OMB CIRCULAR A-133

COMPLIANCE SUPPLEMENT ADDENDUM #1

JUNE 30, 2009

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

Scope

This addendum supplements the 2009 OMB Circular A-133 Compliance Supplement (Supplement) to provide additional guidance for programs (including clusters of programs) with expenditures of American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (ARRA) awards that the auditor determines are major programs in audits performed under OMB Circular A-133.[1]

This addendum is effective for audits of fiscal years beginning after June 30, 2008. It should be used in conjunction with other Parts and Appendices of the Compliance Supplement in determining the appropriate audit procedures to support the auditor's opinion on compliance for each major program with expenditures of ARRA awards.

Contents of Addendum

This addendum to the March 2009 Supplement modifies the following parts of that Supplement (the appendices are unchanged) as indicated:

- An updated Table of Contents that includes ARRA-funded programs shown in **bold.**

- A supplementary Part 2 matrix that shows (1) new ARRA-funded programs, (2) new clusters resulting from the addition of new ARRA programs to the Supplement and clustering with existing programs (whether or not previously in the Supplement), and (3) pre-existing program supplements (and CFDA numbers) to which ARRA funding and compliance requirements have been added. New programs and existing programs with ARRA requirements are shown in **bold** in the matrix and also are listed below in the Part 4 discussion. In addition, Part 2 shows in **bold** new CFDA numbers for ARRA-funded programs that have been clustered with their counterpart pre-existing program(s) (and CFDA number(s)), but for which there are no new unique compliance requirements.

- Part 3 coverage of new cross-cutting provisions in the following areas: Activities Allowed or Unallowed; Davis-Bacon Act; Procurement and Suspension and Debarment; Reporting, Subrecipient Monitoring, and Special Tests and Provisions. For each change, the addendum includes the new language **in bold** (Part 3 portions of the March 2009 Supplement that have not changed are not repeated in this addendum).

  - It should be noted that N, Special Tests and Provisions, lists three new ARRA compliance requirements (R1, R2, and R3), which apply to all programs with expenditures of ARRA awards. Auditors need to add these to Part 4 (or Part 7 for any programs not included in this Supplement) guidance for each program with expenditures of ARRA awards. This guidance is provided once in Part 3 as it is the same for all programs with expenditures of ARRA awards, even

[1] The guidance contained in this addendum applies to program-specific audits under the provisions of OMB Circular A-133, §.200(c) and §.235, whether or not a program-specific audit guide is available.

though it is the type of guidance that normally would be listed in Part 4 under each individual program.

– Also, at this time, the reporting area indicates only that more substantive coverage of ARRA reporting will be covered in the next Compliance Supplement addendum.

- Part 4 coverage of new or existing programs (whether single programs or as part of clusters) with new compliance requirements as a result of ARRA funding (**with the new information shown in bold in the relevant program supplement)** (see below). Except for the Part 3, N. Special Tests and Provisions coverage discussed above, HHS ARRA programs do not have additional compliance requirements beyond those identified in Part 4 of the March 2009 Supplement; therefore, since the existing Part 4 guidance is sufficient, these programs are only identified in Part 5 as additions to existing clusters or as new clusters.

  Program coverage in Part 4 is provided for the following:

  CFDAs 14.218, 14.253 and 14.254

  CFDAs 14.228 and 14.255

  CFDA 14.256

  CFDA 14.257

  CFDA 14.258

  CFDA 14.318

  CFDAs 14.862 and 14.886

  CFDAs 14.867, 14.882, and 14.887

  CFDAs 14.872, 14.884, and 14.885

  CFDAs 14.873 and 14.883

  CFDAs 14.907, 14.908, 14.909, and 14.910

  CFDA 17.225

  CFDA 66.458

  CFDA 66.468

  84.000

  CFDAs 84.010 and 84.389

  CFDAs 84.027, 84.173, 84.391 and 84.392

  CFDAs 84.041 and 84.404

  CFDAs 84.126 and 84.390

  CFDAs 84.181 and 84.393

CFDAs 84.394 and 84.397

CFDAs 97.024 and 97.114

- An update to Part 5 showing all new clusters, as well as information relating to ARRA considerations for the Student Financial Assistance and Research and Development clusters.

- An addition to the Introduction to Part 6 to address "Internal Control Over Compliance For Major Programs With Expenditures of ARRA Awards."

In addition, this addendum updates the Child Nutrition Cluster (CFDAs 10.553, 10.555, 10.556, and 10.559) to reflect in III.N.1, Special Tests and Provisions – Verification of Free and Reduced Price Applications (NSLP), statutory changes not included in the 2009 Compliance Supplement.

TABLE OF CONTENTS

PART 1 – BACKGROUND, PURPOSE, AND APPLICABILITY

Background 1-1
Purpose and Applicability 1-3
Overview of this Supplement 1-5
Technical Information 1-8
How to Obtain Additional Guidance 1-9

PART 2 – MATRIX OF COMPLIANCE REQUIREMENTS 2-1

PART 3 – COMPLIANCE REQUIREMENTS

Introduction 3-1
A. Activities Allowed or Unallowed 3-A
B. Allowable Costs/Cost Principles 3-B
OMB Circular A-87 ..... 3-B-4
OMB Circular A-21 ..... 3-B-23
OMB Circular A-122 ..... 3-B-41
C. Cash Management 3-C
D Davis-Bacon Act 3-D
E. Eligibility 3-E
F. Equipment and Real Property Management 3-F
G. Matching, Level of Effort, Earmarking 3-G
H. Period of Availability of Federal Funds 3-H
I. Procurement and Suspension and Debarment 3-I
J. Program Income 3-J
K. Real Property Acquisition and Relocation Assistance 3-K
L. Reporting 3-L
M. Subrecipient Monitoring 3-M
N. Special Tests and Provisions 3-N

PART 4 – AGENCY PROGRAM REQUIREMENTS

Introduction 4-1

No. Agency Name

10 United States Department of Agriculture (USDA)

None – Food for Progress Program 4-10.001
None – Section 416(b) Program 4-10.001
10.500 – Cooperative Extension Service 4-10.500
10.551 – Supplemental Nutrition Assistance Program (SNAP) 4-10.551
10.553 – School Breakfast Program (SBP) 4-10.553
10.555 – National School Lunch Program (NSLP) 4-10.553
10.556 – Special Milk Program for Children (SMP) 4-10.553
10.557 – Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) 4-10.557
10.558 – Child and Adult Care Food Program (CACFP) 4-10.558
10.559 – Summer Food Service Program for Children (SFSPC) 4-10.553

10.561 – State Administrative Matching Grants for the Supplemental Nutrition Assistance Program 4-10.551
10.566 – Nutrition Assistance for Puerto Rico 4-10.566
10.568 – Emergency Food Assistance Program (Administrative Costs) 4-10.568
10.569 – Emergency Food Assistance Program (Food Commodities) 4-10.568
10.582 – Fresh Fruit and Vegetable Program 4-10.582
10.665 – Secure Payments for States and Counties Containing Federal Lands 4-10.665
10.666 – Schools and Roads—Grants to Counties 4-10.665
10.760 – Water and Waste Disposal Systems for Rural Communities 4-10.760
10.766 – Community Facilities Loans and Grants 4-10.766

11 Department of Commerce (DOC)
11.300 – Investments for Public Works and Economic Development Facilities 4-11.300
11.307 – Economic Adjustment Assistance 4-11.300
11.555 – Public Safety Interoperable Communications Grant Program 4-11.555

12 Department of Defense (DOD)
12.401 – National Guard Military Operations and Maintenance (O&M) Projects 4-12.401

14 Department of Housing and Urban Development (HUD)
14.157 – Supportive Housing for the Elderly (Section 202) 4-14.157
14.169 – Housing Counseling Assistance Program 4-14.169
14.181 – Supportive Housing for Persons with Disabilities (Section 811) 4-14.181
14.182 – Section 8 New Construction and Substantial Rehabilitation 4-14.182
14.195 – Section 8 Housing Assistance Payments Program—Special Allocations 4-14.182
14.218 – Community Development Block Grants/Entitlement Grants 4-14.218
14.228 – Community Development Block Grants/State's Program and Non-Entitlement Grants in Hawaii (State-Administered Small Cities Program) 4-14.228
14.231 – Emergency Shelter Grants Program 4-14.231
14.235 – Supportive Housing Program 4-14.235
14.238 – Shelter Plus Care 4-14.238
14.239 – HOME Investment Partnerships Program 4-14.239
14.241 – Housing Opportunities for Persons with AIDS 4-14.241
14.249 – Section 8 Moderate Rehabilitation Single Room Occupancy 4-14.182

14.253 – Community Development Block Grant ARRA Entitlement Grants (CDBG-R) (Recovery Act Funded).....4-14.218
14.254 – Community Development Block Grants/Special Purpose Grants/Insular Areas - (Recovery Act Funded).....4-14.218
14.255 – Community Development Block Grants/State's Program and Non-Entitlement Grants in Hawaii – (Recovery Act Funded) (State-Administered Small Cities Program).....4-14.228
14.256 – Neighborhood Stabilization Program (Recovery Act Funded).....4-14.256
14.257 – Homelessness Prevention and Rapid Re-Housing.....4-14.257
14.258 – Tax Credit Assistance Program (TCAP) (Recovery Act Funded).....4-14.258
14.318 – Assisted Housing Stability and Energy and Green Retrofit Investments Program (Recovery Act Funded).....4-14.318
14.850 – Public and Indian Housing.....4-14.850
14.856 – Lower Income Housing Assistance Program-Section 8 Moderate Rehabilitation..... 4-14.182
14.862 – Indian Community Development Block Grant Program 4-14.862
14.866 – Demolition and Revitalization of Severely Distressed Public Housing (HOPE VI) 4-14.866
14.867 – Indian Housing Block Grants.....4-14.867
14.871 – Section 8 Housing Choice Vouchers 4-14.871
14.872 – Public Housing Capital Fund (CFP) 4-14.872
14.873 – Native Hawaiian Housing Block Grants.....4-14.873
14.882 – Native American Housing Block Grants (Formula) Recovery Act Funded.....4-14.867
14.883 Native Hawaiian Housing Block Grants (Recovery Act Funded).....4-14.873
14.884 – Public Housing Capital Fund Competitive (Recovery Act Funded).....4-14.872
14.885 – Public Housing Capital Fund Stimulus (Formula) Recovery Act Funded.....4-14.872
14.886 – Indian Community Development Block Grant Program (Recovery Act Funded).....4-14.863
14.887 – Native American Housing Block Grants (Competitive) Recovery Act Funded.....4-14.867
14.907 – Lead-Based Paint Hazard Control in Privately-Owned Housing (Recovery Act Funded).....4-14.907
14.908 – Healthy Homes Demonstration Grants (Recovery Act Funded).....4-14.907
14.909 – Lead Hazard Reduction Demonstration Grant Program (Recovery Act Funded).....4-14.907
14.910 – Healthy Homes Technical Studies Grants (Recovery Act Funded).....4-14.907

15 Department of the Interior (DOI)
None – BIA Cross-Cutting Section 4-15.000
15.021 – Consolidated Tribal Government Program 4-15.021
15.022 – Tribal Self-Governance 4-15.022
15.030 – Indian Law Enforcement 4-15.030
15.042 – Indian School Equalization Program 4-15.042
15.426 – Coastal Impact Assistance Program 4-15.426
15.605 – Sport Fish Restoration Program 4-15.605
15.611 – Wildlife Restoration 4-15.605
15.614 – Coastal Wetlands Planning, Protection and Restoration Act 4-15.614
15.623 – North American Wetlands Conservation Fund 4-15.623
15.635 – Neotropical Migratory Bird Conservation 4-15.635

16 Department of Justice (DOJ)
16.710 – Public Safety Partnership and Community Policing Grants 4-16.710
16.738 – Edward Byrne Memorial Justice Assistance Grant Program 4-16.738

17 Department of Labor (DOL)
17.207 – Employment Service/Wagner-Peyser Funded Activities 4-17.207
17.225 – Unemployment Insurance 4-17.225
17.235 – Senior Community Service Employment Program 4-17.235
17.245 – Trade Adjustment Assistance 4-17.245
17.258 – WIA Adult Program 4-17.258
17.259 – WIA Youth Activities 4-17.258
17.260 – WIA Dislocated Workers 4-17.258
17.264 – National Farmworker Jobs Program 4-17.264
17.265 – Native American Employment and Training 4-17.265
17.801 – Disabled Veterans' Outreach Program (DVOP) 4-17.207
17.804 – Local Veterans' Employment Representative Program (LVER) 4-17.207

20 Department of Transportation (DOT)
None – Transit Cross-Cutting Section 4-20.000
20.106 – Airport Improvement Program 4-20.106
20.205 – Highway Planning and Construction 4-20.205
20.219 – Recreational Trails Program 4-20.205
20.500 – Federal Transit—Capital Investment Grants 4-20.500
20.507 – Federal Transit—Formula Grants 4-20.500
20.509 – Formula Grants for Other than Urbanized Areas 4-20.509
20.513 – Capital Assistance Program for Elderly Persons and Persons with Disabilities 4-20.513
20.516 – Job Access – Reverse Commute 4-20.513
20.521 – New Freedom Program 4-20.513
20.600 – State and Community Highway Safety 4-20.600

20.601 – Alcohol Traffic Safety and Drunk Driving Prevention Incentive Grants 4-20.600
20.602 – Occupant Protection 4-20.600
20.603 – Federal Highway Safety Data Improvements Incentive Grants 4-20.600
20.604 – Safety Incentive Grants for Use of Seatbelts 4-20.600
20.605 – Safety Incentives to Prevent Operation of Motor Vehicles by Intoxicated Persons 4-20.600
20.609 – Safety Belt Performance Grants 4-20.600
20.610 – State Traffic Safety Information System Improvements Grants 4-20.600
20.611 – Incentive Grant Program to Prohibit Racial Profiling 4-20.600
20.612 – Incentive Grant Program to Increase Motorcyclist Safety 4-20.600
20.613 – Child Safety and Child Booster Seat Incentive Grants 4-20.600

21 Department of the Treasury
21.020 – Community Development Financial Institutions Program 4-21.020

23 Appalachian Regional Commission (ARC)
23.003 – Appalachian Development Highway System 4-20.205

45 National Endowment for the Humanities (NEH)
45.129 – Promotion of the Humanities—Federal/State Partnership 4-45.129

66 Environmental Protection Agency (EPA)
66.458 – Capitalization Grants for Clean Water State Revolving Funds 4-66.458
66.468 – Capitalization Grants for Drinking Water State Revolving Funds 4-66.468

81 Department of Energy (DOE)
81.042 – Weatherization Assistance for Low-Income Persons 4-81.042

84 Department of Education (ED)
None – Cross-Cutting Section 4-84.000
84.002 – Adult Education—Basic Grants to States 4-84.002
84.010 – Title I Grants to Local Educational Agencies (LEAs) 4-84.010
84.011 – Migrant Education—State Grant Program 4-84.011
84.027 – Special Education—Grants to States (IDEA, Part B) 4-84.027
84.032 – Federal Family Education Loans - (Guaranty Agencies) 4-84.032-G
84.032 – Federal Family Education Loans - (Lenders) 4-84.032-L
84.041 – Impact Aid 4-84.041
84.042 – TRIO—Student Support Services 4-84.042
84.044 – TRIO—Talent Search 4-84.042
84.047 – TRIO—Upward Bound 4-84.042
84.048 – Career and Technical Education - Basic Grants to States (Perkins IV) 4-84.048

84.066 – TRIO—Educational Opportunity Centers 4-84.042
84.126 – Rehabilitation Services—Vocational Rehabilitation Grants to States 4.84.126
84.173 – Special Education—Preschool Grants (IDEA Preschool) 4-84.027
84.181 – Special Education—Grants for Infants and Families..... 4-84.181
84.186 – Safe and Drug-Free Schools and Communities—State Grants 4-84.186
84.217 – TRIO—McNair Post-Baccalaureate Achievement..... 4-84.042
84.282 – Charter Schools..... 4-84.282
84.287 – Twenty-First Century Community Learning Centers 4-84.287
84.298 – State Grants for Innovative Programs..... 4-84.298
84.318 – Education Technology State Grants..... 4-84.318
84.357 – Reading First State Grants 4-84.357
84.365 – English Language Acquisition Grants 4-84.365
84.366 – Mathematics and Science Partnerships..... 4-84.366
84.367 – Improving Teacher Quality State Grants 4-84.367
84.389 – Title I Grants to Local Educational Agencies, Recovery Act.....4-84.010
84.390 – Rehabilitation Services–Vocational Rehabilitation Grants to States, Recovery Act.....4-84.126
84.391 – Special Education—Grants to States (IDEA, Part B), Recovery Act.....4-84.027
84.392 – Special Education—Preschool Grants (IDEA Preschool), Recovery Act......4-84.027
84.393 – Special Education—Grants for Infants and Families, Recovery Act.....4-84.181
84.394 – State Fiscal Stabilization Fund (SFSF) – Education State Grants, Recovery Act (Education Stabilization Fund).....4-84.394
84.397 – State Fiscal Stabilization Fund (SFSF) – Government Services, Recovery Act.....4-84.394
84.404– Impact Aid – School Construction Formula Grant, Recovery Act.....4-84.041
84.938 – Hurricane Education Recovery..... 4-84.938

93 Department of Health and Human Services (HHS)
93.044 – Special Programs for the Aging--Title III, Part B—Grants for Supportive Services and Senior Centers..... 4-93.044
93.045 – Special Programs for the Aging–Title III, Part C—Nutrition Services 4-93.044
93.053 – Nutrition Services Incentive Program..... 4-93.044
93.153 – Coordinated Services and Access to Research for Women, Infants, Children, and Youth (Ryan White CARE Act Title IV Program)..... 4-93.153
93.210 – Tribal Self-Governance Program--IHS Compacts/ Funding Agreements..... 4-93.210
93.217 – Family Planning – Services 4-93.217

93.224 – Consolidated Health Centers (Community Health Centers, Migrant Health Centers, Health Care for the Homeless, Public Housing Primary Care, and School Based Health Centers) 4-93.224
93.268 – Immunization Grants 4-93.268
93.556 – Promoting Safe and Stable Families 4-93.556
93.558 – Temporary Assistance for Needy Families (TANF) 4-93.558
93.563 – Child Support Enforcement 4-93.563
93.566 – Refugee and Entrant Assistance – State Administered Programs 4-93.566
93.568 – Low-Income Home Energy Assistance 4-93.568
93.569 – Community Services Block Grant 4-93.569
93.575 – Child Care and Development Block Grant 4-93.575
93.596 – Child Care Mandatory and Matching Funds of the Child Care and Development Fund 4-93.575
93.600 – Head Start 4-93.600
93.645 – Child Welfare Services – State Grants 4-93.645
93.658 – Foster Care—Title IV-E 4-93.658
93.659 – Adoption Assistance 4-93.659
93.667 – Social Services Block Grant 4-93.667
93.703 – ARRA – Health Center Integrated Services Development Initiative 4-93.224
93.705 – ARRA – Aging Home-Delivered Nutrition Services for States 4-93.044
93.707 – ARRA – Aging Congregate Nutrition Services for States 4-93.044
93.708 – ARRA – Head Start 4-93.600
93.709 – ARRA – Early Head Start 4-93.600
93.710 – ARRA – Community Services Block Grants 4-93.569
93.712 – ARRA – Immunization 4-93.268
93.713 – ARRA – Child Care and Development Block Grant 4-93.575
93.714 – ARRA – Emergency Contingency Fund for Temporary Assistance for Needy Families (TANF) State Programs 4-93.558
93.716 – ARRA – Temporary Assistance for Needy Families (TANF) Supplemental Grants 4-93.558
93.767 – Children's Health Insurance Program (CHIP) 4-93.767
93.775 – State Medicaid Fraud Control Units 4-93.778
93.776 – Hurricane Katrina Relief 4-93.778
93.777 – State Survey and Certification of Health Care Providers and Suppliers 4-93.778
93.778 – Medical Assistance Program 4-93.778
93.794 – Reimbursement of State Costs for Provision of Part D Drugs 4-93.794
93.889 – National Bioterrorism Hospital Preparedness Program 4-93.889
93.914 – HIV Emergency Relief Project Grants 4-93.914

93.917 – HIV Care Formula Grants 4-93.917
93.918 – Grants to Provide Outpatient Early Intervention Services with Respect to HIV Disease 4-93.918
93.958 – Block Grants for Community Mental Health Services 4-93.958
93.959 – Block Grants for Prevention and Treatment of Substance Abuse 4-93.959
93.991 – Preventive Health and Health Services Block Grant 4-93.991
93.994 – Maternal and Child Health Services Block Grant to the States 4-93.994

94 Corporation for National and Community Service (CNCS)
94.006 – AmeriCorps 4-94.006
94.011 – Foster Grandparent Program 4-94.011
94.016 – Senior Companion Program 4-94.011

96 Social Security Administration (SSA)
96.001 – Social Security--Disability Insurance (DI) 4-96.001
96.006 – Supplemental Security Income (SSI) 4-96.001

97 Department of Homeland Security (DHS)
97.004 – State Domestic Preparedness Equipment Support Program (State Homeland Security Grant Program) 4-97.067
97.024 – Emergency Food and Shelter National Board Program 4-97.024
97.036 – Disaster Grants - Public Assistance (Presidentially Declared Disasters) 4-97.036
97.039 – Hazard Mitigation Grant (HMGP) 4-97.039
97.067 – Homeland Security Grant Program 4-97.067
97.109 – Disaster Housing Assistance Program 4-97.109
97.114 – ARRA Emergency Food and Shelter National Board Program 4-97.024

98 U. S. Agency for International Development (USAID)
98.007 – Food for Peace Development Assistance Program 4-98.007
98.008 – Food for Peace Emergency Program 4-98.007

PART 5 – CLUSTERS OF PROGRAMS
Introduction 5-1
Research and Development 5-2
Student Financial Assistance 5-3
84.007 – Federal Supplemental Educational Opportunity Grants (FSEOG)
84.032 – Federal Family Education Loans (FFEL)
84.033 – Federal Work-Study Program (FWS)
84.038 – Federal Perkins Loan Program-Federal Capital Contributions (FPL)
84.063 – Federal Pell Grant Program (PELL)
84.268 – Federal Direct Student Loans (Direct Loan)
84.375 – Academic Competitiveness Grants (ACG)

84.376 – National Science and Mathematics Access to Retain Talent Grant (National SMART Grant)
93.342 – Health Professions Student Loans, Including Primary Care Loans/Loans for Disadvantaged Students (HPSL/PCL/LDS)
93.364 – Nursing Student Loans (NSL)
93.925 – Scholarships for Health Professions Students from Disadvantaged Backgrounds (SDS)

Other Clusters 5-4

PART 6 – INTERNAL CONTROL

Introduction 6-1
A. Activities Allowed or Unallowed 6-A
B. Allowable Costs/Cost Principles (Same as Activities Allowed or Unallowed) 6-A
C. Cash Management 6-C
D. Davis-Bacon Act 6-D
E. Eligibility 6-E
F. Equipment and Real Property Management 6-F
G. Matching, Level of Effort, Earmarking 6-G
H. Period of Availability of Federal Funds 6-H
I. Procurement and Suspension and Debarment 6-I
J. Program Income 6-J
K. Real Property Acquisition and Relocation Assistance 6-K
L. Reporting 6-L
M. Subrecipient Monitoring 6-M

PART 7 – GUIDANCE FOR AUDITING PROGRAMS NOT INCLUDED IN THIS COMPLIANCE SUPPLEMENT 7-1

APPENDICES

I Federal Programs Excluded from the A-102 Common Rule 8-1
II Federal Agency Codification of Certain Governmentwide Grants Requirements 8-2
III Federal Agency Contacts for A-133 Audits 8-3
IV Internal Reference Tables 8-4
V List of Changes for the 2009 Compliance Supplement 8-5
VI Disaster Waivers and Special Provisions Affecting Single Audits 8-6
VII Other OMB Circular A-133 Advisories 8-7
VIII SAS 70 Examinations of EBT Service Organizations 8-8
IX Compliance Supplement Core Team 8-9

PART 2 – MATRIX OF COMPLIANCE REQUIREMENTS

INTRODUCTION

This Part identifies the compliance requirements that are applicable to the programs included in this Supplement. Because Part 4 (Agency Program Requirements) and Part 5 (Clusters of Programs) do not include guidance for all types of compliance requirements that pertain to the program (see introduction to Part 4 for additional information), the auditor should use this Part 2 to identify the types of compliance requirements that apply. The box for each type of compliance requirement will either contain a "Y" (for "Yes" if the type of compliance requirement may apply) or be shaded (if the program normally does not have activity subject to this type of compliance requirement).

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

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

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

CFDA	Types of Compliance Requirements													
	A. Activities Allowed or Unallowed	B. Allowable Costs/Cost Principles	C. Cash Management	D. Davis-Bacon Act	E. Eligibility	F. Equipment and Real Property Management	G. Matching, Level of Effort, Earmarking	H. Period of Availability of Federal Funds	I. Procurement and Suspension and Debarment	J. Program Income	K. Real Property Acquisition/ Relocation Assistance	L. Reporting	M. Subrecipient Monitoring	N. Special Tests And Provisions
10 – United States Department of Agriculture (USDA)														
10.001*	Y	Y	Y			Y		Y	Y	Y		Y		Y
10.500	Y	Y	Y			Y	Y	Y	Y	Y		Y	Y	
10.551 10.561	Y	Y	Y		See Part 4	Y	Y	Y	Y			Y	Y	Y
10.553 10.555 10.556 10.559	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y
10.557	Y	Y	Y		Y	Y		Y	Y	Y		Y	Y	Y
10.558	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	Y
10.566	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	Y
10.568 10.569	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	Y
10.582	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	
10.665 10.666	Y	Y	Y				Y		Y					
10.760	Y	Y	Y			Y	Y	Y	Y			Y		
10.766	Y	Y	Y			Y		Y	Y			Y		
11 – Department of Commerce (DOC)														
11.300 11.307	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
11.555	Y	Y	Y			Y	Y	Y	Y			Y	Y	

CFDA	Types of Compliance Requirements													
	A. Activities Allowed or Unallowed	B. Allowable Costs/Cost Principles	C. Cash Management	D. Davis-Bacon Act	E. Eligibility	F. Equipment and Real Property Management	G. Matching, Level of Effort, Earmarking	H. Period of Availability of Federal Funds	I. Procurement and Suspension and Debarment	J. Program Income	K. Real Property Acquisition/ Relocation Assistance	L. Reporting	M. Subrecipient Monitoring	N. Special Tests And Provisions
12 – Department of Defense (DoD)														
12.401	Y	Y	Y	Y		Y	Y	Y	Y	Y		Y		
14 – Department of Housing and Urban Development (HUD)														
14.157	Y	Y	Y	Y	Y	Y			Y		Y			Y
14.169	Y	Y					Y	Y	Y	Y		Y	Y	
14.181	Y	Y	Y	Y	Y	Y			Y		Y			Y
14.182 14.195 14.249 14.856			Y		Y	Y						Y	Y	Y
14.218 **14.253** **14.254**	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
14.228 **14.255**	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
14.231	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y
14.235	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
14.238	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
14.239	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
14.241	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
14.256	**Y**	**Y**	**Y**	**Y**		**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**
14.257	**Y**	**Y**	**Y**				**Y**	**Y**		**Y**		**Y**	**Y**	**Y**
14.258	**Y**	**Y**	**Y**	**Y**		**Y**		**Y**	**Y**	**Y**	**Y**		**Y**	**Y**
14.318		**Y**		**Y**				**Y**	**Y**					

CFDA	Types of Compliance Requirements													
	A. Activities Allowed or Unallowed	B. Allowable Costs/Cost Principles	C. Cash Management	D. Davis-Bacon Act	E. Eligibility	F. Equipment and Real Property Management	G. Matching, Level of Effort, Earmarking	H. Period of Availability of Federal Funds	I. Procurement and Suspension and Debarment	J. Program Income	K. Real Property Acquisition/ Relocation Assistance	L. Reporting	M. Subrecipient Monitoring	N. Special Tests And Provisions
14.850		Y	Y		Y	Y		Y	Y			Y		Y
14.862 **14.886**	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y
14.866	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y		Y
14.867 **14.882** **14.887**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
14.871	Y	Y	Y		Y							Y	Y	Y
14.872 **14.884** **14.885**	Y	Y	Y	Y		Y		Y	Y		Y	Y		**Y**
14.873 **14.883**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**		**Y**
14.907 **14.908** **14.909** **14.910**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**		**Y**	**Y**	**Y**
15 – Department of the Interior (DOI)														
15.021	Y	Y				Y		Y	Y	Y		Y		Y
15.022	Y	Y		Y		Y		Y	Y	Y			Y	Y
15.030	Y	Y				Y		Y	Y	Y		Y		Y
15.042	Y	Y				Y		Y	Y	Y		Y		Y
15.426	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	
15.605 15.611	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y

CFDA	Types of Compliance Requirements													
	A. Activities Allowed or Unallowed	B. Allowable Costs/Cost Principles	C. Cash Management	D. Davis-Bacon Act	E. Eligibility	F. Equipment and Real Property Management	G. Matching, Level of Effort, Earmarking	H. Period of Availability of Federal Funds	I. Procurement and Suspension and Debarment	J. Program Income	K. Real Property Acquisition/ Relocation Assistance	L. Reporting	M. Subrecipient Monitoring	N. Special Tests And Provisions
15.614	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y
15.623	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	
15.635	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	
16 – Department of Justice (DOJ)														
16.710	Y	Y	Y			Y	Y	Y	Y			Y	Y	
16.738	Y	Y	Y			Y	Y	Y	Y			Y	Y	
17 – Department of Labor (DOL)														
17.207 17.801 17.804	Y	Y	Y			Y	Y	Y	Y	Y		Y		
17.225	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y		Y
17.235	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	
17.245	Y	Y	Y		Y	Y		Y	Y	Y		Y	Y	
17.253	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y
17.258 17.259 17.260	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	
17.264	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	
17.265	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	
20 – Department of Transportation (DOT)														
20.106	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
20.205 20.219 23.003	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y

CFDA	Types of Compliance Requirements													
	A. Activities Allowed or Unallowed	B. Allowable Costs/Cost Principles	C. Cash Management	D. Davis-Bacon Act	E. Eligibility	F. Equipment and Real Property Management	G. Matching, Level of Effort, Earmarking	H. Period of Availability of Federal Funds	I. Procurement and Suspension and Debarment	J. Program Income	K. Real Property Acquisition/ Relocation Assistance	L. Reporting	M. Subrecipient Monitoring	N. Special Tests And Provisions
20.500 20.507	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
20.509	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
20.513 20.516 20.521	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
20.600 20.601 20.602 20.603 20.604 20.605 20.609 20.610 20.611 20.612 20.613	Y	Y	Y			Y	Y	Y	Y	Y		Y	Y	
21 – Department of the Treasury (TREAS)														
21.020	Y	Y	Y		Y	Y	Y		Y			Y	Y	
45 – National Endowment for the Humanities (NEH)														
45.129	Y	Y	Y			Y	Y	Y	Y	Y		Y	Y	
66 – Environmental Protection Agency (EPA)														
66.458	Y	Y	Y	**Y**		Y	Y	Y	Y	Y	Y	Y	Y	Y
66.468	Y	Y	Y	**Y**		Y	Y	Y	Y	Y	Y	Y	Y	Y

CFDA	Types of Compliance Requirements													
	A. Activities Allowed or Unallowed	B. Allowable Costs/Cost Principles	C. Cash Management	D. Davis-Bacon Act	E. Eligibility	F. Equipment and Real Property Management	G. Matching, Level of Effort, Earmarking	H. Period of Availability of Federal Funds	I. Procurement and Suspension and Debarment	J. Program Income	K. Real Property Acquisition/ Relocation Assistance	L. Reporting	M. Subrecipient Monitoring	N. Special Tests And Provisions
81 – Department of Energy (DOE)														
81.042	Y	Y	Y		Y	Y	Y		Y	Y		Y	Y	
84 – Department of Education (ED)														
84.002	Y	Y	Y			Y	Y	Y	Y			Y	Y	Y
84.010 **84.389**	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	Y
84.011	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	Y
84.027 84.173 **84.391** **84.392**	Y	Y	Y	**Y**		Y	Y	Y	Y			Y	Y	Y
84.032-G	Y											Y		Y
84.032-L							Y		Y			Y		Y
84.041 **84.404**	Y	Y		Y			Y					Y		Y
84.042 84.044 84.047 84.066 84.217	Y	Y	Y		Y	Y	Y	Y	Y			Y		
84.048	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y
84.126 **84.390**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y

CFDA	Types of Compliance Requirements													
	A. Activities Allowed or Unallowed	B. Allowable Costs/Cost Principles	C. Cash Management	D. Davis-Bacon Act	E. Eligibility	F. Equipment and Real Property Management	G. Matching, Level of Effort, Earmarking	H. Period of Availability of Federal Funds	I. Procurement and Suspension and Debarment	J. Program Income	K. Real Property Acquisition/ Relocation Assistance	L. Reporting	M. Subrecipient Monitoring	N. Special Tests And Provisions
84.181 **84.393**	Y	Y	Y			Y	Y	Y	Y			Y		Y
84.186	Y	Y	Y			Y	Y	Y	Y			Y	Y	Y
84.282	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	
84.287	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y
84.298	Y	Y	Y			Y	Y	Y	Y			Y	Y	Y
84.318	Y	Y	Y			Y	Y	Y	Y			Y	Y	Y
84.357	Y	Y	Y		Y		Y	Y	Y			Y	Y	Y
84.365	Y	Y	Y			Y	Y	Y	Y			Y	Y	Y
84.366	Y	Y	Y		Y		Y	Y	Y			Y	Y	Y
84.367	Y	Y	Y		Y		Y	Y	Y			Y	Y	Y
84.394 **84.397**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**		**Y**	**Y**	**Y**	**Y**
84.938	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	Y
93 – Department of Health and Human Services (HHS)														
93.044 93.045 93.053 **93.705** **93.707**	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y
93.153	Y	Y	Y			Y	Y	Y	Y	Y		Y		
93.210	Y	Y	Y		Y			Y		Y				
93.217	Y	Y	Y			Y	Y	Y	Y	Y		Y	Y	

CFDA	Types of Compliance Requirements													
	A. Activities Allowed or Unallowed	*B. Allowable Costs/Cost Principles*	*C. Cash Management*	*D. Davis-Bacon Act*	*E. Eligibility*	*F. Equipment and Real Property Management*	*G. Matching, Level of Effort, Earmarking*	*H. Period of Availability of Federal Funds*	*I. Procurement and Suspension and Debarment*	*J. Program Income*	*K. Real Property Acquisition/ Relocation Assistance*	*L. Reporting*	*M. Subrecipient Monitoring*	*N. Special Tests And Provisions*
93.224 **93.703**	Y	Y	Y		Y	Y		Y	Y	Y		Y		Y
93.268 **93.712**	Y	Y	Y					Y	Y	Y		Y		Y
93.556	Y	Y	Y			Y	Y	Y	Y			Y	Y	
93.558 **93.714** **93.716**	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y
93.563	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y
93.566	Y	Y	Y		Y			Y	Y			Y		
93.568	Y	Y	Y		Y		Y	Y	Y			Y	Y	
93.569 **93.710**	Y	Y	Y		Y		Y	Y	Y			Y	Y	Y
93.575 93.596 **93.713**	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	**Y**
93.600 **93.708** **93.709**	Y	Y	Y	Y		Y	Y	Y	Y	Y		Y	Y	Y
93.645	Y	Y	Y				Y	Y	Y			Y		
93.658	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	
93.659	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	
93.667	Y	Y	Y				Y	Y	Y				Y	
93.767	Y	Y	Y		Y		Y	Y	Y	Y		Y	Y	

CFDA	Types of Compliance Requirements													
	A. Activities Allowed or Unallowed	B. Allowable Costs/Cost Principles	C. Cash Management	D. Davis-Bacon Act	E. Eligibility	F. Equipment and Real Property Management	G. Matching, Level of Effort, Earmarking	H. Period of Availability of Federal Funds	I. Procurement and Suspension and Debarment	J. Program Income	K. Real Property Acquisition/ Relocation Assistance	L. Reporting	M. Subrecipient Monitoring	N. Special Tests And Provisions
93.775 93.776 93.777 93.778	Y	Y	Y		Y		Y	Y	Y	Y		Y	Y	Y
93.794	See individual State demonstration agreement and use Part 7													
93.889	Y	Y	Y			Y		Y	Y	Y		Y	Y	
93.914	Y	Y	Y		Y		Y	Y	Y	Y		Y	Y	
93.917	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	
93.918	Y	Y	Y			Y	Y	Y	Y	Y		Y		
93.958	Y	Y	Y			Y	Y	Y	Y			Y	Y	Y
93.959	Y	Y	Y			Y	Y	Y	Y			Y	Y	Y
93.991	Y	Y	Y			Y	Y	Y	Y	Y		Y	Y	
93.994	Y	Y	Y			Y	Y	Y	Y	Y		Y	Y	
94 – Corporation for National and Community Service (CNCS)														
94.006	Y	Y	Y		Y		Y	Y	Y	Y		Y	Y	
94.011 94.016	Y	Y	Y		Y		Y	Y	Y	Y		Y		
96 – Social Security Administration (SSA)														
96.001 96.006	Y	Y	Y			Y		Y	Y			Y		

CFDA	Types of Compliance Requirements													
	A. Activities Allowed or Unallowed	B. Allowable Costs/Cost Principles	C. Cash Management	D. Davis-Bacon Act	E. Eligibility	F. Equipment and Real Property Management	G. Matching, Level of Effort, Earmarking	H. Period of Availability of Federal Funds	I. Procurement and Suspension and Debarment	J. Program Income	K. Real Property Acquisition/ Relocation Assistance	L. Reporting	M. Subrecipient Monitoring	N. Special Tests And Provisions
97 – Department of Homeland Security (DHS)														
97.036	Y	Y	Y		Y	Y	Y	Y	Y			Y	Y	Y
97.039	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	
97.004 97.067	Y	Y	Y			Y	Y	Y	Y			Y	Y	Y
97.024 **97.114**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**			**Y**	**Y**	**Y**
97.109	Y	Y	Y		Y			Y				Y		Y
98 – United States Agency for International Development (USAID)														
98.007 98.008	Y	Y	Y			Y		Y	Y	Y		Y		Y
Clusters of Programs														
R&D	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y
SFA	Y		Y		Y		Y	Y	Y	Y		Y		Y

Legend:

Y Yes, this type of compliance requirement may apply to the Federal program.

Shaded box Indicates the program normally does not have activity subject to this type of compliance requirement.

* Program does not have a CFDA number, so the Part 4 page number is used.

PART 3 – COMPLIANCE REQUIREMENTS

INTRODUCTION

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

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

Administrative Requirements

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

State, Local, and Indian Tribal Governments

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

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

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

Non-Profit Organizations

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

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

Subrecipients

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

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

Compliance Requirements, Audit Objectives, and Suggested Audit Procedures

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

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

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

The suggested audit procedures for compliance testing may be accomplished using dual-purpose testing.

Internal Control

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

The suggested audit procedures for internal control testing may be accomplished using dual-purpose testing.

Improper Payments

Under OMB budgetary guidance and Public Law (Pub. L.) No. 107-300, Federal agencies are required to review Federal awards and, as applicable, provide an estimate of improper payments. Improper payments mean:

1. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements, and includes any payment to an ineligible recipient; and

2. Any payment for an ineligible service, any duplicate payment, any payment for services not received, and any payment that does not account for credit for applicable discounts.

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

American Recovery and Reinvestment Act

The American Recovery and Reinvestment Act (Pub. L. No. 111-5) (ARRA) has significant implications for audits performed under OMB Circular A-133. **Additional cross-cutting requirements have been imposed by ARRA as discussed in the following sections of this part: A, Activities Allowed or Unallowed; D, Davis-Bacon Act; I, Procurement and Suspension and Debarment; L, Reporting; M, Subrecipient Monitoring; and N, Special Tests and Provisions.**

Auditors also should specifically ask auditees about and be alert to recipient and subrecipient expenditure of funds provided by ARRA. A more detailed discussion of the effect of ARRA on single audits is included in Appendix VII, which also contains references to where additional information can be obtained.

A. ACTIVITIES ALLOWED OR UNALLOWED

Compliance Requirements

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

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

Source of Governing Requirements

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

Audit Objectives

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

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

Suggested Audit Procedures – Internal Control

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

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

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

Suggested Audit Procedures – Compliance

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

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

   a. Activities were allowable.

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

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

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

D. DAVIS-BACON ACT

Compliance Requirements

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

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

Source of Governing Requirements

The requirements for Davis-Bacon compliance are contained in 40 USC 3141-3144, 3146, and 3147; 29 CFR part 29; the A-102 Common Rule (§___.36(i)(5)); OMB Circular A-110 (2 CFR part 215, Appendix A, Contract Provisions); program legislation; **Section 1606 of ARRA and OMB guidance at 2 CFR part 176, Subpart C**; Federal awarding agency regulations; and the terms and conditions of the award **(including that imposed by ARRA)**.

Availability of Other Information

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

Audit Objectives

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

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

Suggested Audit Procedures – Internal Control

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

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

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

Suggested Audit Procedures – Compliance

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

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

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

Note: The suggested audit procedures above for internal control and compliance testing may be accomplished using dual-purpose testing.

I. PROCUREMENT AND SUSPENSION AND DEBARMENT

Compliance Requirements

Procurement

States, and governmental subrecipients of States, shall use the same State policies and procedures used for procurements from non-Federal funds. They also shall ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations.

Local governments and Indian tribal governments which are not subrecipients of States will use their own procurement procedures provided that they conform to applicable Federal law and regulations and standards identified in the A-102 Common Rule.

Institutions of higher education, hospitals, and other non-profit organizations shall use procurement procedures that conform to applicable Federal law and regulations and standards identified in OMB Circular A-110.

All non-Federal entities shall follow Federal laws and implementing regulations applicable to procurements, as noted in Federal agency implementation of the A-102 Common Rule and OMB Circular A-110.

In addition to those statutes listed in the A-102 Common Rule and OMB Circular A-110, Section 1605 of ARRA prohibits the use of ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. ARRA provides for waiver of these requirements under specified circumstances. An award term is required in all awards for construction, alteration, maintenance, or repair of a public building or public work (2 CFR section 176.140). Further information about this requirement, including applicable definitions, is found in 2 CFR part 176, Subpart B.

Source of Governing Requirements - Procurement

The requirements for procurement are contained in the A-102 Common Rule (§____.36), OMB Circular A-110 (2 CFR sections 215.40 through 215.48), program legislation, **Section 1605 of ARRA, 2 CFR part 176,** Federal awarding agency regulations, and the terms and conditions of the award **(including that required by ARRA)**. The specific references for the A-102 Common Rule and OMB Circular A-110, respectively, are given for each suggested audit procedure indicated below. (The first number listed refers to the A-102 Common Rule and the second refers to A-110.)

Suspension and Debarment

Governmentwide requirements for nonprocurement suspension and debarment are contained in the OMB guidance in 2 CFR part 180, which implements Executive Orders 12549 and 12689, Debarment and Suspension. The OMB guidance, which superseded the suspension and debarment common rule published November 26, 2003, is substantially the same as that rule.

Non-Federal entities are prohibited from contracting with or making subawards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. "Covered transactions" include those procurement contracts for goods and services awarded under a nonprocurement transaction (e.g., grant or cooperative agreement) that are expected to equal or exceed $25,000 or meet certain other specified criteria. 2 CFR section 180.220 of the governmentwide nonprocurement debarment and suspension guidance contains those additional limited circumstances. All nonprocurement transactions (i.e., subawards to subrecipients), irrespective of award amount, are considered covered transactions.

When a non-federal entity enters into a covered transaction with an entity at a lower tier, the non-federal entity must verify that the entity is not suspended or debarred or otherwise excluded. This verification may be accomplished by checking the *Excluded Parties List System (EPLS)* maintained by the General Services Administration (GSA), collecting a certification from the entity, or adding a clause or condition to the covered transaction with that entity (2 CFR section 180.300). The information contained in the EPLS is available in printed and electronic formats. The printed version is published monthly. Copies may be obtained by purchasing a yearly subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783-3238. The electronic version can be accessed on the Internet (http://epls.arnet.gov).

Source of Governing Requirements – Suspension and Debarment

The requirements for suspension and debarment are contained OMB guidance in 2 CFR part 180, which implements Executive Orders 12549 and 12689, Debarment and Suspension; Federal agency regulations in 2 CFR implementing the OMB guidance; the A-102 Common Rule (§____.36); OMB Circular A-110 (2 CFR section 215.13); program legislation; Federal awarding agency regulations; and the terms and conditions of the award. Most of the Federal agencies have adopted this guidance and relocated their associated agency rules in Title 2 of the CFR as final rules. For any agency that has not completed its adoption of 2 CFR part 180, pending completion of that adoption, agency implementations of the common rule remain in effect. Appendix II includes the current CFR citations for all agencies. In either case, the applicable requirements are specified in the terms and conditions of award.

Audit Objectives

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

2. Determine whether procurements were made in compliance with the provisions of the A-102 Common Rule, OMB Circular A-110, and other procurement requirements specific to an award.

3. **Determine whether an award using ARRA funding includes a Buy-American award term and, if so, whether the recipient is complying with the Buy-American provisions of ARRA or if any waivers have been granted.**

4 For covered transactions determine whether the non-Federal entity verified that entities are not suspended or debarred or otherwise excluded.

Suggested Audit Procedures – Internal Control

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

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

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

Suggested Audit Procedures – Compliance

(Procedures 1 - 4 apply only to institutions of higher education, hospitals, and other non-profit organizations; and Federal awards received directly from a Federal awarding agency by a local government or an Indian tribal government.)

1. Obtain entity's procurement policies. Verify that the policies comply with applicable Federal requirements (§____.36(b)(1), 2 CFR section 215.43, **and Section 1605 of ARRA**).

2. Ascertain if the entity has a policy to use statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals. If yes, verify that these limitations were not applied to federally funded procurements except where applicable Federal statutes expressly mandate or encourage geographic preference (§____.36(c)(2) and 2 CFR section 215.43).

3. Examine procurement policies and procedures and verify the following:

    a. Written selection procedures require that solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, identify all requirements that the offerors must fulfill, and include all other factors to be used in evaluating bids or proposals (§____.36(c)(3) and 2 CFR section 215.44(a)(3)).

    b. There is a written policy pertaining to ethical conduct (§____.36(b)(3) and 2 CFR section 215.42).

4. Select a sample of procurements and perform the following:

a. Examine contract files and verify that they document the significant history of the procurement, including the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis of contract price (§____.36(b)(9) and 2 CFR section 215.46).

b. Verify that procurements provide full and open competition (§____.36(c)(1) and 2 CFR section 215.43).

c. Examine documentation in support of the rationale to limit competition in those cases where competition was limited and ascertain if the limitation was justified (§____.36(b)(1) and (d)(4); and 2 CFR sections 215.43 and 215.44(e)).

d. Verify that contract files exist and ascertain if appropriate cost or price analysis was performed in connection with procurement actions, including contract modifications and that this analysis supported the procurement action (§____.36(f) and 2 CFR section 215.45).

e. Verify that the Federal awarding agency approved procurements exceeding $100,000 when such approval was required. Procurements (1) awarded by noncompetitive negotiation, (2) awarded when only a single bid or offer was received, (3) awarded to other than the apparent low bidder, or (4) specifying a "brand name" product (§____.36(g)(1) and 2 CFR 215.44(e)) may require prior Federal awarding agency approval.

f. Verify compliance with other procurement requirements specific to an award.

(Procedure 5 only applies to States and Federal awards subgranted by the State to a local government or Indian tribal government.)

5. Test a sample of procurements to ascertain if the State's laws and procedures were followed and that the policies and procedures used were the same as for non-Federal funds.

(Procedure 6 applies to all non-Federal entities)

6. Select a sample of procurements and subawards and—

a. Test whether the non-Federal entities performed a verification check for covered transactions, by checking the EPLS, collecting a certification from the entity, or adding a clause or condition to the covered transaction with the entity; and

b. Test the sample of procurements and subawards against the EPLS, and ascertain if covered transactions were awarded to suspended or debarred parties.

Note: The suggested audit procedures above for internal control and compliance testing may be accomplished using dual-purpose testing.

7. Select a sample of ARRA-funded procurements, if any, for activities subject to Section 1605 of ARRA and—

a. Test whether the non-Federal entities requested and received any exceptions to Buy-American requirements; and

b. Test the sample of procurements to ascertain if entities are otherwise in compliance with the ARRA requirements.

L. REPORTING

Compliance Requirements

Financial Reporting

Recipients should use the standard financial reporting forms or such other forms as may be authorized by OMB (approval is indicated by an OMB paperwork control number on the form). Each recipient must report program outlays and program income on a cash or accrual basis, as prescribed by the Federal awarding agency. If the Federal awarding agency requires reporting of accrual information and the recipient's accounting records are not normally maintained on the accrual basis, the recipient is not required to convert its accounting system to an accrual basis but may develop such accrual information through analysis of available documentation. The Federal awarding agency may accept identical information from the recipient in machine-readable format, computer printouts, or electronic outputs in lieu of the prescribed formats.

The financial reporting requirements for subrecipients are as specified by the pass-through entity. In many cases, these will be the same as or similar to the following requirements for recipients.

The standard financial reporting forms are as follows:

1. *Financial Status Report (FSR) (SF-269 (OMB No. 0348-0039) or SF-269A (OMB No. 0348-0038)).* Recipients use the FSR to report the status of funds for all non-construction projects and for construction projects when the FSR is required in lieu of the SF-271. See below for information concerning the transition to the Federal Financial Report (*SF-425/425 A (OMB No. 0348-0061)*).

2. *Request for Advance or Reimbursement (SF-270 (OMB No. 0348-0004)).* Recipients use the SF-270 to request Treasury advance payments and reimbursements under non-construction programs.

3. *Outlay Report and Request for Reimbursement for Construction Programs (SF-271 (OMB No. 0348-0002)).* Recipients use the SF-271 to request funds for construction projects unless advances or the SF-270 is used.

4. *Federal Cash Transactions Report (SF-272 (OMB No. 0348-0003) or SF-272-A (OMB No. 0348-0003)).* Recipients use the SF-272 when payment is by advances or reimbursements. The Federal awarding agency may waive the requirement for an SF-272 when electronic payment mechanisms provide adequate data. See below for information concerning the transition to the Federal Financial Report (*SF-425/425 A* (*OMB No. 0348-0061)*).

The Federal Financial Report (SF-425/425A), which is intended to supersede the SF-269and SF-272, has been approved by OMB under the Paperwork Reduction Act and is available to the Federal awarding agencies for inclusion in award requirements. For financial reports due to the Federal awarding agencies and, when different, the servicing payment office during the audit period covered by the 2009 Supplement, recipients may be submitting the Financial Status

Report/Federal Cash Transactions Report (SF-269 or 269A)/SF-272) and/or the Federal Financial Report (SF-425/SF-425A), depending on the report due date and Federal awarding agency/program requirements. The Federal awarding agencies and paying offices must complete their transition to use of the Federal Financial Report by September 30, 2009. References in L.1, "Reporting - Financial Reporting" in Parts 4 and 5 of the Supplement will continue to show the SF 269/SF-272 as the standard financial reports until after the transition is complete. The award terms and conditions will specify the initial reporting period for which use of the SF-425 will be required. In addition, where a transition date has been determined for a program included in the Supplement, it will be shown in Part 4 or 5. Electronic versions of the existing and new standard forms are located on OMB's Internet home page (http://www.whitehouse.gov/omb/grants/grants_forms.html).

Reporting Under the Payment Management System

Many recipients utilize the Payment Management System (PMS) operated by the Division of Payment Management (DPM) within the Department of Health and Human Services' Program Support Center. After a Federal agency awards a grant, DPM is responsible for processing payments to the recipient; receiving collections for unexpended funds, duplicate payments, and, when applicable, interest earned on Federal funds; accounting for disbursement information provided by the recipient; and reporting data equivalent to the SF-272, *Federal Cash Transactions Report* (as indicated above, this report also will be superseded by the SF 425/SF 425A), to the recipient and the Federal agency.

Federal awarding agencies enter authorization amounts in PMS to allow recipients to draw Federal funds. There are two methods by which recipients can request funds: (1) the PMS 270 request or (2) SMARTLINK II. SMARTLINK II enables recipients to request Federal funds through computer link with DPM. Once a quarter, using the authorization amounts provided by the Federal agency, payments requested by recipients, cash collection activity, and disbursement information provided by recipients, DPM generates PSC-272 reports.

The PSC 272 is a series of reports consisting of:

1. PSC 272, *Federal Cash Transactions Report, Status of Federal Cash (OMB No. 0937-0200).* This report provides the total availability of Federal cash received by the recipient at the account level. It is partially prepared by DPM based on data reported to DPM, and is completed and certified by the recipient.

2. PSC 272-A, *Federal Cash Transactions Report (OMB No. 0937-0200).* This report is a continuation of the PMS-272 and is used by the recipient to report cash disbursements at the grant level.

3. PSC 272-B, *Statement of Cash Accountability (OMB No. 0937-0200).* This report is furnished for the recipient's information and shows how the recipient's cash accountability was derived by DPM.

4. PSC 272-C, *Error Correction Document (OMB No. 0937-0200).* This report can be used by the recipient to report data reconciliation problems for awards on the PSC 272-A or the Advances to Payee portion of the PSC 272-B.

5. PSC 272-E, *Major Program Statement (OMB No. 0937-0200).* This report is furnished to all accounts that are sub-accounted and is for information only. This report lists individual payments during the quarter among the various programs, and provides a cash accountability for all advances received through PMS by major program. All information provided is pre-printed by DPM.

6. PSC 272-F, *Authorizations for Future Periods (OMB No. 0937-0200).* This report is provided for information only and requires no action by the recipient. It represents all awards posted in the PMS database that have effective dates in future reporting periods.

7. PSC 272-G, *Inactive Documents Report (OMB No. 0937-0200).* This report lists all awards posted in the PMS database that have become inactive or fully disbursed during the current period or a previous period. In the event that disbursement adjustments are required, they should be reported via the PSC 272-A.

The reports (except for the PSC 272-C) are available to recipients electronically via the Internet using DPM's Electronic 272 System. Recipients should verify the reported amounts. The recipient uses the PSC 272-A to report the amount of disbursements made; then signs, dates, and returns the report to DPM. PSC 272 reporting requirements do not apply to block grant programs; however, DPM does provide block grant recipients with a PSC 272-E, *Major Program Statement*, quarterly. This report is provided solely for information and no action is required by the recipient.

Performance Reporting

Recipients shall submit performance reports at least annually but not more frequently than quarterly. Performance reports generally contain, for each award, brief information of the following types:

1. A comparison of actual accomplishments with the goals and objectives established for the period.

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

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

Note: The Federal agencies are moving toward the use of standard performance/progress reporting formats; however, there currently is no specified date for completion of the transition. Currently some agencies/programs are using the Performance Progress Report.

Special Reporting

Non-Federal entities may be required to submit other reporting which may be used by the Federal agency for such purposes as allocating program funding.

Compliance testing of performance and special reporting are only required for data that are quantifiable and meet the following criteria:

1. Have a direct and material effect on the program.

2. Are capable of evaluation against objective criteria stated in the laws, regulations, contract or grant agreements pertaining to the program.

Performance and special reporting data specified in Part 4, Compliance Requirements, meet the above criteria.

American Recovery and Reinvestment Act Reporting

Section 1512 of ARRA includes reporting requirements applicable to awards under ARRA Division A. On June 22, 2009, OMB issued "Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009." That guidance covers the reporting requirements of Section 1512 of ARRA and includes two supplements: (1) a list of programs subject to the ARRA reporting requirements, and (2) a Recipient Reporting Data Model.

This guidance may be accessed at the OMB website from links at: http://www.whitehouse.gov/omb/recovery_default/

As indicated in the June 22, 2009 guidance and in Appendix VII of the Supplement, the first reporting period for reports required by Section 1512 of ARRA will end on September 30, 2009 and the reports must be submitted by October 10, 2009. Therefore, coverage of such reports will not be applicable for audit periods with ending dates in June, July, or August 2009. However, other reporting requirements, as identified in this Supplement (or per Part 7) should be covered.

OMB plans to issue an addendum identifying compliance requirements, audit objectives, and suggested audit procedures relating to ARRA Section 1512 reporting requirements by September 30, 2009.

Source of Governing Requirements

Reporting requirements are contained in the following documents:

a. A-102 Common Rule - Financial reporting, §____.41; Performance reporting, §___.40(b).

b. OMB Circular A-110 - Financial reporting, 2 CFR section 215.52 (this section has not been updated to reference the new form); Performance reporting, 2 CFR section 215.51.

c. Program legislation.

d. Federal awarding agency regulations.

e. The terms and conditions of the award.

Audit Objectives

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

2. Determine whether required reports for Federal awards include all activity of the reporting period, are supported by applicable accounting or performance records, and are fairly presented in accordance with program requirements.

Suggested Audit Procedures – Internal Control

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

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

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

Suggested Audit Procedures – Compliance

Note: For recipients using PMS to draw Federal funds, the auditor should consider the following steps numbered 1 through 5 as they pertain to the PSC 272, PSC 272-A, PSC 272-B, and PSC 272-E, regardless of the source of the data included in the PMS reports. Although certain data is supplied by the Federal awarding agency (i.e., award authorization amounts) and certain amounts are provided by DPM, the auditor should ensure that such amounts are in agreement with the recipient's records and are otherwise accurate.

1. Review applicable laws, regulations, and the provisions of contract or grant agreements pertaining to the program for reporting requirements. Determine the types and frequency of required reports. Obtain and review Federal awarding agency, or pass-through entity in the case of a subrecipient, instructions for completing the reports.

    a. For financial reports, ascertain the accounting basis used in reporting the data (e.g., cash or accrual).

    b. For performance and special reports, determine the criteria and methodology used in compiling and reporting the data.

2. Perform appropriate analytical procedures and ascertain the reason for any unexpected differences. Examples of analytical procedures include:

    a. Comparing current period reports to prior period reports.

    b. Comparing anticipated results to the data included in the reports.

    c. Comparing information obtained during the audit of the financial statements to the reports.

    Note: The results of the analytical procedures should be considered in determining the nature, timing, and extent of the other audit procedures for reporting.

3. Select a sample of each of the following report types:

    a. Financial reports

        (1) Ascertain if the financial reports were prepared in accordance with the required accounting basis.

        (2) Trace the amounts reported to accounting records that support the audited financial statements and the Schedule of Expenditures of Federal Awards and verify agreement or perform alternative procedures to verify the accuracy and completeness of the reports and that they agree with the accounting records. If reports require information on an accrual basis and the entity does not prepare its accounting records on an accrual basis, determine whether the reported information is supported by available documentation.

        (3) For any discrepancies noted in PSC-272 reports, review subsequent PSC-272 reports to ascertain if the discrepancies were appropriately resolved with the Department of Health and Human Services' Division of Payment Management.

b. Performance and special reports

(1) Trace the reported data to records that accumulate and summarize data.

(2) Perform tests of the underlying data to verify that the data were accumulated and summarized in accordance with the required or stated criteria and methodology, including the accuracy and completeness of the reports.

c. When intervening computations or calculations are required between the records and the reports, trace reported data elements to supporting worksheets or other documentation that link reports to the data.

d. Test mathematical accuracy of reports and supporting worksheets.

4. Test the selected reports for accuracy and completeness.

a. For financial reports, review accounting records and ascertain if all applicable accounts were included in the sampled reports (e.g., program income, expenditure credits, loans, interest earned on Federal funds, and reserve funds).

b. For performance and special reports, review the supporting records and ascertain if all applicable data elements were included in the sampled reports.

c. For each type of report—

(1) When intervening computations or calculations are required between the records and the reports, trace reported data elements to supporting worksheets or other documentation that link reports to the data.

(2) Test mathematical accuracy of reports and supporting worksheets.

5. Obtain written representation from management that the reports provided to the auditor are true copies of the reports submitted or electronically transmitted to the Federal awarding agency, the Department of Health and Human Services' DPM for recipients using the Payment Management System, or pass-through entity in the case of a subrecipient.

Note: The suggested audit procedures above for internal control and compliance testing may be accomplished using dual-purpose testing.

M. SUBRECIPIENT MONITORING

Compliance Requirements

A pass-through entity is responsible for:

- *Award Identification* – At the time of the award, identifying to the subrecipient the Federal award information (i.e., CFDA title and number; award name and number; if the award is research and development; and name of Federal awarding agency) and applicable compliance requirements.

- *During-the-Award Monitoring* – Monitoring the subrecipient's use of Federal awards through reporting, site visits, regular contact, or other means to provide reasonable assurance that the subrecipient administers Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

- *Subrecipient Audits* – (1) Ensuring that subrecipients expending $500,000 or more in Federal awards during the subrecipient's fiscal year for fiscal years ending after December 31, 2003 as provided in OMB Circular A-133 have met the audit requirements of OMB Circular A-133 (the circular is available on the Internet at http://www.whitehouse.gov/omb/circulars/a133/a133.html) and that the required audits are completed within 9 months of the end of the subrecipient's audit period; (2) issuing a management decision on audit findings within 6 months after receipt of the subrecipient's audit report; and (3) ensuring that the subrecipient takes timely and appropriate corrective action on all audit findings. In cases of continued inability or unwillingness of a subrecipient to have the required audits, the pass-through entity shall take appropriate action using sanctions.

- *Pass-Through Entity Impact* – Evaluating the impact of subrecipient activities on the pass-through entity's ability to comply with applicable Federal regulations.

- ***Central Contractor Registration* – Identifying to first-tier subrecipients the requirement to register in the Central Contractor Registration, including obtaining a Dun and Bradstreet Data Universal Numbering System (DUNS) number, and maintain the currency of that information (Section 1512(h), ARRA, and 2 CFR 176.50(c)).**

During-the-Award Monitoring

Following are examples of factors that may affect the nature, timing, and extent of during-the-award monitoring:

- *Program complexity* – Programs with complex compliance requirements have a higher risk of non-compliance.

- *Percentage passed through* – The larger the percentage of program awards passed through the greater the need for subrecipient monitoring.

- *Amount of awards* – Larger dollar awards are of greater risk.

- *Subrecipient risk* – Subrecipients may be evaluated as higher risk or lower risk to determine the need for closer monitoring. Generally, new subrecipients would require closer monitoring. For existing subrecipients, based on results of during-the-award monitoring and subrecipient audits, a subrecipient may warrant closer monitoring (e.g., the subrecipient has (1) a history of non-compliance as either a recipient or subrecipient, (2) new personnel, or (3) new or substantially changed systems).

Monitoring activities normally occur throughout the year and may take various forms, such as:

- *Reporting* – Reviewing financial and performance reports submitted by the subrecipient.

- *Site Visits* – Performing site visits at the subrecipient to review financial and programmatic records and observe operations.

- *Regular Contact* – Regular contacts with subrecipients and appropriate inquiries concerning program activities.

Agreed-upon procedures engagements

A pass-through entity may arrange for agreed-upon procedures engagements for certain aspects of subrecipient activities, such as eligibility determinations. Since the pass-through entity determines the procedures to be used and compliance areas to be tested, these agreed-upon procedures engagements enable the pass-through entity to target the coverage to areas of greatest risk. The costs of agreed-upon procedures engagements is an allowable cost to the pass-through entity if the agreed-upon procedures are performed for subrecipients below the A-133 threshold for audit (currently at $500,000 for fiscal years ending after December 31, 2003) for the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and reporting (OMB Circular A-133 (§___.230(b)(2)).

Source of Governing Requirements

The requirements for subrecipient monitoring are contained in 31 USC 7502(f)(2)(B) (Single Audit Act Amendments of 1996 (Pub. L. No. 104-156)), OMB Circular A-133 (§___.225 and §___.400(d)), A-102 Common Rule (§___.37 and §___.40(a)), and OMB Circular A-110 (2 CFR section 215.51(a)), program legislation, Federal awarding agency regulations, and the terms and conditions of the award.

