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31 CFR Part 205

Rules and Procedures for Efficient Federal-State Funds Transfers; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 205

RIN 1510–AA38

Rules and Procedures for Efficient Federal-State Funds Transfers

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: On October 12, 2000, the Financial Management Service issued a Notice of Proposed Rulemaking proposing revisions to the regulations implementing the Cash Management Improvement Act of 1990, as amended (CMIA). These regulations govern the transfer of funds between the Federal government and States for certain Federal assistance programs. This final rule finalizes the proposed rule, with changes, and addresses issues raised by comments received in response to the Notice of Proposed Rulemaking. The purpose of this final rule is to update the current regulations and address various concerns raised since the initial issuance of the regulations. This rule is intended to improve the efficiency of Federal-State funds transfers.

EFFECTIVE DATE: June 24, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen K. Kenneally, Financial Program Specialist, at (202) 874–6966, or Ellen Neubauer, Senior Attorney, at (202) 874–6680. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays. A copy of this final rule is being made available on the Financial Management Service web site at the following address: *http://www.fms.treas.gov/policycmia.*

SUPPLEMENTARY INFORMATION:

I. Background

We are revising our regulations at 31 CFR part 205 (part 205). Since we issued part 205 in 1992, we have issued a number of CMIA Policy Statements (Policy Statements) that address various issues relevant to part 205. One of the purposes of this final rule is to update the current regulations by deleting obsolete provisions and incorporating Policy Statements. Another purpose is to address various concerns that States, Federal agencies, and the General Accounting Office [1] have raised since the initial issuance of part 205. Specifically, the regulations:

(1) Provide greater flexibility in funding techniques;
(2) Ensure that Treasury-State agreements are unambiguous and auditable;
(3) Reflect new laws and directives, including the Single Audit Act Amendments of 1996, 31 U.S.C. chapter 75; Executive Order 12866 of September 30, 1993, Regulatory Planning and Review; and the Debt Collection Improvement Act of 1996; and, (4) Are clearer and, where possible, more concise.

We provided an earlier draft of the proposed rule to the National Association of State Auditors, Comptrollers and Treasurers, the National Governors' Association, the National Conference of State Legislatures, the Council of State Governments, and the National League of Cities and solicited comments from their membership. We also provided the draft proposed rule to the State of Colorado. Their comments were considered in the formulation of the proposed rule. Several States and State Associations commented on the proposed rule and, as described in more detail below, their comments were considered in the formulation of this final rule.

II. Summary of Comments

We received 57 written comments in response to the Notice of Proposed Rulemaking (NPRM) from State agencies, State Associations, and Federal agencies. Two issues were of particular interest to the commenters. These issues involve the application of CMIA to disallowed expenses (§ 205.15 of the NPRM) and the requirement of proportional drawdowns of Federal funds for certain grant programs (§ 205.25 of the NPRM). In addition to these two issues, commenters submitted numerous questions, comments and recommendations regarding several other sections. Responses to questions raised by commenters that did not impact the rule and, therefore, are not addressed in the Preamble to this rule, will be published on our web site at *http://www.fms.treas.gov/policycmia.* Substantive changes to the rule are summarized below.

Disallowances

Forty-seven of the fifty-seven commenters opposed the proposed provision in § 205.15 that would have imposed an interest liability on States for disallowed expenditures. The commenters opposed the NPRM's inclusion of disallowance coverage for four main reasons: the increased administrative burden imposed on States for tracking additional interest over longer time periods; the conflicts between existing Federal Program Agency regulations and the NPRM; the inequity caused by States being subject to interest liability if they lose an appeal, but no correlating provision describing Federal Program Agency liability; and the unfairness of the NPRM's interest accrual date being the date funds were drawn down and not the later date when a State is informed that a funds transfer was disallowed.

We have carefully considered the comments received relating to disallowances and the concerns raised therein. Based upon these comments and upon reconsideration of the intent of CMIA, we have deleted those provisions of the NPRM which would subject disallowances to interest liability under CMIA. This treatment of disallowed expenses is consistent with longstanding current practice.

The primary goal of CMIA is to improve the efficiency and effectiveness of funds transfers between the Federal government and States. Disallowances are reflective of program management disputes, not a lack of efficiency of funds transfers. Federal Program Agencies administering Federal programs are the authorities best suited to determine whether funds have been used for an allowable program purpose.

States are required to ensure that Federal funds are used solely for appropriate program purposes. Although disallowances are not governed by the CMIA regulations, they are covered by specific program regulations. In addition, disallowed expenses are subject to existing debt collection regulations.

Proportional Drawdowns

Eighteen State entities and five State Associations opposed proposed § 205.25 which would have required States that provide matching State funding and/or maintenance-of-effort (MOE) funding to coordinate a proportional drawdown of State and Federal funds to avoid interest liabilities.

The matter of proportional drawdowns was addressed in Policy Statements 7 (dated March 31, 1993) and 19 (dated June 1, 1999). These Policy Statements addressed the treatment of programs that incorporate (MOE) and "matching" requirements. Programs with MOE requirements provide a State with an amount of Federal funds and mandate that a State contribute a set minimum of their

[1] See Financial Management: "Implementation of the Cash Management Improvement Act" (Letter Report, 01/08/96, GAO/AIMD–96–4).

historical financial commitment as a condition for receiving Federal funds. Programs with matching requirements allow the Federal Program Agency and a State to share the costs of a program. For example, for every two dollars spent by the Federal Program Agency, a State must contribute one dollar.

The NPRM would have required that States contributing their own funds to a Federal-State program through a MOE requirement or matching program not draw down all Federal funds before State funds are used. The NPRM would have required that Federal and State funds be spent concurrently and in the appropriate proportion.

A large number of commenters noted that the proposed proportional drawdown provision was more prescriptive than are the specific regulations governing the programs. Several commenters noted that the NPRM requirements exceeded the Federal Program Agency requirements governing not only how Federal funds are disbursed, but how States spend their own funds. For example, several commenters indicated that the NPRM provision conflicts directly with the Social Services Block Grant (SSBG), the Child Care Development Fund (CCDF), and the Temporary Assistance for Needy Families (TANF) block grant requirements. These commenters further commented that the use and disbursement of State funds has nothing to do with the relationship between the Federal government and the State as it relates to Federal funds in the SSBG. Commenters also stated that TANF and CCDF funds should not be subject to the proportional drawdown requirement. These commenters noted that under the Federal TANF and CCDF programs agencies must meet the MOE requirement by the close of the fiscal year, but not on a proportional or ongoing basis. In addition, several commenters recommended that clarifications be made between programs that require MOE and those that require matching funds, and that this section not treat MOE in the same manner as State matching requirements. One commenter noted that while both involve cost sharing, the requirements are not the same and should not be treated as such in the regulations.

Commenters indicated that States require flexibility in administering block grant funds, given the complex funding structures associated with these funds. They stated that monitoring block grant funds closely to ensure proportionality creates an administrative burden for the States, particularly since many States have automated drawdown systems not capable of calculating proportional drawdown requests. One commenter wrote that this provision would cause such an administrative burden that it would result in a disincentive for States to voluntarily supplement their programs throughout the year.

One Federal Program Agency addressed this provision, recommending that the regulatory requirements applying to matching funds and MOE be clarified because they are two different types of funding mechanisms.

Based on comments received and additional research, the final rule recognizes that the different funding techniques associated with MOE, mandatory matching, and voluntary matching require proportional State contributions only in limited circumstances. We agree that the requirement in the NPRM for proportional drawdowns in programs that utilize MOE funding may be more prescriptive than are program requirements. Therefore, for programs utilizing MOE contributions from States, the final rule does not require concurrent proportional State contributions. This gives States the added flexibility that was intended for the administration of block grant programs and eases the burden associated with the use of in-kind contributions and funds being used across a large number of State agencies for one program. However, the CMIA regulations' interest provisions continue to apply to the Federal funds received by the State. The time between receiving these Federal funds and expending these funds for program purposes must continue to be minimized.

In programs utilizing voluntary matching contributions from States, the final rule does not require concurrent proportional State contributions. We believe that the CMIA regulations should not hinder States from making voluntary contributions to Federal/State programs. The CMIA regulations' interest provisions will continue to apply to Federal funds received by the State, but the CMIA regulations will not require proportional draws of State voluntary contributions.

In programs utilizing mandatory matching of funds, the requirement for proportional drawdowns is maintained in the final rule in § 205.15(d). Because of the nature of this funding technique, it is necessary to maintain a close linkage between State and Federal funding.

Section 205.2 What Definitions Apply to This Part?

Commenters stated that the proposed definition of ''administrative costs'' is too vague. They stated that because of the variances among grants a uniform definition of this term is not possible or desirable and would cause an undue burden on States in meeting Federal financial reporting requirements. A few commenters suggested that FMS remove this definition altogether from the regulations and others suggested tailoring the definition according to each specific grant program definition of the term. Because the rule describes the treatment of administrative costs under CMIA, a definition of administrative costs is necessary and is intentionally broad to ensure the variances among the many Federal programs are covered. The definition has been amended, however, to clarify that administrative costs include indirect costs.

Commenters noted that the definition of ''disburse'' should recognize that an off-line environment, such as the Electronic Benefit Transfers system, is also an option for the disbursement of funds. We agree with this recommendation and have amended the definition of ''disburse'' accordingly.

Commenters stated that the definition of ''indirect costs'' is too vague and should be narrowed to include only true indirect costs. These commenters noted that the definition should not be so broad as to include direct apportioned costs, which are used by public assistance agencies. One State entity added that the definition should not include allowable allocated costs.

