before a person begins to work or serve on an NSCHC-required grant.

- National Sex Offender Public Website nationwide check
- state of residence and state of service criminal history check(s)
- FBI fingerprint-based check

Review individual NSCHC grant records to determine compliance with the regulations (electronic and/or paper copies are acceptable).

Required documentation includes:

- Evidence that all required components (NSOPW, state(s), and FBI checks) were completed and on file ([34T45 CFR §2540.206](#)).
  - All required components (NSOPW, state(s), and FBI) were conducted on time ([34T45 CFR §2540.205](#)) and documentation reflects evidence of when checks were reviewed (adjudicated) and considered when making an eligibility determination.

- All required components (NSOPW, state(s), and FBI checks) were conducted through sources authorized by AmeriCorps ([34T45 CFR §2540.204](#)) and are consistent with the sources described in the grant recipient’s adopted NSCHC policies and procedures.
  - Evidence that NSOPW results include searches from all states, territories, and Indian tribes ([34T45 CFR §2540.204](#)).
  - Evidence that First and Last Names used on name-based checks reflect the current name of the individual.
    - Documents used to determine an individual’s first and last name must be consistent with sources described in the grant recipient’s adopted NSCHC policies and procedures ([34TRefer to agency NSCHC manual for guidance on name-based checks](#)).
  - Documentation of consent from the candidate to conduct state and FBI checks ([45 CFR §2540.206](#)) and of notice provided to the candidate that selection into the program is contingent upon the organization’s review of the individual’s NSCHC component results, if any ([45 CFR §2540.206](#)).
  - Documentation that the candidate is eligible to serve/work if a vendor returns a “do not recommend” result for the candidate ([45 CFR §2540.206](#)).
    - Note: A vendor’s adjudication recommendation not to “recommend” the candidate indicates that the selecting organization needs more information before it can make a final determination as to the fitness of the individual to work or serve. It does not mean that an individual is ineligible for work or service.
    - Grant recipients must maintain adequate documentation of the process implemented to make an eligibility determination and may include a contemporaneously dated memo to the file documenting determination of the individual’s eligibility.
- b. *For National Service Criminal History Checks Conducted on Persons Working or Serving in Positions Prior to May 1, 2021, Who Continued Working or Serving in a Position on or After November 1, 2021:*

Prior to May 1, 2021, some individuals only required a two-part check consisting of:

- (1) A nationwide name-based search of the National Sex Offender Public Website (NSOPW); and
- (2) Either:

- (a) A name- or fingerprint-based search of the statewide criminal history registry in the person's state of residence and in the state where the person will serve/work; or
- (b) A fingerprint-based FBI criminal history check.

Grant recipients were given until November 1, 2021 to ensure NSCHC records for individuals falling under this category are compliant with the three-part check. Individuals requiring an additional check under the NSCHC Rule, effective May 1, 2021, will have been cleared to work or serve under the grant with only two of the three checks. This is permissible. Individuals that fall into this timeframe are required to have all three National Service Criminal History Checks conducted, reviewed, and an eligibility determination made by the grant recipient by November 1, 2021.

Review individual NSCHC grant records to determine compliance with the regulations (electronic and/or paper copies are acceptable). Refer to section 2.a. for a list of documentation requirements.

- c. For the purposes of this compliance element, auditors may elect not to test NSCHC records for individuals who began work or service **prior to May 1, 2021 and exited from work or service prior to November 1, 2021**, since the former NSCHC regulations apply to those individuals.
- d. *Waivers and Pre-Approved Waivers*

AmeriCorps may waive provisions of NSCHC for good cause, or for any other lawful basis. Certain Pre-Approved Waivers exist that any grantee may use without additional written approval from AmeriCorps. Refer to the NSCHC Manual found on <https://americorps.gov/grantees-sponsors/history-check>. In addition, individual, grant-level waivers may be approved for grantees on a case-by-case basis. Grantees with waivers receive written approval from AmeriCorps that document the waived provisions of the NSCHC regulations and should be made available to auditors during testing.

- e. Eligibility Criteria: An individual in a covered position is ineligible to serve or work if the individual:
  - is registered or required to be registered on a sex offender registry;
  - has been convicted of murder, as defined by 18 USC 1111;
  - refuses to consent to a criminal registry check; or
  - makes a false statement in connection with a grantee's inquiry concerning the individual's criminal history.

Reference: 45 CFR 2540.202; 72 FR 48574, August 24, 2007; 77 FR 60922, October 5, 2012.

**Definitions:**

(1) **Covered Positions (45 CFR section 2540.201)**

Individuals in covered positions are Foster Grandparents who receive a stipend, Senior Companions who receive a stipend, or AmeriCorps grant-funded staff who receive a grant-funded salary, whether funded with AmeriCorps-provided funds or used to meet the grant matching requirement.

(2) **Designated Sources**

- (a) National Sex Offender Public Website (NSOPW) (45 CFR section 2540.204)

NSOPW checks must be sourced from either [www.NSOPW.gov](http://www.NSOPW.gov) or AmeriCorps approved vendor, Truescreen, with an AmeriCorps-affiliated Truescreen account.

- (b) State (45 CFR section 2540.204)

Grantees must use either the AmeriCorps-approved state repository to conduct state checks or AmeriCorps approved vendor, Truescreen, with an AmeriCorps-affiliated Truescreen account in accordance with the Pre-Approved Alternative Search Procedure for Truescreen. The list of AmeriCorps-approved state repositories can be found in the Using NSOPW and State Repositories Manual, available at <https://americorps.gov/grantees-sponsors/history-check>.

- (c) FBI (45 CFR section 2540.2034)

Grantees must use either the AmeriCorps-approved state repository to conduct FBI checks or AmeriCorps approved vendor, Fieldprint, with an AmeriCorps-affiliated Fieldprint account. The list of AmeriCorps-approved state repositories can be found in the Using NSOPW and State Repositories Manual, available at <https://americorps.gov/grantees-sponsors/history-check>.



## **SOCIAL SECURITY ADMINISTRATION**

### **ASSISTANCE LISTING 96.001 SOCIAL SECURITY – DISABILITY INSURANCE**

### **ASSISTANCE LISTING 96.006 SUPPLEMENTAL SECURITY INCOME**

#### **I. PROGRAM OBJECTIVES**

The Disability Insurance (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 201 et seq. of the Social Security Act). In 1974, Congress enacted Title XVI, the Supplemental Security Income (SSI) program, which provides payments to financially needy individuals who are aged, blind, or disabled (Section 1601 et seq. of the Social Security Act).

#### **II. PROGRAM PROCEDURES**

The Social Security Administration (SSA) is responsible for administering the DI and SSI programs. The disability process begins when a person, referred to as a “claimant,” completes an application for DI benefits or SSI payments (20 CFR 404.601 et seq.). SSA field office staff verifies the claimant’s nonmedical eligibility (Program Operations Manual System (POMS)) DI 10005.001). SSA field office staff then forward the claim to the state Disability Determination Services (DDS) for a medical determination of disability. DDSs make disability determinations based on the law and regulations and on written guidelines issued by SSA (POMS DI 22501.002). 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 claimant’s physicians or other treating sources (POMS DI 39545.120).

The SSA pays the DDS for 100 percent of the costs incurred in making disability determinations (POMS DI 39501.020). Each year the state DDS submits a budget request to SSA for review and approval (POMS DI 39501.030). SSA notifies the DDS of budget approval using 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 (POMS 39506.100). 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 (POMS DI 39506.200 et seq.).

#### **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance

requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	N	Y	N	N	Y	N	Y

**A. Activities Allowed or Unallowed**

1. Reimbursement for the cost of activities shall be in accordance with the budget request approved by SSA (POMS DI 39503.000 and 39506.000).
2. 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).
3. Purchased medical services, such as Medical Evidence of Record (MER) and Consultative Examinations (CE), must be in accordance with the DDS fee schedule for purchased medical services (POMS DI 39545.000).

**B. Allowable Costs/Cost Principles**

1. *Direct Costs* – The SSA POMS contains guidance on direct costs for both the DI and SSI programs.
  - a. Personnel services (POMS DI 39518.000) include personnel costs and employee benefits.
  - b. Purchased medical services (POMS DI 39545.000) include MER and CE.
  - c. Other non-personnel costs include travel (POMS DI 39524.000), office space (POMS DI 39527.000), equipment (POMS DI 39530.000), and contracted services (POMS DI 39542.000).

2. *Indirect Costs* – 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. Indirect costs, which may be charged to the disability program, generally arise from three sources (POMS DI 39506.300 and 39503.275):
  - 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.
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. SSA should not be charged the costs on the non-SSA program work (POMS DI 39563.210).

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *SSA-4513, State Agency Report of Obligations for SSA Disability Programs* – 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).
- e. *SSA-4514, Time Report of Personnel Services for Disability Determination Services* – 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. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

### N. Special Tests and Provisions

#### 1. Consultative Examinations Process

**Compliance Requirements** Each state agency is responsible for comprehensive oversight management of its CE process and for ensuring accuracy, integrity, and economy of the CE process (20 CFR sections 404.1519s and 416.919s, and POMS DI 3945.075). As part of these duties, DDSs must have and follow procedures for performing medical license verifications to ensure that only qualified providers perform CEs for DDSs (POMS DI 39545.075). By “qualified,” SSA means that the medical source must:

- a. Be currently licensed in the state and have the training and experience to perform the type of examination or test the DDS requests; and
- b. Not be barred from participation in Medicare or Medicaid programs or other federal or federally assisted programs (20 CFR sections 404.1519g and 416.919g).

Prior to using the services of any CE provider, the DDS must:

- a. Check the System of Award Management (SAM) website, <https://sam.gov/SAM/>; and
- b. Verify medical licenses, credentials, and certifications with state medical boards (POMS DI 39569.300).

**Audit Objectives** Determine whether the state agency performed the required reviews to ensure that only qualified providers perform CEs.

#### Suggested Audit Procedures

- a. Determine whether the state agency has written procedures for verifying, before engaging the services of a provider and periodically thereafter, whether providers have valid medical licenses and are currently excluded, suspended, or barred from participation in federal or federally assisted programs; and whose license to provide health care is not currently lawfully revoked or suspended by any state licensing authority for reasons of fraud, abuse, or professional misconduct, as identified on the SAM website (<https://sam.gov/SAM/>).
- b. Select a sample of CE service agreements entered into during the audit period and determine whether, before using the services of the CE provider, the state agency
  - (1) checked the SAM website; and

- (2) verified medical licenses, credentials, and certifications with state medical boards.
- c. Determine whether:
  - (1) The state agency performed a periodic review for each CE;
  - (2) The results were adequately documented; and
  - (3) As appropriate, actions were taken to terminate CE agreements.

#### **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 (Assistance Listing 96.001).

## DEPARTMENT OF HOMELAND SECURITY

### ASSISTANCE LISTING 97.036 DISASTER GRANTS – PUBLIC ASSISTANCE (PRESIDENTIALLY DECLARED DISASTERS)

#### I. PROGRAM OBJECTIVES

The mission of the Federal Emergency Management Agency's (FEMA) Public Assistance (PA) grant program is to provide assistance to state, tribal, territorial, and local governments (SLTT), and certain types of private nonprofit (PNP) organizations so that communities can quickly respond to and recover from major disasters or emergencies declared by the president.

#### II. PROGRAM PROCEDURES

##### A. Overview

Following a presidential declaration of a major disaster or an emergency, the Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS), awards grants to assist state, local, tribal, and territorial (SLTT) governments and certain PNP entities to respond to and recover from disasters. Specifically, through the PA program, FEMA provides supplemental federal disaster grants assistance for debris removal, emergency protective measures, and the restoration of disaster-damaged, publicly owned facilities and the facilities of certain PNP organizations. The PA program also encourages protection of these damaged facilities from future events by providing assistance for hazard mitigation measures during the recovery process.

The PA program is based on a partnership with the recipient (state, tribal, or territorial government), the subrecipient (local government or PNP) and FEMA. FEMA is responsible for managing the program, approving grants, and providing technical assistance to the SLTT and subrecipients. The state, in most cases, acts as the recipient for the PA program and is responsible for providing technical advice and assistance to eligible subrecipients, providing state support for damage survey activities, ensuring that all potential applicants are aware of funding assistance available, and submitting documents necessary for grant awards (44 CFR sections 206.200 through 206.349) (an Indian tribal and territorial government may also be a recipient). The subrecipient requests assistance, identifies the damaged facilities, provides information to support the request, maintains accurate documentation, and performs necessary work (a recipient can also be a subrecipient).

##### Performance Metrics

The Public Assistance Division currently uses the following measures: accuracy, timeliness, efficiency, and effectiveness.

Accurate:

Project Worksheets processed without revision before obligation  
Projects Worksheets processed without revision after obligation

**Timely:**

Timeliness from Request for Public Assistance (RPA) Approval to Award Funds  
Completion of Field Work within 180 days  
Projects Completed  
Projects Closed

**Efficient:**

Reduce PA program travel costs for field operations.  
Reduce Expenditures on PA Operational staff Salary and Benefits  
Reduce Technical Assistance Contract (TAC) costs

**Effective:****Public Assistance Terms and Definitions**

\* For a complete list of terms and definitions please refer to the most recent version of the Public Assistance Program and Policy Guide (PAPPG) available here:  
<https://www.fema.gov/media-library/assets/documents/111781>.

*Applicant* – A nonfederal entity submitting an application for assistance under the recipient’s federal award.

*Award (Federal)* – The financial assistance that a nonfederal entity receives either directly from a federal awarding agency or indirectly from a pass-through entity; or the cost-reimbursement contract under the Federal Acquisition Regulation that a nonfederal entity receives directly from a federal awarding agency or indirectly from a pass-through entity.

*Direct Administrative Cost (DAC)* – A cost incurred that can be identified separately and assigned to a specific project.

*Emergency Work* – Work that must be done immediately to save lives, protect improved property, protect public health and safety, or avert or lessen the threat of a major disaster.

*Federal Share* – The portion of the total project costs paid by federal funds.

*Indian Tribal Government* – Any federally recognized governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994, Title 25 of the US Code (USC). This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

*Large Project* – A project for which the final obligated (federal and nonfederal) amount is equal to or *greater* than the annually adjusted cost threshold for small project grants.

*Management Cost* – Any indirect cost, administrative expense, and any other expense that a recipient or subrecipient reasonably incurs in administering and managing the PA award that is not directly chargeable to a specific project.

*Permanent Work* – Restorative work that must be performed through repairs or replacement to restore an eligible facility on the basis of its pre-disaster design and current applicable codes and standards.

*Private Nonprofit (PNP) Organization* – Any nongovernmental agency or entity that currently has an effective ruling letter from the US Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or satisfactory evidence from the state that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under state law.

*Project* – A logical grouping of work required as a result of the declared major disaster or emergency.

*Project Worksheet (PW)* – A tool used by the applicant and FEMA to develop projects. The PW (FEMA Form 90-91) is the primary form used to document the location, damage description and dimensions, scope of work, and cost estimate for each project.

*Recipient* – A nonfederal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program.

*Small Project* – A project for which the final obligated (federal and nonfederal) amount is less than the annually adjusted cost threshold for small project grants.

*State* – Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, US Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*Subaward* – An award provided by a pass-through entity to a subrecipient for the Subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program.

*Subrecipient* – A nonfederal entity that receives a subaward from a pass-through entity to carry out part of a federal program. It does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.

## **B. Funding**

For more information on funding please refer to the most recent version of the PAPPG available here: [www.fema.gov/assistance/public/policy-guidance-fact-sheets](http://www.fema.gov/assistance/public/policy-guidance-fact-sheets).



### **Through the PA program, FEMA provides**

- Grant funding for emergency protective measures and debris removal (Emergency Work)
- Grant funding for permanent restoration of damaged facilities, including cost-effective hazard mitigation to protect the facilities from future damage (Permanent Work)

### **Project Funding**

The PA PW is the form FEMA uses to document the details of the applicant's project and costs claimed. The PW contains the information necessary for authorized FEMA personnel to review and approve the scope of work (SOW) and costs. If approved, FEMA obligates the federal share of the eligible 44 CFR section 206.204(d)(2) project cost to the recipient. Once obligated, the PW constitutes the official record of the approved scope of work for the project.

### **Project Thresholds**

FEMA establishes a minimum project threshold for each federal fiscal year. The threshold applies to incidents declared within that fiscal year and is based on the Consumer Price Index. FEMA establishes a dollar threshold each federal fiscal year for the implementation of Simplified Procedures under Section 422 of the Stafford Act. This threshold defines a project as large or small. FEMA categorizes projects as large or small based on the final approved amount of eligible costs after any cost adjustments, including insurance reductions:

- A Large Project is a PW with a cost equal to or greater than the threshold.
- A Small Project is a PW with a cost below the threshold.

For large projects that are not capped projects (projects for which funding is capped at a certain amount), FEMA adjusts any estimated costs to the actual incurred amount so that the final approved funding is based on actual cost. For small projects, FEMA does not adjust estimated costs to the actual incurred amount.

\*For more information on large projects and small projects refer to the most recent version of the PAPPG available here: <https://www.fema.gov/media-library/assets/documents/111781>.

### **Project Types**

**Capped Projects.** FEMA provides three options that provide flexibility for the applicant to use PA funding differently than restoring the pre-disaster design and function of the facility. For these options, FEMA caps the amount of PA funding based on the estimated amount to restore the damaged facility to its pre-disaster design and function, including applicable and federally required codes and standards.

*Improved Project:* A project that restores the pre-disaster function, and at least the same capacity, of the damaged facility and incorporates improvements or changes to its pre-disaster design not required by eligible codes or standards.

*Alternate Projects:* The use of funds toward a project that does not restore the pre-disaster function of the damaged facility. If the applicant determines the public welfare would not be best served by restoring a damaged public facility or its function, it may use the toward a different facility (or facilities) that benefit the same community.

*Alternative Procedures:* The Sandy Recovery Improvement Act of 2013 (Pub. L. No. 113-2) amended Title IV of the Stafford Act (42 USC 5121 et seq.) (Stafford Act) by adding Section 428, which authorizes FEMA to implement alternative procedures for the PA program, under sections 403(a)(3)(A), 406, 407, and 502(a)(5) of the Stafford Act, through a pilot program.

*Alternative Procedures Pilot Program for Permanent Work Project (Large Projects only):* authorizes FEMA to award PA funding based on fixed estimates. Additionally, applicants gain the benefits of the following using the Pilot Program:

- Use of funds across all of an applicant’s pilot projects
- Not required to rebuild the facilities back to what existed prior to the disaster
- Not required to track costs to specific work items
- Not required to track costs to work to specific pilot projects since funds can be shared across all of its pilot projects
- Retention of excess funds for approved purposes
- Third party expert panel review for estimates with a federal cost share of \$5 million or great (FEMA requires this review for estimates that exceed \$25 million)
- Eligible for cost-effective hazard mitigation on replacement projects

*Alternative Procedures Pilot Program for Debris Removal:* This pilot is authorized for major disasters and emergencies declared on or after June 28, 2013, the sole exception is FEMA-4117-DR-OK, which was authorized previously by the president specifically for that major disaster declaration. FEMA extended this pilot program to June 28, 2019, to enable collection of additional data that will be used to evaluate the effectiveness of the alternative procedures and inform decisions as to which alternative procedures should be permanently incorporated into the PA program.

For major disasters and emergencies declared between June 28, 2013 and June 27, 2014, the debris removal alternative procedures, with the exception of reimbursement for

straight-time force account labor, are for large projects only. For major disasters and emergencies declared on or after June 28, 2014, all the debris removal alternative procedures can be applied to both small and large projects.

*Accelerated Debris Removal–Increased Federal Cost Share (Sliding Scale) Procedure* – Provides an increased federal cost share via a sliding scale to incentivize subrecipients to initiate and complete debris removal operations quickly after a disaster. Unless FEMA authorizes an extension (e.g., when unusual circumstances delay the start or completion of work), FEMA will limit the amount of time to complete debris removal activities to 180 days from the start of the incident. Direct federal assistance (DFA) is not available to subrecipients using this procedure. After analyzing the effectiveness of this procedure FEMA ended its use for all major disasters declared on or after June 28, 2018.

Debris Removal Completed (Days from Start of Incident Period)	Federal Cost Share
1–30	85%
31–90	80%
91–180	75%

*Note:* Federal dollars will **not** be provided for debris removal after 180 days unless FEMA authorizes an extension in writing.

*Debris Management Plan Procedure* – Provides a one-time 2 percent federal cost share increase for the first 90 days when a subrecipient has a FEMA-accepted Debris Management Plan and has prequalified one or more debris removal contractors before the declaration. After analyzing the effectiveness of this procedure, FEMA ended its use for any major disasters declared on or after June 28, 2019.

*Straight-Time Force Account Labor Procedure* – Provides reimbursement of base wages for a subrecipient’s own employees who perform or administer debris removal.

*Recycling Revenue Procedure* – Allows subrecipients to retain program income received from recycled debris if used for activities that will improve debris removal operations in the future. After analyzing the effectiveness of this procedure, FEMA ended its use for any major disasters declared on or after June 28, 2018.

*Grants for Debris Removal on the Basis of Fixed Estimates* – Allows for FEMA to make grants for debris removal on the basis of fixed estimates, and to allow subgrantees to use excess funds from those grants for approved purposes. FEMA is not implementing these procedures as part of the pilot. FEMA continues to work to improve debris estimating methodologies and will consider implementing these procedures in the future.

\*For more information on Public Assistance Capped Grants, refer to the most recent version of the PAPPG available here: [www.fema.gov/assistance/public/policy-guidance-fact-sheets](http://www.fema.gov/assistance/public/policy-guidance-fact-sheets).

### 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. The program is also responsible for complying with other regulatory requirements, such as those found in 2 CFR, insurance requirements, floodplain management requirements, and environmental and historic preservation requirements.

### Availability of Other Program Information

Additional program information is available on the FEMA website at: [www.fema.gov/assistance/public](http://www.fema.gov/assistance/public).

The Public Assistance Program and Policy Guide (PAPPG) available here: [www.fema.gov/assistance/public/policy-guidance-fact-sheets](http://www.fema.gov/assistance/public/policy-guidance-fact-sheets).

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	Y	N	N	Y	Y	Y

## B. Allowable Costs/Cost Principles

FEMA evaluates the eligibility of all costs claimed by the applicant. Not all costs incurred as a result of the incident are eligible. Cost must be:

- Directly tied to the performance of eligible work;
- Adequately documented (2 CFR section 200.403(g));
- Reduced by all applicable credits, such as insurance proceeds and salvage values (Stafford Act section 312, 42 USC section 5155, and 2 CFR section 200.406);
- Authorized and not prohibited under federal, state, territorial, tribal, or local government laws or regulations;
- Consistent with applicant’s internal policies, regulations, and procedures that apply uniformly to both federal awards and other activities of the applicant; and
- Necessary and reasonable to accomplish the work properly and efficiently (2 CFR section 200.403).

### 1. *Applicant (Force Account) Labor*

FEMA refers to the applicant’s personnel as “force account.” FEMA reimburses force account labor based on actual hourly rates plus the cost of the employee’s actual fringe benefits. FEMA calculates the fringe benefit cost based on a percentage of the hourly pay rate. Because certain items in a benefit package are not dependent on hours worked (e.g., health insurance), the percentage for overtime is usually different than the percentage for straight-time.

\* For more information of Force Account Labor refer to the most recent version of the PAPPG available here: [www.fema.gov/assistance/public/policy-guidance-fact-sheets](http://www.fema.gov/assistance/public/policy-guidance-fact-sheets).

### 2. *Applicant (Force Account) Equipment and Purchase Equipment*

FEMA provides PA funding for the use of applicant-owned equipment (force account equipment), including permanently mounted generators, based on hourly rates. FEMA may provide PA funding based on mileage for vehicles, if the mileage is documented and is less costly than hourly rates.

There are instances when an applicant does not have sufficient equipment to effectively respond to an incident. If the applicant purchases equipment that it justifiably needs to respond effectively to the incident, FEMA provides PA funding for both the purchase price and either:

- The use of the equipment based on equipment rates (without the ownership and depreciation components); or

- The actual fuel and maintenance costs.

FEMA provides PA funding for force account equipment usage based on FEMA, state, territorial, tribal, or local equipment rates in accordance with the specific criteria.

\* For more information On Applicant (Force Account) Equipment and Purchase Equipment refer to the most recent version of the PAPPG available here: [www.fema.gov/assistance/public/policy-guidance-fact-sheets](http://www.fema.gov/assistance/public/policy-guidance-fact-sheets).

### 3. *Contracts*

FEMA reimburses costs incurred using three types of contract payment obligations: fixed-price, cost-reimbursement, and, to a limited extent, time and materials (T&M). The specific contract types related to each of these are described in FEMA's *Procurement Guidance for Recipients and Subrecipients Under 2 CFR Part 200 (Uniform Rules)*.

The applicant must include required provisions in all contracts awarded and maintain oversight to ensure that contractors perform according to the conditions and specifications of the contract and any purchase orders.

FEMA does not reimburse costs incurred under a cost plus a percentage of cost contract or a contract with a percentage of construction cost method.

\* For more information on Contracts refer to the most recent version of the PAPPG available here: [www.fema.gov/assistance/public/policy-guidance-fact-sheets](http://www.fema.gov/assistance/public/policy-guidance-fact-sheets).

### 4. *Mutual Aid*

When an applicant does not have sufficient resources to respond to an incident, it may request resources from another jurisdiction through a "mutual aid" agreement. FEMA refers to the entity requesting resources as the Requesting Entity. FEMA refers to the entity providing the requested resource as the Providing Entity.

FEMA provides PA funding to the Requesting Entity as it is legally responsible for the work. FEMA does not provide PA funding directly to the Providing Entity. For the work to be eligible, the Requesting Entity must have requested the resources provided.

\* For more information on Mutual Aid refer to the most recent version of the PAPPG available here: [www.fema.gov/assistance/public/policy-guidance-fact-sheets](http://www.fema.gov/assistance/public/policy-guidance-fact-sheets).

## 5. *Donated Resources*

Individuals and organizations often donate resources (equipment, supplies, materials, or labor) to assist with response activities. FEMA does not provide PA funding for donated resources; however, the applicant may use the value of donated resources to offset the nonfederal share of its eligible Emergency Work projects and Direct Federal Assistance.

\* For more information on Donated Resources refer to the most recent version of the PAPPG available here: [www.fema.gov/assistance/public/policy-guidance-fact-sheets](http://www.fema.gov/assistance/public/policy-guidance-fact-sheets).

## 6. *Section 324 Management Costs*

Section 1215 of the Disaster Recovery Reform Act Expands the definition of management costs to include both direct and indirect administrative expenses by the state, local, tribal, or territorial government. It also establishes the following rates for the PA program:

- Up to 12 percent of the total award amount with up to 7 percent for the recipient and 5 percent for the subrecipient.

\* For more information refer to the *Public Assistance Management Cost (Interim) Policy*.

## 7. *Insurance Proceeds*

FEMA cannot provide PA funding that duplicates insurance proceeds. Consequently, FEMA reduces eligible costs by the amount of:

- Actual insurance proceeds, if known; or
- Anticipated insurance proceeds based on the applicant's insurance policy if the amount of actual insurance proceeds is unknown. FEMA subsequently adjusts the eligible costs based on the actual amount of insurance proceeds the applicant receives.

\* For more information on Insurance Proceeds refer to the most recent version of the PAPPG available here: [www.fema.gov/assistance/public/policy-guidance-fact-sheets](http://www.fema.gov/assistance/public/policy-guidance-fact-sheets).

## **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 nonfederal share that is split between

the state and each subrecipient 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 nonfederal share does not have to be met until the end of the project).

- 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**

- a. For major disaster or emergency declarations prior to November 13, 2007, the state makes funding available to subrecipients for their direct costs to request, obtain, and administer PA projects according to the following formula: (a) 3 percent of the subrecipient's first \$100,000 of net eligible project costs; (b) 2 percent of the subrecipient's next \$900,000 of such costs; (c) 1 percent of the subrecipient's next \$4 million of such costs; and (d) 0.5 percent of the subrecipient's net eligible costs over \$5 million (interim final rule, 44 CFR section 207.9(b)(2), effective November 13, 2007, 72 FR 57878, October 11, 2007).
- b. For major disaster or emergency declarations on or after November 13, 2007, the state makes management cost funding available to subrecipients, as prescribed in the state administrative plan, to administer PA projects (interim final rule, 44 CFR sections 206.207 and 206.228 and Part 207, effective November 13, 2007, 72 FR 57876 through 57878, October 11, 2007).

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Applicable only to those nonfederal entities who do not or are unable to utilize the Department of Health and Human Services, Payment Management System.
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable



## 2. Performance Reporting

Quarterly progress reports are due from recipients on all open large projects 30 days after the end of each calendar quarter.

## 3. Special Reporting

Not Applicable

## 4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

## N. Special Tests and Provisions

### 1. Project Accounting

**Compliance Requirements** For large projects, the state is required to make an accounting to FEMA of eligible costs. Similarly, the subrecipient 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, all grant conditions were met, and that payments for that project were made in accordance with the applicable 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 Objectives** 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

**Purpose:** The purpose of this document is to provide a brief overview of the FEMA's Public Assistance Program. For more in-depth information please refer to the Public Assistance

Program and Policy Guide (Version 4) found at [www.fema.gov/assistance/public/policy-guidance-fact-sheets](http://www.fema.gov/assistance/public/policy-guidance-fact-sheets).

Nonfederal entities must record expenditures on the Schedule of Expenditures of Federal Awards (SEFA) when (1) FEMA has approved the nonfederal entity's PW, and (2) the nonfederal entity has incurred the eligible expenditures. Federal awards expended in years subsequent to the fiscal year in which the PW is approved are to be recorded on the nonfederal entity's SEFA in those subsequent years.

For example:

1. If FEMA approves the PW in the nonfederal entity's fiscal year 2014 and eligible expenditures are incurred in the nonfederal entity's fiscal year 2015, the nonfederal entity records the eligible expenditures in its fiscal year 2015 SEFA.
2. If the nonfederal entity incurs eligible expenditures in its fiscal year 2014 and FEMA approves the nonfederal entity's PW in the nonfederal entity's fiscal year 2015, the nonfederal entity records the eligible expenditures in its fiscal year 2015 SEFA with a footnote that discloses the amount included on the SEFA that was incurred in a prior year.

## DEPARTMENT OF HOMELAND SECURITY

### ASSISTANCE LISTING 97.039 HAZARD MITIGATION GRANT PROGRAM (HMGP)

#### I. PROGRAM OBJECTIVES

The purpose of the Hazard Mitigation Grant Program (HMGP) 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, Indian tribal government, territory, or local hazard mitigation plans. It also provides funds designed to develop state, Indian tribal government, and local mitigation plans that meet the planning requirements outlined in 44 CFR Part 201.

#### II. PROGRAM PROCEDURES

HMGP is a cost-shared program administered by the Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS). FEMA provides HMGP awards to states and federally recognized Indian tribal governments (recipients), which, in turn, may provide subawards to state agencies, local governments, Indian tribal governmental agencies, and other eligible entities (subrecipients). Each recipient administers the HMGP according to a FEMA-state or FEMA-Indian tribal government agreement, a comprehensive Standard or Enhanced Mitigation Plan, and a state or Indian tribal government HMGP Administrative Plan. These plans must be approved by FEMA before funds are awarded to the state or Indian tribal government. FEMA is responsible for approving or denying project applications and reviewing the recipient's quarterly and final reports.

FEMA also provides funding for costs incurred by recipients and their subrecipients in administering HMGP. For federal disasters declared prior to November 13, 2007, the recipient receives a statutory administrative cost allowance determined according to a formula based on percentages of the aggregate federal share of funding provided to subrecipients for hazard mitigation projects. Management costs not covered by the allowance may be allowed with FEMA prior approval. The recipient awards statutory administrative cost allowances to subrecipient according to a formula based on percentages of the subrecipient'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 recipients and their subrecipients 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 recipient or subrecipient in the administration and management of HMGP. Recipients may identify and make available a percentage or amount of pass-through funds for management costs to their subrecipients. The basis, criteria, or formula for equitable distribution is determined by the recipient and must be included in the FEMA-approved state or Indian tribal government HMGP 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, Level of Effort, Earmarking – Matching") and are provided in addition to the HMGP program ceiling.

### *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 major declaration designating the state a disaster area. Indian tribal governments may also submit a request for a major disaster declaration within their impacted area. Applicants have up to 12 months from the date the disaster is declared to review and submit applications. The application must identify the specific mitigation measure(s) for which the state or Indian tribal government requests funding, and any entities to which the recipient intends to make subawards.

In addition to submitting applications and supporting documents to FEMA, the recipient'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 subrecipients. Indian tribal governments can receive HMGP assistance as subrecipients of states or apply directly to FEMA. Where FEMA provides an award 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**

HMGP is authorized by Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (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.

#### **1. Performance Metrics**

Performance metrics for this program are as follows:

- Quarterly Progress Reports (QPR)

FEMA uses the QPR data reported by the recipient to evaluate project status and identify potential funding issues (e.g., cost overruns). The scorecard below evaluates the status and progress of quarterly progress reporting for all obligated projects using the following six criteria:

- Timeliness
- Regions submitted to HQ on time
- Data Completeness
- Critical data elements that are reported on each project – Cost Code, Status, Percentage Work Complete, Total Recipient Drawdown, and Sub-recipient Expenditures to date
- Data Reasonableness and Accuracy
- Comparative data analysis between current and previous QPRs

- Closeout

FEMA (HMA) distributes closeout updates to help regional HMA branch chiefs and closeout POCs remain focused on closeout performance measures and established priorities for the fiscal year.

1. Disaster Closeout Initiative (DCI) reports show progress and work remaining to close grant awards eight years beyond the declaration date. The monthly report provides detailed information concerning the number of projects open in each disaster, the Period of Performance end dates for each HM Program and Period of Availability end date for State Management Cost.
2. HM Only Program Open Reports provide a list of HM programs that, if closed, would allow closure of FEMA-State Agreements (FSA).
3. HM Program Closeout Performance Report provides the monthly HMGP closeout performance status, by region. Regional goals to achieve expectation and excellence are established at the beginning of the fiscal year.
4. Government Performance and Results Act (GPRA) reports provide a summary of the progress made each month toward closing FSA/FEMA-Tribal Agreements (FTA) targeted for closure during the fiscal year.

- Obligations

Aligning the 2014–2018 FEMA Strategic Plan, Strategic Priority 4: Enable Disaster Risk Reduction Nationally and Objective 4.2: Incentivize and facilitate investments to manage current and future risk, FEMA measures the aggregate of HMGP obligations per annual year.

- Obligate HMGP grants

- Achieved Expectations
- Achieved Excellence

### **Availability of Other Program Information**

Other program information is available at <http://www.fema.gov/hazard-mitigation-grant-program>.

### **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then

determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/ Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	N	Y	N	N	Y	N	N

**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 Indian tribal government’s (when applying directly to FEMA), comprehensive Hazard Mitigation Plan. Additionally, all subaward projects funded under HMGP must be in accordance with priorities identified in the Indian tribal government 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, Indian tribal government, or local mitigation standards;
6. Development or improvement of warning systems; and
7. 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. *Recipient Direct Costs* – A state or Indian tribal government 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 or Indian tribal government employees, but not their regular (straight-time) salaries. Cost items not eligible for funding from the state's or Indian tribal government's administrative cost allowance, but still related to managing the program, may be funded from the award 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 or Indian tribal government'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. *Subrecipient Administrative Costs* – A subrecipient may use funds made available by the recipient in its administrative cost allowance only for direct costs of requesting, obtaining, and administering its subawards (44 CFR section 207.9(b)(2)).
  - c. *Indirect Costs* – Recipient indirect costs identified in accordance with the federal cost principles are allowable. Indirect costs at the subrecipient level are unallowable (44 CFR section 207.9(c)).
2. *Management Costs for Federal Disasters Declared on or after November 13, 2007*
  - a. *Recipient* – A state or Indian tribal government 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. *Subrecipient* – A state or Indian tribal government may identify and make funds for management costs available to subrecipients in accordance with the FEMA-approved HMGP Administrative Plan. A subrecipient 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 for HMGP subawards. Additionally, an eligible entity must have a FEMA-approved Mitigation Plan to be eligible to receive a project subaward (44 CFR sections 201.6 and 201.7).

- a. State and local governments;
- b. Private nonprofit organizations or institutions that own or operate a private nonprofit facility as defined at 44 CFR section 206.221(e); and
- c. Indian tribal governments and Alaskan Native villages or organizations (44 CFR section 206.434(a)).

**L. Reporting****1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.



#### **IV. OTHER INFORMATION**

In the administration of this grant, the state or Indian tribal government may provide subaward funds to another part of the state (e.g., a state agency) or designated area within an Indian tribal government. If the part of the state or Indian tribal government receiving the subaward is included in the audit of the state, such as a state-wide audit, or Indian tribe, as applicable, then for purposes of determining Type A programs and reporting on the Schedule of Expenditures of Federal Awards, these subawards within the single audit reporting entity (state or Indian tribe) should be eliminated. However, all federal awards expended under this program (including subawards) are subject to 2 CFR Part 200, Subpart F.

## DEPARTMENT OF HOMELAND SECURITY

### ASSISTANCE LISTING 97.067 HOMELAND SECURITY GRANT PROGRAM (HSGP)

#### I. PROGRAM OBJECTIVES

The purpose of the Homeland Security Grant Program (HSGP) is to support state, local, tribal, and territorial efforts to prevent acts of terrorism and other catastrophic events, and to prepare the nation for the threats and hazards that pose the greatest risk to the security of the United States. The HSGP supports core capabilities across the five mission areas of Prevention, Protection, Mitigation, Response, and Recovery. The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government, organization, or community, but rather, require the combined effort of the whole community. HSGP comprises three grant programs: State Homeland Security Program (SHSP), Urban Area Security Initiative (UASI), and Operation Stonegarden (OPSG). Together, these grant programs fund a range of activities, including planning, organization, equipment purchase, training, exercises, and management and administration across all core capabilities and mission areas.

*State Homeland Security Program:* The SHSP assists state, tribal, and local preparedness activities that address high-priority preparedness gaps across all core capabilities where a nexus to terrorism exists. All supported investments are based on capability targets and gaps identified during the Threat and Hazard Identification and Risk Assessment (THIRA) process and assessed in the Stakeholder Preparedness Review (SPR).

*Urban Area Security Initiative:* The UASI program addresses the unique risk-driven and capabilities-based planning, organization, equipment, training, and exercise needs of high-threat, high-density urban areas based on the capability targets identified during the THIRA process and associated assessment efforts and assists them in building an enhanced and sustainable capacity to prevent, protect against, mitigate, respond to, and recover from acts of terrorism.

*Operation Stonegarden:* OPSG supports enhanced cooperation and coordination between Customs and Border Protection (CBP), the United States Border Patrol (USBP) and local, tribal, territorial, 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 with international water borders.

#### II. PROGRAM PROCEDURES

All 56 states and territories, which includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the US Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, are eligible to apply for SHSP funds. The State Administrative Agency (SAA) is the only entity eligible to submit HSGP applications to DHS/FEMA, including those applications submitted on behalf of UASI and OPSG applicants. Tribal governments may not apply directly for HSGP funding; however, funding may be available to tribes under the SHSP and OPSG through the SAA.

Eligible high-risk Urban Areas for the fiscal year (FY) 2020 UASI program have been determined through an analysis of relative risk of terrorism faced by the 100 most populous Metropolitan Statistical Areas (MSAs) in the United States. Subawards will be made by the SAA to the designated Urban Areas.

Eligible subrecipients under OPSG are local units of government at the county level and federally recognized tribal governments in the states bordering Canada, states bordering Mexico, and states with international water borders. All applicants must have active ongoing USBP operations coordinated through a USBP sector office. Subrecipients eligible to apply for and receive a subaward directly from the SAA are divided into three Tiers. Tier 1 entities are local units of government at the county level or equivalent and federally recognized tribal governments that are on a physical border in states bordering Canada, states bordering Mexico, and states and territories with international water borders. Tier 2 eligible subrecipients are those not located on the physical border or international water but are contiguous to a Tier 1 county. Tier 3 eligible subrecipients are those not located on the physical border or international water but are contiguous to a Tier 2 eligible subrecipient. Tier 2 and Tier 3 eligible subrecipients may be eligible to receive funding based on border security risk as determined by the USBP.