Audit Objectives

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

2. Determine whether the pass-through entity properly identified Federal award information and compliance requirements to the subrecipient, and approved only allowable activities in the award documents.

3. Determine whether the pass-through entity monitored subrecipient activities to provide reasonable assurance that the subrecipient administers Federal awards in compliance with Federal requirements.

4. Determine whether the pass-through entity ensured required audits are performed, issued a management decision on audit findings within 6 months after receipt of the subrecipient's audit report, and ensures that the subrecipient takes timely and appropriate corrective action on all audit findings.

5. Determine whether in cases of continued inability or unwillingness of a subrecipient to have the required audits, the pass-through entity took appropriate action using sanctions.

6. Determine whether the pass-through entity evaluates the impact of subrecipient activities on the pass-through entity.

7. Determine whether the pass-through entity determined that subrecipients have current CCR registrations prior to making subawards and performed periodic checks to ensure that subrecipients are updating information, as necessary.

Suggested Audit Procedures – Internal Control

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

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

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

Suggested Audit Procedures – Compliance

(Note: The auditor may consider coordinating the tests related to subrecipients performed as part of Cash Management (tests of cash reporting submitted by subrecipients), Eligibility (tests that subawards were made only to eligible subrecipients), and Procurement (tests of ensuring that a subrecipient is not suspended or debarred) with the testing of Subrecipient Monitoring.)

1. Gain an understanding of the pass-through entity's subrecipient procedures through a review of the pass-through entity's subrecipient monitoring policies and procedures (e.g., annual monitoring plan) and discussions with staff. This should include an understanding of the scope, frequency, and timeliness of monitoring activities and the number, size, and complexity of awards to subrecipients.

2. Test the pass-through entity's subaward review and approval documents to determine whether, before award, the pass-through entity checked CCR to determine whether subrecipients were registered.

3. Test award documents and agreements to ascertain if: (a) at the time of award, the pass-through entity made subrecipients aware of the award information (i.e., CFDA title and number; award name and number; if the award is research and development; and name of Federal awarding agency) and requirements imposed by laws, regulations, and the provisions of contract or grant agreements; and (b) the activities approved in the award documents were allowable. **(**See R3 under N, Special Tests and Provisions, for additional requirements for major programs with expenditures of ARRA awards.)

4. Review the pass-through entity's documentation of during-the-award monitoring to ascertain if the pass-through entity's monitoring provided reasonable assurance that subrecipients used Federal awards for authorized purposes, complied with laws, regulations, and the provisions of contracts and grant agreements, and achieved performance goals.

5. Review the pass-through entity's follow-up to ensure corrective action on deficiencies noted in during-the-award monitoring.

6. Verify that the pass-through entity:

   a. Ensured that the required subrecipient audits were completed. For subrecipients that are not required to submit a copy of the reporting package to a pass-through entity because there were "no audit findings" (i.e., because the schedule of findings and questioned costs did not disclose audit findings relating to the Federal awards that the pass-through entity provided and the summary schedule of prior audit findings did not report the status of audit findings relating to Federal awards that the pass-through entity provided, as prescribed in OMB Circular A-133 §___320(e)), the pass-through entity may use the information in the Federal Audit Clearinghouse (FAC) database (available on the Internet at http://harvester.census.gov/sac) as evidence to verify that the subrecipient had "no audit findings" and that the required audit was performed. This FAC verification would be in lieu of reviewing submissions by the subrecipient to the pass-through entity when there are no audit findings.

   b. Issued management decisions on audit findings within 6 months after receipt of the subrecipient's audit report.

c. Ensured that subrecipients took appropriate and timely corrective action on all audit findings.

6. Verify that in cases of continued inability or unwillingness of a subrecipient to have the required audits, the pass-through entity took appropriate action using sanctions.

7. Verify that the effects of subrecipient noncompliance are properly reflected in the pass-through entity's records.

8. Verify that the pass-through entity monitored the activities of subrecipients not subject to OMB Circular A-133, using techniques such as those discussed in the "Compliance Requirements" provisions of this section with the exception that these subrecipients are not required to have audits under OMB Circular A-133.

Note: The suggested audit procedures above for internal control and compliance testing may be accomplished using dual-purpose testing.

N. SPECIAL TESTS AND PROVISIONS

Compliance Requirements

The specific requirements for Special Tests and Provisions are unique to each Federal program and are found in the laws, regulations, and the provisions of contract or grant agreements pertaining to the program. For programs listed in this Supplement, the compliance requirements, audit objectives, and suggested audit procedures for Special Tests and Provisions are in Part 4 – Agency Program Requirements or Part 5 – Clusters of Programs. For programs not listed in this Supplement, the auditor shall review the program's contract and grant agreements and referenced laws and regulations to identify the compliance requirements and develop the audit objectives and audit procedures for Special Tests and Provisions which could have a direct and material effect on a major program. The auditor should also inquire of the non-Federal entity to help identify and understand any Special Tests and Provisions.

Additionally, for both programs included and not included in this Supplement, the auditor shall identify any additional compliance requirements which are not based in law or regulation (e.g., were agreed to as part of audit resolution of prior audit findings) which could be material to a major program. Reasonable procedures to identify such compliance requirements would be inquiry of non-Federal entity management and review of the contract and grant agreements pertaining to the program. Any such requirements which may have a direct and material on a major program shall be included in the audit.

Internal Control

The following audit objective and suggested audit procedures should be considered in tests of special tests and provisions in addition to those provided in Part 4 – Agency Program Requirements; Part 5 – Clusters of Programs; and in accordance with Part 7 – Guidance for Auditing Programs Not Included in This Compliance Supplement:

Audit Objective

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

Suggested Audit Procedures

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

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

additional compliance tests and reporting are required because of ineffective internal control.

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

Note: The suggested audit procedures above for internal control and compliance testing may be accomplished using dual-purpose testing.

Special Tests and Provisions for Awards with ARRA Funding

The following three special tests and provisions, which ordinarily would be added in Part 4 guidance (or Part 7 for any programs not included in this Supplement), apply to all programs with expenditures of ARRA awards in addition to any special tests and provisions already listed in Part 4.

R1 - Separate Accountability for ARRA Funding –Applicable to all major programs with expenditures of ARRA awards[2]

Compliance Requirements - Depending on the type of organization undergoing audit, the administrative requirements that apply to most programs arise from two sources:

- **A-102 Grants Management Common Rule; and**

- **OMB Circular A-110, 2 CFR part 215, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.**

(Note: Federal agency codification references for these are provided in Appendix II of the 2009 Supplement.)

There are also some other administrative compliance requirements contained in regulations that are not of the type covered in the A-102 Grants Management Common Rule or OMB Circular A-110, that are unique to specific programs. Federal programs excluded from the A-102 Common Rule are listed in Appendix I of the Supplement.

The financial management system must permit the preparation of required reports and tracing of funds adequate to establish that funds were used for authorized purposes and allowable costs. Reporting requirements are contained in the criteria discussed above, and may also be contained in applicable legislation, Federal awarding agency and program regulations, and award terms and conditions.

[2] Note that while this applies to all programs with ARRA funding, given the scope of this addendum, reference is made to major programs only.

As provided in 2 CFR section 176.210, Federal agencies must require recipients to (1) agree to maintain records that identify adequately the source and application of ARRA awards; (2) separately identify to each subrecipient, and document at the time of the subaward and disbursement of funds, the Federal award number, CFDA number, and the amount of ARRA funds; and (3) provide identification of ARRA awards in their Schedule of Expenditures of Federal Awards (SEFA) and Data Collection Form (SF-SAC) and require their subrecipients to provide similar identification in their SEFA and SF-SAC. Additional information, including presentation requirements for the SEFA and SF-SAC, is provided in Appendix VII of the 2009 Supplement.

In addition to addressing the following objective, the auditor should obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c) and should consider the suggested audit procedures in Part 3.N of the 2009 Supplement.

Audit Objective - Determine whether accounting records for ARRA funds provide for the separate identification and accounting required for ARRA awards and activity.

Suggested Audit Procedure - Ascertain if expenditures of ARRA awards are accounted for separately from expenditures of non-ARRA awards.

R2 - Presentation on the Schedule of Expenditures of Federal Awards and Data Collection Form–Applicable to all major programs with expenditures of ARRA awards

Compliance Requirement - Federal agencies must require recipients to agree to provide identification of ARRA awards in their SEFA and SF-SAC. Additional information, including presentation requirements for the SEFA and SF-SAC, is provided in Appendix VII of the 2009 Supplement (2 CFR section 176.210).

Audit Objective - Determine whether the entity met the requirements for reporting expenditures of ARRA awards on the SEFA and that reported amounts are supported by the accounting records and fairly presented in accordance with ARRA and program requirements.

Suggested Audit Procedure - Perform tests to verify that the SEFA properly identifies and reports expenditures of ARRA awards and reported expenditures are supported by accounting records.

R3 - Subrecipient Monitoring –Applicable to all major programs with expenditures of ARRA awards

Compliance Requirement - Federal agencies must require recipients to agree to: (1) separately identify to each subrecipient, and document at the time of the subaward and disbursement of funds, the Federal award number, CFDA number, and the amount of ARRA funds; and (2) require their subrecipients to provide similar identification (as noted in R2 above) in their SEFA and SF-SAC. Additional information, including presentation requirements for the SEFA and SF-SAC, is provided in Appendix VII of the 2009 Supplement (2 CFR section 176.210).

Audit Objective - If subawards of ARRA funds were made, determine whether the entity met the requirements for separately identifying to each subrecipient, and documenting at the time of the subaward and disbursement of funds, the Federal award number, CFDA number, and the amount of ARRA funds; and required their subrecipients to provide appropriate identification in their SEFA and SF-SAC.

Suggested Audit Procedure - Test a sample of subawards and verify that the entity separately identified to each subrecipient, and documented at the time of the subaward and disbursement of funds, the Federal award number, CFDA number, and the amount of ARRA funds; and required their subrecipients to provide appropriate identification in their SEFA and SF-SAC.

UNITED STATES DEPARTMENT OF AGRICULTURE

CFDA 10.553 SCHOOL BREAKFAST PROGRAM (SBP)
CFDA 10.555 NATIONAL SCHOOL LUNCH PROGRAM (NSLP)
CFDA 10.556 SPECIAL MILK PROGRAM FOR CHILDREN (SMP)
CFDA 10.559 SUMMER FOOD SERVICE PROGRAM FOR CHILDREN (SFSPC)

I. PROGRAM OBJECTIVES

The objectives of the child nutrition cluster programs are to: (1) assist States in administering food services that provide healthful, nutritious meals to eligible children in public and non-profit private schools, residential child care institutions, and summer recreation programs; and (2) encourage the domestic consumption of nutritious agricultural commodities.

II. PROGRAM PROCEDURES

General Overview

At the Federal level, these programs are administered by the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA). FNS generally administers these programs through grants to State agencies. Each State agency, in turn, enters into agreements with subrecipient organizations for local level program operation and the delivery of program benefits and services to eligible children. The types of organizations that receive subgrants under each program are described below under "Program Descriptions." In cases where a State agency is not permitted or is not available to administer the program(s), they are administered directly by FNS regional offices. The regional offices then perform the administrative functions for local program operators that are normally performed by a State agency (7 CFR sections 210.3, 215.3, 220.3, and 225.3). For purposes of this discussion, State agencies and FNS regional offices are referred to collectively as "administering agencies."

Under 7 CFR part 250 (General Regulations and Policies - Food Distribution), USDA makes donated agricultural commodities available for use in the operation of all child nutrition programs except the SMP. FNS enters into agreements with State distributing agencies for the distribution of USDA donated commodities. The State distributing agencies, in turn, enter into agreements with local program operators, which are defined collectively as "recipient agencies." A State may designate a recipient agency to perform its storage and distribution duties. A State distributing agency may engage a commercial food processor to use the commodities in the manufacture of food products, and then deliver such manufactured products to recipient agencies.

Program Descriptions

Common Characteristics

The programs in the Child Nutrition Cluster are all variants of a basic program design having the following characteristics:

a. Local program operators provide prepared meals to children in structured settings. Four types of meal service may be authorized: breakfast, lunch, supplements (snacks), and supper. Milk service may be authorized only under the SMP. The types a particular program operator may offer are determined first by the respective program's authorizing statute and regulations, and second by the program operator's agreement with its administering agency.

b. While all children in attendance are entitled to receive these program benefits, children whose households meet stated income eligibility criteria generally receive their meals (or milk, where applicable) free or at a reduced price. With certain exceptions, children not eligible for free or reduced price meals or free milk must pay the full prices set by the program operator for these items. A program meal must be priced as a unit.

   There are two systems of charging for program meals: "pricing" and "nonpricing" programs. In a pricing program, children who do not qualify for free meals pay a separate fee for their meals. The fee may be collected at the point of service; through a separate daily, weekly, or monthly meal charge or meal ticket payment; by earmarking a portion of the child's tuition payment expressly for food service; or through an identifiable reduction from the standard tuition rate for meals provided by parents. In a nonpricing program, no separate identifiable charges are made for meals served to enrolled children. Examples of organizations that often operate nonpricing programs include juvenile detention centers, boarding schools, other residential child-care institutions, and some private schools.

c. Federal assistance to local program operators takes the form of cash reimbursement. In addition, USDA donates food (commodities) under 7 CFR part 250 for use in preparing meals to be served under the NSLP, SBP, and SFSPC.

d. To obtain cash and commodity assistance, a local program operator must submit monthly claims for reimbursement to its administering agency. All meals (and half-pints of milk under SMP) claimed for reimbursement must meet Federal requirements and be served to eligible children.

e. The program operator's entitlement to reimbursement payments is generally computed by multiplying the number of meals (and/or half-pints of milk under the SMP) served by a prescribed per-unit payment rate (called a "reimbursement rate"). Different reimbursement rates are prescribed for different categories and types of service. "Type" refers to the kind of service (breakfast, lunch, milk, etc.),

while "category" refers to the beneficiary's eligibility (free, reduced price, or paid). Under this formula, a local program operator's entitlement to funding from its administering agency is generally a function of the categories and types of service provided. Therefore, the child nutrition cluster programs are said to be "performance funded."

Characteristics of Individual Programs

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

a. *School Nutrition Programs* (NSLP and SBP) - These programs target children enrolled in schools. For program purposes, a "school" is a public or non-profit private school of high school grade or under, or a public or licensed non-profit private residential child-care institution. At the local level, a school food authority (SFA) is the entity with which the administering agency makes an agreement for the operation of the programs. A SFA is the governing body (such as a school board) legally responsible for the operation of the NSLP and/or SBP in one or more schools. A school operated by a SFA may be approved to serve breakfast and lunch. A school participating in the NSLP that also has an afterschool care program with an educational or enrichment component may also be approved to serve afterschool snacks. See also the description of the SMP below.

b. *SFSPC* - The SFSPC is directed toward children in low-income areas when school is not in session. It is locally operated by approved sponsors, which may include public or private non-profit SFAs, public or private non-profit residential summer camps, or units of local, municipal, county or State governments or other private non-profit organizations that develop a special summer or other school vacation program providing food service similar to that available to children during the school year under the NSLP and SBP.

   A feeding site under a sponsor's oversight may be approved to serve breakfast, lunch, snacks, and/or supper. Except for children enrolled in participating summer camps, all participating children receive their meals free. Participating summer camps must identify children eligible for free or reduced price meals and may charge those not income-eligible for free meals.

   Although USDA donated foods are made available under the SFSPC, they are restricted to sponsors that prepare the meals to be served at their sites and those that have entered into an agreement with a SFA for the preparation of meals.

c. SMP - The SMP provides milk to children in schools and child-care institutions that do not participate in other Federal meal service programs. However, schools operating the NSLP and/or SBP may also participate in the SMP to provide milk to children in half-day pre-kindergarten and kindergarten programs where children do not have access to the NSLP and SBP. A SFA or institution operating

the SMP as a pricing program may elect to serve free milk but there is no Federal requirement that it do so. The SMP has no reduced price benefits.

Program Funding

FNS furnishes funds to State agencies by letter of credit. The State agencies use the meal reimbursement funds to support program operations by SFAs, institutions, and sponsors under their oversight, and the administrative funds to fund their own administrative costs. Funding for FNS regional office-administered programs is handled through FNS's Integrated Program Accounting System.

Funding Program Benefits

FNS provides cash reimbursement to each State agency for each meal served under the NSLP, SBP, and SFSPC and for each half pint of milk served under the SMP. The State agency's entitlement to cash assistance for NSLP and SBP meals, NSLP supplements, and SMP milk not reimbursed at the "free" rate is determined by multiplying the number of units served within the State by a "national average payment rate" set by FNS. Cash reimbursement to a State agency under the SFSPC is the product obtained by multiplying the number of meals served by maximum rates of reimbursement established by FNS.

FNS sets the national average payment rate or maximum rate of reimbursement for each type of meal service (breakfast, lunch, supplement, supper) within each program. A national average payment rate is also set for each eligibility category within the NSLP and SBP. Basic levels of cash assistance are provided for all lunches and breakfasts, respectively. This basic rate is increased by two cents for each lunch served in SFAs in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price. Additional assistance is provided for lunches and breakfasts served to children eligible for free or reduced price meals. A higher rate of reimbursement is paid for each breakfast served free or at reduced price in schools determined to be in "severe need." A "severe need" school is one in which at least 40 percent of the school lunches served in the second preceding school year had been served free or at reduced price. Milk served free under the SMP is funded at the average cost of milk. Since all meals are served free under the SFSPC, all meals of the same type are funded at the same rate.

State agencies earn commodity assistance based on the number of program meals served in schools participating in the NSLP and for certain sponsors participating in the SFSPC. The State agency's level of commodity assistance is the product of the number of meals served in the preceding year multiplied by the national average payment for donated foods.

FNS adjusts the national average payment rates and maximum rates for reimbursement annually for NSLP, SBP, and SFSPC to reflect changes in the Consumer Price Index and for the SMP to reflect changes in the Producer Price Index. FNS adjusts commodity assistance rates annually to reflect changes in the Price Index for Food Used in Schools and Institutions. The current announcements of all these assistance rates can be found on the Internet at http://www.fns.usda.gov/cnd (7 CFR sections 210.4(b), 220.4(b), 215.1, and 225.9(d)(9)).

A State agency uses the cash assistance obtained through performance funding to reimburse participating SFAs and sponsors for eligible meals served to eligible persons. Like "national average payments" to States, reimbursement payments are also made on a per-meal (performance funding) basis. SFAs and SFSPC sponsors receive commodities to the extent they can use them for program purposes; however, certain types of products are limited by an entitlement.

Funding State-Level Administrative Costs

In addition to funding for reimbursement payments to SFAs and sponsors, State agencies receive funding from several sources for costs they incur to administer these programs.

a. *State Administrative Expense (SAE) Funds* - These funds are granted under CFDA 10.560, which is not included in the Child Nutrition Cluster.

b. *SFSPC State Administrative (SAF) Funds* - In addition to regular SAE grants, administrative funds are made available to State agencies under CFDA 10.559 to assist with administrative costs of the SFSPC (7 CFR section 225.5). The State agency must describe its intended use of the funds in a Program Management and Administrative Plan submitted to FNS for approval (7 CFR section 225.4).

Source of Governing Requirements

The programs included in this cluster are authorized by the Richard B. Russell National School Lunch Act (NSLA) (42 USC 1751 *et seq*.) and the Child Nutrition Act of 1966 (CNA) (42 USC 1771 *et seq*.). The implementing regulations for each program are codified in parts of 7 CFR as indicated: National School Lunch Program (NSLP), part 210; School Breakfast Program (SBP), part 220; Special Milk Program for Children (SMP), part 215; and, Summer Food Service Program for Children (SFSPC), part 225. Regulations at 7 CFR part 245 address eligibility determinations for free and reduced price meals and free milk in schools and institutions. Regulations at 7 CFR part 250 give general rules for the receipt, custody, and use of USDA donated commodities provided for use in the Child Nutrition Cluster of programs.

Availability of Other Program Information

Additional program information is available from the FNS's Child Nutrition site on the Internet at http://www.fns.usda.gov/cnd. Information on the distribution of USDA donated commodities for the Child Nutrition Cluster programs is available from the FNS Food Distribution web site at http://www.fns.usda.gov/fdd/programs/schcnp/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. **SFSPC Sponsor** *Reimbursement Prior to January 1, 2008*

Prior to January 1, 2008, sponsors generally were required to separately report SFSPC operating and administrative costs as follows:

a. Administrative Costs - Sponsor reimbursement is provided for central-level general administrative overhead, including such costs as planning and organizing, site monitoring, preparation of claims and reports, and audits. Payment to sponsors for administrative costs amounted to the lesser of: actual net expenses incurred for administrative costs; or the number of meals by type actually served to eligible children multiplied by the administrative rates for those meals; or the administrative budget that was approved by the administering agency and included in the program agreement, along with any approved amendments to it (7 CFR sections 225.9(d)(5) and (d)(8)), and section 225.15(c)). Also see the definition of "administrative costs" at 7 CFR section 225.2.

b. Exception for States with Simplified SFSPC Programs -

Operating and administrative cost comparisons are not required for eligible school, public, and camp sponsors in 26 States (Alaska, Arizona, Arkansas, Colorado, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Tennessee, Texas, Washington, West Virginia, Wisconsin, and Wyoming) and Puerto Rico from October 1, 2004 through December 31, 2007 (42 USC 1769(f)).

2. *SFSPC Sponsor Reimbursement on or after January 1, 2008*

Effective January 1, 2008, all States must operate the SFSPC under simplified cost accounting procedures. Sponsors are no longer required to report operating and administrative costs, although they must maintain records of them. Sponsor reimbursement is no longer related to operating and administrative cost comparisons; it is determined solely by applying the applicable meals X rates formula. Separate rates are used to compute reimbursement for operating and administrative costs, but a sponsor can use its entire reimbursement payment for any combination of operating and administrative costs (Title VII, Section 738 of Pub. L. No. 110-161, December 26, 2007).

E. Eligibility

1. Eligibility for Individuals

Any child enrolled in a participating school or summer camp, or attending a SFSPC feeding site, who meets the applicable program's definition of "child" may receive meals under the applicable program. Children belonging to

households meeting nationwide income eligibility requirements may receive meals at no charge or, in the case of the NSLP and SBP, at reduced price. Children in schools operating the School Nutrition Programs, or in camps operating the SFSPC, who have been determined ineligible for free or reduced price meals pay the full price, set by the SFA or sponsor, for their meals (7 CFR sections 225.15(f), 245.1(a), and 245.3(c); definition of "subsidized lunch (paid lunch)" at 7 CFR section 210.2; and definitions of "camp," "closed enrolled site," "open site," and "restricted open site" at 7 CFR section 225.2).

a. *General Eligibility*

The specific groups of children eligible to receive meals under each program are identified in the respective program's regulations.

(1) *School Nutrition Programs (NSLP and SBP)* - A "child" is defined as: (a) a student of high school grade or under (as determined by the State educational agency) enrolled in an educational unit of high school grade or under, including students who are mentally or physically handicapped (as determined by the State) and who are participating in a school program established for the mentally or physically handicapped; (b) a person who has not reached his/her twenty-first birthday and is enrolled in a public or non-profit private residential child care institution; or (c) for meal supplements served in afterschool care programs operated by an eligible school, a person who is 18 years of age or under, except that children who turn 19 during the school year remain eligible for the duration of the school year (42 USC 1766a(b); definition of "child" at 7 CFR sections 210.2 and 220.2).

(2) *SFSPC* - A "child" is defined as: (a) any person 18 years of age and under; and (b) a person over 18 years of age, who has been determined by the State educational agency or a local public educational agency to be mentally or physically handicapped, and who participates in a public or non-profit private school program established for the mentally or physically handicapped (Definition of "children" at 7 CFR section 225.2).

(3) *SMP* - Schools operating this program use the same definition of "child" that is used in the NSLP and SBP, except for provision (3) under the definition of "child" at 7 CFR section 210.2 regarding supplements served in afterschool care programs. Where the program operates in child-care institutions, as defined in 7 CFR section 215.2, a "child" is any enrolled person who has not reached his/her nineteenth birthday (7 CFR section 215.2).

b. *Eligibility for Free or Reduced Price Meals or Free Milk*

(1) *General Rule: Annual Certification* - A child's eligibility for free or reduced price meals under a Child Nutrition Cluster program may be established by the submission of an annual application or statement which furnishes such information as family income and family size. Local educational agencies (LEAs), institutions, and sponsors determine eligibility by comparing the data reported by the child's household to published income eligibility guidelines. In addition to publishing income eligibility information in the *Federal Register*, FNS makes it available on the FNS web site (http://www.fns.usda.gov/cnd/) under "Income Eligibility Guidelines."

(a) *School Nutrition Programs* - Children from households with incomes at or below 130 percent of the Federal poverty level are eligible to receive meals or milk free under the School Nutrition Programs. Children from households with incomes above 130 percent but at or below 185 percent of the Federal poverty level are eligible to receive reduced price meals. Persons from households with incomes exceeding 185 percent of the poverty level pay the full price (7 CFR sections 245.2, 245.3, and 245.6; section 9(b)(1) of the NSLA (42 USC 1758 (b)(1)); sections 3(a)(6) and 4(e) of the CNA (42 USC 1772(a)(6) and 1773(e))).

(b) *SFSPC* - While all SFSPC meals are served at no charge, the sponsors of certain types of feeding sites must make individual determinations of eligibility for free or reduced price meals in accordance with 7 CFR section 225.15(f). See III.E.3. "Eligibility - Eligibility for Subrecipients" for more information.

(c) *SMP* - Eligibility for free milk in SFAs electing to serve free milk is limited to children of households meeting the income eligibility criteria for free meals under the School Nutrition Programs. The SMP has no provision for reduced price benefits (Definition of "free milk" at 7 CFR section 215.2, and 7 CFR sections 215.7(b), 245.3, and 245.6).

Annual eligibility determinations may also be based on the child's household receiving benefits under the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program), Food Distribution Program on Indian Reservations (FDPIR), the Head Start Program (CFDA 93.600) (42 USC 1758(b)(6)(A)), or, under most circumstances, the Temporary Assistance for Needy Families (TANF) program (CFDA 93.558) (42 USC 1758(b)). A

household may furnish documentation of its participation in one of these programs; or the school, institution, or sponsor may obtain the information directly from the State or local agency that administers these programs. Certain runaway, homeless, and migrant children are categorically eligible for free school lunches and breakfasts (42 USC 1758(b)(5)(A); 7 CFR section 245.6(b)).

(2) *Exceptions* - The following are exceptions to the requirement for annual determinations of eligibility for free or reduced price meals and free milk under the Child Nutrition Cluster programs.

(a) *Puerto Rico and the Virgin Islands* - These two State agencies have the option to provide free meals and milk to all children participating in the School Nutrition Programs, regardless of each child's economic circumstances. Instead of counting meals and milk by type, they may determine the percentage that each type comprises of the total count using statistical surveys. The survey design must be approved by FNS (7 CFR section 245.4).

(b) *Special Assistance Certification and Reimbursement Alternatives* - Special Assistance Certification and Reimbursement Alternatives, Provisions 1, 2 and 3, are authorized by Section 11(a)(1) of the NSLA (42 USC 1759a(a)(1)). Provision 1 may be used in schools where at least 80 percent of the children enrolled are eligible for free or reduced price meals. Under Provision 1, eligibility determinations for children eligible for free meals under the School Nutrition Programs must be made once every two consecutive school years. Children who qualify for reduced price meals are certified annually (42 USC 1759a(a)(1)(B); 7 CFR section 245.9(a)).

For Provisions 2 and 3, extended cycles are allowed for eligibility determinations. Since the schools also use alternative meal counting and claiming procedures, descriptions of Provisions 2 and 3 are presented below in III.L.3, "Reporting - Special Reporting."

(c) *SFSPC Open Sites and Restricted Open Sites* - Determinations of individual household eligibility are not required for meals served free at SFSPC "open sites," or at "restricted open sites. See III.G.3, "Eligibility - Eligibility for Subrecipients," for more information.

c. *Reduced Price Charges for Program Meals*

The SFA sets meal prices. However, the price for a reduced price lunch, breakfast, or snack may not exceed $0.40, $0.30, and $0.15, respectively (See definition of "reduced price meal" in 7 CFR section 245.2).

2. Eligibility for Group of Individuals or Area of Service Delivery - Not Applicable

3. Eligibility for Subrecipients

Administering agencies may disburse program funds only to those organizations that meet eligibility requirements. Under the NSLP, SBP and SMP, this means the definition of "school food authority" (SFA) as described at 7 CFR sections 210.2, 215.2, and 220.2, respectively. Eligible SFSPC organizations are described at 7 CFR section 225.2 under the definition of "sponsor." Additional organizational eligibility requirements apply to the SFSPC, NSLP Afterschool Snacks, and the SBP at the feeding site level (see detail below).

a. *SFSPC* - Federal regulations at 7 CFR section 225.2 define sites in four ways:

(1) *Open Sites* - At an open site, meals are made available to all children in the area where the site is located. This area must be one in which poor economic conditions exist (one in which at least 50 percent of the children are from households that would be eligible for free or reduced price school meals under the NSLP and the SBP). Data to support a site's eligibility may include: (a) free and reduced price eligibility data maintained by schools that serve the same area; (b) census data; or (c) other statistical data, such as information provided by departments of welfare and zoning commissions.

(2) *Restricted Open Sites* - A restricted open site is one that was initially open to broad community participation, but at which the sponsor has restricted attendance for reasons of safety, security, or control. A restricted open site must serve an area in which poor economic conditions exist, and its eligibility may be documented with the same kinds of data listed above for open sites.

(3) *Closed Enrolled Sites* - A closed enrolled site makes meals available only to enrolled children, as opposed to the community at large. Its eligibility is based not on serving an area where poor economic conditions exist, but on the eligibility of enrolled children for free or reduced price school meals. At least 50 percent of them must be so eligible. The sponsor must determine their eligibility through the application process described at 7 CFR section 225.15(f).

(4) *Camps* - Eligible camps include residential summer camps and nonresidential day camps that offer regularly scheduled food service as part of organized programs for enrolled children. A camp need not serve an area where poor economic conditions exist. Instead, the camp's sponsor must determine each enrolled child's eligibility for free SFSPC meals through the application requirements at 7 CFR sections 225.15(e) and (f). Unlike other sponsors, the sponsor of a camp receives reimbursement only for meals served to children eligible for free or reduced price school meals (7 CFR section 225.14(d)(1)).

b. *SBP - Severe Need Schools* - In addition to the national average payment, FNS makes additional payments for breakfasts served to children qualifying for free or reduced price meals at schools that are in severe need. The administering agency must determine whether a school is eligible for severe need reimbursement based on the following eligibility criteria: (1) the school is participating in or desiring to initiate a breakfast program and (2) 40 percent or more of the lunches served to students at the school in the second preceding school year under the NSLP were served free or at a reduced price. Administering agencies must maintain on file, and have available for reviews and audits, the source of the data to be used in making individual severe need determinations (42 USC 1773(d); 7 CFR section 220.9(d)).

c. *NSLP - Afterschool Snacks* - Reimbursement for afterschool snacks is made available to those school districts which (1) operate the NSLP in one or more of their schools and (2) sponsor or operate afterschool care programs with an educational or enrichment purpose. In the case of snacks served at an eligible site located in the attendance area of a school in which at least 50 percent of the enrolled children are certified eligible for free and reduced price school meals, all snacks are served free and are reimbursed at the free rate regardless of individual eligibility. Schools and sites not located in such an area may also participate, but they must count and claim supplements as free, reduced price and paid, depending on the eligibility status of the children served, and they must maintain documentation of eligibility for children receiving free or reduced price supplements (42 USC 1766a).

G. Matching, Level of Effort, Earmarking

1. Matching

NSLP - State Revenue Matching Requirement

The State is required to contribute State-appropriated funds amounting to at least 30 percent of the funds it received under Section 4 of the NSLA in the school year beginning July 1, 1980, unless otherwise exempted by 7 CFR section 210.17. In the fall of each year, FNS furnishes each State with a report giving data for the State's use in determining its matching requirements. However, the State revenues derived from the operation of the NSLP and State revenues expended for salaries and administrative expenses of the NSLP at the State level are not considered in this computation. In States with per capita income lower than the national average, the 30 percent match is proportionately reduced (sections 7(a)(1) and (2) of the NSLA, and 7 CFR section 210.17(a)).

a. *Private School Exemption* - States that are prohibited by law from disbursing State appropriated funds to non-public schools are not required to match "General Cash Assistance" (Section 4) funds expended for meals in such schools, or to disburse to such schools any of the State revenue required to meet the matching requirements. Also, the matching requirements do not apply to schools in which the program is administered by a FNS regional office (7 CFR section 210.17(b)).

b. *Applicable State Revenues* - State revenues, appropriated or used specifically for program purposes, are eligible for meeting the matching requirement. States use a number of methods to apply funds toward the matching requirement. For example, they may: (1) disburse such funds directly to SFAs, generally on a per-meal basis; (2) pay bills that SFAs would otherwise have had to pay themselves (such as FICA payments for school food service workers); and (3) track State-appropriated funds that SFAs have indirectly applied to the program through transfers from their general funds to their school food service funds (7 CFR section 210.17(d)).

2. Level of Effort - Not Applicable

3. Earmarking - Not Applicable

I. Procurement and Suspension and Debarment

1. *Procurement*

a. General Procurement - Regardless of whether the State elects to follow State or Federal rules in accordance with the A-102 Common Rule, the following requirements must be followed for procurements initiated by State agencies and SFSPC institutions on or after October 1, 2000. The effective date of these requirements for SFAs is set by their administering agencies, but cannot be later than July 1, 2001.

(1) *Contractor Selection* - A State agency, SFA, institution, or sponsor shall not award a contract to a firm it used to orchestrate the procurement leading to that contract. Examples of services that would disqualify a firm from receiving the contract include preparing the specifications, drafting the solicitation, formulating contract terms and conditions, etc. (7 CFR sections 3016.60(b) and 3019.43).

(2) *Geographical Preference* - A State or local government shall not apply in-State or local geographical preference, whether statutorily or administratively prescribed, in awarding contracts (7 CFR section 3016.60(c)). However, a SFA, institution, or sponsor operating one or more Child Nutrition Cluster programs may use a geographical preference for the procurement of unprocessed agricultural products, both locally grown and locally raised (Section 4302 of Pub. L. No. 110-246, 122 Stat. 1887, June 18, 2008).

b. *Contracts With Food Service Management Companies* – Before awarding a contract to a food service management company, or amending such a contract, an SFA operating the NSLP and SBP must: (1) obtain its administering agency's review and approval of the contract terms; (2) incorporate all changes required by the administering agency; (3) obtain written administering agency approval of any changes made by the SFA or its food service management company to a pre-approved prototype contract; and (4) when requested, submit procurement documents for administering agency inspection (7 CFR sections 210.16(a)(10) and 220.7(d)(1)(ix)). (This requirement is effective for new contracts with solicitations issued on or after November 30, 2007. For amendments/renewals of contracts existing on November 30, 2007 or for other new contracts, see Final Rule, Procurement Requirements for the National School Lunch, School Breakfast, and Special Milk Programs, III. Implementation, see 72 FR 61479, October 31, 2007.)

c. *Cost-Reimbursable Contracts* –

(1) Cost-reimbursable contracts awarded by SFAs operating the NSLP, SMP, and SBP, including contracts with cost-reimbursable provisions and solicitation documents prepared to obtain offers of such contracts, must include the following provisions:

(a) Billing documents submitted by the contractor will either separately identify allowable and unallowable portions of each cost, or include only allowable costs and a certification that payment is sought only for such costs.

(b) The contractor must identify the amount of each discount, rebate, and other applicable credit on bills and invoices presented to the SFA for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually.

(2) No cost resulting from a cost-reimbursable contract may be paid from the SFA's nonprofit school food service account if: (a) the underlying contract does not include the foregoing provisions; or (b) such disbursement would result in the contractor receiving payments in excess of the contractor's actual, net allowable costs (7 CFR sections 210.21(f), 215.14a(d), and 220.16(e)). (This requirement is effective for new contracts with solicitations issued on or after November 30, 2007. For amendments/renewals of contracts existing on November 30, 2007 or for other new contracts, see Final Rule, Procurement Requirements for the National School Lunch, School Breakfast, and Special Milk Programs, III. Implementation, see 72 FR 61479, October 31, 2007.)

2. *Suspension and Debarment* - Mandatory awards by pass-through entities to subrecipients are excluded from the suspension and debarment rules (7 CFR section 3017.215(h)).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* - Applicable

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

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

d. SF-272, *Federal Cash Transactions Report* - Not Applicable

e. FNS-13, *Annual Report of State Revenue Matching (OMB No. 0584 - 0075)* - This report is due 120 days after the end of each school year and identifies the State revenues to be counted toward meeting the State revenue matching requirement (7 CFR section 210.17(g)).

Key Line Item - The following line item contains critical information:

Line 5 - *State revenues to be counted toward the State Revenue Matching Requirement*

f. *Subrecipient Financial Reporting* - A State agency may require SFAs, institutions, and sponsors under its oversight to report information the State agency needs to prepare the financial reports identified above. Such subrecipient reports should be tested during audits of the subrecipients.

2. Performance Reporting - Not Applicable

3. Special Reporting

a. *State Agency Special Reporting*

To receive funds for the Child Nutrition Cluster programs, a State agency administering one or more of these programs compiles the data gathered on its subrecipients' claims for reimbursement into monthly reports to its FNS regional office. Such reports present the number of meals, by category and type, served by SFAs or sponsors under the State agency's oversight during the report period.

An initial monthly report, which may contain estimated participation figures, is due 30 days after the close of the report month. A final report containing only actual participation data is due 90 days after the close of the report month. A final closeout report is also required in accordance with the FNS closeout-schedule. Revisions to the data presented in a 90-day report must be submitted by the last day of the quarter in which they are identified. However, the State agency must immediately submit an amended report if, at any time following the submission of the 90-day report, identified changes to the data cause the State agency's level of funding to change by more than (plus or minus) 0.5 percent. The specific reports for each program are described below.

(1) FNS-10, *Report of School Program Operations (OMB No. 0584-0002)* - This report captures meals served under the NSLP and SBP, and half-pints of milk served under the SMP (7 CFR sections 210.5(d), 210.8, 215.10, 215.11, 220.11, and 220.13).

Key Line Items - The following line items contain critical information:

(a) Item 5 - *National School Lunch Program*:

- Line 5a - *Total lunches served in the NSLP*
- Line 5b - *Lunches served in school food authorities that qualify the State for additional payment*
- Line 5c - *Total afterschool snacks served in all approved schools and sites*
- Line 5d - *Total afterschool snacks served in area eligible schools and sites*

(b) Line 6 - *School Breakfast Program (Include schools with severe need)*

(c) Line 7 - *School Breakfast Program (Severe need only)*

(d) Line 8 - *Commodity Schools (Lunches only)*

(e) Item 9 - *Special Milk Program*:

- Line 9a - *Schools (Include Residential Child Care Institutions)*
- Line 9b - *Nonresidential Child Care Institutions*
- Line 9c - *Summer Camps*

(f) Item 10 - *No. of Meals Served in Private Schools Only*:

- Line 10a - *National School Lunch Program*
- Line 10b - *Afterschool snacks*
- Line 10c - *Afterschool snacks served in area eligible schools and sites*
- Line 10d - *School Breakfast Program (Include Severe Need)*

- Line 10e - *Severe Need School Breakfast Program*

(g) Item 11 - *No. of Meals Served in Residential Child Care Institutions (RCCIs) Only*:

- Line 11a - *National School Lunch Program*

- Line 11b - *NSLP - Snacks*

- Line 11c - *School Breakfast Program (Include Severe Need)*

- Line 11d - *Severe Need School Breakfast Program*

(2) FNS-418, *Report of the Summer Food Service Program for Children (OMB No. 0584-0280)* - This report documents the number of meals served under the SFSPC by sponsors under the State agency's oversight. Unlike the FNS-10 and FNS-44 (*Report of the Child and Adult Care Food Program*), which are generally submitted year round, the FNS-418 is filed only for the months when the program is in operation (7 CFR sections 225.8(b) and 225.9(d)(5)).

Key Line Items - The following line items contain critical information:

Part A - Meals Served

(a) Lines 5 through 7 - *Breakfasts*

(b) Lines 8 through 10 - *Lunches*

(c) Lines 11 through 13 - *Suppers*

(d) Lines 14 through 16 - *Supplements*

(e) Lines 17 through 19 - *Total*

b. *Subrecipient Special Reporting*

To receive reimbursement payments for meals (and milk under the SMP) served, a SFA, institution, or sponsor must submit claims for reimbursement to its administering agency (7 CFR sections 210.8(b), 225.9(d), and 225.15(c)(2)). The claiming process is as follows:

(1) *Claiming - General Process*

At a minimum, a claim must include the number of reimbursable meals/milk served by category and type during the period (generally a month) covered by the claim. All meals claimed for reimbursement must (a) be of types authorized by the SFAs, institution's, or sponsor's administering agency; (b) be served to eligible children; and (c) be supported by accurate meal counts and records indicating the number of meals served by category and type (7 CFR sections 210.7(c), 210.8(c), and 225.9(d)).

(a) *School Nutrition Programs* - The following types of service may be authorized for schools participating in these programs: breakfast, lunch, afterschool snack (if the school operates an afterschool care program), and milk (under the SMP). A school may be approved for the SMP only if it: (i) does not operate any other Federal Child Nutrition meal service programs; or (ii) operates the NSLP and/or SBP, but makes milk available to children in half-day pre-kindergarten or kindergarten programs who do not have access to the NSLP and SBP. All claims must be supported by accurate meal counts by category and type taken at the point of service or developed through an approved alternative procedure (7 CFR sections 210.7, 210.8, 215.8, 215.10, 220.9, and 220.11).

(b) *SFSPC* - The meals that may be claimed under the program are: breakfast, lunch, supper, and snack. Food service sites other than camps and sites which primarily serve migrant children may claim either: one meal each day (a breakfast, a lunch, a supper, or a snack), or two meals each day if one is a lunch or supper and the other is a breakfast or a snack. Camps or sites which serve meals primarily to migrant children may serve three meals or two meals and one snack (7 CFR sections 225.9(d), 225.15(c), and 225.16).

(2) *Claiming - Exceptions*

As noted above in III.E.1.b, "Eligibility for Individuals - Eligibility for Free or Reduced Price Meals or Free Milk," schools operating the School Nutrition Programs under Special Assistance Certification and Reimbursement Alternative Provisions 2 and 3 may use alternative counting and claiming procedures. Under either provision, the schools must serve meals at no charge to all children regardless of income eligibility for program benefits; and the SFA pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of the value

of assistance received under the NSLA and CNA (42 USC 1759a(a)(1)).

(a) *Provision 2* - Provision 2 has a four-year cycle for annual notification and certification for free and reduced price meals. In the first year, schools must take daily counts of the number of meals served by meal category (paid, free, reduced price) and establish the percentage of meals served by category each month. In the second, third and fourth school years, schools must count only the total number of reimbursable meals served each month; the monthly percentages established in the first year are then applied to the counts taken in the corresponding months of the current year. At the end of four years, the cycle may be extended for another four years if the State determines that the economic condition of the school's enrollment has not improved. Additional four-year extensions may be approved on the same basis (42 USC 1759a(a)(1)(C) and (D); 7 CFR section 245.9(b)).

(b) *Provision 3* - Provision 3 has a four-year cycle. Cash reimbursement and commodity assistance are provided at the same level as the school received in the last year free and reduced price applications were taken and daily meal counts by category and type were made, adjusted for inflation, the number of operating days, and enrollment. Schools opting for this alternative are not required to make annual free and reduced price eligibility determinations. Free and reduced price eligibility determinations and daily meal counts by income category are only required during a base year which is not included as part of the four year cycle. Provisions exist for authorizing subsequent four-year extensions if the economic condition of the school's enrollment has not improved (42 USC 1759a(a)(1)(E); 7 CFR section 245.9(d)).

M. Subrecipient Monitoring

State agencies administering the programs included in the Child Nutrition Cluster are required to perform specific monitoring procedures in accordance with 7 CFR sections 210.18 and 210.19(a)(4) (SBP and NSLP), 7 CFR section 215.11 (SMP), and 7 CFR section 225.7 (SFSPC).

N. Special Tests and Provisions

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

Compliance Requirement - By November 15th of each school year, the local education agency (LEA) (or State in certain cases) must verify the current free and reduced price eligibility of households selected from a sample of applications that it has approved for free and reduced price meals, unless the LEA is otherwise exempt from the verification requirement. The verification sample size is based on the total number of approved applications on file on October 1st .

A State agency may, with FNS approval, assume from LEAs under its jurisdiction the responsibility for performing the verifications. If the LEA performs the verification function it must be in accordance with instructions provided by the State agency. The LEA must follow-up on children whose eligibility status has changed as the result of verification activities to put them in the correct category.

LEAs (or State agencies) must select the sample by one of the following methods:

a. Standard Sample Size. The lesser of 3 percent or 3000 of the approved applications on file as of October 1, selected from error-prone applications. For this purpose, error prone applications are those showing household incomes within $100 monthly or $1,200 annually of the income eligibility guidelines for free and reduced price meals.

b. Alternative Sample Sizes.

(1) The lesser of 3 percent or 3,000 applications selected at random from approved applications on file as of October 1 of the school year, or

(2) The sum of: (a) the lesser of 1 percent of all applications identified as error-prone or 1,000 error-prone applications, and (b) the lesser of 1/2 of 1 percent of, or 500, approved applications in which the household provided, in lieu of income information, a case number showing participation in the Food Stamp Program, TANF, or the FDPIR.

(3) The use of alternative sample sizes are available only as follows:

(a) Any LEA may qualify if its non-response rate for the preceding school year's verification was less than 20 percent; or

(b) An LEA with more than 20,000 children approved by application for free and reduced price meals may qualify if its non-response rate for the preceding year had improved over the rate for the second preceding year by at least 10 percent.

"Non-response rate" is defined as the percentage of approved household applications selected for verification for which the LEA has not obtained verification information (7 CFR section 245.6a(a)).

Sources of information for verification include written evidence, collateral contacts, and systems of records, as described in 7 CFR section 245.6a(b) (42 USC 1758(b)(3)(D) and (H)).

Audit Objective - Determine whether the LEA (or State) selected and verified the required sample of approved free and reduced price applications and made the appropriate changes to eligibility status.

Suggested Audit Procedures

a. Obtain the current family size and income guidelines published by FNS.

b. Through examination of documentation, ascertain that:

(1) The sampling and verification of free and reduced price applications were performed, as required.

(2) Changes were made to eligibility status based on documentation and other information obtained through the verification process.

2. Accountability for Commodities

The following compliance requirements do not apply to recipient agencies (as defined at 7 CFR section 250.3), including SFAs and SFSPC institutions. Auditors making audits of recipient agencies are not required to test compliance with these requirements.

Compliance Requirement

a. *Maintenance of Records*

Distributing and subdistributing agencies (as defined at 7 CFR section 250.3) must maintain accurate and complete records with respect to the receipt, distribution, and inventory of donated foods including end products processed from donated foods. Failure to maintain records required by 7 CFR section 250.16 shall be considered *prima facie* evidence of improper distribution or loss of donated foods, and the agency, processor, or entity may be required to pay USDA the value of the food or replace it in kind (7 CFR sections 250.16(a)(6) and 250.15(c)).

b. *Physical Inventory*

Distributing and subdistributing agencies shall take a physical inventory of all storage facilities. Such inventory shall be reconciled annually with the storage facility's inventory records and maintained on file by the agency that contracted

with or maintained the storage facility. Corrective action shall be taken immediately on all deficiencies and inventory discrepancies and the results of the corrective action forwarded to the distributing agency (7 CFR section 250.14(e)).

Audit Objective - Determine whether an appropriate accounting was maintained for donated food commodities, that an annual physical inventory was taken, and the physical inventory was reconciled with inventory records.

Suggested Audit Procedures

a. Determine storage facility, processing, and end use locations of all donated food commodities, including end products processed from donated foods. Determine the commodity records maintained by the entity and obtain a copy of procedures for conducting the required annual physical inventory. Obtain a copy of the annual physical inventory results.

b. Perform analytical procedures, obtain explanation and documentation for unusual or unexpected results. Consider the following:

   (1) Compare receipts, distribution, losses and ending inventory of donated foods for the audit period to the previous period.

   (2) Compare distribution by entity for the audit period to the previous period.

c. Ascertain the validity of the required annual physical inventory. Consider performing the following steps, as appropriate:

   (1) Observe the annual inventory process at selected locations and recount a sample of commodity items.

   (2) If the annual inventory process is not observed, select a sample of significant commodities on hand as of the physical inventory date and, using the commodity records, “roll forward” the balance on hand to the current balance observed.

   (3) On a test basis, recompute physical inventory sheets and related summarizations.

   (4) Ascertain that the annual physical inventory was reconciled to commodity records. Investigate any large adjustments between the physical inventory and the commodity records.

d. On a sample basis, test the mathematical accuracy of the commodity records and related summarizations. From the commodity records, vouch a sample of receipts, distributions, and losses to supporting documentation. Ascertain that activity is properly recorded, including correct quantity, proper period and, if applicable, correct recipient agency.

3. School Food Accounts

Compliance Requirement - A SFA is required to account for all revenues and expenditures of its non-profit school food service in accordance with State requirements. A SFA must operate its food services on a non-profit basis; all revenue generated by the school food service must be used to operate and improve its food services (7 CFR sections 210.14 (a), 210.14 (c), 210.19 (a)(2), 215.7(d)(1), 220.2(o-2), and 220.7(e)(1)(i)).

Audit Objective - Determine whether a separate accounting is made of the school food service, Federal reimbursement payments are promptly credited to the school food service account, and transfers out of the school food service account are for the benefit of the school food service.

Suggested Audit Procedures

a. Review the school food service accounting records and ascertain if a separate accounting is made for the school food service.

b. Test Federal reimbursement payments received monthly from the administering agency to ascertain if promptly credited to the food service account.

c. Test transfers out of the school food service account and ascertain if the transfers were for the benefit of the school food service.

IV. OTHER INFORMATION

FNS no longer requires recipient agencies to inventory commodities separately from purchased food. However, the value of commodities used during a State or recipient agency's fiscal year is considered Federal awards expended in accordance with the OMB Circular A-133 §___.105 definition of Federal financial assistance and should be valued in accordance with §___.205(g). Therefore, recipient agencies must determine the value of commodities used. FNS recommends that recipient agencies use the value of commodities delivered to them during the audit period for this purpose.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.218 COMMUNITY DEVELOPMENT BLOCK GRANTS/ENTITLEMENT GRANTS
CFDA 14.253 COMMUNITY DEVELOPMENT BLOCK GRANT ARRA ENTITLEMENT GRANTS (CDBG-R) (RECOVERY ACT FUNDED)
CFDA 14.254 COMMUNITY DEVELOPMENT BLOCK GRANTS/SPECIAL PURPOSE GRANTS/INSULAR AREAS - (RECOVERY ACT FUNDED)

I. PROGRAM OBJECTIVES

The primary objective of the Community Development Block Grants (CDBG)/Entitlement Grants program (large cities and urban counties) (24 CFR part 570 subpart D) is to develop viable urban communities by providing decent housing, a suitable living environment, and expanded economic opportunities, principally for persons of low and moderate income. This objective is to be achieved in two ways. First, a grantee can only use funds to assist eligible activities that meet one of three national objectives of the program: benefit low- and moderate-income persons, aid in the prevention or elimination of slums and blight, or meet community development needs having a particular urgency. Second, the grantee must spend at least 70 percent of its funds, over a period of up to three years as specified by the grantee in its certification, for activities that address the national objective of benefiting low- and moderate-income persons (24 CFR section 570.200).

The Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. No. 110-289, July 30, 2008) provided funds for emergency assistance for redevelopment of abandoned and foreclosed homes and residential properties, and provides under a rule of construction that, unless HERA provides otherwise, the grants are to be considered CDBG funds. The grant program under Title III is referred to as the Neighborhood Stabilization Program (NSP). **The NSP funding covered in this cluster is the funding provided under HERA and is not the NSP funding provided under ARRA. These HERA funds are also referred to as NSP1 in the Neighborhood Stabilization Program (see CFDA 14.256, Section II, "Program Procedures").**

Title XII of the Recovery and Reinvestment Act of 2009 (ARRA)(Pub. L. No. 111-5) provided additional funding under the CDBG program. The focus of this funding (referred to as CDBG-R) is on infrastructure improvements that stimulate the economy through measures that modernize the nation's infrastructure and improve energy efficiency.

The CDBG Special Purpose Grants/Insular Areas (Insular CDBG-R) program is authorized under Section 106(a)(2) of the Housing and Community Development Act and funding is provided in Title XII of ARRA with the same objectives as the CDBG-R.

II. PROGRAM PROCEDURES

The CDBG Entitlement Grants Program provides grants to metropolitan cities and urban counties which must submit certain certifications and a one-year action plan as to how they propose to use the funds for community development activities. The grant amount is determined by the higher of two formulas that consider a community's population, poverty level, extent of overcrowded housing, age of housing, and growth lag (42 USC 5306(b)).

The NSP grant is a special CDBG allocation to address the problem of abandoned and foreclosed homes. HERA established the need, targets the geographic areas, and limits the eligible uses of NSP funds.

The CDBG-R program provides grants to metropolitan cities and urban counties which must submit specified certifications and a substantial amendment to their 2008 1-year action plans as to how they propose to use the CDBG-R funds to meet the purposes of ARRA. Eligible recipients of the CDBG-R funds are grantees that received CDBG funding in 2008. The grant amount is determined by the higher of two formulas that consider a community's population, poverty level, extent of overcrowded housing, age of housing, and growth lag (42 USC 5306(b)). The Notice of Program Requirements for Community Development Block Grant Program Funding Under the American Recovery and Reinvestment Act of 2009 (FR-5309-N-01) (CDBG-R Notice) describes the common application process, and advises the public of waivers granted to recipients, alternative requirements applied, and statutory program requirements. The CDBG-R Notice provides that, except as described therein, statutory and regulatory provisions governing the CDBG program, including those under Title I of the Housing and Community Development Act of 1974, as amended (HCDA), at 24 CFR part 570, subparts A, C, D, J, K and O, for CDBG entitlement communities shall apply to the use of the CDBG-R funds. The CDBG-R Notice is available on the HUD Web site at: http://www.hud.gov/recovery/cdblock.cfm.

The procedures and requirements that apply to the CDBG-R program apply to the Insular CDBG-R as well.

Source of Governing Requirements

These programs are authorized by Title I of the Housing and Community Development Act of 1974, as amended (Pub. L. No. 93-383) (42 USC 5301) **and ARRA**. Implementing regulations are located at 24 CFR part 570.

The NSP is authorized by Title III of Division B of HERA. HUD published a "Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees Under the Housing and Economic Recovery Act, 2008," (NSP Notice) that advises the public of the allocation formula, allocation amounts, the list of grantees, alternative requirements, and the waivers of regulations provided to grantees (October 6, 2008, *Federal Register*, 73 FR 58330-58349). HUD amended the NSP notice in an "NSP Bridge Notice" in the June 19, 2009, *Federal Register*, 74 FR 29223-29229.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. All activities undertaken must meet one of three national objectives of the CDBG Entitlement Grants program, i.e., benefit low- and moderate-income persons, prevent or eliminate slums or blight, or meet community development needs having a particular urgency (24 CFR sections 570.200 and 570.208).

   The CDBG-R Notice provides an alternative requirement for the CDBG program urgent need national objective criteria. In the regular CDBG program, in order to meet the urgent need national objective pursuant to 24 CFR section 570.208(c), the recipient must certify that: (1) the activity is designed to alleviate existing conditions which (a) pose a serious and immediate threat to the health and welfare of the community, and (b) are of recent origin or recently became urgent; (2) the recipient is unable to finance the activity on its own; and (3) other sources of funds are not available. For CDBG-R, HUD is eliminating the recordkeeping requirement that grantees document the nature, degree, and timing of the seriousness of the condition to be addressed by the activity if the urgent need is based on current economic conditions. HUD has determined that current economic conditions are of recent origin and pose a serious and immediate threat to the economic welfare of communities; therefore, HUD will accept a grantee's certification that current economic conditions are of recent origin and constitute a serious and immediate threat to the welfare of the community. However, the grantee must demonstrate that it is unable to finance the activity on its own, and that other sources of funding are not available. The CDBG-R Notice waives 24 CFR sections 570.506(b)(12)(i) and (iii) and 570.208(c) to the extent necessary to allow grantees to certify that an activity is designed to address current economic conditions which pose a threat to the economic welfare of communities (CDBG-R Notice, Section II.E).

2. Grants funds are to be used for the following activities: (a) the acquisition of real property; (b) the acquisition, construction, reconstruction, rehabilitation or installation of public works, facilities and sites, or other improvements, including removal of architectural barriers that restrict accessibility of elderly or severely disabled persons; (c) clearance, demolition, and removal of buildings and improvements; (d) payments to housing owners for losses of rental income incurred in temporarily holding housing for the relocated; (e) disposition of real property acquired under this program; (f) provision of public services (subject to limitations contained in the CDBG regulations); (g) payment of the non-Federal share for another grant program for activities that are otherwise eligible;

(h) interim assistance where immediate action is needed prior to permanent improvements or to alleviate emergency conditions threatening public health and safety; (i) payment to complete a Title 1 Federal Urban Renewal project; (j) relocation assistance; (k) planning activities; (l) administrative costs; (m) acquisition, construction, reconstruction, rehabilitation, or installation of commercial or industrial buildings; (n) assistance to community-based development organizations; (o) activities related to privately-owned utilities; (p) assistance to private, for-profit businesses, when appropriate to carry out an economic development project; (q) construction of housing assisted under Section 17 of the United States Housing Act of 1937; (r) reconstruction of properties; (s) direct homeownership assistance to low and moderate income households to facilitate and expand homeownership; (t) technical assistance to public or private entities for capacity building (exempt from the planning/administration cap); (u) housing services related to HOME-funded activities; (v) assistance to institutions of higher education to carry out eligible activities; (w) assistance to public and private entities (including for-profits) to assist micro-enterprises; (x) payment for repairs and operating expenses for acquired "in Rem" properties; (y) residential rehabilitation, including code enforcement in deteriorated or deteriorating areas, lead-based paint hazard evaluation, and removal; and (z) construction or improvement of tornado-safe shelters for residents of manufactured housing and provision of assistance to non-profit and for-profit entities for such construction or improvement (42 USC 5305(a); 24 CFR sections 570.200 through 570.207).

3. **The CDBG program provides for float-funded activities and guarantees, a short-term financing mechanism which allows a grantee to use undisbursed funds in its line of credit and CDBG program account that are budgeted in action plans for one or more other activities that do not need the funds immediately. Each activity carried out using the float must meet all CDBG requirements and must be expected to produce program income in an amount at least equal to the amount of float so used. Because program income generated from CDBG-R activities will not be treated as program income to the CDBG-R program, grantees may not use CDBG-R funds to assist any float-funded activity or guarantee. To implement this, HUD has waived the provision at 24 CFR section 570.301(b), thereby making float-funded activities not allowable with CDBG-R funds (CDBG-R Notice, Section II.D; 24 CFR section 570.301).**

4. Entitlement grantees (14.218) may have loans guaranteed by HUD under Section 108 of the Housing and Community Development Act of 1974, (42 USC 5308). The guaranteed loan funds are to be used only for the following activities: (a) acquisition of real property; (b) housing rehabilitation; (c) rehabilitation of publicly owned real property; (d) eligible CDBG economic development activities; (e) relocation payments, (f) clearance, demolition, and removal; (g) payment of interest on Section 108 guaranteed obligations; (h) payment of issuance and other costs associated with private sector financing under this subpart; (i) site preparation related to redevelopment or use of real property

acquired or rehabilitated pursuant to this subpart or for economic development purposes; (j) construction of housing by non-profit organizations for home ownership under Section 17(d) of the U.S. Housing Act of 1937 (12 USC 1715(l)) or Title VI of the Housing and Community Development Act of 1987; (k) debt service reserve; (l) acquisition, construction, reconstruction, rehabilitation or installation of public works and site or other improvements which serve "colonias" (as defined in Section 916 of the Housing Act of 1990 and amended by Section 810 of the Housing and Community Development Act of 1992); and (m) acquisition, construction, rehabilitation, or installation of public facilities (except for buildings for the general conduct of government), public streets, sidewalks, and other site improvements, and public utilities (24 CFR sections 570.700 through 570.710).

5. **The CDBG-R Notice provides an alternative requirement concerning the Section 108 Loan Guarantee program. The Section 108 program is intended to provide longer-term project financing and requires a pledge of future CDBG funds over the life of the loan guarantee, whereas the CDBG-R program is a one-time appropriation of limited duration. CDBG-R funds may not be used: (a) as a pledge of security for repayment of Section 108 loans; (b) to securitize borrowing under the Section 108 program; or (c) as repayment for funds borrowed under the Section 108 program, and they may not be counted toward a grantee's maximum Section 108 borrowing authority. Therefore, HUD has waived the applicability of 42 USC 5308 and Subpart M of 24 CFR part 570 for the use of CDBG-R funds (CDBG-R Notice, Section II.E.; 24 CFR sections 570.700 through 570.710).**

6. All the activities that a grantee undertakes during its CDBG program year must be identified in an action plan or an amended action plan (24 CFR sections 91.220 and 570.301). Plan amendment is only required to reflect significant changes in activities or funding decisions for these years (24 CFR section 91.235).

   All of the activities that a grantee undertakes using CDBG-R funds must be identified in a substantial amendment to its action plan. The required elements in the CDBG-R substantial amendment to the action plan for entitlement communities include a description of the activities the jurisdiction will undertake with CDBG-R funds to address priority needs and objectives. The regulation at 24 CFR section 91.220(l)(ii) has been waived; instead the grantee is required to identify any other ARRA funding to be used in conjunction with each CDBG-R-assisted activity it intends to fund with the CDBG-R allocation (CDBG-R Notice, Section II.A.; 24 CFR sections 91.220 and 570.301).

7. CDBG funding can only be used for special economic development projects that meet the criteria in 24 CFR section 570.203. Grantees must have data to support that assistance provided to carry out special economic development projects is appropriate by meeting the public benefit standards for job creation and provision of goods and services described in 24 CFR section 570.209.

The CDBG-R Notice provides an alternative requirement for public benefit standards to expedite the timely use of CDBG-R funds by grantees. In the regular CDBG program, the public benefit standards at 24 CFR sections 570.209(b), (c), and (d) for entitlement grantees apply to economic development projects under the authority of 24 CFR section 570.203 and 42 USC 5305(a)(2), (14), (15), or (17). The CDBG-R Notice waives 42 USC 5305(e)(3), and 24 CFR sections 570.209 and 570.506(c) to the extent necessary to permit grantees to carry out economic development projects without meeting the public benefit standards, except that the regulations pertaining to prohibited activities listed at 24 CFR sections 270.209(b)(3)(ii)(A) though (E) are not waived (CDBG-R Notice, Section II.E.).

8. When CDBG funds are used to finance rehabilitation, the rehabilitation is to be limited to privately owned buildings and improvements for residential purposes, low income public housing and other publicly owned residential buildings and improvements, publicly or privately owned commercial or industrial buildings, structures, or other real property, equipment, and improvements under certain circumstances, as well as manufactured housing when it constitutes part of the community's permanent housing stock (24 CFR sections 570.202 and 570.203).

9. For NSP funds, HERA requirements supersede some CDBG requirements to allow for the eligible uses in section 2301(c)(3) of HERA. The NSP categories and CDBG entitlement grant regulations are listed in Section II.H.3.a of NSP Notice, 73 FR 58338. The NSP eligible uses are to:

   - Establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties.
   - Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon for later sale, rent or redevelopment.
   - Establish land banks for homes that have been foreclosed upon.
   - Demolish blighted structures
   - Redevelop demolished or vacant properties.