Another State entity added that this definition cannot be standardized because it can have different meanings for different grants. The definition of indirect costs has not been changed. The definition is intentionally broad to ensure it encompasses the variances among Federal programs.

One commenter stated that the definition of ''indirect cost rate'' should be parallel to the definition in Office of Management and Budget (OMB) Circular A–87. We have declined to adopt this suggestion, but believe that the existing definition allows a State and FMS to agree to use indirect cost rates as defined in OMB Circular A–87.

Another commenter noted that the NPRM used the term ''direct cost'' in two different ways. The commenter recommended that this apparent discrepancy be clarified. The term ''direct cost'' as used within the definition of ''indirect cost rate'' is not intended to have the same meaning as that term is used elsewhere in the rule.

We agree that the use of the term ''direct cost'' to describe the costs a State incurs in calculating interest liabilities may be confusing. We have, therefore, changed the term describing the costs a State incurs in calculating interest liabilities to ''Interest Calculation Costs.''

One commenter expressed concern that the definition of ''compensating balances'' would result in increased costs to States, because it would require banking costs to be paid directly from grant funds. Under the NPRM, a State may not draw down funds from its account in the Unemployment Trust Fund in advance of immediate cash needs for any purpose including maintaining a compensating balance. Another commenter suggested that a definition should be included for ''immediate cash needs,'' to clarify the vagueness of the regulations. The definition of compensating balances was added to clarify existing policy regarding drawing down funds in advance of need. The rule merely states, consistent with the goals of CMIA, that funds, including funds drawn down for the purpose of maintaining a compensating balance, may not be drawn down in advance of need. This does not necessarily require that banking costs be paid directly from grant funds. For example, where a Treasury-State agreement establishes a funding technique that creates a State interest liability on funds drawn from the State's account in the Unemployment Trust Fund (e.g., pre-issuance funding), consistent with CMIA, a State may deduct its banking costs from any interest paid. However, States may not draw down funds in advance of need solely for the purpose of covering banking costs.

One commenter recommended that the definition of ''estimate'' be revised so that its usage is consistent in other sections in the regulations. Specifically, the commenter questioned whether the definition applies to references of drawing down Federal funds or in establishing future grant authority amounts. We agree that the term ''estimate'' is used in various sections of the rule in a manner which is inconsistent with how the term is defined. Accordingly, where appropriate, we have replaced the term ''estimate'' with the term ''project'' in §§ 205.10, 205.12, and 205.20.

Section 205.4 Are There any Circumstances Where a Federal Assistance Program That Meets the Criteria of § 205.3 Would Not Be Subject to This Subpart A?

This section allows, under limited circumstances, the exclusion of components of a major Federal assistance program from interest calculations if the State administers the program through several State agencies. Two commenters wrote that this section does not greatly reduce the State's administrative burden, particularly if the management of Federal funds is decentralized within the State. One of these commenters commented that if the agreement is with the State, the entire program should be covered. The other commenter recommended that if the State agencies covered in the agreement account for 90–95% or more of the total program expenditures, the amounts drawn by the remaining agencies should be assumed interest neutral and excluded from the calculations completely. We have not made changes to this section because we believe that, as proposed, it may reduce a State's administrative burden. Where a State administers a Federal financial assistance program through more than one State agency, the State is only required to track funding to a single agency and may pro-rate to determine interest liabilities funding to the remaining agency or agencies. Additionally, this method of calculating interest is optional and, therefore, need not be adopted if it creates a burden. Therefore, no changes to this section have been made.

Two commenters noted that proposed § 205.4(b)(1) does not result in the same exclusions as do the examples in the current CMIA Policy Statement 8 (dated April 19, 1993). In response, we have amended § 205.4(b)(1) to ensure that the final rule and Policy Statement 8 are consistent. States may exclude a component of a major Federal assistance program that is administered by multiple State agencies from the provisions of CMIA on the basis that the funding for that component is an immaterial percentage of the program. FMS will agree to this immaterial exception only if certain requirements are met. These requirements are that the dollar amount of the exempted cash flow or component may not exceed 5% of the State's Single Audit threshold, and the total amount excluded under a single program, by all State agencies administering the program, may not exceed 10% of the total program expenditures. If less than total program funding is subject to interest calculation procedures, the interest liabilities that are calculated under the program should be prorated to 100% of the program to provide the truest projection of interest liabilities.

The only Federal Program Agency commenting on this section suggested that this section be clarified to state that all major programs not already included in a Treasury-State agreement are covered by default procedures until the agreement is modified. We agree that it is important that new major programs be covered as soon as possible, however, we do believe that covering such programs by default procedures until such time as a Treasury-State agreement is modified is the most effective way to ensure prompt coverage. To address this concern, we have clarified in § 205.7 that States must inform us of new major programs in a timely manner (within 30 days) so that they may properly be included in a Treasury-State agreement.

Section 205.5 What Are the Thresholds for Major Federal Assistance Programs?

This section describes new thresholds for determining major Federal assistance programs, as well as the methodology to calculate the new thresholds. Many of the commenters wrote that the formulas included in this section were difficult to understand and, therefore, require further simplification. One commenter stated that it is not clear if the 10% comparison should be calculated each year that the Single Audit is issued or if it should be performed on a one-time basis. We have clarified that this is an annual requirement. We have also revised this section in an attempt to clarify the threshold calculations. Assistance in calculating the threshold can be found at *http://www.fms.treas.gov/policmia.*

Section 205.6 What Is a Treasury-State Agreement?

This section provides that Treasury-State agreements will remain in effect until terminated. Commenters suggested that we clarify that Treasury-State agreements can still be negotiated yearly if the parties desire to do so. This section has been amended to clarify that we and a State may still agree that a Treasury-State agreement will terminate on a specific termination date, where appropriate.

Section 205.7 Can a Treasury-State Agreement Be Amended?

Two commenters proposed that amendments to the Treasury-State agreement should be retroactive based on mutual consent by a State and FMS. We agree that there may be circumstances where it is appropriate for a change to a Treasury-State agreement to be effective as of the date the Treasury-State agreement was entered into. We have therefore amended this section to allow the parties to agree to the effective date of an amendment.

One commenter sought clarification on how soon after Single Audit data is available a State must notify FMS when a Treasury-State agreement needs to be amended due to Federal assistance program changes. This section has been amended to reflect that States must notify us of required amendments to the Treasury-State agreement within 30 days of the time the State becomes aware of the change.

Section 205.8 What If There Is No Treasury-State Agreement in Effect?

One commenter recommended there be a middle ground between establishing a Treasury-State agreement and resorting to default procedures, to prevent the entire agreement from going into default due to disagreement over coverage of a single program. In the ''middle ground'' case, default procedures would go into effect only for the program about which there is a disagreement; a Treasury-State agreement would be entered into for all other programs. We agree that where we and a State are unable to reach agreement over a particular program, we may impose default procedures for only that one program and, therefore, have incorporated this change.

Section 205.9 What Is Included in a Treasury-State Agreement?

This section describes information required to be in Treasury-State agreements, including applicable funding techniques, methodology regarding clearance patterns and estimates, and interest calculations. Two commenters described 205.9(g), which requires States and Federal agencies to describe the methods used to calculate interest liabilities, as excessive and contrary to efforts of reducing administrative burden. We have not changed this provision because we believe the required information is necessary to ensure that interest liabilities are being properly calculated.

Two commenters also stated that 205.9(f), which requires States to include the results of the clearance pattern process, is unnecessary and places an undue burden on States. One of these commenters noted that this burden is placed on States that use pre-issuance funding techniques when computing clearance patterns for inclusion in an agreement that will not be required to be used for interest calculations for over 15 months. In response to this comment, we have amended this section to reflect our intent that this section apply only to programs where funds are drawn based on clearance patterns. Pre-issuance States may provide the results of their clearance pattern process with their annual report.

Section 205.11 What Requirements Apply to Funding Techniques?

Many of the comments on this section addressed compensating balances. Although no change in the treatment of compensating balances was intended in the NPRM, some commenters interpreted the language as a new policy position that prohibited the use of Federal funds for compensating balances. It has been our longstanding policy position, consistent with the purpose of CMIA, that funds cannot be drawn down in advance of need. Because questions regarding compensating balances have arisen, this section of the rule is meant to merely clarify existing policy prohibiting the drawing down of funds for the purpose of maintaining a compensating balance. This does not prohibit those States that are required to have funds on hand before issuing checks from drawing down funds early nor does it prohibit those States from deducting their banking costs from any interest paid.

Section 205.12 What Funding Techniques May Be Used?

Some State Constitutions require that States have funds on hand before issuing checks. These pre-issuance States are allowed to draw funds early, but are subject to interest liability. The commenters strongly recommended retaining the current three-day drawdown window for pre-issuance States, rather than the two-day window proposed in the NPRM. One State said the proposed two-day drawdown window was ''arbitrary and unrealistic'' while another State entity called it ''unnecessary and restrictive.'' We agree that the two-day window proposed in the NPRM may not give States sufficient time to ensure that funds are on hand prior to the issuance of payments. This section has, therefore, been amended to retain the three-day drawdown window that currently exists.

Section 205.13 How Do You Determine When State or Federal Interest Liability Accrues?