### **Source of Governing Requirements**

These programs are authorized under section 2002 of the Homeland Security Act of 2002 (Pub. L. No. 107-296, as amended) (6 USC 603). This program is also funded through the following appropriations: Department of Homeland Security Appropriations Act, 2014 (Pub. L. No. 113-76); Department of Homeland Security Appropriations Act, 2015 (Pub. L. No. 114-4); Department of Homeland Security Appropriations Act, 2016 (Pub. L. No. 114-113); Department of Homeland Security Appropriations Act, 2017 (Pub. L. No. 115-31); Department of Homeland Security Appropriations Act, 2018 (Pub. L. No. 115-141); Department of Homeland Security Appropriations Act, 2019 (Pub. L. No. 116-6); and Department of Homeland Security Appropriations Act, 2020 (Pub. L. No. 116-93). 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.

Additional information concerning this Program is available at <https://www.fema.gov/homeland-security-grant-program>.

### **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not

being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	Y	N	N	Y	Y	Y

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

- a. Funds may be used to enhance the capability of state, local, tribal, and territorial 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, and other catastrophic events. Allowable activities include management and administrative costs, the hiring of intelligence analysts, overtime costs for specific purposes, the purchase of needed equipment, the provision of training and technical assistance, and the conduction of exercises. Funds may be used under the following cost categories: planning, organization, equipment, training, and exercises.
- b. Funds may be used for management and administration (Consolidated Appropriations Act, 2012 (Pub. L. No. 112-74, 125 Stat. 961; Consolidated Appropriations Act, 2013 (Pub. L. No. 113-6, 127 Stat. 358; Consolidated Appropriations Act, 2014 (Pub. L. No. 113-76, 128 Stat. 262); Department of Homeland Security Appropriations Act, 2015 (Pub. L. No. 114-4, 129 Stat. 54); Department of Homeland Security Appropriations Act, 2016 (Pub. L. No. 114-113); the Department of Homeland Security Appropriations Act, 2017 (Pub. L. No. 115-31); and *Department of Homeland Security Appropriations Act, 2018* (Pub. L. No. 115-141)).

- c. As directed by section 2008(b)(2) of the Homeland Security Act of 2002 (codified as amended at 6 USC 609(b)(2)), all personnel and personnel-related costs, including those of intelligence analysts and operational overtime, are allowed up to 50 percent of HSGP funding without time limitation placed on the period of time that such personnel can serve. FEMA may provide a waiver at the request of the recipient to allow personnel expenses to exceed 50 percent of the amount awarded.
- d. OPSG funds may be used for operational overtime costs associated with law enforcement activities, in support of border law enforcement agencies for increased border security enhancement.

## 2. *Activities Unallowed*

- a. Funds awarded for law enforcement terrorism prevention activities under SHSP and UASI cannot be used for construction of facilities, except for a minor perimeter security project, not to exceed the greater of \$1,000,000 or 15 percent of the grant award, as determined necessary by the secretary of Homeland Security.
  - (1) The erection of communication towers that are included in a jurisdiction's interoperable communications plan does not constitute construction.
  - (2) Subject to all applicable laws, regulations, and licensing provisions, projects for the installation of communication towers are typically eligible under the program. Such projects are not considered construction, and, therefore, are, not subject to the otherwise applicable funding limits on construction activities.
- b. 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)). Per section 2008(b)(1)(A) of the Homeland Security Act of 2002 (codified as amended at 6 USC 609(b)(1)(A)), HSGP funds may not be used to supplant state or local funds, but there is no prohibition on using funds for otherwise permissible uses under section 2008(a) on the basis that state or high-risk urban area has previously used its funds to support the same or similar use.
- c. OPSG funds may not be used for the following:
  - (1) staffing (other than overtime) and general information technology computing equipment and hardware, such as personal computers, faxes, copy machines, and modems
  - (2) hiring full-time or permanent sworn public safety officers

- (3) supplanting of inherent routine patrols and law enforcement operations or activities not directly related to providing enhanced coordination between local and federal law enforcement agencies
  - (4) constructing and/or renovating costs
- d. HSGP funds may not be used for the purchase of weapons and weapons accessories, including ammunition, firearms; ammunition; grenade launchers; bayonets; or weaponized aircraft, vessels, or vehicles of any kind with weapons installed.
  - e. HSGP funds may not be used for the reimbursement for the maintenance and/or wear and tear costs of general use vehicles (e.g., construction vehicles), medical supplies, and emergency response apparatus (e.g., fire trucks, ambulances).
  - f. HSGP funds may not be used for equipment that is purchased for permanent installation and/or use, beyond the scope of the conclusion of any exercises.

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

### **2. Performance Reporting**

#### *Performance Progress Report (PPR)*

Recipients are responsible for providing updated performance reports on a biannual basis as an attachment in ND Grants. The PPR should include the following:

- A brief narrative of overall project(s) status
- A summary of project expenditures
- A description of any potential issues that may affect project completion

*Biannual Strategy Implementation Report (BSIR)*. In addition to the quarterly financial and biannual performance progress reports, recipients are responsible for completing and submitting BSIRs through the Grants Reporting Tool (GRT).

**3. Special Reporting**

Not Applicable

**4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

**N. Special Tests and Provisions****1. Subgrant Awards**

**Compliance Requirements** States (with the exception of the District of Columbia, Guam, American Samoa, the US Virgin Islands, and the Commonwealth of the Northern Mariana Islands) must obligate at least 80 percent of the funds awarded to them under SHSP and UASI to units of local or tribal government within 45 calendar days of receipt of the funds (6 USC 604(d)(2)). Recipients of OPSG funds must obligate 100 percent of their allocations to eligible jurisdictions within that same time frame. “Receipt of funds” occurs when the recipient accepts the award or 15 days after the recipient is notified of the award, whichever comes first. “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 subrecipient and, if applicable, accepted by the recipient).

**Audit Objectives** To determine if (1) the state complied with the requirement to obligate 80 percent of the funds awarded under SHSP and UASI and 100 percent of the OPSG allocation passed through to units of local or tribal government within 45 calendar days of receipt of the funds, and (2) subrecipient 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 SHSP, UASI, and OPSG subgrant awards to local and tribal governments, 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 SHSP, UASI, and OPSG requirements and the state’s own procedures.
- d. Select a sample of subgrant awards under these funding streams and review the subrecipients’ payment requests to determine if funds were disbursed by the state to the local or tribal government consistent with the dates of their subawards, i.e., the date of obligation.

#### **IV. OTHER INFORMATION**

When completing the Schedule of Expenditures of Federal Awards (SEFA), recipients should record their expenditures using the Assistance Listings number(s) shown on the legal award document for the period in which the funds were awarded. Subawards issued by the primary recipient are legally binding agreements, and, therefore, Assistance Listings numbers cited by the recipient in the subgrant award must be used by the subrecipient as the Assistance Listings reference in the SEFA.

It also should be noted that, except as otherwise provided by statute, DHS awards of property and/or equipment are subject to the audit requirements of 2 CFR Part 200, Subpart F.



## UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

### ASSISTANCE LISTING 98.007 FOOD FOR PEACE DEVELOPMENT ASSISTANCE PROGRAM

### ASSISTANCE LISTING 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

##### A. 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 the 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 nonemergency 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 nongovernmental organizations. Nongovernmental cooperating sponsors include private voluntary organizations and cooperatives. Title II assistance is provided to cooperating sponsors for emergency and nonemergency 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.

## **B. Program Operation**

### *1. General*

Each cooperating sponsor is required to submit, for USAID approval, an application that typically includes 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 nongovernmental 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.

### *2. Host Country Food for Peace Program Agreement (HCFPPA)*

Each nongovernmental 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 nongovernmental 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 HCFPPA (22 CFR section 211.3(b)).

### *3. 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)).

#### 4. *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)).

### **C. 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. No. 480) (7 USC 1691 through 1738r). Implementing regulations are found at 22 CFR Part 211.

### **Availability of Other Program Information**

USAID maintains a web page with information on the "Food for Peace" program, including laws, regulations, and other information at <https://www.usaid.gov/food-assistance>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	Y	N	N	Y	Y	Y

**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 nonemergency 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)).

## **L. Reporting**

### **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

Not Applicable

### **4. Special Reporting for Federal Funding Accountability and Transparency Act**

See Part 3.L for audit guidance.

## **N. Special Tests and Provisions**

### **1. Recipient Agencies**

**Compliance Requirements** Cooperating sponsors are responsible for determining that recipient agencies to which they distribute commodities are eligible in accordance with the Operational Plan or Transfer Authorization and 22 CFR Part 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 Objectives** 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.

## **PART 5 – CLUSTERS OF PROGRAMS**

### **INTRODUCTION**

Part 5 identifies those programs that are considered to be clusters of federal programs. As defined by 2 CFR section 200.1, a cluster of programs means a grouping of closely related programs that share common compliance requirements. The clusters of programs included in this Part are research and development (R&D) and student financial assistance (SFA), as well as certain other programs included in Part 4, “Agency Program Requirements,” that are deemed to be clusters. A cluster of programs must be considered as one program for determining major programs, as described in 2 CFR section 200.518 (major program determination), and, with the exception of R&D as described in 2 CFR section 200.501(c), determining whether a program-specific audit may be elected.

“Other clusters” also may be designated by a state for federal awards the state provides to its subrecipients that meet the definition of a “cluster of programs.” When designating an “other cluster,” a state must identify the federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with 2 CFR section 200.331(a). This part of the Supplement does not identify any state-designated clusters of programs.

For the R&D and SFA clusters, this part is the equivalent of Part 4 coverage. In developing the audit procedures to test for compliance with the requirements for the R&D and SFA clusters, the auditor must determine which of the eight types of compliance requirements apply and then determine which of the applicable requirements is likely to have a direct and material effect on the cluster at the auditee. For each such requirement other than N, “Special Tests and Provisions,” the auditor must use Part 3 (which includes generic details about each compliance requirement, including audit objectives and suggested audit procedures) and this Part 5 (which includes any cluster-specific requirements) to perform the audit. For N, “Special Tests and Provisions,” Part 3 includes only audit objectives and suggested audit procedures for internal control; all other information is included in Part 5.

The descriptions of the compliance requirements in parts 3 and 5 are a general summary of the actual compliance requirements. The auditor must refer to the referenced citations (e.g., statutes 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 awards, most commonly grants, cooperative agreements, and contracts, to achieve objectives agreed upon between the federal awarding agency and the non-federal entity. The types of R&D conducted under these awards vary widely. The objective of an individual project is explained in the federal award.

### II. PROGRAM PROCEDURES

As defined in 2 CFR section 200.1, *Research and Development*, “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. R&D means all research activities, both basic and applied, and all development activities performed by non-federal entities. 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 when such activities are not included in the instruction function. The absence of the words “research” and/or “development” in the title of the federal award does not indicate it should be excluded from the R&D cluster. The substance of the federal award should be evaluated by the recipient and the auditor to determine the proper inclusion/exclusion in the R&D cluster.

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 award is then negotiated in which the purpose of the project is specified, the amount of the award is indicated, and terms and conditions are delineated.

The administrative requirements that apply to R&D grants and cooperative agreements arise from 2 CFR Part 200, and in some legacy situations, OMB Circular A-110 (2 CFR Part 215), as applicable to an award, and the federal agencies’ codification of the OMB circular/guidance. The administrative requirements that govern contracts are contained in the Federal Acquisition Regulation (FAR) and agency FAR supplements (e.g., the Defense Federal Acquisition Regulation Supplement (DFARS)). The cost principles that apply to R&D cost-reimbursement contracts to non-federal entities are found in FAR subparts 31.2, 31.3, 31.6, and 31.7, as applicable.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance



requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	N	Y	Y	N	N	Y	Y

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 (grants, cooperative agreements, and cost-reimbursement contracts), funding sources, and federal awarding agencies.

In the Schedule of Findings and Questioned Costs, the auditor must associate any questioned costs with the specific award number(s) in the audit finding detail. When the finding applies to the entire R&D cluster (i.e., systemic findings), the auditor must clearly indicate that the finding applies to the R&D cluster and also identify by award number the questioned costs for the specific award(s) impacted. This information is necessary for the auditee to prepare the corrective action plan, and for federal awarding agencies and pass-through entities to issue a management decision on the audit findings in a timely manner.

**A. Activities Allowed or Unallowed**

The objectives of individual R&D projects are explained in the applicable award. Testing of compliance with this requirement should ensure that funds were used only for such objectives.

**B. Allowable Costs/Cost Principles**

Testing of compliance with this requirement should ensure that costs were reasonable and necessary for performance of the R&D effort identified in the applicable award.

### *Compensation*

The auditor should give particular attention to individual employee compensation and related benefits costs. See Frequently Asked Question 200.430-1, which addresses changes to current processes and compliance with the documentation standards of 2 CFR section 200.431(i) ([2CRF-FrequentlyAskedQuestions\\_2021050321.pdf \(cfo.gov\)](#)).

The 2 CFR section 200.430 provides that federal agencies may approve alternative methods of accounting for salaries and wages based on achievement of performance outcomes, including instances when funding from multiple programs/awards is blended to achieve a combined outcome more efficiently.

1. In accordance with the documentation standards of 2 CFR section 200.430(i), costs of compensation for personal services are allowable to the extent the total compensation for individual employees:
  - a. Is reasonable for the services rendered and conforms to the established written policy of the non-federal entity consistently applied to both federal and non-federal activities;
  - b. Follows an appointment made in accordance with a non-federal entity's rules or written policies and meets the requirements of federal statute, where applicable; and
  - c. Is determined and supported as provided in 2 CFR section 200.430(i), including that charges to federal awards for salaries and wages must be based on records that accurately reflect the work performed.
2. The auditor should determine if the awards contain any negotiated wage or salary rates, or contain any restrictions on salaries and wages, such as the NIH restriction on the amount that may be charged for individual salaries ([https://grants.nih.gov/grants/policy/salcap\\_summary.htm](https://grants.nih.gov/grants/policy/salcap_summary.htm)). If so, a sample of these should be included as a part of allowable costs testing.

### *Indirect (facilities and administrative) costs and cost transfers*

1. Indirect or facilities and administrative (F&A) costs are a second major category of cost charged to R&D projects. (See the coverage in Part 3 relating to the review of indirect costs.)
2. Transfers of costs between cost centers or research projects are commonly used to correct the financial records (such as transfers of costs between projects when costs were initially charged to the wrong project and the non-federal entity's control system found the error) and for other valid reasons.
  - a. Cost transfers should be tested for allowability. A cost transfer from one project to another project may appear to be an unallowable charge to the second project. However, the auditor should assess whether, because of

the closely linked nature of the research as verified by the auditee, the costs would be allowable charges to either project. Alternatively, transfers would not be allowable under the second project if the terms and conditions of that project identify the costs as unallowable. Auditors should note that a significant number of cost transfers between unrelated projects could be an indication of poor internal controls and might result in a noncompliance finding.

#### **F. Equipment and Real Property**

Entities are required to appropriately safeguard and maintain all equipment purchased with federal funds. For the R&D cluster, only considering equipment purchased under federal awards during the current audit period to assess whether the requirement is direct and material 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. When assessing whether this 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 this assessment, auditors should design appropriate procedures to determine internal control over and compliance with equipment management requirements.

#### **M. Subrecipient Monitoring**

When deciding whether the subrecipient monitoring compliance requirement applies, the auditor must assess whether the non-federal entity entered into any relationships under the federal award that it identified as subawards. A subrecipient relationship exists when funding from a pass-through entity is provided to another entity to perform a portion of the federal award. It does not include payments for the purpose of obtaining goods and services for the non-federal entity's own use. A subaward may be provided through any form of legal agreement, including an award that a pass-through entity makes under a federal cost-reimbursement contract that is subject to the FAR, in which case the subaward is termed a subcontract. In determining whether a subrecipient relationship exists, the substance of the relationship is more important than the term used to describe it (2 CFR section 200.331).

#### **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 internal controls to ensure that (1) federal awards are reviewed to identify special award terms and conditions, and (2) compliance with the special terms and conditions identified. When special terms and conditions exist that 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 2 CFR sections 200.514(c) and (d). One example of a specific cross-cutting special term and condition is key personnel.

### **Key Personnel**

Applications/proposals or awards may include staffing proposals that specify individuals who will work on the project and the extent of the planned involvement of personnel. The non-federal entity may change the staffing mix and level of involvement within limits specified by agency policy or in the award but may be required to obtain federal awarding agency approval of changes in key personnel (as identified in the award, which may differ from the non-federal entity's designation in the application/proposal) and changes in the principal investigator's/project director's time commitment/level of participation in the project. For grants and cooperative agreements, this may include not only a change in the principal investigator or project director but also the disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator 2 CFR sections 200.308(c) (2) and (3)). For cost-reimbursement contracts under the FAR, specific key personnel requirements are included in the contract (or task order).

**Audit Objectives** To determine whether the non-federal entity adhered to key personnel commitments specified in the application/proposal or award (which may be an incorporation by reference of the approved application/proposal) and obtained any required federal awarding agency approval for changes.

### **Suggested Audit Procedures**

- a. Review the non-federal entity's procedures for determining if key personnel were involved in the project.
- b. Review a sample of projects and determine if key personnel identified in the application/proposal and award were involved in the project as required.
- c. Determine if the non-federal entity complied with any award requirements for approval of changes in key personnel or absence from, or changes in time committed to, the project by the approved project director or principal investigator.

**STUDENT FINANCIAL ASSISTANCE PROGRAMS****Department of Education****Department of Health and Human Services**

**ASSISTANCE LISTING 84.007 FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANTS (FSEOG)**

**ASSISTANCE LISTING 84.033 FEDERAL WORK-STUDY PROGRAM**

**ASSISTANCE LISTING 84.038 FEDERAL PERKINS LOAN PROGRAM**

**ASSISTANCE LISTING 84.063 FEDERAL PELL GRANT PROGRAM**

**ASSISTANCE LISTING 84.268 FEDERAL DIRECT STUDENT LOANS**

**ASSISTANCE LISTING 84.379 TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION GRANTS (TEACH Grants)**

**ASSISTANCE LISTING 84.408 POSTSECONDARY EDUCATION SCHOLARSHIPS FOR VETERAN'S DEPENDENTS (Iraq and Afghanistan Service Grant (IASG))**

**ASSISTANCE LISTING 93.264 NURSE FACULTY LOAN PROGRAM (NFLP)**

**ASSISTANCE LISTING 93.342 HEALTH PROFESSIONS STUDENT LOANS, INCLUDING PRIMARY CARE LOANS AND LOANS FOR DISADVANTAGED STUDENTS (HPSL/PCL/LDS)**

**ASSISTANCE LISTING 93.364 NURSING STUDENT LOANS (NSL)**

**ASSISTANCE LISTING 93.925 SCHOLARSHIPS FOR HEALTH PROFESSIONS STUDENTS FROM DISADVANTAGED BACKGROUNDS – 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 eligible institutions of postsecondary education.

**II. PROGRAM PROCEDURES****A. Overview**

Institutions must apply to either the secretary of education or secretary of Health and Human Services (HHS) 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.

### **B. Title IV Programs - General**

The Title IV programs cited in this cluster that are administered by the Department of Education (ED) (those with Assistance Listings 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, the 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®) 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 institution. Therefore, AU-C Section 402, *Audit Considerations Relating to an Entity Using a Service Organization*, does not apply when auditing the institution.)

### **C. Federal Supplemental Educational Opportunity Grants (FSEOG) (Assistance Listing 84.007)**

The FSEOG program provides grants to eligible undergraduate students. Priority is given to Pell recipients who have the lowest expected family contributions. Federal funds are matched with institutional funds (34 CFR 676.21(a) and (c)). Certain minority serving institutions may obtain a waiver of the matching requirement under 34 CFR 676.21(b).

**D. Federal Work-Study (FWS) (Assistance Listing 84.033)**

The FWS program provides part-time employment to eligible undergraduate and graduate students who need earnings to help meet the 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. Institutions that participate in the FWS program 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 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 formula. 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 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.

**E. Federal Perkins Loan Program (Assistance Listing 84.038)**

Under the Perkins Loan Extension Act of 2015 (Extension Act) (Pub. L. No. 114-105), the authority to award new Perkins Loans to graduate students expired on September 30, 2016, and the authority to award new Perkins Loans to undergraduate students expired September 30, 2017. No disbursements were permitted after June 30, 2018 (Pub. L. No. 114-105). Institutions are required to continue servicing their Perkins Loan portfolio (or contract with a third-party servicer for such servicing) and administrative and reporting requirements remain until the institution has completed the liquidation process and program closeout. Although the federal Perkins Loan Program is a loan program in which the proceeds were received and expended in prior years, the federal government is at risk for the loans until the debt is repaid. The guidelines at 2 CFR 200.502(b) must be used to calculate the value of federal awards expended under the federal Perkins Loan Program each year, because the HEA, regulations, and terms and conditions of the federal Perkins Loan Program impose continuing compliance requirements other than to repay the loans.

**F. Federal Pell Grant (Pell) (Assistance Listing 84.063)**

The federal Pell Grant program provides grants to eligible 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, but the amount for which each student is eligible is based on Pell Grant Payment and Disbursement Schedules published every year by ED. ED provides funds to the institution based on actual and estimated Pell expenditures.

**G. William D. Ford Federal Direct Loans (Direct Loan) (Assistance Listing 84.268) (Includes Direct Subsidized, Direct Unsubsidized, and Direct PLUS loans)**

The Direct Loan Program makes Direct Subsidized Loans and Direct Unsubsidized Loans to eligible students, and Direct PLUS Loans to eligible graduate or professional students or to eligible parents of dependent undergraduate students, to pay for the cost of attending postsecondary educational institutions. 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 originate a student's Direct Loan. The financial aid administrator is also required to provide and confirm certain information.

**H. Teacher Education Assistance for College and Higher Education Grants (TEACH Grants) (Assistance Listing 84.379)**

The TEACH Grant program is a non-need-based grant program for eligible students who are enrolled in an eligible program, and who agree to serve as a full-time teacher, in a high-need field, in an elementary school, secondary school, or educational service agency serving low-income students for at least four years within eight years of completing the program for which the TEACH Grant was awarded (34 CFR 686.1). If the grant recipient fails to complete the required teaching service, the TEACH Grant is treated as a Direct Unsubsidized Loan (34 CFR 686.43).

**I. Postsecondary Education Scholarships for Veteran's Dependents (Iraq and Afghanistan Service Grant (IASG)) (Assistance Listing 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 US military service in Iraq or Afghanistan after September 11, 2001, to receive this non-need-based grant if he or she was not eligible to receive a Pell Grant.

**J. Nurse Faculty Loan Program (NFLP) (Assistance Listing 93.264)**

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, provides funding to institutions of nursing to support the establishment and operation of a distinct NFLP loan fund at the institution to increase the number of qualified nursing faculty. The award to the institution, the Federal Capital Contribution (FCC) award, must be deposited into the NFLP loan fund. The institution is required to deposit the Institutional Capital Contribution (ICC) that is equal to no less than one-ninth of the FCC award. Participating institutions make loans from the regular NFLP loan fund to eligible graduate (master's



and doctoral) nursing students to complete the nursing education program. Accredited collegiate institutions of nursing are eligible to apply for funding. Eligible institutions 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).

All funds awarded for the specified budget or project period should be drawn down from the Payment Management System (PMS) account and deposited in an appropriate loan fund. It is expected that loan activity will be conducted through the institutional NFLP loan fund rather than drawdowns from the PMS account.

Active NFLP grantees are permitted to maintain their loan fund balances in the revolving institutional NFLP loan fund account without fiscal year restriction. The loan fund balance should continue to be disbursed (expended) through the current budget or project period.

Program guidance is available at

<https://bhwh.hrsa.gov/fundingopportunities/Default.aspx?id=e7eb501a-80da-40ae-9941-964dce07b3c5>.

**K. Health Professions Student Loans (HPSL)/Primary Care Loans (PCL)/Loans for Disadvantaged Students (LDS) (Assistance Listing 93.342)  
Nursing Student Loans (NSL) (Assistance Listing 93.364)**

The 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 FCC and a matching 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 four 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 ten 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.

## **L. Scholarships for Health Professions Students from Disadvantaged Backgrounds – Scholarships for Disadvantaged Students (SDS) (Assistance Listing 93.925)**

The SDS program provides grants to eligible health professions and nursing institutions to award scholarships to financially needy full-time students from disadvantaged backgrounds who are attending institutions of medicine, osteopathic medicine, dentistry, nursing, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, chiropractic, or allied health; institutions 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 (1) 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 institution, or from a program providing education or training in an allied health profession; or (2) comes from a family with an annual income below a level based on low-income thresholds according to family size published by the US 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.

### **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 600 and 668-690.

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.

### **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 at <https://fsapartners.ed.gov/knowledge-center/fsa-handbook>.

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 at <https://bhw.hrsa.gov/funding/schools-manage-loan-programs>.

## **III. COMPLIANCE REQUIREMENTS**

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance

requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	N	Y	Y	N	N	N	N	N	Y	N	Y

**Sampling for Audits of Institutions for which SFA is Identified as a Major Program**

For institutions where SFA is identified as a major program, when drawing sample items for testing compliance in student populations of 250 items or greater for Eligibility, Verification, Disbursements to or on Behalf of Students and Return of Title IV Funds, auditors must draw samples using a sampling methodology that incorporates a desired level of assurance (confidence level) and expected exception rate. If student-level sampling is performed for Cash Management and Distance Education, samples from student populations of 250 items or greater must also be drawn using a sampling methodology that incorporates a desired level of assurance (confidence level) and expected exception rate. Examples of acceptable methodologies can be found in the AICPA Audit Guide (Guide) *Government Auditing Standards and Single Audits*, among other sources, along with examples of sampling approaches for population of less than 250. See further information about this Guide and other sources in Part 8, Appendix VII, item VI – Audit Sampling of the Compliance Supplement. Samples should be representative of the populations from which they are selected and thus the results can be projected to the population and used to draw conclusions.

**Required Information for the Pell Grant and Direct Loan Programs**

The Pell Grant and Direct Loan programs have been designated as programs susceptible to significant improper payments. As such, ED needs information concerning the audit sample to understand more fully the results of the audit and identify ways that ED can work with institutions to reduce improper payments. ED has concluded that the audit access provisions in 2 CFR 200.517(b) and Title IV regulations at 34 CFR 668.23(e)(1)(ii) give it the authority to collect certain information from the single audit in order for ED to carry out its oversight responsibilities with regard to improper payments. Therefore, when auditors are testing the SFA cluster as a major program, auditors must prepare the information described below in

items 1, 2, and 3. See specific guidance below related to ED's request for the information in item 4.

Auditors must provide this information directly to Federal Student Aid, Director, Financial Management Group, at [FSAPellandDLReporting@ed.gov](mailto:FSAPellandDLReporting@ed.gov), no later than 60 days after the Data Collection Form and reporting package are submitted to the Federal Audit Clearinghouse. A template is available on the following ED website to facilitate communication of this information:

<https://www2.ed.gov/about/offices/list/ocfo/fipao/improper-payments.html>.

1. For audit procedures related to tests that may identify improper payments disbursements and returns of Pell funds (i.e., tests related to Eligibility, Cash Management, Verification, Disbursements to or on Behalf of Students, Return of Title IV Funds, and Distance Education), the auditor must provide the following if these procedures are tested at the student-level:
  - a. A description of each sample drawn and details of the sample, including the number of sampled students that received Pell funds and amount of Pell funds disbursed to these sampled students for the period tested;
  - b. The number of students that received Pell funds and amount of Pell funds disbursed for the population from which the sample was drawn for the period tested by sample drawn.

If these procedures (i.e., tests related to Eligibility, Cash Management, Verification Disbursements to or on Behalf of Students, Return of Title IV Funds, and Distance Education), are **not** tested at the student-level, the auditor must provide the following:

- a. A description of each sample drawn and details of the sample, including the amount of Pell funds sampled for the period tested;
- b. The amount of Pell funds disbursed for the population from which the sample was drawn for the period tested by sample drawn.

For samples and populations related to Return of Title IV Funds, the total Pell disbursed to the students is required even though the Return of Title IV Funds questioned costs identified from testing of the sample are based on the refunds.

If samples were drawn by Office of Postsecondary Education Identification (OPEID) number, provide the sample and population details by OPEID number (an eight-digit number). If this information is not available by OPEID, provide the aggregated sample and population amounts for the institution as a whole. If there is overlap in the samples and/or populations between compliance requirements and/or OPEIDs, provide the number of students and amount of Pell funds disbursed that overlap. For example, if the same sample is used for both disbursements and eligibility, the auditor would add

narrative to the “#” and “\$” columns indicating that only one sample was selected for both disbursements and eligibility.

			Sample (s)	Sample(s)	Population for Each Sample	Population for Each Sample
Sample Description	Related Compliance Requirement(s)	OPEID	Students Receiving Pell (#)	Pell Disbursed (\$)	Students Receiving Pell (#)	Pell Disbursed (\$)

2. For audit procedures related to tests that may identify improper payment disbursements and returns of Direct Loan funds (i.e., tests related to Eligibility, Cash Management, Verification, Disbursements to or on Behalf of Students, Return of Title IV Funds, and Distance Education), the auditor must provide the following if these procedures are tested at the student-level:

- a. A description of each sample drawn and details of the sample, including the number of sampled students that received Direct Loan funds and amount of Direct Loan funds disbursed to these sampled students for the period tested;
- b. The number of students that received Direct Loan funds and amount of Direct Loan funds disbursed for the population from which the sample was drawn for the period tested by sample drawn.

If these procedures (i.e., tests related to Eligibility, Cash Management, Verification Disbursements to or on Behalf of Students, Return of Title IV Funds, and Distance Education), are **not** tested at the student-level, the auditor must provide the following:

- a. A description of each sample drawn and details of the sample, including the amount of Direct Loan funds sampled for the period tested;
- b. The amount of Direct Loan funds disbursed for the population from which the sample was drawn for the period tested by sample drawn.

For samples and populations related to Return of Title IV Funds, the total Direct Loan disbursed to the students is required even though the Return of Title IV Funds questioned costs identified from testing of the sample are based on the refunds.

If samples were drawn by OPEID number, provide the sample and population details by OPEID number (an eight-digit number). If this information is not available by OPEID, provide the aggregated sample and population amounts for the institution as a whole. If there is overlap in the samples and/or populations between compliance requirements and/or OPEIDs, provide the number of students and amount of Direct Loan funds disbursed that overlap. For example, if the same sample is used for both disbursements and eligibility, the auditor would add narrative to the “#” and “\$” columns indicating that only one sample was selected for both disbursements and eligibility.

			Sample(s)	Sample(s)	Population For Each Sample	Population For Each Sample
Sample Description	Related Compliance Requirement	OPEID	Students Receiving Direct Loan (#)	Direct Loan Disbursed (\$)	Students Receiving Direct Loan (#)	Direct Loan Disbursed (\$)

- For each finding related to disbursements or returns of Pell and/or Direct Loans, the auditor must provide the portion of the finding that relates to the Pell and Direct Loan programs, respectively, by unique sampled student and OPEID combination. The amounts should represent the difference between the amount of Pell and/or Direct Loan funds that should have been disbursed or returned and the actual amount of funds disbursed or returned, regardless of whether the noncompliance was subsequently corrected by the institution after the error was identified as part of the audit. Also, provide the amount of Pell and Direct Loans disbursed to the students in question. Assign a unique identifier for each student (e.g., Student 1, Student 2) identified. Do not use the institutionally assigned number or Social Security Number.

Finding Number, and Related Sample	Related Compliance Audit Requirement	Student Identifier	OPEID	Pell Disbursed (\$)	Pell Under-payment (\$)	Pell Over-payment (\$)	Direct Loan Disbursed (\$)	Direct Loan Under-payment (\$)	Direct Loan Over-payment (\$)

Although auditors are not required to report all noncompliance as audit findings for amounts below \$25,000, ED requests that the following information also be provided for noncompliance that was not reported as an audit finding. Although providing this information is optional, including it may reduce the potential for subsequent information requests in accordance with Uniform Guidance 2 CFR 200.517(b) and Title IV regulations at 34 CFR 668.23(e)(1)(ii). This information should be sent to [FSAPellandDLReporting@ed.gov](mailto:FSAPellandDLReporting@ed.gov).

If any instances of noncompliance relating to disbursements or returns of Pell and/or Direct Loan funds are identified but not reported as audit findings, because they did not meet the reporting thresholds at 2 CFR 200.516(a)(3), provide a summary of the noncompliance and amount of over or underpayment of Pell and/or Direct Loan by student using instructions in item three above. These amounts should represent the difference between the amount of Pell and/or Direct Loans that should have been awarded or returned and the actual amount of funds awarded or returned, regardless of whether the error was subsequently corrected. Also, provide the amount of Pell and Direct Loans disbursed to the affected students for the period reviewed. Assign a

unique identifier for each student (e.g., Student 1, Student 2) identified. Do not use the institutionally assigned number or Social Security Number.

Finding Number, and Related Sample	Related Compliance Audit Requirement	Student Identifier	OPEID	Pell Disbursed (\$)	Pell Under-payment (\$)	Pell Over-payment (\$)	Direct Loan Disbursed (\$)	Direct Loan Under-payment (\$)	Direct Loan Over-payment (\$)

**A. Activities Allowed or Unallowed**

SFA funds can be awarded only to students enrolled in eligible programs or eligible coursework (e.g., preparatory coursework). Some eligible programs are listed on an institution’s Eligibility and Certification Approval Report (ECAR). Other programs are eligible without obtaining ED’s approval in advance or being listed on the ECAR if they lead to an associate, baccalaureate, professional, or graduate degree (as long as the institution is already approved to offer education at that level) or are at least eight semester hours, 12 quarter hours, or 300 clock hours offered during a minimum of 10 weeks of instruction, and the institution does not meet any of the limitations outlined in the *FSA Handbook*, Volume 2, Chapter 5 and below (34 CFR 600.10(c)(2)). The institution must always report a program, and ED must always determine the program’s eligibility, when:

- the institution has been provisionally certified,
- the institution is receiving funds under heightened cash monitoring,
- progress in the program is measured by direct assessment (unless ED has previously approved a direct assessment program at the institution at the same level of offering),
- the institution is subject to the two-year rule under 34 CFR 600,
- the program is a comprehensive transition and postsecondary program,
- it is an undergraduate program of 300–599 clock hours and admits as regular students those who have not completed the equivalent of an associate degree (i.e., a short-term program), or
- ED has informed the institution that it must request approval before adding additional programs.

Before it self-certifies, these programs to be eligible and disburses funds to enrolled students, the institution must have received both the required state and accrediting agency approvals. For new gainful employment programs, the institution must update the ECAR within 10 days of providing Title IV aid to students in the program ([34 CFR 600.21\(a\)\(11\)](#)).

SFA funds can be used for making awards to students, for administration of the programs, and other allowable uses for specific programs as follows.

The Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Health Professions Student Loans/Primary Care Loans /Loans for Disadvantaged Students, and Nurse Faculty Loan program. Allow for certain activities as follows:

1. *Federal Work-Study (Assistance Listing 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 675.41(a)), administrative costs, and transfers of up to 25 percent of an institution's allocation to FSEOG (34 CFR 675.18 and 675.33).

Note: Under Section 3503 of the CARES Act, a school is permitted to transfer up to 100 percent of its unexpended FWS allocation to FSEOG through the end of the payment period that includes the last date that the COVID-19 national emergency is in effect, which began on March 13, 2020.

2. *Federal Supplemental Educational Opportunity Grant (Assistance Listing 84.007)*

An institution may transfer up to 25 percent of its FSEOG financial allotment to the institution's FWS program (Section 488 of HEA (20 USC 1095)).

3. *Health Professions Student Loans/Primary Care Loans /Loans for Disadvantaged Students (Assistance Listing 93.342) and Nursing Student Loans (NSL) (Assistance Listing 93.364)*

Funds from both programs may also be used for capital distribution as provided in sections 728 and 839, or, 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 loan funds (HPSL/PCL/LDS, 42 CFR 57.205(a); NSL, 42 CFR 57.305(a)).

4. *Nurse Faculty Loan Program (NFLP) (Assistance Listing 93.264)*

Funds may be used for capital distribution under 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 5311 or, 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 loan funds.

## **C. Cash Management**

*SFA Title IV Programs:* An institution requests funds from ED under the advance, reimbursement, or heightened cash monitoring payment methods. ED has sole discretion



to determine the method an institution must use to request funds. An institution's Program Participation Agreement will indicate whether the institution has been placed on the reimbursement or heightened cash monitoring payment method. An institution could have had more than one Program Participation Agreement during a given payment period in that it could have been placed on or taken off of the reimbursement or heightened cash monitoring payment method at any point during the fiscal year.

The advance payment method is the most widely used method for requesting funds. It permits, but does not require, institutions to draw down Title IV funds prior to disbursing funds to eligible students and parents, or for other allowable activities. The institution's request must not exceed the amount it immediately needs for disbursements the institution has made or will make to eligible students or parents, or for other allowable activities. A disbursement of funds occurs on the date an institution credits a student's account or pays a student or parent directly with either Title IV funds or institutional funds used in advance of drawing down federal funds. The institution must make the disbursements as soon as administratively feasible, but no later than three business days following the receipt of funds (34 CFR 668.162(b)(3)).

ED considers excess cash to be any amount of Title IV funds, other than Perkins Loans funds, because Perkins Loans are no longer made to students, that an institution does not disburse to students or parents by the end of the third business day following the date the institution (1) received those funds from ED or (2) deposited or transferred to its depository account previously disbursed Title IV funds received from ED, such as those resulting from award adjustments, recoveries, or cancellations (34 CFR 668.166(a)). However, an excess cash balance tolerance is allowed if that balance (1) is less than 1 percent of its prior-year drawdowns and (2) is eliminated within the next seven calendar days (34 CFR 668.166(a) and (b)). Aggregate interest earnings greater than \$500 must be remitted to the HHS no later than 30 days after the end of the award year (34 CFR 668.163(c)(3)).

Under the reimbursement payment method, an institution must credit a student's ledger account for the amount of Title IV program funds that the student or parent is eligible to receive and pay the amount of any credit balance due under 34 CFR 668.164(h), before the institution seeks reimbursement from the secretary for those disbursements. An institution seeks reimbursement by submitting to the secretary a request for funds that does not exceed the amount of the disbursements the institution has made to students or parents included in that request using Form 270 (OMB 1845-0089).

As part of its reimbursement request, the institution must (1) identify the students or parents for whom reimbursement is sought; and (2) submit to the secretary, or an entity approved by the secretary, documentation that shows that each student or parent included in the request was eligible to receive and has received the Title IV program funds for which reimbursement is sought and that the student was paid directly any credit balance due under section 668.164(h).

The secretary will not approve the amount of the institution's reimbursement request for a student or parent and will not initiate an EFT of that amount to the depository account

designated by the institution, if the secretary determines with regard to that student or parent, and in the judgment of the secretary, that the institution has not (1) accurately determined the student's or parent's eligibility for Title IV program funds; (2) accurately determined the amount of Title IV program funds disbursed, including the amount paid directly to the student or parent; and (3) submitted the required documentation. (See 34 CFR 668.162(c) for full requirements.)

Under the heightened cash monitoring payment method, the institution must credit a student's ledger account for the amount of Title IV program funds that the student or parent is eligible to receive and pay the amount of any credit balance due under 34 CFR 668.164(h) before the institution submits a request for funds from ED subject to the requirements at 34 CFR 668.162(d), as summarized below.

There are two types of heightened cash monitoring—Heightened Cash Monitoring 1 and Heightened Cash Monitoring 2. Under Heightened Cash Monitoring 1, an institution may request funds under the advance payment method with requests limited to the amount actually disbursed to students. Heightened Cash Monitoring 2 is similar to the reimbursement method of requesting funds except that Heightened Cash Monitoring 2 does not require the same level of documentation to support the request for funds. An institution placed on Heightened Cash Monitoring 2 cannot simply draw down funds as an Heightened Cash Monitoring 1 institution can. After it makes disbursements to students and parents from institutional funds, it must submit a payment request to ED and include a completed Form 270 (OMB 1845-0089). It must also include a completed data spreadsheet that identifies the students and parents for whom it is seeking reimbursement. This must be in the format specified by ED, which may tailor the documentation requirements for institutions on a case-by-case basis. Finally, the institution must include documentation that each student and parent included in the request was eligible to receive and did receive the funds for which reimbursement is sought.