10. For NSP funds, NSP requirements supersede existing CDBG requirements (see III.A.1, above) to permit the use of only the low- and moderate-income national objective for NSP-assisted activities. A NSP activity may not qualify using the "prevent or eliminate slums and blight" or "address urgent community development needs" national objectives. The HERA redefines and supersedes the definition of "low- and moderate-income," effectively allowing households whose incomes exceed 80 percent of area median income but do not exceed 120 percent of median income to qualify as if their incomes did not exceed the published low- and moderate-income levels of the regular CDBG program (Section III.E. of NSP Notice, 73 FR 58335-58336). HUD will refer to this new income group as

"middle income" and maintain the regular CDBG definitions of "low-income" and "moderate-income" currently in use (Section 2301(f)(3)(A) of HERA).

11. For purposes of NSP only, an activity may meet the HERA established low- and moderate-income national objective if the assisted activity: (a) Provides or improves permanent residential structures that will be occupied by a household whose income is at or below 120 percent of area median income; (b) Serves an area in which at least 51 percent of the residents have incomes at or below 120 percent of area median income; or (c) Serves a limited clientele whose incomes are at or below 120 percent of area median income (Section 2301(f)(3)(A) of HERA; Section II.E. of NSP Notice, 73 FR 58335-58336).

12. Eligible uses of NSP funds authorized by HERA are: (a) establishing financing mechanisms for purchase and redevelopment of foreclosed homes and residential properties; (b) purchasing and rehabilitating homes and residential properties abandoned or foreclosed; (c) establishing land banks for foreclosed homes; (d) demolishing blighted structures; and (e) redeveloping demolished or vacant properties. The NSP Notice lists the CDBG-eligible activities HUD has determined best correlate to these specific NSP-eligible uses. Grantees must receive written HUD approval to undertake activities other than those listed in Section II.H., Eligibility and Allowable Costs, of NSP Notice (Section 2301(c)(3) of HERA; Section II.H. of NSP Notice, 73 FR 58337-58338).

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act apply to the rehabilitation of residential property only if such property contains 8 or more units. However, the requirements do not apply to volunteer work where the volunteer does not receive compensation, or is paid expenses, reasonable benefits or a nominal fee for such services, and is not otherwise employed at any time in construction work (42 USC 5310; Section 1606 of ARRA; Section 1205 of Pub. L. No. 111-32; 24 CFR section 570.603).

G. Matching, Level of Effort, Earmarking

1. Matching - Not Applicable

2. Level of Effort - Not Applicable

3. Earmarking

a. Not less than 70 percent of the funds must be used over a period of up to three years, as specified by the grantee in its certification, for activities that benefit low- and moderate-income persons. In determining low- and moderate-income benefits, the criteria set forth in 24 CFR sections 570.200(a)(3) and 570.208(a) are used.

This requirement does not apply to NSP funds as HERA provides for supersession of the overall 70 percent requirement and establishes an alternative requirement for NSP funds where 100 percent of NSP funds must be used to benefit individuals and households whose income does not exceed 120 percent of the area median income. For NSP such households are referred to as low-income, moderate-income and middle-income (Section 2301(c)(2) of HERA; Section II.E. of NSP Notice, 73 FR 58336).

The CDBG-R Notice provides an alternative requirement for overall low- and moderate-income CDBG program benefit. The requirement that 70 percent of funds must be used for activities that benefit low- and moderate-income persons (42 USC 5301(c), 42 USC 5304(b)(3)(A), and 24 CFR section 570.200(a)(3)) applies to the use of CDBG-R funds. A grantee must ensure that 70 percent of its CDBG-R grant will be expended for activities that benefit low- and moderate-income persons. Compliance with the overall benefit requirement must be demonstrated separately for the CDBG-R grant and not in combination with regular CDBG funding or commitments under the Section 108 Loan Guarantee program; thus, no option exists for selecting the timeframe for compliance. Consequently, 42 USC 5304(b)(3)(A), and 24 CFR section 570.200(a)(3) are waived to the extent necessary to require that CDBG-R funds are required to principally benefit persons of low- and moderate-income in a manner that ensures that not less than 70 percent of such funds are used for activities that benefit such persons, exclusive of any other funds received by the grantee under 42 USC 5306 or as a result of a guarantee or a grant under 42 USC 5308. A grantee must meet this requirement over the life of its CDBG-R grant (CDBG-R Notice, Section II.E.).

b. Not more than 20 percent of the total CDBG grant, plus 20 percent of program income received during a program year, may be obligated during that year for activities that qualify as planning and administration pursuant to 24 CFR sections 570.205 and 570.206 (24 CFR section 570.200(g)).

HERA provides for supersession of the 20 percent of any grant amount plus program income limitation to be used for general administration and planning costs. The alternative requirements are that up to 10 percent of the amount of a NSP grant and up to 10 percent of program income earned may be used for general administration and planning activities, as those are defined in 24 CFR sections 570.205 and 570.206 (Section 2301(f)(1) of HERA; Section II.H. of NSP Notice, 73 FR 58337).

The CDBG-R Notice provides an alternative requirement to limitations on planning and general administrative activities because there will be no program income attributed to CDBG-R and CDBG-R is to be treated as a separate appropriation of funds. Compliance

with the planning and administration costs cap must be demonstrated separately based on each grantee's total CDBG-R grant allocation and not in combination with its regular CDBG funding or program income. The CDBG-R Notice waives 42 USC 5306(d)(3), (5) and (6) and 24 CFR section 570.200(g) to the extent necessary to establish the following requirement: no more than 10 percent of CDBG-R funds shall be expended for eligible planning and general administrative activities as defined in 42 USC 5305(a)(12) and (a)(13), 5306(d)(3), and in 24 CFR sections 570.205 and 570.206, exclusive of any other funds received by the grantee under 42 USC 5306 (CDBG-R Notice, Section II.E.).

c. The amount of CDBG funds obligated during the program year for public services must not exceed 15 percent of the grant amount received for that year plus 15 percent of the program income it received during the preceding program year, except that a non-Federal entity that obligated more CDBG funds for public services than 15 percent of its grant funded from Federal Fiscal Years 1982 or 1983 appropriations (excluding program income and any assistance received pursuant to Pub. L. No. 98-8) may obligate more CDBG funds than 15 percent as long as the amount obligated in any program year does not exceed 15 percent of the program income it received during the preceding program year plus the percentage or amount obligated in Federal Fiscal Year 1982 or 1983, whichever method of calculation yields the higher amount (24 CFR section 570.201(e)).

The CDBG-R Notice provides an alternative requirement to limitations on public service activities. HUD is providing an alternative requirement because there will be no program income attributed to CDBG-R and CDBG-R is to be treated as a separate appropriation of funds. Thus, 42 USC 5305(a)(8) and 24 CFR sections 570.201(e)(1) and (e)(2) are waived to the extent necessary to require that no more than 15 percent of CDBG-R funds shall be expended for eligible public service activities, exclusive of any other funds received by the grantee under 42 USC 5306. Compliance with the public service cap must be demonstrated separately based on each grantee's total CDBG-R grant allocation and not in combination with its regular CDBG funding or program income. HUD is waiving 42 USC 5305(a)(8) to exclude program income from the amount of funds on which the cap is based. Other provisions of that section remain in place. Compliance will be demonstrated based on expenditures of CDBG-R funds, not on obligations as in the regular CDBG program. A grantee must meet this requirement over the life of the CDBG-R grant (CDBG-R Notice, Section II.E.; 24 CFR section 570.201(e)).

d. At least 25 percent of NSP funds shall be used for the purchase and redevelopment of abandoned or foreclosed upon homes or residential properties that will be used to house individuals or families whose incomes do not exceed 50 percent of the area median income (Section 2301(f)(3)(A)(ii) of HERA).

H. Period of Availability of Federal Funds

For entitlements for CDBG-R funds, HUD has waived the CDBG program's timely expenditure regulatory requirements of 24 CFR section 570.902 to the extent that CDBG-R funds must be expended by September 30, 2012. These funds will not be included in determining compliance with the timely expenditure compliance requirements of 24 CFR section 570.902. However, income generated from CDBG-R activities will be treated as program income to grantees' regular CDBG programs, and thus will be included in timely expenditure compliance determinations (see III.J.4 below) (CDBG-R Notice, Section II.F.).

I. Procurement and Suspension and Debarment

For CDBG-R recipients, the applicability of the ARRA Buy American requirement in Section 1605 of ARRA is still under review by HUD.

J. Program Income

1. The grantee must accurately account for any program income generated from the use of CDBG funds **or ARRA funds**, and must treat such income as additional CDBG funds which are subject to all program rules. Program income does not include income received in a single program year by the grantee and all of its subrecipients if the total amount of such income does not exceed $25,000 (24 CFR sections 570.500, 570.504, and 570.506).

2. Making loans and collecting the payments on those loans can be a significant source of program income for grantees. The use of income derived from loan payments is subject to program requirements. This carries with it the responsibility for grantees to have a loan origination and servicing system in effect which assures that loans are properly authorized, receivables are properly established, earned income is properly recorded and used, and write-offs of uncollectible amounts are properly authorized (24 CFR sections 570.500, 570.501, 570.504, 570.506, and 570.513).

3. NSP revenue received by a unit of general local government or subrecipient that is directly generated from the use of CDBG funds (which includes NSP grant funds) constitutes CDBG program income. The CDBG definition of program income shall be applied to amounts received by units of local government and subrecipients (Sections 2301(c)(3) of HERA; 24 CFR section 570.500; Section II.N. of NSP Notice 73 FR 58340-58341 and NSP Bridge Notice, 74 FR 29224).

4. **The CDBG-R Notice provides an alternative requirement pertaining to program income earned from CDBG-R assisted activities. All program income generated from the use of CDBG-R funds will be treated as program income to the regular CDBG program, not as program income to the CDBG-R program. The regulations at 24 CFR sections 85.21 and 570.504 require grantees and subrecipients to disburse program income before requesting additional cash withdrawals of regular CDBG funds from the U.S. Treasury; these requirements will not apply to the drawdown of CDBG-R funds (CDBG-R Notice, Section II.D.).**

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* - Not Applicable

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

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

d. SF-272, *Federal Cash Transactions Report* – Applicable

e. *Integrated Disbursement and Information System (IDIS) (OMB No. 2506-0077)* - Grantees may include reports generated by IDIS as part of their annual performance and evaluation report that must be submitted for the CDBG Entitlement Program 90 days after the end of a grantee's program year. Auditors are only expected to test information extracted from IDIS in the following system-generated reports:

(1) C04PR03 - Activity Summary Report

(2) C04PR26 - CDBG Financial Summary

2. Performance Reporting

HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons*, (*OMB No. 2529-0043*) – For each grant over $200,000 that involves housing rehabilitation, housing construction, or other public construction, the prime recipient must submit Form HUD 60002. (24 CFR sections 135.3(a), 135.90, and 570.607).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 2. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting - Not Applicable

M. Subrecipient Monitoring

Before disbursing any CDBG **or CDBG-R** funds to a subrecipient, the recipient shall sign a written agreement with the subrecipient. The agreement shall include provisions concerning: the statement of work, records and reports, program income and uniform administrative requirements (24 CFR section 570.503).

N. Special Tests and Provisions

1. Citizen Participation

Compliance Requirement - Prior to the submission to HUD for its annual grant, the grantee must certify to HUD that it has met the citizen participation requirements in 24 CFR sections 91.105 and 570.302, as applicable.

HERA provided for supersession of the citizen participation requirement to expedite the distribution of NSP grant funds and to provide for expedited citizen participation. The provisions of 24 CFR sections 570.302 and 91.105 with respect to following the citizen participation plan are waived to allow the jurisdiction to provide no fewer than 15 calendar days for citizen comment, rather than 30 days, for its initial NSP submission (Section II.B.4 of NSP Notice, 73 FR 58334).

CDBG-R - The CDBG-R Notice provides an alternative requirement to provide for expedited citizen participation for the CDBG-R substantial amendment. The following citizen participation plan requirements are waived: (1) 24 CFR section 91.105 is being waived to specify that the grantee will provide no fewer than 7 calendar days for citizen comment (rather than 30 days) for its CDBG-R substantial amendment and (2) the requirement at 24 CFR section 91.505(c)(1) that states a grantee may submit a copy of an amendment to its action plan to HUD as it occurs or at the end of the program year has been waived to require each grantee to submit the substantial amendment to its action plan for CDBG-R funds no later than June 5, 2009 (CDBG-R Notice, Section II.A.).

Audit Objective (CDBG) – Determine whether the grantee has developed and implemented a citizen participation plan.

Suggested Audit Procedures - (CDBG)

a. Verify that the grantee has a citizen participation plan.

b. Review the plan to verify that it provides for public hearings, publication, public comment, access to records, and consideration of comments.

c. Examine the grantee's records for evidence that the elements of the citizen's participation plan were followed as the grantee certified.

Audit Objective (CDBG-R) - Determine whether the grantee adhered to the applicable provisions of the CDBG-R Notice as it pertains to the citizen participation plan.

Suggested Audit Procedures - (CDBG-R)

a. Verify that the grantee has a citizen participation plan.

b. Review the plan to determine how the grantee effected modifications to its citizen participation plan process to comply with the CDBG-R Notice provisions.

c. Examine the grantee's records for evidence that the elements of the citizen's participation plan, as modified by the CDBG-R Notice, were followed as the grantee certified.

2. Required Certifications and HUD Approvals

Compliance Requirement - CDBG funds (and local funds to be repaid with CDBG funds **or CDGB-R funds)** cannot be obligated or expended before receipt of HUD's approval of a Request for Release of Funds (RROF) and environmental certification, except for exempt activities under 24 CFR section 58.34 and categorically excluded activities under section 58.35(b) (24 CFR section 58.22).

Audit Objective - Determine whether the grantee is obligating and expending program funds only after HUD's approval of the RROF.

Suggested Audit Procedures

a. Examine HUD's approval of the RROF and environmental certification and note dates.

b. Review the expenditure and related records to ascertain when CDBG funds **or CDGB-R funds,** and local funds which were repaid with CDBG **funds or CDGB-R funds**, were first obligated or expended and ascertain if any funds were obligated or expended prior to HUD's approval of the RROF.

3. Environmental Reviews

Compliance Requirement - Projects must have an environmental review unless they meet criteria specified in the regulations that would exempt or exclude them from RROF and environmental certification requirements (24 CFR sections 58.1, 58.22, 58.34, 58.35, and 570.604).

Audit Objective - Determine whether environmental reviews are being conducted, when required.

Suggested Audit Procedures

a. Verify through a review of environmental review certifications that the environmental reviews were made.

b. Select a sample of projects where an environmental review was not performed and ascertain if a written determination was made that the review was not required.

c. Test whether documentation exists that any determination not to make an environmental review was made consistent with the criteria contained in 24 CFR sections 58.34 and 58.35(b).

4. Rehabilitation

Compliance Requirement - When CDBG funds **or CDGB-R funds** are used for rehabilitation, the grantee must ensure that the work is properly completed (24 CFR section 570.506).

Any NSP-assisted rehabilitation of a foreclosed-upon home or residential property shall be completed to the extent necessary to comply with applicable laws, codes and other requirements relating to housing safety, quality, or habitability, in order to sell, rent or redevelop such homes and properties. To comply with this provision, a grantee must describe or reference in its NSP action plan amendment what rehabilitation standards it

will apply for NSP-assisted rehabilitation (Section 2301(d)(2) of HERA; Section II.I. of NSP Notice, 73 FR 58338).

Audit Objective - Determine whether the grantee assures rehabilitation work is properly completed.

Suggested Audit Procedures

a. Verify that pre-rehabilitation inspections are conducted describing the deficiencies to be corrected.

b. Ascertain that the deficiencies to be corrected are incorporated into the rehabilitation contract.

c. For NSP projects, review rehabilitation standards.

d. Verify through a review of documentation that the grantee inspects the rehabilitation work upon completion to assure that it is carried out in accordance with contract specifications, and that NSP projects were carried out in accordance with rehabilitations standards.

IV. OTHER INFORMATION

See Appendix VI for program waivers related to Hurricanes Katrina and Rita.

ARRA gave HUD the authority to waive or specify alternative requirements for some of the statutory and regulatory provisions to facilitate the use of CDBG-R funds. Most of the waivers are contained in the CDBG-R Notice.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.228 COMMUNITY DEVELOPMENT BLOCK GRANTS/STATE'S PROGRAM AND NON-ENTITLEMENT GRANTS IN HAWAII (State-Administered Small Cities Program)

CFDA 14.255 COMMUNITY DEVELOPMENT BLOCK GRANTS/STATE'S PROGRAM AND NON-ENTITLEMENT GRANTS IN HAWAII – (RECOVERY ACT FUNDED) (State-Administered Small Cities Program)

I. PROGRAM OBJECTIVES

The primary objective of the Community Development Block Grants (CDBG) /State's Program and Non-Entitlement Grants in Hawaii (State-Administered Small Cities Program) is the development of viable communities by providing decent housing, a suitable living environment, and expanded economic opportunities, principally for persons of low- and moderate-income. This objective can be achieved in two ways. First, funds can only be used to assist eligible activities that fulfill one or more of three national objectives. Second, the grantee must spend at least 70 percent of its funds over a period of up to three years, as specified by the grantee in its certification, for activities that address the national objective of benefiting low- and moderate-income persons (42 USC 5301(c) and 5304(b)(3)).

The Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. No. 110-289, July 30, 2008) provided funds for emergency assistance for redevelopment of abandoned and foreclosed homes and residential properties, and provides under a rule of construction that, unless HERA provides otherwise, the grants are to be considered CDBG funds. The grant program under Title III is referred to as the Neighborhood Stabilization Program (NSP). **The NSP funding covered in this cluster is the funding provided under HERA and is not NSP funding provided under ARRA. These HERA funds are also referred to as NSP1 in the Neighborhood Stabilization Program (see CFDA 14.256, Section II, "Program Procedures").**

The primary objective of the Community Development Block Grants /State's Program and Non-Entitlement Grants in Hawaii (State-Administered Small Cities Program) – (Recovery Act Funded) (CDBG-R) is to stimulate the economy through measures that modernize the Nation's infrastructure that provide basic services to residents, principally for persons of low- and moderate- income, or activities that promote energy efficiency and conservation through rehabilitation or retrofitting of existing buildings.

II. PROGRAM PROCEDURES

CDBG funds are provided, according to a statutory formula, to those States that elect to administer their CDBG non-entitlement funds. The States, in turn, distribute the funds to small units of general local government (subrecipients) that do not qualify for grants under the CDBG Entitlement Program. The non-entitlement counties in Hawaii are handled differently than Entitlement grantees in the following ways: (1) their funding comes from Section 106(d) of the Housing and Community Development Act of 1974, as amended (42 USC 5306(d)); (2) funds are distributed using the formula contained in 24 CFR section 570.429(c); reallocations due to grant reductions, or funds not applied for, go to the other non-entitlement counties in Hawaii on a

pro rata basis (24 CFR section 570.429(d)); (3) non-entitlement counties are not eligible to use the exception criteria in 24 CFR section 570.208(a)(1)(ii); and (4) 24 CFR section 570.307 (Urban Counties) and 24 CFR section 570.308 (Joint Requests) would not apply to non-entitlement counties in Hawaii. Except for these differences, non-entitlement counties in Hawaii should follow the requirements of CDBG Entitlement Grants (CFDA 14.218).

The CDBG-R program provides formula grants to States, which must submit certain certifications and a substantial amendment to their 2008 1-year action plans as to how they propose to use the CDBG-R funds to meet the purposes of the Recovery Act. Eligible recipients of the CDBG-R funds are grantees that received CDBG funding in 2008. The grant amount is determined by the higher of two formulas that consider a community's population, poverty level, extent of overcrowded housing, age of housing, and growth lag (42 USC 5306(b)). States (other than Hawaii) must distribute CDBG-R funds to units of general local government (counties, towns, etc.) in nonentitlement areas. Units of general local government then carry out community development activities funded by the State. The Insular Areas and three Hawaii counties directly carry out eligible CDBG-R activities. Program procedures and waivers are contained in HUD's Notice of Program Requirements for Community Development Block Grant Program Funding Under the American Recovery and Reinvestment Act of 2009 (FR-5309-N-01) (CDBG-R Notice). The CDBG-R Notice is available on the HUD Web site at: http://www.hud.gov/recovery/cdblock.cfm.

In Hawaii, HUD awards the State's share of these funds to three non-entitlement counties. The non-entitlement counties in Hawaii are handled differently than entitlement grantees in the following ways: (1) their funding comes from Section 106(d) of the Housing and Community Development Act of 1974, as amended (42 USC 5306(d)); (2) funds are distributed using the formula contained in 24 CFR section 570.429(c), reallocations due to grant reductions, or funds not applied for, go to the other non-entitlement counties in Hawaii on a pro rata basis (24 CFR section 570.429(d)); (3) non-entitlement counties are not eligible to use the exception criteria in 24 CFR section 570.208(a)(1)(ii); and (4) 24 CFR section 570.307 (Urban Counties) and 24 CFR section 570.308 (Joint Requests) would not apply to non-entitlement counties in Hawaii. Except for these differences, non-entitlement counties in Hawaii should follow the requirements of CDBG Entitlement Grants program (CFDA 14.218). Therefore, the program supplement for the CDBG-R Entitlement Program (CFDA 14.253) should be used when reviewing Hawaii.

Units of general local government receiving CDBG-R funds from a State or the three Hawaii non-entitlement counties receiving CDBG-R funds from HUD may select subgrantees to carry out approved projects. Such subgrantees may include: neighborhood-based nonprofit organizations; local development corporations; Small Business Investment Companies; or other nonprofit organizations serving the development needs of non-entitlement areas. Grant recipients may provide subgrants to for-profit entities when the recipient determines that the provision of such assistance is appropriate to carry out an economic development project.

For the CDBG and CDBG-R programs, in addition to Federal statutory requirements, each State has the authority to issue rules consistent with Federal statutes and regulations. The State rules should be reviewed before beginning the audit (24 CFR sections 570.480 and 570.481).

The NSP grant is a special CDBG allocation to address the problem of abandoned and foreclosed homes. The HERA established the need, targets the geographic areas, and limits the eligible uses of NSP funds. A State choosing to carry out an activity directly must apply the requirements of 24 CFR section 570.208(a) to determine whether the activity has met the low-, moderate-, and middle-income national objective and must maintain the documentation required at 24 CFR section 570.506 to demonstrate compliance to HUD.

Source of Governing Requirements

These programs are authorized under Title I of the Housing and Community Development Act of 1974, as amended (42 USC 5301**) and Title XII of the American Recovery and Reinvestment Act of 2009 (ARRA), (Pub. L. No. 111-5).** Implementing regulations may be found at 24 CFR part 570, subpart I.

The NSP is authorized by Title III of Division B of HERA. HUD published a "Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees Under the Housing and Economic Recovery Act, 2008," (NSP Notice) that advises the public of the allocation formula, allocation amounts, the list of grantees, alternative requirements, and the waivers of regulations provided to grantees (see October 6, 2008, *Federal Register*, 73 FR 58330-58349). HUD amended the NSP Notice in an "NSP Bridge Notice" in the June 19, 2009, *Federal Register*, 74 FR 29223-29229.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Section 105(a) of the Housing and Community Development Act of 1974 lists the activities eligible under the CDBG State's Program (State administered small cities program**) and the CDBG-R program**, which include: (a) the acquisition of real property; (b) the acquisition, construction, reconstruction, or installation of public works, facilities and site, or other improvements, including those that promote energy efficiency; (c) code enforcement in deteriorated or deteriorating areas; (d) clearance, demolition, reconstruction, rehabilitation, and removal of buildings and improvements; (e) removal of architectural barriers that restrict accessibility of elderly or severely disabled persons; (f) payments to housing owners for losses of rental income incurred in temporarily holding housing for the relocated; (g) disposition of real property acquired under this program; (h) provision of public services (subject to limitations contained in the CDBG regulations); (i) payment of the non-Federal share for another grant program that is part of the assisted activities; (j) payment to complete a Title 1 Federal Urban Renewal project; (k) relocation assistance; (l) planning activities;

(m) administrative costs; (n) acquisition, construction, reconstruction, rehabilitation, or installation of commercial or industrial buildings; (o) assistance to neighborhood-based nonprofit organizations, local development corporations, nonprofit organizations serving the development needs of communities in non-entitlement areas to carry out a neighborhood revitalization or community economic development or energy conservation project; (p) activities related to development of energy use strategies; (q) assistance to private, for-profit businesses, when appropriate to carry out an economic development project; (r) rehabilitation or development of housing assisted under Section 17 of the United States Housing Act of 1937; (s) technical assistance to public or private entities for capacity building (exempt from the planning/administration cap); (t) housing services related to HOME-funded activities; (u) assistance to institutions of higher education to carry out eligible activities; (v) assistance to public and private entities (including for-profits) to assist micro-enterprises; (w) payment for repairs and operating expenses for acquired "in Rem" properties; (x) direct home ownership assistance to facilitate and expand home ownership among persons of low-and moderate-income; (y) lead-based paint hazard evaluation, and removal; and (z) construction or improvement of tornado-safe shelters for residents of manufactured housing and provision of assistance to nonprofit and for-profit entities for such construction or improvement (42 USC 5305; 24 CFR section 570.482(a)).

2. **The CDBG program provides for float-funded activities and guarantees, a short-term financing mechanism which allows a grantee to use undisbursed funds in its line of credit and CDBG program account that are budgeted in action plans for one or more other activities that do not need the funds immediately. Each activity carried out using the float must meet all CDBG requirements and must be expected to produce program income in an amount at least equal to the amount of float so used. Because program income generated from CDBG-R activities will not be treated as program income to the CDBG-R program, grantees may not use CDBG-R funds to assist any float-funded activity or guarantee. To implement this, HUD has waived the provision at 24 CFR section 570.301(b), thereby making float-funded activities not allowable with CDBG-R funds (CDBG-R Notice, Section II.D; 24 CFR section 570.301).**

3. Each activity that the State funds must either benefit low- and moderate-income families; aid in the prevention or elimination of slums or blight; or meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available. The State must retain documentation justifying its certifications (24 CFR sections 570.483 and 570.490).

   The CDBG-R Notice provides an alternative requirement for the CDBG program urgent need national objective criteria. In the regular CDBG program, in order to meet the urgent need national objective pursuant to

24 CFR section 570.483(d), the recipient must certify that: (1) the activity is designed to alleviate existing conditions which (a) pose a serious and immediate threat to the health and welfare of the community and (b) are of recent origin or recently became urgent; (2) the recipient is unable to finance the activity on its own; and (3) other sources of funds are not available. For CDBG-R, HUD is eliminating the recordkeeping requirement that grantees document the nature, degree, and timing of the seriousness of the condition to be addressed by the activity if the urgent need is based on current economic conditions. HUD has determined that current economic conditions are of recent origin and pose a serious and immediate threat to the economic welfare of communities; therefore, HUD will accept a grantee's certification that current economic conditions are of recent origin and constitute a serious and immediate threat to the welfare of the community. However, the grantee must still demonstrate that it is unable to finance the activity on its own, and that other sources of funding are not available. The CDBG-R Notice waives 24 CFR sections 570.483(d) and 570.490(a) and (b) to the extent necessary to allow grantees to certify that an activity is designed to address current economic conditions which pose a threat to the economic welfare of communities (CDBG-R Notice, Section II.E).

4. Non-entitlement local government grant recipients (subrecipients) may have loans guaranteed by HUD under Section 108 of the Housing and Community Development Act of 1974. Guaranteed loan funds may be used only for the following activities: (a) acquisition of real property; (b) housing rehabilitation; (c) rehabilitation of publicly owned real property; (d) eligible CDBG economic development activity; (e) relocation payments, (f) clearance, demolition, and removal; (g) payment of interest on Section 108 guaranteed obligations; (h) payment of issuance and other costs associated with private-sector financing under this subpart; (i) site preparation related to redevelopment or use of real property acquired or rehabilitated pursuant to this subpart or for economic development purposes; (j) construction of housing by nonprofit organizations for homeownership under Section 17(d) of the U.S. Housing Act of 1937 (12 USC 1715(l)) or Title VI of the Housing and Community Development Act of 1987; (k) debt service reserve; (l) acquisition, construction, reconstruction, rehabilitation or installation of public works and site or other improvements that serve "colonias" (as defined in Section 916 of the Housing Act of 1990 and amended by Section 810 of the Housing and Community Development Act of 1992); and (m) acquisition, construction, reconstruction, rehabilitation, or installation of public facilities (except for buildings for the general conduct of government), public streets, sidewalks, and other site improvements and public utilities (24 CFR sections 570.700 through 570.710).

5. **The CDBG-R Notice provides an alternative requirement concerning the Section 108 Loan Guarantee program. The Section 108 program is intended to provide longer-term project financing and requires a pledge of future CDBG funds over the life of the loan guarantee, whereas the CDBG-R program is a one-time appropriation of limited duration. CDBG-R funds**

may not be used: (a) as a pledge of security for repayment of Section 108 loans; (b) to securitize borrowing under the Section 108 program; or (c) as repayment for funds borrowed under the Section 108 program, and they may not be counted toward a grantee's maximum Section 108 borrowing authority. Therefore, HUD has waived the applicability of 42 USC 5308 and Subpart M of 24 CFR part 570 for the use of CDBG-R funds (CDBG-R Notice, Section II.E; 24 CFR sections 570.700 through 570.710).

6. For NSP fund, HERA requirements have superseded some CDBG requirements to allow for eligible uses in Section 2301(c)(3) of HERA. The NSP categories and CDBG entitlement regulations are listed in Section II.H.3.a of NSP Notice, 73 FR 58338. The NSP eligible uses are to:

   - Establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties.
   - Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon for later sale, rent or redevelopment.
   - Establish land banks for homes that have been foreclosed upon.
   - Demolish blighted structures.
   - Redevelop demolished or vacant properties.

7. For NSP funds, NSP requirements supersede existing CDBG requirements (See III.A.1, above) to permit the use of only the low- and moderate-income national objective for NSP-assisted activities. A NSP activity may not qualify using the "prevent or eliminate slums and blight" or "address urgent community development needs" national objectives. The HERA redefines and supersedes the definition of "low- and moderate-income," effectively allowing households whose incomes exceed 80 percent of area median income but do not exceed 120 percent of median income to qualify as if their incomes did not exceed the published low- and moderate-income levels of the regular CDBG program (Section III.E. of NSP Notice, 73 FR 58335-58336). HUD will refer to this new income group as "middle income" and maintain the regular CDBG definitions of "low-income" and "moderate-income" currently in use (Section 2301(f)(3)(A) of HERA).

8. For purposes of NSP only, an activity may meet the HERA established low- and moderate-income national objective if the assisted activity: (1) provides or improves permanent residential structures that will be occupied by a household whose income is at or below 120 percent of area median income; (2) serves an area in which at least 51 percent of the residents have incomes at or below 120 percent of area median income; or (3) serves a limited clientele whose incomes are at or below 120 percent of area median income. (Section 2301(f)(3)(A) of HERA; Section II.E. of NSP Notice, 73 FR 58335-58336).

9. Eligible uses of NSP funds authorized by HERA are: (a) establishing financing mechanisms for purchase and redevelopment of foreclosed homes and residential properties; (b) purchasing and rehabilitating homes and residential properties abandoned or foreclosed; (c) establishing land banks for foreclosed homes; (d) demolishing blighted structures; and (e) redeveloping demolished or vacant properties. The NSP Notice lists the CDBG-eligible activities HUD has determined best correlate to these specific NSP-eligible uses. Grantees must receive written HUD approval to undertake activities other than those listed in Section II.H, Eligibility and Allowable Costs, of the NSP Notice (Section 2301(c)(3) of HERA; Section II.H. of NSP Notice, 73 FR 58337-58338).

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act apply to the rehabilitation of residential property only if such property contains eight or more units. However, the requirements do not apply to volunteer work where the volunteer does not receive compensation, or is paid expenses, reasonable benefits, or a nominal fee for such services, and is not otherwise employed at any time in construction work (42 USC 5310**; Section 1606 of ARRA; Section 1205 of Pub. L. No. 111-32).**

G. Matching, Level of Effort, Earmarking

1. Matching

1. States are required to match the funds used for State administrative costs beyond the first $100,000 on a one-to-one basis, as further described under III.G.3.b, "Matching Level of Effort, Earmarking - Earmarking" (24 CFR section 570.489(a)(1)). This requirement does not apply to NSP funds (Section 2301(e)(2) of HERA; see Section II.N. of NSP Notice, 73 FR 58337).

2. For CDBG-R funds, HUD has waived the requirement for matching State administrative funds (Section II.E. of CDBG-R Notice, FR-5309-N-01).

2. Level of Effort - Not Applicable

3. Earmarking

a. The Housing and Community Development Act of 1974 requires the State to certify that the aggregate use of the CDBG funds it receives, over a period specified by the State not to exceed three years, shall principally benefit low- and moderate-income persons. This requirement means that not less than 70 percent of the funds must be used in this manner (24 CFR section 570.484 and 42 USC 5304(b)(3**)). This requirement applies to the CDBG-R program as well, and must be demonstrated separately for the CDBG-R grant and not in combination with the CDBG grant (CDBG-R Notice FR-5309-N-01, Section II.E).**

This requirement does not apply to NSP funds as HERA provides for supersession of the overall 70 percent requirement and establishes an alternative requirement for NSP funds where 100 percent of NSP funds must be used to benefit individuals and households whose income does not exceed 120 percent of the area median income. For NSP, such households are referred to as low-income, moderate-income and middle-income (Section 2301(c)(2) of HERA; Section II.E. of NSP Notice, 73 FR 58336).

b. The State may use up to $100,000 of its grant funds for administrative purposes. In addition to this amount, up to three percent of the grant may be expended at the State level for administrative costs, provided such funds are matched from State resources on a one-to-one basis. Further, States may use three percent of program income collected, regardless of whether at the State or local government level, for administrative costs. All administrative funds, including the State matching funds, which may be in-kind contributions, must be used to carry out the State's responsibilities. The State may use up to three percent of its grant funds to provide technical assistance to local governments and nonprofit program recipients. The State may use no more than the aggregate of three percent of its grant funds for administrative purposes or technical assistance (24 CFR section 570.489(a)(1) and 42 USC 5306(d)).

c. For planning and administrative costs **under the CDBG program**, the combined expenditures of the State and units of general local governments may not exceed 20 percent of the State's total allocation plus 20 percent of any program income for any given year. Within this Statewide limit, a State may fund grants to local governments consisting entirely of planning activities (24 CFR section 570.489(a)(3)).

HERA provides for supersession of the 20 percent of any grant amount plus program income limitation to be used for general administration and planning costs. The alternative requirements are that up to 10 percent of the amount of a NSP grant provided to a grantee and up to 10 percent of program income earned may be used for general administration and planning activities, as those are defined in 24 CFR sections 570.205 and 570.206. For States, the 10 percent includes expenditures by the State, as well as any unit of general local government that the State funds (Section 2301(f)(1) of HERA; Section II.H. of NSP Notice, 73 FR 58337).

For CDBG-R, the combined expenditures of the State and units of general local governments for planning and administrative expenses may not exceed 10 percent of the State CDBG-R's total. States should note that the 10 percent limitation includes any funds the State expends for technical assistance to units of general local government and nonprofit organizations pursuant to 42 USC 5306(d)(5) (CDBG-R Notice FR-5309-N-01, Section II.E).

d. **For the CDBG program**, the amount of CDBG funds used for public services must not exceed 15 percent of the grant amount received for that year plus 15 percent of the program income attributed to the year. The 15 percent public-services cap applies to each year's allocation of nonentitlement funds for the State. Individual grants to units of general local government are not subject to the public-services cap. Within this Statewide cap, a State may fund grants to local governments consisting entirely of public service activities (42 USC 5305(a)(8)).

For the CDBG-R program, no more than 15 percent of CDBG-R funds can be expended for eligible public service activities, exclusive of any other funds received by the grantee under 42 USC 5306. Compliance with the public service cap must be demonstrated separately based on each grantee's total allocation and not in combination with its regular CDBG funding or program income (CDBG-R Notice, Section II.E.).

e. Under Section 916 of the National Affordable Housing Act of 1990 (NAHA) (Pub L. No. 101-625; 42 USC 5306 note), the States of Arizona, California, New Mexico, and Texas are required to set aside a portion of their State CDBG funds for use in colonias. The Secretary of HUD annually determines the percentage of each state's allocation (up to 10 percent) required to be set aside for this purpose. Entitlement communities in metropolitan areas of less than one million in population are eligible to receive CDBG funding from the colonias set aside in these States (42 USC 5306 note).

f. At least 25 percent of NSP funds shall be used for the purchase and redevelopment of abandoned or foreclosed upon homes or residential properties that will be used to house individuals or families whose incomes do not exceed 50 percent of the area median income (Section 2301(f)(3)(A)(ii) of HERA).

I. Procurement and Suspension and Debarment

For CDBG-R recipients, the applicability of the ARRA Buy American requirement in Section 1605 of ARRA is still under review by HUD.

J. Program Income

1. **For the CDBG and CDBG-R programs,** program income does not include income received in a single program year by a unit of general local government and its subrecipients if the total amount of such income does not exceed $25,000 (24 CFR section 570.489(e)(2)(i)).

2. NSP revenue received by a unit of general local government or subrecipient that is directly generated from the use of CDBG funds (which include NSP grant funds) constitutes CDBG program income. The CDBG definition of program

income shall be applied to amounts received by units of local government and subrecipients (Sections 2301(c)(3) of HERA; 24 CFR section 570.500; Section II.N. of NSP Notice, 73 FR 58340-58341 and NSP Bridge Notice, 74 FR 29224).

3. **For the CDBG-R program, any program income generated from the use of CDBG-R funds will be treated as program income to the regular CDBG program, not as program income to the CDBG-R program. HUD has waived the regulatory provisions at 24 CFR sections 85.21 and 570.489(e)(3) to implement this requirement, and to ensure that the use of CDBG-R funds is expedited. The waived regulations require grantees and subrecipients to disburse program income before requesting additional cash withdrawals of regular CDBG funds from the U.S. Treasury. Those requirements will not apply to the drawdown of CDBG-R funds since the CDBG-R program will not have any program income (CDBG-R Notice, Section II.F.).**

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* - Not Applicable

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

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

d. SF-272, *Federal Cash Transactions Report* - Not Applicable

e. *Performance and Evaluation Report (OMB No. 2506-0085)* - This report is due from each **CDBG** grantee within 90 days after the close of its program year in a format suggested by HUD. HUD encourages the submission of the report in both paper and computerized formats. Among other factors, the report is to include a description of the use of funds during the program year and an assessment of the grantee's use for the priorities and objectives identified in its plan. The auditor is only expected to test the financial data in this report (24 CFR sections 91.520 (a) and (c)).

2. Performance Reporting

HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons,* (*OMB No. 2529-0043*) – For each grant over $200,000 that involves housing rehabilitation, housing construction, or other public construction, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a), 135.90, and 570.487(d)).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 2. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting - Not Applicable

N. Special Tests and Provisions

1. Environmental Oversight

Compliance Requirement - The State must assume the environmental oversight responsibilities and functions of HUD under Section 104(g), Housing and Community Development (HCD) Act, (42 USC 5304(g)). The State must: (a) require each of its general local governments (subrecipients) to perform as a responsible Federal official in carrying out all HUD environmental review requirements under 24 CFR part 58, National Environmental Policy Act (NEPA), and other applicable authorities; (b) review and approve each subrecipient's Request for Release of Funds (RROF) in accordance with the procedures provided under 24 CFR part 58 subpart H; (c) ensure that each subrecipient observes the statutory requirement that funds cannot be expended or obligated before the State approves its RROF and environmental certification, except as otherwise provided specifically in regulation or authorized by law; and (d) monitor and provide technical

assistance to its subrecipients to ensure compliance with the environmental authorities (24 CFR part 58) and the adequacy of environmental reviews.

Audit Objective - Determine whether the State carries out its environmental oversight responsibilities and functions.

Suggested Audit Procedures

a. Examine the State's program for monitoring and enforcing compliance with the environmental authorities.

b. Examine the State's approval of the RROF and environmental certification, and note dates.

c. Verify that the State obtained certifications and that the State's records provide evidence that the funds were obligated and expended after the State's approval of the RROF and environmental certification.

2. Environmental Reviews

Compliance Requirement - Projects must have an environmental review unless they meet criteria specified in the regulations that would exclude them from RROF and environmental certification requirements. States that directly implement NSP activities are considered recipients and must assume environmental review responsibilities for the State's activities and those of any non-governmental entity that participates in the project. States that directly implement activities must submit the Request for Release of Funds (RROF) and the certifications to HUD for approval (24 CFR sections 58.4(b)(1), 58.34 and 58.35).

Audit Objective - Determine whether the required environmental reviews were conducted and required HUD approvals were obtained.

Suggested Audit Procedures

a. Verify that the State obtained environmental review certifications from the subrecipient and that the State records provide evidence that the environmental reviews were made.

b. For any project where an environmental review was not performed, ascertain that a written determination was made that the review was not required.

c. Ascertain that documentation exists that any determination not to make an environmental review was made consistent with the criteria contained in 24 CFR sections 58.34 and 58.35.

d. Verify that States obtained HUD approvals of RROFs and environmental certifications for State activities.

e. Verify that, for State activities, funds were obligated and expended after HUD approval of State RROFs and environmental certifications.

3. Citizen Participation

Compliance Requirement

CDBG - Prior to the submission to HUD for its annual grant, the grantee must certify to HUD that it has met the citizen participation requirements in 24 CFR sections 91.115 and 570.486, as applicable.

HERA provided for supersession of the citizen participation requirement to expedite the distribution of NSP grant funds and to provide for expedited citizen participation. The provisions of 24 CFR sections 570.485 and 570.486 with respect to following the citizen participation plan are waived to allow the jurisdiction to provide no fewer than 15 calendar days for citizen comment, rather than 30 days, for its initial NSP submission (Section II.B.4 of NSP Notice, 73 FR 58334).

CDBG-R **- The CDBG-R Notice provides an alternative requirement to provide for expedited citizen participation for the CDBG-R substantial amendment. The following the citizen participation plan requirements are waived: (1) 24 CFR sections 91.105 and 91.115 have been waived to specify that the grantee will provide no fewer than 7 calendar days for citizen comment (rather than 30 days) for its CDBG-R substantial amendment; and (2) 24 CFR section 91.505(c)(1) that states a grantee may submit a copy of an amendment to its action plan to HUD as it occurs or at the end of the program year was waived to require each grantee to submit the substantial amendment to its action plan for CDBG-R funds no later than the June 29, 2009. In addition, 24 CFR section 91.110 was waived to the extent necessary to eliminate the requirement that a State must consult with units of local government in determining the State's method of distribution in its substantial amendment (CDBG-R Notice, Section II.A.).**

Audit Objective – **CDBG -** Determine whether the **CDBG** grantee has developed and implemented a citizen participation plan.

Suggested Audit Procedures – CDBG

a. Verify that the grantee has a citizen participation plan.

b. Review the plan to verify that it provides for public hearings, publication, public comment, access to records, and consideration of comments.

c. Examine the grantee's records for evidence that the elements of the citizen's participation plan were followed as the grantee certified.

Audit Objective – CDBG-R - Determine whether the grantee adhered to the applicable provisions of the CDBG-R Notice as it pertains to the citizen participation plan.

Suggested Audit Procedures – CDBG-R

a. Verify that the grantee has a citizen participation plan.

b. Review the plan to determine how the grantee effected modifications to its citizen participation plan process to comply with the CDBG-R Notice provisions.

c. Examine the grantee's records for evidence that the elements of the citizen's participation plan, as modified by the CDBG-R Notice, were followed as the grantee certified.

4. Rehabilitation Using NSP Funds

Compliance Requirement - Any NSP-assisted rehabilitation of a foreclosed-upon home or residential property shall be completed to the extent necessary to comply with applicable laws, codes and other requirements relating to housing safety, quality, or habitability, in order to sell, rent or redevelopment such homes and properties. To comply with this provision, a grantee must describe or reference in its NSP action plan amendment what rehabilitation standards it will apply for NSP-assisted rehabilitation (Section 2301(d)(2) of HERA; Section II.I. of NSP Notice, 73 FR 58338).

Audit Objective - To determine whether the grantee assures NSP rehabilitation work is properly completed.

Suggested Audit Procedures

a. Review rehabilitation standards established for NSP work.

b. Verify through a review of documentation that the rehabilitation work is inspected upon completion to ensure that it is carried out in accordance with applicable rehabilitation standards.

IV. OTHER INFORMATION

See Appendix VI for program waivers and special provisions related to Hurricanes Katrina and Rita.

ARRA gave HUD the authority to waive or specify alternative requirements for some of the CDBG statutory and regulatory provisions to facilitate the use of CDBG-R funds. Most of the waivers are contained in the CDBG-R Notice.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.256 NEIGHBORHOOD STABILIZATION PROGRAM (RECOVERY ACT FUNDED)

I. PROGRAM OBJECTIVES

The objectives of the Neighborhood Stabilization Program (NSP) are to: (1) stabilize property values; (2) arrest neighborhood decline; (3) assist in preventing neighborhood blight; and (4) stabilize communities across America hardest hit by residential foreclosures and abandonment. These objectives will be achieved through the purchase and redevelopment of foreclosed and abandoned homes and residential properties that will allow those properties to turn into useful, safe and sanitary housing.

II. PROGRAM PROCEDURES

NSP is separated into three categories:

NSP1 is authorized under Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008 (Pub. L. No. 110-289). NSP1 is not part of CFDA 14.256 and this program supplement does not cover NSP1. Those NSP1 awards are made under CDFA 14.218 and CFDA 14.228 and are covered under those respective clusters.

NSP2 is authorized under the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5). NSP2 provides grants based on competitive factors of need, organizational capacity, soundness of approach, leveraging of other funds, energy efficiency and sustainable development, neighborhood transformation, and economic opportunity to States, local governments, nonprofits, and consortia of nonprofit entities.

NSP-TA (technical assistance) also is authorized by ARRA. NSP-TA provides grants for technical assistance based on competitive factors of recent experience, organizational capacity, soundness of approach, leveraging resources, and achieving results and program evaluation, to national and local technical assistance providers to support NSP1 and NSP2 grantees to increase their capacity to carry out neighborhood stabilization programs.

On May 7, 2009, HUD issued Notices of Funding Availability (NOFAs) for NSP2 (FR-5321-N-02) and NSP-TA (FR-5313-N-01) in the *Federal Register* (74 FR 21377). These NOFAs provide information on funds availability, alternative requirements, and waivers issued by HUD.

Source of Governing Requirements

NSP2 and NSP-TA are authorized by ARRA. Like NSP1, NSP2 is a component of the Community Development Block Grant program (CDBG) (CFDA 14.218 and CFDA 14.228). Unless different requirements are provided in the NSP2 NOFA or the NSP-TA NOFA, the statutory and regulatory provisions governing the CDBG program, including those at 24 CFR part 570 subparts A, C,D, J, K, and O, as appropriate, apply to the use of NSP2 and NSP-TA funding. In addition, NSP1 activities authorized under HERA apply to NSP2 as well.

Availability of Other Program Information

Additional information about the NSP, including the NSP2 and NSP-TA NOFAs, is available on the Internet at the HUD ARRA website on the Internet at http://www.hud.gov/recovery or the NSP website at: http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/. HUD has published detailed additional guidance on program income on the Internet at: http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/docs/nsp_faq_program_income.doc.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. For NSP2 funds, HERA requirements supersede some CDBG requirements to allow for the eligible uses in Section 2301(c)(3) of HERA. The NSP2-eligible uses and CDBG entitlement grant regulations are listed in Appendix I.H of the NSP2 NOFA. The NSP2 eligible uses are to:

   - Establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties.
   - Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon for later sale, rent, or redevelopment.
   - Establish land banks for homes that have been foreclosed upon.
   - Demolish blighted structures.
   - Redevelop demolished or vacant properties (Appendix I, H, Eligibility and Allowable Costs, of NSP2 NOFA).

2. Grantees must receive written HUD approval to undertake activities other than those listed in III.A.1 above (Appendix I.H, Eligibility and Allowable Costs, of NSP2 NOFA.

3. NSP-TA funds can be used for:

   a. National TA activities are limited to activities that address, at a national level, one or more of NSP-TA program activities or priorities. National TA activities may include the (1) development of written products, (2) development of web-based materials, (3) development of training courses, (4) delivery of training courses previously approved by HUD, (5) organization and delivery of workshops and conferences, and (6) delivery of direct TA.

b. Local TA activities are limited to the (1) development of needs assessments, (2) direct TA to HUD Community development program recipients, (3) organization and delivery of workshops and conferences, and (4) customization and delivery of previously HUD-approved training courses or materials (Section III.C.2, Eligible National TA and Local TA Activities, of NSP-TA NOFA).

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act apply to the rehabilitation of residential property only if such property contains 8 or more units. However, the requirements do not apply to volunteer work where the volunteer does not receive compensation, or is paid expenses, reasonable benefits or a nominal fee for such services, and is not otherwise employed at any time in construction work (42 USC 5310; Section 1606 of ARRA; Section 1205 of Pub. L. No.111-32; 24 CFR section 570.603).

G. Matching, Level of Effort, Earmarking

1. Matching

a. For NSP2, the regulatory and statutory requirements for State match for program administration at 24 CFR section 570.489(a)(i) are superseded by the statutory direction at Section 2301(e)(2) of HERA so that no matching funds can be required in order for a State or unit of general local government to receive an NSP2 grant (Section 2301(e)(2) of HERA; Appendix I, H, Eligibility and Allowable Costs, of NSP2 NOFA).

b. There is no matching requirement for NSP-TA (Section III.B, Cost Sharing or Matching, of NSP-TA NOFA).

2. Level of Effort - Not Applicable

3. Earmarking

a. At least 25 percent of NSP2 grant funds must be used for the purchase and redevelopment of abandoned or foreclosed homes or residential properties that will be used to house individuals or families whose incomes do not exceed 50 percent of area median income (Appendix I.E, Income Eligibility Requirements Changes, of NSP2 NOFA).

b. No more than 10 percent of an NSP2 grant, and no more than 10 percent of program income earned, may be used for general administration and planning activities as those are defined at 24 CFR sections 570.205 and 507.206. The 10 percent limitation applies to the grant as a whole and does not apply to individual payment requests (Appendix I.H, Eligibility and Allowable Costs of NSP2 NOFA).

H. Period of Availability of Federal Funds

NSP2 grantees are required to expend 50 percent of NSP2 funds in two years after HUD signs the grant agreement and expend 100 percent of NSP2 funds within three years after HUD signs the grant agreement (ARRA, 123 Stat. 217).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* - Not Applicable

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

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

d. SF-272, *Federal Cash Transactions Report* - Not Applicable

2. Performance Reporting

HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons,* (*OMB No. 2529-0043*) – For each grant over $200,000 that involves housing rehabilitation, housing construction, or other public construction, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a), 135.90, and 570.487(d)).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 2. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting - Not Applicable

N. Special Tests and Provisions

1. Citizen Participation

To expedite the distribution of NSP2 funds and ensure citizen participation on the specific use of funds, HUD has established a minimum time for citizen comments of 10 days on the proposed use of funds and the targeted geographic area. The grantee must publicize its NSP2 application material on its website and in the general media (Appendix I.B, Pre-Grant Process of NSP2 NOFA).

Audit Objective – Determine whether the grantee adhered to the citizen participation requirements.

Suggested Audit Procedures

a. Verify that the proposed use of funds and targeted geographic area were posted on the grantee's official website and published in a local newspaper.

b. Verify that the citizen comment period was no less than 10 days.

2. Required Certifications and HUD Approvals

Compliance Requirement – NSP2 funds (and local funds to be repaid with NSP2 funds) cannot be obligated or expended before receipt of HUD's approval of a Request for Release of Funds (RROF) and environmental certification, except for exempt activities under 24 CFR section 58.34 and categorically excluded activities under 24 CFR section 58.35(b) (24 CFR section 58.22).

Audit Objective - Determine whether the grantee is obligating and expending program funds only after HUD's approval of the RROF.

Suggested Audit Procedures

a. Examine HUD's approval of the RROF and environmental certification and note dates.

b. Review the expenditure and related records to ascertain when NSP2 funds, and local funds which were repaid with NSP2 funds, were first obligated or expended and ascertain if any funds were obligated or expended prior to HUD's approval of the RROF.

3. Environmental Reviews

Compliance Requirement - NSP2 assistance is subject to the National Environmental Policy Act of 1969 and related HUD environmental regulations at 24 CFR part 58. Nonprofits recipients and other recipients that are not designated responsible entities under 24 CFR part 58 may not assume environmental review responsibilities and must receive HUD-approved environmental review under 24 CFR part 50 unless they apply in consortia with States, local governments, or Indian tribes with jurisdiction over proposed projects. In the case of NSP2 consortium applicants, States, local governments, or Indian tribes may perform the environmental reviews on behalf of consortium for projects with their jurisdiction as described under 24 CFR part 58. NSP2 grantees cannot obligate or expend Federal, or non-Federal, funds if the project or activity would limit reasonable choices or could produce an adverse environmental impact until: (1) all required environmental reviews and notifications have been completed by HUD or by a State, local government, or Indian tribe; (2) HUD notifies the grantee that the review under 24 CFR part 50 is completed; or (3) HUD or the State, local government, or Indian tribe approves a grantee's request for release of funds under the provisions contained in 24 CFR part 58.

Projects must have an environmental review unless they meet criteria specified in the regulations that would exempt or exclude them from RROF and environmental certification requirements (24 CFR sections 58.1, 58.22, 58.34, 58.35, and 570.604).

Recipients undergoing an environmental review under 24 CFR part 50 are required to: (1) supply HUD with all available, relevant information necessary for HUD to perform, for each property, any environmental review required by 24 CFR part 50 and (2) carry out mitigating measures required by HUD or select alternate eligible property. Recipient may not: (1) acquire, rehabilitate, demolish, convert, lease, repair, or construct property or (2) commit or expend HUD or other non–Federal funds for the program activities with respect to any eligible property until HUD completes the review and notifies the grantee of approval to proceed.

States, local governments, and Indian tribes that directly implement NSP2 activities are considered recipients and must assume environmental review responsibilities for the environmental activities and those of any non-governmental entity that participates in the project. These entities that directly implement activities must submit the Request for Release of Funds (RROF) and the certifications to HUD for approval (24 CFR sections 58.4(b)(1), 58.34, and 58.35).

Additional information regarding NSP environmental review requirements may be on the Internet at:

http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/docs/nsp_faq_environment.

Audit Objective - Determine whether the environmental oversight responsibilities and functions had been carried out and required approvals were obtained prior to any obligations of funds.

Suggested Audit Procedures

a. Verify through a review of environmental review certifications that the required environmental reviews were made.

b. Select a sample of projects where an environmental review was not performed and ascertain if a written determination was made that the review was not required.

c. Test whether documentation exists that any determination not to make an environmental review was made consistent with the criteria contained in 24 CFR sections 58.34 and 58.35(b)).

d. Verify that the State, local government, or Indian tribe obtained environmental review certifications from the subrecipient and that the records provide evidence that the environmental reviews were made.

e. Verify that funds were obligated and expended after HUD approval of RROFs and environmental certifications.

f. Verify that, for nonprofits and consortia grantees without State, local government, or Indian tribe members with jurisdiction over assisted projects, the environmental review under 24 CFR part 50 was completed.

4. Rehabilitation

Compliance Requirement - When NSP2 funds are used for rehabilitation, the grantee must ensure that the work is properly completed (24 CFR section 570.506).

Any NSP2-assisted rehabilitation of a foreclosed-upon home or residential property shall be completed to the extent necessary to comply with applicable laws, codes, and other requirements relating to housing safety, quality, or habitability, in order to sell, rent or redevelop such homes and properties. To comply with this provision, a grantee must describe or reference in its NSP2 application what rehabilitation standards it will apply for NSP2-assisted rehabilitation (Section 2301(d)(2) of HERA; Appendix I.I, Rehabilitation Standards of NSP2 NOFA).

Audit Objective - Determine whether the grantee assures NSP2 rehabilitation work is properly completed.

Suggested Audit Procedures

a. Review rehabilitation standards established for NSP2 work.

b. Verify through a review of documentation that the grantee inspects the rehabilitation work upon completion to assure that it is carried out in accordance with contract specifications, and that projects were carried out in accordance with rehabilitations standards.

IV. OTHER INFORMATION

ARRA gave HUD the authority to waive or specify alternative requirements for some of the CDBG statutory and regulatory provisions to facilitate the use of NSP2 funds. Most of the waivers are contained in the NSP2 NOFA.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.257 HOMELESSNESS PREVENTION AND RAPID RE-HOUSING PROGRAM (HPRP) (RECOVERY ACT FUNDED)

I. PROGRAM OBJECTIVES

The objectives of the Homelessness Prevention and Rapid Re-Housing Program (HPRP), as authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5), are to provide homelessness prevention assistance to households who would otherwise become homeless–many due to the economic crisis–and to provide assistance to rapidly re-house persons who are homeless as defined by Section 103 of the McKinney-Vento Homeless Assistance Act (42 USC 11302).

II. PROGRAM PROCEDURES

HPRP provides grants to States, metropolitan cities, urban counties, and four territories according to a formula used in the Emergency Shelter Grants Program (CFDA 14.231), with a minimum grant allocation set by the Department of Housing and Urban Development (HUD) at $500,000. A State grantee must make available all of its formula allocation, except for an appropriate share of funds for administrative costs, to the following subgrantees to carry out all eligible activities: (1) local governments in the State, which includes formula cities and counties, whether or not such cities and counties receive grant amounts directly from HUD; or (2) private non-profit organizations, if the local government in which the proposed activities are to be located certifies that it approves of each project. Metropolitan cities, urban counties, and territories, or an agency of those governments, may directly carry out eligible activities or may distribute all or part of their grant amounts to private non-profit organizations to carry out HPRP activities. In addition, any local government grantee may enter into a subgrant with another local government to carry out the program.

HPRP is focused on housing for homeless and at-risk households. It will provide temporary financial assistance and housing relocation and stabilization services to individuals and families who are homeless or would be homeless but for this assistance. The funds under this program are intended to target two populations of persons facing housing instability: (1) individuals and families who are currently in housing but are at risk of becoming homeless and need temporary assistance to prevent them from becoming homeless or assistance to move to another unit (homelessness prevention), and (2) individuals and families who are experiencing homelessness (residing in emergency or transitional shelters or on the street) and need temporary assistance in order to obtain housing and retain it (rapid re-housing). HPRP grantees must coordinate with the local Continuum of Care and with other ARRA funding streams, so that eligible activities under other ARRA programs are aligned with HPRP funds to create a comprehensive package of housing and service options available to eligible program participants.

Source of Governing Requirements

HPRP was authorized by Title XII of ARRA.

Availability of Other Program Information

Additional information about the HPRP is available on the Internet at the HUD Recovery Act website on the Internet at http://www.hud.gov/recovery, or in Notice of Allocations, Application Procedures, and Requirements for Homelessness Prevention and Rapid Re-Housing Program Grantees under the American Recovery and Reinvestment Act of 2009 (HPRP Notice), which is available on the Internet at: http://portal.hud.gov/pls/portal/docs/PAGE/RECOVERY/PROGRAMS/HOMELESSNESS_RESOURCES/HRP-NOTICE.PDF.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Allowed Activities* - There are four categories of eligible activities for the HPRP program: financial assistance, housing relocation and stabilization services, data collection and evaluation, and administrative costs.

    a. Financial assistance is limited to the following activities: short-term and medium-term tenant-based rental assistance up to 18 months, security deposits, utility deposits, utility payments, moving cost assistance, and motel and hotel vouchers for up to 30 days if housing has been identified. Grantees and subgrantees must not make payments directly to program participants, but only to third parties, such as landlords or utility companies. In addition, an assisted property may not be owned by the grantee, subgrantee or the parent, subsidiary or affiliated organization of the subgrantee.

    b. Rental assistance may also be used to pay up to 6 months of rental arrears for eligible program participants. Rental arrears may be paid if the payment enables the program participant to remain in the housing unit for which the arrears are being paid or move to another unit. All rents paid must be in compliance with HUD's standards of "rent reasonableness." (Section IV, A. Eligible Activities, in HPRP Notice)

2. *Unallowed Activities* – HPRP is not a mortgage assistance program; therefore, HPRP funds are not eligible to pay for any mortgage costs or legal or other fees associated with retaining homeowners' housing. Specifically, HPRP funds may not be used to pay for any of the following items:

    a. Construction or rehabilitation;

    b. Credit card bills or other consumer debt;

c. Car repair or other transportation costs;

d. Travel costs;

e. Food;

f. Medical or dental care and medicines;

g. Clothing and grooming;

h. Home furnishings;

i. Pet care;

j. Entertainment activities;

k. Work or education related materials;

l. Cash assistance to program participants;

m. Development of discharge planning programs in mainstream institutions such as hospitals, jails, or prisons;

n. Certifications, licenses, and general training classes (Note, training for case managers and program administrators is an eligible administrative cost as long as it is directly related to HPRP program operations); and

o. State operating costs, except for administrative costs (Section IV, B. Ineligible and Prohibited Activities, in HPRP Notice).

C. Cash Management

Any HPRP funds used to support program participants must be issued directly to the appropriate third party, such as the landlord or utility company, and in no case are funds eligible to be issued directly to program participants (Section IV, B. Ineligible and Prohibited Activities, in HPRP Notice).

G. Matching, Level of Effort, Earmarking

1. Matching – There is no match required in this program.

2. L**evel of Effort** - Not Applicable

3. Earmarking - Not more than 5 percent of the total grant may be used for administrative costs (ARRA, 123 Stat.221).

H. Period of Availability of Federal Funds

Recipients must expend at least 60 percent of such funds within 2 years of the date on which funds became available for obligation; and expend 100 percent of such funds within 3 years of such date (ARRA, 123 Stat. 221).

J. Program Income

Recipients may not charge fees to HPRP program participants (Section IV, B. Ineligible and Prohibited Activities, in HPRP Notice).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* - Not Applicable

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

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

d. SF-272, *Federal Cash Transactions Report* – Applicable

e. *Integrated Disbursement and Information System (IDIS) (OMB No. 2506-0077*) – Grantees, and as applicable, subgrantees, will use the Integrated Disbursement and Information System (IDIS) to draw down HPRP funding and report grant expenditures.

(1) C04PR02 - List of Activities by Program Year and Project (HPRP Projects Only).

(2) C04PR19 - HPRP Statistics for Projects as of Grant Year

Key Line Item: Dollars funded from HPRP Grants

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

IV. OTHER INFORMATION

ARRA gave HUD the authority to waive statutory and regulatory requirements to facilitate the use of HPRP funds.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.258 TAX CREDIT ASSISTANCE PROGRAM (TCAP) (RECOVERY ACT FUNDED)

I. PROGRAM OBJECTIVES

Title XII of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) appropriated $2.250 billion under the HOME Investment Partnerships (HOME) Program for the authorized Tax Credit Assistance Program (TCAP)(Recovery Act Funded). TCAP provides grant funds to State housing credit agencies for capital investments in rental projects that received or will receive an award of Low Income Housing Tax Credits (LIHTC) during the period from October 1, 2006 to September 30, 2009, and require additional funding to be completed and placed into service in accordance with the LIHTC requirements of Section 42 of the Internal Revenue Code (IRC).

II. PROGRAM PROCEDURES

The housing credit agency of each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico are the only eligible grantees for the TCAP program. These agencies are referred to collectively as either "State housing credit agencies" or "grantees."

The TCAP program is administered by those State housing credit agencies that receive an allocation of TCAP funds. A State may subgrant or loan all or some of its TCAP funds to a local housing credit agency.

Grantees must distribute their TCAP funds competitively in accordance with: (1) the grantee's LIHTC "qualified allocation plan" as defined in Section 42(m) of the IRC and (2) the grantee's written TCAP selection criteria. Grantees are required to give priority to eligible projects that are expected to be completed within 3 years from the date of enactment ARRA. Grantees can decide whether to provide TCAP funds to eligible projects through subgrants or loans.

Grantees must provide TCAP assistance to a project in the same manner and subject to the same limitations (including rent, income, use restrictions and compliance monitoring) as required by the State housing credit agency with respect to an "award of LIHTC" to the project (i.e., as required under Section 42 of the IRC and its implementing regulations).