One commenter wrote that the indirect costs referenced in § 205.13(b) should be for Statewide indirect costs, not agency specific costs. Another commenter recommended clarifying § 205.13(b) by including specific reference to costs allocated through a Federally-approved public assistance cost allocation plan or through a Federally-approved Statewide cost allocation plan. Based on these comments, we have made changes in the final rule. States will be allowed to apply a Statewide indirect cost rate or a public assistance indirect cost rate, where appropriate. The cost rate must be consistent with OMB Circular A–87, including Attachments.

Section 205.14 When Does Federal Interest Liability Accrue?

Three commenters requested clarification on how interest is calculated when obligational authority is established after an expenditure is made. Under § 205.14(a)(2), Federal interest liability may accrue when States expend their own funds for program purposes and obligational authority is subsequently established to cover those expenditures. In accordance with § 205.14(a)(1), this Federal interest liability is calculated from the time of expenditure. Paragraph (a)(2) has been amended to clarify this intent.

One commenter commented that § 205.14(c) conflicts with § 205.14(a)(1). Section 205.14(c) requires that a State adhere to Federal disbursement schedules when requesting funds; § 205.14(a)(1) states that interest begins to accrue against the Federal government whenever a State advances funds for program purposes. We do not agree that these two provisions conflict. Section 205.14(a)(1) contains the general rule regarding the accrual of Federal interest liabilities. Section 205.14(c) contains an exception to that rule, namely, we may deny interest liability even if a State advances its own funds for program purposes if it does so because it failed to timely request a drawdown of the funds. To clarify this in the rule, we have added the phrase ''notwithstanding any other provision of this section'' at the beginning of 205.14(c).

One Federal Program Agency recommended that there be no Federal interest liability for implementation of new activities by the State until the Federal Program Agency approves the new plan(s) and/or system projects. The same agency proposed adding language to this section saying no Federal interest will accrue while approval is pending. In response to these comments, we have modified the provisions of paragraph (a)(2) to allow for greater flexibility to deny interest in certain circumstances where a State expends its own funds without Federal approval even if obligational authority is subsequently established. For example, if a State is required to have an approved State plan in effect as a pre-condition to Federal funding and makes an expenditure prior to the time the plan has been approved, we may deny Federal interest liability if the State failed to act reasonably in obtaining Federal approval.

Section 205.15 When Does State Interest Liability Accrue?

As previously discussed, the provisions addressing interest liability on disallowances have been deleted.

The final rule clarifies that for mandatory matching programs, the interest provisions of the CMIA regulations apply when a State draws Federal funds in advance or in excess of State funds.

Section 205.16 What Special Rules Apply to Federal Assistance Programs and Projects Funded by the Federal Highway Trust Fund?

One commenter disagreed with the policy on valid projects that experience an unforeseen cost overrun. Under this section, a State that advances its own funds because of cost overruns may be reimbursed later by the Federal Highway Administration. However, no CMIA interest will be paid to the State, even though it advanced its own funds. The policy, which has not changed from the existing rule, is intended to discourage cost overruns. Accordingly we have not made any changes to this provision.

Section 205.18 Are Administrative Costs Subject to This Part?

One commenter questioned why the determination of whether indirect and administrative costs are subject to subpart A is based upon whether the grants are wholly dedicated to these purposes. Another commenter noted that the exclusion in 205.18(b) exempting the administrative and indirect cost portions of Federal Program Agency grants from subpart A of the regulations may prevent States from collecting interest from Federal Program Agencies. One commenter sought a definition or example of ''administrative costs'' while another stated that the regulations should not provide a definition at all, but rely on how the term is defined by the Federal Program Agency responsible for that particular program. One Federal Program Agency suggested that the provision clearly state that drawdowns for indirect costs must be related to timing of the associated direct costs.

While the intent of this provision was to ease the burden on States of tracking administrative and indirect costs which were only a portion of a Federal award, we nevertheless agree that whether an award is wholly or partially dedicated to indirect and administrative costs should not be the basis for determining whether or not CMIA interest applies. We have, therefore, amended this section to clarify that when States and Treasury agree, in a Treasury-State agreement, to specified funding techniques for administrative costs (including Statewide or public assistance indirect costs, if appropriate, consistent with OMB Circular A–87), no interest liability will accrue provided the agreed upon funding technique is followed. This rule will apply whether the Federal grant is dedicated wholly or partially to administrative costs.

Section 205.21 When May Clearance Patterns Be Used?

One commenter recommended amending § 205.21(b) to delete the reference to § 205.9, since that commenter felt the provisions contained therein are excessive, unreasonably burdensome, and will be costly to develop and incorporate in Treasury-State agreements. We have not adopted this recommendation because, without the required information, we cannot ensure the accuracy of clearance patterns. The costs of developing clearance patterns in support of interest calculations may be considered Interest Calculation Costs.

Section 205.23 What Requirements Apply to Estimates?

One commenter noted that the provisions of this section are counter to most, if not all, of the program regulations on block grant programs. This commenter suggested that forcing a State to list ''hard and fast'' rules in a Treasury-State agreement defeats the purpose and intent of block grant law. We do not agree because the requirements of this section apply only when the funds transfer procedures agreed upon by us and a State are based on estimates. Where the use of estimates is not agreed upon, the requirements do not apply.

Consistent with changes made to § 205.25 on proportional draws, the restrictions on MOE and voluntary matching have been removed from the final rule.

Commenters also sought clarification on the use of the term ''estimates'' in the proposed regulations. We agree that the term ''estimate'' is used in various sections of the rule in a manner which is inconsistent with how the term is defined. Accordingly, where appropriate, we have replaced the term ''estimate'' with the term ''project'' in §§ 205.10, 205.12, and 205.20. The use of the term ''estimate'' in § 205.23 remains unchanged.

Section 205.25 How Does This Part Apply to Certain Federal Assistance Programs or Funds?

In addition to comments received on the issue of proportional drawdowns, discussed above, two commenters recommended that this section be amended to allow States the option of maintaining a compensating balance to offset the actual benefit and clearing account banking charges incurred. These same commenters also suggested that the final rule allow States to earn non-cash credits to offset legitimate banking charges related to the Unemployment Insurance Trust Fund.

We have declined to adopt this recommendation because maintaining a compensating balance is not consistent with the goals of CMIA. Under CMIA, States must minimize the time elapsing between the receipt of funds from the Federal government and the payment of those funds to program beneficiaries. Maintaining funds drawn down from the Federal government in a bank account for the purpose of covering banking expenses is inconsistent with that goal. As previously noted, however, nothing in this rule prohibits us and a State from agreeing, in a Treasury-State agreement, to a funding technique that creates a State interest liability on funds drawn from the State's account in the Unemployment Trust Fund (e.g., pre-issuance funding). Where a State incurs an interest liability on funds drawn from the State's account in the Unemployment Trust Fund, banking costs may be deducted from any interest paid.

Section 205.26 What Are the Requirements for Preparing Annual Reports?

This section requires States to submit supporting documentation for all liability claims greater than $5,000. One commenter was in favor of increasing the documentation threshold to $10,000. Another recommended deleting the requirement of documentation for claims in excess of $5,000. A third commenter recommended requiring the $5,000 supporting documentation only in cases when the funding technique used would not normally be expected to result in a Federal interest liability. We have not adopted these recommendations because we are of the view that this requirement is necessary to ensure that claims are verified when appropriate.

Section 205.27 How Are Interest Calculation Costs Calculated?

The title of this section has been amended to eliminate the confusion caused by use of the term ''direct costs'' to describe those costs incurred by a State in performing the interest calculations required under CMIA. The term ''direct costs'' has been replaced with the term ''Interest Calculation Costs.'' Two commenters suggested that Interest Calculation Costs should not be limited to amounts that can be offset against interest owed by the States to the Federal government. Two commenters recommended that the definition of ''interest calculation'' be broadened to allow more costs to be charged. One of these commenters wrote that, in order to measure the cost benefit of the CMIA program, CMIA-related costs need to be recovered by the program. We do not believe that CMIA permits us to expand the definition of Interest Calculation Costs. The CMIA limits those costs which may be claimed by States to costs incurred for interest calculations. The statute does not provide a mechanism for paying these costs other than to offset them from amounts otherwise owed by States. Additionally, in our view the $50,000 limitation imposed by this section is reasonable and appropriate.

Section 205.30 What Are the Federal Oversight and Compliance Responsibilities?

One Federal Program Agency submitted comments proposing a time period of at least 30 days to review States' Annual Reports. We agree that a 30-day time period to review States' annual reports is reasonable and have incorporated this change.

Section 205.31 How Does a State or Federal Program Agency Appeal a Determination Made by us and Resolve Disputes?

One commenter recommended shortening the 90-day periods for appeals and rebuttals to 30-day periods. We have not adopted this recommendation because we believe 90 days is warranted to ensure that appeals and rebuttals are carefully considered and thoroughly reviewed. Another commenter suggested removing the discretion granted to the FMS Assistant Commissioner on approving when disputes can be moved along the Administrative Dispute Resolution Act (ADRA) track. Because the use of alternative dispute resolution procedures requires the agreement of all parties, we have declined to adopt this recommendation.

Subpart B

Section 205.35 What Is the Result of Federal Program Agency or State Non-compliance?

