

UNIFORM GRANT MANAGEMENT STANDARDS

GOVERNOR'S OFFICE OF BUDGET AND
PLANNING

(As Adopted June 2004)

Rick Perry
Governor

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REVISIONS ADOPTED IN JUNE 2004 HAVE BEEN HIGHLIGHTED.

I. Introduction

The following Uniform Grant Management Standards (UGMS) for state agencies were developed under the authority of Chapter 783 of the Texas Government Code, which codifies the Uniform Grant and Contract Management Standards Act of 1981. That Act directs the governor's office to establish uniform grant and contract administration procedures "to promote the efficient use of public funds in local government and in programs requiring cooperation among local, state and federal agencies." The Act requires the governor's office to "compile and distribute" a set of standards from OMB Circular A-102 and "from other applicable statutes and regulations." The standards were first published in June 1982, incorporating A-102, "Grants and Cooperative Agreements With State and Local Governments"; A-87, "Cost Principles for State, Local and Indian Tribal Governments"; and A-128, "Audits of State and Local Governments." They were revised in February 1990 to incorporate changes to OMB Circular A-102. Major revisions began in January 1996 and were completed in December 1997, with clarifications to the cost principles and revisions to the audit provisions made in December 1998 in response to specific questions regarding the standards as published in January 1998. Amendments were adopted November 2000. The revisions incorporated into this issuance of the standards were developed to conform UGMS changes in OMB Circular A-87, to revise and clarify the A-102 annotations as necessary and to make the standards consistent with federal law by substituting OMB Circular A-133 for A-128, which was rescinded when A-133 was issued in June 1997. While both A-87 and A-102 were significantly modified to reflect state law, policies and procedures, A-133 was transformed into a new state single audit circular. The last amendments were adopted in June 2004. The revisions correct typographical errors, clarify certain provisions in the cost principles and make substantive changes to selected provisions of the state single audit circular adopted by reference from OMB Circular A-87, the grant administration requirements adopted by reference from the Common Rule of OMB Circular A-102 and single audit requirements adopted by reference from OMB Circular A-133.

Purpose, Applicability and Scope

Purpose: The Uniform Grant Management Standards were established to promote the efficient use of public funds by providing awarding agencies and grantees a standardized set of financial management procedures and definitions, by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state.

Applicability: Chapter 783 of the Government Code specifically applies the standards promulgated by the governor's office only to state and local governments, and excludes school districts, colleges and universities and special districts. However, to further consistency and accountability, some state agencies have applied these standards by rule or contract to all their subrecipients. In addition, Chapter 2105, Texas Government Code, subjects all subrecipients of federal block grants to the Uniform Grant and Contract Management Standards. In summary, recipients and subrecipients, other than state and local governments, of federal pass-through and other funds from state agencies should check with the awarding agency to ascertain whether or to what extent they are subject to these standards. In the event of a conflict between UGMS and applicable federal law, the provisions of federal law apply.

Scope: The standard financial management conditions and uniform assurances set out in the following pages are applicable to all grants, cooperative agreements, contracts and other financial assistance arrangements executed between state agencies, local governments and any other subrecipient not specifically excluded by state or federal law. Contracts for the sole purpose of procuring goods or services on a competitive basis, in which there is a clear purchaser-vendor relationship, are excluded from the requirements of these standards (see State Single Audit Circular, sec.____.210 for guidance on determining whether a subrecipient or a vendor relationship exists). State agencies may deviate from these standards only if the agency has complied with Texas Government Code, Sec. 783.007, Uniform Assurances and Standard Conditions Required; Variations.

II. Cost Principles for State and Local Governments and Other Affected Entities

With Annotations Where State Provisions Differ from the OMB Circular A-87

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ATTACHMENT A -- General Principles for Determining Allowable Costs

A. Purpose and Scope

1. Objectives. This Attachment establishes principles for determining the allowable costs incurred by State, local, and federally-recognized Indian tribal governments (governmental units) under grants, contracts, **[these principles apply to cost reimbursement as well as other types of payment agreements; "cost reimbursement" has been stricken only to avoid a possible interpretation limiting the type of contracts covered.]** and other agreements with the federal **and state** government (collectively referred to in this Circular as **"Federal awards"**). The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal or governmental unit participation in the financing of a particular program or project. The principles are designed to provide that Federal **and state** awards bear their fair share of cost recognized under these principles except where restricted or prohibited by law. Provision for profit or other increment above cost is outside the scope of this Circular.

2. Policy guides.

a. The application of these principles is based on the fundamental premises that:

(1) Governmental units are responsible for the efficient and effective administration of Federal **and state** awards through the application of sound management practices.

(2) Governmental units assume responsibility for administering Federal **and state** funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal **and state** award.

(3) Each governmental unit, in recognition of its own unique combination of staff, facilities, and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration of Federal **and state** awards.

b. Federal agencies should work with States or localities which wish to test alternative mechanisms for paying costs for administering Federal programs. The Office of Management and Budget (OMB) encourages Federal agencies to test fee-for-service alternatives as a replacement for current cost-reimbursement payment methods in response to the National Performance Review's (NPR) recommendation. The NPR recommended the fee-for-service approach to reduce the burden associated with maintaining systems for charging administrative costs to Federal programs and preparing and approving cost allocation plans. This approach should also increase incentives for administrative efficiencies and improve outcomes.

3. Application.

a. These principles will be applied by all Federal **and state** agencies in determining costs incurred by governmental units under Federal **and state** awards (including subawards) except those with (1) Publicly-financed educational institutions subject to OMB Circular A-21, "Cost Principles for Educational Institutions," and (2) programs administered by publicly-owned hospitals and other providers of medical care that are subject to requirements promulgated by the sponsoring Federal agencies. However, this Circular does apply to all central service and department/agency costs that are allocated or billed to those educational institutions, hospitals, and other providers of medical care or services by other State and local government departments and agencies.

b. All subawards are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a governmental unit (other than a college,

university or hospital), this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial organizations shall apply; if a subaward is to a college or university, Circular A-21 shall apply; if a subaward is to a hospital, the cost principles used by the Federal awarding agency for awards to hospitals shall apply, subject to the provisions of subsection A.3.a. of this Attachment; if a subaward is to some other non-profit organization, Circular A-122, "Cost Principles for Non-Profit Organizations," shall apply.

c. These principles shall be used as a guide in the pricing of fixed price arrangements where costs are used in determining the appropriate price.

d. Where a Federal **or state** contract awarded to a governmental unit incorporates a Cost Accounting Standards (CAS) clause, the requirements of that clause shall apply. In such cases, the governmental unit and the cognizant Federal agency **or state grantor agency** shall establish an appropriate advance agreement on how the governmental unit will comply with applicable CAS requirements when estimating, accumulating and reporting costs under CAS-covered contracts. The agreement shall indicate that OMB Circular A-87 requirements will be applied to other Federal **or state awards**. In all cases, only one set of records needs to be maintained by the governmental unit.

B. Definitions

1. "Approval or authorization of the awarding or cognizant Federal agency" means documentation evidencing consent prior to incurring a specific cost. If such costs are specifically identified in a Federal award document, approval of the document constitutes approval of the costs. If the costs are covered by a State/local-wide cost allocation plan or an indirect cost proposal, approval of the plan constitutes the approval.

2. "Award" means grants, contracts, **[these principles apply to cost reimbursement as well as other types of payment agreements; "cost reimbursement" has been stricken to avoid a possible interpretation limiting the type of contracts covered.]** and other agreements between a State, local and Indian tribal government and the Federal **or state** government.

3. "Awarding agency" means (a) with respect to a grant, cooperative agreement, or contract, **[these principles apply to cost reimbursement as well as other types of payment agreements; "cost reimbursement" has been stricken to avoid a possible interpretation limiting the type of contracts covered.]**, the Federal **or state** agency, and (b) with respect to a subaward, the party that awarded the subaward.

4. "Central service cost allocation plan" means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a governmental unit on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

5. "Claim" means a written demand or written assertion by the governmental unit or grantor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to the award. A voucher, invoice or other routine request for payment that is not a dispute when submitted is not a claim. Appeals, such as those filed by a governmental unit in response to questioned audit costs, are not considered claims until a final management decision is made by the Federal **or state** awarding agency.

6. "Cognizant agency" means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this Circular on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies. **[See "state single audit coordinating agency"]**

7. "Common Rule" means the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule" originally issued at 53 FR 8034-8103 (March 11, 1988). Other common rules will be referred to by their specific titles. **Some federal agencies have guidelines that deviate from the common rule, either by statutory requirement or by special authorization from the Office of Management and Budget. In addition, some state agencies may have variances required by statute that apply to nonprofits and others.**

8. "Contract" means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and, bilateral contract modifications. **Procurement contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301 et seq. or by the Uniform Grant Management Standards.**

9. "Cost" means an amount as determined on a cash, accrual, or other basis acceptable to the Federal **or state** awarding or cognizant agency. It does not include transfers to a general or similar fund.

10. "Cost allocation plan" means central service cost allocation plan, public assistance cost allocation plan, and indirect cost rate proposal. Each of these terms are further defined in this section.

11. "Cost objective" means a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred.

12. "Documentation" means records that verify grant expenditure amounts and their appropriateness to grant funds. (See C. Basic Guidelines (1)(j) definition of "adequately documented")

13. "Federally-recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

14. "Governmental unit" means the entire State, local, political subdivision, or federally-recognized Indian tribal government, including any component thereof. Components of governmental units may function independently of the governmental unit in accordance with the term of the award. **[Section 783.003(3) of the Texas Government Code specifically excludes school districts and other special purpose districts from UGMS. However, some state agencies have extended UGMS by rule to certain categories of recipients which are not specifically excluded by the statute.]**

15. "Grant" means an award of financial assistance, including cooperative agreements, in the form of money, property in lieu of money, or other financial assistance paid or furnished by the state or federal government to carry out a program in accordance with rules, regulations and guidance provided by the grantor agency. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, for which the grantee is not required to account. See the State Single Audit Circular, sec. ___210(b), (c) and (d) for guidance in differentiating between grants and procurement. Sec. ___210 (b) of that circular lists the following characteristics, which may be present in whole or part, of a grantee organization:

The receiving organization:

- (1) Determines who is eligible to receive what state or federal financial assistance;

- (2) Has its performance measured against whether the objectives of the state or federal program are met;
- (3) Has responsibility for programmatic decision making;
- (4) Has responsibility for adherence to applicable state or federal program compliance requirements; and
- (5) Uses the state or federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

Section ____210(d) points out that “There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.”

16. “Grantee department or agency” means the component of a State, local, or federally-recognized Indian tribal government which is responsible for the performance or administration of all or some part of a Federal **or state** award. **The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.**

17. “Indirect cost rate proposal” means the documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect cost rate as described in Attachment E of this Circular.

18. “Local government” means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government. **[Section 783.003(3) of the Texas Government Code specifically excludes school districts and other special purpose districts from UGMS.]**

19. “Public assistance cost allocation plan” means a narrative description of the procedures that will be used in identifying, measuring and allocating all administrative costs to all of the programs administered or supervised by State public assistance agencies as described in Attachment D of this Circular.

20. “State” means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

21. “State single audit coordinating agency” means the state agency designated by the governor’s office to coordinate single audits of state subrecipients required by the Uniform Grant Management Standards and the State of Texas Single Audit Circular. Generally, the state agency which provides the most funding is designated as the coordinating agency. The state single audit coordinating agency is responsible for assuring satisfactory and timely audit coverage, providing technical assistance and liaison, conducting desk reviews of audit reports, notifying other affected agencies of irregularities, advising a subrecipient if its audit does not meet single audit requirements, coordinating additional audits and following up on audit findings applicable to its own, but not other affected agencies’, programs. A state single audit coordinating agency may, but is not required to, review and approve an assigned grantee’s indirect cost plan. A detailed listing of the state single audit coordinating agency’s responsibilities appears at sec. ____400, State of Texas Single Audit Circular.

22. “Subcontractor” means a purveyor of goods or services engaged by a primary contractor to provide goods, services or both through a procurement relationship generally available to any purchaser for a stated price. Although such goods or services may contribute to carrying out some portion of a scope of services for which grant funds are expended, they constitute procurement, and are not subject to the requirements set forth in these Standards for grantees and subgrantees (see State of Texas Single Audit Circular, sec.____210 (c) and (d).

C. Basic Guidelines

1. Factors affecting allowability of costs. To be allowable under Federal **or state** awards, costs must meet the following general criteria:

- a. Be necessary and reasonable for proper and efficient performance and administration of Federal **or state** awards.
- b. Be allocable to Federal **or state** awards under the provisions of this Circular.
- c. Be authorized or not prohibited under State or local laws or regulations.
- d. Conform to any limitations or exclusions set forth in these principles, Federal **or state** laws, terms and conditions of the Federal **or state** award, or other governing regulations as to types or amounts of cost items.
- e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal **or state** awards and other activities of the governmental unit.
- f. Be accorded consistent treatment. A cost may not be assigned to a Federal **or state** award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal **or state** award as an indirect cost.
- g. Except as otherwise provided for in this Circular, be determined in accordance with generally accepted accounting principles.
- h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal **or state** award in either the current or a prior period, except as specifically provided by Federal **or state** law or regulation.
- i. Be the net of all applicable credits.
- j. Be adequately documented. **Documentation required may include, but is not limited to, travel records, time sheets, invoices, contracts, mileage records, billing records, telephone bills and other documentation that verifies the expenditure amount and appropriateness to the grant.**

2. Reasonable costs. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately **state or** federally-funded. In determining reasonableness of a given cost, consideration shall be given to:

- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal **or state** award.
- b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal **or state** award.
- c. Market prices for comparable goods or services.
- d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the **state or** Federal

Government.

e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal **or state** award's cost.

3. Allocable costs.

a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

b. All activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs. **[For example, the fair market value of volunteer services contributed to a project need to be included in the allocation. Unallowable costs have to be included to ensure that the grantor agency does not pay a disproportionate share of project costs by having such costs "backed out" prior to allocating costs among funding sources.]**

c. Any cost allocable to a particular Federal **or state** award or cost objective under the principles provided for in this Circular may not be charged to other Federal **or state** awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal **or state** awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements.

d. Where an accumulation of indirect costs will ultimately result in charges to a Federal **or state** award, a cost allocation plan will be required as described in Attachments C, D, and E.

4. Applicable credits.

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to Federal **or state** awards as direct or indirect costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs, they shall be credited to the Federal **or state** award either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the **state or** Federal Government to finance activities or service operations of the governmental unit should be treated as applicable credits.

Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to Federal **or state** awards. (See Attachment B, item 15, "Depreciation and use allowances," for areas of potential application in the matter of Federal **or state** financing of activities.)

D. Composition of Cost

1. Total cost. The total cost of Federal **and state** awards is comprised of the allowable direct cost of the program, plus its allocable portion of allowable indirect costs, less applicable credits.

2. Classification of costs. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal **or state** award or other final cost objective. Therefore, it is essential that each item of cost be treated consistently in like circumstances either as a direct or an indirect cost. Guidelines for determining direct and indirect costs charged to Federal **or state** awards are provided in the sections that follow.

E. Direct Costs

1. General. Direct costs are those that can be identified specifically with a particular final cost objective.
2. Application. Typical direct costs chargeable to Federal **or state** awards are:
 - a. Compensation of employees for the time devoted and identified specifically to the performance of those awards.
 - b. Cost of materials acquired, consumed, or expended specifically for the purpose of those awards.
 - c. Equipment and other approved capital expenditures.
 - d. Travel expenses incurred specifically to carry out the award.
3. Minor items. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all cost objectives.

F. Indirect Costs

1. General. Indirect costs are those: (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within an entity or in other agencies providing services to an entity. Indirect cost pools should be distributed to benefited cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.
2. Cost allocation plans and indirect cost proposals. Requirements for development and submission of cost allocation plans and indirect cost rate proposals are contained in Attachments C, D, and E.
3. Limitation on indirect or administrative costs.
 - a. In addition to restrictions contained in this Circular, there may be laws that further limit the amount of administrative or indirect cost allowed.
 - b. Amounts not recoverable as indirect costs or administrative costs under one Federal **or state** award may not be shifted to another Federal **or state** award, unless specifically authorized by Federal **or state** legislation or regulation.

G. Interagency Services

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro rate share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Attachment C.

H. Required Certifications

Each cost allocation plan or indirect cost rate proposal required by Attachments C and E must comply with the following:

1. No proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency, **state single audit coordinating agency or other agency designated by the governor's office** or maintained on file by the governmental unit, shall be acceptable unless such costs have been certified by the governmental unit using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Attachments C and E. The certificate must be signed on behalf of the governmental unit by **the chief financial officer and executive director** of the governmental unit that submits the proposal or component covered by the proposal.

2. No cost allocation plan or indirect cost rate shall be approved by the Federal Government, **state single audit coordinating agency or other agency designated by the governor's office**, unless the plan or rate proposal has been certified. Where it is necessary to establish a cost allocation plan or an indirect cost rate and the grantee has not submitted a certified proposal for establishing such a plan or rate in accordance with the requirements, the Federal Government, **state single audit coordinating agency or other agency designated by the governor's office** may either disallow all indirect costs or unilaterally establish such a plan or rate. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency, **state single audit coordinating agency or other agency designated by the governor's office** and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government, **state single audit coordinating agency or other agency designated by the governor's office** because of failure of the grantee to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

ATTACHMENT B -- Selected Items of Cost

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Sections 1 through 44 provide principles to be applied in establishing the allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal **or state** reimbursement only to the extent of benefits received by Federal **or state awards** and its conformance with the general policies and principles stated in Attachment A to this Circular. Failure to mention a particular item of cost in these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

1. Accounting. The cost of establishing and maintaining accounting and other information systems is allowable.

2. Advertising and public relations costs.

a. The term "advertising costs" means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term "public relations" includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. Advertising costs are allowable only when incurred for the recruitment of personnel, the procurement of goods and services, the disposal of surplus materials, and any other specific purposes directly related to the purpose(s) of the program receiving grant assistance necessary to meet the requirements of the Federal **or state** award. Advertising costs associated with the disposal of surplus materials are not allowable where all disposal costs are reimbursed based on a standard rate as specified in the grants management common rule.

d. Public relations costs are allowable when:

(1) Specifically required by the Federal **or state** award and then only as a direct cost;

(2) Incurred to communicate with the public and press pertaining to specific activities or accomplishments that result from performance of the Federal **or state** award and then only as a direct cost; or

(3) Necessary to conduct general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of Federal **or state** contract/grant awards, financial matters, etc.

e. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections c. and d.;

(2) Except as otherwise permitted by these cost principles, costs of conventions, meetings, or other events related to other activities of the governmental unit including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs; and

(4) Costs of advertising and public relations designed solely to promote the governmental unit.