Grantees can only provide TCAP funds to rental projects that received or will receive an "award of LIHTCs" during the period from October 1, 2006, to September 30, 2009. The State housing credit agency must define an "award of LIHTCs," which can be as early as the date of public notice of the funding decision for a particular LIHTC project but no earlier than October 1, 2006. The same definition of "award of LIHTCs" must be uniformly applied to all LIHTC projects in that State for the purpose of determining project eligibility for TCAP funding.

Source of Governing Requirements

TCAP was established by Title XII of ARRA. Although TCAP funds were appropriated under the HOME Investment Partnerships Program heading of ARRA, the HOME program requirements found in 24 CFR part 92 and the Consolidated Planning requirements found in 24 CFR part 91 do not apply to TCAP funds. HUD has not issued TCAP regulations. TCAP is governed by the applicable provisions of ARRA, the implementing guidance provided by HUD, and the grant agreement executed by HUD and the grantee.

The Internal Revenue Service (IRS) is responsible for issuing regulations and guidance that apply to the LIHTC program (Section 42 of the IRC). HUD is not issuing separate guidance concerning TCAP compliance with LIHTC requirements.

Availability of Other Program Information

On May 4, 2009, HUD issued Notice CPD-09-03 that sets forth the TCAP submission requirements, eligible uses of funds, and program requirements. HUD has also issued "TCAP Questions and Answers." HUD will issue supplemental or interpretive guidance on program requirements, including the process for disbursing funds, recordkeeping, reporting, and applicable Federal grant requirements, as this guidance becomes available. Information on the TCAP program and TCAP requirements and guidance, including HUD Notice CPD-09-03 and "TCAP Questions and Answers," is posted on the Internet under Programs at: http://www.hud.gov/recovery/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. TCAP funds must be used funds for capital investment in eligible LIHTC projects. "Capital investment" means costs that are included in the "eligible basis" of a project under Section 42 of the IRC (ARRA 123 Stat. 220). [Note: HUD is considering adding land acquisition, demolition and hazardous material remediation as eligible costs.]

2. TCAP funds cannot be used for administrative costs, including costs incurred for operating the program or compliance monitoring (ARRA 123 Stat. 220).

3. Projects eligible to receive TCAP assistance are rental housing projects that:

    a. Received or will receive an "award of LIHTCs" under Section 42(h) of the IRC or section 1400N of the IRC (e.g., Gulf Opportunity Zone and Midwestern Disaster Area Housing Credits) during the period from October 1, 2006 to September 30, 2009; and

b. Require additional funding to be completed and placed into service in accordance with the requirements of Section 42 of the IRC (ARRA 123 Stat. 220; Section 1204 of Pub. L. No. 111-32).

4. Projects awarded LIHTCs that will also receive bond financing are eligible to receive TCAP funds. However, if the project's only source of credits is the Gulf Opportunity Zone or Midwestern Disaster Area Housing Credits, the project is not an eligible TCAP project since its credits were not awarded under Section 42(h) of the IRC. (See TCAP "General Questions and Answers" for more guidance.)

D. Davis-Bacon Act

Contractors and subcontractors are required to pay prevailing wages to laborers and mechanics in compliance with the Davis-Bacon Act (Section 1606 of ARRA).

H. Period of Availability of Federal Funds

A grantee must commit not less than 75 percent of its TCAP grant within 1 year of the enactment of ARRA and demonstrate that all project owners have expended 75 percent of the TCAP funds within 2 years of the enactment of ARRA (i.e., by February 16, 2011). Grantees must expend 100 percent of their funds within 3 years of the enactment of ARRA (i.e., by February 16, 2012). A TCAP Funding Commitment is recorded on the date of execution of the Written Agreement between the grantee and project owner that provides TCAP assistance to a project (ARRA, 123 Stat. 220).

N. Special Tests and Provisions

1. Drawdowns of TCAP Funds

Compliance Requirement - The Integrated Disbursement and Information System (*OMB No. 2506-0181*) is used both to collect information on compliance with program requirements and to disburse TCAP funds. Grantees are required to have different staffs setting up projects and drawing down funds. Grantees must maintain payment certifications each time a drawdown of funds is made (HUD Notice CPD-09-03).

Audit Objective - Determine whether the required separation of duties is maintained over the drawdown of TCAP funds.

Suggested Audit Procedures

a. Verify that the persons setting up projects are not the same as the person drawing down funds.

b. Verify that TCAP payment certification amounts match the amount of disbursements.

2. Asset Management

Compliance Requirement - Grantees must perform asset management functions, or contract for performance of these services at the owner's expense, to ensure compliance with Section 42 of the IRC and with the long term viability of projects funded by TCAP (ARRA, 123 Stat. 221).

Audit Objective - Determine whether the grantee is performing asset management reviews and taking actions to ensure the long term viability of TCAP projects.

Suggested Audit Procedures

a. Review the grantee's asset management system that ensures the long term viability of TCAP projects.

b. For a sample of projects, review records to verify that the grantee is complying with the asset review requirements.

CFDA 14.318 ASSISTED HOUSING STABILITY AND ENERGY AND GREEN RETROFIT INVESTMENTS PROGRAM (RECOVERY ACT FUNDED)

I. PROGRAM OBJECTIVES

The objective of the Assisted Housing Stability and Energy and Green Retrofit Investments Program is to make loans, make grants, and take a variety of other actions to facilitate utility-saving and other green building retrofits, in certain existing HUD-assisted multifamily housing, subject to agreement between HUD and the Owner. The program is also called the Green Retrofit Program for Multifamily Housing (GRP).

II. PROGRAM PROCEDURES

HUD will implement the GRP through the Office of Affordable Housing Preservation (OAHP) using, where appropriate, policy and program approaches developed for the Mark-to-Market Green Initiative, including using existing infrastructure for program management, due diligence, underwriting, closing, and rehabilitation escrow administration. Certain Mark-to-Market participating administrative entities (PAEs) will carry out due diligence, underwriting and negotiation activities, and closing for the GRP pursuant to each PAE's existing portfolio restructuring agreement, as amended.

Upon assignment of an eligible project to a PAE, the PAE will first verify eligibility and confirm that HUD's requirements for GRP participation are met or exceeded. The PAE will then commission, among other appropriate due diligence, a GRP Physical Condition Assessment (GRPCA) that will evaluate the opportunities for green retrofits and green operation. The PAE will also conduct a tenant meeting at the project to gain input from the tenants on energy and water conservation measures, indoor air quality, and other items that benefit the environment generally (all items that may be eligible for funding as Green Retrofits).

Upon completion of due diligence and underwriting, the PAE will discuss its recommended green retrofit plan with the owner. If the Owner accepts the plan, the PAE will present it to HUD for approval. If the plan is approved, the PAE will prepare a Green Retrofit Plan Commitment that it offers to the owner. Green Retrofit Plan Commitments will be executed by HUD subject to availability of funding. Closing must occur within 30 days after HUD executes the Green Retrofit Plan Commitment. Funding will be obligated at the closing of the grant or loan. Funding will go into an escrow account, overseen by HUD, to pay for the agreed upon retrofits.

Source of Governing Requirements

This program is authorized by Section XII of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) and implemented by HUD Notice H-09-02, published on May 13, 2009, with public notice in the *Federal Register* on May 18, 2009 (74 FR 23200).

Availability of Other Program Information

General information about HUD programs is available on the Internet at http://www.hud.gov/funds/index.cfm. Information on this program, including the HUD Notice H-09-02, is available on HUD's ARRA website on the Internet at (http://www.hud.gov/recovery).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

D. Davis-Bacon Act

All construction activities, including those conducted by an owner's employees performing construction work, are subject to the Davis-Bacon Act (Section 1606 of ARRA)(See paragraph IV.I.4 of HUD Notice H-09-02).

H. Period of Availability of Federal Funds

Owners must expend 100 percent of GRP funds within 2 years of the date on which funds became available to them (ARRA, 123 Stat. 223).

I. Procurement and Suspension and Debarment

The ARRA requirement for recipients must use only iron, steel, and manufactured goods produced in the United States in their projects does not apply to this program because it does not fund public works projects (Section 1605 of ARRA).

IV. OTHER INFORMATION

ARRA gave HUD the authority to waive or specify alternative requirements for some of the statutory and regulatory provisions to facilitate the use of ARRA funds.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.862 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
CFDA 14.886 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (RECOVERY ACT FUNDED)

I. PROGRAM OBJECTIVES

The primary objective of the Indian Community Development Block Grant (CDBG) programs is the development of viable Indian and Alaskan Native communities, including decent housing, a suitable living environment, and expanded economic opportunities, principally for persons of low- and moderate-income. Indian CDBG assistance may not be used to reduce substantially the amount of local financial support for community development activities below the level of support prior to the availability of the assistance (24 CFR section 1003.2). **In addition, the objectives of the Indian CDBG (Recovery Act Funded) program are to reduce greenhouse gas emission, decrease consumer energy costs, increase the quality and longevity of Native American housing stock, unlock private lending, and create or preserve jobs.**

II. PROGRAM PROCEDURES

Two types of grants are eligible under the Indian CDBG program. Single-purpose grants provide funds for one or more single purpose projects which consist of an activity or set of activities designed to meet a specific community development need. This type of grant is awarded through competition with other single-purpose projects. Imminent threat grants alleviate an imminent threat to public health or safety that requires immediate resolution. This type of grant is awarded only after a HUD area office determines that such conditions exist and that funds are available for such grants (24 CFR section 1003.100).

For the Indian CDBG (Recovery Act Funded), only single-purpose grants are awarded through competition with other single-purpose projects. These grants will be awarded only to entities that received Indian CDBG funds in Fiscal Year 2008.

Source of Governing Requirements

The Indian CDBG (Recovery Act Funded) is authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5). Implementing regulations are published at 24 CFR part 1003.

Availability of Other Program Information

Additional information about the Indian CDBG program is available on the Internet at http://www.hud.gov/offices/pih/ih/grants/icdbg.cfm. **Additional information about the Indian CDBG (Recovery Act Funded) program is available on the Internet at http://www.hud.gov/recovery.**

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Indian CDBG* - Funds (including program income generated by activities carried out with grant funds) may only be used for the following activities: (1) the acquisition of real property; (2) the acquisition, construction, reconstruction, or installation of public works, facilities, and site, or other improvements; (3) code enforcement in deteriorated or deteriorating areas; (4) clearance, demolition, removal, and rehabilitation of buildings and improvements; (5) special projects for removal of material and architectural barriers that restrict accessibility by elderly and handicapped individuals; (6) payments to housing owners for losses of rental income incurred in temporarily holding housing for the relocated; (7) disposition of real property acquired under this program; (8) provision of public services (subject to limitations contained in regulations and to certain HUD determinations); (9) payment of the non-Federal share for a grant program that is part of the assisted activities; (10) payment to complete a Title 1 Federal Urban Renewal project; (11) relocation assistance; (12) planning activities; (13) administrative costs; (14) acquisition, construction, reconstruction, rehabilitation, or installation of commercial or industrial buildings; (15) assistance to community-based development organizations; (16) activities related to energy use; (17) assistance to private, for-profit business, when appropriate to carry out an economic development project; (18) substantial reconstruction of housing owned and occupied by low- and moderate-income persons (subject to certain HUD determinations); (19) direct assistance to facilitate and expand homeownership; (20) technical assistance to public or private entities for capacity building (exempt from planning/administration cap); (21) housing counseling and housing activity delivery costs under Indian CDBG and Indian HOME; (22) assistance to colleges and universities to carry out eligible activities; and (23) assistance to public and private entities (including for-profits) to assist micro-enterprises (24 CFR sections 1003.201 through 1003.206).

2. ***Indian CDBG (Recovery Act Funded)*** **- Funds (including program income generated by activities carried out with grant funds) may be used for the following activities: (1) construction of new housing; (2) rehabilitation of existing housing; (3) acquisition of land to support new housing and public facilities; (3) direct assistance to low- and moderate-income households to facilitate homeownership; (4) construction of tribal and other facilities for single or multiple use, construction of streets, and construction of other public facilities; and (5) economic development projects (see Notice of Funding Availability (NOFA) posted on the Internet at http://hud.gov/recovery) (ARRA, 123 Stat. 217 through 220).**

F. Equipment and Real Property Management

1. For equipment purchased with Indian CDBG funds, including ARRA funds, the requirements of 24 CFR section 85.32 apply with the exception that when the equipment is sold, the proceeds are considered program income (24 CFR section 1003.501(a)(9)).

2. Generally, when real property that was acquired or improved using Indian CDBG program funds, including ARRA funds, in excess of $25,000 is disposed of, the Indian CDBG program or Indian CDBG (Recovery Act Funded) must be reimbursed for its fair share of the current market value of the property. If disposition occurs after program closeout, the proceeds shall be used for allowable activities and meeting the primary objective of the program (24 CFR section 1003.504).

G. Matching, Level of Effort, Earmarking

1. Matching - Not Applicable

2. Level of Effort - Not Applicable

3. Earmarking

a. To be eligible under either Indian CDBG program, a single-purpose grant activity must benefit low- and moderate-income persons. To meet this requirement, not less than 70 percent of the funds of each single-purpose grant must be used for activities that benefit low-and moderate-income persons under the criteria set forth in 24 CFR sections 1003.208(a), (b), (c), or (d). In determining the percentage of funds used for such activities, the provisions of 24 CFR section 1003.208(e)(4) apply.

b. No more that 20 percent of the total grant plus program income received during a program year may be obligated during that year for activities that qualify as planning and administration pursuant to 24 CFR sections 1003.205 and 1003.206 (24 CFR section 1003.206). Technical assistance costs associated with developing the capacity to undertake a specific funded program activity are not considered administrative costs and are not included in the 20 percent limitation on planning and administration costs (24 CFR section 1003.206).

c. Public service activities may comprise no more than 15 percent of the total grant award 24 CFR section 1003.201(e).

H. Period of Availability of Federal Funds

For the Indian CDBG (Recovery Act Funded), grantees must obligate 100 percent of the funds by September 30, 2010, and Implementation Schedules (Form HUD 4125 (*OMB No. 2577-0191*) cannot exceed September 30, 2012 (see NOFA posted on the Internet at http://www.hud.gov/recovery.

I. Procurement and Suspension and Debarment

Indian CDBG (Recovery Act Funded) recipients are exempt from the ARRA requirements to use only iron, steel, and manufactured goods produced in the United States in their projects (Section 1605 of ARRA).

J. Program Income

Program income received before grant closeout may be retained by the non-Federal entity if the income is treated as additional Indian CDBG (or **Indian CDBG (Recovery Act Funded))** funds subject to all the applicable requirements governing the use of Indian CDBG **or Indian CDBG (Recovery Act Funded) funds**. However, as noted in 24 CFR section 1003.503(b)(4), program income does not include the first $25,000 in program income received by the grantee and all of its subrecipients in any single year if the total amount of such income does not exceed $25,000 (24 CFR section 1003.503).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

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

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

d. SF-272, *Federal Cash Transactions Report* – Applicable

2. Performance Reporting

HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons* (*OMB No. 2529-0043*) – For each Indian CDBG that involves development, operating, or modernization assistance, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a), 135.5, and 135.90).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 2. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting - Not Applicable

M. Subrecipient Monitoring

Before disbursing any Indian CDBG **or Indian CDBG (Recovery Act Funded)** funds to a subrecipient, the recipient shall sign a written agreement with the subrecipient. The agreement shall include provisions concerning: the statement of work, records and reports, program income, uniform administrative requirements, and reversion of assets (24 CFR section 1003.502).

N. Special Tests and Provisions

1. Environmental Assessments

Compliance Requirement - An environmental assessment must be prepared for a project unless the grantee determined that it met a criterion specified in the regulations that would exempt or exclude it from Request for Release of Funds (RROF) and environmental certification requirements (24 CFR sections 58.34 and 58.35). Exempt activities do not require an environmental review; activities which are potential

exclusions require an environmental review to determine if an exclusion is applicable. If not applicable, an assessment must be done (24 CFR section 1003.605).

Audit Objective - Determine whether the required environmental reviews are being performed.

Suggested Audit Procedures

a. Select a sample of projects for which expenditures were made and verify that environmental certifications exist.

b. Ascertain that the certifications were supported by an environmental assessment.

c. For any project where an environmental assessment was not performed, ascertain that a written determination was made that the assessment was not required.

d. Ascertain whether documentation exists that any determination not to do an environmental assessment was made consistent with the criteria contained in 24 CFR sections 58.34 and 58.35.

2. Release of Funds

Compliance Requirement - Indian CDBG funds **or Indian CDBG (Recovery Act Funded)** (and local funds to be repaid with Indian CDBG funds) cannot be obligated or expended before receipt of HUD's approval of a RROF and environmental certification, except for exempt activities under 24 CFR section 58.34 or activities found to be categorically excluded under 24 CFR section 58.35 (24 CFR sections 58.22, 58.33 through 35, and 1003.605).

Audit Objective - Determine whether funds were obligated or expended before HUD's approval of the RROF and environmental certification.

Suggested Audit Procedures

a. Examine HUD's approval of the RROF and environmental certification and note receipt dates.

b. Review the expenditure and related records and determine the dates the funds were obligated or expended.

c. Determine that funds, including other than Indian CDBG funds that were subsequently reimbursed by Indian CDBG funds, **or Indian CDBG (Recovery Act Funded**), were obligated or expended subsequent to RROF and environmental certification approval by HUD.

IV. OTHER INFORMATION

For Indian CDBG (Recovery Act Funded) funds, ARRA gave HUD the authority to waive or specify alternative requirements for some of the Indian CDBG statutory and regulatory provisions to facilitate the use of Indian CDBG (Recovery Act Funded) funds. Waivers of some or all of the following requirements have been approved for applications submitted pursuant to the Indian CDBG (Recovery Act Funded) NOFA: Housing Rehabilitation Standards; New Construction Standards; Economic Development Project Analysis; and Citizen Participation Requirement. Applicants are to include in their application which waivers, if any, they will use.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.867 INDIAN HOUSING BLOCK GRANTS
CFDA 14.882 NATIVE AMERICAN HOUSING BLOCK GRANTS (FORMULA) RECOVERY ACT FUNDED
CFDA 14.887 NATIVE AMERICAN HOUSING BLOCK GRANTS (COMPETITIVE) RECOVERY ACT FUNDED

I. PROGRAM OBJECTIVES

The primary objectives of the Indian Housing Block Grants (IHBG) program **and the Native American Housing Block Grant (NAHBG) programs under the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5)** are: (1) to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments on Indian reservations and in other Indian areas for occupancy by low-income Indian families; (2) to coordinate activities to provide housing for Indian tribes and their members and to promote self-sufficiency of Indian tribes and their members; and (3) to plan for and integrate infrastructure resources for Indian tribes with housing development for Indian tribes (24 CFR section 1000.4).

II. PROGRAM PROCEDURES

The IHBG program is formula driven, based on factors that reflect the need of the Indian tribes and the Indian areas of the tribes for assistance for affordable housing activities. To access funds, Indian tribal governments (or tribally designated housing entities (TDHEs)) must submit an Indian Housing Plan (IHP) to the Department of Housing and Urban Development (HUD), and HUD must find that the IHP meets the requirements of Section 102 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). IHBG funds awarded to a recipient may only be used for affordable housing activities that are consistent with its IHP (24 CFR section 1000.6).

Funds under the NAHBG (Formula) program are distributed according to the same funding formula that was used to allocate IHBG funds in Fiscal Year (FY) 2008. To access funds, Indian tribal governments (or TDHEs) must submit an IHP amendment to their FY 2008 IHP to HUD, and HUD must find that the IHP meets the requirements of Section 102 of NAHASDA and ARRA. If a tribe/TDHE did not receive IHBG funds in FY 2008 and received a waiver to receive NAHBG funds, the entity must submit an IHP to receive ARRA funds. NAHBG funds awarded to a recipient may only be used for affordable housing activities that are consistent with its IHP (24 CFR section 1000.6 and ARRA).

Funds under the NAHBG (Competitive) program are awarded through competition with other Tribes or TDHEs across the country. Applications will be reviewed, rated, and awarded as received. The rating factors are: (1) capacity of the applicant, (2) soundness of approach, (3) project readiness, and (4) ARRA priorities. See the Notice of Funding Availability posted on the Internet at http://www.hud.gov/recovery.)

Source of Governing Requirements

These programs are authorized by NAHASDA, codified at 25 USC 4101 through 4212 **and ARRA**. Implementing regulations are in 24 CFR part 1000.

Availability of Other Program Information

Additional information about the IHBG program is available on the Internet at http://www.hud.gov/offices/pih/ih/grants/ihbg.cfm. **Additional information about the NAHBG programs is available on the Internet at http://www.hud.gov/recovery.**

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *IHBG* - The following activities to develop or to support affordable housing for rental or home ownership, or to provide housing services with respect to affordable housing are allowable with IHBG funds:

    a. *Indian Housing Assistance* - The provision of modernization or operating assistance for housing previously developed or operated pursuant to a contract between the Secretary and an Indian housing authority, including such amounts as may be necessary to provide for the continued maintenance and efficient operation of such housing (25 USC 4132(1) and 4133(b)).

    b. *Development* - The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related activities (25 USC 4132(2)).

    c. *Housing Services* - The provision of housing-related services for affordable housing, such as housing counseling in connection with rental or home-ownership assistance, establishment and support of resident organizations and resident management corporations, energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in other housing activities assisted pursuant to this section (25 USC 4132(3)).

d. *Housing Management Services* - The provision of management services for affordable housing, including preparation of work specifications; loan processing, inspections; tenant selection; management of tenant-based rental assistance; and management of affordable housing projects (25 USC 4132(4)).

e. *Crime Prevention and Safety Activities* - The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime (25 USC 4132(5)).

f. *Model Activities* - Housing activities under model programs that are designed to carry out the purposes of NAHASDA and are specifically approved by the Secretary as appropriate for such purpose (25 USC 4132(6)).

2. **IHBG and NAHBG -** Unless the conditions specified in 25 USC 4111(d) (regarding tax exemption for real and personal property taxes and user fees) are met, **IHBG and NAHBG** grants funds may not be used for affordable housing activities for rental or lease-purchase dwelling units developed:

a. Under the United States Housing Act of 1937 (42 USC 1437 *et seq*.), or

b. With amounts provided under 25 USC Chapter 43 that are owned by the recipient for the tribe.

3. NAHBG funds (including program income generated by activities carried out with grant funds) may only be used for NAHASDA-eligible activities, including:

a. New construction, acquisition, and rehabilitation of affordable housing, including energy efficiency and conservation;

b. Infrastructure development;

c. Site improvement;

d. Development and rehabilitation of utilities and infrastructure;

e. Utility services;

f. Mold remediation;

g. Investments that leverage private sector funding or financing for renovations;

h. Conversion, demolition, and other financing; and

i. Planning and administration (ARRA, 123 Stat. 215 through 217).

D. Davis-Bacon Act

NAHASDA **and ARRA** impose the Davis-Bacon Act on contracts and agreements for assistance, sale, or lease for payments to laborers and mechanics employed in the development of affordable housing. **However, when using IHBG and NAHBG grant funds,** Indian tribes may determine and apply their own prevailing wage rates in their contracts or agreements for the development and operation of affordable housing in place of federally determined prevailing wage rates.

In general, NAHASDA provides that Davis-Bacon and HUD-determined rates shall not apply to a contract or agreement if the contract or agreement is otherwise covered by a law or regulation adopted by an Indian tribe that provides for the payment of not less than prevailing wages as determined by the tribe. This requires the Indian tribe to pass a tribal law or regulation and ensure that the law requires the payment of not less than those wage rates the tribe determines to be prevailing (Section 104(b) of NAHASDA; 25 USC 4114(b); **Section 1606 of ARRA; Section 1205 of Pub. L. No. 111-32, signed on June 24, 2009; and** 24 CFR section 1000.16)).

E. Eligibility

1. Eligibility for Individuals

Each recipient shall develop written policies governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under NAHASDA **and ARRA** (25 USC 4133(d)). The following families are eligible for affordable housing activities (25 USC 4131(b)):

a. Low-income Indian families on a reservation or Indian area (24 CFR section 1000.104(a)).

b. A non-low-income Indian family may receive housing assistance in accordance with 24 CFR section 1000.110, except that non-low income Indian families residing in housing assisted under the Housing Act of 1937 (42 USC 1437 *et seq*.) do not have to meet the requirements of 24 CFR section 1000.110 for continued occupancy (24 CFR section 1000.104(b)).

c. A non-Indian family may receive housing assistance on a reservation or Indian area if the non-Indian family's housing needs cannot be reasonably met without such assistance, and the recipient determines that the presence of that family on the reservation or Indian area is essential to the well-being of Indian families, except that non-Indian families residing in housing assisted under the Housing Act of 1937 do not have to meet these requirements for continued occupancy (24 CFR section 1000.104(c)).

Housing assistance for non-low income Indian families requires HUD approval only as required in 24 CFR sections 1000.108 and 1000.110. Assistance under section 201(b)(3) of NAHASDA for non-Indian families does not require HUD approval, but only requires that the recipient determine that the presence of that

family on the reservation or Indian area is essential to the well-being of Indian families and the non-Indian family's housing needs cannot be reasonably met without such assistance (24 CFR section 1000.106).

2. Eligibility for Group of Individuals or Area of Service Delivery - Not Applicable

3. Eligibility for Subrecipients - Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching - Not Applicable

2. Level of Effort - Not Applicable

3. Earmarking

a. Up to 10 percent of an annual grant may be used to provide housing assistance to families whose adjusted income (defined at 25 USC 4103(1)) falls within 80 to 100 percent of the median income (defined at 24 CFR section 1000.10). HUD approval is required to exceed this 10 percent cap or to provide assistance to families with incomes in excess of 100 percent of the median income (24 CFR section 1000.110(d)).

b. A recipient may use up to 20 percent of its annual grant for administration and planning. HUD approval must be obtained to exceed this percentage (24 CFR section 1000.238).

H. Period of Availability of Federal Funds

For the NAHBG programs, recipients must obligate 100 percent of their funds within 1 year of the date funds are made available; expend at least 50 percent of such funds within 2 years of the date on which funds became available; and expend 100 percent of such funds within 3 years of such date (ARRA, 123 Stat. 216).

I. Procurement and Suspension and Debarment

For the NAHBG programs, recipients are exempt from the ARRA requirements to use only iron, steel, and manufactured goods produced in the United States in their projects (Section 1605 of ARRA).

J. Program Income

Any program income may be retained by a recipient provided it is used for affordable housing activities, as specified for each program (see III.A above), in accordance with 25 USC 4132. If the amount of income received in a single year by a recipient and all of its subrecipients, which would otherwise be considered program income, does not exceed $25,000, such funds may be retained but will not be considered to be or be treated as program income (24 CFR section 1000.62).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* - Not Applicable

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

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

d. SF-272, *Federal Cash Transactions Report* - Not Applicable

e. HUD-272-I, *Federal Cash Transactions Report* (*OMB No. 2577-0218*) Applicable

2. Performance Reporting

a. HUD-52735-AS, *Annual Performance Report (OMB No. 2577-0218)* - This report is submitted by paper or electronically via the Internet to the Area Office of Native American Programs (ONAP) within 90 days of the end of the recipient's program year.

Key Line Items - The following items contain critical information:

(1) Part I, Table I - Sources of Funds - column c.

(2) Part I, Table II – Uses of Funds - columns e through i.

(3) Part II, Table III – Inspection of Assisted Housing - columns c through g.

b. HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons* (*OMB No. 2529-0043*) – For each IHBG that involves development, operating, or modernization assistance, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a), 135.5, and 135.90).

Key Line Items –

(1) 3. Dollar Amount of Award

(2) 8. Program Code

(3) Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

(4) Part II, Contracts Awarded, 1. Construction Contracts

(a) A. Total dollar amount of construction contracts awarded on the project

(b) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(c) D. Total number of Section 3 businesses receiving construction contracts

(5) Part II, Contracts Awarded, 2. Non-Construction Contracts

(a) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(b) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(c) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting - Not Applicable

N. Special Tests and Provisions

1. Environmental Review – IHBG and NAHBG

Compliance Requirement - Program regulations provide that a recipient (or beneficiary tribe, if the recipient is a TDHE) may assume responsibilities for environmental review and decision making under the requirements of 24 CFR part 58 or it may allow HUD to retain these responsibilities. If HUD retains the responsibilities, HUD will do reviews under the provisions of 24 CFR part 50 (24 CFR section 1000.20). A HUD environmental review must be completed for any activities not excluded before a recipient may acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds (24 CFR section 1000.20(a)).

If the recipient or beneficiary tribe assumes these responsibilities, the following applies: an environmental assessment must be prepared for an activity unless the recipient (or beneficiary tribe, if the recipient is a TDHE) determined that the activity met a criterion specified in the regulations that would exempt or exclude it from Request for Release of Funds (RROF) and environmental certification requirements (24 CFR sections 58.34 and 58.35). Exempt activities do not require an environmental review; activities that are potential exclusions require an environmental review to determine if an exclusion is applicable. If not applicable, an assessment must be done. No funds may be committed to a grant activity or project before the completion of the environmental review and approval of the request for release of funds and related certification required by 25 USC 4115(b), except as authorized by 24 CFR section 58, such as for the costs of environmental reviews and other planning and administrative expenses (24 CFR section 1000.20(b)(3)).

Audit Objective - Determine whether (1) the required environmental reviews have been performed and (2) program funds were not obligated or expended prior to completion of the environmental review process.

Suggested Audit Procedures

Select a sample of projects for which expenditures were made and verify that:

a. Environmental certifications were supported by an environmental assessment.

b. For any project where an environmental assessment was not performed, a written determination was made that the assessment was not required and documentation exists to support such determination consistent with the criteria contained in 24 CFR sections 58.34 and 58.35.

c. Funds were not obligated or expended prior to the environmental assessment or a determination that an assessment was not required.

2. Investment of IHBG *and NAHBG* Funds

Compliance Requirement - A recipient may invest IHBG **and NAHBG** funds for purposes of carrying out IHBG **and NAHBG** activities in investment securities if approved by HUD (24 CFR section 1000.58). Investments may be for a period of time not to exceed two years and only in those accounts or instruments identified in 24 CFR section 1000.58 (c). The amount of IHBG **and NAHBG** funds and percentage of those funds which may be invested is restricted by the provisions of 24 CFR section 1000.58(f).

Audit Objective - Determine whether the investment of IHBG **and NAHBG** funds by the recipient meets the requirements of 24 CFR section 1000.58.

Suggested Audit Procedures

If IHBG **or NAHBG** funds have been invested during the audit period:

a. Ascertain that prior written HUD approval had been obtained, and any conditions or restrictions on the approval.

b. Verify that the amount invested is no greater than the allowable percentages of the formula grant amount net of any of this amount allocated for the operating subsidy element of the Formula Current Assisted Stock (FCAS) component of the formula.

c. Verify that the funds were invested only in those allowable accounts or instruments and within any conditions or restriction on the approval.

IV. OTHER INFORMATION

For NAHBG funds, ARRA gave HUD the authority to waive or specify alternative requirements for some of the IHBG statutory and regulatory provisions to facilitate the use of NAHBG funds. Waivers of some or all of the following requirements have been approved in relation to IHPs: Local Cooperation Agreements, and Total Development Costs. Applicants are to submit a letter with the IHP or application (as applicable) identifying which waivers, if any, they will use.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.872 PUBLIC HOUSING CAPITAL FUND (CFP)
CFDA 14.884 PUBLIC HOUSING CAPITAL FUND COMPETITIVE (RECOVERY ACT FUNDED)
CFDA 14.885 PUBLIC HOUSING CAPITAL FUND STIMULUS (FORMULA) RECOVERY ACT FUNDED

I. PROGRAM OBJECTIVES

The primary objective of the Capital Fund Programs (CFP) is to make assistance available to public housing agencies (PHAs) to carry out capital and management improvement activities. The CFP can also be used for: demolition, resident relocation, resident economic development, security, financing costs, and homeownership. The CFP is the major source of funding made available by HUD to PHAs for their capital activities, including modernization and development of public housing.

The objectives of modernization activities are to improve the physical condition of existing public housing developments, including the redesign, reconstruction, addition, and reconfiguration of public housing sites, buildings, facilities and/or related appurtenances or improvements (including accessibility improvements).

The objectives of management improvement activities are to upgrade the operation of PHA developments, sustain physical improvements at those developments, or correct management deficiencies.

The objectives of development activities are to provide PHAs with the opportunity to replace, build, or acquire units to house low-income families, including costs for planning, financing, land acquisition, demolition, and construction.

II. PROGRAM PROCEDURES

CFP grants are made available to all PHAs, based on a complex formula, which takes into account a number of variables related to unit characteristics and, ultimately, multiplies a per-unit amount by the number of units in the PHA. The PHA also receives funding potentially for up to 10 years for units that have been torn down (or otherwise left the inventory). There are two types of grants: formula grants and replacement housing factor (RHF) grants (both determined by formula). PHAs can use formula grants for any eligible Capital Fund activity. RHF grants can only be used for the development of replacement housing units.

In recent years, Congress has set aside anywhere from $17 to $75 million within the Capital Fund account to assist PHAs that have incurred damage to their units as a result of an emergency or natural disaster. PHAs submit an application for this funding. The funding is allocated based on the order in which the Department of Housing and Urban Development (HUD) receives approvable applications.

In recent years, HUD has permitted PHAs to borrow funding secured to a portion of future Capital Fund grants under the Capital Fund Financing Program (CFFP). PHAs have to obtain HUD's permission prior to borrowing funds securitized by any public housing asset (including real property, other PHA owned property purchased with Federal grant funds, and CFP grant funds themselves). HUD reviews each transaction to ensure that PHAs will not be overcommitted to payment of debt service to the detriment of the public housing stock/program, for the reasonableness of the terms of the transaction, and to mitigate risk of default.

In planning its modernization projects, the PHA is required to consult with residents and local government officials. After grant award, the PHA may select an architect or engineer through competitive negotiation to develop the plans and specifications for the construction work. Construction work, as well as management improvements, may be carried out through contract labor (competitively procured) or the PHA's own work force (force account). The PHA or its architect monitors the work in progress for compliance with contract requirements and acceptable work quality, and submits periodic progress reports to HUD.

PHAs develop additional public housing, including mixed-financed housing in accordance with 24 CFR section 941. For development projects, the PHA is responsible for negotiating a local cooperation agreement that establishes what services the locality will provide to the public housing project, for project planning, and for submitting a development proposal (and a site acquisition proposal, if applicable). This includes selecting sites or properties to be acquired, contracting with builders to construct or rehabilitate housing, contracting with developers for the purchase of completed (new or rehabilitated) housing, and purchasing existing housing that may require repairs. In addition, as a developer, the PHA is responsible for selecting and contracting with other parties (e.g., architects and engineers) and for expediting and coordinating the preparation of required HUD submissions.

On an annual basis, the PHA submits a Public Housing Agency Plan *(OMB No. 2577-0226 –* Form HUD-50075*),* based on the PHA fiscal year, to HUD for approval. The Plan includes a component that outlines the CFP activities the PHA plans to undertake with its Capital Fund annual allocation. A 5-year plan identifying anticipated expenditures for large capital items is also included. Prior to submitting the Plan to HUD for review and approval, the PHA must hold a public hearing and provide residents, local government officials, and other interested parties with an opportunity to comment on the proposed activities.

HUD provides approval for specific activities through approving the PHA Plan, which includes the PHA's budget for CFP funds (24 CFR section 968.315). On an annual basis, the PHA also provides HUD with its Annual Statement Component 7 of the PHA Plan (Form HUD-50075, *OMB No. 2577-0226*) in accordance with 24 CFR section 968.325(e), which details the eligible activities to be funded with the current year's grant and the estimated costs. A PHA must have an approved 5-year plan to have access to Capital Funds. The funds are limited to a certain number of budget line items (BLIs) until HUD approves the annual Plan. Once HUD approves the annual Plan, it spreads Capital Funds to all of the appropriate BLIs in the Line of Credit Control System (LOCCS) in accordance with the information contained in the PHA Plan. The PHA can then drawdown funds as needed on a 3-day turnaround basis to pay for approved work activities.

In accordance with HUD's Uniform Financial Reporting Standards rule, annually, a PHA is required to submit financial statements, prepared in accordance with generally accepted accounting principles (GAAP), in the electronic format specified by HUD. The unaudited financial statement is due 2 months after the PHA's fiscal year end and the audited financial statement is due 9 months after its fiscal year end (24 CFR section 5.801). The financial statement must include the financial activities of this program.

PHAs file actual modernization cost certificates (AMCC) and actual development cost certificates (ADCC) with the local HUD Field Office when they complete a modernization or development project.

Public Housing Capital Fund Competitive (Recovery Act Funded)

Title XII of the American Recovery and Reinvestment Act of 2009 (ARRA)(Pub. L. No. 111-5) provided additional funding for projects through the CFP. On May 12, 2009, HUD issued a Notice of Fund Availability (NOFA) in the Federal Register (74 FR 22175) for a competitive program to PHAs for Capital Fund activities authorized under section 9 of the United States Housing Act of 1937, as amended, with four funding categories:

Category 1. Improvements Addressing the Needs of the Elderly and/or Persons with Disabilities.

Category 2. Public Housing Transformation.

Category 3. Gap Financing for Projects that are Stalled due to Financing Issues.

Category 4. Creation of Energy Efficient Green Communities.

Eligible applicants are all public housing agencies. If an applicant PHA has been designated as troubled, it must meet specific requirements of the NOFA and be approved by HUD, in order to be considered.

As part of the application for Category 1 and Category 4 (Moderate Rehabilitation)**, a PHA must submit an Annual Statement (Form HUD-50075.1, Parts I & II, *OMB No. 2577-0226*) in accordance with 24 CFR section 968.325(e), which details the eligible activities to be funded with the current year's grant and the estimated costs. PHAs applying for grants in Category 2, Category 3, and Category 4** (Substantial Rehabilitation only), **are required to submit to HUD a "sources and uses" statement in a form prescribed by HUD. Once grants are awarded, the receiving PHAs will be required to modify their Annual Plans and the Capital Fund 5-Year Action Plans to incorporate these new and/or modified work items.**

PHAs receiving a grant will be required to sign an Annual Contributions Contract (ACC) Amendment. Additional requirements imposed by ARRA are reflected in the ACC Amendment for these funds as well as the NOFA issued May 7, 2009 and a revised NOFA issued June 3, 2009. The ACC Amendment is the obligating document. Both NOFAs are available at the HUD ARRA website on the Internet at: http://www.hud.gov/recovery.

Public Housing Capital Fund Stimulus (Formula) Recovery Act Funded

HUD obligated this formula grant funding to 3,134 PHAs on March 18, 2009. HUD calculated the formula grant amount for each PHA using the 2008 Capital Fund formula. PHAs can only use these funds on Capital Fund-eligible activities as described under Section 9 of the United States Housing Act of 1937, as amended. PHAs must give priority to the rehabilitation of vacant rental units and capital projects that are already underway and require additional funds or are included in the Capital Fund 5-Year Action Plan. Some PHAs may need to revise the 5-Year Action Plan to identify additional work items for the amount of funding being provided. PHAs should also give priority to capital projects that can award contracts based on bids within 120 days from the award of the money. A PHA must have an approved 5-Year Action Plan to have access to formula grants. PHAs receive one grant and have only one ACC Amendment. Additional requirements imposed by ARRA are reflected in the ACC Amendment for these funds and in PIH Notice 2009-12 (HA) which was issued on March 18, 2009.

Source of Governing Requirements

The programs are authorized under 42 USC 1437g and 3535 (d) **and ARRA**. Implementing regulations are 24 CFR parts 905, 941, and 968 subparts A and B. In addition, the CFP is operated in conjunction with the PHA Plan process discussed at 24 CFR part 903.

Availability of Other Program Information

HUD posts guidance on the CFP to its Office of Capital Improvements Home Page (http://www.hud.gov/offices/pih/programs/ph/capfund/index.cfm) that provides grantees with information on timelines, budgets, financial instructions, and other program guidance. Specific requirements related to the CFFP can be found by clicking on the CFFP link on the left hand side of the Office of Capital Improvements Home Page. Information regarding the financial reporting requirements of the PHAs is provided by HUD on the Real Estate Assessment Center (REAC) website at http://www.hud.gov/offices/reac/products/fass/pha_doc.cfm and http://www.hud.gov/offices/reac/library/lib_fapha.cfm.

Guidance on ARRA programs can be found in PIH Notice 2009-12 (HA) issued March 18, 2009 and on the Capital Fund webpage on the Internet at: http://www.hud.gov/offices/pih/programs/ph/capfund/ocir.cfm.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. For Capital Fund formula grants **(including ARRA funded grants)** and grants from the set-aside for emergencies and natural disasters, allowed Capital Fund activities include the following: developing, financing, or modernizing public housing; vacancy reduction; deferred maintenance; replacement of obsolete utility systems and dwelling equipment; code compliance; management improvements; demolition and replacement; resident relocation; resident economic empowerment/economic self sufficiency; security; and homeownership (42 USC 1437g(d)).

2. For Capital Fund RHF grants, activities are limited to the development of replacement housing (24 CFR section 905.10(i)(5)(ii)).

3. The PHA may not incur any modernization cost in excess of the total HUD-approved PHA Plan which includes the project budget. Budget revisions may be approved by HUD for deviations from the originally approved modernization program. A PHA shall not incur any modernization cost on behalf of any development that is not covered by its current approved 5-year PHA Plan (24 CFR section 968.225).

4. A PHA may charge up to a maximum of 10 percent of the annual Capital Fund grant **(including ARRA funded grants)** as a management fee. A PHA using a fee-for-service system may charge a management fee of 10 percent, regardless of actual costs (Public Housing Operating Fund Program Guidance on Implementation of Asset Management, 71 FR 52710, September 6, 2006; 24 CFR section 968.112).

5. For ARRA-funded programs, funds cannot be transferred to or used for operations, such as staff training, resident assistance or maintenance staff salaries (unless applied to force account work on a capital project), or rental assistance activities (ARRA, 123 Stat 214).

6. For ARRA-funded programs, funds can only be substituted for work items in the PHA Annual Plan or the Capital Fund 5-Year Action Plan that are not already obligated to an open Capital Fund grant (see HUD Notice PIH 2009-12, Restrictions on Use of Funds).

7. For ARRA-funded programs, Moving to Work agencies will not be permitted to combine ARRA funds with their operating or voucher funds (see HUD Notice PIH 2009-12, VIII, Moving to Work Agency Requirements).

D. Davis-Bacon Act

Projects funded with Capital Funds that are developed in accordance with 24 CFR part 941 – Public Housing Development and/or modernized in accordance with 24 CFR part 968 – Public Housing Modernization that contain only public housing units and mixed-finance projects developed in accordance 24 CFR part 941 subpart F – Public/Private Partnerships for the Mixed-Finance Development of Public Housing are subject to the Davis-Bacon Act (42 USC 1437j (a) and (b), 24 CFR section 941.208 and 24 CFR section 941.610 (a)(8)(vi)).

All ARRA funded projects are subject to the Davis-Bacon Act (Section 1606 of ARRA).

H. Period of Availability of Federal Funds

For ARRA-funded programs, recipients must obligate 100 percent of their funds within 1 year of the date funds are made available; expend at least 60 percent of such funds within 2 years of the date on which funds became available; and expend 100 percent of such funds within 3 years of such date (ARRA, 123 Stat. 215).

I. Procurement and Suspension and Debarment

For ARRA funded programs, State and local procurement laws and regulations cannot be applied to procurements using grant funds. PHAs are required to follow 24 CFR part 85 requirements and can only follow their only procurement policies if they are not contrary to the 24 CFR part 85 or ARRA (see HUD Notice PIH 2009-12, Procurement) (ARRA, 123 Stat. 215).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

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

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

d. SF-272, *Federal Cash Transactions Report* – Not Applicable

e. Financial Reports *(OMB No. 2535-0107)* - Financial Assessment Sub-system, FASS-PHA. 24 CFR part 902 – Public Housing Assessment System (PHAS) Subpart C-Phase Indicator #2 Financial Condition requires the PHA to provide annual reports on a PHA-wide basis (42 USC 1437d (j)(1)(K). Financial reporting requirements in 24 CFR section 902.33(a)(2) provide that the information be submitted electronically in the format prescribed by HUD using the Financial Data Schedule (FDS).

Further 24 CFR section 902.35, "Financial condition scoring and threshold," establishes the procedures to be observed by the PHA.

Key Line Items – The line items under the following Headings contain critical information:

(1) Headings for HUD Programs and Activities

(a) Asset Management Property, or AMP (Low-Rent Public Housing and Capital Fund Programs)

(b) Component Units (Non-Profit Entities)

(2) Line Items
FDS Line 125 - (Accounts Receivable – Misc)
FDS Line 144 - (Inter-Program – Due From)
FDS Line 171 - (Notes, Loans, & Mortgages Receivable – Non-current)
FDS Line 172 - (Notes, Loans, & Mortgages Receivable – Non-current Past Due)
FDS Line 174 - (Other Assets)
FDS Line 176 - (Investment in Joint Ventures)
FDS Line 347 - (Inter-Program – Due To)
FDS Line 348 - (Loan Liability – Current)
FDS Line 355 - (Loan Liability – Non-Current)
FDS Line 10010 - (Operating Transfers – In)
FDS Line 10020 - (Operating Transfers – Out)
FDS Line 10030 - (Operating Transfers From/To Primary Government)
FDS Line 10093 - (Transfers Between Programs and Projects-In)
FDS Line 10094 - (Transfers Between Programs and Projects-Out)

2. Performance Reporting

Form HUD 60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons,* (*OMB No. 2529-0043*) – For each public and Indian housing grant that involves development, operating, or modernization assistance, the prime recipient must submit Form HUD 60002 (24 CFR sections 135.3(a) and 135.90).

Key Line Items –

a. 3. Dollar Amount of Award

b. 8. Program Code

c. Part I, Column C – Total Number of New Hires that are Sec. 3 Residents

d. Part II, Contracts Awarded, 1. Construction Contracts

(1) A. Total dollar amount of construction contracts awarded on the project

(2) B. Total dollar amount of construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving construction contracts

e. Part II, Contracts Awarded, 2. Non-Construction Contracts

(1) A. Total dollar amount of all non-construction contracts awarded on the project/activity

(2) B. Total dollar amount of non-construction contracts awarded to Section 3 businesses

(3) D. Total number of Section 3 businesses receiving non-construction contracts

3. Special Reporting – Not Applicable

N. Special Tests and Provisions

1. FASS – PHA, Public Housing Assessment System Phase Indicator #2, Financial Condition, and HUD-50075, PHA Plans

Compliance Requirement – On an annual basis the PHA must report on the financial condition of the PHA and on the transactions that the PHA is entering into with private and nonprofit entities (FDS Line Items 125, 144, and 347) (24 CFR section 902.33). In the FASS-PHA Financial Assessment Sub System, the PHA transactions with non-profit and private development entities are shown under the headings for HUD Programs and Business Activities Asset Management Property, or AMP (Low-Rent and Capital Fund Programs) for the Capital Fund Program. Such transactions would be noted in the FDS Line items shown above in Section III.L.1.e.(2). The FASS-PHA Financial Report is reviewed and approved or rejected by the REAC.

The PHA is required to report in the PHA Plan, in accordance with HUD 50075 (*OMB No. 2577-0226),* any transactions to be entered into with non-profit and private development entities. The PHA submits the Capital Fund Program in Part III of the PHA Plan. The PHA Plan, Implementation Schedule, for each active grant, details the eligible activities to be funded and the budget of estimated sources and uses. The PHA Plan is reviewed and approved by the HUD Field Office in the region in which the PHA is located.

Audit Objective - Determine whether the expenditures set out in the FDS line items that indicate participation by non-profit and private development entities agree with the data reported in the PHA Plan.

Suggested Audit Procedures

a. Review the data in FDS Line Items 125, 144, and 347 to determine the extent of non-profit and private development entities utilizing the Capital Fund Program.

b. Ascertain that the data in the FDS Line Items 125, 144, and 347 are substantially in agreement with the estimated sources and uses reported in the PHA Plan, Implementation Schedule (i.e., expenditures do not exceed the budget by 10 percent).

2. Debt Secured to Public Housing Asset

Compliance Requirement – PHAs are only permitted to borrow funds secured to public housing assets (including real property, other PHA owned property purchased with Federal grant funds and CFP grant funds themselves) if they have obtained HUD's authorization prior to creating a security interest in public housing assets. This requirement does not prohibit a PHA from borrowing funds that are unsecured or that are not secured to public housing assets. In granting the required authorization, HUD will issue both an approval letter as well as a CFFP ACC Amendment (42 USC 1437z-2).

Audit Objective – Determine whether any debt incurred by the PHA that is secured to public housing assets is duly authorized by HUD.

Suggested Audit Procedures

a. Review the PHAs balance sheet to determine if the PHA has incurred a debt.

b. Examine the documentation that evidences the debt (loan /bond agreement, etc.) to determine if the debt is secured to public housing assets.

c. If the debt is secured to public housing assets, verify that the PHA has the required HUD approval letter authorizing the debt.

IV. OTHER INFORMATION

See Appendix VI for program waivers and special provisions related to Hurricanes Katrina and Rita**.**

For ARRA funded programs, ARRA gave HUD the authority to waive or specify alternative requirements for some of the statutory and regulatory provisions to facilitate the use of ARRA funds.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.873 NATIVE HAWAIIAN HOUSING BLOCK GRANTS
CFDA 14.883 NATIVE HAWAIIAN HOUSING BLOCK GRANTS (RECOVERY ACT FUNDED)

I. PROGRAM OBJECTIVES

The primary objectives of the Native Hawaiian Housing Block Grant (NHHBG) programs are: (1) to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments on Hawaiian home lands for occupancy by low-income Native Hawaiian families; (2) to ensure better access to private mortgage markets and to promote self-sufficiency of low-income Native Hawaiian families; (3) to coordinate activities to provide housing for low-income Native Hawaiian families with Federal, State, and local activities to further economic and community development; (4) to plan for and integrate infrastructure resources on the Hawaiian home lands with housing development; and (5) to promote the development of private capital markets; and to allow the private capital markets to operate and grow, thereby benefiting Native Hawaiian communities.

II. PROGRAM PROCEDURES

The NHHBG programs are distributed according to a formula, based on factors that reflect the needs for assistance for affordable housing activities. To access funds, the Department of Hawaiian Home Lands (DHHL), the recipient, must submit a Housing Plan (HP) to the Department of Housing and Urban Development (HUD), and HUD must find that the HP meets the requirements of section 802 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).

Funding for the NHHBG program under the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) is distributed according to the same funding formula that was used to allocate NHHBG funds in Fiscal Year (FY) 2008. The formula is based on factors that reflect the needs for assistance for affordable housing activities. To access funds, DHHL must submit an amendment to their FY 2008 HP to the HUD, and HUD must find that the HP meets the requirements of section 802 of NAHASDA and ARRA. NHHBG funds awarded to the recipient may only be used for affordable housing activities that are consistent with its HP ***and ARRA***.

Source of Governing Requirements

These programs are authorized by NAHASDA, codified at 25 USC 4221 through 4240, **and ARRA**. The implementing regulations are in 24 CFR part 1006.

Availability of Other Program Information

Additional information about HUD ARRA programs is available on the Internet at http://www.hud.gov/recovery and information on the NHHBG program is available at http://www.hud.gov/offices/pih/ih/codetalk/onap/nhhbgprogram.cfm.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Non-ARRA NHHBG funds (including program income generated by activities carried out with grant funds) may only be used for the following NAHASDA-eligible activities:

1. *Development* - The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related activities (25 USC 4229(b)(1)).

2. *Housing Services* - The provision of housing-related services for affordable housing, such as housing counseling in connection with rental or home-ownership assistance, establishment and support of resident organizations and resident management corporations, energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in other housing activities assisted by this program (25 USC 4229(b)(2)).

3. *Housing Management Services* - The provision of management services for affordable housing, including preparation of work specifications; loan processing, inspections; tenant selection; management of tenant-based rental assistance; and management of affordable housing projects (25 USC 4229(b)(3)).

4. C*rime Prevention and Safety Activities* - The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime (25 USC 4229(b)(4)).

5. *Model Activities* - Housing activities under model programs that are designed to carry out the purposes of NAHASDA and are specifically approved by the Secretary of HUD as appropriate for such purpose (25 USC 4229(b)(5)).

6. NHHBG funds under ARRA (including program income generated by activities carried out with grant funds) may only be used for the following NAHASDA-eligible activities: new construction, acquisition, rehabilitation, including energy efficiency and conservation, and infrastructure development (ARRA, 123 Stat. 216).

D. Davis-Bacon Act

For non-ARRA NHHBG funds, contracts and agreements for assistance, sale or lease under this part must require prevailing wage rates under the Davis-Bacon Act to be paid to laborers and mechanics employed in the development of affordable housing. When NHHBG assistance is only used to assist homebuyers to acquire single family housing, the Davis-Bacon wage rates apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that NHHBG assistance will be used to assist homebuyers to buy the housing (Section 805(b) of NAHASDA; 24 CFR section 1006.345(a)).

For ARRA NHHBG funds, ARRA imposes the Davis-Bacon Act on all contracts and agreements for payments to laborers and mechanics employed in the development of affordable housing (Section 1606 of ARRA).

E. Eligibility

1. Eligibility for Individuals

The Director of DHHL shall develop written policies governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under NAHASDA (25 USC 4230(d)). The following families are eligible for affordable housing activities:

a. Low income Native Hawaiian families eligible to reside on the Hawaiian home lands (24 CFR section 1006.301(a)).

b. When approved by HUD, a non-low income Native Hawaiian family may receive assistance for homeownership activities and loan guarantee activities to address a need for housing that cannot be reasonably met without that assistance (24 CFR section 1006.301(b)).

c. A non-Native Hawaiian family may receive housing or NHHBG assistance if the DHHL documents that non-Native Hawaiian family's housing needs cannot be reasonably met without such assistance, and the presence of that family is essential to the well-being of Native Hawaiian families (24 CFR section 1006.301(c)).

2. Eligibility for Group of Individuals or Area of Service Delivery - Not Applicable

3. Eligibility for Subrecipients - Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching - Not Applicable

2. Level of Effort - Not Applicable

3. Earmarking - Recipients may use up to the amount authorized by HUD of each grant received for administration and planning (24 CFR section 1006.230).

H. Period of Availability of Federal Funds

For ARRA NHHBG funds, the recipient will be required to obligate 100 percent of its funds within 1 year of the date funds are made available; expend at least 50 percent of such funds within 2 years of the date on which funds became available; and expend 100 percent of such funds within 3 years of such date **(ARRA, 123 Stat. 216)**.

I. Procurement and Suspension and Debarment

For ARRA NHHBG funds, the recipient must follow the "Buy American" requirements and use only iron, steel, and manufactured goods produced in the United States in their projects (Section 1605 of ARRA).

J. Program Income

Any program income may be retained by the DHHL provided it is used for affordable housing activities. If the amount of income received in a single year by DHHL, which would otherwise be considered program income, does not exceed $25,000, such funds may be retained but will not be considered to be or be treated as program income (25 USC 4225; 24 CFR section 1006.340).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Not Applicable

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

c. SF-271, *Outlay Report and Request for Reimbursement for Construction Program* - Not Applicable

d. SF-272, *Federal Cash Transactions Report* - Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting - Not Applicable

N. Special Tests and Provisions

Environmental Review

Compliance Requirement - Program regulations provide that DHHL will assume responsibilities for environmental review and decision-making under the requirements of 24 CFR part 58. Funds may not be committed to a grant activity or project before the completion of the environmental review and approval of the request for release of funds and related certification (24 CFR Section 1006.350).

Audit Objective - Determine whether (1) the required environmental reviews have been performed and (2) program funds were not obligated or expended prior to completion of the environmental review process.

Suggested Audit Procedures

Select a sample of projects for which expenditures were made and verify that:

a. Environmental certifications were supported by an environmental assessment.

b. For any project where an environmental assessment was not performed, a written determination was made that the assessment was not required and documentation exists to support such determination consistent with the criteria contained in 24 CFR sections 58.34 and 58.35.

c. Funds were not obligated or expended prior to the environmental assessment or a determination that an assessment was not required.

IV. OTHER INFORMATION

ARRA gave HUD the authority to waive or specify alternative requirements for some of the NHHBG statutory and regulatory provisions to facilitate the use of ARRA NHHBG funds.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.907 LEAD-BASED PAINT HAZARD CONTROL IN PRIVATELY-OWNED HOUSING (RECOVERY ACT FUNDED)
CFDA 14.908 HEALTHY HOMES DEMONSTRATION GRANTS (RECOVERY ACT FUNDED)
CFDA 14.909 LEAD HAZARD REDUCTION DEMONSTRATION GRANT PROGRAM (RECOVERY ACT FUNDED)
CFDA 14.910 HEALTHY HOMES TECHNICAL STUDIES GRANTS (RECOVERY ACT FUNDED)

I. PROGRAM OBJECTIVES

The objectives of the Lead-Based Paint Hazard Control in Privately-Owned Housing (LBPHC) program and the Lead Hazard Reduction Demonstration Grant Program (LHRD) are to: (1) maximize the combination of children less than 6 years of age protected from lead poisoning and housing units where lead-hazards are controlled; (2) prevent childhood lead poisoning; (3) stimulate lower-cost and cost-effective methods and approaches to lead hazard control work that can be replicated; (4) build local capacity to safely and effectively address lead hazards during lead hazard control, renovation, remodeling, and maintenance activities by integrating lead safe work practices into housing maintenance, repair, weatherization, rehabilitation and other programs that will continue beyond the grant period; (5) affirmatively further fair housing and environmental justice; (6) develop a comprehensive community approach to address lead hazards in housing by mobilizing public and private resources, involving cooperation among all levels of government, the private sector, and grassroots community-based nonprofit organizations, including faith-based organizations, to develop cost-effective methods for identifying and controlling lead-based paint hazards; (7) establish a public registry of lead-safe housing; and (8) promote job training, employment, and other economic opportunities for low-income and minority residents and businesses that are owned by and/or employ minorities and low-income persons as defined in 24 CFR section 135.5 (see 59 FR 33881, June 30, 1994).

The objective of the Healthy Homes Demonstration Grants (HHD) program is to develop, demonstrate, and promote cost-effective, preventive measures to correct multiple safety and health hazards that produce serious disease in children and other sensitive subgroups, such as the elderly, with a particular focus on low-income households.

The objective of the Healthy Homes Technical Studies Grants program (HHTS) is to fund technical studies to improve methods for detecting and controlling housing-related health and safety hazards.

II. PROGRAM PROCEDURES

Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (ARRA) appropriated $100 million to be used to fund applicants who had applied under the Lead Hazard Reduction Program Notices of Funding Availability (NOFA) for Fiscal Year 2008, and were found in the application review to be qualified for award, but were not awarded because of funding limitations. LBPHC and LHRD provides grant funds to assist State, tribal, and local

governments to identify and control lead-based paint hazards in privately-owned housing that is owned by or rented to low- or very-low income families. State, Tribal, and local governments are the only eligible grantees for the LBPHC and LHRD programs. Grantees must use their LBPHC and LHRD funds to identify and control lead-based paint hazards in privately-owned housing that is owned by or rented to low- or very-low income families, and build local capacity to safely and effectively address lead hazards during lead hazard control, renovation, remodeling, and maintenance activities by integrating lead safe work practices into housing maintenance, repair, weatherization, rehabilitation and other programs that will continue beyond the grant period.

State, Tribal, and local governments, not-for-profit organizations, and for-profit organizations are the only eligible grantees for the HHD and HHTS programs.

Source of Governing Requirements

Authorizations for the LBPHC and LHRD are in Title X of the Housing and Community Development Act of 1992 (Pub L. No. 102-550) and Title XII of ARRA. Authorizations for the HHD and HHTS are Sections 501 and 502 of the Housing and Urban Development Act of 1970; and Consolidated Appropriations Act, 2008 (Pub. L. No. 110-161, 121 Stat. 2428); and Title XII of ARRA.

Availability of Other Program Information

Information that will assist in understanding these programs is available on the Internet at the Office of Healthy Homes and Lead Hazard Control web page and HUD's Recovery Act web page at: http://www.hud.gov/offices/lead/ and http://www.hud.gov/recovery. FY 2008 Notice of Funds Available at http://www.hud.gov/library/bookshelf12/supernofa/nofa08/grplead.cfm. The HHD NOFA is available at http://www.hud.gov/library/bookshelf12/supernofa/nofa08/hhdsec.pdf, and the HHTS NOFA is available at http://www.hud.gov/library/bookshelf12/supernofa/nofa08/ltssec.pdf.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Grantees must use LBPHC and LHRD funds for evaluation and control of lead-based paint hazards in residential housing (Section 1011(e) of Pub L. No. 102-550).

2. Grantees may use HHD funds for evaluation and control of lead-based paint hazards in residential housing as part of overall healthy homes activities (Pub. L. No. 110-161, 121 Stat. 2428).

3. Grantees may use HHTS funds for research activities (Pub. L. No. 110-161, 121 Stat. 2428).

D. Davis-Bacon Act

ARRA impose the Davis-Bacon Act requirements on all contractors and subcontractors for wages paid to laborers and mechanics (Section 1606 of ARRA).

E. Eligibility

1. Eligibility for Individuals – Only privately-owned housing that is owned by or rented to low- or very-low income families is eligible to receive LBPHC and LHRD assistance (Section 1011(a)(1) of Pub L. No. 102-550).

2. Eligibility for Group of Individuals or Area of Service Delivery - Not Applicable

3. Eligibility for Subrecipients - Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching

a. Recipients must contribution not less than 10 percent of the total LBPHC grant amount (Section 1011(h) of Pub. L. No. 102-550).

b. Recipients must contribution not less than 25 percent of the total LHRD grant amount or 10 percent if the higher matching requirement is waived by HUD (Pub. L. No. 110-161, 121 Stat. 2428).

c. There are no matching requirements for HHD or HHTS funds.

2. Level of Effort - Not Applicable

3. Earmarking

a. No more than 10 percent of the grant may be used for administrative costs (Section 1011(j) of Pub. L. No. 102-550).

b. No more than 40 percent of a HHTS grant may be used for construction activities (Section IV.E.9 of the HHTS NOFA).

H. Period of Availability of Federal Funds

Recipients must expend at least 50 percent of funds within 2 years of the date on which funds became available to the recipient; and expend 100 percent of such funds within 3 years of such date. A LBPHC funding commitment is available on the date of execution of a written agreement between the Recipient and HUD (ARRA, 123 Stat. 224).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

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

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

d. SF-272, *Federal Cash Transactions Report* - Not Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting - Not Applicable

IV. OTHER INFORMATION

ARRA gave HUD the authority to waive or specify alternative requirements for some of the statutory and regulatory provisions to facilitate the use of ARRA funds.

DEPARTMENT OF LABOR

CFDA 17.225 UNEMPLOYMENT INSURANCE (UI)

I. PROGRAM OBJECTIVES

The UI program, also referred to as Unemployment Compensation (UC), provides benefits to unemployed workers for periods of involuntary unemployment and helps stabilize the economy by maintaining the spending power of workers while they are between jobs. The UI program initially consisted of the regular State programs (20 CFR part 601). However, UC coverage was extended to Federal civilian employees in 1954 by the Unemployment Compensation for Federal Employees (UCFE) program (Pub. L. No. 83-767) and to ex-members of the Armed Forces in 1958 by the Unemployment Compensation for Ex-Service Members (UCX) program (5 USC 8501-8525; Pub. L. No. 85-848). UC programs now cover almost all wage and salaried workers.

The Federal-State Extended Unemployment Compensation Act (EUCA) of 1970 (Pub. L. No. 91-373; 26 USC 3304 note) provided for the Extended Benefit (EB) program (20 CFR part 615). During periods of high unemployment, that program pays extended benefits for an additional (or extended) period of time to eligible unemployed workers who have exhausted their entitlement to UC, UCFE, or UCX.

The Federal Additional Compensation (FAC) Program, authorized under Section 2002(e)(1) of the American Recovery and Reinvestment Act (ARRA), Pub. L. No. 111-5, allows States that enter into an agreement with the Secretary of Labor to pay an additional $25 each week to individuals who are otherwise eligible to receive unemployment compensation for the week.