(See Chapter 1, “Requesting & Managing FSA Funds” in Volume 4, of the *FSA Handbook*, for guidance on the funding methods. The handbook may be accessed at: <https://fsapartners.ed.gov/knowledge-center/fsa-handbook>.)

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 Heightened Cash Monitoring 2 payment method, submitting a Form 270, *Request for Title IV Reimbursement or Heightened Cash Monitoring 2 (HCM2)* (OMB No. 1845-0089) to an ED program or regional office through ED's Common Origination and Disbursement (COD) System. For institutions not on the reimbursement or Heightened Cash Monitoring 2 payment methods, when creating a payment request in G5, the grantee enters the drawdown amounts, by award, directly into G5. Institutions not on reimbursement or Heightened Cash Monitoring 1 or 2 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.

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/>; under the “Payment” tab) 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. Auditors will need to work with the institution being tested to obtain access to G5. Note: ED will be transitioning from the DUNS 9-digit number to the Unique Entity Identifier (UEI), a 12-character, alphanumeric identifier, by April 2022. The General Services Administration (GSA) is leading this effort to replace the DUNS with the UEI for the Federal Government using their SAM.gov system.

For the HHS programs, requests for new FCC must only be made when needed. Any monies associated with the fund must be deposited in an income-producing account and all excess cash, including interest earned in excess of \$500 in the aggregate, must be returned to HHS.

For Health Professions Student Loans (HPSL)/Primary Care Loans (PCL)/Loans for Disadvantaged Students (LDS), and Nursing Student Loans (NSL), the institution must maintain all monies relating to each individual fund in interest bearing accounts. If the institution integrates the funds with other institution resources for investment purpose, the institution must maintain separate accountability and reimburse the funds for any losses that occur (HPSL/PCL/LDS 42 CFR 57.203 and 57.205; NSL, 42 CFR 57.303 and 57.305).

For NFLP (Assistance Listing 93.294), the institution must maintain all monies relating to each individual fund in interest-bearing accounts. Any monies associated with the fund must be deposited in an income-producing account and all excess cash, including any interest earned in excess of \$500 in the aggregate, must be returned to HHS. Unused loan funds should be retained in the loan fund for making additional loans. However, unused NFLP funds must be used within 18 calendar months from the end of the NFLP designated budget period. The unused accumulation (cash balance) in the NFLP fund must be reported annually. The NFLP loan fund may be voluntarily or involuntarily terminated if the unused accumulation is deemed excessive. If an institution is determined to have an excessive unused accumulation, future awards may be affected (Program Guidance, Overview of Institutional Management of NFLP Funds <https://bhw.hrsa.gov/funding/schools-manage-loan-programs>).

## **E. Eligibility**

### **1. Eligibility for Individuals**

- a. Most of the requirements for student eligibility are contained in Appendix A (located after Section IV, “Other Information,” of this Part 5).

In the process of a student applying for ED federal financial aid, an ISIR is sent electronically to the institution and a SAR, or information on how to access the SAR, is 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, 9, 10, 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 at [The ISIR Guide, 2021-2022 - July 2020 \(ed.gov\)](#). The ISIR Guide changes annually and should be obtained and reviewed for the period under audit.

(1) *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 nonfederal aid (need and non-need based aid) to ensure that total aid is not awarded in excess of the student's financial need or cost of attendance (34 CFR 668.42, FWS, and FSEOG, 34 CFR 673.5 and 673.6; Direct Loan, 34 CFR 685.301). 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 686.21(d)). An IASG-eligible student who has an EFC that does not meet the need-based criteria for a Pell grant can receive a non-need-based IASG, but the (1) award may not exceed the student's cost of attendance (COA) and (2) IASG is not considered estimated financial assistance (20 USC 1070h).

The determination of need-based SFA award amounts is based on financial need. Financial need is generally defined as the student's COA minus financial aid awarded to the student. For Title IV programs, the first financial aid available is the 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 a limited allowance for room and board in a student's COA for students who are less than half-time students. In this context, a limited allowance for room and board is an allowance for up to three semesters (or equivalent), with no more than two of the semesters being consecutive at any one institution (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; when 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.

A crossover payment period is one that includes both June 30 and July 1 overlapping two award years. If a student enrolls in a crossover payment period, the institution must consider the crossover payment period to occur entirely within one award year and must have a valid SAR or valid ISIR for the selected award year. The choice of which award year the institution assigns to a crossover payment period (“header” or “trailer”) must be outlined in the institution’s Pell Grant crossover payment period policy and can be made on a student-by-student basis. The crossover payment period may be assigned to a different award year for Pell Grant purposes than the award year used for the student’s other Title IV aid for that period. See Volume 3 of the *FSA Handbook* for additional information on crossover payment periods.

Additional program specific individual eligibility requirements can be found at the following: *20 USC 1087ll-1087mm; FWS, 34 CFR section 675.9; FSEOG, 34 CFR section 676.9; Direct Loan, 34 CFR sections 685.200 and 301; Pell, 34 CFR section 690.75; HPSL/PCL/LDS, 42 USC 293a(d)(2); 42 CFR section 57.206(b); NSL, 42 USC 297n-1(c)(2); 42 CFR section 57.306(b); NFLP, Affordable Care Act, Section 5311 and Program Guidance.*

(2) *Federal Pell Grant (Assistance Listing 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 Schedule provides the maximum scheduled award a student would receive for a full academic year as a full-time student based on their EFC and COA. The Disbursement Schedules are used to determine annual awards for full-time, three-quarter time, half-time, and less-than-half-time students. All Schedules, however, are based on the COA of a full-time student for a full academic year (see Chapter 3 in Volume 3, Calculating Pell and Iraq & Afghanistan Service Grant Awards, 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). Disbursement schedules for 2020–2021 and 2021–2022 award years can be found at the following links:

<https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2020-01-31/2020-2021-federal-pell-grant-payment-and-disbursement-schedules>; and,

<https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2021-01-22/2021-2022-federal-pell-grant-payment-and-disbursement-schedules>.

Students that receive Pell or IASG may not receive more than six Scheduled Awards (12 semesters, or the equivalent) as measured by the percentage of “lifetime eligibility used” (LEU) field in COD (tracked by ED) (20 USC 1070a(c)(5)). The LEU maximum percentage for student eligibility is 600 percent.

The steps to determine Pell awards are as follows:

- (a) Determine the student’s enrollment status (full-time, three-quarter time, half-time, or less than-half-time) in accordance with the requirements under definitions of those terms in 34 CFR 668.2(b). Note that for nonterm credit and clock hour programs, students are always considered to be full-time for Pell Grant purposes except to the extent that fewer cost of attendance components are included in the calculation of a Pell Grant award for less-than-half-time students (see Chapter 3 in Volume 3, *Calculating Pell and Iraq & Afghanistan Service Grant Awards*, of the *FSA Handbook* for more information). There are also special considerations for determining enrollment status for students enrolled in correspondence courses, as described under 34 CFR 690.8.
- (b) 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 for a limited duration.

- (c) Determine the annual award, based on the cost of attendance calculated above and the EFC, from the Payment and Disbursement Schedule for the student's enrollment status (i.e., full-time, three quarter-time, half-time, or less than half-time).
- (d) Determine the payment period. For term programs (semester, trimester, quarter), the payment period is the term.
- (e) 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 or for students enrolled in correspondence courses (34 CFR 690.62 through 690.66. Also see Chapter 3 in Volume 3, *Calculating Pell and Iraq & Afghanistan Service Grant Awards*, of the *FSA Handbook*).
- (f) Disburse funds at prescribed times (this is tested under III.N. 2, "Special Tests and Provisions - Disbursements To or On Behalf of Students") (34 CFR 690.61 through 690.66, and 690.75 through 690.76; Pell Grant Payment Schedules; General Provisions regulations, part 668, subpart K, and *FSA Handbook*).

### **Additional Pell Grant Award Eligibility**

Under the Year Round Pell Grant provisions, to be eligible for the additional Pell Grant funds, the student must be otherwise eligible to receive Pell Grant funds for the payment period and must be enrolled at least half-time, in accordance with 34 CFR 668.2(b), in the payment period(s) for which the student receives the additional Pell Grant funds in excess of 100 percent of the student's Pell Grant Scheduled Award.

For a student who is eligible for the additional Pell Grant funds, the institution must pay the student all of the student's eligible Pell Grant funds, up to 150 percent of the student's Pell Grant Scheduled Award for the award year. Note that the provisions of the new law state that any Pell Grant received will be included in determining the student's Pell Grant duration of eligibility and Lifetime Eligibility Used (LEU) in accordance with section 401(c)(5) of the HEA (also see Dear Colleague Letter GEN-13-14 at <https://fsapartners.ed.gov/knowledge-center/library/dear->

[colleague-letters/2013-05-16/gen-13-14-subject-federal-pell-grant-duration-eligibility-and-lifetime-eligibility-used](#)).

- (3) *Postsecondary Education Scholarships for Veteran's Dependents (Iraq and Afghanistan Service Grant) (Assistance Listing 84.408)*

A non-Pell eligible student whose parent or guardian died as a result of US military service in Iraq or Afghanistan after September 11, 2001, can receive an IASG grant. The student must have been less than 24 years old or, if 24 years old or older, enrolled in at an institution of higher education when the parent or guardian died. The amount of the grant is specified by ED annually. All other Pell requirements apply but, unlike Pell Grants, these non-need-based grants do not count as estimated financial assistance (20 USC 1070h; *FSA Handbook*, Volume 1, Chapter 6; and electronic announcement dated November 6, 2009 (<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2009-11-06/general-subject-operational-implementation-increased-title-iv-student-assistance-children-certain-deceased-members-us-military>)).

- (4) *Campus-Based Programs (FWS, FSEOG) (Assistance Listing 84.033, Assistance Listing 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.

The FSEOG program provides grants to eligible undergraduate students who have not previously earned a bachelor's or first professional degree. Priority is given to Pell Grant 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 676.10 and 676.20).



(5) *TEACH Grants (Assistance Listing 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 an elementary school, secondary school, or educational service agency serving primarily disadvantaged populations for four years within eight years of graduation. The aggregate amount of TEACH Grants that a student 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 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 686.21).

(6) *Direct Loans (Assistance Listing 84.268)*

In determining loan amounts for Direct Subsidized 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. Direct Unsubsidized Loans, Direct PLUS Loans, TEACH Grants, loans made by an institution to assist the student, and state-sponsored loans may be used to replace the EFC (34 CFR 685.102(b)). A financial aid administrator may use professional judgment to offer a Direct Unsubsidized Loan (but no other Title IV aid) to a dependent student whose parents do not support the student and who refuse to complete a FAFSA (20 USC 1087(a)).

The annual loan limits apply to the length of the institution's academic year. Except for Direct PLUS loans and Direct Unsubsidized Loans made to graduate or professional students, proration of the annual loan limit 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 annual loan limits for a borrower who received an associate or bachelor's degree and has re-enrolled in another eligible program

for which the prior degree is a prerequisite, the grade level determination includes the number of years that a student has completed in the previously completed program of undergraduate study.

### **Annual Limits for Direct Subsidized Loans and Direct Unsubsidized Loans**

Direct Subsidized Loans and Direct Unsubsidized Loans have annual loan limits that vary based on the student's grade level and (for Direct Unsubsidized Loans) dependency status (34 CFR 685.203). The annual loan limit is the maximum amount that a student may receive for an academic year.

For undergraduate students there is a combined annual loan limit for Direct Subsidized Loans and Direct Unsubsidized Loans, of which not more than a specified amount may be comprised of Direct Subsidized Loans (“annual subsidized maximum”).

For dependent undergraduate students (excluding dependent undergraduates whose parents are unable to borrow Direct PLUS Loans), the combined Direct Subsidized Loan and Direct Unsubsidized Loan annual loan limits are (34 CFR 685.203(a) and (b):

- \$5,500 for **dependent first-year undergraduates**, not more than \$3,500 of which may be subsidized;
- \$6,500 for **dependent second-year undergraduates**, not more than \$4,500 of which may be subsidized; and
- \$7,500 for **dependent third-, fourth-, and fifth-year undergraduates**, not more than \$5,500 of which may be subsidized.

For independent undergraduate students (and for dependent undergraduate students whose parents are unable to obtain Direct PLUS Loans), the annual loan limits are (34 CFR 685.203(a) and (c):

- \$9,500 for **independent first-year undergraduates**, not more than \$3,500 of which may be subsidized;
- \$10,500 for **independent second-year undergraduates**, not more than \$4,500 of which may be subsidized; and

- \$12,500 for **independent third-, fourth-, and fifth-year undergraduates**, not more than \$5,500 of which may be subsidized.

Note that the annual subsidized maximum is the same for both dependent and independent undergraduate students. However, the combined subsidized/unsubsidized annual loan limits are higher for independent undergraduates and for dependent undergraduates whose parents are unable to borrow Direct PLUS Loans.

An undergraduate student who is not eligible for a Direct Subsidized Loan may receive up to the total combined subsidized/unsubsidized annual loan limit in Direct Unsubsidized Loans.

For undergraduate students, the annual loan limit must be prorated if the student is enrolled in a program (or in the remaining portion of a program) that is less than an academic year in length. (For details on loan proration requirements, see Volume 3, Chapter 5, of the *FSA Handbook*. The *FSA Handbook* is available at <https://fsapartners.ed.gov/knowledge-center/fsa-handbook>.)

For graduate and professional degree students, there is an annual loan limit only for Direct Unsubsidized Loans (graduate and professional students are not eligible to receive Direct Subsidized Loans). The annual loan limit for graduate and professional students is \$20,500 in Direct Unsubsidized Loans (34 CFR 685.203(b)(2)(iii) and 685.203(c)(2)(v)).

There are higher Direct Unsubsidized Loan annual loan limits for graduate and professional students who are enrolled in certain health professions programs. (For details on the increased annual loan limits for certain health professions students, see Volume 3, Chapter 5, of the *FSA Handbook*. The *FSA Handbook* is available at <https://fsapartners.ed.gov/knowledge-center/fsa-handbook>.)

### **Aggregate Loan Limits for Direct Subsidized Loans and Direct Unsubsidized Loans**

Under 34 CFR 685.203(d) and (e) the aggregate loan limits for Direct Subsidized Loans and Direct Unsubsidized Loans (a borrower's maximum allowable outstanding loan debt, excluding capitalized interest, but including amounts borrowed under the Federal Family Education Loan program prior to 2010) are:

- \$31,000 for **dependent undergraduate students** (except for dependent students whose parents are unable to borrow

Direct PLUS Loans), not more than \$23,000 of which may be subsidized;

- \$57,500 for **independent undergraduate students** (and for dependent students whose parents are unable to borrow Direct PLUS Loans, not more than \$23,000 of which may be subsidized; and
- \$138,500 for **graduate and professional students**, not more than \$65,500 of which may be subsidized. The total \$138,500 limit includes loans for undergraduate study. The \$65,500 subsidized maximum includes subsidized loans received for undergraduate study and subsidized loans received by graduate and professional students for periods of enrollment beginning before July 1, 2012, when graduate and professional students were eligible to receive subsidized loans.

### **Direct PLUS (PLUS)**

Direct PLUS Loans are available to parents of dependent undergraduate students and to graduate and professional students (34 CFR 685.200(b) and (c)(2)). A parent or graduate/professional student with an adverse credit history is prohibited from obtaining a Direct PLUS Loan unless he or she meets additional criteria. 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.

There are no fixed annual or aggregate loan limits for Direct PLUS Loans. A Direct 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 (34 CFR 685.101(b), 685.200, and 34 CFR 685.203(f), (g), (h) and (j) also apply).

#### b. *HHS Programs*

In determining the financial resources available for the HHS programs, the institution must use one of the need analysis systems or any other procedures approved by the secretary of education. The institution must also take into account other information that it has regarding the student's financial status. 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 institution. The institution

must document the criteria used for determining these costs (HPSL, PCL, and LDS, 42 CFR 57.206; NSL, 42 CFR 57.306(b)); NFLP, Affordable Care Act, Section 5311, and Program Guidance).

**Health Professions Student Loans/Primary Care Loans)/Loans for Disadvantaged Students (Assistance Listing 93.342), Nursing Student Loans (Assistance Listing 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 57.207). For students who are applying for a HPSL/PCL/LDS loan, the institution 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 (GI) Benefits, and earnings during the institution year (HPSL/PCL/LDS, 42 CFR 57.206(c)). For periods after November 13, 1998, the total amounts of HPSL/PCL/LDS loans to a student for an institution 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 an institution of medicine or osteopathic medicine, be increased to pay balances of loans that were made to the individual for attendance at the institution (42 CFR 57.210; Pub. L. No. 105-392, 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).

(1) *Nurse Faculty Loan Program (NFLP) (Assistance Listing 93.264)*

The total amount of NFLP loans made to a student for an institution year may not exceed \$35,500 for a maximum of five years to support the cost of tuition, fees, books, laboratory expenses and other reasonable education expenses. 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 loan, the student must be enrolled full-time or part-time in an eligible graduate (master's and doctoral) nursing education program at the institution. The institution must make its selection of 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 the institution of nursing student loan funds that support doctoral nursing students. Institutions 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).

(2) *Scholarships for Disadvantaged Students (Assistance Listing 93.925)*

Individual student awards must be at least 50 percent of the student's annual tuition costs. The maximum amount of \$30,000 must be awarded for students whose tuition is more than \$60,000; however, no student can be awarded SDS funds greater than \$30,000 in a given year. Scholarships will be awarded by institutions 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 institution (42 USC 293a; Section 737, PHS Act).

**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-270, Request for Advance or Reimbursement (Form 270, Request for Title IV Reimbursement or Heightened Cash Monitoring 2 [OMB No. 1845-0089])* – Applicable to ED programs (using the G5 System). Any institution on the Reimbursement or Heightened Cash Monitoring (HCM2) funding methods must complete a Form 270 and submit it with each claim when requesting reimbursement of Title IV funds. Institutions can submit one form for all Title IV programs request/authorization. An ED Method of Payment analyst would ensure that each Form 270 is:

- Completed appropriately for the funds requested on the student spreadsheet
- Includes President/Owner/Chief Executive Officer Certification with signature and date

- Includes Comptroller or Third-Party Servicer Certification with signature and date
  - For institutions on either HCM2 or Reimbursement funding, auditors are supposed to select a sample of HCM2 or Reimbursement requests submitted to ED for payment.
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable for ED programs; Applicable for HHS programs
- d. *Common Origination and Disbursement (COD) System (OMB No. 1845-0039).*

#### *SFA – Title IV Programs*

Institutions submit Direct Loan, Pell Grant, TEACH Grant, and IASG origination records and disbursement records to the COD system. Origination records can be sent well in advance of any disbursements, as early as the institution chooses to submit them for any student the institution reasonably believes will be eligible for a payment. An institution follows up with a disbursement record for that student no earlier than (1) seven calendar days prior to the disbursement date under the Advance or Heightened Cash Monitoring 1 payment methods, or (2) the date of the disbursement under the Reimbursement or Heightened Cash Monitoring 2 Payment Method (see [Federal Register, Volume 85, Number 134, July 14, 2020](#)). 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 institution. The acknowledgments identify the processing status of each record: Rejected, Accepted with Corrections, or Accepted. In testing the 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 disbursement data within 15 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported student disbursement data or expected student disbursement data. Institutions may do this by reporting once every 15 calendar days, bi-weekly or 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, if applicable, are: Social Security number, award amount, enrollment date, verification status code (when applicable), 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 (34 CFR 690.83; *FSA Handbook*, technical references on obtaining reports for each award year are located at <https://fsapartners.ed.gov/knowledge-center/library/system-technical->

[references/2020-11-24/2021-2022-cod-technical-reference](#) COD Technical Reference; choose the award year, Volume VI, appendices, Section 7).

## 2. Performance Reporting

Not Applicable

## 3. Special Reporting

*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 institution 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. By October 1, 2021, the institution should submit its FISAP that includes the *Fiscal Operations Report* for the award year 2020–2021 and the *Application to Participate* for the 2021–2022 award year (FWS, FSEOG 34 CFR 673.3; *Fiscal Operations Report and Application to Participate Instructions*).

*Key Line Items* – The following line items contain critical information:

Part I, Identifying Information, Certification, and Warning

Part II, Application to Participate

- Information on enrollment
- Assessments and expenditures
- Information on eligible aid applicants

Part III, Fiscal Operations Report

- All sections

Part IV, Fiscal Operations Report Federal Supplemental Educational Opportunity Grant (FSEOG) Program

- All sections

Part V, Fiscal Operations Report 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)



#### 4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

### N. Special Tests and Provisions

#### 1. Verification

**Compliance Requirements** An institution is required to establish written policies and procedures that incorporate the provisions of 34 CFR 668.51 through 668.61 for verifying applicant information for those applicants selected for verification by ED. The institution shall require each applicant whose application is selected by ED to verify the information required for the Verification Tracking Group to which the applicant is assigned.

However, certain applicants are excluded from the verification process as listed in 34 CFR 668.54(b). A menu of potential verification items for each award year is published in the *Federal Register*, and the items to verify for a given application are selected by ED from that menu and indicated on the student's output documents. Verification tracking groups and verification items for each award year can also be found in the annual *FSA Handbook*, Application and Verification Guide, Chapter 4. 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 and provide an accurate code for the individual's verification status in the Common Origination and Disbursement (COD) system. (34 CFR 668.54(a); *FSA Handbook* Application and Verification Guide, Chapter 4).

Note: For the 2021–2022 processing year, the requirement for verification of most Free Application for Federal Student Aid/Institutional Student Information Record (FAFSA®/ISIR) information was waived by ED due to COVID-19, except for Identity/Statement of Educational Purpose and High School Completion Status under Verification Tracking Groups V4 and V5, as outlined in Dear Colleague Letter [GEN-21-05](#). However, this waiver does not exempt institutions from resolving conflicting information if concerns arise.

**Audit Objectives** Determine whether the institution established policies and procedures to verify information in student aid applications selected by ED and verified applications were in compliance with the verification requirements, made corrections, and reported the verification status, as applicable, in accordance with the requirements.

#### Suggested Audit Procedures

- a. Review the institution's policies and procedures for verifying student applications selected by ED and verify that they meet the requirements of 34 CFR 668.53.
- b. Select a sample of applications that were selected by ED for verification and review the student aid files for those applications to ascertain that the institution (1) obtained acceptable documentation to verify the information required for the Verification Tracking Group to which the applicant is assigned; (2) matched information on the documentation to the student aid application; (3) if necessary,

submitted data corrections to the central processor and recalculated awards and (4) correctly coded the student's verification status in the Common Origination and Disbursement (COD) system for Pell Grants.

## **2. Disbursements to or on Behalf of Students**

### **Compliance Requirements**

#### *SFA - Title IV Programs*

#### *Title IV Programs – General*

Disbursements may only be made to eligible students (see Eligibility Compliance Requirement). At the time an institution makes a disbursement to a student, it must confirm that the student is eligible for the funds being disbursed (34 CFR 668.164(b)(3)). With the exception of FWS, disbursements are made on a payment period basis and the disbursement must be made during the current payment period (34 CFR 668.164(b)(1)). There are three types of payment periods that an institution may use—payment periods that measure progress in credit hours and use standard terms; payment periods that measure progress in credit hours and use non-standard terms; and payment periods that measure progress in credit hours and does not have academic terms or for a program that measures progress in clock hours (34 CFR 668.4 Payment period). An institution may make early or late disbursements under limited circumstances provided for at 34 CFR 668.164 sections (i), (j), and (k).

An institution may credit a student's ledger for only allowable costs and, unless on the reimbursement or Heightened Cash Monitoring 1 or 2 payment method, with the student or parent's authorization, retain a credit balance for each disbursement. An institution on the reimbursement or Heightened Cash Monitoring 1 or 2 payment method must disburse credit balances to students whether or not the institution has an authorization to hold the credit balance and must disburse the credit balance to the student prior to requesting funds from ED.

Note: Due to COVID-19, IHEs that are on HCM1 under section 668.162(d)(1), the secretary temporarily modified the cash management requirements to permit those institutions to submit a request for funds without first paying the credit balances due to the students for whom those funds were requested. This flexibility extends through the end of the payment period that begins after the date on which the federally declared national emergency related to COVID-19 is rescinded.

- 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 668.4(a)). (Non-standard terms are substantially equal in length if no term is more than two weeks of instructional time longer than any other term (34 CFR 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 668.4(b)):
- (1) For Pell Grant, IASG, FSEOG, and TEACH Grants, the payment period is the academic term.
  - (2) For 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 668.4(c)):
- (1) If the program is one academic year or less in length (a) 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; and (b) 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 more than half but less than a full academic year in length (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 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 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, 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 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 668.4(g)). (See exception to this general rule in 34 CFR 668.4(g)(3).)

- e. 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 or module for which the disbursement is intended (34 CFR 668.164(i)). (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 tenth day before the first day of classes (34 CFR 668.164(a)(2)). There are two exceptions to this rule. First, institutions may not disburse or deliver the first installment of Direct Loans to first-year undergraduates who are first time borrowers until 30 days after the student's first day of classes (34 CFR 668.164(i)(2)), 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 Direct Loan program, the day the student completed the previous payment period (34 CFR 668.164(i)(1)). The excepted circumstances for Direct Loan programs are described in 34 CFR 685.303(d)(3)(ii), (d)(5), and (d)(6) (34 CFR 668.164(i)).

In addition, for subscription-based programs as defined under [34 CFR 668.2](#), the earliest an institution may disburse title IV, HEA funds to an eligible student or parent is the later of 10 days before the first day of classes in the payment period or the date the student completed the cumulative number of credit hours associated with the student's enrollment status in all prior terms attended (34 CFR 668.164(i)(1)(iii)). (See *Federal Register*, Volume 85, Number 171, September 2, 2020).

- 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 15 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 685.303(b)(5)).

- g. The institution must notify the student, or parent, in writing of (1) the date and amount of the disbursement; (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 loan funds applies only if the funds are disbursed by EFT payment or master check (34 CFR 668.165). Institutions that implement an affirmative confirmation process (as described in 34 CFR 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 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 seven 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 (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. 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 668.164(l)).

Note: As outlined under 34 CFR 668.164(l), an institution must have a process that ensures FSA funds never escheat to a state or revert to the institution or any other third party. A failure to have such a process in place would call into question an institution's administrative capability, its fiscal responsibility, and its system of internal controls required under the FSA regulations.

- i. If a student received financial aid while attending one or more other institutions, institutions are required to request financial aid history using the NSLDS Student Transfer Monitoring Process. Under this process, an institution informs NSLDS about its transfer students. NSLDS will "monitor" those students on the institution's "inform" list and alert the institution of any relevant financial aid history changes. An institution must wait seven days after it "informs" NSLDS about a transfer student before disbursing Title IV aid to that student. However, an institution 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 website. When an institution 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 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 FSEOG, (2) employ the applicant in its FWS program, or (3) originate Direct Loans (or process proceeds of previously 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 FSEOG, or may make one interim disbursement of Pell or FSEOG, 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 originate a Direct Subsidized Loan, but cannot process the proceeds. If the verification process is not completed within the time period specified, the institution shall return any subsidized loan proceeds it received. 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 668.58, 668.60(b)(3), and 668.61)).

### *Pell*

To disburse Pell funds, the institution must have received a valid ISIR from the central processor 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* (the deadline date is normally in the month of September following the end of the award year). Late disbursements of Pell for students that are now ineligible (e.g., no longer enrolled) are allowed if, before the date the student became ineligible, an ISIR or SAR was processed that contained an official EFC. 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.

When making a late disbursement or retroactive payment of Pell for a completed period, an institution determines a student's enrollment status for the completed period based only on the hours completed by the student for that period (34 CFR 690.76(b)).

The institution must review and document the student's eligibility before it disburses funds each payment period (34 CFR 690.61, 690.75, 690.76, and 668.164(b)(3)). (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.)

### *TEACH Grant*

To disburse TEACH Grant funds, the institution must ensure that the student (a) is eligible (per 34 CFR 686.11), (b) has completed the initial or subsequent counseling (required by 34 CFR 686.32), (c) has signed an agreement to serve (required by 34 CFR 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 668.4, for which he or she will be paid a grant (34 CFR 686.31). (Requirements for student eligibility are found in Appendix A.)

When making a late disbursement or retroactive payment of TEACH Grant funds for a previously completed period, an institution determines a student's enrollment status for the completed period based only on the hours completed by the student for that period (34 CFR 686.33(b)).

### *Direct Loan*

Except in the case of an allowable late disbursement (34 CFR 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. In order for an institution to disburse Direct Loan funds to a student, the student must generally be enrolled at least half-time as a regular student. However, a student may be eligible to receive Direct Loan funds if the student is enrolled at least half-time in preparatory coursework for no longer than a 12-month period under 668.32(a)(1)(ii) and 685.203(a)(6). Students may also be eligible for Direct Loan funds if they are enrolled at least half-time in teacher certification coursework under 34 CFR 685.203(a)(7).

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 request funds only for those that they have already disbursed funds to students (34 CFR 685.301 and 685.303). (See III.C, "Cash Management," for discussion of payment methods.) (Requirements for student eligibility are found in Appendix A.)

An additional requirement of the Direct Loan program is that institutions must implement a quality assurance system. Institutions also may not charge a borrower a fee of any kind for Direct Loan origination activities or the provision of any information necessary for a student or parent to receive a Direct Loan or any benefits associated with a Direct Loan (34 CFR 685.300(b)(9) and (10)). (Electronic Announcement, November 13, 2013, Direct Loan Quality Assurance Requirement Reminder, <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2013-11-13/direct-loans-subject-direct-loan-quality-assurance-requirement-reminder>.)

### *FWS*

The student's wages are earned when the work is performed. The institution shall ensure that the student is paid 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 institution-provided goods and services (34 CFR 675.16). (Requirements for student eligibility are found in Appendix A.)

### *HHS Programs*

#### *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, 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 the 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 57.209; NSL, 42 CFR 57.309). Each student loan must be evidenced by a properly executed promissory note (HPSL/PCL/LDS, 42 CFR 57.208; NSL, 42 CFR 57.308).

#### *Nurse Faculty Loan Program (NFLP) (Assistance Listing 93.264)*

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 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).

**Audit Objectives** Determine whether disbursements to students were made or returned to ED or HHS in accordance with required time frames; and whether required reviews were made and required documents and approvals were obtained before disbursing SFA funds.

Determine whether the institution has implemented a Direct Loan quality assurance system and is not charging borrowers fees of any kind for origination activities or for the provision of any information necessary for a student or parent to receive a Direct Loan or any benefits associated with a Direct Loan.

### **Suggested Audit Procedures**

- a. Using a sample of students, 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 the reimbursement or cash monitoring payment method, that the institution only requested funds from ED for students to whom the institution had already disbursed funds.

- b. For instances in the sample tested in procedure a. above where disbursements created a credit balance in the student account and the student or parent did not provide an authorization for the institution to retain funds, verify that the institution provided the credit balance amount to the student within 14 days of the date the balance was created.
- c. For instances in the sample tested in procedure a. above where disbursements created a credit balance in the student account and the institution retained the credit balance, verify that the institution was not on the reimbursement or heightened cash monitoring payment method and obtained the student or parent's authorization before retaining a credit balance. For an institution on the reimbursement or heightened cash monitoring payment method, verify that the institution disbursed the credit balance to the student prior to requesting funds from ED.
- d. Review loan or other files to verify that the institution performed required procedures and obtained required documents prior to disbursing funds.
- e. Determine whether the institution has documented its Direct Loan quality assurance system in accordance with 34 CFR 685.300(b)(9) and Electronic Announcement, November 13, 2013, Direct Loan Quality Assurance Requirement Reminder.
- f. Review the charges to students, fee schedules, and catalog, noting any charges for Direct Loan origination activities to determine whether the institution charged students fees of any kind for origination activities or for the provision of any information necessary for a student or parent to receive a Direct Loan or any benefits associated with a Direct Loan.

### **3. Return of Title IV Funds**

#### *SFA - Title IV Programs*

**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 668.22(a)(1) through (a)(5)).

A student is considered to have withdrawn from a payment period or period of enrollment (34 CFR 668.22(a)(2)) if the student does not meet one of the withdrawal exemptions and:

- For credit hour programs, a student is considered to have withdrawn if the student does not complete all the scheduled days in the payment period or period of enrollment.
- For clock hour programs, a student is considered to have withdrawn if the student does not complete all the clock hours and weeks of instructional time in the payment period or period of enrollment.
- For a student in a standard or non-standard-term program, excluding a subscription-based program, is considered to have withdrawn if he/she is not scheduled to begin another course within a payment period or period of enrollment for more than 45 calendar days after the end of the module the student ceased attending unless the student is on an approved leave of absence.
- For a student in a subscription-based or a non-term program, the student is unable to resume attendance within a payment period or period of enrollment for more than 60 days after ceasing attendance, unless the student is on approved leave of absence.

Under the September 2, 2020, final regulations, ED revised the definition of a program “offered in modules” for Title IV purposes to only include a program that uses a standard term or nonstandard-term academic calendar, is not a subscription-based program, and has a course or courses in the program that do not span the entire length of the payment period or period of enrollment (34 CFR 668.22(1)). A student is not considered to have withdrawn from a program offered in modules if the institution obtains written confirmation from the student, at the time that otherwise would have been a withdrawal, of the date that he/she will attend a module that begins later in the same payment period or period of enrollment and, for standard and non-standard-term programs offered in modules, excluding subscription-based programs, that module begins no later than 45 calendar days after the end of the module the student ceased attending.

For a subscription-based program, a student is not considered to have withdrawn if the institution obtains written confirmation from the student at the time that would have been a withdrawal of the date that he or she will resume attendance, and that date occurs within the same payment period or period of enrollment and is no later than 60 calendar days after the student ceased attendance.

For a non-term program, a student is not considered to have withdrawn if the institution obtains written confirmation from the student at the time that would have been a withdrawal of the date that he or she will resume attendance, and that date is no later than 60 calendar days after the student ceased attendance.

If the institution obtains the written confirmation, but the student does not return as scheduled, the student is considered to have withdrawn. The student's withdrawal date and the total number of calendar days in the payment period or period of enrollment are the withdrawal date and the total number of calendar days that would have applied had the student not provided written confirmation of future attendance (34 CFR 668.22(a)(2)(ii)(C)).

#### *R2T4 Withdrawal Exemptions*

Under 34 CFR 668.22(a)(2)(ii)(A), ED established withdrawal exemption criteria which, if met, allows a student who has withdrawn or otherwise ceased attendance to not be considered a withdrawn student for Title IV purposes, which means that no R2T4 calculation is required for that student. Prior to conducting an R2T4 calculation for a student who has ceased attendance during a payment period or period of enrollment, an institution should review the student's circumstances to see if the student qualifies for any of the R2T4 withdrawal exemptions.

The withdrawal exemption categories are as follows:

a. Withdrawal exemption for graduates/completers

- A student who completes all the requirements for graduation from his or her program before completing the days or hours in the period that he or she was scheduled to complete is not considered to have withdrawn

Note: Institutions with clock-hour programs in which a student graduates without successfully completing all of the established hours in the program must re-prorate the amount of Title IV aid and only pay the student for the hours successfully completed. See the 2021–2022 *FSA Handbook*, Volume 3 for more information and examples.

b. Withdrawal exemptions for programs offered in modules

- (1) A student is not considered to have withdrawn if the student successfully completes one module that includes 49 percent or more of the number of days in the payment period, excluding scheduled breaks of five or more consecutive days and all days between modules
- (2) A student is not considered to have withdrawn if the student successfully completes a combination of modules that when combined contain 49 percent or more of the number of days in the payment period, excluding scheduled breaks of five or more consecutive days and all days between modules
- (3) A student is not considered to have withdrawn if the student successfully completes coursework equal to or greater than the coursework required for

the institution's definition of a half-time student under section 668.2 for the payment period

For additional information and examples regarding withdrawal exemptions, please see the 2021–2022 *FSA Handbook*, Volume 5, Chapter 1.

### *Post-withdrawal Disbursements*

Post-withdrawal disbursements must be made from available grant funds before available loan funds (34 CFR 668.22(a)(6)). 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 668.22(a)(6)(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

- a. 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;
- b. Explains that, if the borrower does not want the loan funds credited to the student's account, it is up to the institution to decide whether it will disburse the loan funds as a direct disbursement to the borrower;
- c. Explains the obligation of the borrower to repay any loan funds disbursed; and
- d. 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 of the date the institution sent the notification (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 668.22(a)(6) and 668.164(c)).

If a student or parent accepts a post-withdrawal disbursement of loan funds, the institution must make the disbursement within 180 days after the date of the institution's determination that the student withdrew and in accordance with the request of the recipient (34 CFR 668.22(a)(6)(iii)(C) and 668.164(c)(1), (c)(2), (c)(3), and (j)).

Subject to the above, an institution may credit a student's account for minor prior-award-year charges, if not more than \$200 (34 CFR 668.164(c)(3)).

#### *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:

- a. 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);
- b. The institution itself has a requirement that its instructors take attendance; or
- c. The institution or an outside entity has a requirement that can only be met by taking attendance or a comparable process, including, but not limited to, requiring that students in a program demonstrate attendance in the classes of that program or a portion of that program (34 CFR 668.22(b)(3)).

Note: As provided in the [Department's Program Integrity Q&As for Return of Title IV Funds](#), the monitoring of whether online students log into classes does not by itself result in an institution being an institution that is required to take attendance for Title IV, HEA program purposes because monitoring logins alone is not monitoring academic engagement (as defined under 34 CFR 600.2). However, an institution that collects and maintains information about students' online activities for the purpose of tracking academic engagement is considered to be an institution that is required to take attendance for programs involving such tracking if that tracking:

- (1) Involves monitoring student attendance in a synchronous class, lecture, recitation, or field or laboratory activity, physically or online via a distance education platform, where there is an opportunity for interaction between the instructor and students; or
- (2) Is used to administratively withdraw students or to enforce an institutional attendance policy.

If an institution is not required to take attendance, the withdrawal date is (1) the date, as determined by the institution, that the student began the withdrawal process prescribed by the institution; (2) the date, as determined by the institution, that the student otherwise

provided official notification to the institution, 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 institution 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 668.22(c) and (1)).

Title IV funds may be expended only towards the education of the students who can be proven to have been in attendance at the institution. In a distance education context, documenting that a student has logged into an online distance education platform or system is not sufficient, by itself, to demonstrate attendance by the student. To avoid returning all funds for a student that did not begin attendance, an institution must be able to document "attendance at any class." To qualify as a last date of attendance for Return of Title IV purposes, an institution must demonstrate that a student participated in class or was otherwise engaged in an academically related activity, such as by contributing to an online discussion or initiating contact with a faculty member to ask a course-related question.

An institution that is required to take attendance or requires that attendance be taken on only one specified day to meet a census reporting requirement, is not considered to take attendance (34 CFR 668.22(b)(3)(iv)).

#### *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 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 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 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 non-standard 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 non-standard term-based program (34 CFR 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 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; or (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 five consecutive calendar days (including module programs that a student is not required to attend for five 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 668.22(f)).

The September 2, 2020, final regulations added a definition of the number of days a student was scheduled to complete in a module by indicating under 34 CFR 668.22(1)(9) that a student in a program offered in modules is scheduled to complete the days in a module if the student's coursework in that module was used to determine the amount of the student's eligibility for title IV, HEA funds for the payment period or period of enrollment.

When a student enrolls in a module during a payment period or period of enrollment, the student is considered to be enrolled in a program offered in modules and the institution



must determine the number of days in the denominator of the R2T4 calculation based on whether the coursework, including full-term courses, was used to determine the amount of eligibility for Title IV aid. This determination will depend on several factors:

- Whether the institution uses an R2T4 Freeze Date;
- The Title IV programs for which the student was eligible; and
- Which modules/courses the student attended during the period.

An R2T4 Freeze Date is an optional (not required) policy that uses the student's enrollment schedule at a fixed calendar point to determine the number of days the student is scheduled to attend during the period for R2T4 purposes. If the institution uses an R2T4 Freeze Date, the days in a module/course are included in the R2T4 calculation if the student attends the module/course or is enrolled in the module/course on the R2T4 Freeze Date, regardless of the types of Title IV aid awarded.

Institutions that choose to not establish an R2T4 Freeze Date will monitor changes in the student's enrollment throughout the period and which module/course days to include in the R2T4 calculation will, in part, depend on the type of Title IV aid awarded.