(5) Costs of publicizing or directing attention to any individual official or employee of any agency of the state government (Article IX, Sec. 6, General Appropriations Act of 1995).

(6) Costs associated with influencing the outcome of any election, or the passage or defeat of any legislative measure.

3. Advisory councils. Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal **or state** awarding agency or as an indirect cost where allocable to Federal **or state** awards. **Chapter 2110, Texas Government Code, contains detailed provisions relating to state agency advisory committees. State agencies should review these provisions as well as check appropriations act riders and general provisions to ensure they meet the statutory requirements and that expenditures for advisory committees are authorized prior to making such expenditures.**

4. Alcoholic beverages. Costs of alcoholic beverages are unallowable.

5. Audit services. The costs of audits are allowable provided that the audits were performed in accordance with the Single Audit Act, as implemented by Circular A-133, "Audits of State and Local Governments" **and the State of Texas Single Audit Circular for state funds**. Generally, the percentage of costs charged to Federal **or state** awards for a single audit shall not exceed the percentage derived by dividing Federal **or state** funds expended by total funds expended by the recipient or subrecipient (including program matching funds) during the fiscal year. The percentage may be exceeded only if appropriate documentation demonstrates higher actual costs.

Other audit costs are allowable if specifically approved by the awarding or cognizant agency as a direct cost to an award or included as an indirect cost in a cost allocation plan or rate.

6. Automatic electronic data processing. The cost of data processing services is allowable (**but see section 20, equipment and other capital expenditures, for additional guidelines**).

7. Bad debts. Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable unless provided for in Federal **or state** program award regulations.

8. Bonding costs. Costs of bonding employees and officials are allowable to the extent that such bonding is in accordance with sound business practice.

9. Budgeting. Costs incurred for the development, preparation, presentation, and execution of budgets are allowable.

10. Communications. Costs of telephone, mail, messenger, and similar communication services are allowable.

11. Compensation for personnel services.

a. General. Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal **or state** awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this Circular,

and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal **or state** law, where applicable; and

(3) Is determined and supported as provided in subsection h.

b. Reasonableness. Compensation for employees engaged in work on Federal **or state** awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal **or state** awards are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

c. Unallowable costs. Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personnel compensation.

d. Fringe benefits.

(1) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit.

(2) The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: (a) they are provided under established written leave policies; (b) the costs are equitably allocated to all related activities, including Federal **or state** awards; and, (c) the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.

(3) When a governmental unit uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component.

(4) The accrual basis may be used only for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When a governmental unit uses the accrual basis of accounting, in accordance with GAAP, allowable leave costs are the lesser of the amount accrued or funded.

(5) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in section **26**, Insurance and indemnification); pension plan costs (see subsection e.); and other similar benefits are allowable, provided such benefits are granted

under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal **or state** awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal **or state** awards and other activities.

e. Pension plan costs. **Pension plan costs are allowable for bona fide plans established under state or federal law.** Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded.

The cognizant agency, **state single audit coordinating agency or other agency designated by the governor's office** may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government **or state government** and related Federal **or state** reimbursement and the governmental unit's contribution to the pension fund.

Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government **or state government** for the time value of Federal **or state** reimbursements in excess of contributions to the pension fund.

(3) Amounts funded by the governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods.

(4) When a governmental unit converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion shall be allowable if amortized over a period of years in accordance with GAAP.

(5) The Federal Government and state grantor agencies shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

f. Post-retirement health benefits. Post-retirement health benefits (PRHB) refers to costs of health insurance or health services not included in a pension plan covered by subsection e. for retirees and their spouses, dependents, and survivors. PRHB costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For PRHB financed on a pay as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHB costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency, **state single audit coordinating agency or other agency designated by the governor's office** may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing

of the charges to the Federal Government **or state government** and related Federal **or state** reimbursements and the governmental unit's contributions to the PRHB fund. Adjustments may be made by cash refund, reduction in current year's PRHB costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHB fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the government's contribution in a future period.

(4) When a governmental unit converts to an acceptable actuarial cost method and funds PRHB costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, and, if no such GAAP period exists, over a period negotiated with the cognizant agency.

(5) To be allowable in the current year, the PRHB costs must be paid either to:

(a) An insurer or other benefit provider as current year costs or premiums, or

(b) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government **or the state grantor** agency shall receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. Severance pay.

(1) Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by (a) law, (b) employer-employee agreement, or (c) established written policy.

(2) Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.

(3) Abnormal or mass severance pay will be considered on a case-by-case basis and is allowable only if approved by the cognizant Federal agency **or state grantor** agency.

h. Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation.

(1) Charges to Federal **or state** awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal **or state** award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work

performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection (5) unless a statistical sampling system (see subsection (6)) or other substitute system has been approved by the cognizant Federal agency **or state awarding agency**. Such documentary support will be required where employees work on:

- (a) More than one Federal **or state** award,
- (b) A Federal award and a non-Federal award, **including a state award**,
- (c) An indirect cost activity and a direct cost activity,
- (d) Two or more indirect activities which are allocated using different allocation bases, or
- (e) An unallowable activity and a direct or indirect cost activity.

(5) Personnel activity reports or equivalent documentation must meet the following standards:

- (a) They must reflect an after-the-fact distribution of the actual activity of each employee,
- (b) They must account for the total activity for which each employee is compensated,
- (c) They must be prepared at least monthly and must coincide with one or more pay periods, and
- (d) They must be signed by the employee and the supervisory official having first hand knowledge of the work performed by the employee. **The employee's signature is not required in the event the employee cannot be reached due to termination of employment, lack of forwarding address, death or other documented reason.**

(e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal **or state** awards but may be used for interim accounting purposes, provided that:

- (i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;
- (ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal **or state** awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and
- (iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.

(6) Substitute systems for allocating salaries and wages to Federal **or state** awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency, **state single audit coordinating agency or other agency designated by the governor's office**. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.

(a) Substitute systems which use sampling methods (primarily for Aid to Families with Dependent Children (AFDC), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(i) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection (c);

(ii) The entire time period involved must be covered by the sample; and

(iii) The results must be statistically valid and applied to the period being sampled.

(b) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(c) Less than full compliance with the statistical sampling standards noted in subsection (a) may be accepted by the cognizant agency **or state single audit coordinating agency or other agency designated by the governor's office** if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal **or state** awards than a system which complies with the standards.

(7) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal **or state** awards must be supported in the same manner as those claimed as allowable costs under Federal **or state** awards.

i. Donated services.

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of the Common Rule. **The value placed on donated services must be documented to the satisfaction of the awarding agency prior to being accepted as match or for other financial purposes, and must be reasonable.**

Donated services shall be considered reasonable to the extent they are consistent with the value placed on similar work in other activities of the grantee or subrecipient. In cases where the kinds of services required to carry out a state award are not found in the other activities of the grantee or subrecipient, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing grantee or subrecipient competes for the kind of services involved. Surveys providing data representative of the services involved will be an acceptable basis for evaluating reasonableness.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

12. Construction. No construction is allowed without the prior written approval of the awarding agency.

13. Contingencies. Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, or intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see subsection 26.c.), pension plan reserves (see subsection 11.e.), post-retirement health and other benefit reserves (see subsection 11.f.) computed using acceptable actuarial cost methods, and such other funds as may be required or permitted in writing by the awarding agency.

14. Contributions and donations. Contributions and donations, including cash, property, and services, by governmental units to others, regardless of the recipient, are unallowable.

15. Defense and prosecution of criminal and civil proceedings, and claims.

a. The following costs are unallowable for contracts covered by 10 U.S.C. 2324(k), "Allowable costs under defense contracts."

(1) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of false certification brought by the United States where the contractor is found liable or has pleaded *nolo contendere* to a charge of fraud or similar proceeding (including filing of a false certification).

(2) Costs incurred by a contractor in connection with any criminal, civil or administrative proceedings commenced by the United States or a State to the extent provided in 10 U.S.C. 2324(k).

b. Legal expenses required in the administration of Federal **or state** programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

16. Depreciation and use allowances.

a. Depreciation and use allowances are means of allocating the cost of fixed assets to periods benefiting from asset use. Compensation for the use of fixed assets on hand may be made through depreciation or use allowances. A combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.) except as provided in subsection g. Except for enterprise funds and internal service funds that are included as part of a State/local cost allocation plan, classes of assets shall be determined on the same basis used for the government-wide financial statements.

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used. The value of an asset donated to the governmental unit by an unrelated third party shall be its fair market value at the time of donation. Governmental or quasi-governmental organizations located within the same State shall not be considered unrelated third parties for this purpose.

c. The computation of depreciation or use allowances will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government **or state** irrespective of where title was originally vested or where it presently

resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the governmental unit, or a related donor organization, in satisfaction of a matching requirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvements (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition costs. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent (6 and 2/3) of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air condition, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the destruction of, or need for costly or extensive alterations or repairs, to the building or the equipment. Equipment that meets these criteria will be subject to the 6 and 2/3 percent equipment use allowance limitation.

e. Where the depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, technological developments, and the renewal and replacement policies of the governmental unit followed for the individual items or classes of assets involved. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight line method of depreciation shall be used. Depreciation methods once used shall not be changed unless approved by the Federal cognizant or awarding agency, **state single audit coordinating agency or other agency designated by the governor's office** for indirect cost plans or state awarding agency for bilateral financial assistance relationships. When the depreciation method is introduced for application to an asset previously subject to a use allowance, the annual depreciation charge thereon may not exceed the amount that would have resulted had the depreciation method been in effect from the date of acquisition of the asset. The combination of use allowances and depreciation applicable to the asset shall not exceed the total acquisition cost of the asset or fair market value at time of donation.

f. When the depreciation method is used for buildings, a building's shell may be segregated from the major component of the building (e.g., plumbing system, heating, and air conditioning system, etc.) and each major component depreciated over its estimated useful life, or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

g. A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

h. Charges for use allowances or depreciation must be supported by adequate property records. Physical inventories must be taken at least once every two years (a statistical sampling approach is acceptable) to ensure that assets exist, and are in use. Governmental units will manage equipment in accordance with State laws and procedures. When the depreciation method is followed, depreciation records indicating the amount of depreciation taken each period must also be maintained.

17. Disbursing service. The cost of disbursing funds by the treasurer or other designated officer is allowable.

18. Employee morale, health, and welfare costs. The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employee counseling services, employee information publications, and any related expenses incurred in accordance with a governmental unit's policy are allowable. Income generated from any of these activities will be offset against expenses.

19. Entertainment. Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable, **unless such costs are incurred for components of a program approved by the grantor agency and are directly related to the program's purpose.**

20. Equipment and other capital expenditures:

a. As used in this section the following terms have the meanings as set forth below:

(1) "Capital expenditure" means the cost of the asset including the cost to put it in place. Capital expenditure for equipment means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired.

Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the governmental unit's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the governmental unit for financial statement purposes, or (b) **\$5,000.**

(3) "Other capital assets" mean buildings, land, and improvements to buildings or land that materially increase their value or useful life.

b. Capital expenditures which are not charged directly to a Federal **or state** award may be recovered through use allowances or depreciation on buildings, capital improvements, and equipment (see section 16). See also section 38 for allowability of rental costs for buildings and equipment.

c. Capital expenditures for equipment, including replacement equipment, other capital assets, and improvements which materially increase the value or useful life of equipment or other capital assets are allowable as a direct cost when approved by the awarding agency.

Federal **and state** awarding agencies are authorized at their option to waive or delegate this approval requirement.

d. Items of equipment with an acquisition cost of less than **\$5,000 (or the capitalization level established by the governmental unit for financial statement purposes or subsequent threshold established by state law)** are considered to be supplies and are allowable as direct costs of Federal **pass-through or state** awards without specific awarding agency approval.

e. The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by (1) continuing to claim the otherwise allowable use allowances or depreciation charges on the equipment or by (2) amortizing the amount to be written off over a

period of years negotiated with the cognizant agency.

f. When replacing equipment purchased in whole or in part with Federal **or state** funds, the governmental unit may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property. **In addition, subject to the prior written approval of the state awarding agency, a capitalization fund may be established to fund the acquisition of replacement or improved equipment.**

21. Fines and penalties. Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, Federal, State, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the Federal **or state** award or written instructions by the awarding agency authorizing in advance such payments.

22. Fund raising and investment management costs.

a. Costs of organized fund raising, including financial campaigns, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable, regardless of the purpose for which the funds will be used.

b. Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable. However, such costs associated with investments covering pension, self-insurance, or other funds which include Federal **or state** participation allowed by this Circular are allowable.

c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subsection C.3.b. of Attachment A.

23. Gains and losses on disposition of depreciable property and other capital assets and substantial relocation of Federal **or state** programs.

a.

(1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under sections 16 and 20.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subsection 26.d.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Substantial relocation of Federal **or state** awards from a facility where the Federal Government **or state** participated in the financing to another facility prior to the expiration of the useful life of the financed facility requires Federal **or state** agency approval. The extent of the relocation, the amount of the Federal **or state** participation in the financing, and the depreciation charged to date may require negotiation of space charges for Federal **or state** awards.

c. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a., e.g., land or included in the fair market value used in any adjustment resulting from a relocation of Federal **or state** awards covered in subsection b. shall be excluded in computing Federal **or state** award costs.

24. General government expenses.

a. The general costs of government are unallowable (**except as provided in section 43**). These include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executives of federally-recognized Indian tribal governments;

(2) Salaries and other expenses of State legislatures, tribal councils, or similar local governmental bodies, such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction;

(3) Cost of the judiciary branch of a government;

(4) Cost of prosecutorial activities unless treated as a direct cost to a specific program when authorized by program regulations (however, this does not preclude the allowability of other legal activities of the Attorney General); and

(5) Other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost in program regulations.

b. For federally-recognized Indian tribal governments and Councils Of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal **or state** programs by the chief executive and his staff is allowable.

25. Idle facilities and idle capacity.

a. As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental unit.

(2) "Idle facilities" means completely unused facilities that are excess to the governmental unit's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between (a) that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and (b) the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal **or state** awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices.

Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

26. Insurance and indemnification.

a. Costs of insurance required or approved and maintained, pursuant to the Federal **or state** award, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the governmental unit's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government **or state** property are unallowable except to the extent that the awarding agency has specifically required or approved such costs.

c. Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal **or state** award or as described below. However, the Federal Government will participate in actual losses of a self insurance fund that are in excess of reserves. Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable. **However, if such losses result in an aggregate loss of \$1,000 or more within a twelve month period, the grantee or subrecipient may be required to reimburse the grantor agency.**

d. Contributions to a reserve for certain self-insurance programs including workers compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not

exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the governmental unit's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions.

Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims (a) submitted and adjudicated but not paid, (b) submitted but not adjudicated, and (c) incurred but not submitted. Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the governmental unit. If individual departments or agencies of the governmental unit experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund), refunds shall be made to the Federal Government **or state** for its share of funds transferred, including earned or imputed interest from the date of transfer.

(6) All transactions must comply with state law.

e. Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., subsection 11.f. for post retirement health benefits), are allowable in the year of payment provided (1) the governmental unit follows a consistent costing policy and (2) they are allocated as a general administrative expense to all activities of the governmental unit. **The state awarding agency may require that copies of claims paid be submitted for review prior to allowing recovery of costs.**

f. Insurance refunds shall be credited against insurance costs in the year the refund is received.

g. Indemnification includes securing the governmental unit against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government **or state** is obligated to indemnify the governmental unit only to the extent expressly provided for in the Federal **or state** award, except as provided in subsection d.

h. Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship are unallowable.

27. Interest.

a. Costs incurred for interest on borrowed capital or the use of a governmental unit's own funds, however represented, are unallowable except as specifically provided in subsection b. or authorized by Federal **or state** legislation.

b. Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with the otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction or remodeling completed on or after October 1, 1980 is allowable, subject to the

conditions in (1)-(4). Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with otherwise allowable costs of equipment is allowable, subject to the conditions in (1)-(4).

(1) The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit;

(2) The assets are used in support of Federal **or state** awards;

(3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(4) Governmental units will negotiate the amount of allowable interest whenever cash payments (interest, depreciation, use allowances, and contributions) exceed the governmental unit's cash payments and other contributions attributable to that portion of real property used for Federal **or state** awards.

28. Lobbying. The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans shall be governed by the common rule, "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Government-wide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), and 57 FR 1772 (January 15, 1992), respectively.

29. Maintenance, operations, and repairs. Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they: (1) keep property (including Federal property, unless otherwise provided for) in an efficient operating condition, (2) do not add to the permanent value of property or appreciably prolong its intended life, and (3) are not otherwise included in rental or other charges for space. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures (**see sections 16 and 20**).

30. Materials and supplies. The cost of materials and supplies is allowable. Purchases should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing, consistently applied. Incoming transportation charges are a proper part of materials and supply costs.

31. Memberships, subscriptions, and professional activities.

a. Costs of the governmental unit's memberships in business, technical, and professional organizations are allowable.

b. Costs of the governmental unit's subscriptions to business, technical and professional periodicals are allowable.

c. Costs of meetings and conferences where the primary purpose is the dissemination of technical information, including meals, transportation, rental of meeting facilities, and other incidental costs are allowable.

d. Costs of membership in civic and community, social organizations are allowable as a direct cost with the approval of the Federal **or state** awarding agency.

e. Costs of membership in organizations substantially engaged in lobbying are unallowable.

32. Motor pools. The costs of a service organization which provides automobiles to user governmental units at a mileage or fixed rate and/or provides vehicle maintenance, inspection, and repair services are allowable.

33. Pre-award costs. Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

34. Professional and consultant service costs.

a. Cost of professional and consultant services rendered by persons or organizations that are members of a particular profession or possess a special skill, whether or not officers or employees of the governmental unit, are allowable, subject to section 15 when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. **State agencies should see Chapter 2254, Texas Government Code, for detailed provisions related to selection of consultants and professional services.**

b. Retainer fees supported by evidence of bona fide services available or rendered are allowable.

35. Proposal costs. Costs of preparing proposals for potential Federal **or state** awards are allowable. Proposal costs should normally be treated as indirect costs and should be allocated to all activities of the governmental unit utilizing the cost allocation plan and indirect cost rate proposal. However, proposal costs may be charged directly to Federal **or state** awards with the prior approval of the Federal **or state** awarding agency.