II. PROGRAM PROCEDURES

The structure of the Federal-State UI Program partnership is based on Federal statute; however, it is implemented through State law. State UI program operations are conducted by the State Workforce Agency (SWA)—the generic name for the agency that has responsibility for the State's Employment Security function. SWAs were previously referred to as State Employment Security Agencies (SESAs).

State responsibilities include: (1) establishing specific, detailed policies and operating procedures which comply with the requirements of Federal laws and regulations; (2) determining the State UI tax structure; (3) collecting State UI contributions from employers (commonly called "unemployment taxes"); (4) determining claimant eligibility and disqualification provisions; (5) making payment of UC benefits to claimants; (6) managing the program's revenue and benefit administrative functions; (7) administering the programs in accordance with established policies and procedures; and (8) enacting State UC law that conforms with Federal UC law.

Unless otherwise noted, responsibilities of the U.S. Department of Labor (DOL) include: (1) allocating available administrative funds among States; (2) administering the Unemployment Trust Fund (UTF) through the U.S. Department of the Treasury and monitoring activities of the UTF; (3) establishing program performance measures; (4) monitoring State performance; (5) ensuring conformity and substantial compliance of State law and operations with Federal law; and (6) setting broad overall policy for program administration.

Note: Informal references are frequently made to eligibility for "weeks" of UC. The auditor is cautioned that eligibility is actually for a maximum dollar amount of UC, which is inaccurately referred to as receipt of UC for a given number of weeks.

Benefits payable under several additional programs also are administered by the SWAs, as agents for DOL; however, they are distinct programs with separate compliance requirements—the Trade Adjustment Assistance (TAA) program to workers adversely affected by foreign trade and the Disaster Unemployment Assistance (DUA) program to workers and self-employed individuals who are unemployed as a direct result of a presidentially declared major disaster, and are not eligible for regular UI benefits paid by States (CFDA 17.245 and 97.034, respectively). For example, SWAs provide weekly TAA payments for eligible program participants consistent with the eligibility requirements of CFDA 17.245.

The Federal Emergency Management Agency (FEMA) has delegated to the Secretary of Labor the responsibility for administering those provisions of the Stafford Act that pertain to the DUA program and payment of DUA benefit assistance. Under DUA, the SWA is accountable to both DOL and, through DOL, FEMA for prompt, accurate benefit determinations, payment, and reporting. The SWA works directly with the appropriate FEMA regional office to ensure that the availability of DUA is announced promptly; make an overall estimate of the number, type (farm, factory, etc.) and the duration of unemployment that is the direct result of the disaster; and review and coordinate funding estimates.

FAC is payable in a State for weeks of unemployment beginning with the first week which begins after the date a FAC agreement is signed between the State and the Secretary of Labor.

For each program administered under the UI program umbrella—UC, TAA/ATAA, and DUA, States must ensure full payment of applicable benefits "when due," and must deny payments when not due.

Program Funding

UC payments to claimants are funded primarily by State UI taxes on covered employers (three States also have provisions for employee taxes). Some employers make direct reimbursements to the State for UC payments made on their behalf rather than paying UI taxes. State governments, political subdivisions and instrumentalities of the States, federally recognized Indian tribes, and qualified non-profit organizations may reimburse the State for UC benefits paid by the SWA; however, they may elect to be contributory employers (i.e., remit State UI taxes) in lieu of reimbursing the State. Also, States are reimbursed from the UTF for UCFE and UCX paid by the SWA on behalf of various Federal entities. Program administration is funded

by a Federal UI tax on covered employers (see below). Generally, the employment covered by State UI taxes and Federal UI taxes is the same; however, there are specific differences.

State UI taxes and reimbursements are used exclusively for the payment of regular UC and the State share of EB to eligible claimants. UI taxes and reimbursements remitted by employers to the States are deposited in State accounts in the UTF. SWAs periodically draw funds from their UTF accounts for the purpose of making UC payments.

The Federal Unemployment Tax Act (FUTA) imposes a Federal tax on covered employers. Currently, the FUTA tax on covered employment (generally employment subject to a State UI tax) is 6.2 percent of the first $7,000 of covered employee wages. Employers, however, receive two credits against the FUTA tax. One credit is equal to the amount of State UI tax paid by the employer. A second credit is awarded to employers who pay less than the State's maximum tax rate. The employer receives these credits when the State UI law, and its application, conform and substantially comply with FUTA requirements. All States currently meet the Federal criteria for both credits to be applicable to the States' employers. The two credits combined cannot exceed 5.4 percent of taxable employee wages.

FUTA revenues from the remaining 0.8 percent are collected by the IRS and deposited into the general fund of the U.S. Treasury, which by statute are appropriated to the UTF. FUTA revenues are used primarily to finance Federal and SWA administrative expenses, the Federal share of EB, and advances to States whose UTF account balances are exhausted. DOL allocates available administrative grant funds (as appropriated by Congress) to States based on forecasted workload and costs, and is adjusted for increases or decreases in workload during the current year.

States annually compute an "experience rate" for contributing, or tax-remitting, employers. The experience rate is the dominant factor in the computation of an employer's State UI tax rate. While methods of computation differ, the key factor in most methodologies is the amount of UC benefits paid by the SWA within a time period specified by State UI law, to claimants who are former employees of the employer. Also, various methods are used by the SWAs to identify which one or more of the claimant's former employers will be "charged" with the UC benefits paid to the claimant.

Since FEMA has delegated to the Secretary of Labor the responsibility for administering the DUA program, FEMA transfers resource to the Employment and Training Administration (ETA), DOL to provide funding to the affected States. Funding for each disaster is provided separately for administrative costs and benefits. States are expected to report the cost of each disaster separately by administrative cost and benefits. The funding period for the majority of disasters covers a 26-week period after the declaration.

Under the FAC program, each State that has entered into an agreement with the Secretary of Labor will be provided a monthly allotment projected to equal 100 percent of the estimated amount of FAC to be paid to individuals by the State under the agreement and in full accordance with ARRA. States' drawdown of allotments will be monitored, and monthly amounts will be adjusted as needed. States will request funds from a general fund account established by the U.S. Treasury to pay all FAC benefits attributable to all claim

types (UC, EB, UCFE, UCX, Emergency Unemployment Compensation, 2008 [EUC08], DUA, and TRA). All requests will go through the Automated Standard Application for Payments (ASAP) system and will be covered by each State's Treasury-State Agreement (executed under the Cash Management Improvement Act of 1990). Requests will be funded in the same manner as all ASAP transactions elected by the states (FEDWIRE or ACH to the state benefit payment account).

Synopsis of Regular Unemployment Compensation Program

The regular UC program provides UC coverage to most wage and salary workers in each State, the District of Columbia, Puerto Rico, and the Virgin Islands. Except for provisions necessary to comply with Federal law, the provisions of State UI laws vary greatly, including their qualifying requirements and methods used to compute UC amounts.

The period during which a claimant may receive UC is referred to as the "benefit year." In all but one State, a benefit year lasts one year from the effective date of the claim. The total regular UC that a claimant may receive in a benefit year is computed by the SWA in a dollar amount. A claimant may collect UC up to the maximum benefit amount allowable for the benefit year during periods of unemployment that occur during the benefit year. Under State UI laws, the total (maximum) UC a claimant is entitled to vary within certain limits according to the worker's wages in the base period (see III.E, "Eligibility"). Reduced benefits may be paid for weeks of partial unemployment. In some States, the weekly UC benefit payment is augmented by a dependent's allowance, which may be paid for each dependent up to a maximum number of dependents.

Synopsis of Extended Benefits Program

An interval of high unemployment at a certain level will "trigger on" a period of not less than 13 consecutive weeks during which the State will make EB payments to eligible unemployed workers who have exhausted their entitlement to regular compensation (20 CFR section 615.11). With certain exceptions, EB is payable at the same rate as the claimant's regular compensation benefits (20 CFR section 615.6). The EB period is determined by the State in which the original claim was established (EUCA section 202(a)(2), 20 CFR section 615.2(k)(2)). A reduction in the unemployment rate will "trigger off" the period for the payment of EB.

A claimant may receive EB equal to the lesser of the following amounts: (1) one-half the total amount of regular compensation, including dependent's allowances, (2) 13 times the weekly amount of regular compensation, or (3) 39 times the weekly amount of regular compensation reduced by the amount of regular compensation paid to the claimant (EUCA, section 202(a)(2), 20 CFR section 615.7(b)). However, the amount of EB benefits payable increases if the unemployment rate reaches a benchmark level established in EUCA. While EB are payable under the terms and conditions of State law, FUTA requires that State UI law conform to certain provisions of EUCA (26 USC 3304(a)(11)).

States are reimbursed with Federal funds for one-half the cost of EB paid to claimants by the SWAs, with the following exceptions: (1) EB paid to former UCFE and UCX claimants are 100 percent reimbursable from Federal funds; and (2) EB paid to former employees of the State government, and political subdivisions and instrumentalities of the State, and federally recognized Indian tribes are not reimbursable from Federal funds. Reimbursements will be prorated for claimants who had employment in both the private and public sectors during their "base periods." The first week of EB is reimbursable to the State only if the State requires the first week in an individual's benefit year be an unpaid "waiting week" (EUCA section 204; 20 CFR section 615.14). The auditor should refer to 20 CFR section 615.14 for a complete explanation of when EB is not reimbursed to the State.

Synopsis of UCFE and UCX Programs

For UCFE, the qualifying requirements, determination of UC benefit amounts, and duration of UC are generally determined under the applicable State law, which is generally the State in which the official duty station was located (5 USC 8501-8508; 20 CFR part 609).

The UCX program combines elements of the applicable State law and factors unique to the UCX program, such as "schedules of remuneration" (20 CFR section 614.12), which must be considered by the SWA in making its determinations of eligibility, UC benefit amounts and duration (20 CFR part 614).

States are reimbursed from the UTF for UC paid to UCFE and UCX claimants. On a quarterly basis, States report the amount of UCFE and UCX paid to the DOL, which is responsible for obtaining reimbursement to the UTF from the appropriate Federal agencies (20 CFR sections 609.14 and 614.15).

Synopsis of TAA/ATAA Benefit Payments/Wage Subsidies

Trade adjustment allowances (TAA) are available as weekly income support to eligible workers who have exhausted UI benefits. The amendments enacted by the TAA Reform Act of 2002 provide an alternative trade adjustment assistance (ATAA) benefit. The ATAA is available in lieu of TAA to eligible workers who are 50 years of age and older and elect to receive this benefit (20 CFR part 617; Training and Employment Guidance Letters (TEGLs) 11-02 and 2-03).

Synopsis of DUA Benefit Payments

Based on a request by the Governor, the President declares a major disaster and authorizes the type(s) of Federal assistance to be made available and the geographic areas that have been adversely affected by the disaster. The Presidential declaration may authorize Individual Assistance (IA), which includes the provisions for DUA (20 CFR part 625).

FEMA furnishes funds to the Secretary of Labor, or to his/her designee, who makes funds available to the affected State(s) based on an agreement between the State and the Secretary of Labor for the State's DUA administrative costs and the payment of DUA to eligible individuals.

Synopsis of FAC Program

The FAC program provides a $25 weekly supplement to the unemployment compensation of eligible claimants. This $25 supplement, as well as any additional administrative expenses incurred by the State in paying the supplement, is 100 percent funded from Federal general revenues.

FAC is payable to individuals who are otherwise entitled under State law to receive regular UC for weeks of unemployment. FAC is also payable to individuals receiving the following Federal and other State unemployment benefit programs: UCFE, UCX, EUC08, EB, TRA, DUA, Short-Time Compensation (STC), and payments under the Self-Employment Assistance (SEA) programs. However, FAC is not payable as a supplement to State additional compensation.

FAC is payable in a State the week following the week in which the agreement with the Secretary of Labor is signed. In most States, where the week of unemployment ends on Saturday, the first week for which FAC may be paid is the week ending February 28, 2009. FAC is not payable for any week beginning after June 30, 2010. Accordingly, in States where the week of unemployment ends on Saturday, the last week that FAC benefits may be paid is the week ending July 3, 2010.

Source of Governing Requirements

The Federal-State Unemployment Insurance (UI) program partnership is provided for by Titles III, IX, and XII of the Social Security Act of 1935 (SSA) (42 USC 501, 1101, 1321, *et seq*.) and the FUTA (26 USC 3301 *et seq*.). Program regulations are found in 20 CFR parts 601 through 616. The TAA/ATAA program is authorized by the Trade Act of 1974, as amended by the TAA Reform Act of 2002 (Pub. L. No. 107-210 (19 USC 2271 *et seq.*)). Implementing regulations are 29 CFR part 90, Subpart B, and 20 CFR part 617. Operating instructions for the TAA program are found in TEGL 11-02, and operating instructions for the ATAA program are found in TEGL 2-03. Implementing regulations for the DUA program are found at 44 CFR sections 206.8 and 206.141 for FEMA, and 20 CFR part 625 for DOL.

FAC is payable under Title II, Division B, Section 2002 of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5).

Availability of Other Program Information

Additional information on the UI programs can be found on the Internet at http://ows.doleta.gov/ and http://www.ows.doleta.gov/unemploy/bqc.asp. Additional information on TAA and ATAA program procedures is available at http://www.doleta.gov/tradeact. Additional information on DUA is available at http://www.ows.doleta.gov/unemploy/disaster.

Additional information on the UI programs can be found in Unemployment Insurance Program Letter No. 11-09, dated February 23, 2009, available at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2713.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Administrative grant funds may be used only for the purposes and in the amounts necessary for proper and efficient administration of the UI program (20 CFR part 601; 20 CFR sections 609.14(d); and 614.15(d); 20 CFR section 617.59 (TAA/ATAA); 44 CFR section 206.8 (DUA)).

2. *Activities Allowed for TAA and ATAA*

   a. *TAA* - Allowable activities include payment of weekly TAA benefits to eligible participants (20 CFR sections 617.10 through 617.19).

   b. ATAA - Allowable activities include payment of ATAA wage subsidies to eligible participants (Section 246 of Pub. L. No. 107-210).

4. *Activities Allowed for DUA*

   Funds may be used for the State's administrative costs.

4. *Activities Allowed and Unallowed for FAC*

a. FAC payments may be payable either as (1) as an increase of $25 in the weekly benefit payment to the individual, or (2) as a separate $25 supplemental payment made, on the same schedule as regular UC, to the individual (Pub. L. No. 111-5, section 2002(b)(2)).

b. FAC is not payable to individuals receiving State additional compensation.

E. Eligibility

1. Eligibility for Individuals

a. *Regular Unemployment Compensation Program* - Under State UI laws, a worker's benefit rights depend on the amount of the worker's wages and/or weeks of work in covered employment in a "base period." While most States define the base period as the first 4 of the last 5 completed calendar quarters prior to the filing of the claim, other base periods may be used. To qualify for benefits, a claimant must have earned a certain amount of wages, or have worked a certain number of weeks or calendar quarters within the base period, or meet some combination of wage and

employment requirements. Some States require a waiting period of one week of total or partial unemployment before UC is payable. A "waiting period" is a noncompensable period of unemployment in which the worker was otherwise eligible for benefits.

To be eligible to receive UC, all States provide that a claimant must have been involuntarily separated from suitable work, i.e., not because of such acts as leaving voluntarily without good cause, or discharge for misconduct connected with work. After separation, he or she must be able and available for work, in the labor force, legally authorized to work in the U.S., and not have refused an offer of suitable work (20 CFR section 603.2).

b. *EB Program* - To qualify for EB, a claimant must have exhausted regular UC benefits (20 CFR section 615.4(a)). To be eligible for a week of EB, a claimant must apply for and be able and available to accept suitable work, if offered. What constitutes suitable work is dependent on a required SWA's evaluation of the claimant's employment prospects. An EB claimant must make a "systematic and sustained effort" to seek work and must provide "tangible evidence" to the SWA that he or she has done so (20 CFR section 615.8).

c. *UCFE and UCX Programs* - For UCFE, the claimant's eligibility and benefit amount will generally be determined in accordance with the UI law of the State of the claimant's last duty station (20 CFR section 609.8). For UCX, a claimant's eligibility is determined in accordance with the UI law of the State in which the claimant files a first claim after separation from active military service (20 CFR section 614.8).

d. *TAA and ATAA* - For weekly TAA payments, the worker must: (a) have been employed at wages of $30 or more per week in adversely-affected employment with a single firm or subdivision of a firm for at least 26 of the previous 52 weeks ending with the week of the individual's qualifying separation (up to seven weeks of employer-authorized leave, up to seven weeks as a full-time representative of a labor organization, or up to 26 weeks of disability compensation may be counted as qualifying weeks of employment); (b) have exhausted all UC to which he or she is entitled; and (c) be enrolled in or have completed an approved job training program, unless a waiver from the training requirement has been issued after a determination is made that training is not feasible or appropriate (20 CFR section 617.11).

TAA becomes payable to eligible claimants only after they have exhausted their entitlement to regular UC benefits, including EB, if applicable. The maximum combined number of weeks for receipt of UC, EB, and TAA cannot exceed 52 weeks, except that up to 52 additional weeks of TAA may be paid to program participants enrolled in approved training and an

additional 26 weeks may be paid to program participants enrolled in remedial training (20 CFR sections 617.14 and 617.15; Pub. L. No. 107-210, section 116(a)).

To be eligible to receive ATAA payments, an individual must be an adversely affected worker covered under a DOL certification of eligibility for TAA and ATAA, and have a qualifying separation which occurred (i) on or after the impact date specified in the certification as the beginning of the import caused unemployment or underemployment and (ii) before the expiration of the 2-year period beginning on the date on which the Secretary of Labor issued the certification for his or her group or, if earlier, before the termination date, if any, specified in the certification, and meet the following conditions at the time of reemployment (19 USC 2318 and TEGLs 11-02 and 2-03):

(1) Be at least age 50 at time of reemployment.

(2) Obtain reemployment by the last day of the 26th week after the worker's qualifying separation from the TAA/ATAA certified employment.

(3) Must not be expected to earn more than $50,000 annually in gross wages (excluding overtime pay) from the reemployment.

(4) Be reemployed full-time as defined by the State law where the worker is employed.

(5) Cannot return to work to the employment from which the worker was separated.

e. *DUA* - To be eligible for DUA, individuals must be unable to work at their ongoing employment or self-employment due to the disaster or must be prevented from commencing employment or self-employment. This includes individuals who reside in the major disaster area but are unable to reach their place of employment or self-employment outside of the major disaster area, and individuals who must travel through a major disaster area to their employment or self-employment, but who are unable to do so as a direct result of the major disaster (20 CFR sections 625.4 and 625.5).

DUA weekly benefits and re-employment assistance services are provided to individuals who are unemployed as a direct result of a presidentially declared major disaster and who are not eligible for unemployment compensation but meet the DUA qualifying requirements.

Generally, an applicant is eligible for DUA for a week of unemployment if he or she meets the following conditions (20 CFR section 625.4):

(1) Each week of unemployment claimed begins during the disaster assistance period;

(2) The individual is an unemployed worker or an unemployed, self-employed individual whose unemployment (total or partial) has been found to be the direct result of a major disaster in the major disaster area;

(3) The applicant is able to work and available for work, within the meaning of the applicable State law, except an applicant will be deemed to meet this requirement if any injury directly caused by the major disaster is the reason for inability to work; and

(4) The individual is not eligible for compensation (as defined in 20 CFR section 625.2(d)) or for waiting-period credit for such week under any other Federal or State law; except that an individual determined ineligible because of the receipt of disqualifying income shall be considered eligible for such compensation or waiting period credit.

(5) Claimants eligible for UI are not eligible for DUA. DUA may not be paid as a supplement to unemployment compensation for the same week of unemployment. DUA also is not payable for any unemployment compensation waiting period required under State UC law (20 CFR section 625.4(i)).f. Aliens must show proof that they are authorized to work by the U.S. Citizenship and Immigration Services (USCIS) in order to be eligible to receive a federal public benefit (42 USC 1302b-7(d) and (e)).

(6) The individual files an initial application for DUA within 30 days after the announcement date of the major disaster. An initial application filed later than 30 days after the announcement date shall be considered timely filed if the State finds that there is good cause for the late filing. At the request of the State, the Secretary may authorize extension of the 30-day filing requirement for all DUA applicants. In no case will initial applications be accepted if filed after the expiration of the disaster assistance period, including any authorized extensions (20 CFR section 625.8).

f. Aliens must show proof that they are authorized to work by the U.S. Citizenship and Immigration Services (USCIS) in order to be eligible to receive a federal public benefit (42 USC 1302b-7(d) and (e)).

g. *Federal Additional Compensation Program* - For an individual to be eligible for a FAC payment, the applicable State must have a signed FAC agreement with the Secretary. FAC is payable to individuals who are otherwise entitled under State or Federal law to receive regular UC for weeks of unemployment. FAC is also payable to individuals receiving the following Federal and other State unemployment benefit programs: UCFE, UCX, Emergency Unemployment Compensation, EUC08, EB, TRA, DUA, Short-Time Compensation (STC), and payments under the Self-Employment Assistance (SEA) programs.

(1) All program requirements of these programs for regular compensation apply equally to FAC payments. FAC payments must not reduce either the weekly benefit amount or the maximum benefit amount for individuals eligible for benefits under these programs (e.g., the $25 FAC will not be treated as UC under Section 233(a)(1) of the Trade Act of 1974, as amended; therefore, FAC will not reduce the maximum entitlement of basic TRA) (Pub. L. No. 11-5, section2002 (g).

(2) Individuals receiving State additional compensation are not eligible for FAC.

2. Eligibility for Group of Individuals or Area of Service Delivery - Not Applicable

3. Eligibility for Subrecipients - Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching –

a. *Shareable Compensation Program (EB)*

From its UI tax revenues, the State is required to pay zero percent (UCFE, UCX), 50 percent (EB), or 100 percent (regular compensation) of the UC paid by the SWA to eligible claimants.

The State is required to provide 50 percent of the amounts paid to the majority of eligible EB claimants (those not covered by Federal law or special provisions of State law) (20 CFR sections 615.2 and 615.14(a)). Those EB amounts paid by the SWA, and that are not the responsibility of the State, are reimbursable to the State from the UTF (20 CFR section 615.14). The first week of EB is reimbursable to the State only if, in addition to other requirements, the State requires the first week of an individual's benefit year to be an "unpaid waiting week" (EUCA section 204; 20 CFR section 615.14).

The 50 percent share of EB for which the State is responsible is prorated for those claimants whose base period includes wages from both public and private sector employment.

b. *Federal Additional Compensation*

The State is required to pay zero of the FAC paid by the SWA to eligible claimants, i.e., FAC funds are not required to be matched.

2. Level of Effort - Not Applicable

3. Earmarking - Not Applicable

H. Period of Availability of Federal Funds

1. *TAA/ATAA* - Funds allotted to a State for any fiscal year are available for expenditure by the State during the year of award and the two succeeding fiscal years (Section 130 of Pub. L. No. 107-210, 116 Stat. 942; 19 USC 2317).

2. *DUA* - Funding for each disaster is provided separately for administrative costs and benefits. States are expected to report the cost of each disaster separately by administrative cost and benefits. The funding period for the majority of disasters covers a 26-week period after declaration. Immediately after all payment activity has been concluded for a particular disaster, which may be less than 26 weeks after declaration, the DUA program should be closed out by the State.

3. FAC – FAC is payable in a State for weeks of unemployment beginning with the first week which begins after the date a FAC agreement is signed between the State and DOL. With few exceptions, no FAC payment may be made on benefit years that begin on or after January 1, 2010. In most States (where the week begins on a Sunday), the last week that FAC entitlement may be established is the week beginning December 20, 2009.

L. Reporting

1. Financial Reporting

Instructions for reporting financial and program activities are contained in ET Handbook 336, 18th Edition, *State Quality Service Plans for Unemployment Insurance Operations*, ET Handbook 401, 3rd Edition, *Unemployment Insurance Reports Handbook 401*, and ET Handbook 356, *Disaster Unemployment Assistance (DUA)*, *and UIPL No. 11-09, Attachment A, New Temporary Federal Additional Compensation Program*. The SWA may file certain reports electronically.

a. ETA 9130, *Financial Status Report, UI Programs* – This report is used to report program and administrative expenditures. All ETA grantees are required to submit quarterly financial reports for each grant award which they operate, including standard program and pilot, demonstration, and evaluation projects. Additional information on the following forms under *OMB Number 1205-046108* can be accessed on the Internet at http://www.doleta.gov/grants/ and scroll down to the section on Financial Status Reporting. A separate ETA 9130 is submitted for each of the following: UI Administration, Regular UI Benefits, DUA, TAA/ATAA, and UA Projects (administration and benefits).

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

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

d. SF-272, *Federal Cash Transactions Report* - Payments under this program are made by the Department of Health and Human Services, Payment Management System (PMS). Reporting equivalent to the SF-272 is accomplished through the PMS and is evidenced by the PSC 272-E, *Major Program Statement*.

e. ETA 2112, *UI Financial Transaction Summary (OMB No. 1205-0154)* - A monthly summary of transactions, which account for all funds received in, passed through, or paid out of the State unemployment fund (ET Handbook 401).

f. ETA 581, *Contribution Operations (OMB No. 1205-0178)* - Quarterly report on volume of SWA work, performance in determining the taxable status of employers, and other information pertinent to the overall effectiveness of the tax program (ET Handbook 401).

g. ETA 191, *Financial Status of UCFE/UCX (OMB No. 1205-0162)* - Quarterly report on UCFE and UCX expenditures and the total amount of benefits paid to claimants of specific Federal agencies (ET Handbook 401).

h. ETA 227, *Overpayment Detection and Recovery Activities (OMB No. 1205-0173)* - Quarterly report on results of SWA activities in principal detection areas of benefit payment control (ET Handbook 401).

i. ETA 902, *DUA Activities Under the Stafford Act (OMB No. 1205-0051)* - This report provides monthly data on DUA activities when a major disaster is declared by the President. Its workload items are also used with fiscal reports to estimate the cost of administering this Stafford Act program. (ET Handbook 356).

j. ETA 563, *Trade Adjustment Assistance Quarterly Activities Report (OMB No. 1205-0016)* – This report provides information on a quarterly basis for all TAA/ATAA program activity. Key workload data on TAA/ATAA is needed to measure program performance and to allocate program and administrative funds to the SWAs administering the trade programs.

2. Performance Reporting - Not Applicable

3. Special Reporting

ETA 2208A, *Quarterly UI Contingency Report (OMB No. 1205-0132)* - Quarterly report of staff years worked and paid by program category. Key line items are 1 through 7 of Section A. The auditor is not expected to test Sections B through E.

N. Special Tests and Provisions

1. Employer Experience Rating

Compliance Requirement – Certain benefits accrue to States and employers when the State has a federally approved experience-rated UI tax system. All States currently have an approved system. For the purpose of proper administration of the system, the SWA maintains accounts, or subsidiary ledgers, on State UI taxes received or due from individual employers, and the UC benefits charged to the employer.

The employer's "experience" with the unemployment of former employees is the dominant factor in the SWA computation of the employer's annual State UI tax rate. The computation of the employer's annual tax rate is based on State UI law (26 USC 3303).

Audit Objective – To verify the accuracy of the employer's annual State UI tax rate and to determine if the tax rate was properly applied by the State.

Suggested Audit Procedures

a. Experience rating systems are generally highly automated systems. These systems could contain errors that are material in the aggregate, but which are not susceptible to detection solely by sampling. If errors are detected, sampling may not be the most effective and efficient means to quantify the extent of such errors. For this reason, the auditor should have a thorough understanding of the operation of these systems, and is strongly encouraged to consider the use of computer-assisted auditing techniques (CAATs) to test these systems.

b. On a test basis, reconcile the subsidiary employer accounts with the State's UI general ledger control accounts.

c. Trace a sample of taxes received and benefits paid to postings to the applicable employer accounts. Verify the propriety of any non-charging of benefits paid to an employer account.

d. Trace a sample of postings to employer accounts to documentation of taxes received and benefits paid.

e. On a test basis, recompute employer experience-related tax rates.

2. UI Benefit Payments

Compliance Requirement – Due to the complexity of the UI benefit payment operations, it is unlikely the auditor will be able to support an opinion that UI benefit payments are in compliance with applicable laws and regulations without relying on the SWA's systems and internal controls.

SWAs are required by 20 CFR section 602.11(d) to operate a Benefits Accuracy Measurement (BAM) program to assess the accuracy of UI benefit payments and denied claims. The program estimates error rates, that is, numbers of claims improperly paid or denied and dollar amounts of benefits improperly paid or denied by projecting the results from investigations of small random samples to the universe of all claims paid and denied in a State. Specifically, the SWA's BAM unit is required to draw a weekly sample of payments and denied claims, review the records, and contact the claimant, employers, and third parties (either in-person, by telephone, or by fax) to verify all the information pertinent to the paid or denied claim that was sampled. BAM investigators review cases for adherence to State law and policy. For claims that were overpaid, underpaid, or erroneously denied, the BAM investigator determines the amount of payment error or, for erroneously denied claims, the potential eligibility of the claimant; the cause of and the responsibility for any payment error; the point in the UI claims process at which the error was detected; and actions taken by the agency and employer prior to the payment or denial decision that is in error. Federal regional office staff members review a sub-sample of completed cases each year in each State. BAM covers State UC, UCFE, and UCX.

Additional information on BAM procedures, historical data, and a State contacts list can be obtained at http://www.ows.doleta.gov/unemploy/bqc.asp.

The auditor also should review the requirements relating to the investigative process and data collection in ET Handbook No. 395, 4th Edition, Benefit Accuracy Measurement State Operations Handbook, Chapters IV, V, VI, VII, and Appendix C (Investigative Guide Source, Action, and Documentation), pertinent UI Program Letters and other sources of information including Question and Answer series on the Employment and Training Web site (see above).

Audit Objective – To verify that States operate a BAM program in accordance with Federal requirements to assess the accuracy of UI benefit payments and denied claims.

Suggested Audit Procedures

a. Review State BAM case investigative procedures and methodology to assess the SWA's adherence to BAM requirements.

b. Determine whether BAM samples of UI weeks paid and disqualifying eligibility determinations (monetary, separation, and non-separation) are selected for investigation and verification once a week by the State agency's BAM unit.

c. Determine whether BAM case sampling and case assignment for paid and denied claims were reviewed for compliance with State law and policy.

d. Determine whether the State agency is meeting its completion requirements and identify any impediments to the State BAM unit's efforts to complete cases timely.

e. Conduct reviews of a representative sub-sample of completed cases to ensure that established procedures were followed (e.g., each completed case has undergone supervisory review) and information is accurately recorded. The auditor should not attempt to conduct a new investigation, or new fact finding.

3. Match with IRS 940 FUTA Tax Form

Compliance Requirement – States are required to annually certify for each taxpayer the total amount of contributions required to be paid under the State law for the calendar year and the amounts and dates of such payments in order for the taxpayer to be allowed the credit against the FUTA tax (26 CFR section 31.3302(a)-3(a)). In order to accomplish this certification, States annually perform a match of employer tax payments with credit claimed for these payments on the employer's IRS 940 FUTA tax form.

Audit Objective – Determine whether the State properly performed the match to support its certification of State FUTA tax credits.

Suggested Audit Procedures

a. Ascertain the State's procedures for conducting the annual match.

b. Obtain and examine documentation supporting the annual match process from the group of employers' State unemployment tax payments used by the State in its match process.

c. For a sample of employer payments:

   (1) Verify that the tax payments met the stated criteria for FUTA tax credits allowance (e.g., timely State unemployment tax filings and payments).

   (2) Compare the audit results to the States' reported annual match results.

3. FAC Benefit Payments

Compliance Requirement – Because the FAC is added to a compensation payment after all deductions are made, including offsets for overpayments, FAC may only be used to offset FAC overpayments. Further, section 2002(f) of ARRA provides that "the provisions of section 4005 of the Supplemental Appropriations Act, 2008 (Pub. L. No. 110-252) shall apply" with respect to FAC overpayments and fraud and to the same extent and in the same manner as in the case of EUC08.

Since FAC is used only to offset FAC overpayments, the cross-program offset provisions of Section 303(g)(2) of the Social Security Act (which govern recovery of overpayments through offset between State and Federal UC programs) may not be used to recover State UC overpayments from FAC. However, if a State has a Section 303(g)(2) agreement with the Secretary of Labor, the State will use State UC to recover FAC overpayments in accordance with that agreement. A State may also use other Federal UC to recover FAC overpayments made in that State, regardless of whether the State has a Section 303(g)(2) agreement. Further, if a State has an Interstate Reciprocal Overpayment Recovery Arrangement in effect with the National Association of State Workforce Agencies, FAC may only be used to offset FAC overpayments for another State. However, a State may use State or other Federal UC paid in that State to recover FAC overpayments for other States.

Audit Objective – To verify that States operate a FAC program in accordance with Federal requirements and to assess the accuracy of FAC payments.

Suggested Audit Procedures

a. Verify that the State has entered into an agreement with the Secretary of Labor allowing it to carry out the FAC program.

b. Determine if the State is calculating the weekly benefit amount and making any adjustments in accordance with the applicable State law to account for any earnings and any other deductions (e.g., severance, or retirement/pension payments).

c. Determine whether FAC has been paid "with respect to any week for which the individual is … otherwise entitled to" compensation, in accordance with Section 2002(b)(1) of the Act. Therefore, if the individual is eligible to receive at least one dollar ($1) of UC for the claimed week, the State will pay the claimant the $25 FAC. However, if disqualifying income reduces an individual's unemployment compensation payment to $0, the individual is not entitled to the $25 FAC.

d. Determine whether the state is properly offsetting all debts from the individual's unemployment compensation.

e. Determine if individuals are receiving FAC regardless of their maximum benefit amount—as long as the individual is eligible for unemployment compensation for the week, the individual also receives the $25 FAC.

IV. OTHER INFORMATION

State unemployment tax revenues and the governmental, tribal, and non-profit reimbursements in lieu of State taxes (State UI funds) must be deposited to the UTF in the U.S. Treasury, primarily to be used to pay benefits under the federally approved State unemployment law. This program supplement includes several compliance requirements that must be tested with regard to these State UI funds. Consequently, State UI funds, as well as Federal funds for benefit payments under UCFE, UCX, EB, TAA/ATAA, DUA, **and FAC** shall be included in the total expenditures of CFDA 17.225 when determining Type A programs. State UI funds should be included with Federal funds on the Schedule of Expenditures of Federal Awards. A footnote to the Schedule to indicate the individual State and Federal portions of the total expenditures for CFDA 17.225 is encouraged.

ENVIRONMENTAL PROTECTION AGENCY

CFDA 66.458 CAPITALIZATION GRANTS FOR CLEAN WATER STATE REVOLVING FUNDS

I. PROGRAM OBJECTIVES

Capitalization grants are awarded to States to create and maintain Clean Water State Revolving Funds (CWSRFs) to: (1) enable States to encourage construction of wastewater treatment facilities to meet the enforceable requirements of the Clean Water Act (Act); (2) increase the emphasis on nonpoint source pollution control and protection of estuaries; and (3) establish permanent financing institutions in each State to provide continuing sources of financing to maintain water quality. The CWSRF provides loans and other types of financial assistance (but not grants) to qualified communities and local agencies. The CWSRF is a permanent revolving fund to provide loans and other assistance (40 CFR section 35.3115).

II. PROGRAM PROCEDURES

The CWSRF program is established in each State by capitalization grants from the Environmental Protection Agency (EPA). Since the enabling legislation was enacted in 1987, capitalization grants have been available to States in most years. EPA implements the CWSRF in a manner that preserves a high degree of flexibility for States in operating their revolving funds in accordance with each State's unique needs and circumstances.

States are required to provide an amount equal to 20 percent of the capitalization grant as State matching funds in order to receive a grant. **However, subgrants awarded under the American Recovery and Reinvestment Act of 2009 (ARRA) do not require a State match (Note that ARRA terms these subawards by States as "grants.")**. Capitalization grant applications shall include: (1) an Intended Use Plan (IUP), which lists proposed projects eligible for financing from CWSRF loans; (2) an identification of the source of the matching amount; (3) a proposed payment schedule; and (4) certain certifications and demonstrations. States may transfer an amount up to 33 percent of its Drinking Water State Revolving Fund (DWSRF) (CFDA 66.468) capitalization grant to the CWSRF or an equivalent amount from the CWSRF to the DWSRF program.

The State shall provide an annual report to EPA on its CWSRF program.

Source of Governing Requirements

The CWSRF program is authorized under Title VI of the Clean Water Act (33 USC 1381 *et seq.*) **and ARRA (Pub. L. No. 111-5) and Conference Report 111-16**. The implementing regulations are found in 40 CFR part 35, subpart K. **Subgrants also are subject to 40 CFR part 31**.

Guidance on cross-collateralization is found in the policy statement entitled *Transfer and Cross-Collateralization of Clean Water Revolving Funds and Drinking Water State Revolving Funds*, published in the October 13, 2000 *Federal Register* (65 FR 60940). Guidance on fees collected under the CWSRF program is found in the policy statement entitled *Fees Charged by States to*

Recipients of Clean Water State Revolving Fund Assistance, published in the October 20, 2005 *Federal Register* (70 FR 61039). This guidance supplements the coverage of 40 CFR part 35.

Availability of Other Program Information

General information about the program is available on the EPA Clean Water State Revolving Fund home page (http://www.epa.gov/owm/cwfinance/cwsrf/index.htm). Information regarding EPA's ARRA activity is available at http://www.epa.gov/recovery.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

The audit focus is on a State's CWSRF program, rather than individual capitalization grants awarded to States by EPA.

A. Activities Allowed or Unallowed

1. *Financial Assistance*

   a. The CWSRF may provide financial assistance: (1) to municipalities, inter-municipal, interstate, or State agencies for the construction of publicly owned treatment works, as defined in section 212 of the Act that are on the State's project priority list; (2) for implementing nonpoint source management programs under section 319 of the Act; and (3) for developing and implementing estuary management plans under section 320 of the Act (33 USC 1383(c)).

   b. The allowable types of financial assistance are (33 USC 1383(d)):

      (1) Making loans (not grants) for eligible projects;

      (2) Buying or refinancing of debt obligations of municipal, intermunicipal, and interstate agencies incurred after March 7, 1985;

      (3) Guaranteeing or purchasing insurance for local debt obligations;

      (4) Using as a source of revenue or security for CWSRF debt obligations (providing that the net proceeds of the sale of such bonds are deposited in the CWSRF); and

      (5) Guaranteeing loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies.

c. ARRA funds may be used for financial assistance as follows:

(1) States may award CWSRF funds under the additional subsidy reserve required by ARRA (see III.G.3.b(1) below) as subgrants.

(2) ARRA-appropriated funds may be used for refinancing of municipal debt or restructuring CWSRF loans only if the initial debt was incurred on or after October 1, 2008 (ARRA, Title VII).

2. CWSRF funds may be used by States for the reasonable costs of administering and managing the CWSRF (33 USC 1383(d)(7)).

3. ARRA-appropriated funds may not be used for the purchase of land or easements for activities authorized by section 603(c) of the Federal Water Pollution Control Act (ARRA, Title VII).

C. Cash Management

The State may draw cash from EPA through the Automated Clearinghouse (ACH) or the Automated Standard Application for Payments (ASAP) system for:

1. *Loans* - when the CWSRF receives a request from a loan recipient, based on incurred costs, including pre-building and building costs.

2. *Refinance or Purchase of Municipal Debt* - generally, when at a rate no greater than equal amounts over the maximum number of quarters that payments can be made, and up to the amount committed to the refinancing or purchase of the local debt.

3. *Purchase of Insurance* - when insurance premiums are due.

4. *Guarantees and Security for Bonds* - immediately, in the event of imminent default in debt service payments on the guaranteed/secured debt; otherwise, up to an amount dedicated for the guarantee or security based on incurred construction costs.

5. *Administrative Expenses* - cash can be drawn based on a schedule that coincides with the rate at which administrative expenses will be incurred (40 CFR section 35.3160).

6. *Subgrants awarded from the additional subsidy reserve under ARRA* – when the State receives a request from a subrecipient based on incurred costs, including pre-building and building costs.

D. Davis Bacon Act

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of Title 40, USC (ARRA, Section 1606).

The non-ARRA portion of this program is not subject to the Davis-Bacon Act.

G. Matching, Level of Effort, Earmarking

1. Matching

States are required to deposit into the CWSRF from State monies, an amount equal to 20 percent of each **non-ARRA** grant payment. If the State provides a match in excess of the required amount, the excess balance may be banked toward subsequent match requirements. States generally report the total amount of their matching for a capitalization grant in an annual CWSRF report to EPA. The match is required to be made on or before the time that EPA funds are drawn (40 CFR section 35.3135(b)).

No State match deposit is required for funds provided under ARRA.

2. Level of Effort - Not Applicable

3. Earmarking

a. The maximum amount allowable for administering and managing the CWSRF is 4 percent of the cumulative amount of capitalization grant awards received. When the administrative expense of the CWSRF exceeds 4 percent, the excess must be paid from sources outside the CWSRF (40 CFR section 35.3120(g)).

b. ARRA includes the following requirements:

(1) Notwithstanding the requirements of Section 603(d) of the Federal Water Pollution Control Act, States shall use not less than 50 percent of the amount of its ARRA-funded capitalization grants to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans, or subgrants, or any combination of these (ARRA, Title VII).

(2) To the extent that there are sufficient eligible project applications, not less than 20 percent of the funds appropriated shall be for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities (ARRA, Title VII).

H. Period of Availability of Federal Funds

1. "Grant payments" from a capitalization grant shall begin in the quarter in which the grant is awarded, and end no later than eight quarters after the grant is awarded, not to exceed 12 quarters from the date of allotment of grant funds to the States (40 CFR section 35.3155(c)).

2. EPA CWSRF grant funds under ARRA must be committed to eligible projects that are under contract or construction in an amount equal to the full value of the ARRA assistance agreement by February 17, 2010 (one year after enactment of ARRA). Each State must certify in writing, and forward to EPA, not later than March 1, 2010, that projects funded under its ARRA grant have met these requirements.

J. Program Income

1. If States collect fees as a result of loans made with grant funds (i.e., funds awarded by EPA in the capitalization grant) and the fees are not included as principal in the loan, they are considered program income and must be accounted for as indicated below.

   The permissible use of fees resulting from loans awarded from a particular capitalization grant varies depending on when the fee is collected.

   a. Regardless of when the funds are used, if the fee is collected during the grant period, i.e., before submission of the final Financial Status Report for the capitalization grant giving rise to the fee, it may be used under either the addition or cost sharing or matching alternatives for use of program income (40 CFR sections 31.25(g)(2) or (g)(3)). Under either alternative or combination of alternatives, use of program income is limited to the activities allowed under section III.A. above, as well as administrative expenses exceeding the four percent limitation under section III.G.3.a.

   b. Fees collected after the grant period may be used as indicated under paragraph 1.a as well as for other water quality-related purposes and combined financial administration of the CWSRFs and DWSRFs where the programs are administered by the same State agency.

      (*Fees Charged by States to Recipients of Clean Water State Revolving Fund Assistance*, (October 20, 2005 *Federal Register*, 70 FR 61039), section II.C.

2. Fees included in loan principal are not considered program income (see section III.N.3, "Special Tests and Provisions – Fund Establishment, Loan Repayments, Fund Earnings, and Use of Funds," below).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

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

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

d. SF-272, *Federal Cash Transactions Report* – Applicable

2. Performance Reporting - Not Applicable

3. Special Reporting - The State must provide an Annual Report to EPA according to the schedule in the grant agreement (*OMB No. 2040-0118*) (40 CFR sections 35.3165(a) and (b)).

N. Special Tests and Provisions

1. Environmental Review Requirements

Compliance Requirement - The State must conduct reviews of the potential environmental impacts of all Section 212 construction projects receiving assistance from the CWSRF, including nonpoint source pollution control and estuary protection projects that are also Section 212 projects (40 CFR section 35.3140).

Audit Objective - Determine whether the State is performing environmental reviews before construction proceeds.

Suggested Audit Procedures

a. Inquire of CWSRF management about the environmental review procedures in place.

b. Select a sample of projects that began during the year to ascertain that the decisions were rendered prior to the project proceeding and were approved in the State environmental review process.

2. Binding Commitments

Compliance Requirement - A "binding commitment" is a legal obligation by a State to a local recipient that defines the terms for assistance under the CWSRF. Cumulative binding commitments must equal at least 120 percent of cumulative capitalization grant payments received one year earlier. Binding commitments requirements are intended to help ensure that the State utilizes grant funds in a timely manner. EPA may withhold future payments and require adjustments to the payment schedules before releasing further payments if the State does not meet the binding commitment requirement. States generally report the total amount of their binding commitments in an annual CWSRF report to EPA (40 CFR sections 35.3135(c) and 35.3165(a)).

Audit Objective - Determine whether States have complied with the requirement to make binding commitments equal to or greater than 120 percent of the amount of the capitalization grants.

Suggested Audit Procedures

a. Review binding commitments in conjunction with EPA payment schedules to ascertain if the State entered into cumulative binding commitments in an amount at least equal to 120 percent of the cumulative grant payments received one year earlier (i.e., cumulative binding commitments in the current year should be equal to or greater than 120 percent of cumulative grant payments made through the previous year).

b. Test a sample of binding commitments reported by the State to verify that the amount and date agree with supporting documentation.

3. Fund Establishment, Loan Repayments, Fund Earnings, and Use of Funds

Compliance Requirements - The State shall establish a separate account or series of accounts that is dedicated solely to providing loans and other forms of financial assistance. All loan repayments (including principal and interest), interest earnings on investments, capitalization grants, State match, and transfers from the DWSRF must be credited directly to the CWSRF. Repayment of loans shall begin within one year after project completion, and loans shall be fully amortized over not more than 20 years after project completion (40 CFR sections 35.3110(b) and 35.3120(a) and the policy statement titled *Transfer and Cross-Collateralization of Clean Water Revolving Funds and Drinking Water State Revolving Funds* published in the October 13, 2000, *Federal Register* (65 FR 60940)). Fees included in loan principal must be used as provided in *Fees Charged by States to Recipients of Clean Water State Revolving Fund Assistance,* section I.

Audit Objectives - Determine whether the State has a separate account or series of accounts for the CWSRF. Determine whether principal and interest payments, interest earnings on investments, capitalization grants, State match, and transfers from the DWSRF, were properly credited to the CWSRF. Determine whether fees included in loan principal were used for authorized purposes.

Suggested Audit Procedures

a. Ascertain if the CWSRF is a separate account, or series of accounts, dedicated solely to purposes of the program.

b. Test a sample of projects funded by the CWSRF and for which repayments were due during the year to determine that principal and interest payments were properly credited to the CWSRF accounts and, if spent, were used for authorized purposes.

c. Test a sample of loan agreements and other project records to ascertain if the repayments began within one year of project completion and the loans are scheduled for full amortization within 20 years.

d. Obtain a list of investments made during the year and ascertain if earnings on investments were properly recorded in the CWSRF.

4. CWSRF as Security for Bonds

Compliance Requirement - When funds from the CWSRF are used as security or as a source of revenue for the payment of principal and interest on revenue or general obligation bonds issued by the State, the net proceeds (i.e., funds raised from the sale of bonds less issuance costs) of the sale of such bonds must be deposited in the CWSRF (40 CFR section 35.3120(d)). Generally, bond proceeds are deposited in accounts established by the bond trust indenture and identified in the Official Offering Statement. This requirement includes the situation where the State employs the cross-collateralization process permitted by the CWSRF program. Cross-collateralization allows for certain assets of both the DWSRF and the CWSRF programs to be pledged as collateral for a single or joint bond issue in proportion to the assets offered as collateral. Proportionality may be achieved at different levels of security: (1) at reserve level; (2) at loan repayment level; or (3) using an alternative structure approved by EPA (40 CFR section 35.3530(d)) and the policy statement titled *Transfer and Cross-Collateralization of Clean Water Revolving Funds and Drinking Water State Revolving Funds* published in the October 13, 2000, *Federal Register* (65 FR 60940).

Audit Objective - Determine whether the State placed the net proceeds from the sale of bonds guaranteed by the CWSRF into the CWSRF.

Suggested Audit Procedures

a. Review bond documentation and trace amounts qualifying as net proceeds to accounts in the CWSRF.

b. Ascertain that the net bond proceeds were deposited into the CWSRF.

c. If the State has employed a cross-collateralization technique, ascertain that the net proceeds deposited into the CWSRF were proportionate to the assets offered as collateral.

IV. OTHER INFORMATION

Subrecipients - In years after the subrecipient has expended loan proceeds and completed construction, and the subrecipient's only ongoing financial activity of the program is the payment of principal and interest on outstanding balances, the prior loan balances at the subrecipient level are not considered to have continuing compliance requirements under OMB Circular A-133 §___.205(d). Prior loans that do not have continuing compliance requirements other than to repay the loans are not considered Federal awards expended and therefore are not required to be audited under OMB Circular A-133.

ENVIRONMENTAL PROTECTION AGENCY

CFDA 66.468 CAPITALIZATION GRANTS FOR DRINKING WATER STATE REVOLVING FUNDS

I. PROGRAM OBJECTIVES

Capitalization grants are awarded to States to create and maintain Drinking Water State Revolving Funds (DWSRF) programs. States can use capitalization grant funds to establish a revolving loan fund (DWSRF) to assist public water systems finance the costs of infrastructure needed to achieve or maintain compliance with Safe Drinking Water Act (SDWA) requirements and protect the public health objectives of the Act. The DWSRF can be used to provide loans and other types of financial assistance for qualified communities, local agencies, and private entities. States may also set aside certain percentages of their capitalization grant or allotment for various activities that promote source water protection and enhanced water systems management.

II. PROGRAM PROCEDURES

The DWSRF program is established in each State by capitalization grants from the Environmental Protection Agency (EPA) and State match equaling 20 percent of the EPA capitalization grants. **However, subgrants awarded under the American Recovery and Reinvestment Act of 2009 (ARRA) do not require a State match (Note that ARRA terms these subawards by States as "grants.")**. EPA implements the DWSRF program in a manner that preserves flexibility for States in operating their program in accordance with their unique needs and circumstances. States have the flexibility to set aside up to 31 percent of their capitalization grants for other related activities. States may also transfer an amount up to 33 percent of its DWSRF capitalization grant to the Clean Water State Revolving Fund (CWSRF) (CFDA 66.458) or an equivalent amount from the CWSRF to the DWSRF program. A State may transfer capitalization grant dollars, State match, investment earnings, or principal and interest repayments.

Capitalization grant agreements include: (1) an application; (2) an Intended Use Plan (IUP), which describes how the State intends to use funds made available to it, including a list of proposed projects eligible for financing and a description of the financial status of the program; (3) a proposed payment schedule; (4) certain certifications and demonstrations which can be included in an optional operating agreement; and (5) workplans containing a least a general description of the use of set-aside funds.

The State must annually provide an IUP which describes how the State will use available DWSRF program funds for the year to meet the objectives of the SDWA and further the goal of protecting public health. The IUP explains how all of the funds available to the DWSRF program (including bond proceeds, interest earnings, loan repayments, Federal capitalization grants, State match, etc.) will be expended (40 CFR section 35.3555).

The State also must provide a Biennial Report to the EPA containing detailed information on how the State met the goals and objectives of the previous two fiscal years as stated in its IUP and grant agreement. Such report must cover the State's entire DWSRF program, including its set-aside activities. EPA conducts Annual Review of State programs to assess the success of each program, including activities identified in the IUP and Biennial Report.

Source of Governing Requirements

This program is authorized under Section 1452 of the Public Health Service Act (Title XIV), commonly known as the SDWA (42 USC 300j-12), and **ARRA (Pub. L. No. 111-5) and Conference Report 111-16**. The implementing regulations for the program can be found at 40 CFR part 35, subpart L. **Subgrants also are subject to 40 CFR part 31 or 40 CFR part 30 (for subgrants to non-profit agencies and with eligible public water systems under ARRA that are for-profit entities)**.

Availability of Other Program Information

Other general information about the program is available on the EPA Drinking Water State Revolving Fund home page (http://www.epa.gov/safewater/dwsrf.html). ***Information regarding EPA's ARRA activity is available at http://www.epa.gov/recovery.***

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

The audit focus is on a State's DWSRF program, rather than individual capitalization grants awarded to States by EPA.

A. Activities Allowed or Unallowed

1. The DWSRF program may provide the following financial assistance to publicly- or privately-owned community water systems and non-profit non-community water systems for eligible drinking water infrastructure projects (40 CFR sections 35.3520 and 35.3525):

    a. Making loans for eligible projects (40 CFR section 35.3520(b).

    b. Purchasing or refinancing existing debt obligations of municipal, intermunicipal and interstate agencies entered into on or after July 1, 1993.

    c. Guarantee of or purchasing insurance for local debt obligations.

    d. Providing a source of revenue or security for DWSRF debt obligations, provided that the net proceeds of the sale of such debt obligations are deposited in the DWSRF.

e. States may award DWSRF funds under the additional subsidy reserve required by ARRA (see III.G.3.d.(1) below) as subgrants (ARRA, Title VII).

f. ARRA-appropriated funds may be used for refinancing of municipal debt or restructuring DWSRF loan sonly if the initial debt was incurred on or after October 1, 2008 (ARRA, Title VII).

2. A State may set aside funds for the following designated set-aside activities (40 CFR section 35.3535):

   a. Administrative expenses (including technical assistance).

   b. Technical assistance to small water systems that regularly serve 10,000 or fewer persons (40 CFR section 35.3505).

   c. State program management.

   d. Local Assistance and other State programs.

3. The DWSRF may not provide assistance for (40 CFR sections 35.3520(d) through (f)):

   a. Dams or reservoirs, water rights, laboratory fees for monitoring, system operation and maintenance, or projects that are primarily fire protection.

   b. Expansion projects pursued solely in anticipation of future growth.

4. In addition to the prohibitions listed in 3. above, no funds appropriated under ARRA may be used for the following purposes:

   a. Local Assistance and other State programs (15 percent) set-aside.

   b. The purchase of land or easements for activities authorized by Section 1452(k) of the Safe Drinking Water Act (ARRA, Title VII).

C. Cash Management

The State may draw cash through the Automated Clearing House (ACH) or the Automated Standard Application for Payments (ASAP) system for (40 CFR sections 35.3560 and 35.3565):

1. *Loans* - when the DWSRF receives a request from a loan recipient, based on incurred costs, including pre-building and building costs.

2. *Refinance or Purchase of Municipal Debt* - generally, at a rate not greater than equal amounts over the maximum number of quarters that payments can be made, and up to the amount committed to the refinancing or purchase of the local debt. A State may immediately draw cash for up to the greater of $2 million or 5 percent of each fiscal year's capitalization grant to refinance costs.

3. *Purchase of Insurance* - when insurance premiums are due.

4. *Guarantees and Security for Bonds* - immediately, in the event of imminent default in debt service payments on the guaranteed/secured debt; otherwise, up to the amount dedicated for the guarantee or security based on actual construction cost.

5. *Set-Asides* - generally, on an incurred cost basis after work plans have been approved by EPA (40 CFR section 35.3560(e)).

6. *Subgrants awarded from the additional subsidy reserve under ARRA* – when the State receives a request from a subrecipient based on incurred costs, including pre-building and building costs.

D. Davis Bacon Act

All laborers and mechanics employed by contractors and sub contractors on projects funded directly by or assisted in whole or in part by and through the Federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of Title 40, USC.

The non-ARRA portion of this program is not subject to the Davis-Bacon Act.

G. Matching, Level of Effort, Earmarking

1. Matching

a. States are required to deposit into the DWSRF from State monies an amount equal to 20 percent of each **non-ARRA** grant payment. The match is required to be made on or before the time that EPA funds are drawn. When a letter of credit (LOC) mechanism or similar financial arrangement is used for the State match, payments to the LOC account must be made proportionally on the same schedule as payments for the capitalization grant. Monies from this State match LOC must be drawn into the DWSRF as monies are drawn on the Federal automated clearinghouse account. A State may issue general obligation or revenue bonds to derive the State match. If the State provides a match in excess of the required amount, the excess balance may be banked toward subsequent match requirements (40 CFR section 35.3550(g)).

No State match deposit is required for funds provided under ARRA.

b. In the case of the State Program Management set-aside, the State must also provide an amount equal to 100 percent of said payments. A State is authorized to use the amount of State funds expended on its Public Water System Supervision (PWSS) program in fiscal year 1993 (including PWSS match) as a credit toward meeting its match requirement. The value of this credit can be up to, but not greater than, 50 percent of the amount of match that is required. A State must provide the additional funds necessary to meet the remainder of the match requirement. The sources of these additional funds can be State monies (excluding PWSS match) or documentation of in-kind services. Although required PWSS match cannot be used as a source of additional State monies, State overmatch can be used (40 CFR sections 35.3535(d)(2) and 35.3550(h)).

2. Level of Effort - Not Applicable

3. Earmarking

a. Up to 31 percent of the allotment can be earmarked for set-aside activities as follows:

(1) *Administrative Expenses* - Not to exceed 4 percent of the cumulative allotment (40 CFR section 35.3535(b)).

(2) *Technical Assistance to Small Systems* - Not to exceed 2 percent of the cumulative allotment (40 CFR section 35.3535(c)).

(3) *State Program Management* - Not to exceed 10 percent of the cumulative allotment (40 CFR section 35.3535(d)).

(4) *Local Assistance and Other State Programs* - Not to exceed 15 percent of the capitalization grant and no more than 10 percent is used on any one of the defined activities (40 CFR section 35.3535(e)).

b. A State cannot use more than 30 percent of any particular fiscal year's capitalization grant to provide subsidies in the form of principal forgiveness or negative interest rate loans to communities meeting the State's definition of disadvantaged, or communities the State expects to become disadvantaged as a result of the project (40 CFR section 35.3525(b)).

c. States may earmark DWSRF funds awarded under ARRA for the set-asides described in 3.a.(1), (2), and (3) above; however, no funds may be used for the Local Assistance set-aside described in 3.a.(4).

d. In addition, ARRA includes the following requirements:

(1) Notwithstanding the requirements of Section 1452 (f) of the SDWA, States shall use not less than 50 percent of the amount of its ARRA-funded capitalization grants to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants, or any combination of these (ARRA, Title VII).

(2) To the extent that there are sufficient eligible project applications, not less than 20 percent of the funds appropriated shall be for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities (ARRA, Title VII).

H. Period of Availability of Federal Funds

Grant payments from a capitalization grant, which increase the ceiling of funds from which a State may draw cash for eligible costs, shall begin no earlier than the quarter in which the grant is awarded, and generally end no later than eight quarters after the grant is awarded, not to exceed 12 quarters from the date of allotment of grant funds to the States. State must obligate funds for eligible projects within one year of accepting a payment. States disburse, or liquidate, grant funds for projects in accordance with construction schedules. Funds are disbursed for set-aside activities in accordance with costs being incurred under approved workplans (40 CFR sections 35.3550(e) and 35.3560).

EPA DWSRF grant funds under ARRA must be committed to eligible projects that are under contract or construction in an amount equal to the full value of the ARRA assistance agreement by February 17, 2010 (one year after enactment of ARRA). Each State must certify in writing, and forward to EPA, not later than March 1, 2010, that projects funded under its ARRA grant have met these requirements.

J. Program Income

The State may charge fees to process, manage, or review an application for Federal assistance. Such fees may be collected in an account outside the DWSRF and used to supplement administrative expenses and for other allowable purposes for which a grant is awarded under 42 USC 300j-12. However, if these fees are deposited into the DWSRF, they are subject to the uses of the DWSRF, which do not include the use of funds for administrative purposes (40 CFR section 35.3530(b)).

L. Reporting

1. Financial Reporting

a. SF-269A, *Financial Status Report* – Applicable

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

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

d. SF-272, *Federal Cash Transactions Report* – Applicable

2. Performance Reporting - Not Applicable

3. Special Reporting - Not Applicable

N. Special Tests and Provisions

1. Environmental Review Requirements

Compliance Requirement - The State must conduct reviews of the potential environmental impacts of all infrastructure projects and those set-aside activities that impact the quality of the human environment receiving assistance from the DWSRF program. A State Environmental Review Process (SERP) that is equivalent to a National Environmental Policy Act (NEPA) review must be performed on projects and activities with cumulative costs equal to the annual capitalization grant. Other projects must be reviewed under an alternative SERP (40 CFR section 35.3580).

Audit Objective - Determine whether the State performed environmental reviews before projects and activities proceeded.

Suggested Audit Procedures

a. Inquire of DWSRF management about the environmental review procedures in place.

b. Select a sample of projects that began during the year to ascertain that decisions were rendered prior to the project proceeding and were reviewed in accordance with the SERP.

2. Binding Commitments

Compliance Requirement - A "binding commitment" is a legal obligation by a State to a local recipient that defines the terms for assistance under the DWSRF program. Cumulative binding commitments must be made in an amount equal to the amount of each grant payment plus the required State match that is deposited into the DWSRF within one year after the receipt of each grant payment. Payments for set-asides are not included in the binding commitment calculation. Binding commitment requirements are intended to help assure that the State utilizes grant funds in a timely manner. A State may initiate an adjustment to payment schedules if the State believes that it will not meet the binding commitment requirement. States generally report the total amount of their binding commitments in the Biennial Report to EPA (40 CFR section 35.3550(e)).

Audit Objective - Determine whether the State complied with the requirements to make binding commitments in an amount equal to the amount of each grant payment plus the required State match deposited into the DWSRF within one year after the receipt of each grant payment.

Suggested Audit Procedures

a. Review binding commitments in conjunction with the EPA payment schedules to ascertain if the State entered into binding commitments in an amount equal to the cumulative amount of grant payments plus the cumulative required State match deposited into the Fund, less cumulative set-aside funds, within one year after the receipt of each grant payment.

b. Test a sample of binding commitments reported by the State to verify that the amount and date agree with supporting documentation.

3. Deposits to DWSRF

Compliance Requirements - The State shall establish a separate account, or series of accounts, that is dedicated solely to providing loans and other forms of financial assistance from the DWSRF. All loan repayments (including principal and interest) interest earnings on investments, capitalization grants (except that portion the State intends to use as set-asides), State match and transfers from the CWSRF must be credited directly to the DWSRF. A State must maintain separate and identifiable accounts for the portion of the capitalization grant to be used for set-aside activities (40 CFR sections 35.3550(f) and (g)).

Transfers between the DWSRF and CWSRF must be approved by the State Governor (40 CFR section 35.3530(c)). Repayment of loans shall begin within one year after project completion, and loans shall be fully amortized over not more than 20 years after project completion, with the exception that loans to qualified disadvantaged communities can be amortized over 30 years (40 CFR sections 35.3525(a) and (b)(3)).

Audit Objectives - Determine whether the State has a separate account or series of accounts for the DWSRF program. Determine whether principal and interest payments, interest earnings on investments, set-aside funds, applicable portions of capitalization grants, and State match were credited to the appropriate accounts.

Suggested Audit Procedures

a. Ascertain if the DWSRF is a separate account, or series of accounts, dedicated solely to purposes of the program and that the set-aside funds are deposited into a separate accounts identified for the use of set-aside activities.

b. Test a sample of projects funded by the DWSRF and for which repayments were due during the year to determine that principal and interest payments were properly credited directly to the DWSRF.

c. Test a sample of loan agreements and other project records to ascertain if the repayments began within one year of project completion and the loans are scheduled for full amortization within 20 years, or 30 years for loans to disadvantaged communities.

d. Obtain a list of investments made during the year and ascertain if earnings on investments were directly credited to the DWSRF account.

e. Obtain cash draw records or reports from the EPA Regional office and ascertain if cash draws were directly credited to the DWSRF account and the appropriate State match was deposited.

f. Ascertain if a transfer of funds between the DWSRF and CWSRF programs occurred and if the transfer was approved by the State Governor.