One commenter wrote that §§ 205.3(b), 205.3(c), and 205.35 seemed contradictory and requested clarification regarding whether or not individual programs covered by subpart B could be moved to subpart A. Section 205.35 has been clarified to reflect our intent that under § 205.35 we may, at our discretion, move a program that falls below the threshold for a major Federal assistance program from subpart B to subpart A without lowering the threshold applicable to other programs.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. These regulations will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These regulations will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These regulations do not alter the budgetary effects of entitlement, grants, user fees, or loan programs, or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this final rule easier to understand.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule does not require any actions on the part of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements in the final rule under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and has assigned clearance number 1510–0061. Sections of this final rule with information collection requirements are §§ 205.9, 205.26, 205.27, 205.29, and we estimate the public reporting burden of these sections to average, respectively, 500 hours per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. We estimate the number of respondents to be 56. No comments were received regarding this burden estimate or any other aspect of this collection of information.

List of Subjects in 31 CFR Part 205

Administrative practice and procedure, Electronic funds transfers, Grant programs, Intergovernmental relations.

Authority and Issuance

For the reasons set out in the Preamble, we revise Part 205 of title 31 of the Code of Federal Regulations to read as follows:

PART 205—RULES AND PROCEDURES FOR EFFICIENT FEDERAL-STATE FUNDS TRANSFERS

Sec.

Subpart B—Rules Applicable to Federal Assistance Programs Not Included in a Treasury-State Agreement

Subpart C—[Reserved]

Authority: 5 U.S.C. 301; 31 U.S.C. 321, 3332, 3335, 6501, 6503.

§ 205.1 What Federal assistance programs are covered by this part?

(a) This part prescribes rules for transferring funds between the Federal government and States for Federal assistance programs. This part applies to:

(1) All States as defined in § 205.2; and

(2) All Federal program agencies, except the Tennessee Valley Authority (TVA) and its Federal assistance programs.

(b) Only programs listed in the Catalog of Federal Domestic Assistance, as established by Chapter 61 of Title 31, United States Code (U.S.C) are covered by this part.

(c) This part does not apply to:

(1) Payments made to States acting as vendors on Federal contracts, which are subject to the Prompt Payment Act of 1982, as amended, 31 U.S.C. 3901 *et seq.*, 5 CFR Part 1315, and 48 CFR Part 32; or

(2) Direct loans from the Federal government to States.

§ 205.2 What definitions apply to this part?

For purposes of this part:

Administrative Costs means expenses incurred by a State associated with managing a Federal assistance program. This term includes indirect costs.

Auditable means records must be retained to allow for calculations outlined in the Treasury-State agreements to be reviewed and replicated for compliance purposes. States must maintain these records to be readily available, fully documented, and verifiable.

Authorized State Official means a person with the authority under the laws of a State to make commitments on behalf of the State for the purposes of this part, or that person's official designee as certified in writing.

Business Day means a day when Federal Reserve Banks are open.

Catalog of Federal Domestic Assistance (CFDA) means the government-wide list of Federal assistance programs, projects, services, and activities which provide assistance or benefits to the American public. The listing includes financial and non-financial Federal assistance programs administered by agencies of the Federal government.

Clearance Pattern means a projection showing the daily amount subtracted from a State's bank account each day after the State makes a disbursement. For example, a State mailing out benefit checks may project that the percentage of checks cashed each day will be 0% for the first day, 10% for the second day, 80% on the third day, and 10% on the fourth day following issuance. Clearance patterns are used to schedule the transfer of funds with various funding techniques and to support interest calculations.

Compensating Balance means funds maintained in State bank accounts and/or State Treasurer bank accounts to offset the costs of bank services.

Current Project Cost means a cost for which the State has recorded a liability on or after the day that the State last requested funds for the project.

Day means a calendar day unless otherwise specified.

Default Procedures means efficient cash management practices that we prescribe for Federal funds transfers to a State if a Treasury-State agreement is not in place.

Disburse means to issue a check or initiate an electronic funds transfer payment, or to provide access to benefits through an electronic benefits transfer.

Discretionary Grant Project means a project for which a Federal Program Agency is authorized by law to exercise judgment in awarding a grant and in selecting a grantee, generally through a competitive process.

Dollar-Weighted Average Day of Clearance means the day when, on a cumulative basis, 50 percent of funds have been paid out. To calculate the dollar-weighted average day of clearance for a clearance pattern:

(1) For each day, multiply the percentage of dollars paid out that day by the number of days that have elapsed since the payments were issued. For example, on the first day payments were issued, multiply the percentage of dollars paid out on that day by zero, since zero days have elapsed. On the day after payments were issued, multiply the percentage of dollars paid out on that day by one, since one day has elapsed; and so forth.

(2) Total the results from paragraph (1) of this definition. Round to the nearest whole number. This is the dollar-weighted average day of clearance.

Draw Down (verb) means a process in which a State requests and receives Federal funds.

Drawdown (noun) means Federal funds requested and received by a State.

Electronic Funds Transfer (EFT) means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account.

Estimate means a projection of the needs of a Federal Assistance Program.

Federal Assistance Program means a program included in the Catalog of Federal Domestic Assistance where funds are transferred from the Federal government to a State. Federal assistance programs include cooperative agreements, but do not include vendor payments or direct loans.

Federal Program Agency means an executive agency as defined by 31 U.S.C. 102, except the Tennessee Valley Authority (TVA), that issues and administers Federal assistance programs to States or cooperative agreements with States.

Federal-State Agreement means an agreement between a State and a Federal Program Agency specifying terms and conditions for carrying out a Federal assistance program or group of programs. This is different than a Treasury-State agreement.

Financial Management Service (we or us) means the Bureau of the U.S. Department of the Treasury responsible for implementation of this part.

Fiscal Year means the twelve-month period that a State designates as its budget year.

Grant means, for purposes of this part, a funds transfer by the Federal government associated with a Federal assistance program listed in the Catalog of Federal Domestic Assistance.

Indirect Cost Rate means a formula that identifies the amount of indirect costs based on the amount of accrued direct costs. The applicable indirect cost rate shall be described in the Treasury-State agreement.

Indirect Costs means costs a State incurs that are necessary to the operation and performance of its Federal assistance programs, but that are not readily identifiable with a particular project or Federal assistance program.

Interest Calculation Costs means those costs a State incurs in performing the actual calculation of interest liabilities, including those costs a State incurs in developing and maintaining clearance patterns in support of interest calculations.

Maintenance-of-Effort means a requirement that a State spend at least a specified amount of State funds for Federal assistance program purposes.

Major Federal Assistance Program means a Federal assistance program which receives Federal funding in excess of the dollar thresholds found in Table A to § 205.5.

Obligational Authority means the existence of a definite commitment on the part of the Federal government to provide appropriated funds to a State to carry out specified programs, whether the commitment is executed before or after a State pays out funds for Federal assistance program purposes.

Pay Out means to debit the State's bank account.

Pay Out Funds for Federal Assistance Program Purposes means, in the context of State payments, to debit a State account for the purpose of making a payment to:

(1) A person or entity that is not considered part of the State pursuant to the definition of ''State'' in this section; or

(2) A State entity that provides goods or services for the direct benefit or use of the payor State entity or the Federal government to further Federal assistance program goals.

Rebate means funds returned to a State by third parties after a State has paid out those funds for Federal assistance program purposes.

Refund means funds that a State recovers that it previously paid out for Federal assistance program purposes. Refunds include rebates received from third parties.

Refund Transaction means an entry to the record of a State bank account representing a single deposit of refunds. A refund transaction may consist of a single check or item, or a bundle of accumulated checks.

Related Banking Costs means separately identified costs which are necessary and customary for maintaining an account in a financial institution, whether a commercial account or a State Treasurer account. Investment service fees and fees for credit-related services are not related banking costs.

Request for Funds means a State's request for funds that the State completes and submits in accordance with Federal Program Agency guidelines.

Reverse Flow Program means a Federal assistance program, such as Supplemental Security Income (SSI), for which the Federal government makes payments to recipients on behalf of a State.

Revolving Loan Fund means a pool of program funds managed by a State. States may loan funds from the pool to other entities in support of Federal assistance program goals. Investment income is earned on the funds that remain in the pool and on loans made from pool funds. A Federal Program Agency may require that all income derived from a revolving loan fund be used for Federal assistance program purposes.

Secretary means the Secretary of the United States Department of the Treasury. We are the Secretary's representative in all matters concerning this part, unless otherwise specified.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the Virgin Islands. It includes any agency, instrumentality, or fiscal agent of a State that is legally and fiscally dependent on the State Executive, State Treasurer, or State Comptroller.

(1) A State agency or instrumentality is any organization of the primary government of the State financial reporting entity, as defined by generally accepted accounting principles.

(2) A fiscal agent of a State is an entity that pays, collects, or holds Federal funds on behalf of the State in furtherance of a Federal assistance program, excluding private nonprofit community organizations.

(3) Local governments, Indian Tribal governments, institutions of higher education, hospitals, and nonprofit organizations are excluded from the definition of State.

Treasury-State agreement means a document describing the accepted funding techniques and methods for calculating interest and identifying the Federal assistance programs governed by this subpart A.

Trust Fund for Which the Secretary Is the Trustee means a trust fund administered by the Secretary.

Vendor Payment means a funds transfer by a Federal Program Agency to a State to compensate the State for acting as a vendor on a Federal contract.

We and Us means Financial Management Service.

Subpart A—Rules Applicable to Federal Assistance Programs Included in a Treasury-State Agreement

§ 205.3 What Federal assistance programs are subject to this subpart A?

(a) Generally, this subpart prescribes the rules that apply to Federal assistance programs which:

(1) Are listed in the Catalog of Federal Domestic Assistance;

(2) Meet the funding threshold for a major Federal assistance program; and

(3) Are included in a Treasury-State agreement or default procedures.