36. Publication and printing costs. Publication costs, including the costs of printing (including the processes of composition, plate-making, press work, and binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling are allowable.

37. Rearrangements and alterations. Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable.

Special arrangements and alterations costs incurred specifically for a Federal or state award are allowable with the prior approval of the Federal or state awarding agency.

38. Reconversion costs. Costs incurred in the restoration or rehabilitation of the governmental unit's facilities to approximately the same condition existing immediately prior to commencement of Federal **or state** awards, less costs related to normal wear and tear, are allowable **subject to prior approval of the awarding agency.**

39. Rental costs.

a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property.

c. Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the governmental unit. For this purpose, less-than-

arms- length leases include, but are not limited to, those where:

(1) One party to the lease is able to control or substantially influence the actions of the other;

(2) Both parties are parts of the same governmental unit; or (3) The governmental unit creates an authority or similar entity to acquire and lease the facilities to the governmental unit and other parties.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount that would be allowed had the governmental unit purchased the property on the date the lease agreement was executed. This amount would include expenses such as depreciation or use allowance, maintenance, and insurance. The provisions of Financial Accounting Standards Board Statement 13 shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section 27.

40. Security deposits. Outlays for security deposits (e.g., rent , utilities, equipment rental) when required to carry out an authorized program are allowable. These outlays will be shown as “assets” until returned to the grantee. Any funds returned to the grantee or subrecipient shall be treated as program income in the year recovered.

41. Taxes.

a. Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs. This provision becomes effective for taxes paid during the governmental unit's first fiscal year that begins on or after January 1, 1998, and applies thereafter.

b. Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the **state or** Federal Government are allowable.

c. This provision does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency may accept a reasonable approximation thereof.

42. Training. The cost of training provided for employee development is allowable.

43. Travel costs.

a. General. Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees traveling on official business. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-federally-and non-state-sponsored activities **unless state law prescribes otherwise**. Notwithstanding the provisions of section 24, travel costs of officials covered by that section, when specifically related to Federal **or state** awards, are allowable with the prior approval of a grantor agency.

b. Lodging and subsistence costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as a result of the governmental unit's policy (**that is, the grantee's policies**). In the absence of a written governmental unit policy regarding travel costs, the rates and amounts

established under subchapter I of Chapter 57 of Title 5, United States Code "Travel and Subsistence Expenses; Mileage Allowances," or by the Administrator of General Services, or the President (or his designee) pursuant to any provisions of such subchapter **or as otherwise directed by state law** shall be used as guidance for travel under Federal **and state** awards (41 U.S.C. 420, "Travel Expenses of Government Contractors").

c. Commercial air travel. Airfare costs in excess of the customary standard (coach or equivalent) airfare, are unallowable except when such accommodations would: require circuitous routing, require travel during unreasonable hours, excessively prolong travel, greatly increase the duration of the flight, result in increased cost that would offset transportation savings, or offer accommodations not reasonably adequate for the medical needs of the traveler. Where a governmental unit can reasonably demonstrate to the awarding agency either the nonavailability of customary standard airfare or Federal **or state** government contract airfare for individual trips or, on an overall basis, that it is the governmental unit's practice to make routine use of such airfare, specific determinations of nonavailability will generally not be questioned by the Federal Government **or state awarding agency**, unless a pattern of avoidance is detected. However, in order for airfare costs in excess of the customary standard commercial airfare to be allowable, e.g., use of first-class airfare, the governmental unit must justify and document on a case-by-case basis the applicable condition(s) set forth above.

d. Air travel by other than commercial carrier. Cost of travel by governmental unit-owned, leased, or chartered aircraft, as used in this section, includes the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, interest, insurance, and other related costs. Costs of travel via governmental unit-owned, -leased, or -chartered aircraft are unallowable to the extent they exceed the cost of allowable commercial air travel, as provided for in subsection c.

44. Under recovery of costs under Federal **or state** agreements. Any excess costs over the Federal **or state** contribution under one award agreement are unallowable under other award agreements.

ATTACHMENT C -- State/Local-Wide Central Service Cost Allocation Plans

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A. General

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally **and state**-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefited activities on a reasonable and consistent basis.

The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal **or state** awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "**A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.**" A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

B. Definitions

1. "Billed central services" means central services that are billed to benefited agencies and/or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

2. "Allocated central services" means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefited agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. "Agency or operating agency" means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of awards or activities of the governmental unit.

C. Scope of the Central Service Cost Allocation Plans

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal or state awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D. Submission Requirements

1. Each State will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each local government that has been designated as a "major local government" by the Office of Management and Budget (OMB) is also required to submit a plan to its cognizant agency annually. OMB periodically lists major local governments in the Federal Register.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Circular and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal **or state** approval or

review unless they are specifically requested to do so by the cognizant agency, **their state single audit coordinating agency or another agency designated by the governor's office**. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating indirect cost rates and/or monitoring the sub-recipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency on a case-by-case basis.

E. Documentation Requirements for Submitted Plans

The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal **or state** awards.

Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General. All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the State/local government whether or not they are shown as benefiting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Circular, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal **or state** awards and between Federal and **other** non-Federal awards/activities.

2. Allocated central services. For each allocated central service, the plan must also include the following: a brief description of the service, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefited agencies, and a summary schedule showing the allocation of each service to the specific benefited agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. shall also be included.

3. Billed services.

a. General. The information described below shall be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. Internal service funds.

(1) For each internal service fund or similar activity with an operating budget of \$5 million or more, the plan shall include: a brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this Circular, with an explanation of how variances will be

handled.

(2) Revenues shall consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users shall be provided. Expenses shall be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. Self-insurance funds. For each self-insurance fund, the plan shall include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefited activities.

Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted but not adjudicated, and (3) incurred but not submitted must be identified and explained.

d. Fringe benefits. For fringe benefit costs, the plan shall include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies; and procedures used to charge or allocate the costs of the benefits to benefited activities. In addition, for pension and post-retirement health insurance plans, the following information shall be provided; the governmental unit's funding policies, e.g., legislative bills, trust agreements, or State-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. Required Certification. Each central service cost allocation plan will be accompanied by a certification in the following form:

Certificate of Cost Allocation Plan

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal to establish cost allocations or billings for are allowable in accordance with the requirements of OMB Circular A-87, "Cost Principles for State and Local Governments," and the Federal **and state** award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal **or state** awards on the basis of a beneficial or causal relationship between the expenses incurred and the awards to which they are allocated in accordance with applicable requirements.

Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit -----
Signature -----
Name of Official -----
Title -----
Date of Execution -----

F. Negotiation and Approval of Central Service Plans

1. All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the Federal cognizant agency on a timely basis. The cognizant agency will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable.

Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency.

2. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. **The results of the negotiation shall be made available to all Federal agencies for their use.**

3. Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal **or state** awards, or (b) are unallowable because they are clearly not allocable to Federal **or state** awards, shall be adjusted, or a refund shall be made at the option of the Federal cognizant agency, **state single audit coordinating agency or another agency designated by the governor's office**. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. Other Policies

1. Billed central service activities. Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. Working capital reserves. Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 days may be approved by the cognizant Federal agency **or state awarding agency** in exceptional cases.

3. Carry-forward adjustments of allocated central service costs. Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry-forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry-forward" procedure applies to all central services whose costs were fixed in the approved plan.

However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of billed central services. Billing rates used to charge Federal **or state** awards shall be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund to the Federal Government **or state** for the Federal **or state** share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds \$500,000.

5. Records retention. All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal **or state** awards must be retained for audit in accordance with the records retention requirements contained in the Common Rule **or state** law.

6. Appeals. If a dispute arises in the negotiation of a plan between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

7. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

ATTACHMENT D--Public Assistance Cost Allocation Plans

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A. General

Federally-financed programs administered by State public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Attachment extends these requirements to all Federal agencies whose programs are administered by a State public assistance agency. Major federally-financed programs typically administered by State public assistance agencies include: Aid to Families with Dependent Children, Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. Definitions

1. "State public assistance agency" means a State agency administering or supervising the administration of one or more public assistance programs operated by the State as identified in Subpart E of 45 CFR Part 95. For the purpose of this Attachment, these programs include all programs administered by the State public assistance agency.
2. "State public assistance agency costs" means all costs incurred by, or allocable to, the State public assistance agency, except expenditures for financial assistance, medical vendor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. Policy

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the State public assistance agency. Where a letter of approval or disapproval is transmitted to a State public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Attachment (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.
2. Under the coordination process outlined in subsection E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the quarter following the submission of the plan or amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the State public assistance agency and will inform the State agency of the action taken on the plan or plan amendment.

E. Review of Implementation of Approved Plans

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the

funding agencies, single audits, or audits conducted by the cognizant audit agency.

2. Where inappropriate charges affecting more than one funding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more funding agencies, the dispute shall be resolved in accordance with the appeals procedures set out in 45 CFR Part 75. Disputes involving only one funding agency will be resolved in accordance with the funding agency's appeal process.

4. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. Unallowable Costs

Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Circular. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual awards.

ATTACHMENT E -- State and Local Indirect Cost Rate Proposals

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A. General

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal **or state** awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated to a Federal **or state** award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal **or state** award as a direct cost.

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal **or state** awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Attachment C) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal **or state** awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal **or state** awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "**A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.**" A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain State/local-wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, etc.

5. This Attachment does not apply to State public assistance agencies. These agencies should refer instead to Attachment D.

B. Definitions

1. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

2. "Indirect cost rate" is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

3. "Indirect cost pool" is the accumulated costs that jointly benefit two or more programs or other cost objectives.

4. "Base" means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal **or state** awards. The direct cost base selected should result in each award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

5. "Predetermined rate" means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal contracts; they may, however, be used for grants or cooperative

agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods. **The State of Texas has no comparable process for negotiating and approving indirect cost plans. State single audit coordinating agencies may provide this service, but are not required to do so.**

6. "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

7. "Provisional rate" means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal **or state** awards pending the establishment of a "final" rate for that period.

8. "Final rate" means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. **A final audited rate is not subject to adjustment.**

9. "Base period" for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of costs.

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General.

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefited functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. Simplified method.

a. Where a grantee agency's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) classifying the grantee agency's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal **or state** awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal **or state** awards to that

department or agency is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. Multiple allocation base method.

a. Where a grantee agency's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefited functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefited functions. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to the Federal Government, **the state awarding agency** and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: (1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and (2) it is common to the benefited functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with subsection 4, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual Federal **or state** awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special indirect cost rates.

a. In some instances, a single indirect cost rate for all activities of a grantee department or agency or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular award is carried out in an environment which appears to generate a significantly different level of indirect costs,

provisions should be made for a separate indirect cost pool applicable to that award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (1) the rate differs significantly from the rate which would have been developed under subsections 2. and 3., and (2) the award to which the rate would apply is material in amount.

b. Although this Circular adopts the concept of the full allocation of indirect costs, there are some Federal **or state** statutes which restrict the reimbursement of certain indirect costs. Where such restrictions exist, it may be necessary to develop a special rate for the affected award.

Where a "restricted rate" is required, the procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. Submission and Documentation of Proposals

1. Submission of indirect cost rate proposals.

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal **or state** awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in the Common Rule **and state** law.

b. A governmental unit for which a cognizant agency assignment has been specifically designated must submit its indirect cost rate proposal to its cognizant agency. The Office of Management and Budget (OMB) will periodically publish lists of governmental units identifying the appropriate Federal cognizant agencies. The cognizant agency for all governmental units or agencies not identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. In these cases, a governmental unit must develop an indirect cost proposal in accordance with the requirements of this Circular and maintain the proposal and related supporting documentation for audit. These governmental units are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating and/or monitoring the sub-recipient's plan. **The State of Texas' "state single audit coordinating agency" system is modeled after the federal cognizant agency process, in so far as coordinating agencies are generally assigned by the governor's office based upon which state agency provides the most funds to the entity requesting designation of a coordinating agency. However, while state single audit coordinating agencies may negotiate and approve indirect cost plans, they are not required to do so. Therefore, in those situations in which a grantee or subgrantee does not have a federal cognizant agency or the federal cognizant agency does not provide a signed negotiation agreement, the state single audit coordinating agency, may, at its discretion, perform these duties as they pertain to state funds. In the event that neither the federal cognizant agency nor the state single audit coordinating agency performs these duties, the major state funding agency or another state agency designated by the governor's office may perform these duties as they pertain to state funds. (See E.2. a. through g. for applicable procedures.)**

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant Federal agency).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant Federal **or state single audit coordinating agency or awarding** agency. If the proposed central service cost allocation plan for the same period has not been approved by that

time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of proposals. The following shall be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant **or state single audit coordinating agency or awarding** agency and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant **or state single audit coordinating agency or awarding** agency in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal **or state** awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required certification. Each indirect cost rate proposal shall be accompanied by a certification in the following form, **signed by the organization's chief financial officer and executive director of the organization**: Certificate of Indirect Costs

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal **or state** award(s) to which they apply and OMB Circular A-87, "Cost Principles for State and Local Governments." Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal **or state** awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government **or state** will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

E. Negotiation and Approval of Rates

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant Federal agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal **and state** agencies unless prohibited or limited by statute. Where a Federal **or state** funding agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant Federal **and/or state single audit coordinating** agency.

2. Other Indirect Cost Rates

a. In the absence of a signed negotiation agreement from the federal cognizant agency, the **state single audit coordinating agency**, may, at its discretion, perform these duties as they pertain to state funds. In the event that neither the federal cognizant agency nor the **state single audit coordinating agency** performs these duties, the major state funding agency or another state agency designated by the governor's office may perform these duties as they pertain to state funds. State awarding agencies will use the alternative procedures set out in sections b through f below, as appropriate.

b. When a grantee has a negotiation agreement signed within the past 24 months by a federal cognizant agency or a **state single audit coordinating agency**, all state awarding agencies shall accept the rate *until* a new rate is negotiated with a federal cognizant agency or a state single audit coordinating agency on an annual or multiyear basis. A final rate will be established by audit, based upon actual allowable costs for the period. **A final audited rate is not subject to adjustment.**

c. When a grantee does not have an approved indirect cost rate, the **state single audit coordinating agency**, the major funding agency, or another state agency designated by the governor's office, as applicable, and the grantee may negotiate a predetermined, fixed or provisional rate, with a final rate to be established based on the actual allowable costs of the **period as established by audit.**

d. If the **state single audit coordinating agency**, the major funding agency or another state agency designated by the governor's office chooses not to negotiate a plan or rate, the grantee will keep the plan or rate on file. Once established, the rate will be used as the approved rate by all state awarding agencies, subject to standard carry forward adjustments and audit verification. **A final audited rate is not subject to adjustment.**

e. Alternatively, a grantee may negotiate a predetermined rate for one or more years with a grantor agency in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgement (1) as to the probable level of indirect costs in the grantee programs during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect costs.

f. Approved indirect cost recovery plans and cost rates are subject to renegotiation between the **state single audit coordinating agency**, the major funding agency or another state agency designated by the governor's office, as applicable, and a grantee during a program year if a grantee's total expenditures increase or decrease by 25 percent or more within a 90-day period. If the **state single audit coordinating agency**, the major funding agency or another state agency designated by the governor's office chooses not to renegotiate the plan or rate, the grantee will keep the revised plan or rate on file. A final rate will be established based on the actual allowable costs of the period as established by audit. **A final audited rate is not subject to adjustment.**

g. None of the above precludes an awarding agency from auditing indirect costs and recovering unallowable costs.

3. The use of predetermined rates, if allowed, is encouraged where the cognizant **or state single audit coordinating agency or awarding** agency has reasonable assurance based on past experience and reliable projection of the grantee agency's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

4. The results of each negotiation shall be formalized in a written agreement between the cognizant **or state single audit coordinating agency or awarding** agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates shall be made available to all Federal **and state** agencies for their use.

5. Refunds shall be made **to the state awarding agency** if proposals are later found to have included costs that (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal **or state** awards, or (b) are unallowable because they are clearly not allocable to Federal **or state** awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies

1. Fringe benefit rates. If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual grantee agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the grantee agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency.

2. Billed services provided by the grantee agency. In some cases, governmental units provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental unit should be guided by the requirements in Attachment C relating to the development of billing rates and documentation requirements, and should advise the cognizant agency of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. Indirect cost allocations not using rates. In certain situations, a governmental unit, because of the nature of its awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for review, negotiation, and approval.

4. Appeals. If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant **or state awarding** agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant **or state awarding** agency.

5. Collection of unallowable costs and erroneous payments. Costs specifically identified as unallowable and charged to Federal **or state** awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal **or state awarding** agency regulations).

6. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner. **This does not apply to any problems between state agencies and their grant recipients.**

III. State Uniform Administrative Requirements For Grants and Cooperative Agreements

With Annotations Where State Provisions Differ from the Common Rule of OMB Circular A-102

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Subpart A—General

____.1 Purpose and scope of this part

This part establishes uniform administrative rules for federal grants and cooperative agreements and subawards to state, local and Indian tribal governments.

____.2 Scope of subpart

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

____.3 Definitions

As used in this part:

“Accrued expenditures” mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

“Accrued income” means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

“Acquisition cost” of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or-protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee’s regular accounting practices.

“Administrative requirements” mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from “programmatic” requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

“Awarding agency” means (1) with respect to a grant, the federal **or state** agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

“Cash contributions” means the grantee’s cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by federal legislation, federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

“Common rule” means the “**Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local Governments; Final Rule**” originally issued at 53 FR 8034-8103 (March 11, 1988). Other common rules will be referred to by their specific titles.

Some federal agencies have guidelines that deviate from the Common Rule, either by statutory requirement or by special authorization from the Office of Management and Budget (OMB).

In addition, some state agencies may have variances by statute or rule that apply to nonprofits and others.

“Contract” means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and, bilateral contract modifications. Procurement contracts do not include grants and cooperative agreements covered by 31 USC 6301 et. seq. or by the Uniform Grant Management Standards. See the State Single Audit Circular, sec. ___210(b), (c) and (d) for guidance in differentiating between grants and procurement. Sec. ___210 (b) of that circular lists the following characteristics, which may be present in whole or part, of a grantee organization as opposed to a vendor:

A grantee or subrecipient:

- (1) Determines who is eligible to receive what state or federal financial assistance;
- (2) Has its performance measured against whether the objectives of the state or federal program are met;
- (3) Has responsibility for programmatic decision making;
- (4) Has responsibility for adherence to applicable state or federal program compliance requirements; and
- (5) Uses the state or federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

A vendor:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the state program; and
- (5) Is not subject to compliance requirements of the state program.