If the student is only eligible for Pell Grant, Iraq-Afghanistan Service Grant, and/or TEACH Grant funds during the period and the institution does not use an R2T4 Freeze Date, the days in a module/course must be included in the denominator of the R2T4 calculation only if the student actually attends the module/course.

If the student is eligible for Direct Loan or FSEOG funds during the period (regardless of eligibility for other Title IV programs) and does not use an R2T4 Freeze Date, the days in a module/course must be included in the R2T4 calculation if the student was enrolled in the module/course on the first day of the period or enrolled in the module/course at any time during the period.

For additional information, please review the 2021–2022 *FSA Handbook*, Volume 5, Chapter 2.

#### *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 668.22(g)).

Note: *Section 3508 of the CARES Act waives Return of Title IV Funds (R2T4) requirements for students whose withdrawals were related to the novel coronavirus disease (COVID-19). The CARES Act also provides that, for those students: (1) Direct Loan and TEACH Grant funds received for the period will be cancelled (Sec. 3508); (2) The period will not count toward the student's Subsidized Loan usage for purposes of the 150 percent Direct Subsidized Loan Limit (Sec. 3506); and (3) Pell Grant funds received for the period will be excluded from the student's Lifetime Eligibility Used (Sec. 3507). These waivers apply to payment periods that include March 13, 2020, through the last date of the COVID-19 national emergency. For institutions basing R2T4 calculations on a period of enrollment, the waiver may apply to a student who begins attendance in a payment period that includes the last date that the national emergency is in effect and withdraws after the conclusion of that payment period but within the applicable period of enrollment.*

For COVID-19 related guidance, including waivers and exemptions to Title IV rules, please see the following webpages:

- The Department of Education's COVID-19 Information and Resources for Schools and School Personnel: <https://www.ed.gov/coronavirus/program-information>
- Office of Postsecondary Education COVID-19 Title IV FAQ: <https://www2.ed.gov/about/offices/list/ope/covid19faq.html>

*The CARES Act requires institutions to report to ED information specific to each student for whom it was not required to return Title IV funds under the waiver exception (and for each student for which Title IV funds were previously returned and are now being redrawn). The law also requires institutions to report to ED the total amount of Title IV grant or loan assistance that was not returned as a result of the CARES Act provisions.*

*To implement this CARES Act relief for each student who withdraws as a result of the COVID-19 national emergency, ED requires the institution to:*

- Use the Coronavirus Indicator checkbox in the COD System to indicate that an aid recipient's actual disbursement(s) qualifies for Direct Loan cancellation (and the exclusion from the Direct Loan annual limits and Subsidized Loan usage calculations), or the exclusion from Pell Grant LEU calculations and TEACH Grant award limits.*
- Report the amount of SFA funds not returned under Section 3508 of the CARES Act, either by adding a Coronavirus Indicator to calculations using the R2T4 Tool for each withdrawn student who qualifies for CARES Act relief, or by reporting the total amount of funds not returned at the institution level. Both of these types of reporting are performed in the COD System. The COD System allows institutions to produce a report that lists all the disbursements that have been marked with the Coronavirus Indicator. Additional information can be found at [092320CODSystemImpInfoAddCODSysChangesSupCARESActPhaseTwoAttac](https://092320CODSystemImpInfoAddCODSysChangesSupCARESActPhaseTwoAttac)*

[h.pdf \(ed.gov\)](#). That report 1) identifies students who have been flagged as qualifying for CARES Act relief and 2) ensures that none of those funds were returned. Additional information and examples of how to identify students who have withdrawn due to COVID-19 can be found in an [Electronic Announcement published on March 19, 2021](#).

### *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 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 institution's agreements with other state agencies or private agencies (34 CFR 668.22(i)).

- a. Unsubsidized Federal Direct Stafford Loans
- b. Subsidized Federal Direct Stafford Loans
- c. Federal Direct PLUS
- d. Federal Pell Grant
- e. Iraq and Afghanistan Service Grant
- f. Federal Supplemental Educational Opportunity Grants
- g. Teacher Education Assistance for College and Higher Education 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 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 668.173(b)).

An institution that is not required to take attendance 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 668.22(j)). The institution must also notify the recipient of Title IV loans returned (34 CFR 685.306(a)(2)).

### **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 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 668.21(c)).

#### *FSEOG, TEACH Grants, Pell Grant, and IASG program funds*

If a student does not begin attendance, the institution must return all FSEOG, TEACH Grants, Pell Grant, and IASG 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 668.21(a)(1)).

#### *Direct Loan Funds*

The institution must return all Direct Loan funds that were

- a. Credited to the student's account for that payment period or period of enrollment;
- b. 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
- c. 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 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

institution), 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 685.211 (34 CFR 668.21(a)(2)).

Note: Under the HEROES Act waivers outlined in the December 11, 2020 federal register, ED waived the requirement for institutions to notify the Direct Loan servicer where Direct Loan funds for living expenses are paid directly to a student who does not begin attendance. This COVID-19 waiver is applicable through the end of the payment period that begins after the date on which the federally declared national emergency related to COVID-19 is rescinded.

*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 668.21(b)).

*Timely return of funds by the institution*

An institution returns Title IV funds timely if:

- a. The institution deposits or transfers the funds into the bank account it maintains under 34 CFR 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;
- b. 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;
- c. 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 the lender to adjust the borrower's loan account for the amount returned; or
- d. 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
  - (1) 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
  - (2) The date on the cancelled check shows that the bank used by the secretary 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 668.21(d)).

**Audit Objectives** Determine if the institution—

Accurately calculated returns of Title IV funds for students who began attendance, allocated the return of Title IV funds as required, returned Title IV funds timely (unless the student qualified for R2T4 relief under the CARES Act or met one of the R2T4 withdrawal exemptions, see Electronic Announcement 2020-05-15 UPDATED Guidance for interruptions of study related to Coronavirus (COVID-19) (Updated June 16, 2020), and notified borrowers of returned loans;

Returned all Title IV funds when a student did not begin attendance as required;

Followed the requirements for post-withdrawal disbursements as applicable; and

For returns not made due to withdrawals as a result of COVID-19 related circumstances, (a) determined that students qualified for R2T4 relief under the CARES Act and (b) met the reporting requirements for students who qualified for R2T4 relief.

**Suggested Audit Procedures**

- a. Using a sample of students who ceased attendance during a payment period or period of enrollment (including those who met one of the withdrawal exemptions), dropped, on a leave of absence, never began attendance or terminated during the audit period ascertain if returns of Title IV funds were properly calculated. Obtain and inspect student academic and financial aid files, student ledger accounts, financial records, and, if applicable, attendance records. Ensure that for students enrolled in distance education courses, documented attendance includes academic engagement, not merely logging in to an online platform; when applicable to the determination of last day of attendance (See the discussion under *FSA Handbook*, Volume 5, Chapter 2: Documenting attendance when students are enrolled in distance education courses). From the records determine:
  - (1) If the student's enrollment status is correct (official or unofficial withdrawal).
  - (2) Whether the calculation is calculated accurately. Calculating return of Title IV funds may be made using the worksheets found in the Appendix to Volume 5 of the *FSA Handbook*.
- b. For instances in the sample tested in procedure a. above where a return of Title IV was required, trace the return of Title IV funds to disbursement and accounting records (including canceled checks to ED 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 withdrawn, deposits or transfers were made into the federal funds account, electronic transfers were initiated, or checks were issued. When an institution issues a check, the return of Title IV is not timely if the institution's records show that the check was issued

more than 45 days after the institution becomes aware that the student withdrew (or more than 30 days for students that never began attendance) or the date on the cancelled check shows that the bank used by ED endorsed the check more than 60 days after the institution becomes aware that the student withdrew (or more than 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 or met one of the withdrawal exemptions. 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 withdrawn (unofficial withdrawals). Ensure that for students enrolled in distance education courses, documented attendance includes academic engagement, not merely logging in to an online platform.
- d. For instances in the sample tested in procedure a. above where the student or parent was eligible for a post withdrawal disbursement, ascertain if appropriate notification of the post withdrawal disbursement was given to the student or parent. Review evidence of the student or parent's acceptance or rejection of the post withdrawal disbursement. Determine if the institution followed the student or parent's instructions regarding the post withdrawal disbursement.
- e. For instances in the sample tested in procedure a. above where the institution did not return Title IV funds due to withdrawals as a result of COVID-19 related circumstances, determine that (a) the student began attendance in a payment period or period of enrollment that includes March 13, 2020, or began between March 13, 2020 and the last date of the national emergency, and (b) qualified for R2T4 relief under the CARES Act (either because the student was enrolled in an affected program or provided a written attestation explaining why the withdrawal was the result of the COVID-19 emergency)
- f. For instances in the sample tested in procedure a. above where the institution did not return Title IV funds due to withdrawals as a result of COVID-19 related circumstances, determine that the institution reported to ED (a) information specific to each student that qualified for the R2T4 relief and, if the institution chose to report the amount of R2T4 relief received under the CARES Act on a student-by-student basis, (b) the total amount of Title IV grant or loan assistance that was not returned for each student as a result of the CARES Act R2T4 relief.

#### **4. Enrollment Reporting**

**Compliance Requirements** Institutions are required to report enrollment information under the Pell grant and the Direct and FFEL loan programs via the NSLDS (*OMB No. 1845-0035*), although FFEL loans are no longer made or a part of the SFA Cluster, a student may have a FFEL loan from previous years that would require enrollment

reporting for that student (Pell, 34 CFR 690.83(b)(2); FFEL, 34 CFR 682.610; Direct Loan, 34 CFR 685.309). The administration of the Title IV programs depends heavily on the accuracy and timeliness of the enrollment information reported by institutions. Institutions must review, update, and verify student enrollment statuses, program information, and effective dates that appear on the Enrollment Reporting Roster file or on the Enrollment Maintenance page of the NSLDS Professional Access (NSLDSFAP) website which the financial aid administrator can access for the auditor. The data on the institution's Enrollment Reporting Roster, or Enrollment Maintenance page, is what NSLDS has as the most recently certified enrollment information. There are two categories of enrollment information, "Campus Level" and "Program Level," both of which need to be reported accurately and have separate record types. The *NSLDS Enrollment Reporting Guide* provides the requirements and guidance for reporting enrollment details using the NSLDS Enrollment Reporting Process. The guide can be accessed at [https://fsapartners.ed.gov/knowledge-center/library/resource-type/NSLDS%20User%20Resources?nslds\\_type=NSLDS%20User%20Documentation](https://fsapartners.ed.gov/knowledge-center/library/resource-type/NSLDS%20User%20Resources?nslds_type=NSLDS%20User%20Documentation).

Institutions are responsible for accurately reporting the following significant data elements under the Campus-Level Record that ED considers high risk:

- OPEID Number – This is the OPEID for the location that the student is actually attending.
- Enrollment Effective Date – The date that the current enrollment status reported for a student was first effective. (See 4.4.2 of the *NSLDS Enrollment Reporting Guide* for the specific requirements for reporting the Enrollment Effective Date. Also see 4.4.3 of the *NSLDS Enrollment Reporting Guide* for additional guidance on effective dates for Withdrawal versus Graduation and Electronic Announcement titled – *NSLDS Enrollment Reporting – Submission Dates, Effective Dates and Certification Dates*, dated April 20, 2017, for additional information and examples at <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2017-04-20/general-subject-nslds-enrollment-reporting-submission-dates-effective-dates-and-certification-dates>.)
- Enrollment Status – The student's enrollment status as of the reporting date; full-time (F), three-quarter time (Q), half-time (H), less than half-time (L), leave of absence (A), graduated (G), withdrawn (W), deceased (D), never attended (X) and record not found (Z). (See 4.4.4 of the *NSLDS Enrollment Reporting Guide* for additional guidance on reporting graduated and withdrawn for the Campus-Level Record versus the Program Level Record and 4.4.10 for further guidance on Enrollment Status reporting at the Campus-Level Record and the Program-Level Record.)
- Certification Date – The Date enrollment certified by institution. At a minimum, institutions are required to certify enrollment every 60 days or every other month.

Institutions are responsible for accurately reporting the following significant data elements under the Program-Level Record that ED considers high risk:



- OPEID – This is the OPEID for the location that the student is actually attending.
- CIP Code – The Classification of Instructional Programs (CIP) is a set of codes that define fields of study. CIP Codes are maintained by ED's National Center for Education Statistics (NCES). They were most recently updated in 2020 and are usually updated every ten years. A listing of current CIP codes is available at: <https://nces.ed.gov/ipeds/cipcode/resources.aspx?y=56>.
- CIP Year – Year for the corresponding CIP code. The CIP Year for the codes currently used by NSLDS is 2020.
- Credential Level – Indicates the level of a credential the student will receive for the program the student is attending, for example undergraduate certificate, associate degree, or bachelor's degree. (See 4.4.7 of the *NSLDS Enrollment Reporting Guide* for additional guidance on reporting the Credential Level.)
- Published Program Length Measurement – The institution identifies whether the Published Program Length is in days, weeks, or years.
- Published Program Length - Published Program Length should be reported based on the definition of “normal time” to completion in the regulations at 34 CFR 668.41(a), as follows:

If the institution has published, in its catalog, on its website, or in any promotional materials, the length of the program in weeks, months, or years, the program length reported must be the same as the program length that the institution has published.

If the institution has not published a program length and the program is an associate or bachelor's degree program, the program length to be reported should be two years (associate) or four years (bachelor), respectively, unless the academic design of the program makes it longer or shorter than the typical program length.

For all other programs for which the institution has not published a program length, the program length is based on the institution's determination of how long, in weeks, months, or years, the program is designed for a full-time student to complete.

(See 4.4.6 of the *NSLDS Enrollment Reporting Guide* for additional guidance.)

- Program Begin Date – The Program Begin Date is the date the student first began attending the program being reported. Typically, this would be the first day of the term in which the student began enrollment in the program, unless the student enrolled in the program on an earlier date. (See 4.4.5 and 4.4.8 of the *NSLDS Enrollment Reporting Guide* for additional guidance.)

- Program Enrollment Status – The student’s enrollment status as of the reporting date; full-time (F), three-quarter time (Q), half-time (H), less than half-time (L), leave of absence (A), graduated (G), withdrawn (W), deceased (D), never attended (X) and record not found (Z). (See 4.4.4 of the *NSLDS Enrollment Reporting Guide* for additional guidance on reporting graduated and withdrawn for the Campus-Level Record versus the Program Level Record and 4.4.10 for further guidance on Enrollment Status reporting at the Campus-Level Record and the Program-Level Record.)
- Program Enrollment Effective Date – The date that the enrollment status as of the reporting date reported for the program was first effective.

Institutions are responsible for timely reporting, whether they report directly or via a third-party servicer. Institutions must complete and return within 15 days the Enrollment Reporting roster file placed in their Student Aid Internet Gateway (SAIG) (*OMB No. 1845-0002*) mailboxes sent by ED via NSLDS. An institution determines how often it receives the Enrollment Reporting roster file with the default set at a minimum of every 60 days. Once received, the institution must update for changes in the data elements for the Campus Record and the Program Record identified above, and submit the changes electronically through the batch method, spreadsheet submittal, or the NSLDS website (Pell, 34 CFR 690.83(b)(2); FFEL, 34 CFR 682.610; Direct Loan, 34 CFR 685.309). (Note: The automated processes and required reporting are described in the *NSLDS Enrollment Reporting Guide*. After the institution submits the Enrollment Reporting roster to NSLDS, NSLDS evaluates the Enrollment Reporting roster and provides the institution an Error/Acknowledgement file. If errors are identified, institutions have 10 days to correct the errors and resubmit to NSLDS.)

NSLDS will send a Late Enrollment Reporting notification e-mail if no updates are received by batch or online within 22 days after the date the roster was sent to the institution. Institutions that receive a Late Enrollment Reporting notification are not in compliance with the requirement to complete and return the Enrollment Reporting roster file within 15 days. However, since institutions are required to complete and return the Enrollment Reporting roster within 15 days (not 22 days), the notification email (or lack thereof) should not be used to measure compliance. The Enrollment Reporting Summary Report (SCHER1) on the NSLDS website can be created at the request of the institution. It shows the dates the roster files were sent and returned, the number of errors, date and number of online updates, and the number of late enrollment reporting notifications sent for overdue Enrollment Reporting rosters. The Enrollment Submittal File Tracking Report (SCHET1) also provides the processed date, which represents when NSLDS transmitted the Roster or Submittal File (which could be 24–48 hours after a batch is submitted, depending on processing times, online submittals are processed in real time).

When a Direct Loan was made to or on behalf of a student who was enrolled or accepted for enrollment at the institution, and the student ceased to be enrolled on at least a half-time basis or failed to enroll on at least a half-time basis for the period for which the loan was intended; or a student who is enrolled at the institution and who received a loan under Title IV has changed his or her permanent address, the institution must report the

change in its next updated Enrollment Reporting Roster file (due within 60 days of the change).

**Audit Objectives** Determine whether the institution is notifying ED of changes in student enrollment information at the Campus Level and Program Level in a timely and accurate manner.

### **Suggested Audit Procedures**

- a. Select a sample of Pell and Direct Loan students from the institution's records that had a reduction or increase in attendance levels, graduated, withdrew, dropped out, or enrolled but never attended during the audit period. Compare the data in the student's NSLDS Enrollment Detail to the students' academic files and other institutional records and verify that the institution is accurately reporting the significant Campus-Level and Program-Level enrollment data elements that ED considers high risk.
- b. For instances in the sample tested in procedure a. above where a Direct loan was made to or on behalf of a student who was enrolled or accepted for enrollment at the institution, and the student ceased to be enrolled on at least a half-time basis or failed to enroll on at least a half-time basis for the period for which the loan was intended; or a student who is enrolled at the institution and who received a loan under Title IV has changed his or her permanent address, determine whether the institution reported the change in its next updated Enrollment Reporting Roster file (due within 60 days of the change).
- c. Have the institution access the NSLDS website and create the SCHER1 and/or SCHET1. Compare the dates the roster files were sent to the return dates to verify that the institution returned the roster files within 15 days.

## **5. Student Loan Repayments (HPSL/PCL/LDS and NSL, and NFLP)**

### *HHS Programs*

**Compliance Requirements** 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 ten 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 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 nine months after the student ceases to be a full-time or half-time student, except as required in 42 CFR 57.310(a) .

For 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, up to 85 percent of the principal and interest of an NFLP loan can be cancelled if the student borrower serves as full-time nurse faculty for four years. For this program, “full-time” is defined as either (1) a full-time faculty member at an accredited institution of nursing; or (2) a part-time faculty member at an accredited institution of nursing, in combination with another part-time faculty position or part-time clinical preceptor position affiliated with an accredited institution of nursing that, together, equate to full-time employment. The loan cancellation over the four-year period is as follows: (1) the institution will cancel 20 percent of the principal and interest on the NFLP loan, as determined on the first day of employment, upon completion by the borrower of each of the first, second, and third years of full time employment as a faculty member in an institution of nursing; and (2) the institution will cancel 25 percent of the principal and interest on the NFLP loan, as determined on the first day of employment, upon completion of the fourth year of full-time employment as a faculty member in an institution 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 3 percent per annum for loan recipients who establish employment as full-time nurse faculty (Funding Opportunity Announcements <https://bhw.hrsa.gov/fundingopportunities/default.aspx?id=bd03570b-3eb6-4a77-a1e3-4326ce292907>).

Loans under the HPSL/PCL/LDS, NSL, and NFLP programs may be cancelled only in the event that the borrower dies or becomes disabled (HPSL/PCL/LDS; 42 CFR 57.211 and 57.213a; NSL; 42 CFR 57.311 and 57.313a; and NFLP Administrative Guidelines, Disability and Death (<https://bhw.hrsa.gov/funding/schools-manage-loan-programs>)).

Institutions must exercise due care and diligence in the collection of loans (HPSL/PCL/LDS, NSL, and NFLP, 42 CFR 57.210(b) and 57.310(b), and NFLP Program Guidance, Institutional Responsibility in Repayment Process, respectively).

**Audit Objectives** Determine whether institutions are timely converting loans to repayment, establishing repayment plans, processing cancellation requests, and servicing loans as required.

### **Suggested Audit Procedures**

Note: Many institutions engage third-party servicers for billing, collection, and processing deferment and cancellation requests. Although these institutions remain responsible for compliance, auditors of these institutions may exclude the audit procedures below for the compliance requirements performed by a third-party servicer.

- 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 cancellations. Select a sample of loans that were cancelled during the audit period and review documentation to ascertain whether the cancellations were adequately supported.
- c. Select a sample of loans that have defaulted during the year and review loan records to ascertain if the required interviews, contacts, billing procedures, and collection procedures were carried out.

## 6. Perkins Loan Recordkeeping and Record Retention

*34 CFR 674.19.(e)*

**Compliance Requirements** Institutions must retain original or true and exact copies of promissory and master promissory notes (MPN), repayment records, and cancellation and deferment requests for each Perkins loan (including Defense, NDSL) made. Disbursement records, electronic authentication and signature records for loans made with an MPN must also be retained by the institution.

Institutions are required to keep original paper promissory notes or original paper MPNs and repayment schedules in a locked, fireproof container. The original promissory notes and repayment schedules must be kept until the loans are satisfied. If required to release original documents in order to enforce the loan, the institution must retain certified true copies of those documents. After the loan obligation is satisfied, the institution shall return the original or a true and exact copy of the note marked "paid in full" to the borrower, or otherwise notify the borrower in writing that the loan is paid in full and retain a copy for the prescribed period.

An institution shall retain repayment records, including cancellation and deferment requests for at least three years from the date on which a loan is assigned to the secretary, canceled, or repaid. An institution shall retain disbursement and electronic authentication and signature records for each loan made using an MPN for at least three years from the date the loan is canceled, repaid, or otherwise satisfied.

When an institution uses a third-party servicer for its Perkins Loan program, the institution must perform due diligence to ensure that the third-party servicer is in compliance with the requirements for the functions the third-party servicer is performing for the institution. Such due diligence could include obtaining and reviewing the third-party servicer's most recent Title IV compliance audit.

**Audit Objectives** Determine whether the institution has properly maintained its Perkins loan records in the manner set forth in 34 CFR 674.19.(e).

### Suggested Audit Procedures

- a. When an institution uses a third-party servicer to perform requirements of the Perkins loan program, the auditor should determine which compliance requirements the third-party servicer performs for the institution and evaluate

whether the institution performed appropriate due diligence to ensure the third-party servicer's compliance with the Perkins Loan functions it is performing. For those requirements not performed by a third-party servicer the auditor should include the testing below as appropriate.

- b. Through inquiry, evaluate for appropriateness of the institution's Perkins loan records storage location and its security and whether the storage is fireproof for reasonableness.
- c. Test a sample of borrowers with open loans to verify that original promissory notes and/or MPNs, repayment records, cancellation and deferment requests, and if applicable, disbursement and electronic authentication records, are being properly maintained.
- d. Test a sample of borrowers with loans retired or assigned loans within the previous three fiscal years and current fiscal years to verify that appropriate records are being retained for at least three years from the date the loans were retired or assigned.

## **7. Direct Loan Reconciliation**

### *SFA - Title IV Programs*

**Compliance Requirements** Institutions must report all loan disbursements and submit required records to COD within 15 days of disbursement (*OMB No. 1845-0021*). Each month, 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 institution) Loan Detail records. The institution 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, institutions may receive three SAS data files each month (34 CFR 685.102(b), 685.300(b), 685.301, and 303). (Note: An electronic announcement dated December 18, 2020, describes the reconciliation process and is available at <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-12-18/william-d-ford-federal-direct-loan-program-reconciliation>.)

**Audit Objectives** Determine whether the institution reconciled SAS data files to institution records each month.

### **Suggested Audit Procedures**

- a. Test a sample of the SAS and ascertain that reconciliations are being performed on a monthly basis.

## 8. Institutional Eligibility

### *SFA - Title IV Programs*

**Compliance Requirements** The institution admits as regular students only persons who have a high school diploma; have the recognized equivalent of a high school diploma; are beyond the age of compulsory education or will be dually or concurrently enrolled in the institution and a secondary school (34 CFR 600.4(a)(2)).

The institution is legally authorized to provide an educational program beyond secondary education in the state in which the institution is physically located and that state authorization is in compliance with 34 CFR 600.9 (34 CFR 600.4(a)(3)).

- 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 any of the following occurred (34 CFR 600.7):
  - (1) More than 50 percent of its courses were correspondence courses;
  - (2) Fifty 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 (Note: When calculating the number of correspondence courses, a student is considered "enrolled in correspondence courses" if the student's enrollment in correspondence courses constituted more than 50 percent of the courses in which the student enrolled during an award year ([34 CFR 600.7\(b\)\(2\)](#)), (*see Federal Register, Final Rule, September 2, 2020*);
  - (3) Twenty-five 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 four- or two-year program for which it awards a bachelor's or associate degree, respectively.

(Note: "Correspondence course" is defined in 34 CFR 600.2.)
- b. The institution is prohibited from paying any commission, bonus, or other incentive payment based, in any part, directly or indirectly, upon success in securing enrollments or the award of 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. 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 668.14(b)(22)(i)). Title 34 CFR 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 any entity or person engaged by the institution to deliver services to it (34 CFR 668.14(b)(22)(iii)(C)).

The auditor should refer to the specific text of these regulations when auditing this compliance requirement.

- c. An institution must ensure that its administrative procedures for the Title IV, HEA programs include an adequate system of internal checks and balances (34 CFR 668.16(c)). This system, at a minimum, must separate the functions of authorizing payment and disbursing or delivering funds so that no single person or office exercises both functions for any student receiving FSA funds.
- d. Institutions must establish and publish reasonable standards for measuring whether eligible students are maintaining satisfactory academic progress (SAP) in their educational program. The institution's standards are reasonable if the standards (34 CFR 668.16(e) and 668.34) do the following:
  - (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) Provide for consistent application of standards to all students within categories of students and educational programs;
  - (3) Provide for the student's academic progress to be evaluated
    - (a) at the end of each payment period if the educational program is either one academic year in length or shorter than an academic year; or
    - (b) for all other educational programs, at the end of each payment period or at least annually to correspond with the end of a payment period;
  - (4) Include a qualitative component, which generally consists of grades that are measurable against a norm, and a quantitative component (where applicable) that consists of a maximum time frame for completion of the educational program. For credit hour programs, the maximum time frame can be measured in credit hours or expressed in calendar time. The maximum time frame must, for an undergraduate program, be no longer than 150 percent of the published length of the educational program ([see Federal Register, Final Rule, September 2, 2020](#))
    - Under 34 CFR 668.34(a)(5), the quantitative measurement (pace of progression) is no longer required for subscription-based programs, nonterm programs and clock hour programs.
  - (5) Provide a policy that, if at the time of each evaluation, the student has not achieved the required GPA, is not successfully completing their program of study at the required pace (if required), or has not completed the program within the maximum time frame, they no longer are eligible for Title IV aid;



- (6) Provide specific procedures for disbursements to students on financial aid warning status or financial aid probation status;
- (7) If the institution permits the student to appeal a determination, provide specific procedures how the student may reestablish eligibility to receive Title IV; basis on which a student may file an appeal; and information that the student must submit regarding why they failed satisfactory academic progress and how they have changed that will now allow the student to make satisfactory academic progress at the next evaluation;
- (8) If the institution does not permit the student to appeal a determination, provide a policy for a student to reestablish their eligibility to receive Title IV assistance; and
- (9) Provide notification to the students of their results of an evaluation that impacts their eligibility for Title IV.

Note: Due to the COVID-19 national emergency, attempted credits a student was unable to complete as the result of a COVID-19 related circumstance may be excluded from the quantitative (pace) component of SAP. This flexibility is applicable for SAP assessments made for payment periods that include or begin after March 13, 2020, through the end of the payment period that includes the last date that the national emergency is in effect (section 3509 of the CARES Act. May 15, 2020 electronic announcement). The *Eligibility and Certification Approval Report* (ECAR) that ED sends to the institution lists locations where students are eligible for Title IV funds. (Title IV program eligibility for an institution and its programs does not automatically include separate locations and extensions.) If, after receipt of the ECAR, an institution wishes to add a location at which at least 50 percent of an educational program is offered that is licensed and accredited, it must notify ED (34 CFR 600.10(b)).

All institutions are required to report (using the *Electronic Application for Approval to Participate in the Federal Student Aid Programs* or E-App) to ED when adding an additional accredited and licensed location where they will be offering 50 percent or more of an eligible program if the institution wants to disburse FSA program funds to students enrolled at that location.

Institutions must not disburse FSA program funds to students at a new location before the institution has reported that location and submitted any required supporting documents to ED. Once it has reported a new licensed and accredited location, unless it is an institution that is required to apply for approval for a new location under 34 CFR 600.20(c), an institution may disburse FSA program funds to students enrolled at that location.

An institution must report and obtain approval for an additional location where 50 percent or more of an eligible program will be offered if any of the following apply to the institution and/or the additional location—

The institution is provisionally certified.

The institution is on the cash monitoring or reimbursement system of payment.

The institution has acquired the assets of another institution that provided educational programs at that location during the preceding year, and the other institution participated in the FSA programs during that year.

The institution would be subject to a loss of eligibility under the cohort default rate regulations if it adds that location.

The institution was previously notified by ED that it must apply for approval of an additional location.

Note: For any additional location not meeting the approval requirements above, none of the students at that location are eligible for Title IV program funds and all funds disbursed to students at that location are questioned costs.

**Audit Objectives** Determine whether the institution meets the above institutional eligibility requirements as applicable. All disbursements made to students determined to be ineligible for Title IV funds per published SAP and regulatory standards are questioned costs.

### **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 determine whether 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. If not evaluated under the tests of internal control, evaluate the institution's policies for the authorization and disbursement of Title IV funds to determine whether those policies require that no single person or office exercises both functions for any student receiving Title IV funds and test a sample of authorizations and disbursement transactions to ensure that the requirement that no single person or office exercises control over both the authorization and disbursement of Title IV funds is met.
- d. Ascertain from a review of the institution's published satisfactory academic progress standards whether all required elements are included in the standards.
- e. 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 as required.

## **9. Program Eligibility**

### *SFA - Title IV Programs*

#### **Clock-to-Credit Hour Conversion (34 CFR 668.8 (k) and (l))**

**Compliance Requirements** If an institution offers an undergraduate program in credit hour RLF Standard Terms and Conditions, Part II, section D) 4) a) (x)).s, it must determine the number of Title IV credit hours associated with the program and each class within the program unless:

- a. The program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by ED; or
- b. Each course within the program is acceptable for full credit toward completion of a single eligible program offered by the institution that provides an associate degree, bachelor's degree, professional degree, or equivalent degree as determined by ED, provided that 1) the eligible program requires at least two academic years of study; and 2) the institution can demonstrate that at least one student graduated from the program during the current award year or the two preceding award years.

The formula will determine if, after the conversion, the program includes the minimum number of credit hours to qualify as an eligible program for Title IV, HEA purposes. The formula also determines the number of Title IV credit hours associated with each class that an institution can use to determine a student's enrollment status during the program.

For determining the number of credit hours in that educational program:

- a semester or trimester hour must include at least 30 clock hours of instruction, and
- a quarter hour must include at least 20 clock hours of instruction.

[See Federal Register, Final Rule, September 2, 2020.](#)

If an institution provides a credit-hour non-degree program that is subject to the clock-hour to credit-hour conversion, the institution no longer uses out-of-class hours in the conversion calculation.

**Audit Objectives** Determine whether any programs offered by the institution must meet the clock-to-credit hour conversion requirements and that the formula for conversion was accurately applied.

#### **Suggested Audit Procedures**

- a. Review and evaluate the programs offered by the institution to determine whether any of the programs must meet the clock-to-credit hour conversion requirements.
- b. For a sample, based on the number of students served by the clock-to-credit hour programs, of programs that must meet the clock-to-credit hour conversion requirements, determine whether the formula was accurately applied.

### **10. Short-Term Programs at Postsecondary Vocational Institutions**

**Compliance Requirements** For the Direct Loan Program, short-term eligible programs at a postsecondary vocational institution (as defined at 34 CFR 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 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 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, and (3) written evidence of payments of Social Security taxes (34 CFR 668.8(g)(2)).

**Audit Objectives** If there are eligible short-term programs for which students received loans under the Direct Loan program, 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 668.8(f) and (g).
- b. 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.

## 11. General Program Eligibility

**Compliance Requirements** An institution's eligibility does not necessarily extend to all its programs so the institution is responsible for ensuring that a program is eligible before awarding Title IV funds to students in that program. A student is not eligible to receive Title IV funds for an ineligible program.

An eligible program needs to be included under the notice of accreditation from a nationally recognized accrediting agency (34 CFR 600.4, 600.5, and 600.6). An agency may or may not require an institution to seek its approval before adding new programs.

An eligible program needs to be authorized by the appropriate state to offer the program if the state licenses individual programs at postsecondary institutions. In some instances, an institution or program may need a general authorization as well as licensure for a specific program approval (34 CFR 600.4, 600.5, and 600.6).

Generally, the institution's eligible nondegree programs and locations are specifically named on the ECAR. Additional locations and programs may be added later. Once the School Participation Division (SPD) has approved the program/location, it will notify the institution and an updated ECAR can be printed. See the discussion under *FSA Handbook, Volume 2, Chapter 5 Changes to Educational Programs* for a discussion of when and how an institution must notify ED when adding programs and when the institution must wait for approval from ED. Note that all Gainful Employment programs must be reported to ED and all direct assessment programs, comprehensive transition and postsecondary programs, and short-term programs must be reported to and approved by ED (34 CFR 668.8(n), 34 CFR 668.8(d), and 34 CFR 668.232) prior to making disbursements to eligible students. All disbursements made to students at programs required to obtain prior approval from ED where that approval was not obtained prior to making the disbursement are questioned costs.

The 34 CFR 668.8 defines general program eligibility requirements for institutions of higher education and postsecondary vocational institutions including program level offerings, credential offered, minimum program lengths for each level of offering, and program measurements. Approvals for an institution's program levels offered, credentials offered and non-degree programs are noted on the institution's ECAR. Programs that have been added subsequent to the institution's most recent certification may not be on the ECAR. An institution may require ED's approval for new programs prior to

disbursing Title IV program funds if it has been put on any restrictions by ED, such as provisional certification or issues relating to financial responsibility.

**Audit Objectives** Determine whether students who received Title IV funds during the audit period were enrolled in ineligible programs.

### **Suggested Audit Procedures**

- a. Review the institution's accreditation and state licensure documentation. Determine whether accreditation and licensure or state approval, where required, was in effect for all corresponding educational programs, program levels, and credentials offered.
- b. Determine whether the institution required ED's approval for new programs prior to disbursing Title IV program funds. Determine whether any programs requiring the ED's approval prior to disbursing Title IV program funds received such approval prior to the institution disbursing Title IV program funds.

## **12. Distance Education Program**

**Compliance Requirements** A distance education course is a course offered to students who are separated from the instructor or instructors and involves regular and substantive interaction between students and the instructor or instructors. The interaction may be synchronous (student and instructor are in communication at the same time) or asynchronous. The technologies may include: (1) the internet; (2) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communication devices; (3) audio conference; and (4) other media used in conjunction with one of the three technologies listed to support interaction between the students and the instructor (34 CFR 600.2). If a course where students are separated from the instructor does not qualify as a distance education course, it is a correspondence course.

In distance education, an *instructor* is defined as an individual responsible for delivering course content and who meets the qualifications for instruction established by an institution's accrediting agency (34 CFR 600.2).

In addition, *substantive interaction* is defined as engaging students in teaching, learning, and assessment, consistent with the content under discussion, and also includes at least two of the following:

- Providing direct instruction;
- Assessing or providing feedback on a student's coursework;
- Providing information or responding to questions about the content of a course or competency;

- Facilitating a group discussion regarding the content of a course or competency; or
- Other instructional activities approved by the institution's or program's accrediting agency.

An institution must ensure regular interaction between a student and instructor or instructors by, prior to the student's completion of a course or competency:

- Providing the opportunity for substantive interactions with the student on a predictable and scheduled basis commensurate with the length of time and the amount of content in the course or competency; and
- Monitoring the student's academic engagement and success and ensuring that an instructor is responsible for promptly and proactively engaging in substantive interaction with the student when needed on the basis of such monitoring, or upon request by the student.

*Academic engagement* refers to active participation by a student in an instructional activity related to a student's course of study and is defined by the institution in accordance with any applicable requirements of its state or accrediting agency. The [34 CFR 600.2](#) provides specific activities that would meet the definition of academic engagement. It also provides examples of activities that do not meet the definition.

The academic year regulatory requirements amended the definition of "week of instructional time" to account for asynchronous coursework through distance education or correspondence courses ([34 CFR 668.3\(b\)\(ii\)\(A\)](#) and [\(B\)](#)). In addition, there is a new definition of "clock hour" specific to distance education to account for a period of attendance in a synchronous or asynchronous class, lecture or recitation or an asynchronous learning activity involving academic engagement in which the student interacts with technology that can monitor and document the amount of time that the student participates in the activity. A clock hour in a distance education program does not meet the requirements of this definition if it does not meet all accrediting agency and state requirements or if it exceeds an agency's or state's restrictions on the number of clock hours in a program that may be offered through distance education. ([34 CFR 600.2](#))

If an eligible program is offered in whole or in part through distance education, the institution must have been evaluated and accredited for its effective delivery of distance education by an accrediting agency that: (1) is recognized by the secretary of ED and (2) has distance education within its scope of recognition. (34 CFR 668.8(m)). A list of recognized accrediting agencies, including the scope of recognition, is available at <https://ope.ed.gov/dapip/#/agency-list>.

On August 31, 2020, ED published a *Federal Register* notice concerning the rescission of guidance that was outdated. That notice announced that Dear Colleague Letter GEN-06-17, Institutional Accreditation for Distance Learning Programs, was rescinded. ED published an [electronic announcement on January 19, 2021](#) explaining this rescission and

its effects on the requirement for an accrediting agency to evaluate an institution's ability to effectively offer distance education. Previously, under this interpretation of the 2006 Dear Colleague Letter, if an institution did not offer more than 50 percent of its courses via distance education, did not have more than 50 percent of its students enrolled in distance education, or did not offer more than 50 percent of an educational program via distance education, its distance education programs were not required to be evaluated or approved by an accrediting agency with distance education in its scope of recognition. Following ED's January 19, 2021 announcement, subject to the COVID-19 flexibilities described below, before an institution offers *any* distance education programs that can be eligible for Title IV, the institution must be evaluated and accredited for its effective delivery of distance education programs by a recognized agency that has distance education within its scope of recognition.

Note: Due to disruptions caused by the COVID-19 pandemic, during the period of the COVID-19 national emergency ED waived the requirement under 34 CFR 668.8(m) for an institution to be evaluated and accredited for its effective delivery of distance education by a recognized accrediting agency. This waiver extends to all payment periods that include or begin after March 13, 2020, through the end of the payment period that begins after the date on which the federally declared national emergency related to COVID-19 is rescinded.

**Audit Objectives** Determine whether the institution has been evaluated and accredited for effective delivery of distance education by the institution's accrediting agency.

### **Suggested Audit Procedures**

- a. Review the institution's accreditation document(s) to determine that its accrediting agency is approved to accredit distance education programs and that the institution has been evaluated and approved for its effective delivery of distance education-
- b. If an institution is offering at least one distance education program and was not evaluated by its accrediting agency, determine whether the COVID-19 pandemic waiver was applicable throughout the audit period and, if not, whether the institution was evaluated and approved by its accrediting agency prior to the end of the waiver period.

## **13. Gramm-Leach-Bliley Act–Student Information Security**

### *SFA - Title IV Programs*

**Compliance Requirements** The Gramm-Leach-Bliley Act (Pub. L. No. 106-102) requires financial institutions to explain their information-sharing practices to their customers and to safeguard sensitive data (16 CFR 314). The Federal Trade Commission considers Title IV-eligible institutions that participate in Title IV Educational Assistance Programs as “financial institutions” and subject to the Gramm-Leach-Bliley Act because they appear to be significantly engaged in wiring funds to consumers (16 CFR 313.3(k)(2)(vi)). Under an institution's Program Participation Agreement with the ED



and the Gramm-Leach-Bliley Act, institutions must protect student financial aid information, with particular attention to information provided to institutions by ED or otherwise obtained in support of the administration of the federal student financial aid programs (16 CFR 314.3; HEA 483(a)(3)(E) and HEA 485B(d)(2)). ED provides additional information about cybersecurity requirements at <https://studentprivacy.ed.gov/security>.