(b) Upon a State's request, we will make additional Federal assistance programs subject to subpart A by lowering the funding threshold in the Treasury-State agreement. All of a State's programs that meet this lower threshold would be subject to this subpart A.

(c) We may make additional Federal assistance programs subject to subpart A if a State or Federal Program Agency fails to comply with subpart B of this part.

§ 205.4 Are there any circumstances where a Federal assistance program that meets the criteria of § 205.3 would not be subject to this subpart A?

(a) A Federal assistance program that meets or exceeds the threshold for major Federal assistance programs in a State is not subject to this subpart A until it is included in a Treasury-State agreement or in default procedures.

(b) We and a State may agree to exclude components of a major Federal assistance program from interest calculations if the State administers the program through several State agencies and meets the following requirements:

(1) The dollar amount of the exempted cash flow does not exceed 5% of the State's major Federal assistance program threshold and the total amount excluded under a single program by all State agencies administering the program does not exceed 10% of that Federal assistance program's total expenditures;

(2) If less than the total amount of Federal assistance program funding is subject to interest calculation procedures, the interest liabilities should be pro-rated to 100% of the Federal assistance program funding;

(3) A State may not use this exclusion if a Federal assistance program is administered by only one State agency; and

(4) We may request Federal assistance program specific data on funding levels to determine exemptions.

(c) We and a State may exclude a Federal assistance program from this subpart A if the Federal assistance program has been discontinued since the most recent Single Audit and the remaining funding is below the threshold, or if the Federal assistance program is funded by an award not limited to one fiscal year and the remaining Federal assistance program funding is below the State's threshold.

§ 205.5 What are the thresholds for major Federal assistance programs?

(a) Table A of this section defines major Federal assistance programs based on the dollar amount of an individual Federal assistance program and the dollar amount of all Federal assistance being received by a State for all Federal assistance programs including non-cash programs. A State must locate the appropriate row in Column A based upon the total amount of Federal assistance received. In that same row, a State must apply the percentage from Column B to the dollar value of all its Federal assistance programs to determine the State's threshold for major Federal assistance programs. For example, if the total amount received by a State for all Federal assistance programs is $50 million, then that State's threshold for major Federal assistance programs is 6% of $50 million or $3 million. A State which receives more than $10 billion under Federal assistance programs will have a minimum default threshold of $60 million.

(b) To ensure adequate coverage of all State programs, a State must, on an annual basis, compare its program coverage using the percentage obtained from Table A to the program coverage which would result using a percentage which is half of the percentage obtained from Table A. For example, a State receiving $1 billion in Federal Assistance would use Table A to learn that its threshold level would be .60 percent of $1 billion. A State would compare program coverage at .60 percent of $1 billion to program coverage at .30 percent of $1 billion.

(c) If the comparison conducted under paragraph (b) of this section results in a reduction of program coverage that is greater than 10%, a State must lower its threshold, or add programs, until the difference is less than or equal to 10%.

(d) In accordance with § 205.3(b), a State may lower its threshold to include additional programs. All of a State's programs that meet this lower threshold would be subject to this subpart A.

(e) Unless specified otherwise, major Federal assistance programs must be determined from the most recent Single Audit data available.

TABLE A TO § 205.5

Column A Total amount of Federal Assistance for all programs per State:	Column B Major Federal Assistance Program means any Federal assistance program that exceed these levels:
Between zero and $100 million inclusive.	6.00 percent of the total amount of Federal assistance.
Over $100 million but less than or equal to $10 billion.	0.60 percent of the total amount of Federal assistance.
Over $10 billion.	The greater of 0.30 percent of the total Federal assistance of $60 million.

§ 205.6 What is a Treasury-State agreement?

(a) A Treasury-State agreement documents the accepted funding techniques and methods for calculating interest agreed upon by us and a State and identifies the Federal assistance programs governed by this subpart A. If anything in a Treasury-State agreement is inconsistent with this subpart A, that part of the Treasury-State agreement will not have any effect and this subpart A will govern.

(b) A Treasury-State agreement will be effective until terminated unless we and a State agree to a specific termination date. We or a State may terminate a Treasury-State agreement on 30 days written notice.

§ 205.7 Can a Treasury-State agreement be amended?

(a) We or a State may amend a Treasury-State agreement at any time if both we and the State agree in writing.

(b) The effective date of an amendment shall be the date both parties agree to the amendment in writing unless otherwise agreed to by both parties.

(c) We and a State must amend a Treasury-State agreement as needed to change or clarify its language when the terms of the existing agreement are either no longer correct or no longer applicable. A State must notify us in writing within 30 days of the time the State becomes aware of a change, describing the Federal assistance program change. The notification must include a proposed amendment for our review and a current list of all programs included in the Treasury-State agreement. Amendments may address, but are not limited to:

(1) Additions or deletions of Federal assistance programs subject to this subpart A;

(2) Changes in funding techniques; and

(3) Changes in clearance patterns.

(d) Additions or deletions to the list of Federal assistance programs subject to this subpart A take effect when a Treasury-State agreement is amended, unless otherwise agreed to by the parties.

(e) Federal assistance programs that are to be added to a Treasury-State agreement are not subject to this subpart A until the Treasury-State agreement is amended, except when a Federal assistance program subject to this subpart A is being replaced by a Federal assistance program governed by subpart B of this part, in which case the replacement program is immediately subject to this subpart A.

(f) Notwithstanding any other provision of this section, if no changes to the Treasury-State agreement are required, States must notify us annually.

§ 205.8 What if there is no Treasury-State agreement in effect?

When a State does not have a Treasury-State agreement in effect, we will prescribe default procedures to implement this subpart A. The default procedures will prescribe efficient funds transfer procedures consistent with State and Federal law and identify the covered Federal assistance programs and designated funding techniques. When we and a State reach agreement on some but not all Federal assistance programs administered by the State, we and the State may enter into a Treasury-State agreement for all programs on which we are in agreement and we may prescribe default procedures governing those programs on which we are unable to reach agreement.

§ 205.9 What is included in a Treasury-State agreement?

We will prescribe a uniform format for all Treasury-State agreements. A Treasury-State agreement must include, but is not limited to, the following:

(a) State agencies, instrumentalities, and fiscal agents that administer the

Federal assistance programs subject to this subpart A.

(b) Federal assistance programs subject to this subpart A, consistent with §§ 205.3 and 205.4. A State must use its most recent Single Audit report as a basis for determining the funding thresholds for major Federal assistance programs, unless otherwise specified in the Treasury-State agreement. A State may use budget or appropriations data for a more recent period instead of Single Audit data, if specified in the Treasury-State agreement.

(c) Funding techniques to be applied to Federal assistance programs subject to this subpart A.

(d) Methods the State will use to develop and maintain clearance patterns and estimates, consistent with § 205.11. The method must include, at a minimum, a clear indication of:

(1) The data used;

(2) The sources of the data;

(3) The development process;

(4) For estimates, when and how the State will update the estimate to reflect the most recent data available;

(5) For estimates, when and how the State will make adjustments, if any, to reconcile the difference between the estimate and the State's actual cash needs; and

(6) Any assumptions, standards, or conventions used in converting the data into the clearance pattern or estimate.

(e) Federal Program Agency provisions requiring reconciliation of estimates to actual outlays may be included in a Treasury-State agreement. The supporting documentation must be retained by the State for three years.

(f) States must include the results of the clearance pattern process in the Treasury-State agreement for programs where the timing of drawdowns is based on clearance patterns. For programs where the timing of drawdowns is not based on clearance patterns, the results of the clearance pattern process may be provided with the annual report required under § 205.26. The supporting documentation must be retained by the State for three years.

(g) Methods used by the State and Federal agencies to calculate interest liabilities pursuant to this subpart A. The method must include, but is not limited to, a clear indication of:

(1) The data used;

(2) The sources of the data;

(3) The calculation process; and

(4) Any assumptions, standards, or conventions used in converting the data into the interest liability amounts.

(h) Treasury-State agreements must include language describing how a State and Federal Program Agency will address a State request for supplemental funding. This language must include, but is not limited to, the following provisions:

(1) What constitutes a timely request for supplemental funds for Federal assistance program purposes by a State; and

(2) What constitutes a timely transfer of supplemental funds for Federal assistance program purposes from a Federal Program Agency to a State.

§ 205.10 How do you document funding techniques?

The Treasury-State agreement must include a concise description for each funding technique that a State will use. The description must include the following:

(a) What constitutes a timely request for funds;

(b) How the State determines the amount of funds to request;

(c) What procedures are used to project or reconcile estimates with actual and immediate cash needs;

(d) What constitutes the timely receipt of funds; and

(e) Whether a State or Federal interest liability accrues when the funding technique, including any associated procedure for projection or reconciliation, is properly applied.

§ 205.11 What requirements apply to funding techniques?

(a) A State and a Federal Program Agency must minimize the time elapsing between the transfer of funds from the United States Treasury and the State's payout of funds for Federal assistance program purposes, whether the transfer occurs before or after the payout of funds.

(b) A State and a Federal Program Agency must limit the amount of funds transferred to the minimum required to meet a State's actual and immediate cash needs.

(c) A State must not draw down funds from its account in the Unemployment Trust Fund (UTF) or from a Federal account in the UTF in advance of actual immediate cash needs for any purpose including maintaining a compensating balance.

(d) A Federal Program Agency must allow a State to submit requests for funds daily. This requirement should not be construed as a change to Federal Program Agency guidelines defining a properly completed request for funds.