Section (d) goes on to say that in making the determination, “the substance of the relationship is more important than the form of the agreement” and that not all of the characteristics have to be present to make a determination.

“Cost sharing or matching” means the value of the third party in-kind contributions and the portion of the costs of a federally **or state** assisted project or program not borne by the federal **or state** government.

“Equipment” means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 (or such other threshold established by state law) or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

“Expenditure report” means: (1) For nonconstruction grants, the SF-269 “Financial Status Report” (or other equivalent report); (2) for construction grants, the SF-271 “Outlay Report and Request for Reimbursement” (or other equivalent report).

“Federally recognized Indian tribal government” means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 State 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs

“Government” means a state or local government or a federally recognized Indian tribal government.

“Grant” means an award of financial assistance, including cooperative agreements, in the form of money, property in lieu of money, or other financial assistance paid or furnished by the state or federal government to an eligible grantee to carry out a program in accordance with rules, regulations and guidance provided by the grantor agency. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, for which the grantee is not required to account.

“Grantee” means the **entity** to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. **See the State Single Audit Circular, sec. ___210(b), (c) and (d) for guidance in differentiating between grants and procurement. Sec. ___210 (b) of that circular lists the following characteristics, which may be present in whole or part, of a grantee organization:**

The receiving organization:

- (1) Determines who is eligible to receive what state or federal financial assistance;
- (2) Has its performance measured against whether the objectives of the state or federal program are met;
- (3) Has responsibility for programmatic decision making;
- (4) Has responsibility for adherence to applicable state or federal program compliance requirements; and
- (5) Uses the state or federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

“Local government” means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government. **[Section 783.003 (3) of the Texas Government Code specifically excludes school districts and other special districts from UGMS; Section 783.003(4) excludes colleges and universities. However, some state agencies have extended UGMS by rule to these and other categories of recipients.]**

“Obligations” means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

“OMB” means the United States Office of Management and Budget.

“Outlay” (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

“Percentage of completion method” refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee’s cost incurred.

“Program income” refers to income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds, where authorized. Except as otherwise provided in regulations of the federal or state awarding agency, program income does not include interest on federal grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them. Interest earned **in excess of \$250** on grants from purely state sources is considered program income.

“Prior approval” means documentation evidencing consent prior to incurring specific costs.

“Real property” means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

“Standards” refers to the Uniform Grant Management Standards.

“Share”, when referring to the awarding agency’s portion of real property, equipment or supplies, means the same percentage as the awarding agency’s portion of the acquiring party’s total costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

“State” means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a state exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

“Subgrant” means an award of financial assistance in the form of money or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of “grant” in this part.

“Subgrantee” means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. **“Subgrantee” is synonymous with “subrecipient”. See the State Single Audit Circular, sec. ___210(b), (c) and (d) for guidance in differentiating between grants and procurement. Sec. ___210 (b) of that circular lists the following characteristics, which may be present in whole or part, of a grantee organization:**

The receiving organization:

- (1) Determines who is eligible to receive what state or federal financial assistance;
- (2) Has its performance measured against whether the objectives of the state or federal program are met;
- (3) Has responsibility for programmatic decision making;
- (4) Has responsibility for adherence to applicable state or federal program compliance requirements; and
- (5) Uses the state or federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the federal [or state] program; and
- (5) Is not subject to compliance requirements of the federal **[or state]** program.

“Supplies” means all tangible personal property other than “equipment” as defined in this part.

“Suspension” means, depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

“Termination” means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee.

“Termination” does not include: (1) Withdrawal of funds awarded on the basis of the grantee’s underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

“Terms of a grant or subgrant” mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

“Third party in-kind contributions” mean property or services which benefit a federally assisted project or program and which are contributed by non-federal third parties without charge to the grantee, **or subgrantee**, under the grant agreement.

“Unliquidated obligations” for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

“Unobligated balance” means the portion of the funds authorized by the federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

“Withholding payments” means the temporary withholding of advances or reimbursements to a grantee or subgrantee for proper charges or obligations incurred, pending resolution of issues of noncompliance with grant conditions or indebtedness to the U. S. or State of Texas. Withholding payments is not considered an adverse action for the purpose of protest or appeal.

.4 Applicability

(a) General. Subparts A-D of this part apply to all grants and subgrants to governments, except where inconsistent with federal **or state** statutes or with regulations authorized in accordance with the exception provision of Section .6, or:

- (1) Grants and subgrants to state and local institutions of higher education or state and local hospitals. **This exception in these Standards is not applicable to hospitals.**

(2) Titles I-III of the Job Training Partnership Act of 1982. With the exception of (3) through (10) below, all other programs are subject to Subpart A-D of these Standards.

(3) Entitlement grants to carry out the following programs of the Social Security Act:

- (i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);
- (ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);
- (iii) Foster Care and Adoption Assistance (Title IV-E of the Act);
- (iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and
- (v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903 (a) (6) (B) .

(4) Entitlement grants under the following programs of The National School Lunch Act:

- (i) School Lunch (section 4 of the Act),
- (ii) Commodity Assistance (section 6 of the Act),
- (iii) Special Meal Assistance (section 11 of the Act),
- (iv) Summer Food Service for Children (section 13 of the Act), and
- (v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

- (i) Special Milk (section 3 of the Act), and
- (ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for state administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 30 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) Entitlement programs. Entitlement programs enumerated above in Section _____.4 (a)(3)-(8) are subject to Subpart E.

____.5 Effect on other issuances

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in Section _____.6.

____.6 Additions and exceptions

(a) For classes of grants and grantees subject to this part, federal agencies may not impose additional administrative requirements except in codified regulations published in the Federal Register. **State grantor agencies may vary from these Standards only when required to do so by federal law or regulations or by specific state law. State grantor agencies are required to notify the Governor's Budget and Planning Office and to publish the variance in the Texas Register. State grantor agency rules or regulations of themselves are not sufficient to authorize variance from the provisions contained herein.**

(b) Exceptions for classes of grants or grantees may be authorized only by OMB. **This provision does not apply to state agencies and grantees.**

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected federal agencies. **This provision does not apply to state agencies and grantees.**

Subpart B—Pre-Award Requirements

____.10 Forms for applying for grants

(a) Scope

(1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants. **State agencies are encouraged to use the application forms and procedures described in this section, where applicable, with modifications as necessary to meet state law requirements.**

(b) Authorized forms and instructions for governmental organizations.

(1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications. **State agencies may require additional copies of preapplications and applications.**

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be

submitted. Previously submitted pages with information that is still current need not be resubmitted. **State agencies may require resubmission of the entire application.**

____.11 State plans

(a) Scope. The statutes for some programs require states to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," states are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the executive order.

(b) Requirements. A state need meet only federal administrative or programmatic requirements for plans that are in statutes or codified regulations.

(c) Assurances. In each plan the state will include an assurance that the state shall comply with all applicable federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the state may:

- (1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,
- (2) Repeat the assurance language in the statutes or regulations, or
- (3) Develop its own language to the extent permitted by law.

(d) Amendments. A state will amend a plan whenever necessary to reflect: (1) New or revised federal statutes or regulations or (2) a material change in any state law, organization, policy, or state agency operation. The state will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

____.12 Special grant or subgrant conditions for "high-risk" grantees

(a) A grantee or subgrantee may be considered " high-risk" if an awarding agency determines that a grantee or subgrantee:

- (1) Has a history of unsatisfactory performance, or
- (2) Is not financially stable, or
- (3) Has a management system which does not meet the management standards set forth in this part, or
- (4) Has not conformed to terms and conditions of previous awards, or
- (5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.**

(b) Special conditions or restrictions may include:

- (1) Payment on a reimbursement basis;
- (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;
- (3) Requiring additional, more detailed financial reports;
- (4) Additional project monitoring;
- (5) Requiring the grantee or subgrantee to obtain technical or management assistance; or
- (6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

- (1) The nature of the special conditions/restrictions;
- (2) The reason(s) for imposing them;
- (3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and
- (4) The method of requesting reconsideration of the conditions/restrictions imposed.

____.13 Determination of Financial Management System Adequacy

An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

____.14 State assurances

(a) Scope. In addition to federal requirements, state law requires a number of assurances from applicants for federal pass-through or other state-appropriated funds. An attempt has been made below to list major state and federal assurances. Generally, not all of these assurances will be required for any one grant. However, it is the applicant's responsibility to ensure that all assurances required by the awarding agency are submitted.

The legal instrument for awarding state funds must be consistent with the standards prescribed herein; however, these standard conditions or assurances may be incorporated into contracts or grant agreements by reference rather than by being reproduced in their entirety.

(1) A subgrantee must comply with Texas Government Code, Chapter 573, Vernon's 1994, by ensuring that no officer, employee, or member of the applicant's governing body or of the applicant's contractor shall vote or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years, or such other period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.

(2) A subgrantee must insure that all information collected, assembled or maintained by the applicant relative to a project will be available to the public during normal business hours in compliance with Texas Government Code, Chapter 552, Vernon's 1994, unless otherwise expressly prohibited by law.

(3) A subgrantee must comply with Texas Government Code, Chapter 551, Vernon's 1994, which requires all regular, special or called meeting of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.

(4) A subgrantee must comply with Section 231.006, Texas Family Code, which prohibits payments to a person who is in arrears on child support payments.

(5) No health and human services agency or public safety or law enforcement agency may contract with or issue a license, certificate or permit to the owner, operator or administrator of a facility if the license, permit or certificate has been revoked by another health and human services agency or public safety or law enforcement agency.

(6) A subgrantee that is a law enforcement agency regulated by Texas Government Code, Chapter 415, must be in compliance with all rules adopted by the Texas Commission on Law Enforcement Officer Standards and Education pursuant to Chapter 415, Texas Government Code or must provide the grantor agency with a certification from the Texas Commission on Law Enforcement Officer Standards and Education that the agency is in the process of achieving compliance with such rules.

(7) When incorporated into a grant award or contract, standard assurances contained in the application package become terms or conditions for receipt of grant funds. Administering state agencies and local subrecipients shall maintain an appropriate contract administration system to insure that all terms, conditions, and specifications are met. (See Section _____.36 for additional guidance on contract provisions.)

(8) A subgrantee must comply with the Texas Family Code, Section 261.101 which requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Child Protective and Regulatory Services. Subgrantees shall also ensure that all program personnel are properly trained and aware of this requirement.

(9) Subgrantees will comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans With Disabilities Act of 1990; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

(10) Subgrantees will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. § § 276a to 276a-7), the Copeland Act (40 U.S.C. § § 276c and 18 U.S.C. § § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. § § 327-333), regarding labor standards for federally assisted construction subagreements.

(11) Subgrantees will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P. L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

(12) Subgrantees will comply with the provisions of the Hatch Political Activity Act (5 U.S.C. § 7321-29) which limit the political activity of employees whose principal employment activities are funded in whole or in part with Federal funds.

(13) Subgrantees will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable.

(14) Subgrantees will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA. (EO 11738).

(15) Subgrantees will comply with the flood insurance purchase requirements of 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234. Section 102 (a) requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition proposed for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

(16) Subgrantees will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

(17) Subgrantees will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

(18) Subgrantees will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

(19) Subgrantees will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

(20) Subgrantees will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residential structures.

(21) Subgrantees will comply with Public Law 103-277, also known as the Pro-Children Act of 1994 (Act), which prohibits smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

(22) Subgrantees will comply with all federal tax laws and are solely responsible for filing all required state and federal tax forms.

(23) Subgrantees will comply with all applicable requirements of all other federal and state laws, executive orders, regulations and policies governing this program.

(24) The applicant must certify that they are not debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs.

(25) Subgrantees must adopt and implement applicable provisions of the model HIV/AIDS work place guidelines of the Texas Department of Health as required by the Texas Health and Safety Code, Ann., Sec. 85.001, et seq.

Subpart C—Post-Award Requirements--Financial Administration

.20 Standards for financial management systems. [This section does not apply to procurement contracts.]

(a) A state must expend and account for grant funds in accordance with state laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the state, as well as its subgrantees, must be sufficient to—

- (1) Permit preparation of reports required by this part and the statutes authorizing the grant, and
- (2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

- (1) Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
- (2) Accounting records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
- (3) Internal control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
- (4) Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
- (5) Allowable cost. Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.
- (6) Source documentation. Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.
- (7) Cash management. Procedures for minimizing the time elapsing between the transfer of funds from the U. S. Treasury and disbursements by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees. **State awarding agencies and their subgrantees may pass through these**

requirements to their subrecipients or stipulate different procedures as necessary to meet federal and state requirements.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

.21 Payment

(a) Scope. This section prescribes the basic standard and the methods under which a federal **or state** agency will make payments to grantees, and grantees will make payments to subgrantees and contractors. **Payment procedures and forms must be provided by the state awarding agency.**

(b) Basic standard. Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205. Unless required by the state awarding agency or a subgrantee, this provision does not apply to state funds, **since 31 CFR Part 205 applies only to transfer of federal cash to states.**

(c) Advances. Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee. **State awarding agencies may advance fund grantees or subgrantees, but are not required to do so unless specifically directed by law.**

(d) Reimbursement. Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulations, federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) Working capital advances. If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the federal **or state** agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash on a working capital advance basis, **subject to any restrictions in agency rules or state law.** Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) Effect of program income, refunds, and audit recoveries on payment.

(1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) Withholding payments.

(1) Unless otherwise required by federal **or state** statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

- (i) The grantee or subgrantee has failed to comply with grant award conditions; or
- (ii) The grantee or subgrantee is indebted to the United States **or to the State of Texas**.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with Section _____.43(c).

(3) A federal **or state** agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the federal **or state** agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to assure satisfactory completion of work.

(h) Cash depositories.

(1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230. **State grantees must maintain any advances in federally-insured, interest-bearing accounts.**

(2) A grantee or subgrantee shall maintain a separate bank account only when required by federal-state agreement.

(i) Interest earned on advances. Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the federal agency. The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative expenses. Interest earned in excess of \$250 per year on grants from purely state sources is considered program income. Interest earned on grants which combine state and federal funds must be prorated between the sources. **Earnings attributable to federal funds may be used only in accordance with applicable federal law and regulations.**

_____.22 Allowable costs

(a) Limitation on use of funds. Grant funds may be used only for:

(1) The allowable costs of the grantees **and** subgrantees.

(b) Applicable cost principles. For each kind of organization, there is a set of federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a:	Use the principles in:
----------------------------	-------------------------------

State, local or Indian tribal government.	OMB Circular A-87
The Following Circulars and Laws Are Not a Part of These Standards And Do Not Apply to State and Local Government	
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122
Educational institutions	OMB Circular A-21
For-profit organization other than a hospital and an organization named in OMB Circular A-122 as not subject to that circular	48 CFR Part 31. Contract Cost Principles Procedures, or uniform cost accounting standards that comply with cost principals acceptable to the federal or state awarding agency.

_____.23 **Period of availability of funds**

(a) General. Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) Liquidation of obligations. A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The federal **or state** agency may extend this deadline at the request of the grantee.

_____.24 **Matching or cost sharing.**

(a) Basic rule: Costs and contributions acceptable. With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-federal grants or by other cash donations from non-federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) Qualifications and exceptions—

(1) Costs borne by other federal grant agreements. Except as provided by federal statute, a cost sharing or matching requirement may not be met by costs borne by another federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another federal grant.

(2) General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered federal grant funds. **Program no longer authorized or funded.**

(3) Cost or contributions counted toward other federal **or state** cost-sharing requirements. Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another federal **or state** grant agreement, a federal procurement contract, or any other award of federal **or state** funds.

(4) Costs financed by program income. Costs financed by program income, as defined in Section _____.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in Section _____.25(g).)

(5) Services or property financed by income earned by subgrantees. **Subgrantees** under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) Records. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantees. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) Special standards for third party in-kind contributions.

(i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee **or** subgrantee receiving the contribution had to pay for them, the payments would have been indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee **or** subgrantee has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

- (A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or
- (B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) Valuation of donated services--

(1) volunteer services. Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) Employees of other organizations. When an employer other than a grantee or subgrantee furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c) (1) of this section applies.

(d) Valuation of third party donated supplies and loaned equipment or space.

(1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) Valuation of third party donated equipment, buildings, and land. If a third party donates equipment, building, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) Awards for capital expenditures. If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2)(i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that approval be obtained from the federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only **depreciation or use allowances** may

be counted for donated equipment and buildings. The **depreciation or use allowances** for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in Section _____.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) Valuation of grantee or subgrantee donated real property for construction/acquisition. If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) Appraisal of real property. In some cases under paragraphs (d), (e), and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the federal *or state* agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

____.25 Program income

(a) General. Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the federal *or state awarding* agency, program income does not include interest on *federal* grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them. Interest earned **in excess of \$250** per year on grants from purely state sources is considered program income. **Earnings attributable to federal funds may be used only in accordance with applicable federal law.**

(b) Definition of program income. "**Program income**" means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "**During the grant period**" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) Cost of generating program income. If authorized by federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or federal agency regulations as program income.

(e) Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or federal agency regulations as program income. (See Section _____.34.)

(f) Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of Section _____.31 and Section _____.32.

(g) Use of program income. Program income shall be deducted from outlays which may be both federal and non-federal as described below, unless the federal *or state* agency regulations or the

grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the federal **or state** agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When federal **or state** agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays. **(See also section ____21(f)(2)).**

(1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the federal **or state** agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the federal **or state** agency and grantee contributions rather than to increase the funds committed to the project.

(2) Addition. When authorized, program income may be added to the funds committed to the grant agreement by the federal **or state** agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the federal **or state** grant award remains the same.

(h) Income after the award period. There are no federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the federal **or state** agency regulations provide otherwise.

____.26 Audit

(a) Basic Rule. Grantees and subgrantees of federal awards 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. Grantees and subgrantees of state awards (as defined in the State of Texas Single Audit Circular) are responsible for obtaining audits in accordance with the State of Texas Single Audit Circular.

(b) Single Audit Act, that receive federal **or state** financial assistance and provide \$300,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether state or local subgrantees have met the audit requirements of the Act.