**Audit Objectives** Determine whether the institution designated an employee or employees to coordinate the information security program; performed a risk assessment that addresses the three areas noted in 16 CFR 314.4 (b) and documented safeguards for identified risks.

### **Suggested Audit Procedures**

- a. Verify that the institution has designated an employee or employees to coordinate the information security program.
- b. Verify that the institution has performed a risk assessment that addresses the three required areas noted in 16 CFR 314.4 (b), which are (1) employee training and management; (2) information systems, including network and software design, as well as information processing, storage, transmission and disposal; and (3) detecting, preventing and responding to attacks, intrusions, or other systems failures.
- c. Verify that the institution has documented a safeguard for each risk identified from step b above.

## **14. Federal Perkins Loan Liquidation**

### *SFA - Title IV Programs*

**Compliance Requirements** For an institution that decided to stop participating in the Federal Perkins Loan program (Perkins) (Assistance Listing 84.038), the institution is responsible for returning any unspent funds (34 CFR section 668.14(b)(25)). The institution must perform the end-of-participation procedures in which it must (a) notify ED of the intent to stop participating in Perkins (34 CFR section 668.26(b)(1)); (b) purchase any outstanding loans left in its Perkins portfolios or assign them to ED (34 CFR sections 674.8(d), 674.17(a)(2), and 674.45(d)(2)); and (c) maintain program and fiscal records of all Perkins funds since the most recent Fiscal Operations Report (FISAP) was submitted, and reconcile this information at least monthly (34 CFR section 674.19(d)). The FISAP form is available at <https://fsapartners.ed.gov/knowledge-center/topics/campus-based-processing-information/fisap-form-and-instructions>.

ED has compiled its guidance on the Perkins loan program wind-down, liquidation, and related issues at <https://fsapartners.ed.gov/knowledge-center/library/program/Perkins%20Loan>. In addition to the Guide, the website also

includes a [Federal Perkins Loan Frequently Asked Questions | Knowledge Center](#) and other information. The website is updated by ED as additional guidance is developed.

**Audit Objectives** Determine whether the institution ceasing to participate in the Perkins loan program has properly performed end-of-participation procedures.

### **Suggested Audit Procedures**

- a. Review, evaluate, and document procedures that the institution used to notify ED of its intent to liquidate its Perkins loan portfolios.
- b. If the institution has completed the liquidation of its Perkins loan portfolio, ascertain that the institution has either purchased or assigned to ED any Perkins loans with outstanding balances.
- c. If the process of liquidating outstanding loans has not been completed, verify that the institution has begun to assign those loans to ED.
- d. Ascertain that the institution, as part of its procedures for maintaining program and fiscal records for all transactions that occurred after the most recent FISAP was filed, reconciled the following information:
  - (1) All loans for the total number of borrowers that make up the portfolio have been accounted for, including retired loans (including loans purchased) and loans assigned to ED (including validation of the computed accumulated interest charged on the loans);
  - (2) Service cancellation data that will be counted in Part III, *Fiscal Report* (Section A, lines 7–25 and 35–52), and all of the data that will be in Part III, *Cumulative Repayment Information* (Section C, lines 1.1–5.4);
  - (3) The Federal Capital Contribution (FCC) that will be reported at the end of fiscal year under *Fund Activity* (Section B, lines 1–4);
  - (4) The Institutional Capital Contribution (ICC) that will be reported at the end of fiscal year under *Fund Activity* (Section B, line 6); and
  - (5) Overall cash-on-hand or excess cash amounts (this overall cash-on-hand amount would include payment to the Perkins fund for any loans the institution may have purchased) (Section A, Line 1.1).
- e. If the liquidation process is complete, validate that the distributional shares of the final capital distribution are calculated using the Over-time Calculation provided in page nine of the Perkins Liquidation Procedures and that the federal portion is returned to the US Treasury.

#### **IV. OTHER INFORMATION**

While the programs included in this cluster are generally similar in their intent, administration, documentation, etc., there are differences among them. Because of space considerations, this cluster supplement does not list all of the differences, exceptions to general rules or nuances pertaining to specific programs. Auditors should use regulations and guidance applicable to the year(s) being audited when auditing the SFA programs.

##### *SFA - Title IV Programs*

Several waivers related to the COVID-19 national emergency apply at least as long as the national emergency persists. Because the national emergency was in effect for the period covered by this Compliance Supplement, institutions remain obligated to comply with requirements related to such waivers. More information about sunset dates for COVID-19 waivers and flexibilities can be found in an [Electronic Announcement published January 15, 2021](#).

##### *Pell Payment Data*

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.

**APPENDIX A**

**STUDENT FINANCIAL ASSISTANCE PROGRAMS**

**STUDENT ELIGIBILITY COMPLIANCE REQUIREMENTS**

<b>Requirements</b>	<b>PELL</b>	<b>IASG</b>	<b>FWS</b>	<b>FSEOG</b>	<b>TEACH</b>	<b>DIRECT LOAN</b>	<b>HSPL/PCL /LDS</b>	<b>NSL/NFLP</b>	<b>SDS</b>
<b>1.</b> A regular student enrolled or accepted for enrollment in an eligible program (34 CFR 600.2, 668.32(a)(1)(i), 690.75, 675.9, 676.9, 685.200, 686.11, 20 USC 1070h; 42 CFR 57.206(a) and 57.306(a), 42 USC 293a(d)(2)) <sup>1</sup> unless meeting an exception.	x	x	x	x	x	x	x	x	
<b>2.</b> U.S. Citizen, National, or provides evidence from the U.S. Citizenship and Immigration Services that he or she is a permanent resident or in the U.S. with the intention of becoming a citizen or permanent resident (eligible noncitizen) (34 CFR 668.32(d), 668.33(a), 690.75, 675.9, 676.9, , 685.200, 686.11, 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 57.206(a) and 57.306(a))	x	x	x	x	x	x	x	x	
<b>3.</b> Has financial need and total awards do not exceed need (34 CFR 675.9(c), 676.9(c), 685.200(a)(2)(i), 690.63, 20 USC 1070a, 42 CFR 57.206(b) and 57.306(b); 42 USC 293a(d)(2)); 42 USC 297n-1(c)(2))	x <sup>2</sup>		x	x		x <sup>3</sup>	x	x	x
<b>4.</b> Does not owe a Title IV grant overpayment(34 CFRs 668.32(g)(4), 690.75, 675.9, 676.9, , 685.200, 686.11, 20 USC 1070h; 42 CFRs 57.206 and 57.306)	x	x	x	x	x	x			
<b>5.</b> Not in default on any student loans (34 CFRs 668.32(g)(1), 690.75, 675.9, 676.9, 685.200, 686.11, 20 USC 1070h; 42 CFRs 57.206 and 57.306)	x	x	x	x	x	x	x		
<b>6.</b> Has not obtained loan amounts that exceed annual or aggregate loan limits (34 CFR 668.32(g) (2))	x	x	x	x	x	x	x		
<b>7.</b> Does not have property subject to a judgment lien for a debt owed to the United States (34 CFR 668.32(g)(3))	x	x	x	x	x	x			
<b>8.</b> Must maintain good standing, or satisfactory academic progress (34 CFRs 668.16, 668.32(f), 668.34, 690.75, 675.9, 676.9, 685.200, 686.11, 20 USC 1070h; 42 CFR 57.306; 42 USC 293a(d)(2))	x	x	x	x	x	x	x	x	
<b>9.</b> Has a valid Social Security Number <sup>4</sup> (34 CFRs 668.32(i), 668.36, 675.9, 676.9, , 685.200, 686.11, 20 USC 1070h)	x	x	x	x	x	x			
<b>10.</b> Has a high school diploma, its recognized equivalent, or another indication of high school completion status, or qualifies for one of the ability-to-benefit (ATB) alternatives(34 CFR 668.32(e), 690.75, 675.9, 676.9, 685.200, 686.11, 20 USC 1070h)	x	x	x	x	x	x			

Requirements	PELL	IASG	FWS	FSEOG	TEACH	DIRECT LOAN	HSPL/PCL /LDS	NSL/NFLP	SDS
<b>11.</b> Is not enrolled in either an elementary or secondary school (34 CFR 668.32(b))	x	x	x	x	x	x			
<b>12.</b> In the case of a student who has been convicted of, or has pled nolo contendere or guilty to, a crime involving Title IV funds, has completed the repayment of such assistance (34 CFR 668.32(m))	x	x	x	x	x	x			
<b>13.</b> For an undergraduate student, has not completed coursework for a first baccalaureate (34 CFR 668.32(c)) <sup>5</sup>	x	x		x	x				
<b>14.</b> An undergraduate student has received for award year, a SAR or determination of eligibility or ineligibility for a Federal Pell Grant (34 CFR 676.10, 685.200(a)(1)(iii), 690.75, 20 USC 1070h)	x	x		x		x			
<b>15.</b> Is enrolled or accepted for enrollment as an undergraduate student at the institution (34 CFR 676.9(b), 690.75(a)(2))	x	x		x					
<b>16.</b> Is not incarcerated (34 CFR 600.2, 668.32(c)(2)(ii) and (c)(3))	x <sup>6</sup>	x				x			
<b>17.</b> If the student is not a regular student enrolled or accepted for enrollment in an eligible program (see item 1 above), the student is enrolled in preparatory coursework necessary for enrollment in an eligible program for not longer than one 12-month period (34 CFR 668.32(a)(1)(ii), 685.203(a)(6))						x			
<b>18.</b> If the student is not a regular student enrolled or accepted for enrollment in an eligible program (see item 1 above), the student is enrolled or accepted for enrollment as at least a half-time student (except for TEACH) at an eligible institution in a program necessary for a professional credential or certification from a state that is required for employment as a teacher in an elementary or secondary school in that state (34 CFR 668.32(a)(1)(iii))	x	x	x		x	x			
<b>19.</b> Is enrolled or accepted for enrollment as an undergraduate, graduate, or professional student at the institution, (34 CFR 668.32(a), 675.9(b), and 685.101(b))	x	x	x	x	x	x			
<b>20.</b> Is enrolled or accepted for enrollment, on at least a half-time basis in an institution that participates in the Direct Loan Program (34 CFR 668.32(a)(2), 685.200(a)(1)(i))						x			
<b>21.</b> Parents can receive a PLUS loan if the parent does not have an adverse credit history and conditions in items 2, 4, 5, 10, and 14 above are met by the parent and the student otherwise meets all student eligibility requirements (34 CFR 668.32 and 685.200(c)(2))						x			
<b>22.</b> Students met FSEOG selection criteria (34 CFR 676.10)				x					
<b>23.</b> Has signed a TEACH Grant agreement to serve (34 CFR 686.11(a)(1)(ii) and 668.12)					x				
<b>24.</b> Is enrolled in a TEACH Grant-eligible institution in a TEACH Grant-eligible program (34 CFR 686.11(a)(1)(iii))					x				

Requirements	PELL	IASG	FWS	FSEOG	TEACH	DIRECT LOAN	HSPL/PCL /LDS	NSL/NFLP	SDS
25. 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 686.11(a)(1)(iv))					x				
26. 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 686.2(d) (34 CFR 668.32(c)(4)(ii))					x				
27. If in the first year of an undergraduate program, the student 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 75 <sup>th</sup> 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 (34 CFR 686.11(a)(1)(v)(A) and (E))					x				
28. If beyond the first year of an undergraduate program, the student has a cumulative GPA of at least 3.25 as determined by the institution, through the most recently completed payment period; or a score above the 75 <sup>th</sup> 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 (34 CFR 686.11(a)(1)(v)(B) and (E))					x				
29. If the student is a graduate student during the first payment period, a cumulative undergraduate GPA of at least 3.25; if the student is a graduate student beyond the first payment period, a cumulative graduate GPA of at least 3.25 through the most-recently completed payment period; or a score above the 75 <sup>th</sup> 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 686.11(a)(1)(v)(C), (D), and (E))					x				
30. If the student is a current or former teacher or a retiree, the student is applying for a grant to obtain a master's degree or pursuing certification through a high-quality alternative certification route (34 CFR 686.11(b)(2))					x				
31. 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							

Notes:

<sup>1</sup> An otherwise-eligible student who is not enrolled as a regular student may be eligible to receive Direct Loan funds if the student is enrolled in preparatory coursework under 668.32(a)(1)(ii) and 685.203(a)(6). Similarly, students who are not enrolled as

regular student in programs leading to a degree or certificate may receive Pell and TEACH Grants through enrollment in an eligible postbaccalaureate teacher certification program under limited circumstances under 34 CFR 690.6(c) and 686.3(a).

<sup>2</sup>The Pell Grant is calculated based on COA and EFC and in accordance with the Pell Payment and Disbursement Schedules published annually by ED, but it is not adjusted to account for other resources or estimated financial assistance.

<sup>3</sup>Does not apply to unsubsidized loans and parent loans.

<sup>4</sup>The requirement for a Social Security Number does not apply to students who are residents of the Federated States of Micronesia, Republic of the Marshall Islands, or Republic of Palau.

<sup>5</sup>There is an exception for Pell and TEACH Grants if the student meets alternative requirements through enrollment in a postbaccalaureate teacher certification or licensing program under 690.6(c) and 686.3(a).

<sup>6</sup>Students incarcerated in federal and state penal institutions are not eligible for Pell Grants, but those incarcerated in local penal institutions are eligible.

**OTHER CLUSTERS****Programs included in this Supplement deemed to be other clusters**

<b>Agency</b>	<b>Assistance Listing No.</b>	<b>Name of Other Cluster/Program</b>
<b>SNAP Cluster</b>		
USDA	10.551	Supplemental Nutrition Assistance Program (SNAP)
	10.561	State Administrative Matching Grants for the Supplemental Nutrition Assistance Program
<b>Child Nutrition Cluster</b>		
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)
	10.582	Fresh Fruit and Vegetable Program (FFVP)
<b>Food Distribution Cluster</b>		
USDA	10.565	Commodity Supplemental Food Program
	10.568	Emergency Food Assistance Program (Administrative Costs)
	10.569	Emergency Food Assistance Program (Food Commodities)
<b>Forest Service Schools and Roads Cluster</b>		
USDA	10.665	Schools and Roads–Grants to States
	10.666	Schools and Roads–Grants to Counties
<b>Community Facilities Loans and Grants Cluster</b>		
USDA	10.766	Community Facilities Loans and Grants
	10.780	Community Facilities Loans and Grants (Community Programs)
<b>Economic Development Cluster</b>		
DOC	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
	14.249	Section 8 Moderate Rehabilitation Single Room Occupancy
	14.856	Lower Income Housing Assistance Program – Section 8 Moderate Rehabilitation

**CDBG - Entitlement Grants Cluster**

HUD	14.218	Community Development Block Grants/Entitlement Grants
	14.225	Community Development Block Grants/Special Purpose Grants/Insular Areas

**CDBG - Disaster Recovery Grants – Pub. L. No. 113-2 Cluster**

HUD	14.269	Hurricane Sandy Community Development Block Grant Disaster Recovery Grants (CDBG-DR)
	14.272	National Disaster Resilience Competition (CDBG-NDR)

**HOPE VI Cluster**

HUD	14.866	Demolition and Revitalization of Severely Distressed Public Housing (HOPE VI)
	14.889	Choice Neighborhoods Implementation Grants

**Housing Voucher Cluster**

HUD	14.871	Section 8 Housing Choice Vouchers
	14.879	Mainstream Voucher Program (MV)

**477 Cluster**

DOI	15.025	Services to Indian Children, Elderly and Families
	15.026	Indian Adult Education
	15.113	Indian Social Services – Welfare Assistance
	15.114	Indian Education – Higher Education Grant
	15.130	Indian Education – Assistance to Schools (Johnson-O’Malley)
DOL	17.265	Native American Employment and Training
HHS	93.558	Temporary Assistance for Needy Families (TANF)
	93.569	Community Services Block Grant
	93.575	Child Care and Development Block Grant
	93.594	Tribal Work Grants – Native Employment Works (NEW)
	93.596	Child Care Mandatory and Matching Funds of the Child Care and Development Fund

Note: The DOL and HHS programs listed above have separate program supplements in Part 4 of the Supplement. The 477 cluster or the program supplement applies as indicated at the beginning of the 477 cluster.

### **Fish and Wildlife Cluster**

DOI	15.605	Sport Fish Restoration Program
	15.611	Wildlife Restoration and Basic Hunter Education
	15.626	Enhanced Hunter Education and Safety Program

### **Employment Service Cluster**

DOL	17.207	Employment Service/Wagner-Peyser Funded Activities
	17.801	Jobs for Veterans State Grant

### **WIOA Cluster**

DOL	17.258	WIOA Adult Program
	17.259	WIOA Youth Activities
	17.278	WIOA Dislocated Worker Formula Grants

### **Highway Planning and Construction Cluster**

DOT	20.205	Highway Planning and Construction (Federal-Aid Highway Program)
	20.219	Recreational Trails Program
	20.224	Federal Lands Access Program
	23.003	Appalachian Development Highway System

### **FMCSA Cluster**

DOT	20.218	Motor Carrier Safety Assistance Program
	20.237	High Priority Grant Program

### **Federal Transit Cluster**

DOT	20.500	Federal Transit—Capital Investment Grants (Fixed Guideway Capital Investment Grants)
	20.507	Federal Transit—Formula Grants (Urbanized Area Formula Program)
	20.525	State of Good Repair Grants Program
	20.526	Bus and Bus Facilities Formula & Discretionary Programs (Bus Program)

### **Transit Services Programs Cluster**

DOT	20.513	Enhanced Mobility of Seniors and Individuals with Disabilities
	20.516	Job Access and Reverse Commute Program

	20.521	New Freedom Program
		<b>Highway Safety Cluster</b>
DOT	20.600	State and Community Highway Safety
	20.611	Incentive Grant Program to Prohibit Racial Profiling
	20.616	National Priority Safety Programs
		<b>Clean Water State Revolving Fund (CWSRF) Cluster</b>
EPA	66.458	Capitalization Grants for Clean Water State Revolving Funds
	66.482	Disaster Relief Appropriations Act (DRAA) Hurricane Sandy Capitalization Grants for Clean Water State Revolving Funds
		<b>Drinking Water State Revolving Fund (DWSRF) Cluster</b>
EPA	66.468	Capitalization Grants for Drinking Water State Revolving Funds
	66.483	Disaster Relief Appropriations Act (DRAA) Hurricane Sandy Capitalization Grants for Drinking Water State Revolving Funds
		<b>Special Education Cluster (IDEA)</b>
ED	84.027	Special Education—Grants to States (IDEA, Part B)
	84.173	Special Education—Preschool Grants (IDEA Preschool)
		<b>TRIO Cluster</b>
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
		<b>Aging Cluster</b>
HHS	93.044	Special Programs for the Aging—Title III, Part B—Grants for Supportive Services and Senior Centers, CARES Act for Supportive Services Under Title III-B of the Older Americans Act, and American Rescue Plan for Supportive Services Under Title III-B of the Older Americans Act
	93.045	Nutrition Services and CARES Act for Nutrition Services Under Title III-C of the Older Americans Act, CARES Act for Nutrition Services Under Title III-C of the Older Americans Act, and American Rescue Plan for Nutrition Services Under Title III-C of the Older Americans Act
	93.053	Nutrition Services Incentive Program

**Hurricane Sandy Relief Cluster**

HHS	93.095	HHS Programs for Disaster Relief Appropriations Act–Non-Construction
	93.096	HHS Programs for Disaster Relief Appropriations Act–Construction

**Health Center Program Cluster**

HHS	93.224	Health Center Program (Community Health Centers, Migrant Health Centers, Health Care for the Homeless, and Public Housing Primary Care)
	93.527	Grants for New and Expanded Services under the Health Center Program

**CCDF Cluster**

HHS	93.489	Child Care Disaster Relief
	93.575	Child Care and Development Block Grant
	93.596	Child Care Mandatory and Matching Funds of the Child Care and Development Fund

**Head Start Cluster**

	93.356	Head Start Disaster Recovery from Hurricanes Harvey, Irma, and Maria
	93.600	Head Start

**Medicaid Cluster**

HHS	93.775	State Medicaid Fraud Control Units
	93.777	State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare
	93.778	Medical Assistance Program (Medicaid; Title XIX)

**Foster Grandparent/Senior Companion Cluster**

CNCS	94.011	Foster Grandparent Program
	94.016	Senior Companion Program

**Disability Insurance/SSI Cluster**

SSA	96.001	Social Security–Disability Insurance
	96.006	Supplemental Security Income

**Food For Peace Cluster**

USAID	98.007	Food for Peace Development Assistance Program
	98.008	Food for Peace Emergency Program

## **PART 6 - INTERNAL CONTROL**

The focus of this part is on internal control over compliance requirements for federal awards (sometimes referred to as internal control over compliance). It is intended for the consideration of both non-federal entities and auditors and includes the following:

- A summary of the requirements for internal control for both non-federal entities receiving federal awards (also referred to as auditee management) and auditors performing audits under 2 CFR section 200 (i.e., the Uniform Guidance);
- A background discussion on important internal control concepts; and
- Appendices that include illustrations of entity-wide internal controls over federal awards (Appendix 1), as well as illustrations of internal controls specific to each type of compliance requirement (Appendix 2).

### **Uniform Guidance Internal Control Requirements**

The 2 CFR section 200.303 requires that non-federal entities receiving federal awards establish and maintain internal control over the federal awards that provides reasonable assurance that the non-federal entity is managing the federal awards in compliance with federal statutes, regulations, and the terms and conditions of the federal awards. The 2 CFR section 200.514 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 of noncompliance for major programs, and, unless internal control is likely to be ineffective, 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 perform testing of internal control as planned.

Note: When internal control is likely to be ineffective in preventing and detecting noncompliance, 2 CFR section 200.514 requires the auditor to report a significant deficiency or material weakness, assess control risk at the maximum, and consider whether additional compliance tests are required because of the ineffective internal control.

The objectives of internal control over compliance as found in 2 CFR section 200.1, are as follows:

1. Transactions are properly recorded and accounted for in order to:
  - a) Permit the preparation of reliable financial statements and federal reports;
  - b) Maintain accountability over assets; and
  - c) Demonstrate compliance with federal statutes, regulations, and the terms and conditions of the federal award;
2. Transactions are executed in compliance with:
  - a) Federal statutes, regulations, and the terms and conditions of the federal award that could have a direct and material effect on a federal program; and

- b) Any other federal statutes and regulations that are identified in the Compliance Supplement; and
3. Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

The 2 CFR section 200.303 indicates that the internal controls required to be established by a non-federal entity receiving federal awards “should” be in compliance with guidance in “Standards for Internal Control in the Federal Government,” issued by the Comptroller General of the United States (the Green Book) or the “Internal Control Integrated Framework” (revised in 2013), issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The 2 CFR 200.101 (b) states that “throughout this part when the word “must” is used it indicates a requirement. Whereas use of the word “should” or “may” indicates a best practice or recommended approach rather than a requirement and permits discretion. Therefore the Uniform Guidance is recommending that non-federal entities use either the Green Book or COSO internal control frameworks but does not require it. Q-67 indicates that, while non-federal entities must have effective internal control, there is no expectation or requirement that the non-federal entity document or evaluate internal controls prescriptively in accordance with COSO, the Green Book, or this part of the Supplement, or that the non-federal entity or auditor reconcile technical differences between them. Q-67 goes on to say that 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.

However, non-federal entities and auditors should be aware that the Uniform Guidance also includes requirements for non-federal entities to have written policies or procedures supporting compliance with certain compliance requirements. The areas of procurement and subrecipient monitoring are examples of compliance requirements that contain such requirements.

### **COSO/Green Book Concepts Relevant to Internal Control Over Compliance**

The following is a summary level discussion of internal control concepts covered in both the COSO and Green Book frameworks that are relevant to internal control over compliance. Non-federal entities and auditors should review COSO and the Green Book in their entirety to ensure an appropriate understanding of these concepts.

Internal control is generally defined as a process effected by an entity’s oversight body, management, and other personnel that provides reasonable assurance that the objectives of an entity will be achieved.

With respect to federal awards, a system of internal control is expected to provide a non-federal entity with reasonable assurance that the entity’s objectives relating to compliance with federal statutes, regulations, and the terms and conditions of federal awards will be achieved.

Internal control is not one event or circumstance, but a dynamic and iterative process—actions that permeate an entity’s activities and that are an integral part of the way auditee management runs the entity. Embedded within this process are controls consisting of policies and procedures.

These policies reflect auditee management or oversight body statements of what should be done to effect internal control. Procedures consist of actions that implement a policy.

Processes, which are conducted within or across operating units or functional areas, are managed through the fundamental auditee management activities, such as planning, executing, and checking. Internal control is integrated with these processes. Internal control embedded within these processes and activities are likely more effective and efficient than stand-alone controls.

Internal control provides many benefits to an entity. It provides auditee management with added confidence regarding the achievement of objectives, provides feedback on how effectively an entity is operating, and helps reduce risks affecting the achievement of the entity's compliance objectives.

Auditee management exercises judgment in balancing the cost and benefit of designing, implementing, and operating internal controls. In exercising that judgment, management considers both qualitative and quantitative factors, as well as the specific risks of their federal awards and operations.

The Green Book and COSO are both organized by five components of internal control as shown in the table below. COSO identifies 17 principles related to the five components of internal control, each of which has important attributes which explain the principles in greater detail. The Green Book adapts these principles for a government environment.

### Summary of Green Book and COSO Components and Principles of Internal Control

<b>Components of Internal Control</b>	<b>Principles</b>
Control Environment	<ol style="list-style-type: none"> <li>1. Demonstrate Commitment to Integrity and Ethical Values</li> <li>2. Exercise Oversight Responsibility</li> <li>3. Establish Structure, Responsibility, and Authority</li> <li>4. Demonstrate Commitment to Competence</li> <li>5. Enforce Accountability</li> </ol>
Risk Assessment	<ol style="list-style-type: none"> <li>6. Define Objectives and Risk Tolerances</li> <li>7. Identify, Analyze, and Respond to Risks</li> <li>8. Assess Fraud Risk</li> <li>9. Identify, Analyze, and Respond to Change</li> </ol>
Control Activities	<ol style="list-style-type: none"> <li>10. Design Control Activities</li> <li>11. Design Activities for the Information System</li> <li>12. Implement Control Activities</li> </ol>
Information and Communication	<ol style="list-style-type: none"> <li>13. Use Quality Information</li> <li>14. Communicate Internally</li> <li>15. Communicate Externally</li> </ol>
Monitoring	<ol style="list-style-type: none"> <li>16. Perform Monitoring Activities</li> <li>17. Evaluate Issues and Remediate Deficiencies</li> </ol>



To determine if an internal control system is effective, auditee management assesses the design, implementation, and operating effectiveness of the five components and 17 principles. If a principle or component is not effective, or the components are not operating together in an integrated manner, then an internal control system cannot be effective.

Because both COSO and the Green Book have the same components of internal control and similar principles, for consistency, this part and its appendices are primarily based on the Green Book.

### **Illustrative Internal Controls Appendices**

The section in this part, “Uniform Guidance Internal Control Requirements,” describes the auditor’s responsibility for internal control under the Uniform Guidance. The appendices to this part are intended to illustrate internal controls for each of the five components of internal control to assist non-federal entities and their auditors in complying with their respective requirements.

Appendix 1 provides illustrative entity-wide controls over compliance for four of the five above described components of internal control as follows: control environment, risk assessment, information and communication, and monitoring. For this purpose, entity-wide controls are considered governance controls that apply to most, if not all, types of compliance requirements for one or more federal programs. See Appendix 1 for more information about entity-wide controls.

Appendix 2 provides illustrative specific controls for control activities, the remaining component of internal control, for each type of compliance requirement. For this purpose, specific controls are considered operational-level controls that apply to individual types of compliance requirements. See Appendix 2 for more information about specific controls.

**Important Note:** Auditors are cautioned that the approach taken in the appendices to present four of the five control components as being subject to entity-wide controls and the remaining component as being subject to specific controls may not reflect how a particular entity designs and implements internal control.

For example:

- Some entities may establish specific controls (versus entity-wide controls) relating to certain of the control components discussed in Appendix 1 as typically having entity-wide controls.
- Federal programs may also be administered under multiple internal control structures. This occurs when multiple organizational units (for example, locations or branches) are involved in the administration of federal programs such as a university that has several campuses administering a federal program, each having differing internal control structures.

In these situations, auditors should obtain an understanding of controls and test controls at a level that reflects the way management designs and implements internal control, as well as prepare related audit documentation at that level.

Finally, the illustrative controls in the appendices to this part are not intended to be all-inclusive or a checklist of required internal control characteristics. That is, non-federal entities could have adequate internal control even though some or all of the illustrative controls are not present. Further, non-federal entities could have other appropriate internal controls operating effectively that have not been included among the illustrations. Non-federal entities need to exercise judgment in determining the most appropriate and cost-effective internal control in a given environment or circumstance, to provide reasonable assurance of compliance with federal program requirements.

## **Appendix 1 - Illustrative Entity-Wide Controls**

This appendix provides illustrative entity-wide controls over compliance for four of the five components of internal control as follows: control environment, risk assessment, information and communication, and monitoring. It is organized this way because many non-federal entities consider and implement internal control in this manner.

For this purpose, entity-wide controls are considered governance controls that apply to most, if not all, types of compliance requirements for one or more federal programs. Entity-wide controls are generally governance controls established at the entity-wide level versus at the federal program or type of compliance requirement level. For example, an entity may establish controls related to the control environment for all types of compliance requirements for an individual federal program or even across all federal programs. When non-federal entities implement internal controls in this manner, auditors may obtain an understanding of controls and test controls at the entity-wide level, as well as prepare related documentation at that level.

### **Green Book Principles**

The Green Book includes a description of the five components of internal control and their related principles. The descriptions of the components and principles for control environment, risk assessment, information, and communication, and monitoring below are taken directly from the Green Book.

Note: The following provides illustrative entity-wide controls for four of the five components of internal control as follows: control environment, risk assessment, information and communication, and monitoring. It is not intended to be used as a checklist of required internal control characteristics. In addition, caution should be used as the entity-wide control approach used below may not reflect the way management considers and implements internal control. Refer to the introduction to this appendix above to ensure an appropriate understanding of this appendix and how to use it. Importantly, as noted in both the Green Book and COSO, all five components of internal control have to be present and functioning for internal control to be designed effectively.

See Appendix 2 for illustrative specific controls for control activities, the remaining component of internal control, for each type of compliance requirement.

### **Control Environment Component**

The foundation for an internal control system. It provides the discipline and structure, which affect the overall quality of internal control. It influences how objectives are defined and how control activities are structured. The oversight body and management establish and maintain an environment throughout the entity that sets a positive attitude toward internal control.

Principle 1. The oversight body and management should demonstrate a commitment to integrity and ethical values.

**Illustrative Controls for Principle 1:**

- A code of conduct is developed, documented, communicated and periodically updated
- A code of conduct explicitly prohibits inappropriate management override of established controls
- Conflict of interest statements are obtained periodically from those charged with governance (TCWG) and key management

**Principle 2.** The oversight body should oversee the entity's internal control system.

**Illustrative Controls for Principle 2:**

- TCWG have the requisite skills and knowledge to provide effective oversight pertaining to federal award compliance issues and related risk
- TCWG periodically review ethical and moral conduct violations including stakeholder complaints regarding issues of federal award compliance with senior management
- A whistle blower submission process exists to receive and evaluate concerns by employees regarding questionable practices inclusive of issues impacting federal award compliance/non-compliance
- An audit committee charter exists and addresses federal compliance oversight
- The effectiveness and performance of the audit committee is evaluated annually
- TCWG have effective two-way communication with external and internal auditors
- TCWG review risk assessments including the risks of fraud for impact on federal compliance objectives

**Principle 3.** Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives.

**Illustrative Controls for Principle 3:**

- Policies, procedures and organizational charts provide for segregation of duties within and among processes and controls
- Policies and procedures are in place to ensure that compliance responsibilities are assigned to particular positions

**Principle 4.** Management should demonstrate a commitment to recruit, develop, and retain competent individuals.

**Illustrative Controls for Principle 4:**

- Job descriptions include appropriate knowledge and skill requirements
- Appropriate training is provided that is relevant to responsibilities over compliance objectives
- Personnel with federal award compliance responsibilities are properly trained on their responsibilities

Principle 5. Management should evaluate performance and hold individuals accountable for their internal control responsibilities.

Illustrative Controls for Principle 5:

- Appropriate performance evaluations are provided that establish goals, accountability, and feedback
- Violations of the code of conduct result in remedial actions to deter others
- Consequences for noncompliance with the code of conduct are communicated and enforced
- Penalties for inappropriate behavior are adequate and publicized

### **Risk Assessment Component**

Having established an effective control environment, management assesses the risks facing the entity as it seeks to achieve its objectives. This assessment provides the basis for developing appropriate risk responses. Management assesses the risks the entity faces from both external and internal sources.

Principle 6. Management should define objectives clearly to enable the identification of risks and define risk tolerances.

Illustrative Controls for Principle 6:

- Management establishes an effective risk assessment process that includes the use of a specific risk matrix
- Management identifies key compliance objectives for types of compliance requirements
- Management identifies and evaluates risk tolerances related for controls over compliance

Principle 7. Management should identify, analyze, and respond to risks related to achieving the defined objectives.

Illustrative Controls for Principle 7:

- Management analyzes and identifies compliance risks
- TCWG have oversight over significant areas of risks
- Employees receive appropriate training to address identified risks
- Risk mitigation strategies are implemented by management

Principle 8. Management should consider the potential for fraud when identifying, analyzing, and responding to risks.

Illustrative Controls for Principle 8:

- Management reviews audit findings to identify fraud risks

- If an internal audit function exists, it reviews fraud risks and the internal control structure
- Management reviews the internal control structure for potential fraud risks
- TCWG periodically review a report of the potential fraud risks identified and actions taken in response to those risks during the period

Principle 9. Management should identify, analyze, and respond to significant changes that could impact the internal control system.

Illustrative Controls for Principle 9:

- Management identifies changes such as new personnel, new technology, expanded operations, rapid growth, or changes in the operating environment and adjusts risk assessments to address those changes
- Management analyzes compliance requirement modifications to properly adjust risk
- A communication process with regulators is in place to identify changes in compliance requirements
- Changes in philosophies or employee turnover are evaluated by management for any potential impact on related controls

**Control Activities Component** – See Appendix 2 for this component and related principles 10, 11, and 12.

### **Information and Communication Component**

Management uses quality information to support the internal control system. Effective information and communication are vital for an entity to achieve its objectives. Entity management needs access to relevant and reliable communication related to internal as well as external events.

Principle 13. Management should use quality information to achieve the entity's objectives.

Illustrative Controls for Principle 13:

- Financial and programmatic systems capture, accurately process, and timely report pertinent information
- The accounting system provides for separate identification of federal and non-federal transactions
- Adequate source documentation exists to support amounts and items reported
- Reports are provided timely to managers for review and appropriate action
- Management verifies the sources and reliability of information used in making management decisions and executes monitoring controls
- When information is derived from the organization's information technology (IT) systems:
  - Security administration
    - Written policies and procedures regarding IT security exist

- Regarding managing user access rights, (1) rights are approved and granted based on job responsibilities; (2) rights, including super user access, are reviewed periodically; and (3) access is revoked in a timely manner
- Duties of security personnel do not include performing compliance processes or controls, programming, or IT management
- Remote and third party access rights are managed to include timely revocation of rights
- Program maintenance
  - Policies around the change management process are documented, approved, and communicated
  - Segregation of duties exists between development, testing, and production
  - Changes to productions are logged and reviewed
- Program execution
  - Policies around the program execution process are documented, approved, and communicated
  - Production job scheduling change requests are approved by appropriate IT personnel
  - The scheduling system is restricted from accessing anything that is not in the production library (applications and databases)
  - Schedule exceptions are monitored to determine if they are properly resolved

Principle 14. Management should internally communicate the necessary quality information to achieve the entity's objectives.

Illustrative Controls for Principle 14:

- Relevant internal and external information is communicated and delivered to employees responsible for federal award compliance on a timely basis
- Effective channels for communication throughout the organization exist

Principle 15. Management should externally communicate the necessary quality information to achieve the entity's objectives.

Illustrative Controls for Principle 15:

- Relevant information is communicated to external parties including subrecipients, vendors, federal granting agencies, and third party processors on a timely basis
- Effective channels exist for communications with federal granting agencies, oversight agencies and cognizant agencies

### **Monitoring Component**

Activities management establishes and operates to assess the quality of performance over time and promptly resolves the findings of audits and other reviews.

Principle 16. Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results

Illustrative Controls for Principle 16:

- Management monitors the effective operation of critical control activities
- Management monitors the use of effective self-review procedures in critical compliance areas
- Management monitors the effective review of timely and reliable metrics or key performance indicators, including reconciliation with data from financial or other reporting systems to ensure its accuracy and completeness
- Management monitors the reconciliation of key performance indicators with data from financial or other reporting systems, including reconciliation with data from financial or other reporting systems to ensure its accuracy
- If an internal audit function exists, it is staffed with qualified and competent personnel and it reports directly to TCWG
- If an internal audit function exists, its responsibilities and audit plans are aligned to the organization's risk assessment

Principle 17. Management should remediate identified internal control deficiencies on a timely basis.

Illustrative Controls for Principle 17:

- Findings, recommendations and other observations by independent auditors, internal auditors, and federal auditors are distributed and reviewed by those individuals responsible for compliance with federal requirements.
- Control deficiencies and instances of noncompliance are reported to and evaluated by management and TCWG, if applicable, for resolution on a timely basis
- Management periodically monitors the corrective action plans related to known noncompliance and control deficiencies and the organization's progress to remediating the findings



## **Appendix 2 – Illustrative Specific Controls for Control Activities**

While Appendix 1 includes illustrative entity-wide controls over compliance for four of the five components of internal control (i.e., control environment, risk assessment, information and communication, and monitoring), this appendix provides illustrative specific controls over compliance for control activities, the remaining component of internal control. It is organized this way because many non-federal entities consider and implement internal control in this manner.

For this purpose, specific controls are considered operational-level controls that apply to individual types of compliance requirements. For example, an entity may establish controls related to control activities at the applicable type of compliance requirement level (e.g., allowable costs, eligibility, reporting) for the federal programs that it participates in. When non-federal entities implement internal controls in this manner, auditors should obtain the understanding of controls and test specific controls related to control activities and prepare related documentation at that level.

### **Control Activities Component**

The actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system, which includes the entity's information system. The Green Book includes the following three principles for control activities:

- Principle 10. Design Control Activities – management should design control activities to achieve objectives and respond to risks
- Principle 11. Design Activities for the Information System – management should design the entity's information system and related control activities over technology to achieve objectives and respond to risks
- Principle 12. Implement Control Activities – management should implement control activities through policies

### **Understanding a Process vs. Controls**

A process is a series of actions that lead to a particular result—for example, charging costs to a federal award. The process is where noncompliance with allowable costs/cost principles or other requirements could occur. Often the potential noncompliance is referred to as a “what-could-go-wrong” (WCGW). A control is designed to prevent or timely detect noncompliance. However, a control does not itself introduce noncompliance into a process. When identifying controls, it is important to first consider the processes and the resulting WCGWs. As controls should be designed, implemented, and maintained to be responsive to risk and WCGWs, it is difficult to determine the appropriateness of specific controls without understanding the process and the WCGWs.

Controls may be viewed as part of a process and the flow of transactions, but controls need to be separately identified. When it is difficult to identify the difference between the process and controls, there is often a missing control. Several important related considerations follow:

- Process owners are often referred to as the doers and the control owner is often referred to as the reviewer.
- A well-designed system of internal control assigns a control to each WCGW. An entity could have one control that addresses one WCGW, a suite of controls that address one WCGW, or one control that addresses multiple WCGWs.
- Controls are often described in terms of a control category, such as authorization, management review, segregation of duties, or system access.

### **Understanding Controls Activities**

Control activities may be preventative or detective. A preventive control is designed to avoid an unintended event or result at the time of the transaction while a detective control is designed to discover an unintended event or result after the initial processing has occurred but before the ultimate objective has concluded. Entities usually employ a mix of both.

Controls need to be designed such that they *would* prevent or detect a WCGW—not just that they *could* prevent or detect a WCGW. Controls also need to be evaluated for the precision of their efforts. Generally, management has a greater need for precision and redundancy than do auditors. That is, external auditors are focused on material noncompliance, whereas management is focused on compliance.