4. DWSRF as Security for Bonds

Compliance Requirement - When funds from the DWSRF are used as security or as a source of revenue for the payment of principal and interest on revenue or general obligation bonds issued by the State, the net proceeds (i.e., funds raised from the sale of bonds less issuance costs) of the sale of such bonds must be deposited in the DWSRF (40 CFR section 35.3525(e)). Generally bond proceeds are deposited in accounts established by the bond trust indenture and identified in the Official Offering Statement. This requirement includes the situation where the State employs the cross-collateralization process permitted by the DWSRF program. Cross-collateralization allows for certain assets of both the DWSRF and the CWSRF programs to be pledged as collateral for a single or joint bond issue in proportion to the assets offered as collateral. Proportionality may be achieved at different levels of security: (1) at reserve level; (2) at loan repayment level; or (3) using an alternative structure approved by EPA (40 CFR section 35.3530(d)).

Audit Objective - Determine whether the State properly deposited and recorded the net proceeds from the sale of bonds guaranteed by the DWSRF into the DWSRF.

Suggested Audit Procedures

a. Review bond documentation and trace amounts qualifying as net proceeds to the appropriate accounts in the DWSRF.

b. Ascertain that the net bond proceeds were deposited into the DWSRF.

c. If the State has employed a cross-collateralization technique, ascertain that the net proceeds deposited into the DWSRF were proportionate to the assets offered as collateral.

5. Repayment of Set-Aside Loans

Compliance Requirement - Assistance from the Local Assistance and Other State Programs set-aside for assistance for land acquisition or conservation easements for source water protection of a public water system or for implementation of voluntary, incentive-based source water quality protection measures for a community water system must be made in the form of a loan which must be repaid within 20 years after completion of the project. Principal and interest payments on these and other set-aside loans must be placed in the DWSRF or in a separate dedicated account or accounts for use of the same set-aside activity in accordance with 40 CFR section 35.3535(e)(2).

Audit Objective - Determine whether principal and interest payments on set-aside loans directly credited to the DWSRF or a separate account to be used for the same set-aside activity.

Suggested Audit Procedures

Test a sample of set-aside loan repayments to ascertain that they were credited to the DWSRF or in a separate dedicated account or accounts for loans made under the set-asides.

IV. OTHER INFORMATION

Subrecipients - In years after the subrecipient has expended loan proceeds and completed construction, and the subrecipient's only ongoing financial activity of the program is the payment of principal and interest on outstanding balances, the prior loan balances at the subrecipient level are not considered to have continuing compliance requirements under OMB Circular A-133 §___.205(d). Prior loans that do not have continuing compliance requirements other than to repay the loans are not considered Federal awards expended and therefore are not required to be audited under OMB Circular A-133.

DEPARTMENT OF EDUCATION

CROSS-CUTTING SECTION

INTRODUCTION

This section contains compliance requirements that apply to more than one Department of Education (ED) program either because the program was authorized under the Elementary and Secondary Education Act of 1965 (ESEA), or the program is subject to the General Education Provisions Act (GEPA), or both. **Programs for which funds were appropriated under the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) are included in this Cross-Cutting Section. Each ARRA program is identified by a separate CFDA number specific to the ARRA funding, and is clustered with a corresponding CFDA number for the program as operated under the regular (non-ARRA) appropriation.** The compliance requirements in this Cross-Cutting Section reference the applicable programs in Part 4, Agency Compliance Requirements. Similarly, the applicable programs in Part 4 reference this Cross-Cutting Section.

CFDA No. Program Name	Listed as
ESEA Programs	
84.010 Title I Grants to Local Educational Agencies (LEAs)	Title I, Part A Cluster
84.389 Title I Grants to Local Educational Agencies (LEAs), Recovery Act	
84.011 Migrant Education—State Grant Program	MEP
84.186 Safe and Drug-Free Schools and Communities—State Grants	SDFSCA
84.282 Charter Schools	CSP
84.287 Twenty-First Century Community Learning Centers	21st CCLC
84.298 State Grants for Innovative Programs	Title V, Part A
84.318 Education Technology State Grants	Ed Tech
84.357 Reading First State Grants	Reading First
84.365 English Language Acquisition Grants	Title III, Part A
84.366 Mathematics and Science Partnerships	MSP
84.367 Improving Teacher Quality State Grants	Title II, Part A

Other Programs

84.002 Adult Education—State Grant Program	Adult Education
84.027 Special Education—Grants to States (IDEA, Part B)	Special Education Cluster IDEA(
84.173 Special Education—Preschool Grants (IDEA Preschool)	
84.391 Special Education—Grants to States (IDEA, Part B), Recovery Act	
84.392 Special Education—Preschool Grants (IDEA Preschool), Recovery Act	
84.042 TRIO—Student Support Services	TRIO Cluster
84.044 TRIO—Talent Search	
84.047 TRIO—Upward Bound	
84.066 TRIO—Educational Opportunity Centers	
84.217 TRIO—McNair Post-Baccalaureate Achievement	
84.048 Career and Technical Education - Basic Grants to States (Perkins IV)	CTE
84.126 Rehabilitation Services - Vocational Rehabilitation Grants to States	Vocational Rehabilitation Cluster
84.390 Rehabilitation Services - Vocational Rehabilitation Grants to States, Recovery Act	
84.181 Special Education—Grants for Infants and Families with Disabilities	IDEA, Part C Cluster
84.393 Special Education—Grants for Infants and Families, Recovery Act	
84.938 Hurricane Education Recovery Act Programs	HERA

No Child Left Behind Act

The ESEA was amended January 8, 2002 by the No Child Left Behind Act of 2001 (NCLB) (Pub. L. No.107-110).

Waivers and Expanded Flexibility

Under Title IX of the ESEA, States, Indian tribes, LEAs, and schools through their LEA may request waivers from ED of many of the statutory and regulatory requirements of programs authorized in ESEA. In addition, some States may have been granted authority to grant waivers of Federal requirements under the Education Flexibility Partnership Act of 1999. **Auditors should be aware that because of ARRA, more waivers than usual may have been requested.** Auditors should ascertain from the audited State Education Agencies (SEAs) and LEAs whether the SEA or the LEA or its schools are operating under any waivers.

I. PROGRAM OBJECTIVES

The ESEA, as amended by the NCLB, provides for a comprehensive overhaul of Federal support for education, and restructures how these programs provide services. ESEA programs in this Supplement to which this section applies are shown above. Generally these requirements are applicable for fiscal years beginning after June 30, 2002.

Under the NCLB, Federal education programs authorized in the ESEA are designed to work in concert with each other, rather than separately. By emphasizing program coordination, planning, and service delivery among Federal programs and enhancing integration with State and local instructional programs, the ESEA reinforces comprehensive State and local educational reform efforts geared toward ensuring that all children can meet challenging State standards regardless of their background or the school they attend.

Program objectives for non-ESEA programs covered by this cross-cutting section and additional information on program objectives for the ESEA programs are set forth in the individual program sections of this Supplement.

II. PROGRAM PROCEDURES

Plans for ESEA Programs

An SEA must either develop and submit separate, program-specific individual State plans to ED for approval as provided in individual program requirements outlined in the ESEA or submit, in accordance with section 9302 of the ESEA, a consolidated plan to ED for approval. Consolidated plans will provide a general description of the activities to be carried out with ESEA funds. Subgrants to LEAs and other educational service agencies and amounts to be used for State activities are often set by law for ESEA programs. However, SEAs have discretion in using funds available for State activities.

LEAs also have the choice in many cases of submitting individual program plans or a consolidated plan to the SEA to receive program funds. SEAs with approved consolidated State plans may require LEAs to submit consolidated plans.

Unique Features of ESEA Programs That May Affect the Conduct of the Audit

Consolidation of administrative funds (In addition to the compliance requirement in III.A.1, see IV, "Other Information.")

SEAs and LEAs (with SEA approval) may consolidate Federal funds received for administration under many ESEA programs, thus eliminating the need to account for these funds on a program-by-program basis. The amount from each applicable program set aside for State consolidation may not be more than the percentage, if any, authorized for State administration under that program. The amount set aside under each covered program for local consolidation may not be more than the percentage, if any, authorized for local administration under that program. Expenditures using consolidated administrative funds may be charged to the programs on a first in/first out method, in proportion to the funds provided by each program, or another reasonable manner.

Schoolwide Programs (In addition to the compliance requirement in III.A.2, see IV, "Other Information.")

Eligible schools are able to use their Title I, Part A funds, in combination with other Federal, State, and local funds, in order to upgrade the entire educational program of the school and to raise academic achievement for all students. Except for some of the specific requirements of the Title 1, Part A program, Federal funds that a school consolidates in a schoolwide program are not subject to most of the statutory or regulatory requirements of the programs providing the funds as long as the schoolwide program meets the intent and purpose of those programs. The Title I, Part A requirements that apply to schoolwide programs are identified in the Title I, Part A program-specific section. If a school does not consolidate Federal funds with State and local funds in its schoolwide program, the school has flexibility with respect to its use of Title I, Part A funds, consistent with section 1114 of ESEA (20 USC 6314), but it must comply with all statutory and regulatory requirements of the other Federal funds it uses in its schoolwide program

Transferability (In addition to the compliance requirement in III.A.3, see III.G.3.b, "Matching, Level of Effort, Earmarking – Earmarking," and IV, "Other Information.")

SEAs and LEAs (with some limitations) may transfer funds from one or more applicable programs to one or more other applicable programs, or to Title I, Part A. Transferred funds are subject to all of the requirements, set-asides, and limitations of the programs into which they are transferred.

Small Rural Schools Achievement Alternative Use of Funds (In addition to the compliance requirement in III.A.4, see IV, "Other Information.")

Eligible LEAs may, after notifying the SEA, spend all or part of the funds they receive under four applicable programs for local activities authorized under one or more of seven applicable programs.

General and Program-Specific Cross-Cutting Requirements

The requirements in this cross-cutting section can be classified as either general or program-specific. General cross-cutting requirements are those that are the same for all applicable programs but are implemented on an entity-level. These requirements need only be tested once to cover all applicable major programs. The general cross-cutting requirements that the auditor only need test once to cover all applicable major programs are: III.G.2.1, "Level of Effort-Maintenance of Effort (SEAs/LEAs);" III.L.3, "Special Reporting;" and, III.N, "Special Tests and Provisions" (III.N.2, "Schoolwide Programs;" and III.N.3, "Comparability"). Program-specific cross-cutting requirements are the same for all applicable programs, but are implemented at the individual program level. These types of requirements need to be tested separately for each applicable major program. The compliance requirement in III.N.1, "Participation of Private School Children," may be tested on a general or program-specific basis.

Program procedures for non-ESEA programs covered by this cross-cutting section and additional information on program procedures for the ESEA programs are set forth in the individual program sections of this Supplement.

Availability of Other Program Information

The ESEA, as reauthorized by the NCLB, is available with a hypertext index on the Internet at http://www.ed.gov/policy/elsec/leg/esea02/index.html. A number of documents contain guidance applicable to the cross-cutting requirements in this Supplement. They include:

- Guidance on the Transferability Authority (June 8, 2004) (http://www.ed.gov/programs/transferability/finalsummary04.doc);
- Guidance on the Rural Education Achievement Program (REAP) (June 2003) (http://www.ed.gov/policy/elsec/guid/reap03guidance.doc);
- State Educational Agency Procedures for Adjusting Basic, Concentration, Targeted, and Education Finance Incentive Grant Allocations Determined by the U.S. Department of Education (May 23, 2003) (http://www.ed.gov/programs/titleiparta/seaguidanceforadjustingallocations.doc);
- How Does a State or Local Educational Agency Allocate Funds to Charter Schools that Are Opening for the First Time or Significantly Expanding Their Enrollment? (December 2000) (http://www.ed.gov/policy/elsec/guid/cschools/cguidedec2000.doc);
- Title I Services to Eligible Private School Children (October 17, 2003) (http://www.ed.gov/programs/titleiparta/psguidance.doc);
- Title IX, Part E Uniform Provisions Subpart 1—Private Schools: Equitable Services to Eligible Private School Students, Teachers, and Other Educational Personnel (August 2005) (http://www.ed.gov/policy/elsec/guid/equitableserguidance.doc);
- Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, not Supplant; Carryover; Consolidating Funds in Schoolwide Programs; and Grantback Requirements (February 2008) (http://www.ed.gov/programs/titleiparta/fiscalguid.doc); and
- Designing Schoolwide Programs (March 2006) (http://www.ed.gov/policy/elsec/guid/designingswpguid.doc).

A number of documents contain guidance applicable to the cross-cutting requirements affected by ARRA. They include:

- **American Recovery and Reinvestment Act of 2009: State Fiscal Stabilization Fund (Mar. 7, 2009) (http://www.ed.gov/policy/gen/leg/recovery/factsheet/stabilization-fund.html);**
- **Guidance on the State Fiscal Stabilization Fund Program (Apr. 2009) (http://www.ed.gov/programs/statestabilization/guidance.pdf);**

- **American Recovery and Reinvestment Act of 2009: Title I, Part A Funds for Grants to Local Education Agencies (Apr. 1, 2009) (http://www.ed.gov/policy/gen/leg/recovery/factsheet/title-i.html);**

- **Guidance: Funds under Title I, Part A of the Elementary and Secondary Education Act of 1965 Made Available Under The American Recovery and Reinvestment Act of 2009 (Apr. 2009) (http://www.ed.gov/policy/gen/leg/recovery/guidance/title-i.pdf);;**

- **American Recovery and Reinvestment Act of 2009: IDEA Recovery Funds for Services to Children and Youths with Disabilities (IDEA, Part B) (April 1, 2009) (http://www.ed.gov/policy/gen/leg/recovery/factsheet/idea.html);**

- **Guidance: Funds for Part B of the Individuals with Disabilities Education Act Made Available Under The American Recovery and Reinvestment Act of 2009 (Apr. 2009) (http://www.ed.gov/policy/gen/leg/recovery/guidance/idea-b.doc); and**

- **American Recovery and Reinvestment Act of 2009: IDEA Recovery Funds for Services to Infants and Toddlers with Disabilities (IDEA, Part C) (April 1, 2009) (http://www.ed.gov/policy/gen/leg/recovery/factsheet/idea-c.html).**

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Further, if there has been a transfer of funds to a consolidated administrative cost pool from a major program, in developing audit procedures to test compliance with Activities Allowed or Unallowed and Allowable Costs/Cost Principles, the auditor should include the consolidated administrative cost pool in the universe to be tested.

A. Activities Allowed or Unallowed

1. ***Consolidation of Administrative Funds*** (SEAs/LEAs)

   ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (except the Governor's Program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287 Title V, Part A (84.298); Ed Tech (84.381); Reading First (84.357); Title III, Part A (84.365); MSP (84.366) (at the LEA level only); and Title II, Part A (84.367).*

   An SEA may consolidate the amounts specifically made available to it for State administration under one or more ESEA programs (and such other programs as the ED Secretary may designate) if the SEA can demonstrate that the majority of its resources are derived from non-Federal sources. An SEA must use consolidated administrative funds for authorized administrative activities of one

or more of the consolidated programs. It may also use such funds for administrative activities designed to enhance the effective and coordinated use of funds under one or more of the programs included in the consolidation, such as coordination of ESEA programs with other Federal and non-Federal programs; the establishment and operation of peer review mechanisms; the dissemination of information regarding model programs and practices; and technical assistance (Section 9201 of ESEA (20 USC 7821)).

An LEA may, with the approval of its SEA, consolidate and use for the administration of one or more ESEA programs not more than the percentage, established in each program, of the total available under those programs. An LEA may use consolidated funds for the administration of the consolidated programs and for uses at the school district and school levels comparable to those authorized for the SEA. An LEA that consolidates administrative funds may not use any other funds under the programs included in the consolidation for administration (Section 9203 of ESEA (20 USC 7823)).

An SEA or LEA that consolidates administrative funds is not required to keep separate records of administrative costs for each individual program. Expenditures of consolidated administrative funds are allowable if they are for administrative costs that are allowable under any of the contributing programs (Sections 9201(c) and 9203(e) of ESEA (20 USC 7821(c) and 7823(e))).

See III.N.2.c, "Special Tests and Provisions - Schoolwide Programs" in this cross-cutting section for discussion of provisions relating to allowable activities for Schoolwide Programs.

See IV, "Other Information," for guidance on the treatment of consolidated administrative funds for purposes of Type A program determination and presentation in the Schedule of Expenditures of Federal Awards.

An SEA may consolidate any amounts specifically made available to it for State administration under ARRA and use those consolidated administrative funds for authorized administrative activities of one or more of the consolidated programs (Section 9201 of ESEA (20 USC 7821)).

An LEA, with the approval of its SEA, may consolidate and use for the administration of one or more ESEA programs not more than the percentage, established in each program, of the total available under ARRA (Section 9203 of ESEA (20 USC 7823)).

Because ARRA funds must be accounted for separately from funds available under the regular ESEA appropriation, an SEA or LEA may use any reasonable method—e.g., proportionality—to assign expenditures of State or local consolidated administrative funds to ARRA.

2. ***Schoolwide Programs*** (LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (****84.381****); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).*

*This section also applies to IDEA (84.027, 84.173****, 84.391, and 84.392****) and CTE (84.048).*

An eligible school participating under Title I, Part A may, in consultation with its LEA, use its Title I, Part A funds, along with funds provided from the above-identified programs, to upgrade the school's entire educational program in a schoolwide program. See III.N.2, "Special Tests and Provisions - Schoolwide Programs" in this cross-cutting section for testing related to schoolwide programs (Section 1114 of ESEA (20 USC 6314)).

See IV, "Other Information," for guidance on the treatment of consolidated schoolwide funds for purposes of Type A program determination and presentation in the Schedule of Expenditures of Federal Awards.

An eligible school participating under Title I, Part A may, in consultation with its LEA, use its Title I, Part A ARRA funds, along with ARRA funds provided from all programs identified above, to upgrade the school's entire educational program in a schoolwide program (Section 1114 of ESEA (20 USC 6314)).

Because ARRA funds must be accounted for separately from funds available under the regular fiscal year appropriation an LEA may use any reasonable method (e.g., proportionality) to assign expenditures of ARRA funds consolidated in a schoolwide program to the program that contributed the funds.

3. ***Transferability*** (SEAs and LEAs)

ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a), with the agreement of the Governor); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318); and Title II, Part A (84.367).

SEAs may transfer up to 50 percent of the non-administrative funds allocated for State-level activities from one or more listed applicable programs to one or more of the other listed applicable programs, or to Title I, Part A (84.010). Except for 21st CCLC (84.287), LEAs not identified for improvement or corrective action under Section 1116(c) of ESEA may also transfer up to 50 percent of the funds allocated to them from one or more of the listed applicable programs to another listed applicable program or to Title I, Part A. LEAs identified for improvement

under Section 1116(c) may transfer up to 30 percent of the funds allocated to them for (i) school improvement under Section 1003; or (ii) other LEA improvement activities consistent with Section 1116(c). LEAs identified for corrective action may not transfer funds (Sections 6123(a) and (b) of ESEA (20 USC 7305b(a) and (b))).

Transferred funds are subject to all of the requirements, set-asides, and limitations of the programs into which they are transferred (Section 6123(e) of ESEA (20 USC 7305b(e))).

See III.G.3.b, "Matching, Level of Effort, Earmarking - Earmarking," for additional testing related to transferability.

See IV, "Other Information," for guidance on the treatment of funds transferred under this provision for purposes of Type A program determination and presentation in the Schedule of Expenditures of Federal Awards.

4. ***Small Rural Schools Achievement (SRSA) Alternative Uses of Funds Program***

ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a)); Title V, Part A (84.298); Ed Tech (84.381); and Title II, Part A (84.367).

LEAs that (a) have a total average daily attendance of fewer than 600 students, or serve only schools that are located in counties with a population density of fewer than 10 persons per square mile, and (b) serve only schools that are coded by the National Center for Education Statistics (NCES) as rural (NCES code of 7 or 8), or (with the concurrence of the SEA) are located in an area defined as rural by a governmental agency of the State may, after notifying the SEA, spend all or part of the funds received under the above four programs for local activities authorized under one or more of the following eight programs:

CFDA 84.010, Title I Grants to Local Education Agencies (LEAs)
(Part A, Title I)
CFDA 84.389, Title I Grants to Local Education Agencies (LEAs)
(Part A, Title I)
CFDA 84.186, Safe and Drug-Free Schools and Communities—State Grants
(Part A, Title IV)
CFDA 84.287, Twenty-First Century Community Learning Centers
(Part B, Title IV)
CFDA 84.298, Innovative Education Program Strategies (Part A, Title V)
CFDA 84.318, Education Technology State Grants (Part D, Title II)
CFDA 84.365, English Language Acquisition Grants (Part A, Title III)
CFDA 84.367, Improving Teacher Quality State Grants
(Subpart 2, Part A, Title II)
(Section 6211(a)-(c) of ESEA (20 USC 7345(a)-(c)))

See IV, "Other Information," for guidance on the treatment of funds transferred under this provision for purposes of Type A program determination and presentation in the Schedule of Expenditures of Federal Awards.

B. Allowable Costs/Cost Principles

1. ***Alternative Fiscal and Administrative Requirements*** (SEAs/LEAs)

This section applies to all ESEA programs in this Supplement: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318); Reading First (84.357); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).*

A State may adopt its own written fiscal and administrative requirements, which are consistent with the provisions of OMB Circular A-87, for expending and accounting for all funds received by SEAs and LEAs under ESEA programs. The written fiscal and administrative requirements must: (a) be sufficiently specific to ensure that funds are used in compliance with all applicable statutory and regulatory provisions, including ensuring that costs are allocable to a particular cost objective; (b) ensure that funds received are spent only for reasonable and necessary costs of the program; and (c) ensure that funds are not used for general expenses required to carry out other responsibilities of State or local governments (34 CFR section 299.2(b)).

2. ***Documentation of Employee Time and Effort (Consolidated Administrative Funds and Schoolwide Programs)***

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (except the Governor's Program authorized under Section 4112(a) with respect to consolidated administrative funds); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.381); Reading First (84.357) (consolidated administrative funds only); Title III, Part A (84.365); MSP (84.366) (with respect to schoolwide programs and consolidation of administrative funds at the LEA level); and Title II, Part A (84.367).*

This section also applies to SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a) for schoolwide programs only); IDEA (84.027, 84.173, ***84.391, and 84.392****) (schoolwide programs only); and CTE (84.048) (schoolwide programs only).*

a. *Consolidated Administrative Funds:* An SEA or LEA that consolidates Federal administrative funds under Sections 9201 or 9203 of ESEA (20 USC 7821 or 7823) is not required to keep separate records by individual program. The SEA or LEA may treat the consolidated administrative cost objective as a "dedicated function."

Time-and-effort requirements with respect to consolidated administrative funds vary under different circumstances.

(1) An employee who works solely on a single cost objective (i.e., the consolidated administrative cost objective) must furnish a semi-annual certification that he/she has been engaged solely in activities. The certifications must be signed by the employee or a supervisory official having first-hand knowledge of the work performed by the employee in accordance with OMB Circular A-87, Attachment B, paragraph 8.h.(3).

(2) An employee who works in part on a single cost objective (i.e., the consolidated administrative cost objective) and in part on a Federal program whose administrative funds have not been consolidated or on activities funded from other revenue sources must maintain time and effort distribution records in accordance with OMB Circular A-87, Attachment B, paragraphs 8.h.(4), (5), and (6) documenting the portion of time and effort dedicated to:

(a) The single cost objective, and

(b) Each program or other cost objective supported by non-consolidated Federal funds or other revenue sources.

b. *Schoolwide Programs* - A schoolwide program school is permitted to consolidate Federal funds with State and local funds to upgrade the entire educational program of the school. (Note: Reading First funds may not be consolidated - see *Federal Register*, Notice of Authorization and Exemption of Schoolwide Programs, July 2, 2004, 69 FR 40361-40362.) A school that consolidates Federal funds with State and local funds in a consolidated schoolwide pool is not required to maintain separate records by program (Section 1114(a)(3)(C) of ESEA (20 USC 6314(a)(3)(C)); 34 CFR section 200.29(d)). If a schoolwide program school does not consolidate Federal funds in a consolidated schoolwide pool, the school must keep separate records by program. (Guidance is contained in the publication entitled *Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, not Supplant; Carryover; Consolidating Funds in Schoolwide Programs; and Grantback Requirements* (February 2008). This guidance is available on the Internet at http://www.ed.gov/programs/titleiparta/fiscalguid.doc).

Time-and-effort requirements in schoolwide program schools vary under different circumstances.

(1) If a school operating a schoolwide program consolidates Federal, State, and local funds in a consolidated schoolwide pool, an employee who is paid in full with funds from that pool is not

required to file a semi-annual certification because there is no distinction between staff paid with Federal funds and staff paid with State or local funds. In effect, payment from the single consolidated schoolwide pool certifies that the employee works only on activities of the schoolwide program.

(2) If a school operating a schoolwide program does not consolidate Federal funds with State and local funds in a consolidated schoolwide pool, an employee who works, in whole or in part, on a Federal program or cost objective must document time and effort as follows:

(a) An employee who works solely on a single cost objective (i.e., a single Federal program whose funds have not been consolidated or Federal programs whose funds have been consolidated but not with State and local funds) must furnish a semi-annual certification that he/she has been engaged solely in activities. The certifications must be signed by the employee or a supervisory official having first-hand knowledge of the work performed by the employee in accordance with OMB Circular A-87, Attachment B, paragraph 8.h.(3).

(b) An employee who works on multiple activities or cost objectives (i.e., in part on a Federal program whose funds have not been consolidated in a consolidated schoolwide pool and in part on Federal programs supported with funds consolidated in a schoolwide pool or on activities funded from other revenue sources) must maintain time and effort distribution records in accordance with OMB Circular A-87, Attachment B, paragraph 8.h.(4), (5), and (6). The employee must document the portion of time and effort dedicated to:

(i) The Federal program; and

(ii) Each program or other cost objective supported either by consolidated Federal funds or other revenue sources.

c. Consolidated Administrative (ARRA Funds) - An SEA or LEA that consolidates ARRA administrative funds under Sections 9201 or 9203 of ESEA (20 USC 7821 or 7823) must keep separate records by individual program of the ARRA funds (2 CFR section 176.210). The SEA or LEA may use any reasonable method (e.g., proportionality) to assign expenditures of ARRA consolidated administrative funds to the program that contributed the funds. With respect to documentation

of employee time and effort, however, the SEA or LEA may treat the consolidated administrative cost objective, including ARRA funds, as a "dedicated function" and follow the requirements discussed in the corresponding provision of the cross-cutting section of the Supplement.

d. Schoolwide Programs (ARRA Funds) - A schoolwide program school is permitted to consolidate Federal funds, including Title I, Part A funds and other funds available under ARRA, with State and local funds to upgrade the entire educational program of the school. Generally, a school that consolidates Federal funds with State and local funds in a consolidated schoolwide pool is not required to maintain separate records by program (Section 1114(a)(3)(C) of ESEA (20 USC 6314(a)(3)(C)); 34 CFR section 200.29(d)). However, a school that consolidates ARRA funds in a schoolwide program must account for the ARRA funds separately (2 CFR section 176.210). An LEA may use any reasonable method (e.g., proportionality) to assign expenditures of ARRA funds consolidated in a schoolwide program to the program that contributed the funds.

Although an LEA must account for ARRA funds separately even if it consolidates those funds in a consolidated schoolwide pool, an employee who is paid in full with funds from that pool is not required to file a semi-annual certification because there is no distinction between staff paid with Federal funds and staff paid with State or local funds. In effect, payment from the single consolidated schoolwide pool certifies that the employee works only on activities of the schoolwide program.

If a schoolwide program school does not consolidate ARRA funds in a consolidated schoolwide pool, the school must keep separate records by program, including separate records with respect to ARRA funds. (Guidance is contained in the publication entitled Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, Not Supplant; Carryover; Consolidating Funds in Schoolwide Programs; and Grantback Requirements (February 2008). This guidance is available on the Internet at http://www.ed.gov/programs/titleiparta/fiscalguid.doc).

3. ***Indirect Costs*** (All grantees/all subgrantees)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318); Reading First (84.357); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).*

This section also applies to Adult Education (84.002); IDEA (84.027, 84.173, ***84.391, and 84.392****); CTE (84.048); IDEA, Part C (84.181 and* ***84.393****); and HERA (84.938A).*

A "restricted" indirect cost rate (RICR) must be used for programs administered by State and local governments and their governmental subrecipients that have a statutory requirement prohibiting the use of Federal funds to supplant non-federal funds. Non-governmental grantees or subgrantees administering such programs have the option of using the RICR, or an indirect cost rate of 8 percent, unless ED determines that the RICR would be lower.

The formula for a restricted indirect cost rate is:

RICR = (General management costs + Fixed costs) / (Other expenditures)

General management costs are costs of activities that are for the direction and control of the grantee's (or subgrantee's) affairs that are organization wide, such as central accounting services, payroll preparation and personnel management. For State and local governments, the general management indirect costs consist of (1) allocated Statewide Central Service Costs approved by the Department of Health and Human Services in a formal Statewide Cost Allocation Plan (SWCAP) as "Section I" costs and (2) departmental indirect costs. The term "general management" as it applies to departmental indirect costs does not include expenditures limited to one component or operation of the grantee. Specifically excluded from general management costs are the following costs that are reclassified and included in the "other expenditures" denominator:

(a) Divisional administration that is limited to one component of the grantee;

(b) The governing body of the grantee;

(c) Compensation of the chief executive officer of the grantee;

(d) Compensation of the chief executive officer of any component of the grantee; and

(e) Operation of the immediate offices of these officers.

Also excluded from the SWCAP Section I indirect costs are any occupancy and maintenance type costs as described in 34 CFR section 76.568. However, because these costs are allocated and not incurred at the departmental level, they do not require reclassification to the "other expenditure" denominator.

Fixed costs are contributions to fringe benefits and similar costs associated with salaries and wages that are charged as indirect costs, including retirement, social security, pension, unemployment compensation and insurance costs.

Other expenditures are the grantee's total expenditures for its federally and non-federally funded activities, including directly charged occupancy and space maintenance costs (as defined in 34 CFR section 76.568), and the costs related to the chief executive officer of the grantee or any component of the grantee and its offices. Excluded are general management costs, fixed costs, subgrants, capital outlays, debt service, fines and penalties, contingencies, and election expenses (except for elections required by Federal statute).

Occupancy and space maintenance costs associated with functions that are not organization-wide must be included with other expenditures in the indirect cost formula. These costs may be charged directly to affected programs only to the extent that statutory supplanting prohibitions are not violated. This reimbursement must be approved in advance by ED. Specific occupancy and space maintenance costs may be charged directly only to programs affected by the restricted rate calculation if charging for such costs is approved in advance by ED (34 CFR section 76.568(c)).

Indirect costs charged to a grant are determined by applying the RICR to total direct costs of the grant minus capital outlays, subgrants, and other distorting or unallowable items as specified in the grantee's indirect cost rate agreement.

The other ED programs (those not having a statutory non-supplant requirement) that allow indirect costs do not require a restricted rate and should follow the applicable OMB cost principles circular (34 CFR sections 76.560 and 76.563-76.569).

4. Unallowable Direct Costs to Programs

Officials from ED have noted that some entities have charged costs in the following areas which were determined to be unallowable as specified in the indicated references. Auditors should be alert that if any such costs are charged, charges must be consistent with provisions of OMB Circular A-87.

a. Separation leave costs (OMB Circular A-87, Attachment B, paragraph 8.d.(3)).

b. Severance costs (OMB Circular A-87, Attachment B, paragraph 8.g.(3)).

c. Post retirement health benefit (PRHB) costs (OMB Circular A-87, Attachment B, paragraph 8.f).

5. Unallowable Costs to Programs (Direct or Indirect)

Officials from ED have noted that, in cases where grantees rent or lease buildings or equipment from an affiliate organization, the costs associated with the lease or rental agreement can be excessive. The auditor should be alert to the fact that the measure of allowability in such "less-than-arms-length-relationships" is not fair market value, but rather the "costs of ownership" standard as referenced in each OMB cost principles circular as follows:

a. OMB Circular A-87, Attachment B, paragraph 37.c.

b. OMB Circular A-21, Section J.43.

c. OMB Circular A-122, Attachment B, Paragraph 43.c.

C. Cash Management

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.381); Reading First (84.357); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).*

This section also applies to Adult Education (84.002); IDEA (84.027, 84.173, ***84.391, and 84.392****); TRIO Cluster (84.042, 84.044, 84.047, 84.066 and 84.217); CTE (84.048); Vocational Rehabilitation (84.126); IDEA, Part C (84.181* ***and 84.393****); and HERA (84.938A, 84.938B, 84.938C, 84.938D, 84.938E, and 84.938F).*

Note: This section applies only to Federal programs in which the entity being audited is a grantee, i.e. the entity receives grant funds directly from ED. Auditors should refer to Part 3, Section C, "Cash Management," for any Federal program in which the entity is being audited is a subrecipient, i.e., Federal funds are received through a pass-through grant from a grantee.

Effective December 17, 2007, grantees draw funds via the G5 System instead of the Grant Administration and Payment System (GAPS). Grantees request funds by: (1) creating a payment request using the G5 System through the Internet; (2) calling the Payee Hotline; or (3) if the grantee is placed on the reimbursement or cash monitoring payment method, submitting a PMS-270, *Request for Title IV Reimbursement,* to an ED program or regional office. When creating a payment request in G5, the grantee enters the drawdown amounts, by award, directly into G5. Grantees can redistribute drawn amounts between grant awards by making adjustments in G5 to reflect actual disbursements for each award, as long as the net amount of the adjustments is zero. When requesting funds using the other two methods, grantees provide drawdown information to the hotline operator or on the PMS-270.

To assist grantees in reconciling their internal accounting records with the G5 System, using their DUNS (Data Universal Numbering System) number, grantees can obtain a G-5 External Award Activity Report (https://www.g5.gov/) showing cumulative and detail information for each award. The External Award Activity Report can be created with date parameters (Start and End Dates) and viewed on-line. To view each draw per award, the G5 user may click on the award number to view a display of individual draws for that award.

D. Davis-Bacon Act

Under the General Education Provisions Act, when authorized, all construction and minor remodeling projects under ED programs covered by the Cross-Cutting Section are subject to the requirements of the Davis-Bacon Act (20 USC 1232b). Additional ED programs are subject to the Davis-Bacon Act as indicated in the relevant program description.

G. Matching, Level of Effort, Earmarking

1. Matching

See individual program compliance supplement for any matching requirements.

2.1 Level of Effort - *Maintenance of Effort* (SEAs/LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a) when the Governor awards subgrants to LEAs); 21st CCLC (84.287); Ed Tech (84.381); Title III, Part A (84.365); and Title II, Part A (84.367).*

As described in II, "Program Procedures - General and Program-Specific Cross-Cutting Requirements," this requirement is a general cross-cutting requirement that need only be tested once to cover all major programs to which it applies.

An LEA may receive funds under an applicable program only if the SEA finds that the combined fiscal effort per student or the aggregate expenditures of the LEA from State and local funds for free public education for the preceding year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding year, unless specifically waived by ED.

An LEA's expenditures from State and local funds for free public education include expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities. They do not include the following expenditures: (a) any expenditures for community services, capital outlay, debt service and supplementary expenses as a result of a Presidentially declared disaster and (b) any expenditures made from funds provided by the Federal government.

If an LEA fails to maintain fiscal effort, the SEA must reduce the amount of the allocation of funds under an applicable program in any fiscal year in the exact proportion by which the LEA fails to maintain effort by falling below 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the LEA) (Section 9521 of ESEA (20 USC 7901); 34 CFR section 299.5).

In some States, the SEA prepares the calculation from information provided by the LEA. In other States, the LEAs prepare their own calculation. The audit procedures contained in III.G.2.1, "Level of Effort - Maintenance of Effort," should be adapted to fit the circumstances. For example, if auditing the LEA and the LEA does the calculations, the auditor should perform steps a., b., and c. If auditing the LEA and the SEA does the calculation, the auditor should perform step c for the amounts reported to the SEA. If auditing the SEA and the SEA performs the calculation, the auditor should perform steps a. and b. and amend step c to trace amounts to the LEA reports. If auditing the SEA and the LEA performs the calculation, the auditor should perform step a. and, if the requirement was not met, determine if the funding was reduced appropriately.

2.2 Level of Effort - *Supplement Not Supplant* (SEAs/LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.381); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).*

General – Including the Safe and Drug-Free Schools Governor's program, an SEA and LEA may use program funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of the Federal funds, be made available from non-Federal sources for the education of participating students. In no case may an LEA use Federal program funds to supplant funds from non-Federal sources (Title I, Part A, Section 1120A(b) of ESEA (20 USC 6321(b)); MEP, Section 1304(c)(2) of ESEA (20 USC 6394(c)(2)); SDFSCA, Section 4113(a)(8) of ESEA (20 USC 7113(a)(8)); 21st CLCC, Section 4204(b)(2)(G) of ESEA (20 USC 7174(b)(2)(G)); Title V, Part A, Section 5144 of ESEA (20 USC 7217c); Ed Tech, Section 2413(b)(6) of ESEA (20 USC 6763(b)(6)); Title III, Part A, Section 3115(g) (20 USC 6825(g)); MSP, Section 2202(a)(4) of ESEA (20 USC 6662(a)(4)); and Title II, Part A, Sections 2113(f) and 2123(b) of ESEA (20 USC 6613(f) and 6623(b))).

In the following instances, it is presumed that supplanting has occurred:

a. The SEA or LEA used Federal funds to provide services that the SEA or LEA was required to make available under other Federal, State or local laws.

b. The SEA or LEA used Federal funds to provide services that the SEA or LEA provided with non-Federal funds in the prior year.

c. The SEA or LEA used Title I, Part A or MEP funds to provide services for participating children that the SEA or LEA provided with non-Federal funds for nonparticipating children.

These presumptions are rebuttable if the SEA or LEA can demonstrate that it would not have provided the services in question with non-Federal funds had the Federal funds not been available.

Schoolwide Programs - In a Title I schoolwide program, a school is not required to provide supplemental services to identified children. A school operating a schoolwide program does not have to: (1) show that Federal funds used within the school are paying for additional services that would not otherwise be provided; or (2) demonstrate that Federal funds are used only for specific target populations. Such a school, however, is required to use funds available under Title I and any other Federal programs to supplement the total amount of funds that would, in the absence of the Federal funds, be made available from non-Federal sources for that school, including funds needed to provide services that are required by law for children with disabilities and children with limited English proficiency (Title I, Part A, Section 1114(a)(2) of ESEA (20 USC 6314(a)(2)); 34 CFR sections 200.25(c) and (d)).

Title I, Part A and MEP - An SEA and LEA may exclude from determinations of compliance with the supplement not supplant requirement supplemental State or local funds spent in any school attendance area or school for programs that meet the intent and purposes of Title I, Part A or the MEP, respectively, as identified in Title I of ESEA (Sections 1120A(d) and 1304(c)(2) of ESEA (20 USC 6321(d) and 6394(c)(2)); 34 CFR sections 200.79 and 200.88).

Title III, Part A – An LEA may only use funds under Title III, Part A to supplement the level of Federal, State and local public funds that, in the absence of the Title III funds, would have been provided for programs for limited English proficient children and immigrant children and youth (Section 3115(g) of ESEA (20 USC 6825(g))).

3. Earmarking

a. ***Administration*** (SEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****) and MEP (84.011).*

An SEA may reserve for the administration of Title I programs up to one percent from each of the amounts allocated to the State under Title I, Parts A, C (MEP), and D (Subpart 1) or $400,000, whichever is greater. However, if the sum of the amounts appropriated for Parts A, C, and D is

equal to or greater than $14,000,000,000, which it is for **both fiscal years 2008 and 2009**, the amount an SEA may reserve for administration may not exceed one percent of the amount the State would receive if the Title I allocation were $14,000,000,000 (20 USC 6304(b)). ED will provide a table to the State showing amount they could reserve for administration of Title I programs from **FY 2008 and FY 2009 funds if only $14 billion were appropriated for each year.** An SEA may reserve less than one percent from each of Parts A, C, and D. Moreover, an SEA does not need to reserve the same percentage from each part, although the SEA may not reserve more from Parts C and D than it would have reserved if it had reserved proportionate amounts from Parts A, C, and D. An SEA reserving $400,000 must reserve proportionate amounts from each of the amounts allocated to the State under Part A, but is not required to reserve funds proportionately from each of Parts A, C, and D and may, for example, take the reservation entirely out of Part A funds. However, in reserving $400,000, an SEA may not reserve more funds for State administration from Part C or Part D than it would have if it had reserved proportionate funds from Parts A, C, and D. **An SEA that chooses to reserve funds for administrative costs from ARRA Title I awards (under CFDA 84.389) must include that amount in the calculation of the maximum amount of it may reserve from its FY 2009 Title I, Part A funds. (This is because ARRA Title I appropriations are defined as FY 2009 appropriations in ARRA (ARRA, Division A). An SEA has flexibility in how much of this reserve it takes from Title I, Part A, ARRA funds versus how much it takes from funds received under the regular FY 2009 Part A appropriation so long as the total amount reserved does not exceed the amount permitted under section 1004(b). Regardless of how much an SEA takes from either source of funding, the SEA must account separately for any State administrative funds reserved from ARRA** (Section 1004 of ESEA (20 USC 6304); see also 34 CFR section 200.100(b)). For more detail, see page 33 of the guidance entitled *State Educational Agency Procedures for Adjusting Basic, Concentration, Targeted, and Education Finance Incentive Grant Allocations Determined by the U.S. Department of Educa*tion (May 23, 2003) (http://www.ed.gov/programs/titleiparta/seaguidanceforadjustingallocations.doc).

As explained in III.A.1, "Activities Allowed or Unallowed - Consolidation of administrative funds," the amounts reserved above may be consolidated with State administrative funds available under other applicable programs (Section 9201(a) of ESEA (20 USC 7821(a)).

b. ***Transferability*** (SEAs and LEAs)

ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a), with the agreement of the Governor); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.381); and Title II, Part A (84.367).

SEAs may transfer up to 50 percent of each fiscal year's base of non-administrative funds allocated for State-level activities from one or more of the listed applicable programs to one or more of the other listed applicable programs, or to Title I, Part A (84.010). Except for 21st CCLC (84.287), LEAs not identified for improvement or corrective action under Section 1116 of ESEA may also transfer up to 50 percent of each fiscal year's funds from one or more of the listed applicable programs to another listed applicable program, or to Title I, Part A. LEAs identified for improvement may transfer up to 30 percent of their allocation base. LEAs identified for corrective action may not transfer funds (Sections 6123(a) and (b) of ESEA (20 USC 7305b(a) and (b))).

The allocation base for a program for a fiscal year equals that fiscal year's original funding plus funds transferred into the program for that fiscal year. Funds may be transferred during a fiscal year's carryover period, as long as the total amount transferred from the fiscal year's allocation base does not exceed the maximum percentage. Funds must be transferred to the receiving program's allocation for the same fiscal year that the funds were allocated to the transferring program (Sections 6123(a) and (b) of ESEA (20 USC 7305b(a) and (b))).

H. Period of Availability of Federal Funds (All grantees)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); CSP (84.282); Title V, Part A (84.298); Ed Tech (84.381); Reading First (84.357); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).*

This section also applies to Adult Education (84.002); IDEA (84.027, 84.173, ***84.391, and 84.392****); CTE (84.048); and IDEA, Part C (84.181* ***and 84.393****).*

All ESEA and other programs listed above except CSP and subrecipients under CTE - LEAs and SEAs must obligate funds during the 27 months, extending from July 1 of the fiscal year for which the funds were appropriated through September 30 of the second following fiscal year. This maximum period includes a 15-month period of initial availability plus a 12-month period for carryover. For example, funds from the fiscal year 2008 appropriation initially became available on July 1, 2008 and may be obligated

by the grantee and subgrantee through September 30, 2010 (Section 421(b) of GEPA (20 USC 1225(b)); 34 CFR sections 76.703 through 76.710).

Title I, Part A - An LEA that receives $50,000 or more in Title I, Part A funds may not carry over beyond the initial 15 months of availability more than 15 percent of its Title I, Part A funds. An SEA may grant a waiver of the percentage limitation for an LEA once every three years if the LEA's request is reasonable and necessary or if supplemental appropriations for Title I, Part A become available for obligation (Section 1127 of ESEA (20 USC 6339)).

SDFSCA program - An LEA that receives SDFSCA funding may not carry over beyond the initial 15 months of availability more than 25 percent of its SDFSCA State Grant funds. An SEA may waive the percentage limitation for good cause (Section 4114(a)(3)(B) of ESEA (20 USC 7114(a)(3)(B))).

CSP program - The recipient must obligate funds from a grant during the period for which the funds are available for obligation as set forth in the grant award document. Recipients must maintain documentation to demonstrate that the obligation occurred during the period of availability and was charged to an appropriate year's grant funds. If obligations occur outside of the period of availability, the funds are not timely obligated and must be returned. However, under the "expanded authorities" provisions grantees are permitted to:

a. Extend grants automatically at the end of a project period for up to one year without prior approval (with some exceptions);

b. Carry funds over from one budget period to the next;

c. Obligate funds up to 90 days before the effective date of a budget period without prior approval; and

d. Transfer funds among budget categories without prior approval, except for a limited number of specific cases.

CTE program - In any academic year that a subrecipient does not obligate all of the amounts it is allocated under the Secondary and Postsecondary CTE programs for that year, it must return the unobligated amounts to the State to be reallocated under the Secondary and Postsecondary CTE Programs, as applicable (Section 133(b) of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) (Pub. L. No. 109-270) (20 USC 2353(b))).

Consolidated administrative funds - Consolidated administrative funds must be obligated within the period of availability of the program that the funds came from. Because expenditures in a consolidated administrative fund are not accounted for by specific Federal programs, an SEA or LEA may use a first-in, first-out method for determining when funds were obligated, may attribute costs in proportion to the dollars provided, or may use another reasonable method.

Definition of Obligation - An obligation is not necessarily a liability in accordance with generally accepted accounting principles. When an obligation occurs (is made) depends on the type of property or services that the obligation is for (34 CFR section 76.707):

IF AN OBLIGATION IS FOR --		THE OBLIGATION IS MADE --
(a)	Acquisition of real or personal property.	On the date on which the State or subgrantee makes a binding written commitment to acquire the property.
(b)	Personal services by an employee of the State or subgrantee.	When the services are performed.
(c)	Personal services by a contractor who is not an employee of the State or subgrantee.	On the date on which the State or subgrantee makes a binding written commitment to obtain the services.
(d)	Performance of work other than personal services.	On the date on which the State or subgrantee makes a binding written commitment to obtain the work.
(e)	Public utility services.	When the State or subgrantee receives the services.
(f)	Travel.	When the travel is taken.
(g)	Rental of real or personal property.	When the State or subgrantee uses the property.
(h)	A pre-agreement cost that was properly approved by the State under the applicable cost principles.	On the first day of the subgrant period.

The act of an SEA or other grantee awarding Federal funds to an LEA or other eligible entity within a State does not constitute an obligation for the purposes of this compliance requirement. An SEA or other grantee may not reallocate grant funds from one subrecipient to another after the period of availability.

If a grantee or subgrantee uses a different accounting system or accounting principles from one year to the next, it shall demonstrate that the system or principle was not improperly changed to avoid returning funds that were not timely obligated. A grantee or subgrantee may not make accounting adjustments after the period of availability in an attempt to offset audit disallowances. The disallowed costs must be refunded.

Programs in to which the rest of this section applies are: Title I, Part A (84.010 and 84.389); Ed Tech (84.381); IDEA, Part B (84.027 and 84.391); and IDEA, Part C (84.173 and 84.392).

Funds under ARRA for the programs cited above are FY 2009 funds; however, they became available for obligation beginning with the date of enactment of ARRA (February 17, 2009). Funds under the regular FY 2009 appropriation for these programs will not become available for obligation until July 1, 2009. The ARRA funds will remain available for obligation by SEAs and LEAs until September 30, 2011, which includes the one-year carryover period authorized under section 421(b) of the General Education Provisions Act (Section 1603 of ARRA and 20 USC 1225(b)).

Title I, Part A – An LEA that receives $50,000 or more in Title I, Part A funds may not carry over beyond the initial 15 months of availability more than 15 percent of its Title I, Part A funds, including its Title I, Part A, ARRA funds. An SEA may grant a waiver of the percentage limitation for an LEA once every 3 years if the LEA's request is reasonable and necessary or if supplemental appropriations for Title I, Part A, such as ARRA funds, become available for obligation. Moreover, an SEA may request a waiver from ED to waive the carryover limitation more than once every 3 years for an LEA that exceeds the 15 percent limit due to the availability of Title I, Part A, ARRA funds (Section 1127 of ESEA (20 USC 6339)).

L. Reporting

1. Financial Reporting

*ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 **and 84.389**); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.381); Reading First (84.357); Title III, Part A (84.365); MSP (84.366); Title II, Part A (84.367); and HERA (84.938A, 84.938B, and 84.938C).*

*This section also applies to IDEA (84.027, 84.173, **84.391, and 84.392**); IDEA, Part C (84.181 **and 84.393**); and HERA (84.938D, 84.938E, and 84.938F).*

a. SF-269, *Financial Status Report* - Not Applicable

b. SF-270, *Request for Advance or Reimbursement* - Only grantees placed on reimbursement are required to complete this form to request payment of grant award funds. The requirement to use this form is imposed on an individual recipient basis.

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

d. SF-272, *Federal Cash Transactions Report* - Not Applicable

e. LEAs and other subrecipients are generally required to report financial information to the pass-through entity. These reports should be tested during audits of LEAs.

2. Performance Reporting - Not Applicable

3. Special Reporting

State Per Pupil Expenditure (SPPE) Data (*OMB No. 1850-0067*) (SEAs/LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****) and MEP (84.011).*

As described in II, "Program Procedures - General and Program-Specific Cross-Cutting Requirements," this requirement is a general cross-cutting requirement that need only be tested once to cover all major programs to which it applies.

Each year, an SEA must submit its average State per pupil expenditure (SPPE) data to the National Center for Education Statistics. These SPPE data are used by ED to make allocations under several ESEA programs, including Title I, Part A and MEP. SPPE data are reported on the National Public Education Finance Survey. SPPE data comprise the State's annual current expenditures for free public education, less certain designated exclusions, divided by the State's average daily attendance.

LEAs must submit data to the SEA for the SEA's report. The SEA determines the format of the data submissions.

Current expenditures to be included are those for free public education, including administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities. Current expenditures to be excluded are those for community services, capital outlay, debt service, and expenditures from funds received under Title I and Title V, Part A of ESEA. To determine its expenditures under Titles I and V, Part A of ESEA in a schoolwide program, an LEA could calculate the percentage of funds that Title I and Title V, Part A contributed to the schoolwide program and then apply those percentages to the total expenditures in the schoolwide program. Other reasonable methods may also be used (Section 9101(14) of ESEA (20 USC 7801(14))).

Except when provided otherwise by State law, average daily attendance generally means the aggregate number of days of attendance of all students during a school year divided by the number of days school is in session during such school year. For purposes of ESEA, average daily membership (or similar data) can be used in place of average daily attendance in States that provide State aid to LEAs on the basis of average daily membership or such other data. When an LEA in which a child resides makes a tuition or other payment for the free public education of the child in a school of another LEA, the child is considered to be in attendance at the school of the LEA making the payment, and not at the school of the LEA receiving the payment. Similarly, when an LEA makes a tuition payment to a private school or to a public school of another LEA for a child with disabilities,

the child is considered to be in attendance at the school of the LEA making the payment (Section 9101(1) of ESEA (20 USC 7801(1))).

N. Special Tests and Provisions

1. Participation of Private School Children (SEAs/LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.381); Reading First (84.357); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).*

Depending on how the SEA/LEA implements requirements for the provision of equitable participation of private school children, this requirement may be tested on a general or program-specific basis (as described in II, "Program Procedures - General and Program-Specific Cross-Cutting Requirements").

Compliance Requirements – For programs funded under Title I, Part A (CFDA 84.010), an LEA, after timely and meaningful consultation with private school officials, must provide equitable services to eligible private school children, their teachers, and their families. Eligible private school children are those who reside in a participating public school attendance area and have educational needs under section 1115(b) of ESEA (20 U.S.C. 6315(b)). Title I, Part A funds must be allocated to each participating public school attendance area on the basis of the total number of children from low-income families residing in that area. In calculating the total number of children from low-income families, an LEA must include children from low-income families who attend private schools. An LEA must use the portion of Title I, Part A funds attributable to private school children from low-income families included in the calculation to provide services to eligible private school children. For example, if $100,000 of Title I, Part A funds are allocated based on 100 children from low-income families, 25 of whom are private school children, $25,000 of the $100,000 must be expended to provide equitable services to eligible private school children.

If an LEA reserves funds off the top of its Title I, Part A allocation to provide instructional and related activities for public school students at the district level, the LEA must also provide from those funds, as applicable, equitable services to eligible private school students. From applicable funds reserved for parent involvement and professional development, an LEA must ensure that teachers and families of participating private school children have an equitable opportunity to participate in professional development and parent involvement activities, respectively. The amount of funds available to provide these services must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas (Sections 1113(c) and 1120 of ESEA (20 USC 6313(c) and 6320); 34 CFR sections 200.62 through 200.67 and 200.77 through 200.78).

For all other programs, an SEA, LEA, or any other educational service agency (or consortium of such agencies) receiving financial assistance under an applicable program must provide eligible private school children and their teachers or other educational personnel with equitable services or other benefits under the program. Before an agency or consortium makes any decision that affects the opportunity of eligible private school children, teachers, and other educational personnel to participate, the agency or consortium must engage in timely and meaningful consultation with private school officials. Expenditures for services and benefits to eligible private school children and their teachers and other educational personnel must be equal on a per-pupil basis to the expenditures for participating public school children and their teachers and other educational personnel, taking into account the number and educational needs of the children, teachers and other educational personnel to be served (Sections 5142 and 9501 of ESEA (20 USC 7217a and 7881); 34 CFR sections 299.6 through 299.9).

The control of funds used to provide equitable services to eligible private school students, teachers and other educational personnel, and families, and title to materials, equipment, and property purchased with those funds must be in a public agency and the public agency must administer the funds, materials, equipment, and property. The provision of equitable services must be by employees of a public agency or through a contract by the public agency with an individual, association, agency, or organization that is independent of any private school or religious organization. The contract must be under the control of the public agency (Sections 1120(d), 5142(c), and 9501(d) of ESEA (20 USC 6320(d), 7217a(c) and 7881(d); 34 CFR sections 200.67 and 299.9).

This compliance requirement also applies to Transferability (See III.A.3, "Activities Allowed or Unallowed - Transferability (SEAs and LEAs)") for transfers made by *SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a), with the agreement of the Governor); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318); and Title II, Part A (84.367)* (Section 6123(e)(2) of ESEA (20 USC 7305b(e)(2))).

Audit Objectives - Determine whether (1) the LEA, SEA, or other agency receiving ESEA funds has conducted timely consultation with private school officials to determine the kind of educational services to provide to eligible private school children, (2) the planned services were provided, and (3) the required amount was used for private school children.

Suggested Audit Procedures (LEA/SEA)

a. Verify, by reviewing minutes of meetings and other appropriate documents, that the SEA or LEA conducted timely consultation with private school officials in making its determinations and set aside the required amount for private school children.

b. Review program expenditure and other records to verify that educational services that were planned were provided.

c. For Title I, Part A, verify that:

(1) The per pupil allocation (PPA) generated by private school children from low-income families living in participating public school attendance areas is equal to the PPA generated by public school children from low-income families living in the same attendance areas;

(2) Funds to provide equitable services to private school students were available, as applicable, from funds, if any, reserved off the top of the LEA's Part A allocation for instructional and related activities at the district level; and

(3) Funds to provide equitable services to teachers and families of participating private school students were available from reservations of funds for professional development and parent involvement.

d. If the LEA provides services to eligible private school students under an arrangement with a third-party provider, verify that the LEA retains proper administration and control by having a written contract that:

(1) Describes the services to be provided; and

(2) Provides that the LEA retains ownership of materials, equipment, and property purchased with Federal I funds.

e. For programs other than Title I, Part A, verify that expenditures are equal on a per-pupil basis for public and private school students, teachers and other educational personnel, taking into consideration their numbers and needs as required by 34 CFR section 299.7.

2. Schoolwide Programs (SEAs/LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.318); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).*

This section also applies to IDEA (84.027, 84.173, ***84.391 and 84.392****) and CTE (84.048).*

As described in II, "Program Procedures - General and Program-Specific Cross-Cutting Requirements," this requirement is a general cross-cutting requirement that only needs to be tested once to cover all major programs to which it applies.

Compliance Requirements - A school participating under Title I, Part A may, in consultation with its LEA, use its Title I, Part A funds, along with funds provided from the above-identified programs and other Federal (except Reading First), State, and local education funds, to upgrade the school's entire educational program in a schoolwide program. At least 40 percent of the children enrolled in the school or residing in the school attendance area for the initial year of the schoolwide program must be from low-income families. The LEA is required to maintain records to demonstrate compliance with this requirement.

a. To operate a schoolwide program, a school must include the following three core elements:

   (1) Comprehensive needs assessment of the entire school (34 CFR section 200.26(a)).

   (2) Comprehensive plan based on data from the needs assessment (34 CFR section 200.26(b)).

   (3) Annual evaluation of the results achieved by the schoolwide program and revision of the schoolwide plan based on that evaluation (34 CFR section 200.26(c)).

b. A schoolwide plan also must include the following components:

   (1) Schoolwide reform strategies (34 CFR section 200.28(a)).

   (2) Instruction by highly qualified professional staff (34 CFR section 200.28(b)).

   (3) Strategies to increase parental involvement (34 CFR section 200.28(c)).

   (4) Additional support to students experiencing difficulty (34 CFR section 200.28(d)).

   (5) Transition plans for assisting preschool children in the successful transition to the schoolwide program (34 CFR section 200.28(e)).

c. A schoolwide program school that consolidates Federal, State, and local funds in a consolidated schoolwide pool may use those funds for any activity in the school. (Consolidating funds in a schoolwide program means that a school treats the funds like they are a single "pool" of funds--i.e., the funds lose their individual identity and the school has one flexible pool of funds.) The school is not required to maintain separate records, by program, that identify the specific activities supported by those funds. Also, the school is not required to meet most of the statutory and regulatory requirements of the Federal programs included in the consolidation as long as it meets the intent and purposes of those programs.

If a schoolwide program school consolidates just its Federal funds in a single Federal consolidated schoolwide pool, the school must use those funds to address specific educational needs of the school identified by the needs assessment and articulated in the schoolwide plan. Although the Federal funds lose their specific program identity and may be accounted for as part of the pool, the school must keep records to demonstrate that the consolidated funds support activities that address the intent and purpose of each program. The school is not required to meet most of the statutory and regulatory requirements of the specific Federal programs included in the consolidation as long as it meets the intent and purposes of those programs.

If a schoolwide program school does not consolidate its Federal funds, the school must use Title I, Part A funds to support activities that address specific educational needs of the school identified by the needs assessment and articulated in the schoolwide plan. The school must use other Federal funds in accordance with the specific requirements of each Federal program. For more detail on consolidating funds in schoolwide program schools, see pages 49-67 in guidance entitled *Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, not Supplant; Carryover; Consolidating Funds in Schoolwide Programs; and Grantback Requirements* (February 2008). This guidance is available on the Internet at http://www.ed.gov/programs/titleiparta/fiscalguid.doc) (20 USC 6314; 34 CFR sections 200.25 through 200.29).

d. If a schoolwide program school consolidates funds, the school must ensure that its schoolwide program addresses the needs of children who are members of the target population of any Federal program whose funds are consolidated. Specific requirements apply to these programs as follows:

(1) Before consolidating funds or services received under MEP, a schoolwide program must: (a) in consultation with parents of migratory children or organizations representing those parents, first meet the identified needs of migratory children that result from the effects of their migratory lifestyle or are needed to permit migratory children to participate effectively in schools; and (b) document that services addressing those needs have been met (34 CFR section 200.29(c)(1)).

(2) A schoolwide program must have the approval of the Indian parent advisory committee established in section 7114(c)(4) of ESEA (20 USC 7424(c)(4)) before funds received under the Title VII, Part A, Subpart 1 Indian Education program can be consolidated (34 CFR section 200.29(c)(2)).

(3) A schoolwide program may consolidate funds received under IDEA, Part B. However, the amount of funds consolidated may not exceed the amount received by the LEA under IDEA, Part B for that fiscal year, divided by the number of children with disabilities in the jurisdiction of the LEA and multiplied by the number of children with disabilities

participating in the schoolwide program. A school that consolidates IDEA, Part B funds may use those funds for any activities under the schoolwide plan but must comply with all other requirements of IDEA, Part B to the same extent it would if it did not consolidate funds under IDEA, Part B in the schoolwide program (34 CFR section 200.29(c)(3)).

In addition, a schoolwide program school may consolidate funds it receives from discretionary programs administered by the ED Secretary; however, it must carry out the activities included in its application for which those funds were awarded.

e. An SEA must modify State fiscal and accounting procedures, if necessary, to eliminate barriers so that schools can easily consolidate funds from other Federal, State, and local sources in schoolwide programs. The SEA must also notify its LEAs of the authority to operate schoolwide programs.

f. A school participating under Title I, Part A may, in consultation with its LEA, use its Title I, Part A ARRA funds, along with ARRA funds provided from the above-identified programs, and other Federal (except Reading First), State, and local education funds, to upgrade the school's entire educational program in a schoolwide program. At least 40 percent of the children enrolled in the school or residing in the school attendance area for the initial year of the schoolwide program must be from low-income families.

A schoolwide program school that consolidates Federal, State, and local funds in a consolidated schoolwide pool may use those funds for any activity in the school. (Consolidating funds in a schoolwide program means that a school treats the funds like they are a single "pool" of funds, i.e., the funds lose their individual identity and the school has one flexible pool of funds.) Generally, the school is not required to maintain separate records, by program, that identify the specific activities supported by those funds. However, a school that consolidates ARRA funds in a schoolwide program must account for the ARRA funds separately. An LEA may use any reasonable method (e.g., proportionality) to assign expenditures of ARRA funds consolidated in a schoolwide program to the program that contributed the funds.

(Sections 1111(c)(6), (9) and (10), 1114, 1306(b)(4), and 7115(c) of ESEA (20 USC 6311(c)(6), (9) and (10), 6314, 6396(b)(4), and 7425(c)); Section 613(a)(2)(D) of IDEA (20 USC 1413(a)(2)(D)); 34 CFR sections 200.25 through 200.29).

Audit Objectives (SEAs) – Determine whether the SEA has taken steps to (1) notify its LEAs of the authority to consolidate Federal, State, and local funds in schoolwide programs, and (2) remove fiscal and accounting barriers preventing such consolidation of funds.

Suggested Audit Procedures (SEAs) - Review documentation to determine whether the SEA notified its LEAs of the authority to consolidate Federal, State, and local funds in schoolwide programs, and examined its fiscal and accounting procedures to remove any barriers preventing such consolidation of funds.

Audit Objectives (LEAs) - Determine whether (1) the schools operating schoolwide programs were eligible to do so, and (2) the schoolwide programs included the core elements and components.

Suggested Audit Procedures (LEAs)

a. For schools operating a schoolwide program, review records and ascertain if the schools met the poverty eligibility requirements.

b. Review the schoolwide plan and ascertain if it included the required core elements and components described above.

c. Review documentation to support:

   (1) Consultation with parents including, when MEP funds are consolidated, the parents of migratory children or organizations representing those parents; and, when Title VII, Part A, Subpart 1 (Indian Education) funds are consolidated, approval by the Indian parent advisory committee.

   (2) If MEP funds are consolidated in the schoolwide program, the identified needs of migratory children were met before MEP funds were consolidated.

3. Comparability (SEAs/LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****) and MEP (84.011).*

As described in II, "Program Procedures - General and Program-Specific Cross-Cutting Requirements," this requirement is a general cross-cutting requirement that need only be tested once to cover all major programs to which it applies.