(e) In accordance with the electronic funds transfer provisions of the Debt Collection Improvement Act of 1996 (31 U.S.C. 3332), a Federal Program Agency must use electronic funds transfer methods to transfer funds to States unless a waiver is available.

§ 205.12 What funding techniques may be used?

(a) We and a State may negotiate the use of mutually agreed upon funding techniques. We may deny interest liability if a State does not use a mutually agreed upon funding technique. Funding techniques should be efficient and minimize the exchange of interest between States and Federal agencies.

(b) We and a State may base our agreement on the sample funding techniques listed in paragraphs (b)(1) through (b)(5) of this section, or any other technique upon which both parties agree.

(1) Zero balance accounting means that a Federal Program Agency transfers the actual amount of Federal funds to a State that are paid out by the State each day.

(2) Projected clearance means that a Federal Program Agency transfers to a State the projected amount of funds that the State pays out each day. The projected amount paid out each day is determined by applying a clearance pattern to the total amount the State will disburse.

(3) Average clearance means that a Federal Program Agency, on the dollar-weighted average day of clearance of a disbursement, transfers to a State a lump sum equal to the actual amount of funds that the State is paying out. The dollar-weighted average day of clearance is the day when, on a cumulative basis, 50 percent of the funds have been paid out. The dollar-weighted average day of clearance is calculated from a clearance pattern, consistent with § 205.20.

(4) Cash advance (pre-issuance or post-issuance) funding means that a Federal Program Agency transfers the actual amount of Federal funds to a State that will be paid out by the State, in a lump sum, not more than three business days prior to the day the State issues checks or initiates EFT payments.

(5) Reimbursable funding means that a Federal Program Agency transfers Federal funds to a State after that State has already paid out the funds for Federal assistance program purposes.

§ 205.13 How do you determine when State or Federal interest liability accrues?

(a) State or Federal interest liability may or may not accrue when mutually agreed to funding techniques are applied, depending on the terms of the Treasury-State agreement.

(b) We and a State may agree in a Treasury-State agreement that no State or Federal interest liability will accrue for indirect costs or indirect allocated costs based on an indirect cost rate. This indirect cost must be consistent with OMB Circular A–87 (For availability, see 5 CFR 1310.3.) and be in accordance with this subpart A. The indirect cost rate may be a Statewide indirect cost rate or a public assistance cost rate, where appropriate.

§ 205.14 When does Federal interest liability accrue?

(a) Federal interest liabilities may accrue in accordance with the following provisions:

(1) The Federal Program Agency incurs interest liability if a State pays out its own funds for Federal assistance program purposes with valid obligational authority under Federal law, Federal regulation, or Federal-State agreement. A Federal interest liability will accrue from the day a State pays out its own funds for Federal assistance program purposes to the day Federal funds are credited to a State bank account.

(2) If a State pays out its own funds for Federal assistance program purposes without obligational authority, the Federal Program Agency will incur an interest liability if obligational authority subsequently is established. However, if the lack of obligational authority is the result of the failure of the State to comply with a Federal Program Agency requirement established by statute, regulation, or agreement, interest liability may be denied. A Federal interest liability will accrue from the day a State pays out its own funds for Federal assistance program purposes to the day Federal funds are credited to a State bank account.

(3) If a State pays out its own funds prior to the day a Federal Program Agency officially notifies the State in writing that a discretionary grant project is approved, the Federal Program Agency does not incur an interest liability, notwithstanding any other provision of this section.

(4) If a State pays out its own funds prior to the availability of Federal funds authorized or appropriated for a future Federal fiscal year, the Federal Program Agency does not incur an interest liability, notwithstanding any other provision of this section.

(5) If a State fails to request funds timely as set forth in § 205.29, or otherwise fails to apply a funding technique properly, we may deny any resulting Federal interest liability, notwithstanding any other provision of this section.

(b) Federal Program Agency programs that have specific payment dates set by the Federal Program Agency that create interest liabilities are subject to this part.

(c) States must adhere to Federal Program Agency disbursement schedules when requesting funds. Notwithstanding any other provision of this section, we may deny a State's claim for Federal interest liability for the period prior to a late drawdown request. States must time their funds drawdown so that it does not create Federal interest liability. The drawdown request must allow the Federal Program Agency sufficient time to meet its disbursement schedule. If the Federal Program Agency does not make a timely payout in accordance with the terms of the Treasury-State agreement, a State may submit a claim for interest liability.

§ 205.15 When does State interest liability accrue?

(a) *General rule.* State interest liability may accrue if Federal funds are received by a State prior to the day the State pays out the funds for Federal assistance program purposes. State interest liability accrues from the day Federal funds are credited to a State account to the day the State pays out the Federal funds for Federal assistance program purposes.

(b) *Refunds.* (1) A State incurs interest liability on refunds of Federal funds from the day the refund is credited to a State account to the day the refund is either paid out for Federal assistance program purposes or credited to the Federal government.

(2) We and a State may agree, in a Treasury-State agreement, that a State does not incur an interest liability on refunds in refund transactions under $50,000.

(c) *Exception to the general rule.* A State does not incur an interest liability to the Federal government if a Federal statute requires the State to retain or use for Federal assistance program purposes the interest earned on Federal funds, notwithstanding any other provision in this section.

(d) *Mandatory matching of Federal funds.* In programs utilizing mandatory matching of Federal funds with State funds, a State must not arbitrarily assign its earliest costs to the Federal government. A State incurs interest liabilities if it draws Federal funds in advance and/or in excess of the required proportion of agreed upon levels of State contributions in programs utilizing mandatory matching of Federal funds with State funds.

§ 205.16 What special rules apply to Federal assistance programs and projects funded by the Federal Highway Trust Fund?

The following applies to Federal assistance programs and projects funded out of the Federal Highway Trust Fund, notwithstanding any other provision of this part:

(a) A State must request funds at least weekly for current project costs, or Federal interest liability will not accrue prior to the day a State submits a request for funds.

(b) If a State pays out its own funds in the absence of a project agreement or in excess of the Federal obligation in a project agreement, the Federal Program Agency will not incur an interest liability.

§ 205.17 Are funds transfers delayed by automated payment systems restrictions based on the size and timing of the drawdown request subject to this part?

Funds transfers delayed due to payment processes that automatically reject drawdown requests that fall outside a pre-determined set of parameters are subject to this part.

§ 205.18 Are administrative costs subject to this part?

(a) A State and FMS may agree, in a Treasury-State agreement, to the following funding conventions for indirect costs and administrative costs:

(1) The State will draw down a prorated amount of administrative costs on the date of the State payday. For example, the State would draw one-third of its quarterly administrative costs if payroll is monthly, or one-sixth of its quarterly administrative costs if payroll is semi-monthly.

(2) If an indirect cost rate is applied to a program, the State will include a proportionate share of the indirect cost allowance on each drawdown by applying the indirect cost rate to the appropriate direct costs on each drawdown.

(3) If costs must be allocated to various programs pursuant to a labor distribution or other system under an approved cost allocation plan, the State will draw down funds to meet cash outlay requirements based on the most recent, certified cost allocations, with subsequent adjustments made pursuant to the actual allocation of costs.

(b) Notwithstanding any other provision of this part, no interest liabilities will be incurred or calculated for indirect costs and administrative costs, provided the funding conventions described in paragraph (a) of this section are properly applied.

§ 205.19 How is interest calculated?

(a) A State must calculate Federal interest liabilities and State interest liabilities for each Federal assistance program subject to this subpart A.

(b) The interest rate for all interest liabilities for each Federal assistance program subject to this subpart A is the annualized rate equal to the average equivalent yields of 13-week Treasury Bills auctioned during a State's fiscal year. We provide this rate to each State.

(c) A State must calculate and report interest liabilities on the basis of its fiscal year. A State must ensure that its interest calculations are auditable and retain a record of the calculations.

(d) As set forth in § 205.9, a Treasury-State agreement must include the method a State uses to calculate and document interest liabilities.

(e) A State may use actual data, a clearance pattern, or statistical sampling to calculate interest. A clearance pattern used to calculate interest must meet the standards of § 205.20. If a State uses statistical sampling to calculate interest, the State must sample transactions separately for each Federal assistance program subject to this subpart A. Each sample must be representative of the pool of transactions and be of sufficient size to accurately represent the flow of Federal funds under the Federal assistance program, including seasonal or other periodic variations.

(f) For the first year in which a Federal assistance program is covered in a Treasury-State agreement, funds transfers that occur prior to the first day of the State's fiscal year must not be included in interest calculations and are not subject to the interest liability provisions of this part.

§ 205.20 What is a clearance pattern?

States use clearance patterns to project when funds are paid out, given a known dollar amount and a known date of disbursement. A State must ensure that clearance patterns meet the following standards:

(a) A clearance pattern must be auditable.

(b) A clearance pattern must accurately represent the flow of Federal funds under the Federal assistance programs to which it is applied.

(c) A clearance pattern must include seasonal or other periodic variations in clearance activity.

(d) A clearance pattern must be based on at least three consecutive months of disbursement data, unless additional data is required to accurately represent the flow of Federal funds.

(e) If a State uses statistical sampling to develop a clearance pattern, the sample size must be sufficient to ensure a 96 percent confidence interval no more than plus or minus 0.25 weighted days above or below the estimated mean.

(f) A clearance pattern must extend, at a minimum, until 99 percent of the dollars in a disbursement have been paid out for Federal assistance program purposes.