Importantly, as noted in both the Green Book and COSO, all five components of internal control have to be present and functioning for internal control to be designed effectively—that is, control activities on their own are not an effective system of internal controls. Even within control activities, controls rely on the effective design and operation of other controls. For example, a management review control generally uses information produced by the entity. Therefore, the management review control is only effective if there are controls over the information used in the review. Also, general IT controls, typically designed and implemented as entity-wide controls described in Appendix 1, are necessary for the effective operation of application IT controls.

Note: The following provides illustrative specific controls for control activities (one of the five components of internal control) for each type of compliance requirement. It is not intended to be used as a checklist of required internal control characteristics. In addition, caution should be used as the specific control approach used below only for control activities may not reflect the way management considers and implements internal control. Refer to the introduction to this appendix above to ensure an appropriate understanding of this appendix and how to use it. Importantly, as noted in both the Green Book and COSO, all five components of internal control have to be present and functioning for internal control to be designed effectively.

See Appendix 1 for illustrative entity-wide controls for the other four components of internal control (i.e., control environment, risk assessment, information and communication, and monitoring).

**PART 6 – APPENDIX 2**

**Illustrative Specific Controls – Control Activities (excerpted from Greenbook).**

**Principle 10. Design Control Activities: management should design control activities to achieve objectives and respond to risks.**

<b>A. ACTIVITIES ALLOWED OR UNALLOWED B. ALLOWABLE COSTS/COST PRINCIPLES</b>	<b>C. CASH MANAGEMENT</b>	<b>E. ELIGIBILITY</b>	<b>F. EQUIPMENT AND REAL PROPERTY MANAGEMENT</b>
<p>Management identifies and puts into effect actions needed to carry out specific responses to risks identified in the risk assessment process, such as miscoding, inappropriate cost transfers, budget overages, segregation of duties concerns, unauthorized changes to system configurations, fraud, unauthorized payments, etc.</p>	<p>Management identifies and puts into effect actions needed to carry out specific responses to risks identified in the risk assessment process, such as time lapses between funds transfer and disbursement, fraud, liquidity pressures, inherent risks with subrecipients, etc.</p>	<p>Management identifies and puts into effect actions needed to carry out specific responses to risks identified in the risk assessment process, such as providing benefits to ineligible individuals, calculating amounts to be received for or on behalf of individuals incorrectly, unauthorized changes to system configurations, fraud, unauthorized payments, etc.</p>	<p>Management identifies and puts into effect actions needed to carry out specific responses to risks identified in the risk assessment process for equipment and real property, such as inaccurate or incomplete recordkeeping, inappropriate use, unidentified dispositions, segregation of duties concerns, fraud, loss, damage, theft, etc.</p>
<p>Management reviews applicable award agreements or contracts for specific allowable activities requirements, budget parameters, indirect rates, fringe benefit rates, and those activities/costs that require pre-approval by the awarding agency and documents such features into a grant approval form which is submitted to accounting personnel for review and approval before being input into the system as the profile for the grant.</p>	<p>Management reviews applicable award agreements or contracts to determine applicability of drawdown method (advance or reimbursement) to develop its own control activities and to inform its establishment of a method for subrecipients, as applicable.</p>	<p>Management reviews applicable award agreements or contracts and identifies specific eligibility requirements including benefits to be paid.</p>	<p>Management reviews applicable award agreements or contracts and identifies specific equipment and real property requirements.</p>

<b>A. ACTIVITIES ALLOWED OR UNALLOWED B. ALLOWABLE COSTS/COST PRINCIPLES</b>	<b>C. CASH MANAGEMENT</b>	<b>E. ELIGIBILITY</b>	<b>F. EQUIPMENT AND REAL PROPERTY MANAGEMENT</b>
<p>Supervisors review and approve invoices, cost allocations, efforts of personnel, fringe benefits and indirect charges for allowability, adherence to cost principles, accuracy, and completeness.</p>	<p>Requests for reimbursement are reviewed/authorized prior to submission by reviewing supporting documents/schedules/reports to ensure amounts have been paid with the organization's funds prior to the reimbursement request. (Reimbursement)</p>	<p>Accuracy and completeness of data used to determine eligibility requirements are reviewed and agreed to support as necessary by staff and reviewed by knowledgeable supervisor.</p>	<p>Property additions purchased with grant funds are recorded timely and compared to source documents for accurate and complete recording.</p>
<p>Chart of accounts segregates unallowable costs/activities into discrete accounts to help ensure they are not coded to federal awards; directly or indirectly.</p>	<p>Cash flow statements/forecasts are prepared and reviewed to determine the immediate cash needs of the federal program. (Advance)</p>	<p>Manual checklists or automated processes used when making eligibility determinations are reviewed and approved by a knowledgeable supervisor.</p>	<p>Title/deeds associated with real property purchased with grant funds is maintained in a secure location and access is limited to authorized personnel.</p>
<p>On a monthly basis, the grant supervisor reviews the budget vs. actual report investigating unusual or unexpected variances and documents results of follow-up work performed.</p>		<p>Calculations of amounts to be received for or on behalf of participants are reperformed by supervisor.</p>	
<p>For changes in indirect rates due to new Negotiated Indirect Cost Rate Agreements (NICRAs) or reconciliations between provisional and actual indirect rates, the grant supervisor reviews the journal entry adjusting those costs by re-performing the calculation.</p>	<p>Drawdowns are reviewed/authorized by supervisors to ensure that amount requested minimizes the time elapsing between the transfer of funds from the US Treasury/Pass-Through Entity and their disbursement. (Advance)</p>	<p>Exception/edit reports are reviewed timely to identify potential ineligible participants/payments.</p>	<p>Leases associated with leasehold improvements purchased with grant funds have appropriate language identifying the improvements as federal property.</p>
<p>Journal entries to transfer costs from one project to another are reviewed for appropriateness and approved.</p>	<p>Drawdowns are reviewed by supervisors to ensure available program income, rebates, refunds, contract settlements, audit</p>	<p>Management periodically reviews documents/files/reports to ensure benefits are discontinued timely when eligibility requirements are no</p>	<p>Property and equipment listings associated with federal funds are reviewed periodically by knowledgeable officials to ensure completeness and accuracy.</p>

<b>A. ACTIVITIES ALLOWED OR UNALLOWED B. ALLOWABLE COSTS/COST PRINCIPLES</b>	<b>C. CASH MANAGEMENT</b>	<b>E. ELIGIBILITY</b>	<b>F. EQUIPMENT AND REAL PROPERTY MANAGEMENT</b>
	recoveries, and interest earned is disbursed prior to requesting additional federal funds. (Advance)	longer met, or period of eligibility expires.	
	End of award close-out reconciliations are performed over cumulative program expenditures and requests for federal funds to ensure completeness and accuracy of draws.		Annual analysis of property and equipment dispositions is documented and reviewed for adherence to federal regulations by knowledgeable supervisors.
	Periodic reconciliations of excess draws and interest to be remitted are reperformed by supervisory personnel.		A sample of physical inventory counts are reperformed by a supervisor to ensure accuracy.
	Templates for subrecipient agreements include standard provisions for cash management methodology requirements.		
Individuals who initiate transactions are different from those approving the transactions and those recording the transactions in the general ledger.	Segregation of duties exists between those responsible for processing program expenditures and those processing drawdown/reimbursement requests.	Segregation of duties exists between those determining a participant's eligibility and those reviewing/approving eligibility.	Segregation of duties exists between those accounting for property and those responsible for safeguarding the property.
Where segregation of duties is not practical, management selects and develops alternative control activities.	Where segregation of duties is not practical, management selects and develops alternative control activities.	Where segregation of duties is not practical, management selects and develops alternative control activities.	Where segregation of duties is not practical, management selects and develops alternative control activities.

**Principle 10. Design Control Activities: management should design control activities to achieve objectives and respond to risks.**

<b>G. MATCHING, LEVEL OF EFFORT, EARMARKING</b>	<b>H. PERIOD OF PERFORMANCE</b>	<b>I. PROCUREMENT AND SUSPENSION AND DEBARMENT</b>	<b>J. PROGRAM INCOME</b>
<p>Management identifies and puts into effect actions needed to carry out specific responses to risks identified in the risk assessment process, such as unallowable funding sources for amounts claimed as match, unsupported or unreasonable valuations of in-kind contributions, unallowable activities/costs, unsupported effort indicators, use of unapplied indirect costs as match without pre-approval, utilization of same data for more than one match when prohibited, failure to track minimum or maximum earmarking criteria, segregation of duties concerns, fraud, etc.</p>	<p>Management identifies and puts into effect actions needed to carry out specific responses to risks identified in the risk assessment process, such as miscoding, in appropriate cost transfers or adjustments for transactions outside the award period, segregation of duties concerns, unauthorized changes to system configurations, fraud, failure to secure approvals or extensions for coding costs outside the original performance period, etc.</p>	<p>Management identifies and puts into effect actions needed to carry out specific responses to risks identified in the risk assessment process, such as unidentified or unaddressed conflicts of interest, fraud, segregation of duties concerns, unauthorized procurements, unauthorized changes to vendor master file, failure to follow documented policies, failure to document history of procurement, failure to document cost/price analysis, inappropriate procurement method used, suspended or debarred vendor/subrecipient contracted with, etc.</p>	<p>Management identifies and puts into effect actions needed to carry out specific responses to risks identified in the risk assessment process, such as failure to identify and use program income, use of incorrect method to use program income, fraud, segregation of duties concerns, etc.</p>
<p>Management reviews applicable award agreements or contracts for specific matching, level of effort, and earmarking requirements including any unique requirements (such as pre-approval by the granting agency to recoup unapplied indirect costs as matching) and documents such features into a grant approval or other grant summary form which is submitted to accounting and/or programmatic personnel, as appropriate for review and approval before being input in the financial system to set up a grant match record or other programmatic tracking system as a profile for the grant.</p>	<p>Management reviews applicable award agreements or contracts for specific period of performance requirements, including any unique provisions about pre-award spending, extensions, and refunds of unobligated cash.</p>	<p>Management creates and requires the use of standard forms and templates for purchase orders, contracts, requests for proposals/bids, cost/price analyses, bid evaluation, etc. Standard documentation protocol for the history of procurements exists including rationale for the method of procurement (micro-purchase, small purchase, sealed bid, competitive proposal, or noncompetitive proposal), selection of the contract type (fixed price, cost reimbursement, etc.), cost/price analysis, basis for contractor selection/rejection, etc.</p>	<p>Management reviews applicable award agreements or contracts for provisions specific to program income, including identifying likely program income based on award purpose and the use of Deduction, Addition, or Cost Sharing/Matching methods for using program income and documents such features into a grant approval form which is submitted to accounting personnel for review and approval before being input into the system as the profile for the grant.</p>
<p>Supervisory review ensures matching contributions are supported by 3rd party evidence, or other procedures are</p>	<p>Supervisors review and approve invoices, cost allocations, efforts of personnel, fringe benefits and</p>	<p>Supervisors review and approve procurement and contracting decisions</p>	<p>On a monthly basis, supervisors review application of program income to the award to ensure that</p>

<b>G. MATCHING, LEVEL OF EFFORT, EARMARKING</b>	<b>H. PERIOD OF PERFORMANCE</b>	<b>I. PROCUREMENT AND SUSPENSION AND DEBARMENT</b>	<b>J. PROGRAM INCOME</b>
performed to ensure they are from non-federal sources and were not used as match for another federally assisted program.	indirect charges to ensure they were incurred during the period of performance.	for compliance with federal and organizational policies.	the proper method was used (Deduction, Addition, or Cost Sharing/Matching), applied correctly and was supported by program income records.
		Management reviews applicable award agreements, contracts, budgets, and other appropriate sources to identify potential covered transactions. Standard forms or templates are used to document verification that parties are not suspended or debarred.	Chart of accounts segregates program income from other income accounts to ensure it is captured completely and accurately.
Supervisors review monthly reporting of cumulative matching, level of effort and earmarking data and resolution of deficiencies, variances or unexpected results is documented.	At the beginning and ending of the period of performance, the grant supervisor reviews activity posted to the federal award investigating any unusual postings, adjustments or variances and documented results of follow-up work performed.		On a monthly basis, recorded program income is reconciled with supporting documentation such as invoices, registration logs, loan ledgers, rent rolls, etc. by a supervisor.
	Journal entries or other adjustments to transfers cost into the federal award costs are reviewed for appropriateness and to ensure costs are within the period of performance.		
		Responsible officials reconcile goods/services received with those procured including evaluating performance in accordance with terms, conditions and specifications of contracts or purchase orders.	
		Responsible officials review and resolve conflicts of interest on a regular basis.	
Segregation of duties exists between those accounting for match, level of effort, and earmarking requirements	Individuals who initiative transactions are different from those approving the transactions	Individuals who initiate procurements are different from those recording the	Individuals who collect cash or other receipts are different from those who deposit receipts, generate

<b>G. MATCHING, LEVEL OF EFFORT, EARMARKING</b>	<b>H. PERIOD OF PERFORMANCE</b>	<b>I. PROCUREMENT AND SUSPENSION AND DEBARMENT</b>	<b>J. PROGRAM INCOME</b>
and those reviewing and approving the reporting of such.	and those recording the transaction in the general ledger.	resulting transactions in the general ledger or making disbursements.	invoices, record general ledger activity, and reconcile the bank statement.
Where segregation of duties is not practical, management selects and develops alternative control activities.	Where segregation of duties is not practical, management selects and develops alternative control activities.	Where segregation of duties is not practical, management selects and develops alternative control activities.	Where segregation of duties is not practical, management selects and develops alternative control activities.



**Principle 10. Design Control Activities: management should design control activities to achieve objectives and respond to risks.**

<b>L. REPORTING</b>	<b>M. SUBRECIPIENT MONITORING</b>	<b>N. SPECIAL TESTS AND PROVISIONS</b>
<p>Management identifies and puts into effect actions needed to carry out specific responses to risks identified in the risk assessment process, such as lack of current knowledge of reporting requirements, data input errors, segregation of duties concerns, fraud, inconsistent application of accounting standards, lack of documented bridge between source data and final reports for any reconciling items and lack of or inappropriate source data or analysis used as the basis of performance or special reporting.</p>	<p>Management identifies and puts into effect actions needed to carry out specific responses to risks identified in the risk assessment process, such as missing federal and pass-through entity requirements in subawards, risks inherent with specific subrecipients, inappropriate/ineffective subrecipient monitoring, etc.</p>	<p>Illustrative internal controls cannot be provided because special tests and provisions are unique to the various federal programs.</p>
<p>Management reviews applicable award agreements or contracts for specific reporting requirements and establishes a reporting calendar for review and approval.</p>	<p>Subrecipient agreements are reviewed and approved by knowledgeable supervisors to ensure all compliance requirements are captured, that information is consistent between pass-through entity records and the subaward, and that all required elements are included.</p>	
	<p>Management tracks subaward notifications and maintains an inventory of executed subrecipient agreements.</p>	
<p>Knowledgeable supervisors review and approve reports for completeness and accuracy, including comparing to source documentation (general ledger, third party evidence or other reliable records) and any reconciliations between source data to final reporting.</p>	<p>Knowledgeable supervisor reviews subrecipient risk assessments to ensure they address compliance risks and Uniform Guidance requirements and approves individual subrecipient monitoring plans.</p>	
<p>Management periodically reviews the completeness and accuracy of and adherence to the reporting calendar.</p>	<p>Management requires the use of a standard template for use for all sub recipient agreements inclusive of all required elements outlined in Uniform Guidance.</p>	
	<p>Documentation and conclusions of results of subrecipient oversight activities including the items below are review by supervisory personnel:</p> <ul style="list-style-type: none"> <li>• Award authorization</li> <li>• Site visits</li> <li>• Financial performance, monitoring, and/or audit reports</li> <li>• Grant budgets and advance or reimbursement requests</li> </ul>	

<b>L. REPORTING</b>	<b>M. SUBRECIPIENT MONITORING</b>	<b>N. SPECIAL TESTS AND PROVISIONS</b>
	<ul style="list-style-type: none"> <li>• Technical assistance provided</li> <li>• Assessment of findings, corrective action, and management's decision as applicable</li> </ul>	
	Supervisors periodically reconcile subrecipient monitoring calendar and planed monitoring activities to actual monitoring activities to ensure monitoring is taking place as planned.	
Segregation of duties exists between those preparing and those reviewing and filing required reports	Segregation of duties exist between those performing the monitoring and those approving the conclusions made about the subrecipient' s compliance.	
Where segregation of duties is not practical, management selects and develops alternative control activities.	Where segregation of duties is not practical, management selects and develops alternative control activities.	

**Principle 11. Design Activities for the Information System: management should design the entity’s information system and related control activities over technology to achieve objectives and respond to risks.**

<b>A. ACTIVITIES ALLOWED OR UNALLOWED B. ALLOWABLE COSTS/COST PRINCIPLES</b>	<b>C. CASH MANAGEMENT</b>	<b>E. ELIGIBILITY</b>	<b>F. EQUIPMENT AND REAL PROPERTY MANAGEMENT</b>
The information system configuration prevents expenditures from being recorded to the expenditure categories in excess of the budget without appropriate review and approval.		The information system configuration prevents a participant from being approved as eligible until all criteria required by the program requirements are input.	
The information system configuration is set up such that invoices, payroll authorization forms and time sheets are only routed to personnel who have the authority to approve them for coding and payment.		The information system is configured so that amounts to be received for or on behalf of a participant conform with minimums, maximums and other criteria as set forth by the grant or contract.	The information system is configured to track federal property and equipment separate from non-federal property and equipment.
The information system is configured to only allow transactions posted to the project account that are coded to pre-selected expense categories.		The information system is set up such that the approval of a participants’ eligibility is routed to personnel who have the authority to approve.	
			Periodic reconciliation of assets within the information system is performed between the general ledger/inventory records.
Access to processes and control activities in information systems specific to allowable activities/costs is limited to authorized individuals.	Access to the external electronic drawdown information system(s) is (are) restricted to authorized individuals.	Access to processes and control activities in information systems specific to eligibility is limited to authorized individuals.	Access to information systems used to track property is limited to authorized individuals.
Changes to the grant profile within the system are restricted to authorized personnel.			

**Principle 11. Design Activities for the Information System: management should design the entity’s information system and related control activities over technology to achieve objectives and respond to risks.**

<b>G. MATCHING, LEVEL OF EFFORT, EARMARKING</b>	<b>H. PERIOD OF PERFORMANCE</b>	<b>I. PROCUREMENT AND SUSPENSION AND DEBARMENT</b>	<b>J. PROGRAM INCOME</b>
The information system configuration prevents amounts or other data from being applied as match for more than one federal funding source.	The information system configuration prevents expenditures from being recorded to the federal award outside the period of performance.		
	The information system configuration is set up such that invoices, payroll authorization forms and time sheets are routed only to personnel who have the authority to approve them for coding and payment.	The information system (procurement card system, purchase order system, etc.) is configured for purchasing/approval hierarchy and any quantity or monetary limits depending on the purchasing authority of the user.	
The information system is configured such that the grant match expense record is linked to original grant expense record and only allows transactions posted to the same pre-selected expense categories.		The information system is configured to only allow use of pre-approved vendors in a vendor master file.	The information system is configured to only allow application of program income based on the method outlined in the grant approval form.
Access to information system used to track matching, matching and level of effort is limited to authorized individuals.	Access to processes and control activities in information systems specific to period of performance is limited to authorized individuals.	Access to processes and control activities in information systems specific to procurement such as the vendor master file is limited to authorized individuals.	Access to processes and control activities in information systems specific to applying program income to grants and capturing program income are restricted to authorized personnel.
Changes to the grant profile within the system are restricted to authorized personnel.	Changes to the grant profile within the system are restricted to authorized personnel.	Changes to the vendor master file are restricted to authorized personnel.	Changes to the grant profile within the system are restricted to authorized personnel.

**Principle 11. Design Activities for the Information System: management should design the entity’s information system and related control activities over technology to achieve objectives and respond to risks.**

<b>L. REPORTING</b>	<b>M. SUBRECIPIENT MONITORING</b>	<b>N. SPECIAL TESTS AND PROVISIONS</b>
Access to processes and control activities information in systems specific to gathering information for reporting is limited to authorized individuals.		
Access to external information systems used to report is limited to those preparing and reviewing reports.		

**Principle 12. Implement Control Activities: management should implement control activities through policies.**

<b>A. ACTIVITIES ALLOWED OR UNALLOWED B. ALLOWABLE COSTS/COST PRINCIPLES</b>	<b>C. CASH MANAGEMENT</b>	<b>E. ELIGIBILITY</b>	<b>F. EQUIPMENT AND REAL PROPERTY MANAGEMENT</b>
<p>Written policies/procedures exist outlining processes and control activities for costs coded to federal awards (award set- up, cost of personnel and fringe, direct costs other than personnel, indirect costs, etc.).</p>	<p>Written policies/procedures exist outlining processes and control activities for requesting advances/reimbursement, ensuring program income and other refunds/rebates are utilized before drawing down funds, monthly reconciliations are performed and monitoring subrecipients for cash management compliance.</p>	<p>Written policies/procedures exist outlining processes and control activities for determining eligibility of participants and amounts awarded, as applicable.</p>	<p>Written policies/procedures exist outlining processes and control activities for: (1) acquiring, safeguarding, maintaining, and disposing of federal equipment and real property; (2) ensuring all property acquired with federal awards, including capitalized leasehold improvements, is detailed including the source of funds used to purchase the property (including the Federal Award Identification Number or FAIN), date of acquisition, cost, date of disposition, a description of the property (including serial number), the condition of the property, and the location of the property; (3) ensuring reconciliations of physical property to the federal award agreements is performed at least annually; and (4) identifying dispositions and to ensure compliance with disposition instructions during the award and upon close out.</p>
<p>Management establishes responsibility and accountability for control activities with management (or other designated personnel) of the unit or function in which the relevant risks reside.</p>	<p>Management establishes responsibility and accountability for control activities with management (or other designated personnel) of the unit or function in which the relevant risks reside.</p>	<p>Management establishes responsibility and accountability for control activities with management (or other designated personnel) of the unit or function in which the relevant risks reside.</p>	<p>Management establishes responsibility and accountability for control activities with management (or other designated personnel) of the unit or function in which the relevant risks reside.</p>
<p>Responsible personnel perform control activities in a timely manner as defined by policies and procedures.</p>	<p>Responsible personnel perform control activities in a timely manner as defined by policies and procedures.</p>	<p>Responsible personnel perform control activities in a timely manner as defined by policies and procedures.</p>	<p>Responsible personnel perform control activities in a timely manner as defined by policies and procedures.</p>
<p>Responsible personnel investigate and act on matters identified as a result of executing control activities.</p>	<p>Responsible personnel investigate and act on matters identified as a result of executing control activities.</p>	<p>Responsible personnel investigate and act on matters identified as a</p>	<p>Responsible personnel investigate and act on matters identified as a result of executing control activities.</p>

<b>A. ACTIVITIES ALLOWED OR UNALLOWED</b> <b>B. ALLOWABLE COSTS/COST PRINCIPLES</b>	<b>C. CASH MANAGEMENT</b>	<b>E. ELIGIBILITY</b>	<b>F. EQUIPMENT AND REAL PROPERTY MANAGEMENT</b>
		result of executing control activities.	
Competent personnel with sufficient authority perform control activities with diligence and continuing focus.	Competent personnel with sufficient authority perform control activities with diligence and continuing focus.	Competent personnel with sufficient authority perform control activities with diligence and continuing focus.	Competent personnel with sufficient authority perform control activities with diligence and continuing focus.
Management periodically reviews control activities to determine their continued relevance and refreshes them, as necessary.	Management periodically reviews control activities to determine their continued relevance and refreshes them, as necessary.	Management periodically reviews control activities to determine their continued relevance and refreshes them, as necessary.	Management periodically reviews control activities to determine their continued relevance and refreshes them, as necessary.

**Principle 12. Implement Control Activities: management should implement control activities through policies.**

<b>G. MATCHING, LEVEL OF EFFORT, EARMARKING</b>	<b>H. PERIOD OF PERFORMANCE</b>	<b>I. PROCUREMENT AND SUSPENSION AND DEBARMENT</b>	<b>J. PROGRAM INCOME</b>
Written policies/procedures exist outlining processes and control activities specific to matching, level of effort and earmarking and including acceptance support for in-kind contributions used as match and an adherence to an organization's processes and control activities for Activities Allowed or Unallowed and Allowable Costs/Cost Principles, as appropriate.	Written policies/procedures exist outlining process and control activities for costs coded to federal awards ensuring that such costs are applied within the period of performance including the process/controls for securing approvals for pre-award spending, as applicable, and the process/controls to ensure that liquidation (payments) made at the end of the period are made within the allowed time period.	Written policies/procedures exist to address Uniform Guidance requirements such as conflict of interests, free and open competition regulations, and solicitation procedures. With respect to suspension and debarment, written policies exist outlining processes and control activities to verify organizations are not contracting or sub-awarding under covered transactions with parties who are suspended or debarred. Policies outline the frequency with which verification takes places, how that verification is documented and the acceptable methods of verification (checking the EPLS system, collecting a certification from the party or adding a clause/condition to the covered transaction with the party).	Written policies/procedures exist outlining processes and control activities for program income inclusive of identifying the proper method (Deduction, Addition, or Cost Sharing/Matching), recording program income completely and accurately and using program income in accordance with the specified method.
Management establishes responsibility and accountability for control activities with management (or other designated personnel) of the unit or function in which the relevant risks reside.	Management established responsibility and accountability for control activities with management (or other designated personnel) of the unit or function in which the relevant risks reside.	Management establishes responsibility and accountability for control activities with management (or other designated personnel) of the unit or function in which the relevant risks reside.	Management establishes responsibility and accountability for control activities with management (or other designated personnel) of the unit or function in which the relevant risks reside.
Responsible personnel perform control activities in a timely manner as defined by policies and procedures.	Responsible personnel perform control activities in a timely manner as defined by policies and procedures.	Responsible personnel perform control activities in a timely manner as defined by policies and procedures.	Responsible personnel perform control activities in a timely manner as defined by policies and procedures.
Responsible personnel investigate and act on matters identified as a result of executing control activities.	Responsible personnel investigate and act on matters identified as a result of executing control activities.	Responsible personnel investigate and act on matters identified as a result of executing control activities.	Responsible personnel investigate and act on matters identified as a result of executing control activities.
Competent personnel with sufficient authority perform	Competent personnel with sufficient authority perform	Competent personnel with sufficient authority perform control activities with diligence and continuing focus.	Competent personnel with sufficient authority perform control activities with diligence and continuing focus.



<b>G. MATCHING, LEVEL OF EFFORT, EARMARKING</b>	<b>H. PERIOD OF PERFORMANCE</b>	<b>I. PROCUREMENT AND SUSPENSION AND DEBARMENT</b>	<b>J. PROGRAM INCOME</b>
control activities with diligence and continuing focus.	control activities with diligence and continuing focus.		
Management periodically reviews control activities to determine their continued relevance and refreshes them, as necessary.	Management periodically reviews control activities to determine their continued relevance and refreshes them, as necessary.	Management periodically reviews control activities to determine their continued relevance and refreshes them, as necessary.	Management periodically reviews control activities to determine their continued relevance and refreshes them, as necessary.

**Principle 12. Implement Control Activities: management should implement control activities through policies.**

<b>L. REPORTING</b>	<b>M. SUBRECIPIENT MONITORING</b>	<b>N. SPECIAL TESTS AND PROVISIONS</b>
Written policies/procedures exist outlining processes and control activities for ensuring reporting to federal awarding agencies and pass-through entities is complete and accurate.	Written policies/procedures exist outlining processes and control activities for oversight of subrecipients.	
Management establishes responsibility and accountability for control activities with management (or other designated personnel) of the unit or function in which the relevant risks reside.	Management establishes responsibility and accountability for control activities with management (or other designated personnel) of the unit or function in which the relevant risks reside.	
Responsible personnel perform control activities in a timely manner as defined by policies and procedures.	Responsible personnel perform control activities in a timely manner as defined by policies and procedures.	
Responsible personnel investigate and act on matters identified as a result of executing control activities.	Responsible personnel investigate and act on matters identified as a result of executing control activities.	
Competent personnel with sufficient authority perform control activities with diligence and continuing focus.	Competent personnel with sufficient authority perform control activities with diligence and continuing focus.	
Management periodically reviews control activities to determine their continued relevance and refreshes them, as necessary.	Management periodically reviews control activities to determine their continued relevance and refreshes them, as necessary.	

## **PART 7 - GUIDANCE FOR AUDITING PROGRAMS NOT INCLUDED IN THIS COMPLIANCE SUPPLEMENT**

### **Purpose**

The 2 CFR section 200.514(d)(3) states that for those federal programs not covered in the compliance supplement, the auditor must use the types of compliance requirements (see 12 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 the federal award, and the laws and regulations referred in such awards.

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, more than 1,500 assistance programs are 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 comprises 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

Appendices

In determining the compliance requirements to test for programs not included in this Supplement, the auditor must refer to parts 3 and 5. Part 3 identifies and describes the 12 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 12 types of compliance requirements are:

- A. Activities Allowed or Unallowed
- B. Allowable Costs/Cost Principles
- C. Cash Management
- D. (Reserved) (Note: Some agencies have made Davis-Bacon Act (Wage Rate Requirements) a Special Test and Provision; see 20.001 in Part 4 for a cross-cutting section addressing Wage Rate Requirements.)
- E. Eligibility
- F. Equipment and Real Property Management
- G. Matching, Level of Effort, Earmarking
- H. Period of Performance
- I. Procurement and Suspension and Debarment
- J. Program Income
- K. (Reserved)
- 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 in 2 CFR section 200.1. A cluster of programs means federal programs with different Assistance Listing (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.

For programs not included in this Supplement, 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, the auditor's focus must be on the 12 types of compliance requirements enumerated in Part 3 of the Supplement. 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?*

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 the federal award (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 federal award 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 generally would 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 federal award. Any such requirements identified that could have a direct and material effect on a major program must be included in the audit.

- c. Review the Assistance Listing. The Assistance Listing provides summary information about each program and includes the name and telephone number of a federal contact person. A searchable copy of the Assistance Listing is available at [SAM.gov](https://www.sam.gov) | [Home](#).
- 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 consider that guidance in identifying the program objectives, program procedures, and compliance requirements. See Part 6 of the Supplement for the availability of program-specific audit guides.

- 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. The 2 CFR section 200.514(d) requires the auditor to perform procedures to determine whether the non-federal entity has complied with laws, regulations, and the provisions of the federal award 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:

- a. Noncompliance could likely result in questioned costs.
  - b. The requirement affects a large part of the federal program (e.g., a material amount of program dollars).
  - c. 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 expected to test compliance only 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:

- a. That are practical to test.
- b. With objective criteria available for the auditor to assess compliance.

- c. Where an audit objective can be written that supports an opinion on compliance.
  - d. When testing adds value, for example:
    - (1) It is likely that the auditor could document the noncompliance in a manner that (a) permits the federal or pass-through entity to take action, or (b) gives the federal or pass-through entity an early warning to initiate a monitoring visit or other contact with the non-federal entity.
    - (2) The federal or pass-through entity does not otherwise have information that verifies compliance.
4. *Into which of the 12 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 must use the 12 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.
- 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 federal awards 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 those who are eligible.
- F. **Equipment and Real Property Management** requirements apply to federal programs that allow for 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, and federal awards applicable to the program to determine specific requirements for matching, level of effort, and/or earmarking.
- H. **Period of Performance** almost always applies to federal programs. The federal award 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 federal award may specify additional criteria.
- 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), involve 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. When applicable, the auditor is required to test compliance with the subaward reporting requirement under the Federal Funding Accountability and Transparency Act (FFATA).

- 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** include 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 Wage Rate Requirements (previously the Davis-Bacon Act), they are unique to each program. In addition to reviewing the program's federal awards and referenced laws and regulations, the auditor also should 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 Special Tests and Provisions, the auditor must 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 direct and 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 is 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 2 CFR Part 200, Subpart F, 200.514 (c) Part 6 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 2 CFR Part 200, Subpart F.

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. As noted above, Special Tests and Provisions (except for Wage Rate Requirements) 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 Wage Rate Requirements, which are found in Part 4, 20.001 Wage Rates Cross Cutting Section)) using the guidance described in Part 3 under Special Tests and Provisions.

## **APPENDIX I FEDERAL PROGRAMS EXCLUDED FROM THE FORMER A-102 COMMON RULE AND PORTIONS OF 2 CFR PART 200**

### **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 former A-102 Common Rule and current 2 CFR 200. 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.

### *Administrative Requirements*

The programs that remain exempt from the former A-102 Common Rule and the administrative requirements in 2 CFR Part 200 are listed below. These exemptions from the administrative requirements in the former A-102 Common Rule were carried forward into 2 CFR Part 200 (2 CFR Part 200, Subpart D), with the exception of 2 CFR sections 200.330 through 200.332. Consult Part 4 - Agency Program Requirements, II, "Program Procedures - Source of Governing Requirements," for the governing requirements for these programs.

Note that, in some cases, the administrative requirements for entitlement programs in federal agency regulations are not identical to those in the former A-102 Common Rule/2 CFR Part 200. Rather than identify for testing each instance where the requirements differ, this Supplement addresses only those differences that warrant special attention. One difference is in the area of procurement (see below). With respect to all other administrative requirements, the auditor must rely on the provisions of the former A-102 Common Rule/2 CFR Part 200 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.

### *Cost Principles*

The programs listed below also are exempt from the provisions of the OMB cost principles circulars and their successor guidance in 2 CFR Part 200, Subpart E. State cost principles requirements apply to these programs (including their subrecipients). The HHS September 8,

2003 rulemaking did not affect the applicability of the cost principles for the HHS entitlement programs. The entitlement programs and the other listed programs are subject to the provisions of the OMB cost principles circulars/2 CFR Part 200, Subpart E.

### **Programs Excluded from the Requirements of the Former A-102 Common Rule and Portions of 2 CFR Part 200**

Some programs (both those included in the Supplement and others) are exempted from the former A-102 Common Rule and specified portions of 2 CFR Part 200.

The following list provides the Assistance Listing number and program name as listed in the current Assistance Listing. A notation is included with the program name to indicate when only part of the awards under a Assistance Listing number are excluded from the former A-102 Common Rule/portions of 2 CFR Part 200 or to provide other clarifications.

Except for the requirement to provide public notice of federal financial assistance programs in 2 CFR section 200.202 and the requirements in 2 CFR sections 200.330 through 200.332, the guidance in 2 CFR Part 200, subparts C, D, and E, as implemented by the federal agency, does not apply to the following programs:

Section\_\_\_\_.4(a)(2)/2 CFR section 200.101(d)(1)

*The Omnibus Budget Reconciliation Act of 1981 (including Community Services):*

- 93.568 Low-Income Home Energy Assistance
- 93.569 Community Services Block Grant (except to the extent that the OMB cost principles apply to subrecipients of these funds pursuant to 42 USC 9916(a)(1)(B)).
- 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 (not included in the Supplement)
- 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.)

Section\_\_\_\_.4(a)(9)/2 CFR section 200.101(d)(2)

*Grants to local education agencies under the following sections of the Impact Aid program:*

Section 8002, 20 USC 7702 (federal property payments), Section 8003(b), 20 USC 7703(b) (Basic support payments).

84.041 (excluding payments for children with disabilities and payments for construction)

Section \_\_\_\_ .4(a)(10)/2 CFR section 200.101(d)(3)

*Payments under the Veterans Administration's State Home Per Diem Program (38 USC 1741):*

64.014 Veterans State Domiciliary Care  
64.015 Veterans State Nursing Home Care  
64.016 Veterans State Hospital Care

2 CFR section 200.101(d)(4)

*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

**APPENDIX II**  
**FEDERAL AGENCY CODIFICATION OF GOVERNMENT-WIDE REQUIREMENTS AND GUIDANCE FOR GRANTS**  
**AND COOPERATIVE AGREEMENTS**

Agency (departments then agencies <sup>1</sup> )	2 CFR Part 200 <sup>2, 3</sup> (Final rule publication date, unless otherwise indicated)	2 CFR Revisions <sup>4</sup> (85 FR 19506-August 13, 2020) Adoption Date	Non-procurement Suspension & Debarment <sup>5</sup> (2 CFR Part 180 or predecessor common rule)
Agriculture	2 CFR 400, 415, 416 (2/16/16)	11/16/20	2 CFR 417
Commerce	2 CFR 1327 (7/28/15)	08/13/20 and 11/12/20	2 CFR 1326
Defense	2 CFR 1103 (interim final, 12/19/14)	N/A	2 CFR 1125
Education	2 CFR 3474 (11/2/15)	08/13/20 and 11/12/20	2 CFR 3485
Energy	2 CFR 910 (9/24/15)	03/18/22	2 CFR 901
Health & Human Services	2 CFR 300/45 CFR 75 (interim final and technical amendments, 1/20/16)	N/A	2 CFR 376
Homeland Security	2 CFR 3002 (10/2/15)	08/13/20 and 11/12/20	2 CFR 3000
Housing & Urban Development	2 CFR 2400 (12/7/15)	08/13/20 and 11/12/20	2 CFR 2424
Interior	2 CFR 1402 (interim final, 12/19/14; proposed rule, 2/8/16)	10/18/21	2 CFR 1400
Justice	2 CFR 2800 (interim final, 09/08/16)	08/13/20 and 11/12/20	2 CFR 2867
Labor	2 CFR 2900 (12/30/15)	04/27/21	29 CFR 98
State	2 CFR 600 (6/2/15)	10/21/20	2 CFR 601
Transportation	2 CFR 1201 (12/17/15)	08/13/20 and 11/12/20	2 CFR 1200
Treasury	2 CFR 1000 (1/27/16)	08/13/20 and 11/12/20	31 CFR 19
Veterans Affairs	2 CFR 802 (12/1/2015)	08/13/20 and 11/12/20	2 CFR 801
ADF			22 CFR 1508
AID	2 CFR 700 (9/17/15)	08/13/20 and 11/12/20	2 CFR 780

Agency (departments then agencies <sup>1</sup> )	2 CFR Part 200 <sup>2,3</sup> (Final rule publication date, unless otherwise indicated)	2 CFR Revisions <sup>4</sup> (85 FR 19506-August 13, 2020) Adoption Date	Non-procurement Suspension & Debarment <sup>5</sup> (2 CFR Part 180 or predecessor common rule)
BBG			22 CFR 513
CNCS	2 CFR 2205 (11/17/15)	08/13/20 and 11/12/20	2 CFR 2200
EPA	2 CFR 1500 (10/9/2015)	08/13/20 and 11/12/20	2 CFR 1532
EX-IM			2 CFR 3513
FMCS			29 CFR 1471
GSA			41 CFR 105-68
GCERC	2 CFR 5900 (12/9/15)	08/13/20 and 11/12/20	
IMLS	2 CFR 3187 (9/21/15)	08/13/20 and 11/12/20	2 CFR 3185
IAF			22 CFR 1006
NASA	2 CFR 1800 (9/11/15)	11/12/20	2 CFR 1880
NARA	2 CFR 2600 (8/25/15)	10/01/20	2 CFR 2600
NEA	2 CFR 3255 (6/29/15)	08/13/20 and 11/12/20	2 CFR 3254
NEH	2 CFR 3374 (9/16/15)	08/13/20 and 11/12/20	2 CFR 3369
NSF	2 CFR 2500 (11/27/15) (NSF's Proposal and Award Policies and Procedures Guide, may be found at <a href="http://www.nsf.gov/bfa/dias/policy/">http://www.nsf.gov/bfa/dias/policy/</a> along with significant changes from the previous version)	08/13/20 and 11/12/20	2 CFR 2520
ONDCP	2 CFR 3603 (9/23/15)	08/13/20 and 11/12/20	21 CFR 1404
OPM			5 CFR 919
Peace Corps			2 CFR 3700
SBA	2 CFR 2701 (1/11/16)	04/26/21	2 CFR 2700
SSA	2 CFR 2300 (11/10/15)	08/13/20 and 11/12/20	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), Gulf Coast Ecosystem Restoration Council (GCERC), 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. The list of exceptions in department and agency regulatory adoption/implementation of 2 CFR Part 200 approved by OMB on December 19, 2014, is available at <https://www.cfo.gov/wp-content/uploads/2014/12/Agency-Exceptions.pdf>. This document provides links to the applicable language in the department/agency rule.
3. The *Federal Register* (<https://www.federalregister.gov/>) for the date shown includes the preamble language for the final rule, which explains any changes from the interim final rule published on December 19, 2014.
4. The 2 CFR was revised on August 13, 2020 (85 FR 19506). The agencies that have adopted the 2014 2 CFR without any exceptions are not required to update their regulations (i.e., Commerce, Homeland Security, GCERC, Housing and Urban Development, IMLS, NEA, NEH, ONDCP, SSA, and Veterans Affairs). When the two dates are shown in this column, the agency has adopted the effective date of August 13, 2020 for the two sections to which it applies (§2 CFR 200.216 and §2 CFR 200.340) and November 12, 2020 for the rest of the revisions. “N/A” in this column means that agency is working on revisions to its 2 CFR sections (mostly technical amendments for section references), and the auditor must check the award’s terms and conditions for applicability of the revisions.
5. The OMB guidance on nonprocurement suspension and debarment is found at 2 CFR Part 180.