Compliance Requirements - An LEA may receive funds under Title I, Part A and the MEP (Title I, Part C) only if State and local funds will be used in participating schools to provide services that, taken as a whole, are at least comparable to services that the LEA is providing in schools not receiving Title I, Part A or MEP funds. An LEA is considered to have met the statutory comparability requirements if it filed with the SEA a written assurance that such LEA has implemented (1) an LEA-wide salary schedule; (2) a policy to ensure equivalence among schools in teachers, administrators, and other staff; and (3) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies. An LEA may also use other measures to determine comparability, such as comparing the average number of students per instructional staff or the average staff salary per student in each school receiving Title I, Part A or MEP

funds with those in schools that do not receive Title I, Part A or MEP funds. If all schools are served by Title I, Part A or MEP, an LEA must use State and local funds to provide services that, taken as a whole, are substantially comparable in each school. Determinations may be made on either a district-wide or grade-span basis.

An LEA may exclude schools with fewer than 100 students from its comparability determinations. The comparability requirement does not apply to an LEA that has only one school for each grade span. An LEA may exclude from determinations of compliance with this requirement State and local funds expended for (1) bilingual education for children with limited English proficiency (LEP); and (2) the excess costs of providing services to children with disabilities as determined by the LEA. The LEA may also exclude supplemental State or local funds for programs that meet the intent and purposes of Title I, Part A or MEP (Sections 1120A(c)-(d) and 1304(c)(2) of ESEA (20 USC 6321(c)-(d) and 6394(c)(2)); 34 CFR sections 200.79 and 200.88).

Each LEA must develop procedures for complying with the comparability requirements and implement the procedures annually. The LEA must maintain records that are updated biennially documenting compliance with the comparability requirements. The SEA, however, is ultimately responsible for ensuring that LEAs remain in compliance with the comparability requirement (Section 1120A(c) of ESEA (20 USC 6321(c))).

Audit Objective (SEAs) - Determine whether the SEA is determining if LEAs are complying with the comparability requirements.

Suggested Audit Procedure (SEAs) - For a sample of LEAs, review SEA records that document SEA review of LEA compliance with the comparability requirements.

Audit Objective (LEAs) - Determine whether the LEA has developed procedures for complying with the comparability requirements and maintained records that are updated at least biennially documenting compliance with the comparability requirements.

Suggested Audit Procedures (LEAs)

a. Through inquiry and review, ascertain if the LEA has developed procedures and measures for complying with the comparability requirements.

b. Review LEA comparability documentation to ascertain (1) if it has been updated at least biennially and (2) that it documents compliance with the comparability requirements.

c. Test comparability data to supporting records.

4. Access to Federal Funds for New or Significantly Expanded Charter Schools (SEAs/LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); SDFSCA (84.186) (except the Governor's Program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.381); Reading First (84.357); Title III, Part A (84.365); and Title II, Part A (84.367).*

*This section also applies to Adult Education (84.002); IDEA (84.027, 84.173****, 84.391, and 84.392****); and CTE (84.048).*

As described in II, "Program Procedures – General and Program-Specific Cross-Cutting Requirements," this requirement is a program-specific cross-cutting eligibility requirement that needs to be tested separately for each covered program in the Supplement.

Note: This requirement only applies with respect to funds allocated to new, or significantly expanded, charter schools under a covered program in a State that has charter schools. A *covered program* means an elementary or secondary education program administered by ED under which the Secretary allocates funds to States on a formula basis, except that the term does not include a program or portion of a program under which an SEA awards subgrants on a discretionary, noncompetitive basis. *Charter school* has the same meaning as provided in Title V, Part B, Subpart 1 of ESEA (Section 5210(1) of ESEA (20 USC 7221i(1))). With respect to an existing charter school LEA that has not significantly expanded its enrollment, an SEA must determine the school's eligibility and allocate Federal funds to the school in a manner consistent with applicable Federal statutes and regulations under each covered program.

If a State considers a charter school to be an LEA under a covered program, this requirement applies to the SEA or other State agency responsible for allocating funds under that program—either by formula or through a competition—to LEAs. If a State considers a charter school to be a public school within an LEA under a covered program, this requirement applies to the LEA. The requirements in this Supplement address an SEA's responsibilities with respect to eligible charter school LEAs. An LEA that is responsible for providing funds under a covered program to eligible charter schools must comply with these requirements on the same basis as an SEA.

Compliance Requirements – An SEA must ensure that a charter school LEA that opens for the first time or significantly expands its enrollment receives the funds under each covered program for which it is eligible. *Significant expansion of enrollment* means a substantial increase in the number of students attending a charter school due to a significant event that is unlikely to occur on a regular basis, such as the addition of one or more grades or educational programs in major curriculum areas. The term also includes any other expansion of enrollment that an SEA determines to be significant.

Except as noted below, if a charter school LEA opens or expands by November 1, the SEA must allocate to the school the funds for which it is eligible no later than 5 months after the school first opens or significantly expands its enrollment; if a charter school LEA opens or significantly expands after November 1 but before February 1, an SEA must allocate to the school a *pro rata* portion of the funds for which the school is eligible on or before the date the SEA makes allocations to other LEAs under that program for the succeeding academic year; if a charter school LEA opens or expands after February 1, the SEA may, but is not required to, allocate to the school a *pro rata* portion of the funds for which the school is eligible.

An SEA must determine a new or expanding charter school LEA's eligibility based on actual enrollment or other eligibility data available on or after the date the charter school LEA opens or significantly expands. An SEA may not deny funding to a new or expanding charter school LEA due to the lack of prior-year data, even if eligibility and allocation amounts for other LEAs are based on prior-year data. An SEA may allocate funds to, or reserve funds for, an eligible charter school LEA based on reasonable estimates of projected enrollment at the charter school LEA. If an SEA allocates more or fewer funds to a charter school LEA than the amount for which the charter school LEA is eligible, based on actual enrollment or eligibility data, the SEA must make appropriate adjustments to the amount of funds allocated to the charter school LEA as well as to other LEAs under a covered program on or before the date the SEA allocates funds to LEAs for the succeeding academic year.

At least 120 days before the date a charter school LEA is scheduled to open or significantly expand its enrollment, the charter school LEA or its authorized public chartering agency must provide the SEA with written notice of that date. Upon receiving such notice, an SEA must provide the charter school LEA with timely and meaningful information about each covered program in which the charter school LEA may be eligible to participate, including notice of any upcoming competitions under the program. An SEA is not required to make allocations within 5 months of the date a charter school LEA opens for the first time or significantly expands if the charter school LEA, or its charter authorizer, fails to provide to the SEA proper written notice of the school's opening or expansion.

For a covered program in which an SEA awards subgrants on a competitive basis, the SEA must provide an eligible charter school LEA that is scheduled to open on or before the closing date of any competition a full and fair opportunity to apply to participate in the program. However, the SEA is not required to delay the competitive process in order to allow a charter school LEA that has not yet opened or expanded to compete. (Section 5206 of ESEA (20 USC 7221e); 34 CFR sections 76.785 through 76.799).

Audit Objectives (SEAs/LEAs, depending on which entity is responsible for funding charter schools) – Determine whether new or significantly expanding charter schools received the amount of Federal formula funds for which they were eligible in a timely manner.

Suggested Audit Procedures (SEAs/LEAs, depending on which entity is responsible for funding charter schools)

a. Determine if the entity was responsible for providing Federal formula funds under the applicable covered program to any charter school LEAs/charter schools that opened for the first time or significantly expanded enrollment on or before November 1 of the academic year.

b. Determine if the entity was responsible for providing Federal formula funds under the applicable covered program to any charter school LEAs/charter schools that opened for the first time or significantly expanded enrollment between November 1 and February 1 of the academic year.

c. Review the entity's procedures for allocating Federal formula funds under the applicable covered program to determine whether eligibility to participate in the program was based on enrollment or eligibility data from a prior year. If prior-year data were used for allocations, determine whether the entity properly based the new or expanding charter school LEA's/charter school's eligibility and allocation amount on actual eligibility or enrollment data for the year in which the school opened or expanded.

d. Review documentation to identify the opening or expansion date for each eligible charter school LEA/charter school that opened or significantly expanded its enrollment on or before November 1 of the academic year. Determine whether the charter school LEA/charter school was given access to all of the funds for which it was eligible, in the proper amount, within five months of the opening or expansion date (provided that SEA or LEA notification, data submission, and application requirements were met).

e. Review documentation to identify the opening or expansion date for each eligible charter school LEA/charter school that opened or significantly expanded its enrollment between November 1 and February 1 of the academic year. Determine whether the charter school LEA/charter school was given access to the *pro rata* portion of the funds for which the school was eligible, in the proper amount, on or before the date the SEA or LEA made allocations to other LEAs/public schools under the program for the succeeding academic year (provided that SEA or LEA notification, data submission, and application requirements were met).

f. Review documentation to determine whether the SEA or LEA made necessary adjustments to account for over- or under-allocations once actual eligibility and enrollment data became available.

IV. OTHER INFORMATION

Consolidation of Administrative Funds (SEAs and LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (except the Governor's Program authorized under Section 4112(a)); CSP (84.282); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.381); Reading First (84.357); Title III, Part A (84.365); MSP (84.366) (at the LEA level only); and Title II, Part A (84.367).*

State and local administrative funds that are consolidated (as described in III.A.1, "Activities Allowed or Unallowed – Consolidation of Administrative Funds (SEAs and LEAs")) should be included in the audit universe and the total expenditures of the programs from which they originated for purposes of (1) determining Type A programs, and (2) completing the Schedule of Expenditures of Federal Awards (SEFA). A footnote showing, by program, amounts of administrative funds consolidated is encouraged.

Schoolwide Programs (LEAs)

ESEA programs in this Supplement to which this section applies are: Title I, Part A (84.010 ***and 84.389****); MEP (84.011); SDFSCA (84.186) (including the Governor's Program authorized under Section 4112(a)); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.381); Title III, Part A (84.365); MSP (84.366); and Title II, Part A (84.367).*

This section also applies to IDEA (84.027, 84.173, ***84.391, and 84.392****) and CTE (84.048).*

Since schoolwide programs are not separate Federal programs, as defined in OMB Circular A-133, expenditures of Federal funds consolidated in schoolwide programs should be included in the audit universe and the total expenditures of the programs from which they originated for purposes of (1) determining Type A programs and (2) completing the SEFA. A footnote showing, by program, amounts consolidated in schoolwide programs is encouraged.

Transferability (SEAs and LEAs)

ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a), with the agreement of the Governor); 21st CCLC (84.287); Title V, Part A (84.298); Ed Tech (84.381); and Title II, Part A (84.367).

Expenditures of funds transferred from one program to another (as described in III.A.3, "Activities Allowed or Unallowed - Transferability (SEAs and LEAs)") should be included in the audit universe and total expenditures of the receiving program for purposes of (1) determining Type A programs, and (2) completing the SEFA. A footnote showing amounts transferred between programs is encouraged.

Small Rural Schools Achievement (SRSA) Alternative Uses of Funds Program

ESEA programs in this Supplement to which this section applies are: SDFSCA (84.186) (including the Governor's program authorized under Section 4112(a)); Title V, Part A (84.298); Ed Tech (84.381); and Title II, Part A (84.367).

Unlike "Transferability" above, where the funds are actually transferred from one program to another, under SRSA the funds are expended from the original program but for activities allowed under another program. Funds used under the SRSA Alternative Uses of Funds program should be included in the audit universe and total expenditures of the programs from which they originated for purposes of (1) determining Type A programs, and (2) completing the SEFA.

Prima Facie Case Requirement for Audit Findings

Section 452(a)(2) of the General Education Provisions Act (20 USC 1234a(a)(2)) requires that ED officials establish a *prima facie* case when they seek recoveries of unallowable costs charged to ED programs. When the preliminary ED decision to seek recovery is based on an OMB Circular A-133 audit, upon request, auditors will need to provide ED program officials audit documentation. For this purpose, audit documentation (part of which is the auditor's working papers) includes information the auditor is required to report and document that is not already included in the reporting package.

The requirement to establish a *prima facie* case for the recovery of funds applies to all programs administered by ED, with the exception of Impact Aid (CFDA 84.041) and programs under the Higher Education Act, i.e., the Family Federal Education Loan Program (CFDA 84.032) and the other ED programs covered in the Student Financial Assistance Cluster in Part 5 of the Supplement.

Program Waivers and Special Provisions Due to Hurricanes Katrina and Rita

See Appendix VI.

DEPARTMENT OF EDUCATION

CFDA 84.010 TITLE I GRANTS TO LOCAL EDUCATIONAL AGENCIES (Title I, Part A of the ESEA)
CFDA 84.389 TITLE I GRANTS TO LOCAL EDUCATIONAL AGENCIES, RECOVERY ACT

I. PROGRAM OBJECTIVES

The objective of these programs is to improve the teaching and learning of children who are at risk of not meeting challenging academic standards and who reside in areas with high concentrations of children from low-income families.

II. PROGRAM PROCEDURES

The Department of Education (ED) provides Title I, Part A funds through each State Educational Agency (SEA) to local educational agencies (LEAs) through a statutory formula based primarily on the number of children ages 5 through 17 from low-income families. This number is augmented by annually-collected counts of children ages 5 through 17 in foster homes, locally operated institutions for neglected or delinquent children, and families above poverty that receive assistance under Temporary Assistance for Needy Families (TANF) (CFDA 93.558), adjusted to account for the cost of education in each State. To receive funds, an SEA must submit to ED for approval either: (1) an individual State plan as provided in Section 1111 of the Elementary and Secondary Education Act (ESEA) (20 USC 6311), or (2) a consolidated plan that includes Part A, in accordance with Section 9302 of the ESEA (20 USC 7842). The individual or consolidated plan, after approval by ED, remains in effect for the duration of the State's participation in Title I, Part A. The plan must be updated to reflect substantive changes.

To receive Title I, Part A funds, LEAs must have on file with the SEA an approved plan that includes descriptions of the general nature of services to be provided, how program services will be coordinated with the LEA's regular program of instruction, additional LEA assessments, if any, used to gauge program outcomes, and strategies to be used to provide professional development. An LEA may also include Part A as part of a consolidated application submitted to the SEA under Section 9305 of the ESEA (20 USC 7845).

LEAs allocate Title I, Part A funds to eligible school attendance areas based on the number of children from low-income families residing within the attendance area. A school at or above 40 percent poverty may use its Part A funds, along with other Federal, State, and local funds, to operate a schoolwide program to upgrade the instructional program in the whole school (20 USC 6314(a)). Otherwise, a school operates a targeted assistance program in which the school identifies students who are failing, or most at risk of failing, to meet the State's challenging student academic achievement standards and who have the greatest need for assistance. The school then designs, in consultation with parents, staff, and the LEA, an instructional program to meet the needs of those students (20 USC 6315).

For funds under the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5), ED awarded each State 50 percent of the funds from its Fiscal Year (FY) 2009 Title I, Part A allocation provided through ARRA on April 1, 2009 on the basis of the State's existing approved ESEA Consolidated State Application. The second half of the funding will be provided through an award that will be made after States have submitted, for review and approval by ED, information that addresses how the State will meet the accountability and reporting requirements in Section 1512 of ARRA.

Source of Governing Requirements

This program is authorized by Title I, Part A of the ESEA, as amended by the No Child Left Behind Act of 2001 (Pub. L. No. 107-110 (20 USC 6301 through 6339 and 6571 through 6578) **and ARRA**. Program regulations are found at 34 CFR part 200. The Education Department General Administrative Regulations (EDGAR) at 34 CFR parts 76, 77, 81, 82, 98, and 99 also apply to this program, as do certain requirements of 34 CFR part 299 (General Provisions).

Availability of Other Program Information

A number of documents posted on ED's website contain information pertinent to the Title I, Part A requirements in this Compliance Supplement. They are:

- Local Educational Agency Identification and Selection of School Attendance Areas and Schools and Allocation of Title I Funds to Those Areas and Schools (August 2003) (http://www.ed.gov/programs/titleiparta/wdag.doc);

- Public School Choice (January 14, 2009) (http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.doc);

- Report Cards, Title I, Part A (September 12, 2003) (http://www.ed.gov/programs/titleiparta/reportcardsguidance.doc);

- Supplemental Educational Services (January 14, 2009) (http://www.ed.gov/policy/elsec/guid/suppsvcsguid.doc);

- Title I Paraprofessionals (March 1, 2004) (http://www.ed.gov/policy/elsec/guid/paraguidance.doc);

- Title I Services to Eligible Private School Children (October 17, 2003) (http://www.ed.gov/programs/titleiparta/psguidance.doc); and

- LEA and School Improvement (July 21, 2006) (http://www.ed.gov/policy/elsec/guid/schoolimprovementguid.pdf)

- *http://www.ed.gov/policy/gen/leg/recovery/guidance/title-i.pdf*.

Additional information is provided in the "Availability of Other Program Information" part of the ED Cross-Cutting Section.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements. Also, as discussed in the Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements.

A. Activities Allowed or Unallowed

Also see ED Cross-Cutting Section.

1. *LEAs* (Targeted assistance programs only). See III.N, "Special Tests and Provisions," for schoolwide programs.)

   In a targeted assistance school, **both ARRA and non-ARRA** funds available under Part A may be used only for programs that are designed to help participating children meet the State's student academic achievement standards expected of all children. Allowable activities in these schools include, but are not limited to, instructional programs, counseling, mentoring, other pupil services, college and career awareness and preparation, services to prepare students for the transition from school to work, services to assist preschool children in the transition to elementary school programs, parental involvement activities, and professional staff development. If health, nutrition, and other social services are not otherwise available from other sources to participating children, Part A funds may be used as a last resort to provide such services. The LEA's plan will provide a description of the general nature of the services to be provided with Part A funds. However, each Title I school determines the actual program it will provide (Title I, Section 1115 of ESEA (20 USC 6315)).

2. *SEAs*

   SEAs can use **both ARRA and non-ARRA** funds to provide subgrants to LEAs, for State administration, and for school improvement activities in accordance with the State plan (Title I, Sections 1003(a)-(e), 1004, 1111, and 1117 of ESEA (20 USC 6303(a)-(e), 6304, 6311, and 6317)). *(Also see ED Cross-Cutting Section, 84.000, III.G.3.a)*

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

C. Cash Management

See ED Cross-Cutting Section.

E. Eligibility

1. Eligibility for Individuals

Eligible Children (LEA targeted assistance programs only)

Title I, Part A funds are to be used to provide services and benefits to eligible children residing or enrolled in eligible school attendance areas. Once funds are allocated to eligible school attendance areas (see E.2.a and E.2.b below), a school operating a targeted assistance program must use Title I funds only for programs that are designed to meet the needs of children identified by the school as failing, or most at risk of failing, to meet the State's challenging student academic achievement standards. In general, eligible children are identified on the basis of multiple, educationally related, objective criteria established by the LEA and supplemented by the school. Children who are economically disadvantaged, children with disabilities, migrant children, and limited English proficient (LEP) children are eligible for Part A services on the same basis as other children who are selected for services. In addition, certain categories of children are considered at risk of failing to meet the State's student academic achievement standards and are thus eligible for Part A services because of their status. Such children include: children who are homeless; children who participated in a Head Start, Even Start, Early Reading First, or Title I preschool program at any time in the two preceding years; children who received services under the Migrant Education Program under Title I, Part C at any time in the two preceding years; and children who are in a local institution for neglected or delinquent children or attending a community day program. From the pool of eligible children, a targeted assistance school selects those children who have the greatest need for special assistance to receive Part A services (Title I, Section 1115 of ESEA (20 USC 6315)).

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

a. *School Attendance Areas or Schools* (LEAs with either schoolwide programs or targeted assistance programs)

An LEA must determine which school attendance areas are eligible to participate in Part A. A school attendance area is generally eligible to participate if the percentage of children from low-income families is at least as high as the percentage of children from low-income families in the LEA as a whole or at least 35 percent. An LEA may also designate and serve a school in an ineligible attendance area if the percentage of children from low-income families enrolled in that school is equal to or greater than the percentage of such children in a participating school attendance area. When determining eligibility, an LEA must select a poverty measure from among the following data sources: (1) the number of children ages 5-

17 in poverty counted in the most recent census; (2) the number of children eligible for free and reduced price lunches; (3) the number of children in families receiving TANF; (4) the number of children eligible to receive Medicaid assistance; or (5) a composite of these data sources. The LEA must use that measure consistently across the district to rank all its school attendance areas according to their percentage of poverty.

An LEA must serve eligible schools or attendance areas in rank order according to their percentage of poverty. An LEA must serve those areas or schools above 75 percent poverty, including any middle or high schools, before it serves any with a poverty percentage below 75 percent. After an LEA has served all areas and schools with a poverty rate above 75 percent, the LEA may serve lower-poverty areas and schools either by continuing with the district-wide ranking or by ranking its schools below 75 percent poverty according to grade-span grouping (e.g., K-6, 7-9, 10-12). If an LEA ranks by grade span, the LEA may use the district-wide poverty average or the poverty average for the respective grade-span grouping. An LEA may serve, for one additional year, an attendance area that is not currently eligible but that was eligible and served in the preceding year.

An LEA may elect not to serve an eligible area or school that has a higher percentage of children from low-income families if: (1) the school meets the Title I comparability requirements; (2) the school is receiving supplemental State or local funds that are spent according to the requirements in sections 1114 or 1115 of Title I; and (3) the supplemental State and local funds expended in the area or school equal or exceed the amount that would be provided under Part A. An LEA with an enrollment of less than 1000 students or with only one school per grade span is not required to rank its school attendance areas (Title I, Section 1113(a)-(b) of ESEA (20 USC 6313(a)-(b)); 34 CFR section 200.78(a)).

b. *Allocating funds to eligible school attendance areas and schools* (LEAs with either schoolwide programs or targeted assistance programs)

An LEA must allocate Part A funds to each participating school attendance area or school, in rank order, on the basis of the **total** number of children from low-income families residing in the area or attending the school. In calculating the total number of children from low-income families, the LEA must include children from low-income families who reside in a participating area and attend private schools, using the same poverty data, if available, as the LEA uses to count public school children. If the same data are not available, the LEA may use comparable data. If an LEA uses a survey of families of private school children, the LEA may extrapolate, from actual data on a representative sample of private school children, the number of children from low-income families who attend private schools. An LEA may also correlate sources of data, or apply the

low-income percentage of each participating public school attendance area to the number of private school children who reside in that area. If an LEA selects a public school to participate on the basis of enrollment, rather than because it serves an eligible school attendance area, the LEA must, in consultation with private school officials, determine an equitable way to count private school children from low-income families in order to calculate the amount of Title I funds available to serve private school children. An LEA may count private school children from low-income families every year or every two years.

If an LEA serves any attendance area with less than a 35 percent poverty rate, the LEA must allocate to all its participating areas an amount per child from a low-income family that equals at least 125 percent of the LEA's Part A allocation per child from a low-income family. (An LEA's allocation per child from a low-income family is the total LEA allocation under subpart 2 of Part A divided by the number of children from low-income families in the LEA according to the poverty measure selected by the LEA to identify eligible school attendance areas. The LEA then multiplies this per-child amount by 125 percent.) If an LEA serves only areas with a poverty rate greater than 35 percent, the LEA must allocate funds, in rank order, on the basis of the total number of children from low-income families in each area or school, but is not required to allocate a per-pupil amount of at least 125 percent. With the possible exception of a school in corrective action or restructuring, an LEA may not allocate a higher amount per child from a low-income family to areas or schools with lower percentages of poverty than to areas with higher percentages. Because an LEA may not reduce the allocation of a school identified for corrective action or restructuring by more than 15 percent in order to reserve Title I funds for choice-related transportation and supplemental educational services, the final allocation per child from a low-income family of such a school after application of this rule may be higher than a higher-poverty school. If an LEA serves areas or schools below 75 percent poverty by grade-span groupings, the LEA may allocate different amounts per child from a low-income family for different grade-span groupings as long as those amounts do not exceed the amount per child from a low-income family allocated to any area or school above 75 percent poverty. Amounts per child from a low-income family within grade spans may also vary as long as the LEA allocates higher amounts per child from a low-income family to higher poverty areas or schools within the grade span than it allocates to lower poverty areas or schools.

The LEA must reserve the amounts generated by private school children from low-income families who reside in participating public school attendance areas to provide services to eligible private school children (Title I, Section 1113(c) of ESEA (20 USC 6313(c)) and Title I, Section 1116(b)(10)(D) of ESEA (20 USC 6316(b)(10)(D)); 34 CFR sections 200.77 and 200.78).

3. Eligibility for Subrecipients - Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching - Not Applicable

2.1 Level of Effort - *Maintenance of Effort*

See ED Cross-Cutting Section.

2.2 Level of Effort - *Supplement Not Supplant*

See ED Cross-Cutting Section.

3. Earmarking (SEAs)

See ED Cross-Cutting Section and the following:

a. *Targeting School Improvement Funds*

Each SEA must reserve 4 percent of the amount the State receives under subpart 2 of Part A for school improvement activities under sections 1116 and 1117 of Title I. Of the amount reserved, the SEA must allocate not less than 95 percent directly to LEAs for activities under section 1116 in schools identified for school improvement, corrective action, and restructuring. However, the SEA may, with the approval of its LEAs, provide directly for these activities or arrange for them to be provided by other entities such as school support teams or educational service agencies. In allocating these funds to LEAs, the SEA must give priority to LEAs that: (1) serve the lowest-achieving students; (2) demonstrate the greatest need for the funds; and (3) demonstrate the strongest commitment to ensuring that the funds will be used to enable the lowest-achieving schools to meet their progress goals.

In reserving these funds, an SEA may not reduce the sum of the allocations an LEA receives under subpart 2 of Part A below the sum of the allocations the LEA received for the preceding fiscal year. If funds are insufficient to reserve 4 percent and meet this provision, the SEA is not required to reserve the full amount.

If, after consulting with LEAs, the SEA determines that the amount of funds reserved is greater than needed, the SEA must allocate the excess amount to LEAs (1) in proportion to their allocations under subpart 2 of Part A, or (2) in accordance with the SEA's reallocation procedures under Section 1126(c) of Title I (Title I, Section 1003(a)-(e) of ESEA (20 USC 6303(a)-(e)); 34 CFR section 200.100(a)).

For school year 2007-08 and any subsequent school year for which school improvement funds are appropriated under Section 1003(g), an SEA that receives funds under that provision must allocate at least 95 percent of those funds directly to LEAs for schools identified for improvement, corrective action, and restructuring, for activities under Section 1116 (20 USC 6316). However, the SEA may, with the approval of its LEAs, provide directly for these activities or arrange for them to be provided by other entities, such as school support teams or educational service agencies. Each LEA's grant must be of sufficient size and scope to support the activities required under Sections 1116 and 1117 and may not be less than $50,000 nor more than $500,000 per participating school. The SEA may reserve no more than five percent of the Section 1003(g) funds it receives for administration, evaluation, and technical assistance (Title I, Sections 1003(b) and (g) of ESEA (20 USC 6303(b) and (g))).

Each SEA must reserve, for school improvement activities under sections 1003(a)-(e) of ESEA, 4 percent of the amount the State receives for its total FY 2009 Title I, Part A allocation from both non-ARRA and ARRA Title I, Part A awards (i.e., non-ARRA funds + ARRA funds = total allocation). (ARRA Title I appropriations are defined as FY 2009 appropriations in ARRA (ARRA, Division A, First Paragraph)). An SEA has flexibility in how much of this reserve it takes from its Title I, Part A ARRA funds, as long as the amount reserved equals 4 percent of the SEA's total FY 2009 Title I, Part A allocation. (Title I, Sections 1003(a)-(e) of ESEA (20 USC 6303(a)-(e)); Division A - Appropriations Provisions of ARRA; 34 CFR section 200.100(a)).

b. *Targeting Funds for Choice-Related Transportation and Supplemental Educational Services*

In the case of a school that is in its first year of school improvement under Section 1116(b)(1)(A), the LEA is required to provide choice-related transportation under Section 1116(b)(9). In the case of a school that is in its second year of school improvement under Section 1116(b)(5), corrective action under Section 1116(b)(7), or restructuring under Section 1116(b)(8), the LEA is required to provide choice-related transportation under Section 1116(b)(9) and supplemental educational services under Section 1116(e). An LEA that is obligated to provide choice-related transportation or choice-related transportation and supplemental educational services must spend an amount equal to at least 20 percent of its allocation under subpart 2 of Part A to provide such transportation and supplemental educational services, unless a lesser amount is needed to satisfy all requests (Section 1116(b)(10)(A) of ESEA (20 USC 6316(b)(10)(A))). Of this amount, the LEA must spend a minimum of an amount equal to 5 percent on choice-related transportation (Section 1116(b)(10)(A)(i) of ESEA (20 USC 6316(b)(10)(A)(i))), and a minimum

of an amount equal to 5 percent for supplemental educational services (Section 1116(b)(10)(A)(ii) of ESEA (20 USC 6316(b)(10)(A)(ii))). The LEA may spend the remaining 10 percent for either or both of these activities (Section 1116(b)(10)(A)(iii) of ESEA (20 USC 6316(b)(10)(A)(iii))). The LEA may count its costs for outreach and assistance to parents concerning their choice to transfer their child to another public school served by the LEA or to request supplemental educational services, up to an amount equal to 0.2 percent of its subpart 2 allocation, toward its obligation to spend an amount equal to at least 20 percent of its subpart 2 of Part A allocation to provide such transportation and supplemental educational services (34 CFR section 200.48(a)(2)(iii)(C). The LEA may not include other costs for administration or costs for transportation related to supplemental educational services, if any, toward meeting these percentage requirements. In applying this provision, an LEA may not reduce by more than 15 percent the total amount it makes available under Part A to a school it has identified for corrective action or restructuring.

For each student receiving supplemental educational services, the LEA must make available the lesser of (1) the amount of its allocation under subpart 2 of Part A divided by the number of students in the LEA from families below the poverty level as determined by the U.S. Bureau of the Census; or (2) the actual cost of the services received by the student (Title I, Sections 1116(b)(10) and (e)(6) of ESEA (20 USC 6316(b)(10), (e)(6)); 34 CFR section 200.48).

With respect to FY 2009 Title I, Part A ARRA funds, the State may have received a waiver from ED that would permit LEAs in the State to exclude those funds from the calculation of an LEA's 20 percent obligation or the calculation of an LEA's per pupil amount for supplemental educational services for FY 2009 (i.e., the 2009-10 school year). Such a waiver, however, would not affect the calculation of an LEA's 20 percent obligation or per pupil amount for supplemental educational services with respect to its FY 2008 Title I, Part A non-ARRA funds.

H. Period of Availability of Federal Funds

See ED Cross-Cutting Section **and the following*:***

Title I, Part A ARRA funds are available for obligation beginning with the date of enactment of ARRA, February 17, 2009. Title I, Part A ARRA funds will remain available for obligation by SEAs and LEAs until September 30, 2011, which includes the one-year carryover period authorized under section 421(b) of the General Education Provisions Act (20 USC 1225(b)) (Section 1603 of ARRA and 20 USC 1225(b)).

L. Reporting

1. Financial Reporting

See ED Cross-Cutting Section.

2. Performance Reporting - Not Applicable

3. Special Reporting

See ED Cross-Cutting Section.

N. Special Tests and Provisions

1. Participation of Private School Children

See ED Cross-Cutting Section.

2. Schoolwide Programs (LEAs)

See ED Cross-Cutting Section.

3. Comparability

See ED Cross-Cutting Section.

4. Access to Federal Funds for New or Significantly Expanded Charter Schools

See ED Cross-Cutting Section.

5. Identifying Schools and LEAs Needing Improvement

Compliance Requirements

SEAs

An SEA must annually review the progress of each LEA that receives funds under subpart 2 of Part A of Title I to determine whether the LEA made adequate yearly progress as defined by the State. The SEA must identify for improvement any LEA that fails to make adequate yearly progress, as defined by the State, for two consecutive years. The SEA must identify the LEA for corrective action if it continues to fail to make adequate yearly progress at the end of its second full year in improvement (subject to the delay provision discussed in the next paragraph) (Title I, Sections 1116(c)(1), (3), and (10) of ESEA (20 USC 6316(c)(1), (3), and (10)); 34 CFR sections 200.50 through 200.53).

The SEA may delay implementation of corrective action for a period not to exceed one year if the LEA makes adequate yearly progress for one year or its failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the LEA (Title I, Section 1116(c)(10)(F) of ESEA (20 USC 6316(c)(10)(F)); 34 CFR section 200.50(f)).

Each SEA must report annually to the Secretary (*OMB No. 1810-0581*) , and make certain information widely available within the State, including the number and names of each school and LEA identified for improvement, corrective action, and restructuring under section 1116, the reason why each school and LEA was so identified, and the measures taken to address the achievement problems in general of such schools and LEAs. In addition, the SEA must prepare and disseminate an annual State report card that contains, among other things, information on the performance of LEAs regarding adequate yearly progress, including the number and names of each school and LEA identified for improvement, corrective action, and restructuring under Section 1116. Moreover, the SEA must ensure that each LEA collects the data necessary to prepare its annual report card (Title I, Sections 1111(h)(1) and (4) of ESEA (20 USC 6311(h)(1) and (4))).

LEAs

An LEA must annually review the progress of each school served under Title I, Part A to determine whether the school has made adequate yearly progress. The LEA must identify for school improvement any school that fails to make adequate yearly progress, as defined by the SEA, for two consecutive school years. After a school has been identified for improvement for two school years (subject to the delay provision discussed in the next paragraph), the LEA must identify that school for corrective action if it continues to fail to make adequate yearly progress. After a school has been in corrective action for a full school year (subject to the delay provision discussed in the next paragraph), the LEA must identify it for restructuring if it continues to fail to make adequate yearly progress (Title I, Sections 1116(a) and (b)(1), (7), and (8) of ESEA (20 USC 6316(a) and (b)(1), (7), and (8)); 34 CFR sections 200.30 through 200.34).

The LEA may delay, for a period not to exceed one year, implementation of requirements under the second year of school improvement, corrective action, or restructuring if the school makes adequate yearly progress for one year or the failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the school or LEA (Title I, Section 1116(b)(7)(D) of ESEA (20 USC 6316(b)(7)(D)); 34 CFR section 200.35).

Each LEA that receives Title I, Part A funds must prepare and disseminate to all schools in the LEA—and to all parents of students attending those schools—an annual LEA report card that, among other things, includes the number, names, and percentage of schools identified for school improvement and how long the schools have been so identified. The LEA must also publicize and disseminate the results of its annual

progress review to parents, teachers, principals, schools, and the community. The LEA should use broad means of communication, such as the Internet and publicly available media, to disseminate and publicize this information (Title I, Sections 1111(h)(2) and 1116(a)(1)(C) of ESEA (20 USC 6311(h)(2) and 6316(a)(1)(C)); 34 CFR sections 200.36 through 200.38).

Note: In many states, the SEA conducts the review of progress of schools within LEAs and sends the results of that review to the LEAs.

Audit Objectives – Determine whether, in collecting, compiling, and reporting progress of LEAs and schools that receive funds under subpart 2 of Part A of Title I, the SEA and LEA complied with the above requirements.

Suggested Audit Procedures

SEAs

a. Review how the SEA collects, compiles, and determines the accuracy of information obtained about the number and names of schools and LEAs in need of improvement and reports this data to ED and the public.

b. Review data received about schools and LEAs to ascertain that those data were included and correctly reflected in the SEA's submission to ED and the information disseminated to the public.

LEAs

a. Review how the LEA determines the schools in need of improvement.

b. Trace the data about the LEA to source records to determine its accuracy, reliability, and completeness.

c. Determine whether the LEA disseminated information to all schools in the LEA and to all parents of students attending those schools and made the information widely available through public means, such as the Internet and the media.

6. Highly Qualified Teachers and Paraprofessionals

Compliance Requirements

Highly qualified teachers.

Beginning after the first day of the 2002-03 school year, an LEA had to ensure that any teacher whom it hired to teach a core academic subject and who worked in a program supported with Title I, Part A funds was highly qualified as defined in 34 CFR section 200.56. This requirement applied to teachers in Title I targeted assistance programs who taught a core academic subject and were paid with Title I, Part A funds and to all teachers who taught a core academic subject in a Title I schoolwide program school. By the end

of the 2005-06 school year, the LEA had to ensure that all teachers of core academic subjects, whether or not they work in a program supported with Title I, Part A funds, are highly qualified. "Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography (Title I, Section 1119(a) of ESEA (20 USC 6319(a)); 34 CFR sections 200.55 and 200.56).

Note: As provided in letters from the Secretary or the Assistant Secretary for Elementary and Secondary Education, dated October 21, 2005, March 21, 2006, and July 23, 2007 (see below), States that did not reach the goal of having all teachers of core academic subjects be highly qualified by the end of the 2005-2006 school year will not lose Federal funds if they are implementing the law and making a good-faith effort to reach that goal as quickly as possible. All States have negotiated a plan to come into compliance with the highly qualified teacher requirements. In accordance with the July 23, 2007 policy letter, schools should hire the most qualified teachers available; States must annually report to the Federal government information on the quality of teachers and the percentage of classes being taught by highly qualified teachers in the State, LEA, and school (Section 1111(h)(4)(G) of ESEA (20 USC 6311(h)(4)(G))); and LEAs must annually inform parents that they may request, and that the LEA will provide on request, information regarding the professional qualifications of classroom teachers (Section 1111(h)(6) of ESEA (20 USC 6311(h)(6))).

Qualifications of paraprofessionals.

a. An LEA must ensure that each paraprofessional who is hired by the LEA after January 8, 2002 and who works in a program supported with Title I, Part A funds meets specific qualification requirements. Paraprofessionals who work in a program supported with Title I, Part A funds and who were hired by an LEA prior to January 8, 2002, had to meet these requirements by the end of the 2005-2006 school year. The term "paraprofessional" means an individual who provides instructional support; it does not include individuals who have only non-instructional duties (such as providing technical support for computers, providing personal care services, or performing clerical duties). A paraprofessional works in a program supported with Title I, Part A funds if the paraprofessional is paid with Title I, Part A funds in a Title I targeted assistance school or works as a paraprofessional in a schoolwide program school.

b. A paraprofessional must hold a high-school diploma or its recognized equivalent and meet one of the following requirements:

   (1) Have completed at least two years of study at an institution of higher education.

   (2) Have obtained an associate's or higher degree.

   (3) Have met a rigorous standard of quality, and can demonstrate through a formal State or local academic assessment knowledge of, and the ability to

assist in instructing, reading/language arts, writing, and mathematics, or reading readiness, writing readiness, and mathematics readiness.

c. A paraprofessional who is proficient in English and a language other than English and acts as a translator or who has duties that consist solely of conducting parental involvement activities need only have a high-school diploma or its recognized equivalent.

(Title I, Section 1119(c)-(f) of ESEA (20 USC 6319(c)-(f));
34 CFR section 200.58)

A number of documents posted on ED's website contain information pertinent to the Title I, Part A requirements regarding highly qualified teachers and paraprofessionals. They are:

- Key Policy Letters Signed by the Education Secretary or Deputy Secretary (March 31, 2004) (http://www.ed.gov/policy/elsec/guid/secletter/040331.html)
- Key Policy Letters Signed by the Education Secretary or Deputy Secretary (October 21, 2005) (http://www.ed.gov/policy/elsec/guid/secletter/051021.html)
- Statement Regarding No Child Left Behind Requirements for Paraprofessionals (June 17, 2005) (http://www.ed.gov/news/pressreleases/2005/06/06172005a.html)
- Key Policy Letter Signed by the Assistant Secretary for Elementary and Secondary Education (March 21, 2006) (http://www.ed.gov/programs/teacherqual/cssoltr.doc)
- Key Policy Letters Signed by the Education Secretary or Deputy Secretary (September 5, 2006) (http://www.ed.gov/policy/elsec/guid/secletter/060905.html)
- Key Policy Letters Signed by the Education Secretary or Deputy Secretary (July 23, 2007) (http://www.ed.gov/policy/elsec/guid/secletter/070723.html)
- Approved State plans for coming into compliance with highly qualified teacher requirements, and related materials (http://www.ed.gov/programs/teacherqual/hqtplans/index.html)

Audit Objective – Determine whether the LEA is hiring only highly qualified teachers to teach core academic subjects in general and is hiring only qualified paraprofessionals in programs supported with Title I, Part A funds. If the LEA is not hiring only highly qualified teachers, determine whether the LEA's hiring of teachers of core academic subjects who are not highly qualified is consistent with the approved State plan.

Suggested Audit Procedures

a. Review LEA procedures for hiring highly qualified teachers of core academic subjects in general and for hiring qualified paraprofessionals in programs supported with Title I, Part A funds.

b. Trace the data to source records to determine if teachers of core academic subjects in general and paraprofessionals working in programs supported with Title I, Part A funds who were hired during the year covered by the audit met the criteria in 34 CFR sections 200.55, 200.56, and 200.58.

c. Ascertain that, during the year covered by the audit, the hiring of teachers of core academic subjects who are not highly qualified was consistent with the approved State plan.

DEPARTMENT OF EDUCATION

CFDA 84.027 SPECIAL EDUCATION—GRANTS TO STATES (IDEA, Part B)
CFDA 84.173 SPECIAL EDUCATION—PRESCHOOL GRANTS (IDEA Preschool)
CFDA 84.391 SPECIAL EDUCATION—GRANTS TO STATES (IDEA, Part B), RECOVERY ACT
CFDA 84.392 SPECIAL EDUCATION—PRESCHOOL GRANTS (IDEA Preschool), RECOVERY ACT

I. PROGRAM OBJECTIVES

The purposes of the Individuals with Disabilities Education Act (IDEA) are to: (1) ensure that all children with disabilities have available to them a free appropriate public education (FAPE) which emphasizes special education and related services designed to meet their unique needs; (2) ensure that the rights of children with disabilities and their parents or guardians are protected; (3) assist States, localities, educational service agencies and Federal agencies to provide for the education of all children with disabilities; and (4) assess and ensure the effectiveness of efforts to educate children with disabilities. The Assistance for Education of All Children with Disabilities Program (IDEA, Part B) provides grants to States to assist them in meeting these purposes (20 USC 1400 *et seq.*).

IDEA's Special Education–Preschool Grants Program, (Preschool Grants for Children with Disabilities Program), also known as the "619 Program," provides grants to States, and through them to LEAs, to assist them in providing special education and related services to children with disabilities ages three through five and, at a State's discretion, to two-year-old children with disabilities who will turn three during the school year (20 USC 1419).

II. PROGRAM PROCEDURES

A State applying through its State Education Agency (SEA) for assistance under IDEA, Part B must, among other things, submit a plan to the Department of Education (ED) that provides assurances that the SEA has in effect policies and procedures that ensure that all children with disabilities have the right to a FAPE (20 USC 1412(a)).

States that receive assistance under IDEA, Part B, may receive additional assistance under the Preschool Grants Program. A State is eligible to receive a grant under the Preschool Grants Program if (1) the State is eligible under 20 USC 1412 and (2) the State demonstrates to the Secretary that it has in effect policies and procedures that ensure the provision of FAPE to all children with disabilities aged three through five years residing in the State. However, a State that provides early intervention services in accordance with Part C of the IDEA to a child who is eligible for services under Section 1419 is not required to provide that child with FAPE (20 USC 1412(a)(1)(C) and 20 USC 1419(b) and (c)).

Funds from the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) are distributed to the States on a formula basis. States received an initial funding of 50 percent of the amount of their IDEA ARRA awards (under CFDA 84.391 and 84.392) on the basis of their eligibility for FY 2008 IDEA non-ARRA State Grants (CFDA 84.027) and Preschool Grants to States (CFDA 84.173) and submission of the certification required by

section 1607 of ARRA. States did not submit a new IDEA Application or assurances to receive this initial funding. The assurances in a State's approved Fiscal Year (FY) 2008 IDEA applications for funds for CFDA's 84.027 and 84.173, as well as the requirements of ARRA, apply to the use of the IDEA ARRA funds. The second half of the awards will be made after States have submitted, for review and approval by ED, information that addresses how the State will meet the accountability and reporting requirements in Section 1512 of ARRA.

Source of Governing Requirements

These programs are authorized under the Individuals with Disabilities Education Act, Part B (IDEA-B) as amended on December 3, 2004 (Pub. L. No. 108-446; 20 USC 1400 *et seq.*) and ARRA. Implementing regulations for these programs are 34 CFR part 300.

Availability of Other Program Information

ED has issued guidance on meeting ARRA requirements in: Guidance: Funds for Part B of the Individuals with Disabilities Education Act Made Available Under The American Recovery and Reinvestment Act of 2009 (Apr. 2009), which is available on the Internet at: (http://www.ed.gov/policy/gen/leg/recovery/guidance/idea-b.doc);

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

Certain compliance requirements that apply to multiple ED programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references the Cross-Cutting Section for these requirements.

A. Activities Allowed or Unallowed

Also see ED Cross-Cutting Section.

1. *SEAs* - Allowable activities for SEAs are subgranting funds to LEAs and State administration, and other State-level activities (See "III.G.3, Earmarking" for a further description of these activities).

2. *LEAs*

   a. *IDEA, Part B* - An LEA may use Federal funds under IDEA, Part B for the excess costs of providing special education and related services to children with disabilities. Special education includes specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the

home, in hospitals and institutions and in other settings, and instruction in physical education. Related services include transportation and such developmental, corrective and other supportive services as may be required to assist a child with a disability to benefit from special education. Related services do not include a medical device that is surgically implanted or the replacement of such device. A portion of these funds, under conditions specified in the law, may also be used by the LEA: for services and aids that also benefit non-disabled children; for early intervening services; to establish and implement high-cost or risk-sharing funds; and for administrative case management (20 USC 1401(26) and (29); 20 USC 1413(a)(2) and (4)).

b. *IDEA Preschool* - A LEA may use Federal funds under the Preschool Grants Program only for the costs of providing special education and related services (as described above) to children with disabilities ages three through five and, at a State's discretion, providing a free appropriate public education to two-year-old children with disabilities who will turn three during the school year (20 USC 1419(a)).

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section.

C. Cash Management

See ED Cross-Cutting Section.

D. Davis-Bacon Act

All construction modernization, renovation, and repair activities funded with ARRA funds are subject to the Davis-Bacon Act requirements (Section 1606 of ARRA).

G. Matching, Level of Effort, Earmarking

1. Matching - Not Applicable

2.1 Level of Effort - *Maintenance of Effort* (SEAs/LEAs)

a. SEAs

(1) A State may not reduce the amount of State financial support for special education and related services for children with disabilities (or State financial support otherwise made available because of the excess costs of educating those children) below the amount of State financial support provided for the preceding fiscal year. The Secretary reduces the allocation of funds under 20 USC 1411 for any fiscal year following the fiscal year in which the State fails to

comply with this requirement by the amount by which the State failed to meet the requirement.

If, for any fiscal year, a State fails to meet the State-level maintenance of effort requirement (or is granted a waiver from this requirement), the financial support required of the State in future years for maintenance of effort must be the amount that would have been required in the absence of that failure (or waiver) and not the reduced level of the State's support (20 USC 1412(a)(18); 34 CFR section 300.163).

(2) For any fiscal year for which the Federal allocation received by a State exceeds the amount received for the previous fiscal year and if the State pays or reimburses all LEAs within the State from State revenue 100 percent of the non-federal share of the costs of special education and related services, the SEA may reduce its level of expenditure from State sources by not more than 50 percent of the amount of such excess (20 USC 1413(j)(1)).

b. LEAs

(1) IDEA, Part B funds received by an LEA cannot be used, except under certain limited circumstances, to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds, or a combination of State and local funds, below the level of those expenditures for the preceding fiscal year. To meet this requirement, an LEA must expend, in any particular fiscal year, an amount of local funds, or a combination of State and local funds, for the education of children with disabilities that is at least equal, on either an aggregate or per capita basis, to the amount of local funds, or a combination of State and local funds, expended for this purpose by the LEA in the prior fiscal year. Allowances may be made for: (a) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel; (b) a decrease in the enrollment of children with disabilities; (c) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child has left the jurisdiction of the agency, has reached the age at which the obligation of the agency to provide a FAPE has terminated or no longer needs such program of special education; (d) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment and the construction of school facilities; or (e) the assumption of costs by the high cost fund operated by the SEA under 34 CFR section 300.704 (20 USC 1413(a)(2); 34 CFR sections 300.203 and 300.204).

(2) For any fiscal year for which the federal allocation received by a LEA exceeds the amount received for the previous fiscal year, the LEA may reduce the level of local or State and local expenditures by not more than 50 percent of the excess (20 USC 1413(a)(2)(C)(i)). If an LEA exercises this authority, it must use an amount of local funds equal to the reduction in expenditures under Section 1413(a)(2)(C)(i) to carry out activities authorized under the Elementary and Secondary Education Act (ESEA) of 1965. The amount of funds expended by the LEA for early intervening services counts toward the maximum amount of State and local expenditures that the LEA may reduce. However, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of Section 1413(a) or the SEA has taken action against the LEA under Section 1416, the SEA shall prohibit the LEA from reducing its local or State and local expenditures for that fiscal year (20 USC 1413(a)(2)(C)).

2.2 Level of Effort - *Supplement Not Supplant* - Not Applicable

3. Earmarking

Individual State grant award documents identify the amount of funds a State must distribute to its LEAs on a formula basis and the amount it can set aside for administration and other State-level activities.

a. ***IDEA, Part B*** (SEAs)

(1) *Administration:* Each State may reserve, for each fiscal year, not more than the maximum amount the State was eligible to reserve for State administration under 20 USC 1411 for FY 2004, or $800,000 (adjusted for inflation in accordance with 20 USC 1411(e)(1)(B)), whichever is greater. Administration includes the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities. These funds may also be used for the administration of Part C of the IDEA if the SEA is the lead agency (20 USC 1411(e)(1)A) and 1411(f)(2)).

(2) *State-level activities:* Each State, for fiscal years 2005 and 2006, may reserve not more than 10 percent from the amount of the State's allocation under Section 1411(d) for State-level activities. States, for which the maximum amount reserved for State administration is not greater than $850,000, may reserve, in fiscal years 2005 and 2006, 10.5 percent from the amount of the State's allocation under Section 1411(d) for the purpose of carrying out State-level activities. However, any State that, in FYs 2005 or 2006, does not reserve funds for the LEA Risk Pool shall have the

maximum amount it can reserve for State-level activities reduced by 1 percent of the amount of its allocation under Section 1411(d) (20 USC 1411(e)(2)). SEAs must use State-level activity funds for monitoring, enforcement, and complaint investigation, and to establish and implement the mediation process, including providing for the costs of mediators and support personnel.

These funds may also be used:

(a) for support and direct services, including technical assistance and personnel preparation and professional development and training;

(b) to support paperwork reduction activities, including expanding the use of technology in the individualized education plan (IEP) process;

(c) to assist LEAs in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities;

(d) to improve the use of technology in the classroom to enhance learning by children with disabilities;

(e) to support the use of technology, including technology with universal design principals and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities;

(f) for development and implementation of transition programs;

(g) for assistance to LEAs in meeting personnel shortages;

(h) to support capacity-building activities and improve the delivery of services by LEAs to improve results for children with disabilities;

(i) for alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools;

(j) to support the development of and provision of appropriate accommodations for children with disabilities, or the development and provision of alternative assessments that

are valid and reliable for assessing the performance of children with disabilities; and

(k) to provide technical assistance to schools and LEAs and direct services, including supplemental educational services as defined in section 1116(e)(12)(C) of the ESEA (20 USC 6316(e)(12)(C)), in schools or LEAs identified for improvement solely on the basis of the assessment results of the disaggregated group of children with disabilities (20 USC 1411(e)(2)).

(3) *LEA Risk Pool:* Each State has the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-level activities: (a) to establish and make disbursements from the high-cost fund to LEAs; and (b) to support innovative and effective ways of cost-sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs. For purposes of this provision, the term "LEA" includes a charter school that is an LEA, or a consortium of LEAs (20 USC 1411(e)(3)).

(4) *Formula Subgrants to LEAs:* Any funds under this program that the SEA does not retain for administration and other State-level activities shall be distributed to eligible LEAs in the State. An SEA must distribute to each eligible LEA the amount that LEA would have received, from the fiscal year 1999 appropriation, if the State had distributed 75 percent of its grant for that year to LEAs. (This amount is based on the IDEA-B child count conducted on December 1, 1998.) The SEA must then distribute 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the LEA's jurisdiction; and then distribute 15 percent of any remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the State educational agency (20 USC 1411(f)(2)).

(5) Formula Subgrants to LEAs: For FY 2009, prior to making subgrants to LEAs, the SEA must first compute the total of its FY 2009 regular IDEA-B allocation (CFDA 84.027) and the IDEA-B funds received under ARRA (CFDA 84.391). Then, the SEA must make its set-aside decisions for administrative and other State-level activities. Next, an SEA must determine whether the set-asides will be deducted from the FY 2009 regular IDEA-B allocation or the IDEA-B ARRA allocation. For ease of recordkeeping, States have been advised by ED to reserve the set-aside amounts from the FY 2009 regular IDEA-

B allocation. If the State decides to set aside all funds for State-level activities from its FY 2009 regular IDEA-B allocation, it should follow these steps in making LEA allocations: (1) deduct the amount of the reserved (set-aside) funds from the State's regular IDEA-B allocation; (2) determine the total allocation level for each of its LEAs by calculating allocations based on the sum of available FY 2009 IDEA-B ARRA funds and regular allocations (using the regular formula based on the 1999 base amount, 85 percent population and 15 percent poverty, as described in III.G.3.a.(4) above); (3) determine each LEA's regular allocation by calculating allocations based only on the FY 2009 regular State IDEA-B allocation amount (after set-asides are subtracted) (using the regular formula based on the 1999 base amount, 85 percent population and 15 percent poverty as described in III.G.3.a.(4) above). Each LEA's IDEA-B ARRA allocation is then the difference between the total allocation and the regular allocation (20 USC 1411(f); 34 CFR section 300.705). (See Section A, Timing and Eligibility in the ED Guidance: Funds for Part B of the Individuals with Disabilities Education Act Made Available Under The American Recovery and Reinvestment Act of 2009 (Apr. 2009).).

b. ***IDEA, Preschool Grants Program*** (SEAs)

(1) *Reservation for State Activities:* For each fiscal year, the Secretary shall determine and report to the SEA an amount that is 25 percent of the amount the State received under this program for fiscal year 1998, cumulatively adjusted by the Secretary for each succeeding fiscal year. These funds may be retained by the State for administration and other State level activities (20 USC 1419(d)).

(a) *State Activities (Administration):* An SEA may use up to 20 percent of the funds it is allowed to retain for State activities under 20 USC 1419(d) for the purposes of administering this program, including the coordination of activities under the IDEA with, and providing technical assistance to, other programs that provide services to children with disabilities. These funds may also be used for the administration of Part C of the IDEA if the SEA is the lead agency for the State under this part (20 USC 1419(e)).

(b) *State Activities (Other State level activities):* SEAs shall use funds reserved for State level activities that are not used for administration for: (a) support services (including establishing and implementing the mediation process required by section 20 USC 1415(e)), which may benefit

children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5; (b) direct services for children eligible for services under this program; (c) development of a State improvement plan; (d) activities at the State and local levels to meet the performance goals established by the State and to support implementation of the State improvement plan; or (e) supplementing other funds used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under this program for a fiscal year (20 USC 1419(f)).

(2) *Formula Subgrants to LEAs:* Any funds under this program that the SEA does not retain for administration and other State-level activities shall be distributed to eligible LEAs in the State. An SEA must distribute to each eligible LEA the amount the LEA would have received from the fiscal year 1997 appropriation if the State had distributed 75 percent of its grant for that year to LEAs. (This amount is based on the IDEA-B child count conducted on December 1, 1996.) The SEA must then distribute 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and then distribute 15 percent of any remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the SEA. (If an SEA determines that an LEA is adequately providing a FAPE to all children with disabilities aged 3 through 5 residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under this program that are not needed by that LEA to provide a FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas they serve) (20 USC 1419(g)).

(3) Formula Subgrants to LEAs: For FY 2009, prior to making subgrants to LEAs, the SEA must first compute the total of its FY 2009 regular IDEA-Preschool allocation and the IDEA-Preschool funds received under ARRA. Then the SEA must make its set-aside decisions for administrative and other State-level activities. Next, an SEA must determine whether the set-asides will be deduced from the FY 2009 regular IDEA-Preschool allocation or the IDEA-Preschool ARRA allocation. For ease of recordkeeping, States have been advised by ED to reserve the set-aside amounts from the FY 2009 regular IDEA-

B allocation. If the State decides to set aside all funds for State-level activities from its FY 2009 regular IDEA-Preschool allocation, it should follow these steps in making LEA allocations: (1) deduct the amount of the reserved (set-aside) funds from the State's regular IDEA-B allocation; (2) determine the total allocation level for each of its LEAs by calculating allocations based on the sum of available FY 2009 IDEA-B ARRA funds and regular allocations (using the regular formula based on the 1997 base amount, 85 percent population and 15 percent poverty, as described in III.G.3.b.(2)) above; (3) determine each LEA's regular allocation by calculating allocations based only on the FY 2009 regular State IDEA-B allocation amount (after set-asides are subtracted) (using the regular formula based on the 1997 base amount, 85 percent population and 15 percent poverty as described in III.G.3.b.(2) above). Each LEA's IDEA-B ARRA allocation is then the difference between the total allocation and the regular allocation (20 USC 1419(g); 34 CFR section 300.816). (See Section A, Timing and Eligibility in the ED Guidance: Funds for Part B of the Individuals with Disabilities Education Act Made Available Under The American Recovery and Reinvestment Act of 2009 (Apr. 2009)).

c. ***Schoolwide Programs*** (LEAs)

The amount of IDEA- B funds used in a schoolwide program, may not exceed the amount received by the LEA under IDEA-B for that fiscal year divided by the number of children in the jurisdiction of the LEA multiplied by the number of children participating in the schoolwide program (34 CFR section 300.206).

d. ***Redistribution of Formula Funds to LEAs***

If a new LEA is created within a State, the State shall divide the base allocation for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA among the new LEA and affected LEAs based on the relative numbers of children with disabilities currently provided special education by each of the LEAs. If one or more LEAs are combined into a single LEA, the State shall combine the base allocation of the merged LEAs. If, for two or more LEAs, geographic boundaries or administrative responsibilities for providing services to children with disabilities ages 3 through 21 change, the base allocation of affected LEAs shall be redistributed among affected LEAs based on the relative numbers of children with disabilities currently provided special education by each affected LEA (34 CFR section 300.705(b)(2)).

e. ***Early Intervening Services***

An LEA can use not more than 15 percent of the amount of Federal funds (less any amount by which it reduces State and local expenditures under 20 USC 1413(a)(2)(C)) (See G.2.1.b. in this section), in combination with other funds for early intervening services for children in kindergarten through grade 12 who have not been identified under IDEA but need additional academic and behavioral support to succeed in the general education environment (20 USC 1413(f)).

H. Period of Availability of Federal Funds

See ED Cross-Cutting Section and the following:

Federal funds appropriated under the Special Education ARRA-funded programs (CFDAs 84.391 and 84.392) are available for obligation beginning with the date of enactment of ARRA, February 17, 2009. Those funds will remain available for obligation by States until September 30, 2011, which includes the one-year carryover period authorized under the Tydings Amendment (Section 1603 of ARRA and 20 USC 1225(b)).

L. Reporting

1. Financial Reporting

See ED Cross-Cutting Section.

2. Performance Reporting - Not Applicable

3. Special Reporting

Report of Children and Youth with Disabilities Receiving Special Education Under Part B of the Individuals With Disabilities Education Act, as amended (OMB Nos. 1820-0030, 1820-0043, 1820-0517, 1820-0521, and 1820-0621) - Each SEA is required to report to the Secretary an unduplicated count of children with disabilities receiving special education and related services.

The SEA may include in this count children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that either (1) provides them with both special education and related services or (2) provides them only with special education if they do not need related services to assist them in benefiting from that special education. The SEA may not, however, include in this count children with disabilities who: (1) are not enrolled in a school or program operated or supported by a public agency; (2) are not provided special education that meets State standards; or (3) are not provided with a related service that they need to assist them in benefiting from special education (34 CFR sections 300.640, 300.643, and 300.644).

Each SEA must: (1) establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services; (2) obtain certification from each agency and institution that an unduplicated and accurate count has been made; and (3) ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count (34 CFR sections 300.645(a), (c), and (e)).

LEAs must report to the SEA in accordance with the SEA-established procedure.

N. Special Tests and Provisions

1. Schoolwide Programs

See ED Cross-Cutting Section.

2. Access to Federal Funds for New or Significantly Expanded Charter Schools

See ED Cross-Cutting Section.

DEPARTMENT OF EDUCATION

CFDA 84.041 IMPACT AID (Title VIII of ESEA)
CFDA 84.404 IMPACT AID – SCHOOL CONSTRUCTION FORMULA GRANT, RECOVERY ACT

I. PROGRAM OBJECTIVES

The objective of the Impact Aid Program (IAP) under Title VIII of the Elementary and Secondary Education Act (ESEA) is to provide financial assistance to local educational agencies (LEAs) whose local revenues or enrollments are adversely affected by Federal activities. These activities include the Federal acquisition of real property (Section 8002) or the presence of children residing on tax-exempt Federal property or residing with a parent employed on tax-exempt Federal property ("federally connected" children) (Section 8003).

II. PROGRAM PROCEDURES

Funds are provided on the basis of statutory criteria and data supplied by LEAs in applications submitted to the Department of Education (ED), with copies provided simultaneously to the State Educational Agency (SEA). ED makes payments directly to the LEA. Generally, payments under Section 8003 of the ESEA are based on membership and attendance counts of federally connected children, with additional funds provided for certain federally connected children with disabilities and children residing on Indian lands. Payments under Section 8002 of the ESEA are based on the estimated assessed value of eligible Federal property and the applicable tax rate, and, in case of insufficient funds, upon a statutory formula that considers past year payments. Except for the additional funds provided for federally connected children with disabilities under Section 8003(d) of the ESEA, funds provided under Sections 8002 and 8003 are considered general aid and generally have no restrictions on their expenditure. Any formula funds that are provided under Section 8007(a) of the ESEA to certain LEAs that received Section 8003 payments must be used for construction, as defined in the statute. Any discretionary construction grant funds that are provided under Section 8007(b) of the ESEA to certain LEAs that received Section 8002 or 8003 payments must be used for emergency repairs or modernization, as defined in the statute and regulations.

The American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) provides for formula grant awards to certain LEAs under Section 8007(a) of ESEA that must be used for construction, as defined in Section 8013(3) of the ESEA (ARRA, 123 Stat. 181).

Source of Governing Requirements

This program is authorized by Sections 8001-8014 of the ESEA, which is codified at 20 USC 7701 through 7714 **and ARRA**. Implementing regulations are 34 CFR part 222.

Availability of Other Program Information

Additional information on this program (including the Impact Aid statute) may be found on the internet at http://www.ed.gov/about/offices/list/oese/programs.html.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Section 8003(d) - Federally connected children with disabilities* - ***(Allowable under CFDA 84.041 only)***

   LEAs must use the payments provided under Section 8003(d) of the ESEA to conduct programs or projects for the free, appropriate public education of the federally connected children with disabilities who generated those funds. Allowable costs include expenditures reasonably related to the conduct of programs or projects for the free, appropriate public education of children with disabilities, including program planning and evaluation and acquisition costs of equipment, except when the title to that equipment would not be held by the LEA. Costs for school construction are not allowable (Section 8003 of ESEA; 34 CFR section 222.53(c)).

2. *Section 8007 – Construction* - ***(CFDAs 84.041 and 84.404)***

   LEAs that receive payments under Section 8003 of the ESEA and that meet certain other statutory criteria may receive formula assistance under Section 8007(a) of the ESEA in any fiscal year that the Congress appropriates funds under that Section. LEAs must use the payments provided under Section 8007(a) **and Section 8007(a) funds provided under ARRA** for construction, as defined in Section 8013(3) of the ESEA. Under Section 8013(3), the term "construction" includes: (a) the preparation of drawings and specifications for school facilities; (b) erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities; (c) inspecting and supervising the construction of school facilities; and (d) debt service for such activities (Sections 8007 and 8013(3) of ESEA). Certain LEAs that receive payments under section 8002 or 8003 of the ESEA and that meet other statutory and regulatory criteria may receive discretionary grant assistance under Section 8007(b) of the ESEA. Selected grantees must use these funds for emergency or modernization construction grant expenditures, as specified in their grant award documents. Emergency and modernization are defined in 34 CFR section 222.176 and the allowable and unallowable uses of these funds are detailed in 34 CFR sections 222.172 through 222.174.

