

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 5, 44, 45, 84, and 85**

[Docket No. FR-4258-I-01]

RIN 2501-AC40

Adoption of Revised OMB Circular A-133; Administrative Requirements for Grantees to Reflect the Single Audit Act Amendments of 1996**AGENCY:** Office of the Chief Financial Officer, HUD.**ACTION:** Interim rule.

SUMMARY: On June 30, 1997, OMB published revised Circular A-133 to implement the Single Audit Act Amendments of 1996. The Act sets forth requirements for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and non-profit organizations expending Federal awards. This rule adopts the revised requirements.

DATES: Effective date: December 18, 1997.

Comment Due Date: January 20, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410-0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: William E. Dobrzykowski, Deputy Chief Financial Officer for Finance, (202) 708-0650. (This is not a toll-free number.) Hearing-impaired or speech-impaired individuals may access the voice telephone number listed above by calling the Federal Information Relay Service during working hours at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: On June 30, 1997, the Office of Management and Budget (OMB) published revised Circular No. A-133, re-titled "Audits of States, Local Governments, and Non-Profit Organizations," which established uniform audit requirements for non-Federal entities that administer Federal awards and implemented the Single Audit Act Amendments of 1996 (Pub.L. 104-156, enacted July 5, 1996). OMB Circular No. A-128, "Audits of States

and Local Governments," which was issued in 1985, was rescinded as a result of the consolidation of audit requirements under Circular A-133.

One of the more significant revisions is that the threshold for when an entity is required to have an audit is raised from \$25,000 to \$300,000. Other significant changes are: a report submission due date which is shortened from 13 to 9 months and a report submission process that includes a data collection form and streamlined filing requirements; a new risk-based approach for major program determination; and additional guidance for program-specific audits, audit findings, and audit findings follow-up.

Through this interim rule the Department of Housing and Urban Development (HUD) adopts these requirements. In addition, HUD is adding a provision to set forth a clarification regarding the uniform audit requirements for non-profit organizations participating in HUD programs whose regulations are set forth in 24 CFR in the part 200 and 800 series, such as parts 207, 213, 220, 221, 231, 232, 234, 236, 241, 242, 244, 266, 880, 881, 882, 883, 884, 886, and 891. The clarification provides that non-profit organizations subject to regulations in the part 200 and part 800 series of 24 CFR shall comply with the audit requirements of revised OMB Circular A-133. Audits of non-profit organizations under these programs were previously subject to the requirements of the Consolidated Audit Guide for Audits of HUD Programs (HUD Handbook 2000.04). This audit guide no longer applies to audits of non-profit organizations. For HUD programs, a non-profit organization is the mortgagor or owner and not a related or affiliated organization or entity. The terms "mortgagor" or "owner" are defined in the regulations in the part 200 and part 800 series, such as §§ 207.251, 891.205 and 891.305.

HUD is also removing and reserving 24 CFR parts 44 and 45 since these parts are no longer applicable because of the revised circular. A number of conforming technical revisions are needed throughout HUD's regulations in title 24 of the CFR as a result of HUD's adoption of the uniform audit requirements. Those revisions will be set forth in a subsequent separate rulemaking.

Findings and Certifications*Environmental Impact*

This amendment is excluded from the environmental review requirements of the National Environmental Policy Act

(42 U.S.C. 4321-4347) and the other related Federal environmental laws and authorities, as set forth in 24 CFR part 50. In keeping with the exclusion provided for in 24 CFR 50.19(c)(1), this amendment does not "direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy."

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. This interim rule merely adopts government-wide requirements related to auditing. The interim rule does not affect the amount of funds provided in the covered programs, but rather increases the threshold for non-Federal entities subject to audit, thereby reducing burden on some small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this interim rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This interim rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects*24 CFR Part 5*

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Individuals with

disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 44

Accounting, Grant programs, Indians, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements.

24 CFR Part 45

Accounting, Colleges and universities, Grant programs, Loan programs, Non-profit organizations, Reporting and recordkeeping requirements.

24 CFR Part 84

Accounting, Audit requirements, Colleges and universities, Grant programs—housing and community development, Loan programs—housing and community development, Non-profit organizations, Reporting and recordkeeping requirements.

24 CFR Part 85

Accounting, Audit requirements, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Accordingly, parts 5, 44, 45, 84, and 85 of title 24 of the Code of Federal Regulations are amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. Subpart A is amended to add a new § 5.107 to read as follows:

§ 5.107 Audit requirements for non-profit organizations

Non-profit organizations subject to regulations in the part 200 and part 800 series of title 24 of the CFR shall comply with the audit requirements of revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" (see 24 CFR 84.26). For HUD programs, a non-profit organization is the mortgagor or owner (as these terms are defined in the regulations in the part 200 and part 800 series) and not a related or affiliated organization or entity.

PARTS 44 AND 45—[REMOVED AND RESERVED]

3. Parts 44 and 45 are removed and reserved.

PART 84—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

4. The authority citation for part 84 continues to read as follows:

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

5. Section 84.26 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 84.26 Non-Federal audits.

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

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

(2) Reserved.

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

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

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6. Section 84.82 is amended by revising paragraphs (e)(1), (2), and (3) to read as follows:

§ 84.82 Provisions applicable only to lump sum grants.

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(e) *Non-Federal audits.* (1) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall

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

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

(ii) [Reserved].

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

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

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PART 85—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

7. The authority citation for part 85 continues to read as follows:

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

8. Section 85.26 is amended by revising paragraphs (a), (b) introductory text, and (b)(1), to read as follows:

§ 85.26 Non-Federal audits.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee which expends \$300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:

(1) Determine whether State or local subgrantees have met the audit

requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," have met the audit requirements of the Act.

Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied

with laws and regulations affecting the expenditure of Federal funds;

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Dated: October 22, 1997.

Andrew Cuomo,
Secretary.

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