**APPENDIX III  
FEDERAL AGENCY SINGLE AUDIT, KEY MANAGEMENT LIAISON, AND  
PROGRAM CONTACTS**

This appendix provides federal agency single audit contacts (starts on page 8-III-2), key management liaisons (starts on page 8-III-10), and program contacts (starts on page 8-III-11) for each program/cluster included in the Supplement. For the single audit contacts a table is provided for each federal agency identifying who can answer technical audit questions. The table includes contact information and the geographical area each federal contact is responsible for overseeing. A list of key management liaisons, who are the contacts for questions related to the administrative requirements applicable to an agency program(s), and their e-mail addresses follows the single audit contact information. Last, program contacts, who can answer programmatic questions, and their contact information, are listed by agency and Assistance Listing number.

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<b>Federal Agency Single Audit Contacts</b>	
<b>Agency</b>	<b>Type of Audit</b>
<b>United States Department of Agriculture</b>	
US Department of Agriculture Andy Kmetz Attn: Office of Audit, USDA OIG 1400 Independence Ave SW, Ste 419 Washington, DC 20250 (404) 594-9789 E-Mail: <a href="mailto:OIG-USDAsingleaudit@oig.usda.gov">OIG-USDAsingleaudit@oig.usda.gov</a>	All audits
<b>Department of Commerce</b>	
Regional Inspector General US Department of Commerce 401 West Peachtree Street NW, Suite 2742 Atlanta, GA 30308 Phone: Voice 404-730-2780 or 404-730-2067 Fax: 404-730-2788 E-Mail: <a href="mailto:NonFederalAudits@oig.doc.gov">NonFederalAudits@oig.doc.gov</a>	All audits
<b>Department of Defense</b>	
Office of the Assistant Inspector General for Audit Policy and Oversight Office of Inspector General US Department of Defense 4800 Mark Center Drive, Suite 11H25 Alexandria, VA 22350-1500 Phone: Voice 703-604-8760 E-Mail: <a href="mailto:aponet@dodig.mil">aponet@dodig.mil</a>	All audits
<b>Department of Education</b>	
US Department of Education Office of Inspector General Attn: Mark Priebe Director of the Non-Federal Audit Team 400 Maryland Ave SW Washington, DC 20202 Phone: 202-245-8255 E-Mail: <a href="mailto:OIGNon-FederalAudit@ed.gov">OIGNon-FederalAudit@ed.gov</a> Web site: <a href="https://www2.ed.gov/about/offices/list/oig/nonfed/index.html">https://www2.ed.gov/about/offices/list/oig/nonfed/index.html</a>	All audits

<b>Federal Agency Single Audit Contacts</b>	
<b>Agency</b>	<b>Type of Audit</b>
<b>Department of Energy</b>	
US 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 202-586-1969 Fax: 202-586-0099 Web site: <a href="https://www.energy.gov/ig/office-inspector-general/">https://www.energy.gov/ig/office-inspector-general/</a>	All audits
<b>Department of Health and Human Services</b>	
National Single Audit Coordinator – Tammie Brown DHHS/OIG/OAS/NEAR Richard Bolling Federal Building 601 East 12th Street, Room 0429 Kansas City, MO 64106 Phone: Voice 816-426-3204 800-732-0679 Fax: 816-426-7745 Web site: <a href="http://www.oig.hhs.gov">http://www.oig.hhs.gov</a> E-Mail: <a href="mailto:Tammie.Brown@oig.hhs.gov">Tammie.Brown@oig.hhs.gov</a>	All audits
<b>Department of Homeland Security</b>	
US Department of Homeland Security OCFO/Financial Assistance Policy and Oversight Building 410 245 Murray Lane, SW Washington, DC 20528 Attn: Nasr N. Fahmy Phone: 202-447-5146 Fax: 202-447-0374 E-Mail: <a href="mailto:Nasr.Fahmy@dhs.gov">Nasr.Fahmy@dhs.gov</a>	All audits
<b>Department of Housing and Urban Development</b>	
US Department of HUD Office of Inspector General National Single Audit Coordinator Karen Cookson 1301 Fannin Street, Room 2200 Houston, TX 77002 Phone: Voice 866-492-1740 Web site: <a href="#">Front Page   Office of Inspector General, Department of Housing and Urban Development (hudoig.gov)</a> Questions on audits of HUD programs: 866-492-1740 <a href="mailto:HUDOIGSingleAuditCoordinator@hudoig.gov">HUDOIGSingleAuditCoordinator@hudoig.gov</a>	All audits

<b>Federal Agency Single Audit Contacts</b>	
<b>Agency</b>	<b>Type of Audit</b>
<b>Department of the Interior</b>	
Director, Financial Audits US Department of Interior Office of Inspector General 1849 C Street, NW Mail Stop 4428 Washington, DC 20240 Phone: Voice 202-208-5724 E-Mail: <a href="mailto:morgan_aronson@doioig.gov">morgan_aronson@doioig.gov</a>	All audits
<b>Department of Justice</b>	
US Department of Justice Chicago Regional Audit Office CitiCorp Center, 500 West Madison, Suite 1121 Chicago, IL 60661 Phone: Voice 312-353-1203 Fax: 312-886-0513	All audits
<b>Department of Labor</b>	
National Single Audit Coordinator-Grover Fowler US Department of Labor Office of Inspector General Francis Perkins Building Room N-4633 200 Constitution Avenue, N.W. Washington, DC 20210 Phone: Voice (202) 693-5254 E-Mail: <a href="mailto:fowler.grover@oig.dol.gov">fowler.grover@oig.dol.gov</a> Web site: <a href="http://www.oig.dol.gov">http://www.oig.dol.gov</a>	All audits
<b>Department of State</b>	
US Department of State Office of Inspector General, OIG/AUD/CG 1700 North Moore Street Arlington, VA 22209 Phone: Voice 571-348-5491 Fax: 703-284-2622 E-Mail: <a href="mailto:DOSOIGSingleAuditCoordinator@stateoig.gov">DOSOIGSingleAuditCoordinator@stateoig.gov</a> Web site: <a href="https://www.stateoig.gov">https://www.stateoig.gov</a>	All audits

<b>Federal Agency Single Audit Contacts</b>	
<b>Agency</b>	<b>Type of Audit</b>
<b>Department of Transportation</b>	
US Department of Transportation Office of Inspector General Attn: National Single Audit Coordinator 101 W. Lombard Street, Suite 2516 Baltimore, MD 21201 Phone: Voice (443) 825-1510 Additional Contact: Matthew Straw <a href="mailto:singleauditrequest@oig.dot.gov">singleauditrequest@oig.dot.gov</a>	
<b>Department of the Treasury</b>	
Department of the Treasury Office of Inspector General Deputy Assistant Inspector General for Audit 875 15th Street NW, Suite 300 Washington, DC 20050 Phone: Voice 202-927-5784 Fax: 202-927-5379	All audits
<b>Department of Veterans Affairs</b>	
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
<b>Agency for International Development</b>	
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: <a href="mailto:faudit@usaid.gov">faudit@usaid.gov</a> Web site: <a href="http://U.S. Agency for International Development (usaid.gov)">U.S. Agency for International Development (usaid.gov)</a>	For audits of all US based not-for-profit organizations

<b>Federal Agency Single Audit Contacts</b>	
<b>Agency</b>	<b>Type of Audit</b>
<b>Appalachian Regional Commission</b>	
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: <a href="mailto:IG@ARC.GOV">IG@ARC.GOV</a>	All audits
<b>Corporation for National and Community Service</b>	
Office of the Inspector General Corporation for National and Community Service Thomas Chin 250 E Street, SW, Suite 4100 Washington, DC 20525 Phone: Voice 202-606-9362 Fax: 202-606-9397 E-Mail: <a href="mailto:t.chin@cncsoig.gov">t.chin@cncsoig.gov</a> Web site: <a href="#">Home   AmeriCorps (americorpsoig.gov)</a>	All audits
<b>Environmental Protection Agency</b>	
National Single Audit Coordinator Office of Inspector General US Environmental Protection Agency Single Audit Coordinator: Jean Bloom Boston, MA Phone: Voice 617-918-1475 Fax: 617-918-0475 E-mail: <a href="mailto:single.audit@epa.gov">single.audit@epa.gov</a> Web site: <a href="#">EPA's Office of Inspector General   US EPA</a>	All audits
<b>Federal Communications Commission</b>	
Federal Communications Commission Office of Inspector General Assistant Inspector General for Audit 45 L Street NE Washington, DC 20554 Phone: 202-418-0483 E-Mail: <a href="mailto:robert.mcgriff@fcc.gov">robert.mcgriff@fcc.gov</a> Web site: <a href="https://www.fcc.gov/inspector-general">https://www.fcc.gov/inspector-general</a>	

<b>Federal Agency Single Audit Contacts</b>	
<b>Agency</b>	<b>Type of Audit</b>
<b>General Services Administration</b>	
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: <a href="mailto:anthony.mitchell@gsa.gov">anthony.mitchell@gsa.gov</a>	All audits
<b>Gulf Coast Ecosystem Restoration Council</b>	
Chief Financial Officer Gulf Coast Ecosystem Restoration Council 500 Poydras Street – Suite 1117 New Orleans, LA 70130 Phone: Voice 504-239-8179 E-Mail: <a href="mailto:Vanessa.taylor@restorethegulf.gov">Vanessa.taylor@restorethegulf.gov</a> Web site: <a href="#">Home   Restore The Gulf</a> Alternate: Steve Sigler, Enterprise Risk Management Specialist Phone: 504-494-3825 E-Mail: <a href="mailto:steve.sigler@restorethegulf.gov">steve.sigler@restorethegulf.gov</a>	All audits
<b>National Aeronautics and Space Administration</b>	
Single Audit Coordinator: Mark Jenson Director, Financial Management 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 E-Mail: <a href="mailto:mark.jenson@nasa.gov">mark.jenson@nasa.gov</a>	All audits
<b>National Archives and Records Administration</b>	
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

<b>Federal Agency Single Audit Contacts</b>	
<b>Agency</b>	<b>Type of Audit</b>
<b>National Endowment for the Arts</b>	
Office of Inspector General National Endowment for the Arts 400 7th Street, SW Washington, DC 20506 Phone: Voice 202-682-5402 Fax: 202-682-5649 E-Mail: <a href="mailto:oig@arts.gov">oig@arts.gov</a> Web site: <a href="http://www.arts.gov/office/inspector-general">http://www.arts.gov/office/inspector-general</a>	All audits
<b>National Endowment for the Humanities</b>	
Office of Inspector General National Endowment for the Humanities 400 7th Street, SW Washington, DC 20506 Phone: Voice 202-606-8350 Fax: 202-606-8329 E-Mail: <a href="mailto:oig@neh.gov">oig@neh.gov</a>	All audits
<b>National Science Foundation</b>	
Office of Inspector General National Science Foundation Assistant Inspector General Office of Audits National Science Foundation 2 2415 Eisenhower Avenue, W 16100 Alexandria, VA 22314 Phone: Voice 703-292-7100 Fax: 703-292-9159	All audits
<b>Nuclear Regulatory Commission</b>	
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: <a href="mailto:acl@nrc.gov">acl@nrc.gov</a>	All audits

<b>Federal Agency Single Audit Contacts</b>	
<b>Agency</b>	<b>Type of Audit</b>
<b>Social Security Administration</b>	
Social Security Administration Audit Liaison Staff Attn: Trae Sommer 6401 Security Blvd, RMB 2511 Phone: 443-471-6786 E-Mail: <a href="mailto:Audit.Correspondence@ssa.gov">Audit.Correspondence@ssa.gov</a>	All audits
<b>Tennessee Valley Authority</b>	
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 Web site: <a href="https://oig.tva.gov/">https://oig.tva.gov/</a>	All audits
<b>US Small Business Administration</b>	
US Small Business Administration Office of Inspector General National Single Audit Coordinator Mail Stop 4112 409 Third Street SW Washington, DC 20416 Phone: Voice 202-205-7431 Email: <a href="mailto:Karmel.Smith@sba.gov">Karmel.Smith@sba.gov</a>	All audits



<b>Federal Agency Key</b>		
<b>Agency</b>	<b>Name</b>	<b>E-Mail Address</b>
Department of Agriculture	Annie Walker-Bradley	<a href="mailto:Anne.Walker-Bradley@cfo.usda.gov">Anne.Walker-Bradley@cfo.usda.gov</a>
Department of Commerce	John P. Geisen	<a href="mailto:JGeisen@doc.gov">JGeisen@doc.gov</a>
Department of Defense	Barbara Orlando	<a href="mailto:Barbara.j.orlando.civ@mail.mil">Barbara.j.orlando.civ@mail.mil</a>
Department of Education	Lihong Guo	<a href="mailto:Lihong.Guo@ed.gov">Lihong.Guo@ed.gov</a>
Department of Energy	Joel Gonzalez	<a href="mailto:Joel.Gonzalez@hq.doe.gov">Joel.Gonzalez@hq.doe.gov</a>
Department of Health and Human Services	Robin Aldridge Johanna Nestor	<a href="mailto:Robin.Aldridge@hhs.gov">Robin.Aldridge@hhs.gov</a> <a href="mailto:Johanna.Nestor@hhs.gov">Johanna.Nestor@hhs.gov</a>
Department of Homeland Security	Nasr Fahmy	<a href="mailto:Nasr.Fahmy@hq.dhs.gov">Nasr.Fahmy@hq.dhs.gov</a>
Department of Housing and Urban Development	Shannon E. Steinbauer	<a href="mailto:Shannon.E.Steinbauer@hud.gov">Shannon.E.Steinbauer@hud.gov</a>
Department of the Interior	Preston Wong	<a href="mailto:preston_wong@ios.doi.gov">preston_wong@ios.doi.gov</a>
Department of Justice	Linda Taylor Jeff A. Haley	<a href="mailto:Linda.Taylor2@usdoj.gov">Linda.Taylor2@usdoj.gov</a> <a href="mailto:Jeff.Haley@usdoj.gov">Jeff.Haley@usdoj.gov</a>
Department of Labor	Anita Robinson Latonya Torrence	<a href="mailto:Robinson.Anita@dol.gov">Robinson.Anita@dol.gov</a> <a href="mailto:Torrence.Latonya@dol.gov">Torrence.Latonya@dol.gov</a>
Department of State	Thomas Kodiak	<a href="mailto:Kodiakt@state.gov">Kodiakt@state.gov</a>
Department of the Treasury	Siporah Jackson	<a href="mailto:Siporah.Jackson@treasury.gov">Siporah.Jackson@treasury.gov</a>
Department of Transportation	Willie Smith	<a href="mailto:willie.smith@dot.gov">willie.smith@dot.gov</a>
Department of Veterans Affairs	Kevin Cone	<a href="mailto:Kevin.Cone@va.gov">Kevin.Cone@va.gov</a>
Corporation for National and Community Service	Autumn Rose	<a href="mailto:arose@cns.gov">arose@cns.gov</a>
Denali Commission	Beth Flowers	<a href="mailto:bflowers@denali.gov">bflowers@denali.gov</a>
Environmental Protection Agency	Kysha Holliday	<a href="mailto:Holliday.Kysha@epa.gov">Holliday.Kysha@epa.gov</a>
Federal Communications Commission	Sheela Kailasanath	<a href="mailto:Sheela.Kailasanath@fcc.gov">Sheela.Kailasanath@fcc.gov</a>
Gulf Coast Ecosystem Restoration Council	Steve Sigler	<a href="mailto:Steve.sigler@restorethegulf.gov">Steve.sigler@restorethegulf.gov</a>
Institute for Museum and Library Services	Connie Cox Bodner	<a href="mailto:CBodner@imls.gov">CBodner@imls.gov</a>
National Aeronautics and Space Administration	Antanese Crank	<a href="mailto:antanese.n.crank@nasa.gov">antanese.n.crank@nasa.gov</a>
National Archives and Records Administration	Christopher Eck	<a href="mailto:Christopher.Eck@nara.gov">Christopher.Eck@nara.gov</a>
National Endowment for the Arts	Breanna Berger	<a href="mailto:bergerb@arts.gov">bergerb@arts.gov</a>
National Endowment for the Humanities	Laura Davis	<a href="mailto:ldavis@neh.gov">ldavis@neh.gov</a>
National Science Foundation	Rochelle D. Ray	<a href="mailto:rray@nsf.gov">rray@nsf.gov</a>
Office of National Drug Control Policy	Lisa Newton	<a href="mailto:Lisa_E_Newton@ondcp.eop.gov">Lisa_E_Newton@ondcp.eop.gov</a>
Social Security Administration	Trae Sommer	<a href="mailto:Audit.Correspondence@ssa.gov">Audit.Correspondence@ssa.gov</a> <a href="mailto:DCO.AUDIT@ssa.gov">DCO.AUDIT@ssa.gov</a> <a href="mailto:DCO.ODD.AUDIT@ssa.gov">DCO.ODD.AUDIT@ssa.gov</a> <a href="mailto:OIG.audit.kansascity@ssa.gov">OIG.audit.kansascity@ssa.gov</a> <a href="mailto:Frank.Biro@ssa.gov">Frank.Biro@ssa.gov</a>
US Agency for International Development	David McNeil	<a href="mailto:dmcneil@usaid.gov">dmcneil@usaid.gov</a>
US Small Business Administration	Kimberly Butler	<a href="mailto:Kimberly.Butler@sba.gov">Kimberly.Butler@sba.gov</a>

	<b>Federal Agency Program Contacts</b>		
<b>Assistance Listing</b>	<b>Agency Contact(s)</b>	<b>E-Mail Address</b>	<b>Telephone Number</b>
<b>10</b>	<b>United States Department of Agriculture (USDA)</b>		
<b>10.000</b>	N/A		
<b>10.500</b>	Cynthia Montgomery Deputy Director, Operations Office of Grants and Financial Management	<a href="mailto:cmontgomery@nifa.usda.gov">cmontgomery@nifa.usda.gov</a>	202-401-6021
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## **APPENDIX IV INTERNAL REFERENCE TABLES**

### **INTRODUCTION**

This Appendix includes a listing of programs with a “higher risk” designation and describes how that designation impacts the major program determination process. It also includes a list of programs in Part 4 which have requirements defined in IV, “Other Information.”

### **PROGRAMS WITH “HIGHER RISK” DESIGNATION**

Uniform Guidance section 200.519(c)(2) states that “Federal agencies, with the concurrence of OMB, may identify Federal programs that are higher risk. It also states that OMB will provide this identification in the Compliance Supplement.”

As a result of the COVID-19 pandemic, many new federal programs have been established and funding has been added to existing federal programs from the following Acts:

- Coronavirus Preparedness and Response Supplemental Appropriations Act
- Families First Coronavirus Response Act
- Coronavirus Aid, Relief, and Economic Security Act (CARES Act)
- Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA)
- American Rescue Plan Act (ARP)

Funding arising from these sources, both to new and existing programs, is referred to as “COVID-19 funding,” or “COVID-19 programs.”

For many years, the only program with a “higher risk” designation in the Compliance Supplement was the Medicaid cluster. However, due to the additional risk associated with certain COVID-19 funding, additional programs were designated as “higher risk” in the 2021 Compliance Supplement and the 2022 Compliance Supplement continues to include certain programs with COVID-19 funding on the “higher risk” list.

The following is a complete list of programs with COVID-19 funding that have been identified as “higher risk” for audits subject to the 2022 Compliance Supplement. The table also continues to include the Medicaid cluster as a “higher risk.”

Agency	Assistance Listing (CFDA) Number	Title
Education*	84.425	Education Stabilization Fund
FCC*	32.009	Emergency Connectivity Fund Program
HHS*	93.461	Testing for the Uninsured
HHS*	93.498	Provider Relief Fund
HHS**	93.778/93.777/93.775	Medicaid Cluster
Transportation**	20.106	Airport Improvement Program
Transportation**	20.500/20.507/20.525/20.526	Federal Transit Cluster
Transportation**	20.315	National Railroad Passenger Corporation Grants
Treasury*	21.023	Emergency Rental Assistance
Treasury*	21.027	Coronavirus State and Local Fiscal Recovery Funds

*Note:*

\* These programs were created by one of the laws cited at the beginning of this section and are thus considered 100% COVID-19 funding.

\*\* These programs were existing programs that received additional funding from one or more of the laws cited at the beginning of this section.

### Impact of “Higher Risk” Status on Major Program Determination

#### *Type A Program Considerations*

A “higher risk” designation will often result in a Type A program or other cluster being audited as a major program. However, an auditor is not precluded from determining that a “higher risk” Type A program or other cluster qualifies as a low risk Type A program if both of the following criteria are met:

1. the program otherwise meets the criteria for a low risk Type A program in section 200.518 of the Uniform Guidance; and
2. the percentage of COVID-19 funding in the program or other cluster during the non-federal entity’s fiscal year is not material to the program or other cluster as a whole. For example, a recipient’s schedule of expenditures of federal awards may include the Airport Improvement Program but the expenditures relevant to COVID-19 funding included in the program during the June 30, 2022, fiscal year end is not material. Alternatively, a recipient’s schedule of expenditures of federal awards may include Education Stabilization Fund expenditures for the June 30, 2022, fiscal year end, which would be considered material because COVID-19 funding comprises the entire program.

Note that the inclusion of COVID-19 funding within the Research & Development (R&D) cluster does not create a “higher risk” designation for the R&D cluster.

Auditors should prepare audit documentation supporting the risk considerations and conclusions for “higher risk” programs.

*Type B Program Considerations*

Under section 200.518 of the Uniform Guidance, in certain circumstances the auditor must identify Type B programs which are high risk using professional judgment and the criteria in section 200.519 of the Uniform Guidance, which includes consideration of whether a program has been identified as “higher risk” by a Federal agency with the concurrence of OMB. Thus, there are no changes to the normal risk assessment process for Type B programs identified as “higher risk.” That is, the “higher risk” identification must be considered with the other factors in section 200.519.

Further, the auditor is not required to prioritize the assessment of risk for “higher risk” Type B programs over other Type B programs.

**PROGRAMS WITH “OTHER INFORMATION” IN PART 4**

The following is a list of programs in Part 4 which have requirements defined in IV, “Other Information.” If the listing is a cluster, all program numbers are shown, but only the primary program name is presented.

10.551/10.561	Supplemental Nutrition Assistance Program (SNAP)
10.553/10.555/10.556/10.559	School Breakfast Program (SBP)
10.557	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
10.558	Child and Adult Care Food Program (CACFP)
10.760	Water and Waste Disposal Systems for Rural Communities
10.766/10.780	Community Facilities Loans and Grants
11.300/11.307	Investments for Public Works and Economic Development
14.157	Supportive Housing for the Elderly (Section 202)
14.181	Supportive Housing for Persons with Disabilities (Section 811)
14.218/14.225	Community Development Block Grants/Entitlement Grants and Non-Entitlement Counties in Hawaii
14.228	Community Development Block Grants/State’s Program and Non-Entitlement Grants in Hawaii
14.239	Home Investment Partnerships Program
14.256	Neighborhood Stabilization Program (Recovery Act Funded)
14.850	Public and Indian Housing
14.862	Indian Community Development Block Grant Program
14.867	Indian Housing Block Grants
14.871/14.879	Section 8 Housing Choice Vouchers
14.872	Public Housing Capital Fund (CFP)
14.873	Native Hawaiian Housing Block Grant
14.881	Moving to Work Demonstration Program
14.888	Lead-based Paint Capital Fund Program and Housing-Related Hazards Capital Fund
15.022	Tribal Self-Governance
15.025/15.026/15.113/	

15.114/15.130	Services to Indian Children, Elderly and Families (477 Cluster)
16.710	Public Safety Partnership and Community Policing Grants
17.225	Unemployment Insurance (UI)
17.265	Native American Employment and Training
20.106	Airport Improvement Program
20.223	Transportation Infrastructure Finance and Innovation Act (TIFIA) Program
21.016	Equitable Sharing Program
21.020	Community Development Financial Institutions Program
21.023	Emergency Rental Assistance Program
21.026	Homeowner Assistance Fund Program
21.027	Coronavirus State and Local Fiscal Recovery Funds
21.029	Coronavirus Capital Projects Fund
66.458/66.482	Capitalization Grants for Clean Water State Revolving Funds
66.468/66.483	Capitalization Grants for Drinking Water State Revolving Funds
81.041	State Energy Program
84.000	Cross-Cutting Section
84.002	Adult Education-Basic Grants to States
84.010	Title I Grants to Local Educational Agencies
84.027/84.173	Special Education-Grants to States (IDEA, Part B)
84.032-G	Federal Family Education Loans-(Guaranty Agencies)
84.032-L	Federal Family Education Loans-(Lenders)
84.041	Impact Aid (Title VII of ESEA)
84.042/84.044/84.047/ 84.066/84.217	Student Support Services
84.048	Career and Technical Education-Basic Grants to States (Perkins IV)
84.181	Special Education-Grants for Infants and Families
84.282	Charter Schools
84.287	Twenty-First Century Community Learning Centers
84.367	Supporting Effective Instruction State Grants (formerly Improving Teacher Quality State Grants)
84.424	Student Support and Academic Enrichment Program
84.938	Hurricane Education Recovery
93.044/93.045/93.053	Special Programs for the Aging-Title III, Part B-Grants for Supportive Services and Senior Centers and CARES Act for Supportive Services Under Title III-B of the Older Americans Act
93.095/93.096	HHS Programs for Disaster Relief Appropriations Act-Non-Construction
93.268	Immunization Cooperative Agreements
93.461	HRSA COVID-19 Uninsured Program
93.498	Provider Relief Fund
93.499	Low-Income Household Water Assistance Program
93.545	Consumer Operated and Oriented Plan (CO-OP) Program
93.558	Temporary Assistance for Needy Families (TANF)

93.566	Refugee and Entrant Assistance—State-Administered Programs
93.568	Low-Income Home Energy Assistance and Low-Income Drinking Water and Wastewater Emergency Assistance
93.569	Community Services Block Grant
93.575/93.596/93.489	Child Care and Development Block Grant
93.600/93.356	Head Start
93.667	Social Services Block Grant
93.778/775/777	Medical Assistance Program (Medicaid; Title XIX)
93.959	Block Grants for Prevention and Treatment of Substance Abuse
93.994	Maternal and Child Health Services Block Grant to the States
96.001/96.006	Social Security-Disability Insurance
97.036	Disaster Grants-Public Assistance (Presidentially Declared Disasters)
97.039	Hazard Mitigation Grant Program (HMGP)
97.067	Homeland Security Grant Program (HSGP)

Part 5.3 also has requirements defined in IV, “Other Information.”

## **APPENDIX V**

### **LIST OF CHANGES FOR THE 2022 COMPLIANCE SUPPLEMENT**

This appendix provides a list of changes from the 2021 Supplement dated August 2022, including changes to documents added from addenda 1 & 2 and the technical update. Please note that changes in the Matrix of Compliance Requirements are reflected in Part 2 of this supplement and are not reflected in this appendix.

#### **Table of Contents**

The Table of Contents has been updated to show additions and deletions.

#### **Part 1 – Background, Purpose, and Applicability**

- Updated for the effective date of the Supplement.

#### **Part 2 – Matrix of Compliance Requirements**

- Matrix of Compliance changes and corrections were made for 2022; these are indicated in the Part 2 Matrix. Changes are shown in yellow highlights.

#### **Part 3 – Compliance Requirements**

Updated website links for the following programs:

- 10.000 – Updated link to the FNS contact.
- 10.500 – Updated II, “Program Procedures,” updated link for Plans of Work.
- 10.555 and 10.553 and 10.556 and 10.559 and 10.582 – Updated II, “Program Procedures,” new link to Summer Food Service Program (SFSP) rates; updated link to FSN web page; and new link to COVID-19 Waivers.
- 11.300 and 11.307 – Updated III.N.2, RFL Awards: Loan Requirements” subsection Compliance Requirements new link for more information on EDA temporary waiver of the requirement to collect evidence demonstrating that credit is not otherwise available.
- 14.218 and 14.225 – Updated II, “Program Procedures,” updated link to CDBG-MIT and CDBG-MIT; III.A., “Activities Allowed or Unallowed,” to add a new link to the *Federal Register* notices; III.J., “Program Income,” to add two new links to the *Federal Register* notices for alternative requirements.
- 14.228 – Updated I, “Program Objectives,” new link to public laws; II, “Program Procedures,” links to CDBG-MIT, to see NSP funds notices, notices at HUDClips, additional information about CDBG-CV, RFP, updates to NSP notices and a new link to NSP Definition and Modification Notice, and *Federal Register*



notices; III.A., “Activities Allowed or Unallowed,” HUD Exchange *Federal Register* notices; III.N.3., “Environmental Reviews,” CPD Notice 20-07; IV, “Other Information” link to CDBG-DR laws, regulations, and *Federal Register* notices.

- 14.231 – Updated II, “Program Procedures,” section on Source of Government Requirements, new link to notice CPD-21-05.
- 14.239 – Updated II, “Program Procedures,” including section Source of Governing Requirements and Availability of Other Program Information two new links to the HOME-ARP Program; III.A., “Activities Allowed or Unallowed,” new links to the HOME-ARP Program; III.N.2., “Maximum Per-unit Subsidy and Underwriting Requirements” link to HOME-ARP Implementing Notice.
- 14.241 – Updated III.E.1., “Eligibility” section Eligibility for Individuals added links to CPD waiver memoranda; III.N.2., “Housing Quality Standards,” new link to waiver memoranda.
- 14.862 – Updated IV, “Other Information,” section on Indian CDBG-ARP Imminent Threat Grants to add links to the Indian CDBG implementing regulations at 24 CFR Part 1003; ICDBG-ARP Implementation Notice, PIH-2021-22; COVID-19 Recovery Programs site, and Code Talk.
- 14.872 – Updated II, “Program Procedures,” section Availability of Other Program Information, for links to the Office of Capital Improvements and REAC
- 14.873 – Updated IV, “Other Information,” with link to NHHBG-ARP Implementation Notice PIH-2021-13.
- 15.025 – Updated II, “Program Procedures,” deleted link to the revised Pub. L. No. 102-477 reporting forms.
- 15.605 and 15.611 and 15.626 – Updated II, “Program Procedures,” deleted link to FWS Grant Information.
- 15.615 – Updated II, “Program Procedures,” updated link to FWS website.
- 17.235 – Updated II, “Program Procedures,” for the link to the SCSEP website.
- 17.245 – Updated II, “Program Procedures,” links to FY 2020 TAA Program Annual Report to Congress, TEN 01-21 and TEN 24-20; II, “Program Procedures,” subsection Availability of Other Program Information updated link to TAA program procedures; III.L.1., “Reporting,” link to TEGL 02-16 and to the form ETA 9130, and the website to submit SF-424 form to ETA.

- 17.264 – Updated II, “Program Procedures,” section Availability of Other Program Information updated link to National Farmworker Jobs Program; III.L.2., “Reporting,” section on Performance Reporting new link for additional information on performance reporting.
- 17.265 – Updated IV, “Other Information,” deleted two links for 477 Plan and additional information at the index page.
- 20.205 and 20.219 and 20.224 and 23.003 – Updated III.I., “Procurement and Suspension and Debarment,” updated link to qualified youth service or conservation corps
- 20.600 and 20.611 and 20.616 – Updated II, “Program Procedures,” subsection Availability of Other Program Information new link to the *Federal Register* for program procedures.
- 21.016 – Updated II, “Program Procedures” subsection Source of Governing Requirements new link to public notices issued by DOJ Wires.
- 21.027 – Updated II, “Program Procedures” subsection Source of Governing Requirements new link to Treasury’s Interim Final Rule and Treasury’s Final Rule at 31 CFR Part 35, and subsection Availability of Other Program Information updated links including email address for Office of Recovery Programs; III.A., “Activities Allowed or Unallowed” new link to Interim Final Rule, Final Rule, and FAQs; III.L.3, new link to Treasury’s Compliance and Reporting Guidance.
- 32.006 – Updated I, “Program Objectives,” link to the April 2, 2020 Report and Order and to the Round 1 and Round 2 websites; “Program Procedures” new email address to Telehealth Application Support, the CARES Act, Round 12 Report and Order, FCC COVID-19 Telehealth Program, FCC 21-39, CFR Title 2 (2021), and additional program information, including FAQs; III.A.2., “Activities Unallowed,” link to DA 21-309; III.B., “Allowable Costs/Cost Principles,” Round 1 FAQs and Round 2 Telehealth Program; III.I., “Procurement and Suspension and Debarment,” DA 21-309; III.N.1., “Eligibility,” links for health care provider entity types.
- 81.041 – Updated II, “Program Procedures” subsection Availability of Other Program Information updated links to SEP 2021 ALRD and a new link for SEP 2021 State Energy Program PY21 Grant Application Instructions; IV, “Other Information” a new link for applicable guidance SEP Program Notice 10-008F.
- 81.042 – Updated III.E., “Eligibility,” links to paragraphs in CFR section 440.22; III.L.2., “Reporting,” new link to DOE F 540.3.

- 84.000 – Updated II, “Introduction” new link to ESEA; II, “Program Procedures,” subsection Availability of Other Program Information updated link to ESSA.
- 84.010 – Updated II, “Program Procedures,” section Availability of Other Program Information new links to List of Invited Waivers and Frequently Asked Question about the waiver due to COVID-19.
- 84.027 and 84.173 – Updated II, “Program Procedures,” section Availability of Other Program Information and III.G.2., updated links to OSEP Memorandum 10-5 and OSEP Memorandum 15-10.
- 84.032-G – Updated II, “Program Procedures,” updated link to Dear Colleague Letter GEN-21-03 in Availability of Other Program Information; III.N.9, Investments – Federal Fund, link to DCLID 99-G-316.
- 84.367 – Updated III.A., “Activities Allowed or Unallowed,” updated link to Part 3 of Non-Regulatory Guidance for Title II, Part A: Building Systems of Support for Excellent Teaching and Leading.
- 84.425 – Updated ERF Section 1: II, “Program Procedures” new and/or updated links to the states approved applications under subsection CRRSA EANS and ARP EANS subsection; under Source of Governing Requirements new links; under Availability of Other Program Information multiple new and updated links, including EANS program and ESF-SEA, ESF-Governor, and ARP OA-SEA for FAQs, Fact Sheet, and State Educational Agency Plan; III.G., “Matching, Level of Effort, Earmarking.”  
ESF Section 2; new link to more information on the Note before Program Objectives; new link to ED Office of OIG and in section Source of Governing Requirements, two new links for (a)(2) and one link for (a)(3), Availability of Other Program Information new links for FAQs, Webinars, and Other Materials; III.L.3., “Reporting,” subsection Special Reporting new link.
- 93.044 and 93.045 and 93.053 – Updated II, “Program Procedures,” new and updated links to BPHC website and COVID-19 funding resources in Availability of Other Program Information.
- 93.224 and 93.527 – Updated II, “Program Procedures,” section Availability of Other Program Information updated link to BPHC program requirements and a new link for COVID-19 funding resources; III.L.3., “Special Reporting” section new links to UDS Resources and UDS Reporting Manual.
- 93.461 – Updated II, “Program Procedures,” section Additional Sources of Information, for Terms and Conditions, and new links for HRSA COVID-19 CAF, including COVID-19 coverage assistance, FAQs, and terms and conditions

for coverage assistance; III.A.2, “Activities Allowed and Unallowed,” for Medicare coverage; IV, “Other Information,” new link to HRSA webpages.

- 93.498 – Updated II, “Program Procedures” section Availability of Other Program Information new links to Assistance Listing for PRF and ARP Rural Distribution, and new links for additional information about the PRF, including General Information, FAQs, all four phases of General Distributions; a variety of links for Targeted Distribution payments; and websites with information about the ARP Rural Distribution; III.B., “Allowable Costs/Cost Principles” deleted link.
- 93.767 – Updated I, “Program Objectives II” link to Medicaid; “Program Procedures,” subsection A. Overview, new link to SHO letter #21-002; III.E., “Eligibility,” link to November 1, 2021 fact sheet on Health Coverage Options for Afghan Evacuees; III.N.1, “Provider Eligibility,” link to Medicaid Provider Enrollment Compendium (MPEC).
- 93.778 and 93.775 and 93.777 – Updated II, “Program Procedures” added new links to transcripts for podcasts, SHO letter #21-002, and State Medicaid Director (SMD) Letter #21-003, CMCS Informational Bulletin; deleted the link to COVID-19 toolkit, and updated the link to CMS guidance available on Medicaid.gov; III.E., “Eligibility,” new links to in State Health Official letter #21-005, fact sheet on Health Coverage Options for Afghan Evacuees, State Medicaid Director letter #21-002; III.N.4., new link for Medicaid Provider Enrollment Compendium (MPEC); III.N.8., new link for the Annual Report to Congress – Medicare and Medicaid Integrity Programs – Fiscal Year 2018; III.N.12., new link to Appendix B of SMD #21-003.
- 94.006 – Updated III.B., “Allowable Costs/Cost Principles,” link for additional instructions to grantees; III.N.2., “National Service Criminal History Checks,” new link to NSCHC Manual and the Using NSOPW and State Repositories Manual.
- 94.011 and 94.016 – Updated III.E.1., “Eligibility,” new link to AmeriCorps website; III.N.1., “National Service Criminal History Checks,” new link to NSCHC Manual and the Using NSOPW and State Repositories Manual.

#### **Part 4 – Agency Program Requirements**

Changes were made to the following programs:

- 10.000 – Updated, including a new email address for FNS’s Office of Financial Management, Office of Internal Controls, Audits and Investigations.
- 10.555 and 10.553 and 10.556 and 10.559 and 10.582 – Updated the cluster deleting 10.579 and adding 10.582; I, “Program Objectives”; II, “Program Procedures,” including subsections Source of Government Requirements and in

Availability of Other Program Information, a new subsection on COVID-19 Pandemic Flexibilities, including a website; III Compliance Matrix C, “Cash Management,” changed to an N from a Y, J, “Program Income,” changed to an N from a Y, and L, “Reporting” changed to a Y from an N; III.A., “Activities Allowed or Unallowed”; III.E., “Eligibility,” all subsections; III.I., “Procurement and Suspension and Debarment”; III.N.1., “Verification of Free and Reduced Price Applications (NSLP)”; III.N.3., “Non-Profit School Food Service Accounts”; III.N.4., “Paid Lunch Equity (NSLP)”; IV, “Other Information.”

- 10.566 – Updated II, “Program Procedures,” subsection on Benefit Redemption; III.A., “Activities Allowed or Unallowed.”
- 10.568 and 10.565 and 10.569 – Updated I, “Project Objectives”; II, “Program Procedures”; III.E., “Eligibility,” all subsections.
- 10.649 – Updated II, “Program Procedures” including a new subsection on P-EBT Administrative Cost Grant Awards; III.A., “Activities Allowed or Unallowed”; III.H., “Period of Performance”; III.L., “Reporting,” section III.L.1, Financial Reporting.
- 11.300 and 11.307 – Updated I, “Program Objectives”; II, “Program Procedures”; III.A.1.f., “Activities Allowed and Unallowed,” to add new subsection in Activities Allowed on participant support costs and Activities Allowed to update CFR references; III.J., “Program Income,” to update CFR references; III.L.1, “Reporting,” and III.L.3., “Special Reporting”; III.M., “Subrecipient Monitoring” to update CFR references; III.N.2, “RLF Awards: Loan Requirements,” subsection Compliance Requirements; III.N.4., “Wage Rate Requirements,” subsection Compliance Requirements for CFR references; IV, “Other Information.”
- 11.611 – Updated II, “Program Procedures,” subsection A, including subsection on Base Cooperative Agreements to Create and Support Centers, and subsection on Cooperative Agreements for Emergency Assistance; III.L.3.a., “Reporting,” subsection on Financial Reporting for SF-425, Federal Financial Report.
- 14.169 – Please note: The program has made the decision to pull the current CSP package for 14.169 from the FY 22 package. They will refine and look to resubmit the package guidance for FY 23.
- 14.218 and 14.225 – Updated II, “Program Procedures”; III.A., “Activities Allowed or Unallowed,” including a new content on additional flexibilities that apply to CDBG-DR and CDBG-MIT funds and a new link to the *Federal Register* notices; III.B., “Allowable Costs/Cost Principles”; III.H., “Period of Performance”; III.J., “Program Income”; III.L., “Reporting”; III.N.2, “Citizen Participation,” subsections Compliance Requirements and Suggested Audit

Procedures; III.N.5., “Rehabilitation,” subsection Compliance Requirements; IV, “Other Information.”