3. *Section 8002 - Federal property payments and Section 8003(b) - Basic support payments* - ***(Allowable under CFDA 84.041 only)***

   Funds made available under Sections 8002 and 8003(b) of the ESEA usually become part of the general operating fund of the LEAs. These funds are available as general aid for free public education and may be used for current operating expenditures or capital outlays in accordance with State laws. The auditor is not expected to perform any tests with respect to the expenditure of these funds.

B. Allowable Costs/Cost Principles

Sections 8002 (Federal property payments) and 8003(b) (Basic support payments) are not subject to the A-102 Common Rule (See Appendix I) or Circular A-87.

D. Davis-Bacon Act

Section 8007 construction funds, **including those funds provided under ARRA**, as well as any Section 8002 or 8003(b) funds spent for construction or minor remodeling, are subject to Davis-Bacon prevailing wage requirements (20 USC 1232b and **Section 1606 of ARRA**).

G. Matching, Level of Effort, Earmarking

1. Matching - Not Applicable

2.1 Level of Effort - *Maintenance of Effort* - Not Applicable

2.2 Level of Effort - *Supplement Not Supplant*

Section 8003(d) funds may not supplant any State funds (either general or special education State aid) that were or would have been available to the LEA for the free, appropriate public education of federally connected children with disabilities counted under Section 8003(d). A reduction in the per-pupil amount of State aid for children with disabilities, including children counted under Section 8003(d), from that received in the previous year raises a presumption that supplanting has occurred. An LEA can rebut this presumption by demonstrating that the reduction was unrelated to the receipt of Section 8003(d) funds (Section 8003(d) of ESEA; 34 CFR section 222.54).

3. Earmarking - Not Applicable

H. Period of Availability of Federal Funds

Section 8007(a) formula funds appropriated by ARRA (CFDA 84.404) are available for obligation beginning with the date of enactment of ARRA (February 17, 2009) and remain available for obligation by LEAs until September 30, 2011 (Section 1603 of ARRA and 20 USC 1225(b)(1)).

L. Reporting

1. Financial Reporting - Not Applicable

2. Performance Reporting - Not Applicable

3. Special Reporting

Application for Impact Aid - Section 8003 (OMB No. 1810-0687) - Each year an LEA must submit this application, which provides the following information: counts of federally connected children in various categories, membership and average daily attendance data, and information on expenditures for children with disabilities. Membership and average attendance data should be tested. The auditor should use professional judgment when determining which tables to test, taking into account the relative materiality of the number of children reported in other tables. (Note: Eligible LEAs submit a separate application for Section 8002 or Section 8007(b) funding. The auditor is not expected to perform any tests with respect to the Section 8002 or Section 8007(b) applications.)

N. Special Tests and Provisions

Required Level of Expenditure

Compliance Requirement - For each fiscal year, the amount of expenditures for special education and related services provided to federally connected children with disabilities must be at least equal to the amount of funds received or credited under Section 8003(d) of the ESEA for that fiscal year. This is demonstrated by comparing the amount of Section 8003(d) funds received or credited with the result of the following calculation:

a. Divide total LEA expenditures for special education and related services for all children with disabilities by the average daily attendance (ADA) of all children with disabilities served during the year.

b. Multiply the amount determined in a. above by the ADA of the federally connected children with disabilities claimed by the LEA for the year.

If the amount of section 8003(d) funds received or credited is greater than the amount calculated above, an overpayment equal to the excess section 8003(d) funds exists. This overpayment may be reduced or eliminated to the extent that the LEA can demonstrate that the average per pupil expenditure for special education and related services provided to federally connected children with disabilities exceeded its average per pupil expenditure for serving non-federally connected children with disabilities (Section 8003(d) of ESEA; 34 CFR section 222.53(d)).

Audit Objective - To determine whether the LEA met the required level of expenditure for providing special education and related services to federally connected children with disabilities.

Suggested Audit Procedures

a. Review the LEA's calculation to ascertain if it shows that the required level of expenditure for federally connected children was met. Check accuracy of calculation.

b. Trace amounts used in the calculation to supporting records.

c. If the LEA's calculation shows that an overpayment was made, verify that the average per pupil expenditure for federally connected children with disabilities exceeded the average per pupil expenditure for non-federally connected children to the extent of the overpayment.

DEPARTMENT OF EDUCATION

CFDA 84.126 REHABILITATION SERVICES--VOCATIONAL REHABILITATION GRANTS TO STATES
CFDA 84.390 REHABILITATION SERVICES--VOCATIONAL REHABILITATION GRANTS TO STATES, RECOVERY ACT

I. PROGRAM OBJECTIVES

The purpose of Title I of the Rehabilitation Act of 1973, as amended (Act), which authorizes the State Vocational Rehabilitation (VR) Services Program, is to assist States in operating statewide comprehensive, coordinated, effective, efficient, and accountable VR programs, each of which is: (1) an integral part of a statewide workforce investment system; and (2) designed to assess, plan, develop, and provide VR services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individuals may prepare for and engage in gainful employment (Section 100(a)(2) of the Act (29 USC 720(a)(2))).

II. PROGRAM PROCEDURES

Federal funds are distributed to the States on a formula basis with the States required to provide a 21.3 percent match. The program is administered by an agency designated by the State as having overall administrative responsibility for the VR program. If the designated State agency is not an agency primarily concerned with VR, or vocational and other rehabilitation of individuals with disabilities, it must include a designated State unit within the agency that is responsible for the designated State agency's VR program (State VR Agency).

The States must submit to the Rehabilitation Services Administration (RSA) a State Plan that provides both assurances and descriptions that are required by Title I of the Act and the implementing regulations (34 CFR part 361). The State Plan is one of the key bases of RSA's monitoring of the State's administration of the VR program.

Services are provided either directly by State VR Agency staff or purchased from community-based vendors. Services, except those of an assessment nature, are provided under the Individualized Plan for Employment (IPE), as determined by the individual, which can be developed by the individual, or with assistance provided by others, including a qualified VR counselor employed by the State VR Agency, to achieve an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities and informed choice.

The Workforce Investment Act of 1998, as amended (WIA), requires the VR program to collaborate with other workforce development, educational, and human resource programs in a one-stop service delivery system. The WIA's objective is to create a seamless delivery system by linking the agencies operating these programs in order to provide universal access to the programs operated by each agency. While the one-stop system operates as a common portal for gaining access to these programs, each program provides its respective services to persons meeting its respective eligibility criteria.

Agencies responsible for administering the programs whose services are delivered in a one-stop system are known as "partners;" those whose participation is mandated by the WIA, including the State VR agency, are "required partners." Each partner must enter into a Memorandum of Understanding (MOU) with the Local Workforce Investment Board regarding the operation of the one-stop system. The MOU covers the services to be provided through the one-stop system, funding for those services and for the system's administrative costs, and the methods for referring individuals between one-stop operators and partners. It establishes how each partner will participate in the one-stop system and share in the cost of operating it. Each partner's resources may be used only for: (1) services that are authorized under that partner's program and delivered to clients eligible for those services; and (2) administrative costs allocable to the partner's program.

In addition to the MOU required by the WIA, the Rehabilitation Act requires that a State VR agency's State Plan provide for a network of cooperative agreements binding that agency's central and local offices to the central and local offices, respectively, of the other partners in the one-stop service delivery system. States can choose to use the same document to meet the requirements for both the MOU and the cooperative agreements. As used henceforth in this discussion, "MOU" refers to whatever document(s) a State agency uses to meet these requirements.

Funds from the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) are distributed to the States on a formula basis. States receive an initial funding of 50 percent of their ARRA VR awards (CFDA 84.390) on the basis of their eligibility for Fiscal Year (FY) 2009 non-ARRA VR State Grant awards (CFDA 84.126) and submission of the certification required by Section 1607 of ARRA. States did not need to submit a new State Plan or assurances to receive this initial funding. The assurances in a State's approved FY 2009 State plan for their non-ARRA VR funds, as well as the requirements of ARRA, apply to the use of the ARRA VR funds. The second half of the awards will be made after States have submitted, for review and approval by the Department of Education (ED), information that addresses how the State will meet the accountability and reporting requirements in Section 1512 of ARRA.

Source of Governing Requirements

The VR program is authorized by Title I of the Rehabilitation Act of 1973, as amended (29 USC 701 *et seq*.). The Rehabilitation Act Amendments of 1998 are found in Title IV of the WIA. **The ARRA VR program is also authorized by ARRA.** Program regulations are found at 34 CFR part 361. In addition, the Education Department General Administrative Regulations (EDGAR) at 34 CFR parts 74, 76, 77, 79, 80, 81, 82, 85, and 86 apply to this program. Requirements in 20 CFR part 662 (Description of the One-Stop Service Delivery System) also apply to the extent that VR activities are being conducted as part of a one-stop service delivery system.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Services to Individuals*

   Services provided under the VR programs are any services described in an IPE necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. Section 103(a) of the Act (29 USC 723(a)) contains examples of the types of services that can be provided.

2. *Services to Groups*

   The State VR Agency may provide other services to groups of individuals with disabilities (Section 103(b) of the Act (29 USC 723(b))):

   a. In the case of any type of small business operated by individuals with significant disabilities the operation of which can be improved by management services and supervision provided by the designated State agency, the provision of such services and supervision, along or together with the acquisition by the designated State agency of vending facilities or other equipment and initial stocks and supplies.

   b. *Community Rehabilitation Programs* - The establishment, development, or improvement of a public or other non-profit community rehabilitation program including, under special circumstances, the construction of a facility for a public or non-profit community rehabilitation program.

   c. The provision of other services, that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized plan for employment of any one individual with a disability.

   d. Telecommunications systems that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with disabilities.

   e. Special services to provide non-visual access to information for individuals who are blind, including telecommunications, Braille, sound recordings or other appropriate media; captioned television, films, or

video cassettes for individuals who are deaf or hard of hearing; tactile materials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media.

f. Technical assistance and support services to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990, and that are seeking to employ individuals with disabilities.

g. Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

3. *Participation in a One-Stop Service Delivery System*

Any service or administrative cost charged to the VR programs through participation in the one-stop service delivery system must be: (a) allowable under the program's authorizing statute and regulations; (b) allocable to the program under the State VR agency's cost allocation plan; and (c) consistent with the MOU between the State VR agency and the Local Workforce Investment Board. The MOU is the primary vehicle by which the State VR agency sets forth how it will participate in the one-stop service delivery system and how it will share in the cost of operating the system (29 USC 2841(b)(1)(B)(iv); 34 CFR section 361.4; 20 CFR part 662; Notice: *Resource Sharing for Workforce Investment Act One-Stop Centers: Methodologies for Paying or Funding Each Partner Program's Fair Share of Allocable One-Stop Costs*, issued May 31, 2001 (66 FR 29637)).

The MOU identifies the resources the State VR agency will provide for compliance with 20 CFR section 662.270, which requires the VR programs to support a fair share of the one-stop system's common administrative costs. The amount provided must be proportionate to the use of the system by individuals attributable to this program. The MOU may provide for cash payments of billings from the one-stop operator, or for providing goods and services that benefit the system's operation. Examples of goods and services that the VR agency may provide for this purpose include: (a) making VR staff available to provide training or technical assistance to other partners in such areas as disability, accessibility, adaptive equipment, and rehabilitation engineering; (b) VR staff participation in cooperative efforts with employers to promote job placement (such as job analysis and employer visits); and (c) applying VR staff and other resources to the VR program's participation in information and financial management systems that link all partners to one another.

C. Cash Management

See ED Cross-Cutting Section

E. Eligibility

1. Eligibility for Individuals

An individual is eligible for VR services if the individual (a) has a physical or mental impairment that, for the individual, constitutes or results in a substantial impediment to employment; (b) can benefit in terms of an employment outcome from VR services; and (c) requires VR services to prepare for, secure, retain, or regain employment (Section 102(a)(1) of the Act (29 USC 722(a)(1))).

An individual who is a beneficiary of Social Security Disability Insurance or a recipient of Supplemental Security Income is presumed to be eligible for VR services (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual) unless the State VR Agency can demonstrate by clear and convincing evidence that such individual is incapable of benefiting in terms of an employment outcome from VR services due to the severity of the disability of the individual (Section 102(a)(3) of the Act (29 USC 722(a)(3))).

An individual is presumed to be able to benefit in terms of an employment outcome from VR services unless the State VR Agency can demonstrate by clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome from VR services due to the severity of the individual's disability. This determination must be made through the use of trial work experiences with appropriate supports provided by the State VR Agency, except under limited circumstances when the individual can not take advantage of such experiences (Section 102(a)(2) of the Act (29 USC 722(a)(2))).

The State VR Agency must determine whether an individual is eligible for VR services within a reasonable period of time, not to exceed 60 days, after the individual has submitted an application for the services unless (Section 102(a)(6) of the Act (29 USC 722(a)(6)):

a. Exceptional and unforeseen circumstances beyond the control of the State VR agency preclude making an eligibility determination within 60 days and the State agency and the individual agree to a specific extension of time; or

b. The State VR Agency is exploring an individual's abilities, capabilities, and capacity to perform in work situations through trial work experiences in order to determine the eligibility of the individual or the existence of clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome from VR services.

The State may choose to consider the financial need of eligible individuals, or individuals who are receiving services during a trial work experience or an extended evaluation, for the purpose of determining the extent of their

participation in the cost of VR services. The State may not consider financial need when providing services described in 34 CFR section 361.54(b)(3). If the State indicates in its State Plan that it will use financial need tests for one or more types of VR services, it must apply such tests in accordance with its written policies uniformly to all individuals under similar circumstances. The policies may require different levels of need for different geographic regions in the State, but must be applied uniformly to all individuals within each geographic region (34 CFR section 361.54).

2. Eligibility for Group of Individuals or Area of Service Delivery - Not Applicable

3. Eligibility for Subrecipients - Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching

a. **For the regular VR State Grants program**, the State share of expenditures made by the State VR Agency under the State Plan, including expenditures for the provision of VR services and the administration of the State Plan, is 21.3 percent (Sections 7(14) and 111(a)(1) of the Act (29 USC 705(14) and 731(a)(1))).

b. **For the regular VR State Grants program**, the Federal share of expenditures made for the construction of a facility for community rehabilitation program purposes may not be more than 50 percent of the total cost of the project (34 CFR section 361.60(a)(2)).

c. **There are no matching requirements for expenditures made under the ARRA VR program (ARRA, 123 Stat. 183).**

2.1 Level of Effort - *Maintenance of Effort*

a. The amount otherwise payable to a State for a fiscal year under this section shall be reduced by the amount by which expenditures from non-Federal sources under the State Plan for the previous fiscal year are less than the total of such expenditures for the fiscal year two years prior to the previous fiscal year. For example, for fiscal year 2001, a State's maintenance-of-effort level is based on the amount of its expenditures from non-Federal sources for fiscal year 1999. Thus, if the State's non-Federal expenditures in fiscal year 2001 are less than they were in fiscal year 1999, the State has a maintenance of effort deficit, and the Secretary reduces the State's allotment for fiscal year 2002 by the amount of that deficit (Section 111(a)(2)(B) of the Act (29 USC 731(a)(2)(B)); 34 CFR section 361.62).

b. If the State Plan provides for the construction of a facility for community rehabilitation program purposes, the amount of the State's share of expenditures for a fiscal year for VR services under the Plan, other than for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation purposes, must be at least equal to the State's share of those expenditures for the second prior fiscal year (34 CFR section 361.62).

2.2 Level of Effort - *Supplement Not Supplant* - Not Applicable

3. Earmarking - Not Applicable

H. Period of Availability of Federal Funds

Federal funds appropriated for a fiscal year **under the regular VR State Grants program** remain available for obligation in the succeeding fiscal year only to the extent that the State VR Agency met the matching requirement for those Federal funds by obligating, in accordance with 34 CFR section 76.707, the non-Federal share in the fiscal year for which the funds were appropriated. Any program income received during a fiscal year that is not obligated by the State VR Agency by the end of that fiscal year will remain available for obligation by the State VR Agency during the succeeding fiscal year (Section 19 of the Act (29 USC 716); 34 CFR section 361.64).

Federal funds appropriated under the ARRA VR program are available for obligation beginning with the date of enactment of ARRA, February 17, 2009. ARRA VR funds remain available for obligation by States until September 30, 2011, which includes the one-year carryover period authorized under section 19 of the Rehabilitation Act (Section 1603 of ARRA and 29 USC 716).

J. Program Income

Sources of program income include, but are not limited to, payments from the Social Security Administration for rehabilitating Social Security beneficiaries, payments received from workers' compensation funds, fees for services to defray part or all of the costs of services provided to particular individuals, and income generated by a State-operated community rehabilitation program.

Except as indicated below, program income, whenever earned, must be used for the provision of VR services and the administration of the State Plan under the State Vocational Rehabilitation Services Program. Program income is considered earned when it is received (Section 108 of the Act (29 USC 728); 34 CFR section 361.63).

The State VR Agency is authorized to treat program income as a deduction from total allowable costs or as an addition to the grant funds to be used for additional allowable program expenditures, in accordance with 34 CFR sections 80.25(g)(1) or (2) (34 CFR section 361.63).

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

b. SF-270, *Request for Advance or Reimbursement* - Only grantees placed on reimbursement are required to complete this form to request payment of grant award funds. The requirement to use this form is imposed on an individual recipient basis.

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

d. SF-272, *Federal Cash Transactions Report* - Not Applicable

e. RSA-2, *Program Cost Report (OMB No. 1820-0017).* State VR agencies submit the RSA-2 annually.

2. Performance Reporting - Not Applicable

3. Special Reporting - Not Applicable

DEPARTMENT OF EDUCATION

CFDA 84.181 SPECIAL EDUCATION—GRANTS FOR INFANTS AND FAMILIES
CFDA 84.393 SPECIAL EDUCATION—GRANTS FOR INFANTS AND FAMILIES, RECOVERY ACT

I. PROGRAM OBJECTIVES

The purposes of the Individuals with Disabilities Education Act (IDEA), Part C (Part C) are to: (1) to develop and implement a statewide, comprehensive, coordinated, multi-disciplinary interagency system that provides early intervention services for infants and toddlers with disabilities and their families; (2) to facilitate the coordination of payment for early intervention services from Federal, State, local and private sources (including public and private insurance coverage); (3) to enhance the State's capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and (4) to encourage States to expand opportunities for children under the age of three years who would be at risk of having substantial developmental delay if they did not receive early intervention services (20 USC 1431(b); 34 CFR section 303.1).

II. PROGRAM PROCEDURES

Generally, the State is responsible for maintaining and implementing a statewide system to identify, evaluate and provide early intervention services to eligible children and their families. Such a system includes a public awareness and child find system, development and implementation of an individualized family service plan for eligible children, maintenance of a central directory of information about early intervention services, personnel development and contracting for or otherwise providing services to eligible children and their families.

A State must have an approved application that provides required assurances and describes the statewide system and related policies. The State designates a lead agency that is responsible for administering, and supervising activities funded by this program. Program services may be carried out by the lead agency, other State agencies, or by public or private organizations either under contract to the State or through other arrangements with such agencies. The lead agency also monitors activities that are covered by the program, whether or not this program funds them. The State also must establish a State Interagency Coordinating Council that, among other things, advises and assists the lead agency in the development and implementation of policies and achieving participation, cooperation, and coordination of all appropriate public agencies in the State.

The amount of a State's allocation under Part C for a fiscal year is based on its proportion of the general population of infants and toddlers, from birth through two years, in the State (i.e., the ratio of the number of infants and toddlers in the State compared to the number of infants and toddlers in all the States).

Funds from the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) were distributed to the States on a formula basis by the Department of Education (ED). States received an initial funding of 50 percent of their IDEA, Part C ARRA awards (CFDA 84.393) on the basis of their eligibility for Fiscal Year (FY) 2008 non-ARRA IDEA funds under CFDA 84.181 and submission of the certification required by section 1607 of ARRA. States did not submit a new IDEA Application or assurances to receive this initial funding. The State's approved FY 2008 IDEA Part C Application for funds for CFDA 84.181, as well as the requirements of ARRA, apply to the use of the IDEA Part C ARRA funds. The second half of the awards will be made after the State has submitted, for review and approval by ED, information that addresses how the State will meet the accountability and reporting requirements in section 1512 of ARRA.

Source of Governing Requirements

These programs are authorized under 20 USC 1431 through 1445 **and ARRA**. Implementing regulations specific to this program are 34 CFR part 303.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for details of the requirements.

Certain compliance requirements that apply to multiple Department of Education (ED) programs are discussed once in the ED Cross-Cutting Section of this Supplement (page 4-84.000-1) rather than being repeated in each individual program. Where applicable, this section references to the Cross-Cutting Section for these requirements.

A. Activities Allowed or Unallowed

The approved application describes the activities to be carried out. Generally, allowable activities for a State, include (20 USC 1433 and 1438; 34 CFR section 303.3):

1. Maintaining a statewide, comprehensive, coordinated, multi-disciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

2. Providing direct early intervention services for infants and toddlers with disabilities and their families, which are otherwise not funded through other public or private sources.

3. Expanding and improving on services under Part C that are otherwise available for infants and toddlers and their families.

4. Providing a free appropriate public education, in accordance with Part B of the IDEA, to children with disabilities from their third birthday to the beginning of the following school year.

5. With the written consent of the parents, continuing to provide early intervention services under this part to children with disabilities from their third birthday until such children enter, or are eligible under State law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with Part B.

6. In any State that does not provide services for at risk infants and toddlers, to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purpose of: (a) identifying and evaluating at-risk infants and toddlers; (b) making referrals of the infants and toddlers identified and evaluated; and (c) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant and toddler for services.

B. Allowable Costs/Cost Principles

See ED Cross-Cutting Section (84.000, Section III, B.3), which explains that a Restricted Indirect Cost Rate (RICR) must be applied. For States, when ED is cognizant agency for indirect costs under OMB Circular A-87, RICRs are incorporated into indirect cost rate agreements approved by ED.

However, Part C is often administered by State entities for which ED is not the cognizant Federal agency for indirect costs. In addition, subrecipients who may not have had their indirect cost rate approve by ED can also administer Part C funding. For these entities, the provisions of ED regulations pertaining to RICRs may not be reflected in the indirect cost rate charged to Part C. However, indirect costs charged to Part C must conform to the RICR regulations (20 USC 1437(b)(5)(B); 34 CFR sections 76.560 through 34 CFR 76.580).

C. Cash Management

See ED Cross-Cutting Section.

G. Matching, Level of Effort, Earmarking

1. Matching - Not Applicable

2.1 Level of Effort - *Maintenance of Effort*

The total amount of State and local funds budgeted for expenditure in the current fiscal year for early intervention services for children eligible under Part C and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowances may be made for: (a) decreases in the number of children who are eligible to receive Part C early intervention services and (b) unusually large amounts of funds expended for such long-term purposes such as the

acquisition of equipment and the construction of facilities (20 USC 1437(b)(5); 34 CFR section 303.124).

Although this requirement is identified as a supplement not supplant requirement in the law and regulation, this Supplement classifies this type of requirement as maintenance of effort.

2.2 Level of Effort - *Supplement Not Supplant* - Not Applicable

3. Earmarking - Not Applicable

H. Period of Availability of Federal Funds

See ED Cross-Cutting Section and the following:

ARRA funds under Part C of the IDEA (CFDA 84.393) are available for obligation beginning with the date of enactment of ARRA (February 17, 20090. IDEA-C ARRA funds will remain available for obligation by States until September 30, 2011, which includes the one-year carryover period authorized under the Tydings Amendment (Section 1603 of ARRA and 20 USC 1225(b).

L. Reporting

1. Financial Reporting

See ED Cross-Cutting Section.

2. Performance Reporting - Not Applicable

3. Special Reporting – Not Applicable

DEPARTMENT OF EDUCATION

CFDA 84.394 STATE FISCAL STABILIZATION FUND (SFSF) – EDUCATION STATE GRANTS, RECOVERY ACT (Education Stabilization Fund)
CFDA 84.397 STATE FISCAL STABILIZATION FUND (SFSF) – GOVERNMENT SERVICES, RECOVERY ACT

I. PROGRAM OBJECTIVES

The objectives of the SFSF - Education State Grants (Education Stabilization Fund) program are to support and restore funding for elementary, secondary, and postsecondary education and, as applicable, early childhood education programs and services in States and local educational agencies (LEAs). The objectives of the SFSF - Government Services program are to support public safety and other government services, which may include assistance for elementary and secondary education and public institutions of higher education (IHEs), and for modernization, renovation, or repair of public school facilities and IHE facilities.

II. PROGRAM PROCEDURES

The American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) authorized the SFSF programs. States apply for funding from the Education Stabilization Fund and the Government Services program under a single application (Section 14002 of ARRA). To receive its initial SFSF allocation under these programs, a State submits an application to the Department of Education (ED) that provides (1) assurances that the State is committed to advancing education reform in four specific areas (increase teacher effectiveness and address inequities in the distribution of highly qualified teachers; establish and use a pre-K-through-college-and-career data system to track progress and foster continuous improvement; make progress towards rigorous college- and career-ready standards and high-quality assessments that are valid and reliable for all students, including limited English proficient students and students with disabilities; and provide targeted, intensive support and effective interventions to turn around schools identified for corrective action and restructuring), (2) baseline data that demonstrate the State's current status in each of the four education reform areas, (3) maintenance-of-effort information, and (4) a description of how the State intends to use its SFSF allocation.

SFSF funds for both programs are allocated to States in two phases. In Phase I, ED allocates 67 percent of a State's total SFSF allocation within 2 weeks of receipt of an approvable SFSF application. However, if a State demonstrates in its application that this amount is insufficient to prevent the immediate layoff of personnel by school districts, public IHEs, or State or local agencies, ED can award the State up to 90 percent of its total SFSF allocation in Phase I. If a State demonstrates an immediate need for additional Government Services funds, by submitting a letter to ED justifying the request, then ED may award the State up to 90 percent of its Government Services funds. The deadline for Phase I applications was July 1, 2009 (see the May 13, 2009 *Federal Register*, 74 FR 22530). In Phase II, the ED will allocate the remaining SFSF funds to a State after it submits an application addressing the requirements established in a *Federal Register* notice.

The application process and program structure for the Insular Areas differs from the process and program structure for the States. However, the general ARRA prohibitions on uses of funds and maintenance of effort (see III.G.2.1) requirements apply to the Insular Areas. The "Insular Areas" are Guam, American Samoa, U.S. Virgin Islands and the Commonwealth of the Northern Mariana Islands. Information on how the program differs for the Insular Areas is available on the Internet at: http://www.ed.gov/programs/statestabilization/applicant.html.

Source of Governing Requirements

These programs are authorized by Title XIV of ARRA. Education Stabilization funds may be used for activities authorized by the Elementary and Secondary Education Act of 1965 (ESEA) (20 USC 6301 et seq.), the Individuals with Disabilities Education Act (20 USC 1400 et seq.), the Adult and Family Literacy Act (20 USC 1400 et seq.), or the Carl D. Perkins Career and Technical Education Act of 2006 (20 USC 2301 et seq.), or for modernization, renovation, or repair of public school facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system. However, other than the permissible uses of funds under those statutes, the applicable statutes and regulations for those programs (such as the prohibition of using Federal program funds to supplant funds from non-Federal sources) do not apply to SFSF funds (Section 14003(a) of ARRA).

Availability of Other Program Information

Non-regulatory guidance for the SFSF programs (*Guidance on the State Fiscal Stabilization Fund Program – April 2009)* is available from links on the ED's website at: http://www.ed.gov/programs/statestabilization/applicant.html

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for details of the requirements.

A. Activities Allowed or Unallowed

1. *Allowable Activities - Education Stabilization Fund - States*

   a. States shall use Education Stabilization funds:

      (1) For support of elementary and secondary education and, as applicable, early childhood education programs and services to restore the amount of funds needed to bring the level of State support for the State's fiscal years 2009, 2010, and 2011 to the greater of the fiscal year 2008 or 2009 level, using the state's primary elementary and secondary funding formula(e), as described by the State in its application. Also, if a State enacted formulae increases to support elementary and secondary education

for the State's fiscal years 2010 and 2011 prior to October 1, 2008, these funds must be used to support such increases.

(2) For support to IHEs to restore the amount of funds needed to bring the level of State support for the State's fiscal years 2009, 2010, and 2011 to the greater of the fiscal year 2008 or 2009 level, as described by the State in its application.

(3) If the Governor determines that the amount of Education Stabilization funds available is insufficient to support public elementary, secondary and postsecondary education at the required levels for fiscal years 2009, 2010, and 2011, the Governor must allocate those funds between those activities proportionally to the relative shortfall for each of these education sectors (Section 14002(a) of ARRA).

b. Any remaining Education Stabilization funds must be used to provide LEAs in the State with subgrants based on their relative shares of funding under part A of title I of ESEA (20 USC 6311 et seq.) for the most recent year for which data are available (Section 14002(a)(3) of ARRA).

2. Allowable Activities - Education Stabilization Fund - LEAs

a. LEAs may use Education Stabilization funds for any activity that is authorized under the following Federal education acts:

- The Elementary and Secondary Education Act of 1965 (ESEA);
- The Individuals with Disabilities Education Act (IDEA);
- The Adult Education and Family Literacy Act; or
- The Carl D. Perkins Career and Technical Education Act of 2006

b. To the extent consistent with State law, an LEA may use Education Stabilization funds for modernization, renovation, or repair of public school facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system. Although ED encourages that any modernization, renovation or repair is consistent with a recognized green building rating system, this is not a requirement.

c. LEAs, (including charter school LEAs) have considerable flexibility in determining how best to use Education Stabilization funds. Because the amount of Education Stabilization funding that an LEA receives is determined strictly on the basis of formulae and ARRA gives LEAs considerable flexibility over the use of these funds, neither the Governor nor the SEA may mandate how an LEA will or will not use the funds. As stated above, an LEA may use these funds for activities authorized under

the ESEA. Because the ESEA includes the broad Impact Aid authority (see Title VIII of the ESEA), an LEA may use Education Stabilization funds for activities that would be allowable under Impact Aid. This flexibility applies to all LEAs that receive Education Stabilization funds, and is not limited to those LEAs that also receive Impact Aid funds.

Most funds that the ED awards under Impact Aid are considered to be general aid to LEAs. Thus, under the Impact Aid authority, an LEA may use Education Stabilization funds for educational purposes consistent with State and local requirements, subject to ARRA and other applicable Federal requirements, including the limitations discussed below.

Construction of new school buildings is an authorized activity under the Impact Aid construction program in section 8007 of the ESEA. Thus, subject to the ARRA statutory requirements and prohibitions governing the uses of Education Stabilization funds, an LEA (including a charter school LEA) may use the funds to support the construction of new school buildings, including construction activities that are consistent with a recognized green-building rating system.

Because an LEA may consider Education Stabilization funds to be available for any activity authorized under the Impact Aid program, the funds may be used to support both current expenditures and other expenses such as capital expenditures. Among other things, Education Stabilization funds may be used for activities such as: paying the salaries of administrators, teachers, and support staff; purchasing textbooks, computers, and other equipment; supporting programs designed to address the educational needs of children at risk of academic failure, limited English proficient students, children with disabilities, and gifted students; and meeting the general expenses of the LEA (Section 14003 of ARRA).

3. Allowable Activities - Education Stabilization Fund - IHEs

a. IHEs may use Education Stabilization funds for two purposes: (1) Education and general expenditures in such a way as to mitigate the need to raise tuition and fees for in-State residents; and (2) modernization, renovation, or repair of IHE facilities that are primarily used for instruction, research, or student housing, including modernization, renovation, and repairs that are consistent with a recognized green-building rating system. Although ED encourages that any modernization, renovation or repair is consistent with a recognized green building rating system, this is not a requirement (Section 14004 of ARRA).

b. While neither the Governor nor the SEA may mandate how an LEA will or will not use the funds, this limitation does not apply to IHEs. For example, a Governor may restrict an IHE's use of funds to expenditures that would mitigate the need for increases in tuition and fees paid for by in-State students (Section 14004(a) of ARRA).

4. Allowable Activities - Government Services

a. The Governor shall use Government Services funds for public safety and other government services, which may include assistance for elementary and secondary education and public IHEs. The Governor may also use Government Services funds for modernization, renovation, or repair of public school facilities and IHE facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system, subject to the requirements in ARRA. Although ED encourages that any modernization, renovation or repair is consistent with a recognized green building rating system, this is not a requirement. Governors are also permitted to use part of their Government Services funds to support administrative costs associated with implementing ARRA, including costs related to monitoring subgrantees and complying with the ARRA reporting requirements (Section 14002(b) of ARRA).

b. Unlike the Education Stabilization Fund program, ARRA does not require Governors to use State funding formulae when awarding funds to LEAs, and they do not have to allocate Government Services funds proportionally with an LEA's share of funding under Part A of Title I of the ESEA. Government Services funds may be allocated to any entity for the broad range of public safety and other government services activities, including assistance to elementary and secondary education and public IHEs, and for modernization, renovation, or repair of public school facilities and IHEs' facilities .

The scope of allowable activities under the Government Services program is broad, and is not limited to modernization, renovation, or repair of public school facilities or IHEs. Subject to limitations in Section 14004(c) of ARRA (see paragraph 6.c below), Governors are permitted to use Government Services funds for construction and infrastructure support.

When providing funds to IHEs, the Governor cannot consider the type or mission of the institution, and must consider any IHE (as defined in section 101 of the Higher Education Act (HEA) of 1965 (20 USC 1001) for funding for modernization, renovation, and repairs within that State, as long as that institution continues to meet the eligibility requirements in the programs under title IV of the HEA (Section 14002(b) of ARRA).

5. *Allowable Activities - Education Stabilization Fund and Government Services*

Upon prior approval from the Secretary of ED, the State or LEA that receives SFSF funds may treat any portion of such funds that is used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program, including Part C of IDEA, administered by the Secretary (Section 14012(d) of ARRA).

6. *Unallowable Activities - Education Stabilization Fund and Government Services*

a. SFSF funds cannot be used to provide financial assistance to students to attend private elementary or secondary schools, unless the funds are used to provide special education related services to children with disabilities as authorized by the IDEA (Section 14011 of ARRA).

b. SFSF funds cannot be used to supplement or restore "rainy day funds," as transferring SFSF funds to a rainy day fund does not constitute an obligation under 34 CFR section 76.707.

c. No entity may use SFSF funds for:

(1) Maintenance of systems, equipment, or facilities;

(2) Modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other public events for which admission is charged to the general public; or

(3) Modernization, renovation, or repair of facilities used for sectarian instruction or religious worship, or in which a substantial portion of the functions of the facilities are subsumed in a religious mission (Section 14004(c) of ARRA).

e. LEAs may not use SFSF funds for:

(1) Payment of maintenance costs;

(2) Stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;

(3) Purchases or upgrades of vehicles;

(4) Improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities; or

(5) School modernization, renovation, or repair of that is inconsistent with State law (Section 14003(b) and (c) of ARRA).

f. IHEs may not use SFSF funds for increasing their endowments (Section 14004(b) of ARRA).

7. *Unallowable Activities Applicable to Government Services*

Government Services funds cannot be used to pay down past debt. Government Services funds must be used for public safety and other government services, precluding the use of Government Services funds to pay down past debt (Section 14002(b)(1) of ARRA).

D. Davis-Bacon Act

All construction, modernization, renovation, and repair activities are subject to the Davis-Bacon Act (Section 1606 of ARRA).

G. Matching, Level of Effort, Earmarking

1. Matching - Not Applicable

2.1 Level of Effort - *Maintenance of Effort (84.394)*

Under the Education Stabilization Fund program, a State is required to maintain its level of support for elementary and secondary education and for public IHEs. Those requirements are:

(1) In each of fiscal years 2009, 2010, and 2011, the State will maintain State support for elementary and secondary education at least at the level of such support for fiscal 2006.

(2) In each of fiscal years 2009, 2010, and 2011, the State will maintain State support for public IHEs (not including support for capital projects or for research and development or tuition and fees paid by students) at least at the level of such support for fiscal year 2006 (Section 14005(d) of ARRA).

However, the Secretary of Education my waive or modify such requirements for fiscal years 2009, 2010, or 2011, if the Secretary determines the State will not provide a smaller percentage of the total revenues available to the State for elementary, secondary, and postsecondary education than that provided in the preceding fiscal year (Section 14012(b) and (c) of ARRA).

Nevertheless, the level of effort required by a State for the following fiscal year shall not be reduced (Section 14012(e) of ARRA).

2.2 Level of Effort - *Supplement Not Supplant* - Not Applicable

3. Earmarking - Not Applicable

H. Period of Availability of Federal Funds

Funds from both SFSF programs remain available for local obligation through September 30, 2011. With specific approval from ED, funds from both SFSF programs may be used to pay for pre-award costs to a specific date, no earlier than February 17, 2009 (Section 1603 of ARRA and 20 USC 1225(b)).

DEPARTMENT OF HOMELAND SECURITY

CFDA 97.024 EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM
CFDA 97.114 ARRA EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM

I. PROGRAM OBJECTIVE

The purpose of the program is to supplement and expand ongoing efforts to provide emergency shelter, food, and supportive services for needy families and individuals. The program also conducts minimum rehabilitation of existing mass shelter or mass feeding facilities, but only to make facilities safe and sanitary and bring them into compliance with local building codes.

II. PROGRAM PROCEDURES

The Emergency Food and Shelter National Board Program (EFSP) is administered by the U.S. Department of Homeland Security/Federal Emergency Management Agency (FEMA). The program has been entrusted to FEMA through the McKinney-Vento Homeless Assistance Act (42 USC 11331 *et seq*.) "to supplement and expand ongoing efforts to provide shelter, food and supportive services" for the nation's hungry and homeless.

The National Board (the recipient) qualifies local jurisdictions for funding using a formula based on current Federal statistics on unemployment, poverty, and population. State Set-Aside Committees are established to receive a portion of funding from the National Board to assist localities experiencing drastic economic changes or that do not qualify for direct funding. The National Board selected United Way of America to serve as its Secretariat and Fiscal Agent.

Local Boards (LBs) must submit a "Local Board Plan" to the National Board which outlines the funding distribution for their jurisdiction. Once the plan is approved by the National Board, the National Board transmits funding, in two equal installments, by electronic funds transfer (EFT), directly to the Local Recipient Organizations (LROs) selected to receive funding by the LBs. LROs that are first-time recipients of EFSP funds receive the payment of their first installment by check.

Source of Governing Requirements

Title III of the McKinney-Vento Homeless Assistance Act, as amended (42 U.S.C. 11331 et seq.) and the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5).

Availability of Other Program Information

Other program information is available through the Fiscal Year 2009 Emergency Food and Shelter Program National Board Phase 27 Responsibilities and Requirements Manual located at www.dhs.gov/xopnbiz/grants/editorial_0565.shtm;

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

   a. Administrative costs

      (1) National Board: up to1 percent of the funding may be used by the National Board to perform administrative duties.

      (2) State Set-Aside Committees: up to 0.5 percent of the award may be used for administrative functions.

      (3) Local Boards: LB administrative costs are restricted to 2 percent of the funds available to the local jurisdiction based on the approved LB plan. The 2 percent allowance may be used by the LB and/or the LRO at the discretion of the LB. No LRO may receive an allowance greater than 2 percent of that LRO's award amount unless the LRO is providing the administrative support for the LB. Any unused administrative allowance must be spent on eligible program services.

   b. LROs may use funding for activities approved by the LB, consistent with the LB's approved plan (42 USC 11343(a)).

2. *Activities Unallowed*.

   Unallowable costs are identified in the *Emergency Food and Shelter National Board Program Phase 27 Responsibilities and Requirements Manual.* The manual is located at www.dhs.gov/xopnbiz/grants/editorial_0565.shtm.

E. Eligibility

1. Eligibility for Individuals – Individuals are eligible for assistance based on the criteria set by individual LROs.

2. Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable

3. Eligibility for Subrecipients – LROs must be private non-profit organizations or local governments (42 USC 11343(b)).

G. Matching, Earmarking, Level of Effort

1. Matching – Not Applicable

2.1 Level of Effort - *Maintenance of Effort* – Not Applicable

2.2 Level of Effort - *Supplement Not Supplant*

EFSP funds are to supplement and expand on going efforts of existing local social service organizations, and cannot be used as seed or start-up money for new organizations.

3. Earmarking – Not Applicable

L. Reporting

1. Financial Reporting

a. SF-269, *Financial Status Report* – Applicable

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

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

d. SF-272, *Federal Cash Transactions Report* – Payments under this program are made by the Department of Health and Human Services, Payment Management System (PMS). Reporting equivalent to the SF-272 is accomplished through the PMS and is evidenced by the PSC 272-E, *Major Program Statement*.

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

IV. OTHER INFORMATION

Expenditures identified under the Homeland Security Emergency Food Shelter cluster in the current audit period may be attributable to awards made under CFDA 97.024, Emergency Food and Shelter National Board Program, which is a non-ARRA EFS program, or to ARRA funding under CFDA 97.114. Subawards issued by the primary grantee are legally binding agreements, and, therefore, the CFDA number(s) cited by the grantee in the subgrant award must be used by the subgrantee as the CFDA reference in the SEFA.

PART 5 – CLUSTERS OF PROGRAMS

1. Add the following paragraph at the end of IV, OTHER INFORMATION, under the Student Financial Assistance cluster:

STUDENT FINANCIAL ASSISTANCE CLUSTER

IV. OTHER INFORMATION

[The six paragraphs in the 2009 Compliance Supplement remain unchanged]

Recovery Act Considerations

Reports posted at the Department of Education website show obligations and outlays of Recovery Act funds for the Federal Pell Grant Program (CFDA 84.063). The reports also show obligations (but not outlays) for the Recovery Act funds for the Federal Work-Study program (CFDA 84.033). Recovery Act funds for these two programs are being accounted for within the Federal government, but disbursements have been made together with funds from the Federal Pell Grant Program (CFDA 84.063) and the Federal Work Study Program (CFDA 84.033), without a separate identification of the Recovery Act portions to auditees. [Consequently, it is not possible for auditees to separately report Recovery Act expenditures for these programs in their Schedules of Expenditures of Federal Awards (SEFA).] All expenditures for the Federal Pell Grant and Federal Work Study programs are covered in single audits as part of the Student Financial Assistance Programs Cluster (SFA cluster). However, the provisions of Appendix VII of the March 2009 Compliance Supplement included on Page 8-7-2 in the section entitled, *Effect of Expenditures of ARRA Awards on Major Program Determination*, do not apply to the SFA cluster. On the SEFA, all expenditures for the Federal Pell Grant and College Work Study Programs should be reported as part of the SFA cluster under CFDAs 84.063 and 84.033, respectively.

2. "OTHER CLUSTERS" has been updated for ARRA programs as follows:

OTHER CLUSTERS

Programs Included in this Supplement Deemed to Be Other Clusters

Agency	CFDA No.	Name of Other Cluster/Program
		Foreign Food Aid Donation Cluster
USDA	None	Food for Progress Program
	None	Section 416(b) Program
		SNAP Cluster
USDA	10.551	Supplemental Nutrition Assistance Program (SNAP)
	10.561	State Administrative Matching Grants for Supplemental Nutrition Assistance Program

		Child Nutrition Cluster
USDA	10.553	School Breakfast Program (SBP)
	10.555	National School Lunch Program (NSLP)
	10.556	Special Milk Program for Children (SMP)
	10.559	Summer Food Service Program for Children (SFSPC)
		Emergency Food Assistance Cluster
USDA	10.568	Emergency Food Assistance Program (Administrative Costs)
	10.569	Emergency Food Assistance Program (Food Commodities)
		Schools and Roads Cluster
USDA	10.665	Secure Payments for States and Counties Containing Federal Lands
	10.666	Schools and Roads--Grants to Counties
		Public Works and Economic Development Cluster
DOC	11.300	Investments for Public Works and Economic Development Facilities
	11.307	Economic Adjustment Assistance
		Section 8 Project-Based Cluster
HUD	14.182	Section 8 New Construction and Substantial Rehabilitation
	14.195	Section 8 Housing Assistance Payments Program--Special Allocations
	14.856	Lower Income Housing Assistance Program - Section 8 Moderate Rehabilitation
	14.249	Section 8 Moderate Rehabilitation Single Room Occupancy
		CDBG - Entitlement Grants Cluster (ARRA programs added to form a new cluster)
HUD	14.218	Community Development Block Grants/Entitlement Grants
	14.253	**Community Development Block Grant ARRA Entitlement Grants (CDBG-R) - (Recovery Act Funded)**
	14.254	**Community Development Block Grants/Special Purpose Grants/Insular Areas - (Recovery Act Funded)**
		CDBG - State-Administered Small Cities Program Cluster (ARRA program added to form a new cluster)
HUD	14.228	Community Development Block Grants/State's Program and Non-Entitlement Grants in Hawaii (State-Administered Small Cities Program)
	14.255	**Community Development Block Grants/State's Program and Non-Entitlement Grants in Hawaii – (Recovery Act Funded) (State-Administered Small Cities Program)**

		Indian CDBG Program Cluster (ARRA program added to existing program to form a new cluster)
HUD	14.862	Indian Community Development Block Grant Program
	14.886	**Indian Community Development Block Grant Program (Recovery Act Funded)**
		Indian Housing Block Grants Cluster (ARRA programs added to existing program to form a new cluster)
HUD	14.867	Indian Housing Block Grants
	14.882	**Native American Housing Block Grants (Formula) Recovery Act Funded**
	14.887	**Native American Housing Block Grants (Competitive) Recovery Act Funded**
		CFP Cluster (ARRA programs/new cluster)
HUD	**14.872**	**Public Housing Capital Fund (CFP)**
	14.884	**Public Housing Capital Fund Competitive (Recovery Act Funded)**
	14.885	**Public Housing Capital Fund Stimulus (Formula) (Recovery Act Funded)**
		Native Hawaiian Housing Cluster (Existing program added to supplement with ARRA program to form a new cluster)
HUD	**14.873**	**Native Hawaiian Housing Block Grants**
	14.883	**Native Hawaiian Housing Block Grants (Recovery Act Funded)**
		Lead Hazard Control Cluster (ARRA programs/new cluster)
HUD	**14.907**	**Lead-Based Paint Hazard Control in Privately-Owned Housing (Recovery Act Funded)**
	14.908	**Healthy Homes Demonstration Grants (Recovery Act Funded)**
	14.909	**Lead Hazard Reduction Demonstration Grant Program (Recovery Act Funded)**
	14.910	**Healthy Homes Technical Studies Grants (Recovery Act Funded)**
		Fish and Wildlife Cluster
DOI	15.605	Sport Fish Restoration Program
	15.611	Wildlife Restoration

		Employment Service Cluster
DOL	17.207	Employment Service
	17.801	Disabled Veterans' Outreach Program (DVOP)
	17.804	Local Veterans' Employment Representative Program (LVER)
		WIA Cluster
DOL	17.258	WIA Adult Program
	17.259	WIA Youth Activities
	17.260	WIA Dislocated Workers
		Highway Planning and Construction Cluster
DOT	20.205	Highway Planning and Construction
	20.219	Recreational Trails Program
	23.003	Appalachian Development Highway System
		Federal Transit Cluster
DOT	20.500	Federal Transit--Capital Investment Grants
	20.507	Federal Transit--Formula Grants
		Transit Services Programs Cluster
DOT	20.513	Capital Assistance Program for Elderly Persons and Persons with Disabilities
	20.516	Job Access - Reverse Commute Program
	20.521	New Freedom Program
		Highway Safety Cluster
DOT	20.600	State and Community Highway Safety
	20.601	Alcohol Traffic Safety and Drunk Driving Prevention Incentive Grants
	20.602	Occupant Protection
	20.603	Federal Highway Safety Data Improvements Incentive Grants
	20.604	Safety Incentive Grants for Use of Seatbelts
	20.605	Safety Incentives to Prevent Operation of Motor Vehicles by Intoxicated Persons
	20.609	Safety Belt Performance Grants
	20.610	State Traffic Safety Information System Improvements Grants
	20.611	Incentive Grant Program to Prohibit Racial Profiling
	20.612	Incentive Grant Program to Increase Motorcyclist Safety
	20.613	Child Safety and Child Booster Seat Incentive Grants
		Title I, Part A Cluster (ARRA program added to existing program to form a new cluster)
ED	84.010	Title I Grants to Local Educational Agencies (Title I, Part A of the ESEA)
	84.389	**Title I Grants to Local Educational Agencies, Recovery Act**

		Special Education Cluster (IDEA) **(ARRA programs added to existing cluster)**
ED	84.027	Special Education--Grants to States (IDEA, Part B)
	84.173	Special Education--Preschool Grants (IDEA Preschool)
	84.391	**Special Education—Grants to States (Idea, Part B), Recovery Act**
	84.392	**Special Education—Preschool Grants (Idea Preschool), Recovery Act**
		Impact Aid Cluster **(ARRA program added to existing program to form a new cluster)**
ED	84.041	Impact Aid (Title VIII of ESEA)
	84.404	**Impact Aid – School Construction Formula Grant, Recovery Act**
		TRIO Cluster
ED	84.042	TRIO--Student Support Services
	84.044	TRIO--Talent Search
	84.047	TRIO--Upward Bound
	84.066	TRIO--Educational Opportunity Centers
	84.217	TRIO--McNair Post-Baccalaureate Achievement
		Vocational Rehabilitation Cluster **(ARRA program added to existing program to form a new cluster)**
ED	84.126	Rehabilitation Services--Vocational Rehabilitation Grants to States
	84.390	**Rehabilitation Services--Vocational Rehabilitation Grants to States, Recovery Act**
		Early Intervention Services (IDEA) Cluster **(ARRA program added to existing program to form a new cluster)**
ED	84.181	Special Education—Grants for Infants and Families
	84.393	**Special Education—Grants for Infants and Families, Recovery Act**
		State Fiscal Stabilization Fund Cluster **(ARRA programs/new cluster)**
ED	**84.394**	**State Fiscal Stabilization Fund (SFSF) – Education State Grants, Recovery Act (Education Stabilization Fund)**
	84.397	**State Fiscal Stabilization Fund (SFSF) – Government Services, Recovery Act**

		Aging Cluster (ARRA programs added to existing cluster)
HHS	93.044	Special Programs for the Aging–Title III, Part B--Grants for Supportive Services and Senior Centers
	93.045	Special Programs for the Aging–Title III, Part C--Nutrition Services
	93.053	Nutrition Services Incentive Program
	93.705	**ARRA – Aging Home-Delivered Nutrition Services for States**
	93.707	**ARRA – Aging Congregate Nutrition Services for States**
		Health Centers Cluster (ARRA program added to existing program to form a new cluster)
HHS	93.224	Consolidated Health Centers (Community Health Centers, Migrant Health Centers, Health Care for the Homeless, Public Housing Primary Care, and School Based Health Centers (Health Center New Access Points)
	93.703	**ARRA – Health Center Integrated Services Development Initiative**
		Immunization Cluster (ARRA program added to existing program to form a new cluster)
HHS	93.268	Immunization
	93.712	**ARRA – Immunization**
		TANF Cluster (ARRA programs added to existing program to form a new cluster)
HHS	93.558	Temporary Assistance for Needy Families (TANF) State Programs
	93.714	**ARRA – Emergency Contingency Fund for Temporary Assistance for Needy Families (TANF) State Programs**
	93.716	**ARRA – Temporary Assistance for Needy Families (TANF) Supplemental Grants**
		CSBG Cluster (ARRA program added to existing program to form a new cluster)
HHS	93.569	Community Services Block Grants
	93.710	**ARRA – Community Services Block Grants**
		CCDF Cluster (ARRA program added to existing cluster)
HHS	93.575	Child Care and Development Block Grant
	93.596	Child Care Mandatory and Matching Funds of the Child Care and Development Fund
	93.713	**ARRA – Child Care and Development Block Grant**

		Head Start Cluster (ARRA programs added to existing program to form a new cluster)
HHS	93.600	Head Start
	93.708	**ARRA - Head Start**
	93.709	**ARRA - Early Head Start**
		Medicaid Cluster
HHS	93.776	Hurricane Katrina Relief Program
	93.778	Medical Assistance Program (Medicaid)
	93.775	State Medicaid Fraud Control Units
	93.777	State Survey and Certification of Health Care Providers and Suppliers
		Foster Grandparent/Senior Companion Cluster
CNS	94.011	Foster Grandparent Program
	94.016	Senior Companion Program
		Disability Insurance/SSI Cluster
SSA	96.001	Social Security--Disability Insurance (DI)
	96.006	Supplemental Security Income (SSI)
		Homeland Security Cluster
DHS	97.004	State Domestic Preparedness Equipment Support Program (State Homeland Security Grant Program)
	97.067	Homeland Security Grant Program

Note: CFDA 97.004 is part of the cluster only for expenditures attributable to FY 2004 awards. See IV, "Other Information," in the program supplement for this cluster in Part 4 for an explanation of the composition of this cluster.

		Emergency Food and Shelter Program Cluster (Existing program added to supplement with ARRA program to form a new cluster)
DHS	**97.024**	**Emergency Food and Shelter National Board Program**
	97.114	**ARRA Emergency Food and Shelter National Board Program**
		Foreign Food Aid Donation Cluster
USAID	98.007	Food for Peace Development Assistance Program
	98.008	Food for Peace Emergency Program

R&D Cluster

ARRA funding is going to the R&D cluster

Programs Not Included in this Supplement Deemed to Be Other Clusters

Agency	CFDA No.	Name of Other Cluster/Program
		Rural Rental Housing Cluster
USDA	10.415	Rural Rental Housing Loans
	10.427	Rural Rental Assistance Payments

PART 6 - INTERNAL CONTROL

INTRODUCTION

The A-102 Common Rule and OMB Circular A-110 (2 CFR part 215) require that non-Federal entities receiving Federal awards (i.e., auditee management) establish and maintain internal control designed to reasonably ensure compliance with Federal laws, regulations, and program compliance requirements. OMB Circular A-133 requires auditors to obtain an understanding of the non-Federal entity's internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk for major programs, plan the testing of internal control over major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program, and, unless internal control is likely to be ineffective, perform testing of internal control as planned.

This Part 6 is intended to assist non-Federal entities and their auditors in complying with these requirements by describing, for each type of compliance requirement, the objectives of internal control, and certain characteristics of internal control that, when present and operating effectively, may ensure compliance with program requirements. However, the categorizations reflected in this Part 6 may not necessarily reflect how an entity considers and implements internal control. Also, this part is not a checklist of required internal control characteristics. Non-Federal entities could have adequate internal control even though some or all of the characteristics included in Part 6 are not present. Further, non-Federal entities could have other appropriate internal controls operating effectively that have not been included in this Part 6. Non-Federal entities and their auditors will need to exercise judgment in determining the most appropriate and cost effective internal control in a given environment or circumstance to provide reasonable assurance for compliance with Federal program requirements.

The objectives of internal control pertaining to the compliance requirements for Federal programs (Internal Control Over Federal Programs), as found in §____.105 of OMB Circular A-133, are as follows:

(1) Transactions are properly recorded and accounted for to:
   (i) Permit the preparation of reliable financial statements and Federal reports;
   (ii) Maintain accountability over assets; and
   (iii) Demonstrate compliance with laws, regulations, and other compliance requirements;

(2) Transactions are executed in compliance with:
   (i) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program; and
   (ii) Any other laws and regulations that are identified in the compliance supplements; and

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

The characteristics of internal control are presented in the context of the components of internal control discussed in *Internal Control-Integrated Framework* (COSO Report), published by the Committee of Sponsoring Organizations of the Treadway Commission. The COSO Report provides a framework for organizations to design, implement, and evaluate control that will facilitate compliance with the requirements of Federal laws, regulations, and program compliance requirements. COSO also has published *Guidance on Monitoring Internal Control Systems* (January 2009), which is available at www.coso.org/GuidanceonMonitoring.htm. Statement on Auditing Standards No. 78 (SAS 78), *Consideration of Internal Control in a Financial Statement Audit*, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA) and a related AICPA audit guide, *Consideration of Internal Control in a Financial Statement Audit*, incorporate the components of internal control presented in the COSO Report.

This Part 6 describes characteristics of internal control relating to each of the five components of internal control that should reasonably assure compliance with the requirements of Federal laws, regulations, and program compliance requirements. A description of the components of internal control and examples of characteristics common to the 14 types of compliance requirements are listed below. Objectives of internal control and examples of characteristics specific to each of 13 of the 14 types of compliance requirements follow this introduction. (Because Special Tests and Provisions are unique for each program, we could not provide specific control objectives and characteristics for this type of compliance requirement.)

Control Environment sets the tone of an organization influencing the control consciousness of its people. It is the foundation for all other components of internal control, providing discipline and structure.

- Sense of conducting operations ethically, as evidenced by a code of conduct or other verbal or written directive.
- If there is a governing Board, the Board has established an Audit Committee or equivalent that is responsible for engaging the auditor, receiving all reports and communications from the auditor, and ensuring that audit findings and recommendations are adequately addressed.
- Management's positive responsiveness to prior questioned costs and control recommendation.
- Management's respect for and adherence to program compliance requirements.
- Key managers' responsibilities clearly defined.
- Key managers have adequate knowledge and experience to discharge their responsibilities.
- Staff knowledgeable about compliance requirements and being given responsibility to communicate all instances of noncompliance to management.
- Management's commitment to competence ensures that staff receive adequate training to perform their duties.
- Management's support of adequate information and reporting system.

Risk Assessment is the entity's identification and analysis of risks relevant to achievement of its objectives, forming a basis for determining how the risks should be managed.

- Program managers and staff understand and have identified key compliance objectives.
- Organizational structure provides identification of risks of noncompliance:
  - Key managers have been given responsibility to identify and communicate changes.
  - Employees who require close supervision (e.g. inexperienced) are identified.
  - Management has identified and assessed complex operations, programs, or projects.
  - Management is aware of results of monitoring, audits, and reviews and considers related risk of noncompliance.
- Process established to implement changes in program objectives and procedures.

Control Activities are the policies and procedures that help ensure that management's directives are carried out.

- Operating policies and procedures clearly written and communicated.
- Procedures in place to implement changes in laws, regulations, guidance, and funding agreements affecting Federal awards.
- Management prohibition against intervention or overriding established controls.
- Adequate segregation of duties provided between performance, review, and recordkeeping of a task.
- Computer and program controls should include:
  - Data entry controls, e.g., edit checks.
  - Exception reporting.
  - Access controls.
  - Reviews of input and output data.
  - Computer general controls and security controls.
- Supervision of employees commensurate with their level of competence.
- Personnel with adequate knowledge and experience to discharge responsibilities.
- Equipment, inventories, cash, and other assets secured physically and periodically counted and compared to recorded amounts.
- If there is a governing Board, the Board conducts regular meetings where financial information is reviewed and the results of program activities and accomplishments are discussed. Written documentation is maintained of the matters addressed at such meetings.

Information and Communication are the identification, capture, and exchange of information in a form and time frame that enable people to carry out their responsibilities.

- Accounting system provides for separate identification of Federal and non-Federal transactions and allocation of transactions applicable to both.
- Adequate source documentation exists to support amounts and items reported.
- Recordkeeping system is established to ensure that accounting records and documentation retained for the time period required by applicable requirements; such as the A-102 Common Rule (§____.42), OMB Circular A-110 (2 CFR 215.53), and the provisions of laws, regulations, contracts or grant agreements applicable to the program.
- Reports provided timely to managers for review and appropriate action.
- Accurate information is accessible to those who need it.
- Reconciliations and reviews ensure accuracy of reports.
- Established internal and external communication channels.
  - Staff meetings.
  - Bulletin boards.
  - Memos, circulation files, e-mail.
  - Surveys, suggestion box.
- Employees' duties and control responsibilities effectively communicated.
- Channels of communication for people to report suspected improprieties established.
- Actions taken as a result of communications received.
- Established channels of communication between the pass-through entity and subrecipients.

Monitoring is a process that assesses the quality of internal control performance over time.

- Ongoing monitoring built-in through independent reconciliations, staff meeting feedback, rotating staff, supervisory review, and management review of reports.
- Periodic site visits performed at decentralized locations (including subrecipients) and checks performed to determine whether procedures are being followed as intended.
- Follow up on irregularities and deficiencies to determine the cause.
- Internal quality control reviews performed.
- Management meets with program monitors, auditors, and reviewers to evaluate the condition of the program and controls.
- Internal audit routinely tests for compliance with Federal requirements.
- If there is a governing Board, the Board reviews the results of all monitoring or audit reports and periodically assesses the adequacy of corrective action.

General Guidance - Internal Control Over Compliance For Major Programs With Expenditures of ARRA Awards

ARRA provides significant Federal funding to supplement existing Federal programs, as well as funding for new programs. Section 3 of ARRA, Principles and Purposes, requires Federal agencies to manage and expend the funds made available to achieve its purposes: "commencing expenditures and activities as quickly as possible consistent with prudent management." Such ARRA requirements make the establishment and operation of effective internal control over compliance (internal control) critical. Therefore, this addendum emphasizes several points related to the internal control testwork related to each major program funded with ARRA awards.

1. **It is essential that auditee management establish and maintain internal control designed to reasonably ensure compliance with Federal laws, regulations, and program compliance requirements, including internal control designed to ensure compliance with ARRA requirements. The auditor then performs and documents testwork relating to internal control as required by OMB Circular A-133. Part 6 of the Compliance Supplement is intended to assist management and their auditors in complying with these requirements.**

2. **The effects of ARRA on audits under OMB Circular A-133 will increase significantly during calendar year 2009 as awards and expenditures under ARRA programs increase. It is imperative that deficiencies in internal control (i.e., material weaknesses and significant deficiencies) be corrected by management as soon as possible to ensure proper accountability and transparency for expenditures of ARRA awards. Early communication by auditors to management, and those charged with governance, of identified control deficiencies related to ARRA funding that are, or likely to be, significant deficiencies or material weaknesses in internal control will allow management to expedite corrective action and mitigate the risk of improper expenditure of ARRA awards. Therefore, auditors are encouraged to promptly inform auditee management and those charged with governance during the audit engagement about control deficiencies related to ARRA funding that are, or likely to be, significant deficiencies or material weaknesses in internal control. The auditor should use professional judgment regarding the form of such interim communications. Factors to consider in determining whether to make communications orally and/or in writing include the relative significance of the identified control deficiencies and the urgency for corrective action. However, regardless of how interim communications are made, the auditor should also communicate ARRA-related significant deficiencies or material weakness via the normal reporting process at the end of the audit (i.e., in the reporting on internal control over compliance and the schedule of findings and questioned costs).**

3. At many entities, awards funded by ARRA funds will result in material increases in funding, which may result in a material increase in the level of resources needed by management to properly manage, monitor, and account for Federal awards and effectively operate internal control. As part of the consideration of internal control over compliance, auditors should consider "capacity" issues as follows:

- **Part 6 of the Compliance Supplement describes characteristics of internal control relating to each of the five components of internal control identified in *Internal Control-Integrated Framework* (COSO Report) that should reasonably assure compliance with the requirements of Federal laws, regulations, and program compliance requirements. A description of the components of internal control and examples of characteristics common to the 14 types of compliance requirements are also included in Part 6. One of those components, "Risk Assessment," relates to an entity's risk assessment process including its identification, analysis, and management of risks relevant to its compliance. When gaining an understanding of the internal control over the "Activities Allowed or Unallowed/Allowable Costs and Cost Principles" and "Eligibility" types of compliance requirements for major programs with ARRA funding, the auditor should consider the entity's internal control environment and internal control established to address the risks arising from ARRA funding (e.g., risks due to rapid growth of a program, new and/or increased activities under a program, changes in the regulatory environment, or new personnel).**

- **When evaluating whether identified control deficiencies, individually or in combination, are significant deficiencies or material weaknesses, the auditor should consider the likelihood and magnitude of noncompliance. One of the factors that affects the magnitude is the volume of activity exposed to the deficiency in the current period or expected in the future.**