(2) Determine whether the subgrantee spent federal **or state** assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with federal **or state** laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantees own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) Auditor selection. In arranging for audit services, Section ____36 shall be followed. Procurement of audit services must comply with state procurement procedures, as well as provisions of these Standards, Texas Administrative Code Section 5.167, State Single Audit Circular, and OMB Circular A-133.

(d) Grantees and subgrantees receiving federal awards (as defined in OMB Circular A-133) **or state** awards (as defined in the State Single Audit Circular) from a state awarding agency, who are not required to have an audit in accordance with either or both circulars for the grantee's/subgrantee's fiscal year in which the state or federal awards were made or expended, shall so certify in writing to each state awarding agency. The grantee or subgrantee's chief executive officer or chief financial officer shall make the certification within 60 days of the end of the grantee's/subgrantee's fiscal year.

Subpart C—Post-Award Requirements - Changes, Property, and Subawards

____.30 Changes

(a) General. Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) Relation to cost principles. The applicable cost principles (see Section ____22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) Budget changes.

(1) Nonconstruction projects. Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total *annual* approved budget, whenever the awarding agency's share exceeds \$100,000.

(iii) For non-construction grants of \$100,000 or less, the state awarding agency may, at its option, require prior approval of cumulative transfers of funds among direct cost categories when the amount transferred exceeds five percent of the total annual budget.

(iv) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) Construction projects. Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) Combined construction and nonconstruction projects. When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or

subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from non- construction to construction or vice versa.

(d) Programmatic changes. Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval.)

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of Section _____.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) Additional prior approval requirements. The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) this section.

(f) Requesting prior approval.

(1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable federal cost principles (see Section _____.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose of terms and conditions of the federal **or state** grant to the grantee. If the revision requested by the subgrantee would result in a change to the grantee's approved project which requires federal prior approval, the grantee will obtain the federal agency's approval before approving the subgrantee's request.

_____.31 **Real property.** In reference to the purchase, use, sale, or transfer of title to state-funded real property, the awarding state agency will determine that all state statutes and procedures have been followed.

(a) Title. Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) Use. Except as otherwise provided by federal *or state* statutes, real property will be used for the originally authorized purpose as long as needed for that purpose, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) Disposition. When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. **Disposition**

instructions will solicit, at a minimum, information on the source and amount of funds used in acquiring the property, the date acquired, the fair market value and how the value was determined (e.g., by appraisal, bids, etc.), and the proposed use of the proceeds. The instructions will provide for one of the following alternatives:

(1) Retention of title. Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sale of property. Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer of title. Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

____.32 Equipment

(a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) States. A state will use, manage, and dispose of equipment acquired under a grant by the state in accordance with state laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section. Local governments and other subgrantees shall develop and use their own property management systems, which must conform with all applicable federal, state, and local laws, rules and regulations. If an adequate system for accounting for personal property owned by the local entity is not in place or is not used properly, the Property Accounting System Manual issued by the State Comptroller of Public Accounts will be used as a guide. It is the responsibility of the **state awarding agency** to provide guidance to local entities on property accountability and to obtain reasonable assurance that proper accountability is being used.

(c) Use.

(1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal **or state** funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a federal **or state** agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the federal **or state** government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in Section _____.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by federal **or state** statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of federal **or state** participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated. Certain types of equipment are classified as "controlled assets". Users of these standards should contact the Texas Comptroller of Public Accounts' property accounting staff or review the Comptroller's State Property Accounting User Manual, available on the internet, for the most current listing. Firearms must be maintained on the grantee's or subrecipient's inventory system irrespective of cost, and the following equipment with costs between \$500 and \$1,000 must be maintained on the grantee's or subrecipient's inventory system: (1) stereo systems, (2) still and video cameras, (3) facsimile machines, (4) VCRs and VCR/TV combinations and (5) cellular and portable telephones. See Texas Government Code, Sec. 403.271(b) for further information. State awarding agencies may specify special treatment for other items of equipment with costs between \$500 and \$1,000 or higher with a high potential for loss.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a federal **or state** agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than **\$5,000** may be retained, sold or otherwise disposed of with no further obligation to the awarding agency. **Methods used to determine per-unit fair market value must be documented, kept on file and made available to the awarding agency upon request.**

(2) Items of equipment with a current per-unit fair market value of **\$5,000 or more** may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share

of the equipment. **Methods used to determine per-unit fair market value must be documented, kept on file and made available to the awarding agency upon request.**

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) Federal **or state** equipment. In the event a grantee or subgrantee is provided federally-**or state**-owned equipment:

(1) Title will remain vested in the federal **or state** government.

(2) Grantees or subgrantees will manage the equipment in accordance with federal **or state** awarding agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the federal **or state** awarding agency.

(g) Right to transfer title. The federal **or state** awarding agency may reserve the right to transfer title to the federal **or state** government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The federal **or state** awarding agency shall issue disposition instructions within 120 calendar days after the end of the federal **or state** support of the project for which it was acquired. If the federal **or state** awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow Section _____.32 (e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

____.33 Supplies

(a) Title. Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) Disposition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally **or state**- sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

(c) If there is a residual inventory of unused supplies with a total aggregate fair market value of less than \$5,000 but more than \$1,000, the awarding agency may direct the grantee or subgrantee to transfer the unused supplies to another program or may direct the grantee or subgrantee to sell the unused supplies. In the event the supplies are sold, the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the supplies.

____.34 Copyrights

The federal **or state** awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal **or state** government purposes:

- (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and
- (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

____.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension." **A current list of "Parties Excluded from Procurement and Nonprocurement Programs" may be obtained from the federal General Services Administration in electronic form via modem or on the internet at <http://www.arnet.gov/eplsl/>. State agencies are prohibited by the state appropriations act from purchasing goods or services with appropriated funds "from companies which have been found, in a judicial or state agency administrative proceeding, to be guilty of unfair business practices." The restriction on such purchases remains in effect for one year from the date of the determination of guilt.**

____.36 Procurement

(a) States. When procuring property and services under a grant, a state will follow the same policies and procedures it uses for procurements from its non-federal funds. The state will ensure that every purchase order or other contract includes any clauses required by federal statutes and executive orders and their implementing regulations. **State or local laws which impose more stringent requirements on purchases or contracts made by a subrecipient must be followed. State agencies should consult Title 10, Texas Government Code and the Texas Building and Procurement Commission Procurement Manual for applicable procurement laws and procedures. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.**

(b) Procurement standards.

(1) Grantees and subgrantees will use their own procurement procedures which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law and the standards identified in this section. **Grantees of the state that choose to use the Texas Building and Procurement Commission's cooperative purchasing program will be presumed to have met state bid requirements.**

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. **See Section _____.14, Subsection (a) (1) and Chapter 171, Local Government Code, for additional ethics provisions.** No employee, officer or agency of the grantee or subgrantee shall participate in the selection, or in the award or administration

of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employed, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into state and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use **federal and state** excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use **value engineering** clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual **and** administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal **or state** agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a federal **or state** concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protester must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the federal agency. Reviews of protests by the federal agency will be limited to:

(i) Violations of federal law or regulations and the standards of this section (violations of state or local law will be under the jurisdiction of state or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition.

(1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Section _____.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services,

geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed.

(1) Procurement by small purchase procedures. Small purchase procedures are the relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than **\$100,000** in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources. **As of April 2000, the federal small purchase threshold had risen to \$100,000. However, the State of Texas Building and Procurement Commission "informal" procurement threshold was \$15,000. State agencies should consult Title 10, Chapter 2156, Texas Government Code and the Texas Building and Procurement Commission Procurement Manual for applicable laws and procedures governing procurement. Municipalities should consult Chapter 252, Texas Local Government Code. Counties should consult Chapter 262, Texas Local Government Code. In case of conflicts between A-102 and state law involving state funds, state law will prevail.**

(2) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, represents best value to the state. The sealed bid method is the preferred method for procuring construction, if the conditions in Section _____.36 (d) (2) (i) apply. **State agencies should consult Title 10, Chapter 2156, Texas Government Code and the Texas Building and Procurement Commission Procurement Manual for applicable laws and procedures governing procurement. Municipalities should consult Chapter 252, Texas Local Government Code. Counties should consult Chapter 262, Texas Local Government Code. In case of conflicts between A-102 and state law involving state funds, state law will prevail.**

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to bidder(s) whose bid(s) represent best value to the state. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. **State agencies should consult Title 10, Chapter 2156, Texas Government Code and the Texas Building and Procurement Commission Procurement Manual for applicable laws and procedures governing procurement. Municipalities should consult Chapter 252, Texas Local Government Code. Counties should consult Chapter 262, Texas Local Government Code. In case of conflicts between A-102 and state law involving state funds, state law will prevail.** The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort. **State agencies must comply with Chapter 2254, Texas Government Code, which governs professional and consulting services.**

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. State agencies should consult the **Texas Building and Procurement Commission** Procurement Manual and individual agency requirements for historically under-utilized businesses (HUB) procedures. Awarding agencies may require subrecipients to adhere to state HUB requirements.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the **Texas Building and Procurement Commission**;

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e) (2) (i) through (v) of this section.

(f) Contract cost and price.

(1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, and the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles (see Section _____.22). Grantees may reference their own cost principles that comply with the applicable federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review.

(1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed \$100,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed \$100,000, specifies a "brand name" product; or

(iv) The proposed award over \$100,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than \$100,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g) (2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section. **State agencies should consult Title 10, Chapter 2156, Texas Government Code and the Texas Building and Procurement Commission Procurement Manual for applicable laws and procedures governing procurement, including specific dollar thresholds and their associated requirements. In case of conflicts between A-102 and state law involving state funds, state law will prevail.**

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. **Chapter 2253, Subchapter B, Sec. 2253.021, Texas Government Code, requires governmental entities entering into contracts with a prime contractor for public works projects in excess of \$100,000 to require a performance bond in the amount of the contract. For public works contracts in excess of \$25,000, governmental entities must execute with the contractor a payment bond in the amount of the contract. These bonds must be executed by a corporate surety authorized to do business in Texas, a list of which may be obtained from the State Insurance Department.** It is the responsibility of the grantee or subrecipient to ensure that other applicable state laws governing construction are followed. For construction or facility improvement contracts or subcontracts exceeding \$100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. **State agencies should consult with the Texas Building and Procurement Commission for applicable laws and procedures governing construction.**

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A “**performance bond**” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A “**payment bond**” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Contract provisions. Contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy. **State agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses required by state law.**

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts other than small purchases).

(2) Termination for cause and for convenience by the grantee of subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60). (All construction contracts awarded in excess of \$10,000).

(4) Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2,000 when required by federal grant program legislation).

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the federal grantor agency, the Comptroller General of the United States, **the State of Texas** or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000.)

(13) Mandatory standards and policies relating to efficiency which are contained in the state energy plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

____.37 Subgrants

(a) State agencies. State agencies shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of federal financial assistance to local and Indian tribal governments. State agencies shall:

(1) Ensure that every subgrant includes any clauses required by federal **or state** statutes and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by **federal and state** statutes and regulations;

(3) Ensure that a provision for compliance with Section _____.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by federal agencies.

(b) All other grantees. All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by federal **or state** statutes and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by federal **or state** statutes and regulations.

(c) Exceptions. By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section _____.10;

(2) Section _____.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in section _____.21; and

(4) Section _____.50.

Subpart C—Post-Award Requirements - Reports, Records, Retention, and Enforcement

____ 40. Monitoring and reporting program performance.

(a) Monitoring by grantees. Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable **federal and state** requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) Nonconstruction performance reports. The federal **or state** agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the federal **or state** agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the federal **or state** agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the federal **or state** agency.

(2) Performance reports will contain for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the **measurable objectives or outcomes** established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) Construction performance reports. For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by federal agencies to monitor progress under construction grants and subgrants. The federal **or state** agency will require

additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) Significant developments. Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the federal **or state** agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation. **Significant delays or other factors materially impairing the grantee's ability to meet objectives may result in sanctions, including the imposition of special conditions under ____12 Special grant or subgrant conditions for "high risk" grantees.**

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal **and state** agencies may make site visits as warranted by program needs.

(f) Waivers, extensions.

(1) federal **and state** agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the federal **or state** agency.

____.41 Financial Reporting

(a) General.

(1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees. **State agencies will, to the extent existing federal forms solicit information required for prudent management, adapt and use the federal forms applicable to this section for subgrantee reporting.**

(3) Grantees shall follow all applicable standard and supplemental federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the federal agency finds unnecessary for its decision-making purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal **or state** agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal **and state** agencies may waive any report required by this section if not needed.

(7) Federal **and state** agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) Financial Status Report--(J) Form. Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph Section _____.41(e)(2)(iii) of this section.

(1) Accounting basis. Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the federal **or state** agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand. **When a state agency determines that a subrecipient's accounting system does not meet standards identified in Section _____.20, the agency may require additional financial reports.**

(2) Frequency. The federal **or state** agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than **monthly**. If the federal agency **or state** does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(3) Due date. When reports are required on a **monthly** basis, they will be due **not less than 15 days nor later than 30 days after the reporting period**. When required on an annual basis, they will be **due not less than 45 days nor later than 90 days after the grant year**. Final reports will be **due not less than 45 days nor later than 90 days** after the expiration or termination of grant support.

(c) Federal Cash Transactions Report--

(1) Form.

(i) For grants paid by letter of credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the federal **and state** agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted **only with the prior approval of the awarding agency** as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) Forecasts of federal cash requirements. Forecasts of federal cash requirements may be required in the "Remarks" section of the report.

(3) Cash in hands of subgrantees. When considered necessary and feasible by the federal **or state** agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) Frequency and due date. Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the federal **or state** agency may require the report to be submitted within 15 working days following the end of each month.

(d) Request for advance or reimbursement--

(1) Advance payments. Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) Reimbursements. Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e) (1) of this section.)

(3) The frequency for submitting payment requests is treated in section ____ .41 (b) (3).

(e) Outlay report and request for reimbursement for construction programs.

(1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in Section ____ .41 (d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in Section ____ .41 (b) (3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the federal **or state** agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by Section ____ .41 (b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in Section ____ .41 (d).

(iii) The federal *or state* agency may substitute the Financial Status Report specified in Section _____.41 (b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) Accounting basis. The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by Section _____.41 (b) (2).

____.42 Retention and access requirements for records.

(a) Applicability. Certain additional standards for retention of public records in Texas are codified at 13 TAC Chap. 6 for state agencies and at 13 TAC Chap. 7 for local governments. The Texas State Library and Archives Commission, through the Records Preservation Advisory Committee has established recommended retention periods longer than three years for many types of public documents, whether in original hard copy or in microfilm form. State awarding agencies may obtain a copy of the Recommended Retention Schedule by contacting the **State Library and Archives Commission**.

(1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this Part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section applies to records maintained by contractors or subcontractors for purchases of goods or services funded in whole or in part from state funds.

For a requirement to place a provision concerning records in certain kinds of contracts, see Section _____.36 (i) (10).

(b) Length of retention period.

(1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the federal *or state* agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) Starting date of retention period.

(1) General. When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last **audit** report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the federal, **state, or other designated** fiscal year. In all other cases, the retention period starts on the day the grantee submits its final **audit** report. If an **expenditure or audit** report has been waived, the retention period starts on the day the report would have been due.

(2) Real property and equipment records. The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) Records for income transactions after grant or subgrant support. In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) Indirect cost rate proposals, cost allocations plans, etc. This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the federal government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the federal government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) Substitution of microfilm. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) Access to records--

(1) Records of grantees and subgrantees. The awarding agency and the Comptroller General of the United States, **the Texas State Auditor**, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) Expiration of right of access. The right of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) Restrictions on public access. The federal Freedom of Information Act (5 U.S.C. 552) does not apply to records. Unless required by federal, state, or local law, grantees and subgrantees are not required to permit public access to their records.

____.43 Enforcement

(a) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a federal **or state** statute or regulation, an assurance, in a state plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, **or impose other sanctions**, as appropriate in the circumstances:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,
- (2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,
- (3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
- (4) Withhold further awards for the program, or
- (5) Take other remedies that may be legally available.

(b) Hearings, appeals. In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

- (1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancelable, and,
- (2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to Debarment and Suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see Section _____.35) **and state law**.

____.44 Termination for convenience

Except as provided in Section _____.43 awards may be terminated in whole or in part only as follows:

- (a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or
- (b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was

made, the awarding agency may terminate the award in its entirety under either Section _____.43 or paragraph (a) of this section.

(c) State awarding agencies may stipulate other reasons for termination in grant contracts and agreements.

Subpart D---After-The-Grant Requirements

____.50 Closeout

(a) General. The federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant have been completed. **The awarding agency will provide any necessary additional information on closeouts. Awarding agencies are encouraged to adapt and use the federal forms described in this section.**

(b) Reports. **Not less than 45 days nor later than 90 days** after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, federal **or state** agencies may extend this timeframe. These may include but are not limited to:

- (1) Final performance or progress report.
- (2) Financial Status Report (SF-269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable.)
- (3) Final request for payment (SF-270) (if applicable).
- (4) Invention disclosure (if applicable).
- (5) Federally **or state**-owned property report: In accordance with Section _____.32(f), a grantee must submit an inventory of all federally **or state**-owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the federal **or state** agency of property no longer needed.

(c) Cost adjustment. The federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) Cash adjustments.

- (1) The federal agency will make prompt payment to the grantee for allowable reimbursable costs.
- (2) The grantee must immediately refund to the federal **or state** agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

____.51 Later disallowances and adjustments

The closeout of a grant does not affect:

- (a) The federal **or state** agency's right to disallow costs and recover funds on the basis of a later audit or other review;
- (b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;
- (c) Records retention as required in Section _____.42;
- (d) Property management requirements in Section _____.31 and Section _____.32; and
- (e) Audit requirements in Section _____.26.

____.52 **Collection of amounts due**

(a) Any funds paid to grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the federal **or state** government. If not paid within a reasonable period after demand, the federal **or state** agency may reduce the debt by:

- (1) Making an administrative offset against other requests for reimbursements,
- (2) Withholding advance payments otherwise due to the grantee, or
- (3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlements (Reserved)

IV. State of Texas Single Audit Circular

With Annotations Where State Provisions Differ from the OMB Circular A-133

AUDITS OF LOCAL GOVERNMENTS AND ORGANIZATIONS WHICH ARE PROVIDERS EXPENDING ANY STATE AWARDS UNDER FEDERAL BLOCK GRANTS

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TO THE HEADS OF **STATE AGENCIES**

SUBJECT: Audits of Local Governments and **also** Organizations **which are providers expending any state awards under federal block grants.**

1. *Purpose.* **This circular sets standards for obtaining consistency and uniformity among state agencies for the coordinated audit of local governments expending any state awards and of non-profit organizations expending any state awards under federal block grants.**
2. *Authority.* **This State of Texas Single Audit Circular and its Attachment (both referred to as "audit circular") is issued under the authority of Texas Government Code, Chapter 783, Uniform Grant and Contract Management.**
3. *Policy.* Except as provided herein, the standards set forth in this **audit circular** shall be applied by all **state** agencies. If any **federal or state** statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the **federal or** subsequent **state** statute shall govern.