(g) We and a State may agree to other procedures, such as estimates to project when funds are paid out when the dollar amount and/or the timing of disbursements are not known.

§ 205.21 When may clearance patterns be used?

(a) A State may develop a clearance pattern for:

(1) An individual Federal assistance program;

(2) A logical group of Federal assistance programs that have the same disbursement method and type of payee;

(3) A bank account;

(4) A specific type of payment, such as payroll or vendor payments; or

(5) Anything that is agreed upon by us and a State. If a clearance pattern is used for multiple Federal assistance programs, a State must apply the clearance pattern separately to each Federal assistance program when scheduling funds transfers or calculating interest.

(b) As set forth in § 205.9, a Treasury-State agreement must include the method a State uses to develop and maintain clearance patterns.

§ 205.22 How are accurate clearance patterns maintained?

(a) If a State has knowledge, at any time, that a clearance pattern no longer reflects a Federal assistance program's actual clearance activity, or if a Federal assistance program undergoes operational changes that may affect clearance activity, the State must notify us, develop a new clearance pattern, and certify that the new pattern corresponds to the Federal assistance program's clearance activity. Clearance patterns will remain in effect until a new clearance pattern is certified.

(b) An authorized State official must certify that a clearance pattern corresponds to the clearance activity of the Federal assistance program to which it is applied. An authorized State official must re-certify the accuracy of a clearance pattern at least every five years. If a State develops a clearance pattern for a bank account or a specific type of payment, or on another basis, as set forth in § 205.21, we may prescribe other requirements for re-certifying the accuracy of the clearance pattern. A State can begin to use a new clearance pattern on the date the new clearance pattern is certified.

§ 205.23 What requirements apply to estimates?

The following requirements apply when we and a State negotiate a mutually agreed upon funds transfer procedure based on an estimate of the State's immediate cash needs:

(a) The State must ensure that the estimate reasonably represents the flow of Federal funds under the Federal assistance program or program component to which the estimate applies. The estimate must take into account seasonal or other periodic variations in activity throughout the period for which the Federal funds are available.

(b) As set forth in §§ 205.9 and 205.10, a Treasury-State agreement must include the method a State uses to develop, maintain, and document the estimate.

§ 205.24 How are accurate estimates maintained?

(a) If a State has knowledge that an estimate does not reasonably correspond to the State's cash needs for a Federal assistance program or program component, or if a Federal assistance program undergoes operational changes that may affect cash needs, the State must immediately notify us in writing. We and the State will amend the funding technique provisions in the Treasury-State agreement or take other mutually agreed upon corrective action.

(b) When estimates are properly updated and applied, a State or Federal interest liability may or may not accrue, depending on the terms of the Treasury-State agreement.

(c) We may require a State to justify in writing that it is not feasible to use a more efficient basis for determining the amount of funds to be transferred under the Federal assistance program or program component to which an estimate is applied. We may prescribe requirements for certifying the reasonableness of an estimate.

§ 205.25 How does this part apply to certain Federal assistance programs or funds?

(a) Special rules apply to certain Federal assistance programs or funds described in this section. To the extent the provisions of this section are inconsistent with other provisions of this part, this section applies.

(b) A State's interest liability on funds withdrawn from its account in the UTF equals the actual interest earned on such funds less the related banking costs. Actual interest earned does not include non-cash bank earnings. If funds withdrawn from the State account in the UTF are commingled with other funds, a proportionate share of interest earnings and banking costs must be allocated to the funds withdrawn from the State account. Interest liabilities on funds withdrawn from a Federal account in the UTF, except the Federal Unemployment Account, are calculated in accordance with § 205.19.

(c) *Supplemental Security Income.* (1) Except as provided in 42 U.S.C. 1382e(d), the Federal government incurs an interest liability from the day State funds are credited to the Federal government's account to the day a Federal Program Agency pays out the State funds for Federal assistance program purposes. A State incurs an interest liability from the day a Federal Program Agency pays out Federal funds for Federal assistance program purposes to the day State funds are credited to the Federal government's account.

(2) Interest liability must be calculated on the difference between a State's monthly Supplemental Security Income payment and the State's actual liability for the month.

(3) The Federal government will not incur interest liabilities on refunds of State funds under the Supplemental Security Income Program.

(4) Administrative fees charged by the Social Security Administration to States under the Supplemental Security Income program are not subject to this part.

(5) Supplemental State payments made in conjunction with Supplemental Security Income are not subject to this part.

(d) *Funds collected under the Child Support Enforcement Program.* (1) Funds collected by States from absent parents pursuant to Title IV–D of the Social Security Act are not subject to this part.

(2) Interest earned by States on undistributed collections must be treated as Federal assistance program income under 45 CFR 304.50(b) and is not subject to this part.

(3) Late payment fees collected by States from absent parents are not subject to interest liabilities under this part and are not subject to this part. However, such fees must be treated as Federal assistance program income in accordance with 45 CFR 302.75(b)(6).

(e) A State that earns interest on Special Supplemental Food Program for Women, Infants, and Children rebates is not subject to interest liability if the funds earned are used for Federal assistance program purposes.

(f) *Revolving Loan Funds.* (1) This part applies to any transfer of funds from the Federal Program Agency to the State for the Revolving Loan Fund.

(2) This part does not apply to interest a State earns on Revolving Loan Funds when Federal Program Agency regulations require that all interest earned on invested funds be used for Federal assistance program purposes.

§ 205.26 What are the requirements for preparing Annual Reports?

(a) A State must submit to us an Annual Report accounting for State and Federal interest liabilities of the State's most recently completed fiscal year. Adjustments to the Annual Report must be limited to the two State fiscal years prior to the State fiscal year covered by the report. The authorized State official must certify the accuracy of a State's Annual Report. A signed original of the Annual Report must be received by December 31 of the year in which the State's fiscal year ends. We will provide copies of Annual Reports to Federal agencies. We will prescribe the format of the Annual Report, and may prescribe that the Annual Report be submitted by electronic means.

(b) A State must submit a description and supporting documentation for liability claims greater than $5,000. This information must include the following:

(1) The amount of funds requested;

(2) The date the funds were requested;

(3) The date the funds were paid out for Federal assistance program purposes;

(4) The date the funds were received by the State; and

(5) The date of award.

(c) A State claiming reimbursement of Interest Calculation Costs must submit its claim with its Annual Report in accordance with § 205.27. An authorized State official must certify the accuracy of a State's claim for Interest Calculation Costs.

§ 205.27 How are Interest Calculation Costs calculated?

(a) We will compensate a State annually for the costs of calculating interest, including the cost of developing and maintaining clearance patterns in support of interest calculations, pursuant to this subpart A, subject to the conditions and limitations of this section.

(b) We may deny an interest calculation cost claim if a State does not:

(1) Have a Treasury-State agreement with us, as set forth in §§ 205.6 through 205.9;

(2) Submit timely a Treasury-State agreement, as set forth in §§ 205.6 through 205.9;

(3) Submit timely an updated list of Federal assistance programs subject to this subpart A, as set forth in §§ 205.6 through 205.9;

(4) Submit timely a claim for Interest Calculation Costs with its Annual Report, as set forth in § 205.26; or

(5) Submit timely its Annual Report, as set forth in § 205.26.

(c) A State must maintain documentation to substantiate its claim for Interest Calculation Costs. We may require a State to provide documentation to support its interest calculation cost claims. We will review all interest calculation cost claims for reasonableness. If we determine that a cost claim is unreasonable, we will not reimburse a State for that cost, notwithstanding any other provision of this section.

(d) *Eligibility and treatment of Interest Calculation Costs.* (1) Interest Calculation Costs do not include expenses for normal disbursing services, such as processing checks or maintaining records for accounting and reconciliation of cash accounts, or expenses for upgrading or modernizing accounting systems.

(2) Interest Calculation Costs in excess of $50,000 in any year are not eligible for reimbursement, unless a State can justify to us that the State is unable to develop and maintain clearance patterns in support of interest calculations, or perform the actual calculation of interest, without incurring such costs. Supporting documentation must accompany State requests for reimbursement in excess of $50,000.

(3) Interest Calculation Costs that a State incurs in fiscal years prior to its most recently completed Annual Report are not eligible for reimbursement.

(4) A State must not include Interest Calculation Costs in its Statewide cost allocation plan, as defined and provided for in OMB Circular A–87. All costs incurred by a State to implement this subpart A, other than Interest Calculation Costs, are subject to the procedures and principles of OMB Circular A–87.

(e) The payments from the Federal government to individual States to offset Interest Calculation Costs incurred are funded from the aggregate interest payments States make to the Federal government. The following limitations apply:

(1) We will not reduce or adjust interest liabilities for Federal assistance programs funded out of trust funds for which the Secretary is trustee. These programs include, but are not limited to, Unemployment Insurance Trust Fund (CFDA 17.225); Highway & Planning Trust Fund (CFDA 20.205); Airport Improvement Trust Fund (CFDA 20.106); Federal Transit Capital Improvement Trust Fund (CFDA 20.500); Federal Transit Capital & Operating Assistance Trust Fund (CFDA 20.507); and Social Security—Disability Insurance Trust Fund (CFDA 96.001); and

(2) The aggregate payments from the Federal government to States to offset Interest Calculation Costs will not be

greater than the aggregate interest payments States make to the Federal government.

§ 205.28 How are interest payments exchanged?