- 14.228 – Updated I, “Program Objectives”; II, “Program Procedures,” including new links in both Source of Governing Requirements and Availability of Other Program Information; Compliance Matrix, F “Equipment/Real Property Management” changed to a Y from an N; III.A., “Activities Allowed or Unallowed”; III.B., “Allowable Costs/Cost Principles”; III.F., “Equipment and Real Property Management,” new narrative added; III.H., “Period of Performance”; III.J., “Program Income”; III.L., “Reporting”; III.N.2., “Environmental Oversight”; III.N.3., “Environmental Reviews,” new content for subsection Compliance Requirements; III.N.4, “Citizen Participation,” new content for subsection Compliance Requirements; IV, “Other Information.”
- 14.231 – Updated II, “Program Procedures,” including a new link in section Source of Government Requirements; III.A., “Activities Allowed and Unallowed”; III.G., “Matching, Level of Effort, Earmarking”; III.N.2, “Maintenance as Homeless Shelters.”
- 14.239 – Updated I, “Program Objectives” to add information on HOME-ARP; II, “Program Procedures,” including section Source of Governing Requirements and Availability of Other Program Information, including a new website; III.A., “Activities Allowed or Unallowed” updated for HOME and HOME-ARP narratives; III.E., “Eligibility,” updated for HOME-ARP narrative; III.J., “Program Income” updated for HOME-ARP narrative; III.M., “Subrecipient Monitoring”; III.N.1., “Wage Rate Requirements”; III.N.2., “Maximum Per-unit Subsidy and Underwriting Requirements”; III.N.3., “Drawdowns of HOME/HOME-ARP Funds”; III.N.3., “Housing Quality Standards”; III.N.4, “Housing Quality Standards”; IV, “Other Information.”
- 14.241 – Updated I, “Program Objectives”; II, “Program Procedures”; III.E.1., “Eligibility” section Eligibility for Individuals, including new links to CPD waiver memoranda; III.L.2., “Reporting,” sections Financial Reporting and Performance Reporting; III.N.1., “Maintenance of Structures,” subsection Suggested Audit Procedures; III.N.2., “Housing Quality Standards,” subsection Compliance Requirements; III.N.3., “Community Residences,” subsection Suggested Audit Procedures.
- 14.862 – Updated II, “Program Procedures”; III.L.2., “Reporting,” section on Performance Reporting changed to “Not Applicable”; IV, “Other Information,” added new section on Indian CDBG-ARP Imminent Threat Grants.
- 14.867 – Updated III.L.2., “Reporting,” section of Performance Reporting; III.N.3., “Investment of IHBG Funds,” subsection Compliance Requirements; IV, “Other Information” for sections on Indian Housing Block Grant-CARES Grant and Indian Housing Block Grant-ARP Grants.

- 14.871 and 14.879 – Updated II, “Program Procedures,” to add under subsection B. Subprograms/Program Elements on Emergency Housing Voucher Program; III.A., “Activities Allowed and Unallowed”; III.N.11, new section Emergency Housing Vouchers Program Funding.
- 14.872 – Updated II, “Program Procedures,” including new links in Availability of Other Program Information; III.A.2, “Activities Allowed or Unallowed,” with new content for the Activities Unallowed section; III.B, “Allowable Costs/Cost Principles.”
- 14.873 – Updated II, “Program Procedures”; IV, “Other Information,” for subsections on Native Hawaiian housing Block Grants-ARP Grants, including a new link, Waivers and Alternative Requirements Applicable Only to NHHBG-ARP Funding.
- 17.207 and 17.801 – Updated title to change name for 17.801 and to delete 17.804; I, “Program Objectives”; III.E., “Eligibility.”
- 17.225 – Updated II, “Program Procedures,” subsections on A. Overview, B. Subprograms/Program Elements, and C. Program Funding; III, Compliance Requirements, B, “Allowable Costs/Cost Principles” to a Y from an N; III.E.1, “Eligibility”; III.H., “Period of Performance”; III.N.4, “UI Program Integrity–Overpayments,” subsection Compliance Requirements.
- 17.235 – Updated II, “Program Procedures,” including updating website; III.L.2., “Reporting,” subsection on Performance Reporting, including the addition of a Key Line Item for Individuals Formerly Incarcerated.
- 17.245 – Program Title updated to Trade Adjustment Assistance for Workers; Updated I, “Program Objectives”; II, “Program Procedures,” including new link, and subsections Source of Governing Requirements and Availability of Other Program Information; III.A.1., “Activities Allowed or Unallowed”; III.E.1., “Eligibility”; III.L., “Reporting.”
- 17.264 – Updated II, “Program Procedures,” section Source of Governing Requirements and a new link in Availability of Other Program Information; III.A., “Activities Allowed or Unallowed”; III.L.2., “Reporting,” new narrative for section on Performance Reporting, including new links.
- 20.315 – Updated, III.N., added three new narratives for III.N.1., “Use and Reporting of Overtime for Agreement Employees”; III.N.2., “Preventing and Reporting on Employee Furloughs”; III.N.3., Buy American Act/Domestic Buying Preference.”

- 20.600 and 20.611 and 20.616 – Updated to remove 20.601 and 20.602 and 20.609 and 20.610 and 20.612 and 20.613 from the cluster; II, “Program Procedures,” including a new link in Availability of Other Program Information; III.A.1., “Activities Allowed or Unallowed”; III.G.3.b, “Matching, Level of Effort, Earmarking,” subsection Earmarking.
- 21.016 – Updated II, “Program Procedures,” including subsection Source of Governing Requirements; III.A.1., “Activities Allowed or Unallowed”; III.B, “Allowable Costs/Cost Principles”; III.E.4, “Eligibility for Groups of Individuals or Area of Service Delivery”; III.G.3, “Matching, Level of Effort, Earmarking” changed from Not Applicable; III.I., “Procurement and Suspension and Debarment”; III.L., “Reporting.”
- 21.027 – Updated I, “Program Objectives”; II, “Program Procedures,” sections on Governing Requirements and Availability of Other Program Information, including new links; III.A., “Activities Allowed or Unallowed,” including new link; III.B., “Allowable Cost/Cost Principles”; III.H., “Period of Performance;” III.I., “Procurement and Suspension and Debarment;” III.L., “Reporting,” new narrative for 3. Special reporting and for III.4; III.M., Subrecipient Monitoring; IV, “Other Information.”
- 32.006 – Updated I, “Program Objectives”; II, “Program Procedures,” including new websites in Source of Governing Requirements and Availability of Other Program sections; III. Compliance Matrix, changed E, “Eligibility,” to an N from a Y; and I, “Procurement and Suspension and Debarment” to a Y from an N; III.A., “Activities Allowed or Unallowed,” both sections; III.B., “Allowable Costs/Cost Principles”; III.E., “Eligibility,” section III.E.1, changed to Not Applicable; III.H., “Period of Performance”; III.I., “Procurement and Suspension and Debarment,” narrative added; III.L., “Reporting,” narrative added; III.N.1., “Eligibility,” narrative added.
- 81.041 – Updated II, “Program Procedures,” including subsection Availability of Other Program Information to update links; III.L.2, “Reporting” subsection Performance Reporting changed from “Not Applicable” to Progress Report; IV, “Other Information.”
- 81.042 – Updated II, “Program Procedures” subsection Source of Governing Requirements; III.A.2.b.(3), “Activities Allowed or Unallowed,” subsection Activities Unallowed; III.E.1, “Eligibility,” subsection; III.L.2., “Reporting,” including a new link in section on Performance Reporting.
- 84.000 – “Introduction,” updated link in Waivers and Expanded Flexibility and changes to Cross-Cutting Requirements; II, “Program Procedures,” section on Availability of Other Program Information; III.A., “Activities Allowed or Unallowed”; III.B., “Allowable Costs/Cost Principles”; III.C., “Cash



Management”; III.G., “Matching, Level of Effort, Earmarking”; III.N.1., “Participation of Private School Children.”

- 84.010 – II, “Program Procedures,” including new links; III.A., “Activities Allowed or Unallowed”; III.E.1., “Eligibility”; III.G.2, “Matching, Level of Effort, Earmarking.”
- 84.032-G – Updated II, “Program Procedures,” subsection Availability of Other Program Information; III.N.5., “Collection Efforts,” subsection Compliance Requirements; III.N.7., “Assignment of Defaulted Loans to ED,” all subsections; III.N.8., “Federal Fund and Agency Operating Fund,” subsection Compliance Requirements; III.N.10., “Collection Charges,” all subsections; added new section III.N.13., “Implementation of Dear Colleague Letter GEN-21-03 “Expansion of Collections Pause to Defaulted FFEL Program Loans Managed by Guaranty Agencies (Updated May 24, 2021)””; added new section III.N.14., “Calculation of Lost Revenue.”
- 84.126 – Updated III.L.2., “Reporting” section on Performance Reporting.
- 84.425 – Updated Introduction, including list of subprograms, and IV, “Other Information,” including a new figure and an example table.  
 ESF Section 1: Added 84.425V American Rescue Plan – Emergency Assistant to Non-Public schools (ARP EANS) subprogram; I, “Program Objectives”; II, “Program Procedures,” including new links in Source of Governing Sources and updated and new links in Availability of Other Program Information; III.A., “Activities Allowed or Unallowed,” including new content on ESF-Governor Funds, ESF-SEA Funds, and ARP-OA SEA Funds; III.B., “Allowable Costs/Cost Principles”; III.F., “Equipment/Real Property Management”; III.G., “Matching, Level of Effort, Earmarking” new narrative; III.L.3, “Reporting,” subsection Special Reporting; III.N., “Special Tests and Provisions,” added new subsection III.N.3., “Identifying Non-Public Schools under ARP EANS that Enroll a Significant Percentage of Students from Low-Income Families and are Most Impacted by the COVID-10 Emergency.”  
 ESF Section 2: Added 84.425P HEERF Institutional Resilience and Expanded Postsecondary Opportunity (IREPO) Program and 84.425T HEERF Supplemental Support Under American Rescue Plan (SSARP) Program; and added a note on 84.425Q and new link before Program Objectives; II, “Program Procedures,” including new links; III “Compliance Requirements” changed “Cash Management” to a Y from an N; III.A., “Activities Allowed and Unallowed”; III.B., “Allowable Costs/Cost Principles”; III.C, “Cash Management” narrative added; III.G, “Matching, Level of Effort, Earmarking”; III.H., “Period of Performance”; III.I, “Procurement and Suspension and Debarment”; III.L, “Reporting,” subsection Special Reporting, including links.
- 93.044 and 93.045 and 93.053 – Title change for 93.044 to add American Rescue Plan and 93.045 to add in reference to CARES Act and American Rescue plans

under Title III-C of the Older Americans Act; I, “Program Objectives”; II, “Program Procedures,” including new and updated links in Availability of Other Program Information; III.G.1., “Matching, Level of Effort, Earmarking” added new subsection titles and new subsection for NSIP grants.

- 93.224 and 93.527 – Updated II, “Program Procedures,” including sections Sources of Governing Requirements and Availability of Other Program Information for links for HRSA COVI-19 CAF; III.A.2., “Activities Allowed and Unallowed”; III.L.3., “Reporting” section on Special Reporting to UDS resources link and Key Line Items; III.N.2., “Compliance with Consolidated Appropriations Act,” subsections Compliance Requirements and Audit Objectives.
- 93.461 – Title change to add in COVID-19 Coverage Assistance Fund; Updated I, “Program Objectives; “ II, “Program Procedures, including Sources of Governing Requirements and Availability of Program Information, including new website links; III.A., “Activities Allowed or Unallowed,” including new link; III.B., “Allowable Costs/Cost Principles”; III.E., “Eligibility”; IV, “Other Information,” link updated.
- 93.498 – Title change to add in American Rescue Plan; Updated I, “Program Objectives,” including table that outlines PRF and ARP Rural Distribution recipients’ payments eligible expenses and lost revenues; II, “Program Procedures,” including new links for PRF in subsection Availability of Other Program Information; III. Compliance Requirements, III.N., “Special Tests and Provisions” changed to an N from a Y; III.A., “Activities Allowed or Unallowed”; III.B, “Allowable Costs/Cost Principles,” with a deleted link; III.L., “Reporting”; IV, “Other Information,” including update to the HRSA PRF and ARP Rural Distribution reporting requirements table.
- 93.558 – Updated I, “Program Objectives”; II, “Program Procedures” to add a section on the American Rescue Plan and to update subsection Availability of Other Program Information; III.A., “Activities Allowed and Unallowed” a new section 3 on Pandemic Emergency Assistance Fund; III.E., “Eligibility” section III.E.2 Eligibility for the Pandemic Emergency Assistance Fund added; III.G., “Matching, Level of Effort, Earmarking,” new narrative for subsection 2.2 for Pandemic Emergency Assistance Fund; III.L., “Reporting,” section Special Reporting.
- 93.575 and 93.489 and 93.596 – Updated II, “Program Procedures,” subsection Availability of Other Program Information for additional web site links; Compliance Matrix change in L, “Reporting” to a Y from an N; III.A.1., Activities Allowed or Unallowed subsection added for Activities Allowed for CCDF ARP Act Stabilization Funds; III.E., “Eligibility,” changes to subsection on Eligibility for Subrecipients, and a new subsection 4, eligibility for Child Care Providers Receiving CCDF ARP Act Stabilization Funds; III.G., “Matching, Level of Effort, Earmarking;” III.H., “Period of Performance” new mandatory

funds for Assistance Listing 93.596 and charts updated for FY 2021 and FY 2022; III.L., new narrative; III.N.4, “Child Care Provider Eligibility for ARP Act Stabilization Funds,” new subsection; III, “Other Information,” new subsection on Funding Sources Within the CCDF Cluster.

- 93.767 – Updated I, “Program Objectives,” with a new link; II, “Program Procedures,” including updating a link; III.A., “Activities Allowed and Unallowed”; III.B, “Allowable Costs/Cost Principles”; III.E., “Eligibility,” including new links; III.G., “Matching, Level of Effort, Earmarking”; III.H, “Period of Performance”; III.N.1., “Provider Eligibility (Screening and Enrollment), subsection Compliance Requirements, including a new link; III.N.2., “Refunding of Federal Share of CHIP Overpayments to Providers,” subsections Compliance Requirements and Suggested Audit Procedures.
- 93.778 and 93.775 and 93.777 – Updated I, “Program Objectives”; II, “Program Procedures,” including new links; III.A., “Activities Allowed or Unallowed”; III.B., “Allowable Costs/Cost Principles”; III.E., “Eligibility,” including new links; III.G., “Matching, Level of Effort, Earmarking”; III.L., “Reporting”; III.N.1., “Utilization Control and Program Integrity,” subsections Compliance Requirements and Audit Objectives; III.N.4., “Provider Eligibility (Screening and Enrollment,” subsection Compliance requirements; III.N.7., “Refunding of Federal Share of Medicaid Overpayments to Providers” subsections Compliance Requirements and Suggested Audit Procedures; III.N.8, “Medicaid National Correct Coding Initiative (NCCI),” subsection Compliance Requirements; III.N.9, Investments – Federal Fund for new link; III.N.12, a new section “American Rescue Plan Act of 2021 (ARP) Section 9817; IV, “Other Information.”
- 94.006 – Updated II, “Program Procedures”; III.B., “Allowable Costs/Cost Principles”; III.E., “Eligibility,” subsections on Eligibility for Individuals; III.N.1., “Living Allowances,” including the living allowances chart for 2020; III.N.2., “National Service Criminal History Checks,” all subsections updated, including two new links.
- 94.011 and 94.016 – Updated throughout to change CNCS to AmeriCorps; III.E.1., “Eligibility,” updated links; III.N.1., “National Service Criminal History Checks,” all subsections updated, including two new links.
- 96.001 and 96.006 – Updated II, “Program Procedures”; III.N.1., subsection Suggested Audit Procedures.

## **Part 5 – Clusters of Programs**

Part 5.1 and 5.2 – updated for the effective date of the Supplement.

Part 5.3 – major edits implemented.

Part 5.4 – updated the cluster list.

### **Part 6 – Internal Control**

- Updated for the effective date of the Supplement.

### **Part 7 – Guidance for Auditing Programs Not Included in This Compliance Supplement**

- Updated for the effective date of the Supplement.

### **Part 8 – Appendixes**

#### **Appendix I – Federal Programs Excluded from the A-102 Common Rule and Portions of 2 CFR Part 200**

- Updated for the effective date of the Supplement.

#### **Appendix II – Federal Agency Codification of Governmentwide Requirements and Guidance for Grants and Cooperative Agreements**

- Updated for the effective date of the Supplement.

#### **Appendix III – Federal Agency Single Audit, Key Management Liaison, and Program Contacts**

- Updated for this year’s program contacts.

#### **Appendix IV – Internal Reference Tables**

- Updated the list of programs currently designated as high risk.
- List updated with new programs with requirements defined in IV, “Other Information.”

#### **Appendix V – List of Changes for the 2022 Compliance Supplement**

- List updated with changes to the programs and appendixes for 2022.

#### **Appendix VI – Program-Specific Audit Guides**

- Updated for the effective date of the Supplement.

#### **Appendix VII – Other Audit Advisories**

- Major updates sections, including Definition of COVID-19 Funding, Alternative Compliance Examination Engagement for Eligible SLFRF Recipients, and Due Date for Submission of Audit Reports and Low-Risk Auditee Criteria and the Federal Audit Clearinghouse transition from Census to GSA.

- Updated for the effective date of the Supplement.

**Appendix VIII – Examinations of EBT Service Organizations**

- Updated for the effective date of the Supplement.

**Appendix IX – Compliance Supplement Core Team**

- Updated for this year’s team members.

## **APPENDIX VI PROGRAM-SPECIFIC AUDIT GUIDES**

This appendix lists program-specific audit guides for use by auditors. The listing includes the title of the guide, the date of issuance or latest update, and where to obtain a copy.

### **Department of Education**

- Audit Guides for Student Aid Programs  
(<https://www2.ed.gov/about/offices/list/oig/nonfed/index.html>)

### **Department of Housing and Urban Development**

- HUD Consolidated Audit Guide ([HUD Consolidated Audit Guide | Office of Inspector General, Department of Housing and Urban Development \(hudoig.gov\)](#))

## **APPENDIX VII OTHER AUDIT ADVISORIES**

### **I. Novel Coronavirus (COVID-19)**

This section provides guidance to the following areas affecting single audits arising due to COVID-19:

- Definition of COVID-19 funding
- Treatment of donated personal protective equipment (PPE) on the Schedule of Expenditures of Federal Awards (SEFA)
- Agency Guidance Document References
- Identification of COVID-19 related awards and single audit applicability
- Identification of COVID-19 related awards on the SEFA and SF-SAC
- Identification of COVID-19 related awards in audit findings
- Identification of compliance requirements for COVID-19 related awards
- Responsibilities for informing subrecipients
- Alternative Compliance Examination Engagement for Eligible SLFRF Recipients

#### **Definition of COVID-19 Funding**

As a result of the COVID-19 pandemic, many new federal programs have been established and funding has been added to existing federal programs from the following Acts:

Coronavirus Preparedness and Response Supplemental Appropriations Act

Families First Coronavirus Response Act

Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA)

American Rescue Plan Act (ARP)

Funding arising from these sources, both to new and existing programs, is referred to as “COVID-19 funding,” “COVID-19 programs,” or “COVID-19 related awards” throughout this section. Refer also to Appendix IV, Internal Reference Tables, for a listing of programs with a “higher risk” designation, many of which involve COVID-19 funding, and for information about how that designation impacts the major program determination process.

## **Donated Personal Protective Equipment (PPE)**

During the emergency period of COVID-19 pandemic and as allowed under OMB Memorandum M-20-20 (April 9, 2020), federal agencies and recipients can donate PPE purchased with federal assistance funds to various entities for the COVID-19 response. The donated PPE were mostly provided without any compliance or reporting requirements or Assistance Listing information from the donors. As such, the non-federal entities that received donated PPE should provide the fair market value of the PPE at the time of receipt as a stand-alone footnote accompanying their SEFA. The amount of donated PPE should not be counted for purposes of determining the threshold for a single audit or determining the type A/B threshold for major programs and is not required to be audited as a major program. Because donated PPE has no bearing on the single audit, the donated PPE footnote may be marked “unaudited.”

As a reminder, the above only relates to donated PPE provided without any compliance or reporting requirements or assistance listing from donors. There could be some PPE that must appear on the SEFA as a federal program (e.g., when the recipient uses funds provided under an Assistance Listing to purchase PPE).

## **Agency Guidance Document References for COVID-19 Programs**

The COVID-19 pandemic has led many federal agencies to issue implementing guidance (e.g., frequently asked questions, memos) outside of the normal regulatory process for new and existing programs receiving COVID-19 funding. Such guidance is issued to communicate an agency’s understanding of how the relevant statutes, regulations, or the terms and conditions of the federal awards and apply to a particular circumstance, but it does not create new compliance requirements. Due to the evolving nature of the pandemic environment, it has been common for federal agencies to update, change, or delete their specific guidance over time.

The Part 4 sections for COVID-19 programs often refer auditors to agency guidance documents to obtain a better understanding of statutory and regulatory compliance requirements subject to audit. When evaluating a non-federal entity’s compliance, auditors must consider provisions of federal statutes, regulations, and the terms and conditions of federal awards. However, auditors may also consider guidance documents in effect during the period to understand the program requirements. An auditor may conclude whether the non-federal entity is in compliance with a type of compliance requirement based on consideration of applicable implementing guidance in effect at the time of the activity or transaction.

When citing criteria for audit findings, 2 CFR 200.516(b)(2) states that the following information must be included in finding detail: “The criteria or specific requirement upon which the finding is based, including the Federal statutes, regulations, or the terms and conditions of the Federal awards.” Therefore, auditors should refer to a statute, regulation, or term and condition as criteria for the audit finding.

## **Identification of COVID-19 Related Awards and Single Audit Applicability**

Federal agencies may have incorporated COVID-19 funding into an existing program and Assistance Listing number or set up a separate COVID-19 program with a unique Assistance



Listing number. Federal agencies are required to specifically identify COVID-19 related awards, regardless of whether the funding is provided under a new or existing Assistance Listing number. However, in the early days of the crisis caused by the COVID-19 pandemic with the need to respond quickly, in some cases cash was sent to non-federal entities without application or Assistance Listing number. The non-federal entity was required to either agree to the terms and conditions or return the funds.

When COVID-19 funding is subawarded by a pass-through entity from an existing program, the information furnished to subrecipients should distinguish the subawards of incremental COVID-19 funding included in the subawards from non-COVID-19 funding.

In order to assist recipients and auditors in the identification of all the COVID-19 funds and their related program Assistance Listing numbers, OMB has issued several summaries of federal programs that were created by COVID-19 funding and also existing programs that received COVID-19 funding. A summary of programs that received funding under the CARES Act (and other earlier COVID-19 legislation) as of May 20, 2020, can be accessed at: [https://www.cfo.gov/wp-content/uploads/2020/07/M-20-21\\_FAQ\\_07312020\\_UPDATED.pdf](https://www.cfo.gov/wp-content/uploads/2020/07/M-20-21_FAQ_07312020_UPDATED.pdf). A summary of programs that received funding under the ARP Act as of October 29, 2021, can be found at: [https://www.cfo.gov/assets/files/Revised-American-Rescue-Plan-Assistance-Listings\\_10-29-2021.pdf](https://www.cfo.gov/assets/files/Revised-American-Rescue-Plan-Assistance-Listings_10-29-2021.pdf). Each summary includes program Assistance Listing numbers and an asterisk (\*) next to Assistance Listing numbers denoting a new Assistance Listing number.

### **Identification of COVID-19 Related Awards on the SEFA and SF-SAC**

As described in 2 CFR section 200.510(b), auditees must complete the SEFA and include Assistance Listing numbers when reporting their federal awards and subawards. To maximize the transparency and accountability of COVID-19 related award expenditures, OMB M-20-26 (June 18, 2020) instructed recipients and subrecipients to separately identify the COVID-19 Emergency Acts expenditures on the Schedules of Expenditures of Federal Awards. Therefore, non-federal entities should separately identify COVID-19 expenditures on the SEFA and SF-SAC. For existing programs that have both COVID-19 expenditures and non-COVID-19 expenditures, this may be accomplished by identifying COVID-19 expenditures on the:

- SEFA – On a separate line by Assistance Listing number with “COVID-19” as a prefix to the program name. For example:
  - COVID-19 – Temporary Assistance for Needy Families – 93.558 – \$1,000,000
  - Temporary Assistance for Needy Families – 93.558 – \$3,000,000
  - Total – Temporary Assistance for Needy Families – 93.558 – \$4,000,000
- SF-SAC – On a separate row by Assistance Listing number with “COVID-19” as the first characters in Part II, Item 1c, Additional Award Information. Example:

	a	b	c	d	e	f	g	h
	Assistance Listing #	Assistance Listing #						
Row Number (auto-generated)	Federal Awarding Agency Prefix	Assistance Listing Three-Digit Extension	Additional Award Identification	Federal Program Name	Amount Expended	Cluster Name	Federal Program Total (auto-generated)	Cluster Total (auto-generated)
					(\$)		(\$)	(\$)
1	93	558		TEMPORARY ASSISTANCE FOR NEEDY FAMILIES	\$3,000,000.00		\$4,000,000.00	
2	93	558	<b>COVID-19</b>	<b>COVID-19</b> - TEMPORARY ASSISTANCE FOR NEEDY FAMILIES	\$1,000,000.00		\$4,000,000.00	
				Total Federal Awards Expended =	\$4,000,000.00			

**Identification of COVID-19 Related Awards in Audit Findings**

Consistent with identifying COVID-19 expenditures on the SEFA, auditors should include the COVID-19 identification for audit findings that are applicable to programs that are entirely COVID-19 funded and existing programs with COVID-19 funding.

**Identification of Compliance Requirements for COVID-19 Related Awards**

As noted in OMB Memorandum M-20-26 (June 18, 2020), federal awarding agencies are responsible for identifying COVID-19 related awards and communicating the applicable compliance requirements to the recipient. Similarly, pass-through entities are responsible for identifying COVID-19 related awards and communicating the applicable requirements to their subrecipients. Normally, this information would be in the award terms and conditions. However, for COVID-19 related awards, the compliance requirements may have been communicated through an agency website and the compliance requirements may have been modified or compliance requirements not included in original terms and conditions may have been added.

For new COVID-19 related programs that are not included in this Supplement, the auditor must use the framework provided by Part 7 of this Supplement. Part 7 includes procedures to determine which of the compliance requirements to test.

**Responsibilities for Informing Subrecipients**

As noted in OMB Memorandum M-20-26 (June 18, 2020), pass-through entities 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, Assistance Listing number, and amount of COVID-19 funds. When COVID-19 funds are subawarded for an existing program, the information furnished to subrecipients should distinguish the subawards of incremental COVID-19 funds from regular subawards under the existing program.

This information is needed to allow the pass-through entity to properly monitor subrecipient expenditures of COVID-19 funds, as well as for oversight by the federal awarding agencies, Federal Offices of Inspector General, and the Government Accountability Office.

### **Alternative Compliance Examination Engagement for Eligible SLFRF Recipients**

The US Department of the Treasury (“Treasury”) recognizes that many recipients of Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) may now be required to complete a Single Audit or a Program-Specific Audit pursuant to the Single Audit Act and its implementing regulations, 2 CFR Part 200, Subpart F, due to their receipt of an SLFRF award, which may lead to them expending \$750,000 or more during their fiscal year in Federal awards. This may be because the recipient has not received federal financial assistance before, or the other federal financial assistance they expended did not exceed the \$750,000 audit threshold set forth 2 CFR 200.501(a). As a result, Treasury has developed an alternative approach which is available for SLFRF recipients that would otherwise not be required to undergo an audit pursuant to 2 CFR Part 200, Subpart F, if it was not for the expenditures of SLFRF funds directly awarded by Treasury.

Under its authority 2 CFR section 200.102(a), OMB is authorizing the use of an alternative compliance examination engagement in accordance with the Government Accountability Office’s Government Auditing Standards in lieu of a full single audit or program-specific audit as required per 2 CFR 200, Subpart F. The alternative approach along with the criteria for eligible recipients are detailed in the Part 4 – Section IV, “Other Information” of assistance listing 21.027 – Coronavirus State and Local Recovery Funds.

This alternative is intended to reduce the burden of a full Single Audit or Program-Specific Audit on eligible recipients and practitioners, as well as uphold Treasury’s responsibility to be good stewards of federal funds.

## **II. Effect of Changes to Compliance Requirements and Other Clusters**

### *Removal of Compliance Requirement from Part 2 Matrix*

In any instance in which a compliance requirement has been removed from a program/cluster, as shown in the Part 2 matrix, if there was an audit finding related to that compliance requirement in an audit conducted using the prior year’s Supplement that finding must continue to be reported in the summary schedule of prior audit findings and considered in the major program determination under 2 CFR section 200.518. The procedures to assess the reasonableness of the summary schedule of prior year audit findings must include all prior audit findings included in the summary schedule, regardless of whether the current Part 2 matrix identified a requirement subject to audit. For example, if there was an audit finding relating to subrecipient monitoring in the prior year but the current year Part 2 matrix identified “M. Subrecipient Monitoring” as not subject to audit with a “No,” the auditor’s procedures to determine the reasonableness of the summary schedule of prior audit findings must include subrecipient monitoring. In any instance in which a compliance requirement was added to a program/cluster in the current year’s Supplement, auditors are not expected to have tested for that requirement under the prior year’s audit. This includes correction of an error, if any, as identified in Appendix V of the Supplement.

### *Addition of a New Program to an Other Cluster*

One of the criteria for an “other cluster” to be considered a low-risk Type A program is that it must have been audited as a major program in at least one of the two most recent audit periods (“2-year look back” under 2 CFR section 200.518(c)(1)). In the year that this Supplement adds a new program to another cluster listed in Part 5, the determination of whether the resulting other cluster meets the 2-year look back criterion requires additional consideration. During that year, the other cluster cannot qualify as having been audited as a major program in one of the two most recent audit periods unless the auditee’s current-year expenditures for the newly added program were less than or equal to 25 percent (0.25) of the Type A threshold, or all of the programs included in the resulting other cluster met the “2-year look back” criterion. The additional criteria in 2 CFR section 200.518(c) must also be evaluated by the auditor to determine if the other cluster can be considered a low-risk Type A program in the current year.

In years after this Supplement adds a program to another cluster, such addition in a prior year does not require additional consideration for the 2-year look back criterion.

The following examples are intended to illustrate consideration of the addition of a new program to another cluster. They are illustrative only and not based on the contents of the current Supplement.

#### **Background for Examples:**

Type A threshold \$750,000.

Human Services existing other cluster (93.123, 93.125, and 93.127) was audited in 2015 with no audit findings.

Part 5 of the 2017 Compliance Supplement added Assistance Listing 93.129 to form the new other cluster with the following federal awards expended in 2017:

93.123: \$ 500,000

93.125: \$ 300,000

93.127: \$ 400,000

93.129: \$ 300,000

Considerations for 2017 major program determination using these facts:

#### **Example 1**

The Human Services cluster was audited in 2015. However, the auditee’s current year expenditures for newly added Assistance Listing 93.129 exceed 0.25 of the Type A threshold of \$750,000 or \$187,500; therefore, the resulting other cluster fails the 2-year look back criterion and cannot be considered a low-risk Type A program in 2017.

If, however, the auditee's expenditures for newly added Assistance Listing 93.129 were equal to or less than \$187,500, the other cluster would pass the 2-year look back criterion and could be considered to have been audited as a major program in one of the two prior years.

#### Example 2

The Human Services cluster was audited in 2015. The newly added program Assistance Listing 93.129 was audited in 2016. If both the cluster and the newly added program met all criteria in 2 CFR section 200.518(c) to be considered low-risk programs for 2017, the other cluster would be a low-risk Type A program in 2017.

### III. Due Date for Submission of Audit Reports and Low-Risk Auditee Criteria

As provided in 2 CFR Part 200, Subpart F (2 CFR section 200.520), in order to meet the criteria for a low-risk auditee in the current year, the two prior years' audits must have met the specified criteria, including report submission to the Federal Audit Clearinghouse (FAC) by the due date.

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 \$750,000, in the prior two audit periods and, therefore, was required to have an audit under the uniform guidance and file with the FAC.
2. If the entity was below the \$750,000 threshold in either of the prior two audit periods, and an audit was not required under the uniform guidance 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 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 nine (9) months after the end of the audit period. For example, for audit periods ending June 30, 2022, the audit report would be due March 31, 2023.
  - b.. Access the FAC web page at <https://harvester.census.gov/facweb>.
    - Select the "Find Audit Information" option and using the "Federal Audit Clearinghouse IMS" and "Search for Single Audits" options for the audit year in question, locate the FAC record for the entity. Verify correct record by comparing both the entity name and Entity Identification Number (EIN) number from the entity's copy of the SF-SAC to the FAC web page.

- For this record, located on the FAC web page, compare the “Date Received” to the Nine Month Due Date to determine if the due date was met.

If the entity was not in compliance with the Nine Month Due Date or Extended Due Date (if applicable) or did not submit the required audit to the FAC for either of the prior two audit periods, then the entity does not qualify as a low-risk auditee.

4. Contact the FAC at [govs.fac@census.gov](mailto:govs.fac@census.gov) or 866-306-8799 if additional information is needed on using the FAC website or determining the date the FAC accepted the report submission as complete.

#### **IV. Treatment of National Science Foundation and National Institutes of Health Awards**

##### *National Science Foundation*

All awards issued by the National Science Foundation (NSF) meet the definition of “Research and Development” at 2 CFR section 200.87. As such, auditees must identify NSF awards as part of the R&D cluster on the Schedule of Expenditures of Federal Awards (SEFA) and the auditor must use the Research and Development cluster in Part 5 when testing any of those awards. NSF recognizes that some awards may have another classification for purposes of reimbursement of indirect costs. The auditor is not required to report this difference in treatment (i.e., the award is classified as R&D for 2 CFR Part 200, Subpart F purposes, but non-research for indirect cost rate purposes), unless the auditee is charging indirect costs at a rate other than the rate(s) specified in the award document(s). This guidance complies with the NSF Proposal and Award Policies and Procedures Guide (PAPPG), the current and prior versions of which may be found at <http://www.nsf.gov/bfa/dias/policy/>.

##### *National Institutes of Health*

Effective for grants and cooperative agreements with budget periods beginning on or after December 26, 2014, and awards that receive supplemental funding on or after December 26, 2014, all awards issued by the National Institutes of Health (NIH) meet the definition of “Research and Development” at 45 CFR section 75.2. As such, auditees must identify NIH awards as part of the R&D cluster on the SEFA, and the auditor must use the Research and Development cluster in Part 5 when testing any of those awards. NIH recognizes that some awards may have another classification for purposes of reimbursement of indirect costs. The auditor is not required to report this disconnect (i.e., the award is classified as R&D for 2 CFR Part 200, Subpart F, purposes, but non-research for indirect cost rate purposes), unless the auditee is charging indirect costs at a rate other than the rate(s) specified in the award document(s). (See the NIH Grants Policy Statement, the current and prior versions of which may be found at <http://grants.nih.gov/grants/policy/policy.htm>.)

## V. Exceptions to the Guidance in 2 CFR Part 200

OMB does not maintain a complete listing of approved agency exceptions to the uniform guidance in 2 CFR Part 200.

For programs included in the Supplement, the auditor should review the program supplement and, as necessary, agency regulations adopting/implementing the OMB uniform guidance in 2 CFR Part 200 to determine if there is any exception related to the compliance requirements that apply to the program. For programs not included in the Supplement that are audited using Part 7, the auditor should review agency regulations adopting/implementing 2 CFR Part 200 to determine if an exception applies to the program.

Questions about the agency-level rulemakings that adopt/implement 2 CFR Part 200 should be directed to the federal agency key management liaisons specified in Appendix III to the Supplement.

## VI. Audit Sampling

Certain suggested audit procedures in this *Compliance Supplement* lend themselves to testing using sampling. Auditors are reminded that when performing an audit under generally accepted auditing standards (GAAS), including single audits, that AU-C section 530, *Audit Sampling*, <https://www.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadabledocuments/au-c-00530.pdf>, provides auditor requirements and guidance related to an auditor's use of sampling. Failure to follow the standards, including the requirement to determine sample sizes that are sufficient to reduce sampling risk to an acceptably low level, may result in the audit being considered nonconforming by the federal cognizant agency for audit as part of a quality control review.

The guidance in AU-C section 530 primarily addresses sampling considerations when performing a financial statement audit. The AICPA Audit Guide, *Government Auditing Standards and Single Audits*, contains auditor guidance for, among other things, designing an audit approach that includes audit sampling to achieve both compliance and internal control over compliance related audit objectives in a single audit or program-specific audit performed in accordance with the Uniform Guidance. It also includes suggested minimum sample sizes for tests of controls over compliance and tests of compliance based on certain engagement-specific inputs.

Another AICPA Audit Guide, *Audit Sampling* also provides additional guidance and technical background, which forms the basis of the practical application of audit sampling to Uniform Guidance audits.

## VII. Federal Audit Clearinghouse Transition from Census to GSA

The provider of the Federal Audit Clearinghouse (FAC) will change from Census to the General Services Administration (GSA) on October 1, 2022. Single audits with a fiscal period ending in 2021 (or earlier) should be submitted to Census. Census will continue to receive and process single audits for a limited period after September 30, 2022, allowing auditees an opportunity to complete remaining in-process submissions.

Single audits with a fiscal period ending in 2022 will be submitted to the GSA FAC beginning on October 1, 2022. Therefore, single audits with a fiscal period ending in 2022 cannot be submitted before that date. The 2 CFR 200.512(1) states that single audits must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If it is not possible to meet the 30-day aspect of that requirement due to the timing of the opening of the GSA FAC for submissions, the audits will not be considered late if they are submitted within nine months after the end of the audit period.

For example, a March 31, 2022, fiscal year-end single audit that is issued on June 30, 2022, would technically be due to the FAC on July 30, 2022 (i.e., 30 calendar days after the auditee's receipt of the auditor's reports). Because the GSA FAC will not be available for submissions until October 1, 2022, if the single audit is submitted to the FAC by December 31, 2022, it would be considered timely and have no impact on the low-risk auditee status of the auditee.



## **APPENDIX VIII**

### **EXAMINATIONS OF EBT SERVICE ORGANIZATIONS**

#### **Background**

States must obtain an examination report 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) (Assistance Listing 10.551) in accordance with the American Institute of Certified Public Accountants (AICPA) Statement on Standards for Attestation Engagements (AT) Section 801, *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 “service organization control (SOC) 1 type 2 report” (7 CFR section 274.1(i)).

In performing audits of SNAP under 2 CFR Part 200, Subpart F, an auditor may use these SOC 1 type 2 reports to gain an understanding of internal controls and obtain evidence about the operating effectiveness of controls.

A SOC 1 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, in all material respects and based on suitable criteria, (a) the aforementioned description fairly presents the system throughout the specified period, (b) the controls were suitably designed throughout the specified period 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 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 exercise professional 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 a SOC 1 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 the service organization’s 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 is current and complete in accordance with programming and documentation standards used by the service organization.
- Systems development staff are not responsible for system maintenance.

## 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.
- A password change policy is in place and requires a password change at a specified interval, generally at least every 90 days.
- 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 be 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 only 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 reconciliations (at least weekly) 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) 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, OMB, and the Census Bureau. The support contractor is CP2S.

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