State agencies shall apply the provisions of the sections of this **audit circular** to **non-state** entities, whether they are recipients expending **state** awards received directly from **state** awarding agencies, or are subrecipients expending **state** awards received from a pass-through entity (a recipient or another subrecipient).

This **audit circular** does not apply to non-U.S. based entities expending **state** awards received either directly as a recipient or indirectly as a subrecipient.

4. *Definitions.* The definitions of key terms used in this **audit circular** are contained in sec.____.105 in the Attachment to this **audit circular**.
5. *Required Action.* The specific requirements and responsibilities of **state** agencies and **non-state** entities are set forth in the Attachment to this **audit circular**. **State** agencies making awards to **non-state** entities, either directly or indirectly, **may** adopt the language in the **audit circular** in codified regulations as provided in Section 10 (below), unless different provisions are required by **state** statute or are approved by the **governor's office**.
6. *Governor's Office Responsibilities.* **The governor's office** will review **state** agency regulations and implementation of this **audit circular**, and will provide interpretations of policy requirements and assistance to ensure uniform, effective and efficient implementation.
7. *Information Contact.* Further information concerning **this** Circular may be obtained by contacting the **Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, telephone (512) 463-1778.**
8. *Reviews.* This **audit circular** will be reviewed periodically for needed changes or improvements.
9. *Effective Dates.* The standards set forth in sec.____.400 of the Attachment to this **audit circular**, which apply directly to **state** agencies, shall be effective July 1, 1996, and shall apply to audits of fiscal years beginning after June 30, 1996, except as otherwise specified in sec.____.400(a). **or in the following paragraphs.**

The standards set forth in this **audit circular** that **state** agencies shall apply to **non-state** entities will apply to audits of fiscal years beginning after June 30, 1996, with the **following exceptions:**

(1) sec.____.305(b) of the Attachment applies to audits of fiscal years beginning after June 30, 1998.

(2) If an awarding state agency has already adopted rules in codified regulations governing audits of non-state entities for fiscal years beginning after June 30, 1996, the agency shall apply the standards set forth in this audit circular for audits of fiscal years beginning after June 30, 1997.

Except for the provision of paragraph (2) in this Section 10, state agencies shall apply the standards set forth in this audit circular to non-state entities regardless of whether the standards are codified in an agency's regulations.

Until the standards in this audit circular become applicable, the previous audit provisions of the UCGMS shall continue in effect.

A--General

sec. ____ .100 Purpose.

This **audit circular** sets forth standards for obtaining consistency and uniformity among **state** agencies for the audit of **non-state** entities expending **state** awards.

sec. ____ .105 Definitions.

Alphabetize all entries by moving "State agency", "State award", "State awarding agency", "State financial assistance" and "State Program" definitions to follow "State".

"Auditee" means any **non-state** entity that expends **state** awards which must be audited under this **audit circular**.

"Auditor" means an auditor, that is a public accountant or a federal, state or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of non-profit organizations.

"Audit finding" means deficiencies which the auditor is required by sec. ____ .510(a) to report in the schedule of findings and questioned costs.

"CFDA number" means the number assigned to a federal program in the Catalog of Federal Domestic Assistance (CFDA).

"Coordinating agency for single audit means" the **state** agency designated **by the governor's office** to carry out the responsibilities described in sec. ____ .400(a).

"Compliance supplement" refers to the **OMB Circular A-133 Compliance Supplement**, or such documents as OMB or its designee may issue to replace it. This document is available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325.

"Corrective action" means action taken by the auditee that:

- (1) Corrects identified deficiencies;
- (2) Produces recommended improvements; or
- (3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

"Federal agency" has the same meaning as the term agency in Section 551(1) of title 5, United States Code.

"Federal award" has the same meaning as defined in OMB Circular A-133.

"GAGAS" means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

"Generally accepted accounting principles" has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA).

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"Internal control" means a process, effected by an entity's management and other personnel, designed to

provide reasonable assurance regarding the achievement of objectives in the following categories:

- (1) Effectiveness and efficiency of operations;
- (2) Reliability of financial reporting; and
- (3) Compliance with applicable laws and regulations.

"Internal control pertaining to the compliance requirements for **state** programs (Internal control over **state** programs)" means a process, effected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of the following objectives for **state** programs:

- (1) Transactions are properly recorded and accounted for to:
 - (i) Permit the preparation of reliable financial statements and **state** 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 **state** program; and
 - (ii) Any other laws and regulations that are identified **by the state awarding agencies**; and
- (3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

"Loan" means a **state** loan or loan guarantee received or administered by a **non-state** entity.

"Local government" means a municipality, county, or other political subdivision of the state, but does not include a school district or other special-purpose district.

"Major **state** program" means a **state** program determined by the auditor to be a major **state** program in accordance with sec.____.520 or a program identified as a major **state** program by a **state** agency or pass-through entity in accordance with sec.____.215(c).

"Management decision" means the evaluation by the **state** awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision as to what corrective action is necessary.

"**Non-state** entity" means a local government or non-profit organization which is a provider expending any state awards under federal block grants (**See Texas Government Code, Chapter 2105**).

"Non-profit organization **which is a provider expending any state matching awards under federal block grants**" means:

- (1) any corporation, trust, association, cooperative, or other organization that:
 - (i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - (ii) Is not organized primarily for profit;

(iii) Uses its net proceeds to maintain, improve, or expand its operations; and

(iv) Is a provider expending any state matching awards under a federal block grant covered by Texas Government Code Chapter 2105.

(2) The term non-profit organization includes non-profit institutions of higher education and hospitals.

"OMB" means the Executive Office of the President, Office of Management and Budget.

"OMB Circular A-133 means" Office of Management and Budget Circular A-133, its attachment, and amendments or successor documents issued by OMB.

"Oversight agency for **single** audit" means the **state** agency that provides the predominant amount of direct funding to a recipient not assigned a **coordinating** agency for **single** audit . When there is no direct funding, the **state** agency with the predominant indirect funding shall assume the oversight . The duties of the oversight agency for **single** audit are described in sec.____.400(b).

"Pass-through entity" means a **non-state** entity that provides a **state** award to a subrecipient to carry out a **state** program.

"Program-specific audit" means an audit of one **state** program as provided for in sec.____200(c) and sec____.235.

"Questioned cost" means a cost that is questioned by the auditor because of an audit finding:

- (1) Which resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of **state** funds, including funds used to match **state** funds;
- (2) Where the costs, at the time of the audit, are not supported by adequate documentation; or
- (3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

"Recipient" means a **non-state** entity that expends **state** awards received directly from a **state** awarding agency to carry out a **state** program.

"Single audit" means an audit which includes both the entity's financial statements and the **state** awards as described in sec.____.500.

"State" means **the State of Texas**

"State agency has the same meaning" as the term state agency in Texas Government Code Chapter 783.

"State award " means **state** financial assistance and **state** cost-reimbursement contracts that local governments receive directly from **state** awarding agencies or indirectly from pass-through entities. **For non-profit organizations which are providers under a federal block grant, state award means state financial assistance or cost-reimbursement contracts received directly from state awarding agencies or indirectly from pass-through entities under a federal block grant. For non-profit organizations which are providers under a federal block grant, state award does not mean state financial assistance and state cost-reimbursement contracts received directly or indirectly under the terms of other federal awards. State awards do not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Any audits of such vendors shall be covered by the terms and conditions of the contract. State awards also do not include federal awards as defined in OMB Circular A-133 (whether the federal awards are passed through a state**

agency or received directly from a federal agency). The definition of state awards as used in this circular differs from the definition used elsewhere in UGMS (see, for example, “award”, Attachment A (B) 2. And “grant”, Attachment A (B) 15.)

“**State** awarding agency” means the **state** agency that provides a **state** award directly to the recipient.

“**State** cluster of programs” means a grouping of closely related **state** programs that share common compliance requirements. Clusters of programs are as defined by the **state awarding agency** or as designated by a **pass-through entity** for **state** awards the **pass-through entity** provides to its subrecipients that meet the definition of a cluster of programs. **When defining a state cluster of programs, the state awarding agency shall comply with sec.____.400(c).** When designating an “other cluster,” a **pass-through entity** shall identify the **state** awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with sec.____.400(d)(1) and sec.____.400(d)(2), respectively. A **state** cluster of programs shall be considered as one program for determining major **state** programs, as described in sec.____.520, and, whether a program-specific audit may be elected.

“**State** financial assistance” means assistance that **non-state** entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, and other assistance, but does not include amounts received as reimbursement for services rendered to individuals as described in sec.____.205 (f).

“**State** program means”:

(1) All **state** awards to a **non-state** entity **which are made under a program defined in state law, or, if the program is not defined in state law, all awards made for the same purpose, and identified as a state program by the state awarding agency.**

(2) When **not defined in state law or identified by the state awarding agency,** all **state** awards from the same **state** agency made for the same purpose should be combined and considered one program.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs **is** as described in the definition of cluster of programs in this section.

“Subrecipient” means a **non-state** entity that expends **state** awards received from a pass-through entity to carry out a **state** program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other **state** awards directly from a **state** awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in sec.____.210.

“Types of compliance requirements” refers to the types of compliance requirements listed in the compliance supplement. **The auditor shall categorize the state compliance requirements applicable to state awards into the same categories.** Examples include: activities allowed or unallowed; allowable costs/cost principles; cash management; eligibility; matching, level of effort, earmarking; and, reporting.

“UGMS” means the Uniform Grant Management Standards issued by the governor’s office.

“Vendor” means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a **state** program. These goods or services may be for an organization’s own use or for the use of beneficiaries of the **state** program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in sec.____.210.

B--Audits

sec. ____ .200 Audit requirements.

(a) Audit required. **Non-state** entities that expend **\$500,000** (for fiscal years ending after December 31, 2003) or more in a year in **state** awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this **audit circular**. Guidance on determining **state** awards expended is provided in sec. ____ .205.

(b) Single audit. **Non-state** entities that expend **\$500,000** (for fiscal years ending after December 31, 2003) or more in a year in **state** awards shall have a single audit conducted in accordance with sec. ____ .500 except when they elect to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) Program-specific audit election. When an auditee expends **\$500,000** (for fiscal years ending after December 31, 2003) in state awards under only one **state** program and the **state** program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with sec. ____ .235

(d) Exemption when **state** awards expended are less than **\$500,000** (for fiscal years ending after December 31, 2003). Unless otherwise required by state statute, non-state entities that expend less than **\$500,000** (for fiscal years ending after December 31, 2003) a year in **state** awards are exempt from **state single** audit requirements for that year, but records must be available for review or audit by appropriate officials of the **state** agency, pass-through entity, **the State Auditor, and by other auditors as required by the state awarding agency.**

sec. ____ .205 Basis for determining **state** awards expended.

(a) Determining **state** awards expended. The determination of when a **state** award is expended should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the **non-state** entity to comply with laws, regulations, and the provisions of contracts or grant agreements, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts and, cooperative agreements; the disbursement of funds passed through to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income;; and, the period when insurance is in force. **Any program income that is considered to be federal awards under OMB Circular A-133 is not considered a state award.**

(b) Loan and loan guarantees (loans). Since the **state** government is at risk for loans until the debt is repaid, the following guidelines shall be used to calculate the value of **state** awards expended under loan programs, except as noted in paragraph (c) of this section:

(1) Value of new loans made or received during the fiscal year; plus

(2) Balance of loans from previous years for which the **State** Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) Prior loan and loan guarantees (loans). Loans, the proceeds of which were received and expended in prior-years, are not considered **state** awards expended under this **audit circular** when the laws, regulations, and the provisions of contracts or grant agreements pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(d) Free rent. Free rent received by itself is not considered a **state** award expended under this **audit circular**. However, free rent received as part of an award to carry out a **state** program shall be included in determining **state** awards expended and subject to audit under this **audit circular**.

(e) Valuing non-cash assistance. **State** non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the **state** agency.

(f) Medicaid. Medicaid payments to a subrecipient for providing patient care services to Medicaid eligible individuals are not considered **state** awards expended under this **audit circular** unless a State requires the funds to be treated as **state** awards expended because reimbursement is on a cost-reimbursement basis.

sec. ____ .210 Subrecipient and vendor determinations.

(a) General. An auditee may be a recipient, a subrecipient, and a vendor. **State** awards expended as a recipient or a subrecipient would be subject to audit under this **audit circular**. The payments received for goods or services provided as a vendor would not be considered **state** awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a **state** award or a payment for goods and services.

(b) **State** award. Characteristics indicative of a **state** award received by a subrecipient are when the organization:

- (1) Determines who is eligible to receive what **state** financial assistance;
- (2) Has its performance measured against whether the objectives of the **state** program are met;
- (3) Has responsibility for programmatic decision making;
- (4) Has responsibility for adherence to applicable **state** program compliance requirements; and
- (5) Uses the **state** funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

(c) Payment for goods and services. Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the **state** program; and
- (5) Is not subject to compliance requirements of the **state** program.

(d) Use of judgment in making determination. There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

(e) For-profit **recipients** and **subrecipients**. For for-profit **providers expending any state awards**

under federal block grants, the state awarding agency is responsible for establishing requirements, as necessary, to ensure compliance by for-profit **recipients and subrecipients**. The contract with the for-profit **recipient or subrecipient shall** describe applicable compliance requirements and the for-profit **recipient's or subrecipient's** compliance responsibility. Methods to ensure compliance for **state** awards made to for-profit **recipients and subrecipients** may include, **at the discretion of the state awarding agency**, pre-award audits, monitoring during the contract, and post-award audits. **(see Texas Government Code, Chapter 2105 for the applicability of the UGMS to entities providing services or benefits to the public under federal block grants).**

(f) Compliance responsibility for vendors. In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major **state** program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

sec. ____ .215 Relation to other audit requirements.

(a) Reliance on audit required by this circular. To the extent an audit required by sections ____ .200(a) through ____ .200(c) meets a state agency's needs, it shall rely upon and use such audits. The provisions of this **audit circular** neither limit the authority of **state** agencies, including their inspectors or auditors, or the State Auditor to conduct or arrange for additional audits (e.g., financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain **state** agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

(b) Additional audits and audited schedules. A **state** agency that **requires** additional audits or audited schedules shall arrange for funding the full cost of such additional audits and audited schedules. Additional audits or audited schedules required by a state agency to be contracted for by a non-state entity must be specifically required in the grant award document and be specifically allowed as costs in that agreement. If a state agency needs additional audits or audited schedules which are not specifically required in the grant award document, the state agency may contract directly with an independent auditor to perform the audit or perform the audit itself. The cost to a non-state entity of providing unaudited schedules in reports shall be borne by the non-state entity. The provisions of this paragraph may be applied by a state awarding agency to any recipient or subrecipient of state awards that are subject to section ____ .200(a) through ____ .200(c). If a pass-through entity needs additional audits or audited schedules from a Subrecipient, the pass-through entity may contract directly with an independent auditor to perform the audit or may perform the audit itself.

(c) Costs of statutorily required audits or audited schedules. If a **state** statute requires an audit or audited schedule in addition to or in lieu of those required by this circular and makes no provision for assuming or reimbursing the costs of such audit or schedule, the costs shall be borne by the non-state entity.

(d) Recipients/subrecipients exempt from state single audit requirements. **State** awarding agencies may contract directly with independent auditors to perform any audit, including a program-specific audit and audited schedules, or recipients or subrecipients exempt from state single audit requirements in accordance with sec. ____ .200(d). However, this audit should general be significantly less in scope than a state single audit. A pass-through entity may use the provisions of this paragraph for a subrecipient. A **state** awarding agency or pass-through entity may utilize its own staff to perform any audit or review of its recipients and subrecipients.

(e) Request for a **state** program to be audited as a major state program. A **state** agency may request an auditee to have a particular state program audited as a major state program. To allow for planning, such requests should be made prior to the end of the auditee's fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such request by informing the state agency whether the program would otherwise be audited as a major state program using the risk-based audit approach described in sec.____.520 and, if not, the estimated incremental cost. The **state** agency shall then promptly confirm to the auditee whether it wants the state program audited as a major state program. If the **state** program is to be audited as a major state program based upon this state agency request, and the state agency agrees to pay the full incremental costs, then the auditee shall have the state program audited as a major state program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

sec.____.220 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) of this section, audits required by this **audit circular** shall be performed annually. Any biennial audit shall cover both years within the biennial period.

(a) A local government that is required by **constitution, charter, ordinance, or statute**, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this **audit circular** biennially. This requirement must still be in effect for the biennial period under audit. **Texas Government Code, chapter 2105 requires providers that receive federal block grants from a state agency to provide the state agency with evidence that an annual audit of the provider has been performed. Therefore, this biennial audit provision does not apply to providers receiving block grants.**

sec.____.225 Sanctions.

No audit costs may be charged to **state** awards when audits required by this **audit circular** have not been made or have been made but not in accordance with this **audit circular**. In cases of continued inability or unwillingness to have an audit conducted in accordance with this **audit circular**, **state** agencies and pass-through entities shall take appropriate action using sanctions such as:

- (a) Withholding a percentage of **state** awards until the audit is completed satisfactorily;
- (b) Withholding or disallowing overhead costs;
- (c) Suspending **current or future state** awards until the audit is conducted; or
- (d) Terminating the **state** award.

sec.____.230 Audit costs.

(a) Allowable costs. Unless prohibited by law, the cost of **state single or program-specific** audits made in accordance with the provisions of this **audit circular** and the cost of additional audits or audited schedules made in accordance with sec.____.215(b) and sec.____.215(d) are allowable charges to **state** awards. Allowable audit charges may be considered a direct or an indirect cost, as determined in accordance with the provisions of the Uniform Grant Management Standards (UGMS) or other applicable cost principles, regulations or state laws.

(b) Unallowable costs. A non-state entity shall not charge the following to a state award:

- (1) The cost of any state single or program-specific audit not conducted in accordance with this

audit circular.