(a) We offset the adjusted total State interest liability and the adjusted total Federal interest liability for each State to determine the net interest payable to or from each specific State. The payment of net interest and any Interest Calculation Costs, as set forth in § 205.27, for the most recently completed fiscal year must occur no later than March 31. We will notify a State of the final net interest liability. A State must submit a claim to receive payment.

(b) A State may appeal a decision by us on interest liabilities and interest calculation cost claims in accordance with § 205.31.

(c) If a State appeals the amount of interest payable in accordance with the provisions of § 205.31, payment must occur by March 31 for any portions not subject to the appeal.

(d) The Federal government will not be liable for interest on any payment of interest to a State.

§ 205.29 What are the State oversight and compliance responsibilities?

(a) A State must designate an official representative with the statutory or administrative authority to coordinate all interaction with the Federal government concerning this subpart A, and must notify us in writing of the representative's name and title. A State must notify us immediately of any change in the official representative.

(b) A State must maintain records supporting interest calculations, clearance patterns, Interest Calculation Costs, and other functions directly pertinent to the implementation and administration of this subpart A for audit purposes. A State must retain the records for each fiscal year for three years from the date the State submits its Annual Report, or until any pending dispute or action involving the records and documents is completed, whichever is later. We, the Comptroller General, and the Inspector General or other representative of a Federal Program Agency must have the right of access to, and may require submission of, all records for the purpose of verifying interest calculations, clearance patterns, interest calculation cost claims, and the State's accounting for Federal funds.

(c) A State's implementation of this subpart A is subject to audit in accordance with 31 U.S.C. Chapter 75, ''Requirements for Single Audits.''

(d) If a State repeatedly or deliberately fails to request funds in accordance with the procedures established for its funding techniques, as set forth in § 205.11, § 205.12, or a Treasury-State agreement, we may deny the State payment or credit for the resulting Federal interest liability, notwithstanding any other provision of this part.

(e) If a State materially fails to comply with this subpart A, we may, in addition to the action described in paragraph (d) of this section, take one or more of the following actions, as appropriate under the circumstances:

(1) Deny the reimbursement of all or a part of the State's interest calculation cost claim;

(2) Send notification of the non-compliance to the affected Federal Program Agency for appropriate action, including, where appropriate, a determination regarding the impact of non-compliance on program funding;

(3) Request a Federal Program Agency or the General Accounting Office to conduct an audit of the State to determine interest owed to the Federal government, and to implement procedures to recover such interest;

(4) Initiate a debt collection process to recover claims owed to the United States; or

(5) Take other remedies legally available.

§ 205.30 What are the Federal oversight and compliance responsibilities?

(a) A Federal Program Agency must designate an official representative to coordinate all interaction with us and the States concerning this subpart A, and must notify us in writing of the representative's name and title. A Federal Program Agency must notify us immediately of any change in the official representative.

(b) A Federal Program Agency's implementation of this subpart A is subject to review pursuant to procedural instructions that we issue.

(c) We will consult with Federal agencies as necessary and appropriate before entering into or amending a Treasury-State agreement.

(d) We will distribute Annual Reports to Federal agencies, as set forth in § 205.26. Upon our request, a Federal Program Agency must review a State's Annual Report for reasonableness and must report its findings to us within 30 days.

(e) A Federal Program Agency must notify us in writing if the program agency has knowledge, at any time, that:

(1) A State's clearance pattern does not correspond to a Federal assistance program's clearance activity; or

(2) Corrective action needs to be taken by a State, us, or another Federal Program Agency, with respect to the implementation of this subpart. We will notify the State or Federal Program Agency as appropriate in writing with a description of the Federal Program Agency's assertion.

(f) A Federal Program Agency must notify us in writing of new Federal assistance programs listed in the Catalog of Federal Domestic Assistance.

(g) If a Federal Program Agency causes an interest liability by failing to comply with this subpart A, we may collect a charge from the Federal Program Agency. A Federal interest liability resulting from circumstances beyond the control of a Federal Program Agency does not constitute noncompliance. We will determine the charge using the following procedures:

(1) We will issue a Notice of Assessment to the Federal Program Agency, indicating the nature of the noncompliance, the amount of the charge, the manner in which it was calculated, and the right to file an appeal.

(2) To the maximum extent practicable, a Federal Program Agency must pay a charge for noncompliance out of appropriations available for the Federal Program Agency's operations and not from the Federal Program Agency's program funds.

(3) If a Federal Program Agency does not pay a charge for noncompliance within 45 days after receiving a Notice of Assessment, we will debit the appropriate Federal Program Agency account.

(4) In the event a Federal Program Agency appeals a charge imposed under the Notice of Assessment, we will defer the charge until we decide the appeal. If we deny the appeal, the effective date of the charge may be retroactive to the date indicated in the Notice of Assessment.

§ 205.31 How does a State or Federal Program Agency appeal a determination made by us and resolve disputes?

(a) This section documents the procedures for:

(1) A State to appeal the net interest charge that we have assessed;

(2) A State to appeal a determination we have made regarding the State's claim for Interest Calculation Costs in accordance with § 205.27;

(3) A Federal Program Agency to appeal a charge for noncompliance that we have assessed in accordance with § 205.30; or

(4) A State or a Federal Program Agency to resolve other disputes with us or between or among each other concerning the implementation of this subpart A.

(b) A State or Federal Program Agency must submit a written petition (Petition) to the Assistant Commissioner, Federal Finance, Financial Management Service, (Assistant Commissioner), within 90 days of the date of the notice of assessment or the event that initiated the appeal or dispute. The Petition must include a concise factual statement, not to exceed 15 pages, with supporting documentation in the appendices, of the conditions forming the basis of the Petition and the action requested of the Assistant Commissioner. In the case of a dispute, the party submitting the petition to us must concurrently provide a copy of the petition to the other concerned parties. The other concerned parties may submit to the Assistant Commissioner a rebuttal within 90 days of the date of the petition. The rebuttal must include a concise factual statement, not to exceed 15 pages, with supporting documentation in the appendices.

(c) The Assistant Commissioner will review the Petition, any rebuttal, and all supporting documentation. As part of the review process, the Assistant Commissioner may request to meet with any or all parties and may request additional information.

(d) The Assistant Commissioner will issue a written decision within the later of 120 days of the date of the Petition or the rebuttal, in case of a dispute, or 120 days from receipt of any additional information. The Assistant Commissioner's decision will be the final program agency action on our part for purposes of judicial review procedures under the Administrative Procedures Act, 5 U.S.C. 701–706 (APA), unless either the State or Federal Program Agency invokes the provisions of the Administrative Dispute Resolution Act of 1990 (ADRA), 5 U.S.C. 581–593.

(e) Either a State or Federal Program Agency may seek to invoke the provisions of the ADRA within 45 days after the date of the Assistant Commissioner's written decision.

(1) The party invoking the ADRA must notify the Assistant Commissioner and any other concerned parties in writing. If all parties, including the Assistant Commissioner, agree in writing, a neutral party appointed under the provisions of the ADRA may assist in resolving the dispute through the use of alternate means of dispute resolution as defined in the ADRA.

(2) If the party invoking the ADRA is unable to reach a satisfactory resolution, the Assistant Commissioner's decision will be the final agency action on our part for purposes of the judicial review procedures under the APA.

(f) Any amount due as a result of an appeal or dispute must be paid within 30 days of the date of the decision of the Assistant Commissioner or the date of the resolution under the ADRA. If a State fails to pay, the State will be subject to collection techniques under 31 U.S.C. 3701 *et seq.*, including accrual of interest on outstanding balances and administrative offset.

Subpart B—Rules Applicable to Federal Assistance Programs Not Included in a Treasury-State Agreement

§ 205.32 What Federal assistance programs are subject to this subpart B?

This subpart B applies to all Federal assistance programs listed in the Catalog of Federal Domestic Assistance that are not subject to subpart A of this part.

§ 205.33 How are funds transfers processed?

(a) A State must minimize the time between the drawdown of Federal funds from the Federal government and their disbursement for Federal program purposes. A Federal Program Agency must limit a funds transfer to a State to the minimum amounts needed by the State and must time the disbursement to be in accord with the actual, immediate cash requirements of the State in carrying out a Federal assistance program or project. The timing and amount of funds transfers must be as close as is administratively feasible to a State's actual cash outlay for direct program costs and the proportionate share of any allowable indirect costs. States should exercise sound cash management in funds transfers to subgrantees in accordance with OMB Circular A–102 (For availability, see 5 CFR 1310.3.).

(b) Neither a State nor the Federal government will incur an interest liability under this part on the transfer of funds for a Federal assistance program subject to this subpart B.

§ 205.34 What are the Federal oversight and compliance responsibilities?

(a) A Federal Program Agency must review the practices of States as necessary to ensure compliance with this subpart B.

(b) A Federal Program Agency must notify us if a State demonstrates an unwillingness or inability to comply with this subpart B.

(c) A Federal Program Agency must formulate procedural instructions specifying the methods for carrying out the responsibilities of this section.

§ 205.35 What is the result of Federal Program Agency or State non-compliance?

We may require a State and a Federal Program Agency to make the affected Federal assistance programs subject to subpart A of this part, consistent with Federal assistance program purposes and regulations, notwithstanding any other provision of this part, if:

(a) A State demonstrates an unwillingness or inability to comply with this subpart B; or

(b) A Federal Program Agency demonstrates an unwillingness or inability to make Federal funds available to a State as needed to carry out a Federal assistance program.

Subpart C—[Reserved]

Richard L. Gregg,

Commissioner.

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