(2) The cost of any additional audit or audited schedule not conducted in accordance with the requirements of the grant award document (see ____215(b)).

(3) The cost of any additional audit on a subrecipient not conducted in accordance with a contract between a pass-through entity and an auditor (**see ____215(b) and (d)**).

sec. ____235 Program-specific audits.

(a) Program-specific audit guide available. In some cases, a program-specific audit guide may be available to provide specific guidance to the auditor with respect to internal control, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor shall contact the **state awarding** agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

(b) Program-specific audit guide not available.

(1) When a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the **state** program as they would have for an audit of a major program in a single audit.

(2) The auditee shall prepare the financial statement(s) for the **state** program that includes, at a minimum, a schedule of expenditures of **state** awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of sec. ____315(b), and a corrective action plan consistent with the requirements of sec. ____315(c).

(3) The auditor shall:

(i) Perform an audit of the financial statement(s) for the **state** program in accordance with GAGAS;

(ii) Obtain an understanding of internal control and perform tests of internal control over the **state** program consistent with the requirements of sec. ____500(c) for a major **state** program;

(iii) Perform procedures to determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the **state** program consistent with the requirements of sec. ____500(d) for a major **state** program; and

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding in accordance with the requirements of sec. ____500(e).

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this **audit circular** and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the **state** program is presented fairly in all material respects in conformity with the stated accounting policies;

(ii) A report on internal control related to the **state** program, which shall describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which would have a direct and material effect on the **state** program; and

(iv) A schedule of findings and questioned costs for the **state** program that includes a summary of the auditor's results relative to the **state** program in a format consistent with sec.____.505(d)(1) and findings and questioned costs consistent with the requirements of sec.____.505(d)(3).

(c) Report submission for program-specific audits.

(1) The audit shall be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the **state** agency that provided the funding or a different period is specified in a program-specific audit guide. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the required reporting shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period, unless a different period is specified in a program-specific audit guide.) Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

(2) When a program-specific audit guide is available, the auditee shall submit the reporting required by the program-specific audit guide to the **state** awarding agency or pass-through entity.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit shall consist of the financial statement(s) of the **state** program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. One copy of this reporting package shall be submitted to the **state** awarding agency, or directly to the pass-through entity **when the auditee is a subrecipient of state awards.**

(d) Other sections of this **audit circular** may apply. Program-specific audits are subject to sec.____.100 through sec.____.215(b), **sec.____.215(d)**, sec.____.220 through sec.____.230, sec.____.300 through sec.____.305, sec.____.315, sec.____.320 **(d)** through sec.____.320 **(f)**, sec.____.400 through sec.____.405, sec.____.510 through sec.____.515, and other referenced provisions of this **audit circular** unless contrary to the provisions of this section, a program-specific audit guide, or program laws and regulations.

C--Auditees

sec.____.300 Auditee responsibilities.

The auditee shall:

(a) Identify, in its accounts, all **state** awards received and expended and the **state** programs under which they were received. **State** program and award identification shall include, as applicable, the **state program name and number, CFDA title and number (if used to identify the state program), award name and number, award year, other relevant identifier, name of the state agency, name of**

the pass-through entity, **and number assigned by the pass-through entity.**

(b) Maintain internal control over **state** programs that provides reasonable assurance that the auditee is managing **state** awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its **state** programs.

(c) Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its **state** programs.

(d) Prepare appropriate financial statements, including the schedule of expenditures of **state** awards in accordance with sec.____.310.

(e) Ensure that the audits required by this **audit circular** are properly performed and submitted when due. When extensions to the report submission due date required by sec.____.320(a) are granted by the **state coordinating or oversight** agency for **single** audit, **the auditee shall** promptly notify each **state awarding agency** and each pass-through entity providing **state** awards of the extension.

(f) Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with sec.____.315(b) and sec.____.315(c), respectively.

(g) When a non-state entity expends state awards totaling less than **\$500,000** (for fiscal years ending after December 31, 2003) in a fiscal year, the CFO or CEO of such entity shall so certify to each **state** awarding agency.

sec.____.305 Auditor selection.

(a) Auditor procurement. In procuring audit services, auditees shall follow the procurement standards prescribed by the **UGMS**, Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," or the FAR (48 CFR part 42), as applicable (OMB Circulars are available from the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503). Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in the **UGMS**, OMB Circular A-110, or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price. **State agencies must comply with the Texas Government Code, Chapter 2254, which governs professional and consulting services.**

(b) Restriction on auditor preparing indirect cost proposals. An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this **audit circular** when the indirect costs recovered **from state or federal funds** by the auditee during the prior year exceeded \$1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs. To minimize any disruption in existing contracts for audit services, this paragraph applies to audits of fiscal years beginning after June 30, 1998.

(c) Use of **state** auditors. **State** auditors may perform all or part of the work required under this **audit circular** if they comply fully with the requirements of this **audit circular**.

sec.____.310 Financial statements.

(a) Financial statements. The auditee shall prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements shall be for the same organizational unit and fiscal year that is chosen to meet the requirements of this **audit circular**. However, organization-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with sec.____.500(a) and prepare separate financial statements.

b) Schedule of expenditures of **state** awards. The auditee shall also prepare a schedule of expenditures of **state** awards for the period covered by the auditee's financial statements. While not required, the auditee may choose to provide information requested by **state** awarding agencies and pass-through entities to make the schedule easier to use. For example, when a **state** program has multiple award years, the auditee may list the amount of **state** awards expended for each award year separately. At a minimum, the schedule shall:

(1) Present, in a separate section or schedule, state awards expended from federal awards expended even if the state funds are awarded with the federal funds as one program. Federal awards and state awards must be totaled separately.

(2) List individual **state** programs by **state** agency. For **state** programs included in a cluster of programs, list individual **state** programs within a cluster of programs.

(3) For **state** awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity shall be included.

(4) Provide total **state** awards expended for each individual **state** program and the **state** program name and state program number (if a number is used), CFDA title and number (if used to identify the state program), or other **relevant** identifier when the **state program** or CFDA information is not available.

(5) Include notes that describe the significant accounting policies used in preparing the schedule.

(6) To the extent practical, pass-through entities should identify in the schedule the total amount provided to subrecipients from each **state** program.

(7) Include, in either the schedule or a note to the schedule, the value of the **state** awards expended in the form of non-cash assistance, the amount of insurance in effect during the year, and loans or loan guarantees outstanding at year end.

sec.____.315 Audit findings follow-up.

(a) General. The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under sec.____.510(c). Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

(b) Summary schedule of prior audit findings. The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to **state** awards. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(4) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.

(3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the **state** agency's or pass-through entity's management decision, the summary schedule shall provide an explanation.

(4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the **state coordinating or oversight agency for single audit, state awarding agency, or pass-through entity** ;

(ii) The **state coordinating or oversight agency for single audit, the state awarding agency, or pass-through entity** is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) Corrective action plan. At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an explanation and specific reasons.

sec.____.320 Report submission.

(a) General. The audit shall be completed and the reporting package described in paragraph (b) of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the **state single audit coordinating or oversight agency for single audit**. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the reporting package shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period.) Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) Reporting package. The reporting package shall include the:

(1) Financial statements and schedule of expenditures of **state** awards discussed in sec.____.310(a) and sec.____.310(b), respectively;

(2) Summary schedule of prior audit findings discussed in sec.____.315(b);

(3) Auditor's report(s) discussed in sec.____.505; and

(4) Corrective action plan discussed in sec.____.315(c).

(c) Submission of reporting package. All auditees shall submit one copy of the reporting package

described in paragraph **(b)** of this section to each of the following:

- (1) Each **state** awarding agency **that provided state funds directly to the auditee** and
- (2) The pass-through entity when the auditee is a subrecipient of state awards.

Paragraph (c) of this section shall apply unless the state awarding agency or pass-through entity specifically waives or modifies this requirement for auditees expending small amounts of state awards.

(d) Requests for report copies. In response to requests by a **state** agency, **subrecipients** shall submit the appropriate copies of the reporting package described in paragraph **(b)** of this section and, if requested, a copy of any management letters issued by the auditor. **In response to requests by a pass-through entity, subrecipients shall submit a copy of any management letters issued by the auditor.**

(e) Report retention requirements. Auditees shall keep one copy of the reporting package described in paragraph **(b)** of this section on file for three years from the date of submission to **each state awarding agency or pass-through entity, as applicable.** Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.

(f) Electronic filing. Nothing in this **audit circular** shall preclude electronic submissions subject to appropriate security, verification of authenticity, and approval by the state awarding agency or pass-through entity when the auditee is a subrecipient of state awards.

D---State Agencies and Pass-Through Entities

sec. ____400 Responsibilities.

(a) **State coordinating agency for single** audit responsibilities. **Recipients who are required to have a single audit and receive state or federal awards from more than one state agency shall have a state single audit coordinating agency.** The **governor's office shall designate a state single audit coordinating agency based upon the state** awarding agency that provides the predominant amount of direct funding to a recipient and other factors, as appropriate, to ensure equitable and manageable work loads. Notwithstanding the manner in which audit **coordination** is determined, a **state** awarding agency with **coordination responsibility** for an auditee may **request the governor's office to** reassign **coordination responsibility** to another **state** awarding agency which provides substantial direct funding and agrees to be the **state single audit coordinating agency.** Within 30 days after any reassignment, both the old and the new **state single audit coordinating agencies** shall notify the auditee, and, if known, the auditor of the reassignment. The **state single audit coordinating agency** shall:

- (1) Provide technical audit advice and liaison to auditees and auditors and ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this audit circular.
- (2) Consider auditee requests for extensions to the report submission due date required by sec. ____320(a). The **state single audit coordinating agency** may grant extensions for good cause.
- (3) Conduct **desk** reviews of **state single audit reports**, and provide the results to other state awarding agencies and the grantee.

(4) Promptly inform other affected **state** agencies and appropriate **state** law enforcement officials of any direct reporting by the auditee or its auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations.

(5) Advise the auditor and, where appropriate, the auditee of any **deficient audit reports** when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the **state single audit coordinating agency** shall notify the auditor, the auditee, and applicable **state** awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(6) Coordinate, to the extent practical, audits or reviews made by or for **state** agencies that are in addition to the audits **required by sec.____.200(a) through sec.____.200(c) of this audit circular**, so that the additional audits or reviews build upon audits performed in accordance with this **audit circular**.

(7) Coordinate a management decision for audit findings that affect the **state** programs of more than one agency.

(8) For biennial audits permitted under sec.____.220, consider auditee requests to qualify as a low-risk auditee under sec.____.530(a).

(b) **State** oversight agency for **single** audit responsibilities. An auditee which does not have a designated **coordinating** agency for **single** audit will be under the general oversight of the **state** agency **that provides the predominant or sole amount of direct funding to the auditee**. The oversight agency for audit:

(1) Shall provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a **state single audit coordinating** agency.

(c) **State** awarding agency responsibilities. The **state** awarding agency shall perform the following for the **state** awards it makes:

(1) Identify **state** awards made by informing each recipient of the **state program name, state program number (if a number is used), CFDA title and number (if used to identify the state program), other relevant identifier**, award name and number **and** award year. When some of this information is not available, the **state** agency shall provide information necessary to clearly describe the **state** award.

(2) Advise recipients of requirements imposed on them by **state** laws, regulations, and the provisions of contracts or grant agreements. **The requirements shall either be stated in the contracts or grant agreements, or be included by specific reference in the contracts or grant agreements.**

(3) Establish procedures to ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this **audit circular**.

(4) Provide technical advice and counsel to auditees and auditors as requested.

(5) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

(6) Notify the state single audit coordinating agency of audit resolutions.

(7) Monitor the activities of recipients as necessary to ensure that state awards are used for authorized purposes in compliance with laws, regulations, and the provision of contracts or grant agreements and that performance goals are achieved.

(8) When state awards are made with federal awards to a recipient, as required match, inform the recipient of the proportion of federal and state funds disbursed to the recipient to facilitate the recipient's separate calculations of expenditures of federal awards and **state** awards for its fiscal year.

(9) When **state** awards are made to a recipient to supplement federal awards, the **state** awards are not used to meet a federal matching requirement, and requirements of the state award differ from the requirements of the federal award (e.g., different activities are allowed or disallowed, or different allowable costs or cost principles are used), the **state** awarding agency shall also provide information as to the amount of each award to the recipient at the time the award is made to facilitate the recipient's accounting for and compliance with the requirements of each award during the term of such award.

(10) Identify, **at the time of award**, any **state** awards made which are part of a state cluster of programs.

(d) Pass-through entity responsibilities. A pass-through entity shall perform the following for the **state** awards it makes:

(1) Identify **state** awards made by informing each subrecipient of **the state program name and state program number (if a number is used), CFDA title and number (if used to identify the state program), other relevant identifier**, award name and number, award year, and name of **state** agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the **state** award.

(2) Advise subrecipients of requirements imposed on them by **state** laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity. **The requirements shall either be stated in the contracts or grant agreements, or be included by specific reference in the contracts or grant agreements.**

(3) Monitor the activities of subrecipients as necessary to ensure that **state** awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

(4) Ensure that subrecipients expending **\$500,000** (for fiscal years ending after December 31, 2003) or more in **state** awards during the subrecipient's fiscal year have met the audit requirements of this **audit circular** for that fiscal year.

(5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

(6) Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

(7) Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this **audit circular**.

(8) When **state** awards are made with federal awards to a subrecipient, as required match, inform the subrecipient of the proportion of federal and state funds disbursed to the subrecipient to facilitate the subrecipient's separate calculations of expenditures of federal awards and state awards for its fiscal year.

(9) When **state** awards are made to a subrecipient to supplement federal awards, the **state** awards are not used to meet a federal matching requirement, and requirements of the **state** award differ from the requirements of the federal award (e.g., different activities are allowed or disallowed, or different allowable costs or cost principles are used), the pass through entity shall also provide information as to the amount of each award to the recipient at the time the award is made to facilitate the subrecipient's accounting for and compliance with the requirements of each award during the term of such award.

(10) Identify, at the time of award, any **state** awards made which are part of a state cluster of programs.

sec. ____405 Management decision.

(a) General. The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the **state** agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.

(b) **State** agency. As provided in sec. ____400(a)(7), the **state single audit coordinating agency** shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one **state** agency. As provided in sec. ____400(c)(5), a **state** awarding agency is responsible for issuing a management decision for findings that relate to **state** awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the **state** agencies concerned.

(c) Pass-through entity. As provided in sec. ____400 (d)(5), the pass-through entity shall be responsible for making the management decision for audit findings that relate to **state** awards it makes to subrecipients.

(d) Time requirements. The entity responsible for making the management decision shall do so within six months of receipt of the audit report. Corrective action should be initiated within six months after receipt of the audit report and proceed as rapidly as possible.

(e) Reference numbers. Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with sec. ____510(c).

E—Auditors

sec. ____500 Scope of audit.

(a) General. The audit shall be conducted in accordance with GAGAS. The audit shall cover the entire operations of the auditee; or, at the option of the auditee, such audit shall include a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered **state** awards during such fiscal year, provided that each such audit shall encompass the

financial statements and schedule of expenditures of **state** awards for each such department, agency, and other organizational unit, which shall be considered to be a **non-state** entity. The financial statements and schedule of expenditures of **state** awards shall be for the same fiscal year.

(b) Financial statements. The auditor shall determine whether the financial statements of the auditee are presented fairly in all material respects in conformity with generally accepted accounting principles. The auditor shall also determine whether the schedule of expenditures of **state** awards is presented fairly in all material respects in relation to the auditee's financial statements taken as a whole.

(c) Internal control.

(1) In addition to the requirements of GAGAS, the auditor shall perform procedures to obtain an understanding of internal control over **state** programs sufficient to plan the audit to support a low assessed level of control risk for major **state** programs.

(2) Except as provided in paragraph (c)(3) of this section, the auditor shall:

(i) Plan the testing of internal control over major **state** programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major **state** program; and

(ii) Perform testing of internal control as planned in paragraph (c)(2)(i) of this section.

(3) When internal control over some or all of the compliance requirements for a major **state** program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(2) of this section are not required for those compliance requirements. However, the auditor shall report a reportable condition (including whether any such condition is a material weakness) in accordance with sec.____.510, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) Compliance.

(1) In addition to the requirements of GAGAS, the auditor shall determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major **state** programs.

(2) The auditor shall determine the requirements governing each major **state** program by reviewing the provisions of contracts and grant agreements and the laws and regulations referred to in such contracts and grant agreements, and use the types of compliance requirements categorized in the compliance supplement as guidance for identifying the types of compliance requirements to test. The auditor shall also consult with the applicable **state** awarding agency to determine whether any of the auditee's major **state** programs are part of a state cluster of programs.

(3) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance.

(e) Audit follow-up. The auditor shall follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with sec.____.315(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor shall perform audit follow-up procedures regardless of whether a prior audit finding relates to a major **state** program in the current year.

sec.____.505 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this **audit circular** and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or

disclaimer of opinion) as to whether the schedule of expenditures of **state** awards is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) A report on internal control related to the financial statements and major **state** programs. This report shall describe the scope of testing of internal control and the results of the tests, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements. This report shall also include an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major **state** program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which shall include the following three components:

(1) A summary of the auditor's results which shall include:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses;

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee;

(iv) Where applicable, a statement that reportable conditions in internal control over major **state** programs were disclosed by the audit and whether any such conditions were material weaknesses;

(v) The type of report the auditor issued on compliance for major **state** programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings which the auditor is required to report under sec.____.510(a);

(vii) An identification of major **state** programs;

(viii) The dollar threshold used to distinguish between **State** Type A and **State** Type B programs, as described in sec.____.520(b); and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under sec.____.530.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for **state** awards which shall include audit findings as defined in sec.____.510(a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) which relate to the same issue should be presented as a single audit finding. Where practical, audit findings should be organized by **state** agency or pass-through entity.

(ii) Audit findings which relate to both the financial statements and **state** awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, **shall** be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(iii) Audit findings which relate to both federal and state awards shall be reported in accordance with OMB Circular A-133, with additional information on the state awards which are affected and the extent the state awards are affected.

sec. ____ .510 Audit findings.

(a) Audit findings reported. The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(1) Reportable conditions in internal control over major **state** programs. The auditor's determination of whether a deficiency in internal control is a reportable condition for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major **state** program. The auditor shall identify reportable conditions which are individually or cumulatively material weaknesses.

(2) Material noncompliance with the provisions of laws, regulations, contracts, or grant agreements related to a major **state** program. The auditor's determination of whether a noncompliance with the provisions of laws, regulations, contracts, or grant agreements is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major **state** program.

(3) Known questioned costs which are greater than \$10,000 for a type of compliance requirement for a major **state** program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor shall also report known questioned costs when likely questioned costs are greater than \$10,000 for a type of compliance requirement for a major **state** program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs which are greater than \$10,000 for a **state** program which is not audited as a major **state** program. Except for audit follow-up, the auditor is not required under this **audit circular** to perform audit procedures for such a **state** program; therefore, the auditor will normally not find questioned costs for a program which is not audited as a major **state** program. However, if the auditor does become aware of questioned costs for a **state** program which is not audited as a major **state** program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than \$10,000, then the auditor shall report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for major **state** programs is other than an unqualified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for **state** awards.

(6) Known fraud affecting a **state** award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for **state** awards. This paragraph does not require the auditor to make an additional reporting when the auditor confirms that the fraud was reported outside of the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary

schedule of prior audit findings prepared by the auditee in accordance with sec.____.315(b) materially misrepresents the status of any prior audit finding.

(b) Audit finding detail. Audit findings shall be presented in sufficient detail for the auditee to prepare a corrective action plan and take corrective action and for **state** agencies and pass-through entities to arrive at a management decision. The following specific information shall be included, as applicable, in audit findings:

(1) **State** program and specific **state** award identification including the **state program name and state program number (if a number is used), CFDA title and number (if used to identify the state program), other relevant identifier, state** award number and year, name of **state** agency, and name of the applicable pass-through entity. When information, such as the **state program or** CFDA title and number or **state** award number, is not available, the auditor shall provide the best information available to describe the **state** award.

(2) The criteria or specific requirement upon which the audit finding is based, including statutory, regulatory, or other citation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) Identification of questioned costs and how they were computed.

(5) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified shall be related to the universe and the number of cases examined and be quantified in terms of dollar value.

(6) The possible asserted effect to provide sufficient information to the auditee and **state** agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action.

(7) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(8) Views of responsible officials of the auditee when there is disagreement with the audit findings, to the extent practical.

(c) Reference numbers. Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

sec.____.515 Audit working papers.

(a) Retention of working papers. The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the **state coordinating or oversight agency for single audit, state agency,** or pass-through entity to extend the retention period. When the auditor is aware that **a state** agency, pass-through entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding for guidance prior to destruction of the working papers and reports.

(b) Access to working papers. Audit working papers shall be made available upon request to the **state coordinating or oversight** agency for **single** audit or its designee, a **state** agency providing direct or indirect funding, or **the State Auditor** at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this **audit circular**. Access to working papers includes the right of **state** agencies to obtain copies of working papers, as is reasonable and necessary.

sec.____.520 Major state program determination.

(a) General. The auditor shall use a risk-based approach to determine which **state** programs are major **state** programs. This risk-based approach shall include consideration of: Current and prior audit experience, oversight by **state** agencies and pass-through entities, and the inherent risk of the **state** program. The process in paragraphs (b) through (i) of this section shall be followed.

(b) Step 1.

(1) The auditor shall identify the larger **state** programs, which shall be labeled **State** Type A programs. **State** Type A programs are defined as **state** programs with **state** awards expended during the audit period exceeding the larger of:

(i) \$300,000 or three percent (.03) of total **state** awards expended in the case of an auditee for which total **state** awards expended equal or exceed \$300,000 but are less than or equal to \$100 million.

(ii) \$3 million or three-tenths of one percent (.003) of total **state** awards expended in the case of an auditee for which total **state** awards expended exceed \$100 million but are less than or equal to \$10 billion.

(iii) \$30 million or 15 hundredths of one percent (.0015) of total **state** awards expended in case of an the auditee for which total **state** awards expended exceed \$10 billion.

(2) **State** programs not labeled **State** Type A under paragraph (b)(1) of this section shall be labeled **State** Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) should not result in the exclusion of other programs as **State** Type A programs. When a **state** program providing loans significantly affects the number or size of **State** Type A programs, the auditor shall consider this **state** program as a **State** Type A program and exclude its values in determining other **State** Type A programs.

(4) For biennial audits permitted under sec.____.220, the determination of **State** Type A and **State** Type B programs shall be based upon the **state** awards expended during the two-year period.

(5) Consider state awards expended separately from federal awards expended when determining State and Federal Type A and B programs.

(6) When a federal program is determined to be a major program in accordance with OMB Circular A-133, and the non-state entity expended **state** award(s) which were received as required matching with the federal award, the **state** award(s) accompanying the major federal program shall be a major state program and be audited as a major state program.

(7) When a federal program is determined to be a major program in accordance with OMB Circular A-133, and the non-state entity expended **state** award(s) which were received as a nonrequired supplement to the federal program, and the **state** award(s) have the same or similar compliance requirements as the federal program, the **state** award(s) accompanying the major federal program shall be a major **state** program and be audited as a major **state** program.

(8) For non-state entities expending more than \$10 million in **state** awards during the audit period, the provisions of paragraphs (6) and (7) of this section should not result in the exclusion of other state programs as **State** Type A programs. The expenditures of state programs determined to be major **state** programs in accordance with paragraphs (6) and (7) of this section, shall be

excluded from state awards expended in determining **State** Type A programs.

(c) Step 2.

(1) The auditor shall identify **State** Type A programs which are low-risk. For a **State** Type A program to be considered low-risk, it shall have been audited as a major **state** program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, it shall have had no audit findings under sec.____.510(a).

However, the auditor may use judgment and consider that audit findings from questioned costs under sec.____.510(a)(3) and sec.____.510(a)(4), fraud under sec.____.510(a)(6), and audit follow-up for the summary schedule of prior audit findings under sec.____.510(a)(7) do not preclude the **State** Type A program from being low-risk. The auditor shall consider: the criteria in sec.____.525(c), sec.____.525(d)(1), sec.____.525(d)(2), and sec.____.525(d)(3); the results of audit follow-up; whether any changes in personnel or systems affecting a **State** Type A program have significantly increased risk; and apply professional judgment in determining whether a **State** Type A program is low-risk.

(d) Step 3.

(1) The auditor shall identify **State** Type B programs which are high-risk using professional judgment and the criteria in sec.____.525. However, should the auditor select Option 2 under Step 4 (paragraph (e) (2)(I)(B) of this section), the auditor is not required to identify more high-risk **State** Type B programs than the number of low-risk Type **State** A programs. Except for known reportable conditions in internal control or compliance problems as discussed in sec.____.525(b)(1), sec.____.525(b)(2), and sec.____.525(c)(1), a single criteria in sec.____.525 would seldom cause a **State** Type B program to be considered high-risk.

(2) The auditor is not expected to perform risk assessments on relatively small **State** programs. Therefore, the auditor is only required to perform risk assessments on **State** Type B programs that exceed the larger of:

(i) \$100,000 or three-tenths of one percent (.003) of total state awards expended when the auditee has less than or equal to \$100 million in total state awards expended.

(ii) \$300,000 or three-hundredths of one percent (.0003) of total **state** awards expended when the auditee has more than \$100,000 million in total **state** awards expended.

(e) Step 4. At a minimum, the auditor shall audit all of the following as major **state** programs:

(1) All **State** Type A programs, except the auditor may exclude any **State** Type A programs identified as low-risk under Step 2 (paragraph (c)(1) of this section).

(2) (i) High-risk **State** Type B programs as identified under either of the following two options:

(A) Option 1. At least one half of the **State** Type B programs identified as high-risk under Step 3 (paragraph (d) of this section), except this paragraph (e)(2)(I)(A) does not require the auditor to audit more high-risk **State** Type B programs than the number of low-risk **State** Type A programs identified as low-risk under Step 2.

(B) Option 2. One high-risk **State** Type B program for each **State** Type A program identified as low-risk under Step 2.

(ii) When identifying which high-risk **State** Type B programs to audit as major **state programs** under either Option 1 or 2 in paragraph (e)(2)(I)(A) or (B), the auditor is encouraged to use an approach which provides an opportunity for different high-risk **State**

Type B programs to be audited as major over a period of time.

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This paragraph (e)(3) may require the auditor to audit more programs as major than the number of **State** Type A programs.

(4) Notwithstanding other provisions of this circular, when there are relatively large numbers of small state programs which would be classified as major resulting in excessively burdensome audit costs, the state single audit coordinating agency or state oversight agency may grant a **waiver allowing fewer state programs to be audited as major**. The waiver shall be in writing and shall specify the percentage or number of programs affected, or list specific programs to be audited as major. In no case shall less than 25 percent of state program expenditures be audited as major state programs under a waiver.

(f) Percentage of coverage rule. The auditor shall audit as major **state** programs **state** programs with **state** awards expended that, in the aggregate, encompass at least 50 percent of total **state** awards expended. If the auditee meets the criteria in sec.____.530 for a low-risk auditee, the auditor need only audit as major **state** programs **state** programs with **state** awards expended that, in the aggregate, encompass at least 25 percent of total **state** awards expended.

(g) Documentation of risk. The auditor shall document in the working papers the risk analysis process used in determining major **state** programs.

(h) Auditor's judgment. When the major **state** program determination was performed and documented in accordance with this **audit circular**, the auditor's judgment in applying the risk-based approach to determine major **state** programs shall be presumed correct. Challenges by **state** agencies and pass-through entities shall only be for clearly improper use of the guidance in this **audit circular**. However, **state** agencies and pass-through entities may provide auditors guidance about the risk of a particular **state** program and the auditor shall consider this guidance in determining major **state** programs in audits not yet completed.

(i) Deviation from use of risk criteria. For first-year audits, the auditor may elect to determine major **state** programs as all **State** Type A programs plus any **State** Type B programs as necessary to meet the percentage of coverage rule discussed in paragraph (f) of this section. Under this option, the auditor would not be required to perform the procedures discussed in paragraphs (c), (d), and (e) of this section.

(1) A first-year audit is the first year the entity is audited under this **audit circular** or the first year of a change of auditors.

(2) To ensure that a frequent change of auditors would not preclude audit of high-risk **State** Type B programs, this election for first-year audits may not be used by an auditee more than once in every three years.

sec.____.525 Criteria for **state** program risk.

(a) General. The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the **state** program. The auditor shall use auditor judgment and consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in **state** programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular **state** program with auditee management and the **state** agency or pass-through entity.

(b) Current and prior audit experience.

(1) Weaknesses in internal control over **state** programs would indicate higher risk. Consideration should be given to the control environment over **state** programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and the competence and experience of personnel who administer the **state** programs.

(i) A **state** program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor shall consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a **state** program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(iii) The extent to which computer processing is used to administer **state** programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a **state** program or have not been corrected.

(3) **State** programs not recently audited as major **state** programs may be of higher risk than **state** programs recently audited as major programs without audit findings.

(c) Oversight exercised by **state** agencies and pass-through entities.

(1) Oversight exercised by **state** agencies or pass-through entities could indicate risk. For example, recent monitoring or other reviews performed by an oversight entity which disclosed no significant problems would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

(2) **state** agencies may identify **state** programs which are higher risk and the reasons the programs were so identified.

(d) Inherent risk of the **state** program.

(1) The nature of a **state** program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the **state** program contracts for goods and services. For example, **state** programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. **State** programs primarily involving staff payroll costs may have a high-risk for time and effort reporting, but otherwise be at low-risk.

(2) The phase of a **state** program in its life cycle at the **state** agency may indicate risk. For example, a new **state** program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in **state** programs, laws, regulations, or the provisions of contracts or grant agreements may increase risk.

(3) The phase of a **state** program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a **state** program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) **State** Type B programs with larger **state** awards expended would be of higher risk than programs with substantially smaller **state** awards expended.

sec.____.530 Criteria for a low-risk auditee.

An auditee which meets all of the following conditions for each of the preceding two years (or, in the case of biennial audits, preceding two audit periods) shall qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with sec.____.520:

(a) Single audits were performed on an annual basis in accordance with the provisions of this **audit circular or preceding federal audit circular**. A non-state entity that has biennial audits does not qualify as a low-risk auditee, unless agreed to in advance by the state coordinating or oversight agency for single audit.

(b) The auditor's opinions on the financial statements and the schedule of expenditures of **state** awards were unqualified. However, the **state coordinating** or oversight agency for **single** audit may judge that an opinion qualification does not affect the management of **state** awards and provide a waiver.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS. However, the **state coordinating** or oversight agency for **single** audit may judge that any identified material weaknesses do not affect the management of **state** awards and provide a waiver.

(d) None of the **state** programs had audit findings from any of the following in either of the preceding two years (or, in the case of biennial audits, preceding two audit periods) in which they were classified as **State** Type A programs:

(1) Internal control deficiencies which were identified as material weaknesses;

(2) Noncompliance with the provisions of laws, regulations, contracts, or grant agreements which have a material effect on the **State** Type A program; or

(3) Known or likely questioned costs that exceed five percent of the total **state** awards expended for a **State** Type A program during the year.

V. APPENDIX A: 1 TAC 5.141-5.167

Title 1. Administration
Part I. Office of the Governor
Chapter 5. Budget and Planning Office
Subchapter A. Federal and Intergovernmental Coordination
Uniform Grant Management Standards

Sec. 5.141. Introduction

The Governor's Budget and Planning Office proposes adoption of revisions to sec. 5.141-5.167 published in the September 19, 1997, issue of the Texas Register (22 TexReg 9398). This rule is being revised to conform the standards to changes in OMB Circular A-87, clarify the state annotations to OMB Circular A-102 as necessary and to substitute OMB Circular A-133, with state annotations, for OMB Circular A-128, which was rescinded effective June 30, 1997, with the adoption by the federal government of the revised OMB Circular A-133. To reduce confusion as to the applicability of the standards, they have been renamed "The Uniform Grant Management Standards" (UGMS). The Uniform Grant Management Standards were developed under the authority of Chapter 783 of the Texas Government Code, which codifies the Uniform Grant and Contract Management Act of 1981. The federal circulars have been renamed and extensively modified to reflect state law, policies and practices. Pursuant to the Act and Chapter 2105, Texas Government Code, the prescribed standard financial management conditions and uniform assurances are applicable to all grants and contracts executed between state agencies, local governments and other affected entities, as described in section 5.142(b).

Sec. 5.142. Purpose, Applicability, and Scope

(a) Purpose. The Uniform Grant and Contract Management Act of 1981 directed the governor's office to establish uniform grant and contract administration procedures "to promote the efficient use of public funds in local government and in programs requiring cooperation among local, state, and federal agencies." These standards further that objective by providing awarding agencies and grantees a standardized set of financial management procedures and definitions, by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state.

(b) Applicability. Chapter 783 of the Texas Government Code specifically applies the standards only to state and local governments. School districts, state colleges and universities and special districts are specifically excluded by law from having to comply with these standards. However, to further consistency and accountability, some state agencies have applied these standards by rule or contract to all of their grantees. In addition, Chapter 2105, Texas Government Code (1 TAC 5.167(c)) subjects all subrecipients of federal block grants to the standards. Therefore, recipients and subrecipients other than state and local governments, including nonprofit organizations, should ascertain from their awarding agencies whether or to what extent they are subject to these standards. In the event of a conflict between UGMS and applicable federal law, the provisions of federal law shall apply.

(c) Scope. These standard financial management conditions and uniform assurances are applicable to all grants, cooperative agreements, contracts and other financial assistance arrangements executed between state agencies, local governments and any other subrecipient not specifically excluded by state or federal law. Contracts for the sole purpose of procuring goods or services on a competitive basis, in which there is a clear purchaser-vendor relationship, as opposed

to a grantor-recipient relationship, are excluded from the requirements of these standards (see Uniform Assurances and Standard Conditions Required: Variations (See "State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart A(3) definition of "grantee"). State agencies may deviate from these standards only if the agency has complied with Texas Government Code, sec. 783.007(c), Uniform Assurances and Standard Conditions Required: Variations (See "State Uniform Administrative Requirements for Grants and Cooperative Agreements", Subpart A(6)(a))

Sec. 5.143. Effective Date

The effective date of the uniform cost principles and administrative requirements is February 12, 1998. Grants, contracts and other financial assistance agreements entered into prior to the adoption date of these standards will be subject to the provisions of the Uniform Grant and Contract Management Standards dated February 22, 1990. The State of Texas Single Audit Circular is effective for single audits of fiscal years beginning after June 30, 1996. However, if an awarding state agency has already adopted rules in codified regulations governing single audits of non-state entities for fiscal years beginning after June 30, 1996, the agency shall apply the standards set forth in this single audit circular for audits of fiscal years beginning after June 30, 1997.

Sec. 5.144. Adoption by Reference

As directed by the Act, the Governor's Budget and Planning Office adopts by reference Office of Management and Budget Circular A-87, as annotated and revised; the Common Rule of OMB Circular A-102, as annotated and revised; and Office of Management and Budget Circular A-133, as annotated and revised. These circulars have been renamed, respectively, "Cost Principles for State and Local Governments and Other Affected Entities", "State Uniform Administrative Requirements for Grants and Cooperative Agreements", and "State of Texas Single Audit Circular".

Sec. 5.145. Grants and Contracts

The terms "grants" and "contracts" as used in the Uniform Grant Management Standards are synonymous only when used to describe a financial agreement involving an awarding agency and a recipient or subrecipient. Procurement contracts or agreements in which there is a clear purchaser-vendor relationship are not covered by the Uniform Grant Management Standards.

Sec. 5.146. Standard Assurances

A listing of major state assurances which may apply to federal pass-through and state-appropriated funds may be found in the State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart B, sec. ____14. Many of these assurances apply only to state agencies, and in most cases, only some will apply to a given grant. This list is subject to change, and it is the applicant's responsibility to determine which assurances are required and that all those required by the awarding agency are submitted.

Sec. 5.147. Variance from Standards

State agencies may vary from the Uniform Grant Management Standards (UGMS) only when required to do so by federal legislation or regulations or by specific state statute. State agencies are required to publish the variance in the Texas Register and to notify the Governor's Budget and Planning Office. State agencies' rules or self-regulation are not sufficient to authorize variance from the provisions contained in the UGMS.

Sec. 5.148. Obtaining Copies of Standards

The Governor's Budget and Planning Office will supply copies for state agency use. However, it is the responsibility of the state agency to reproduce the number of copies to fulfill grantee requirements. State agencies may incorporate the UGMS into their manuals either directly or by reference.

Sec. 5.149. Recommendations for Change

State agencies are requested to submit any recommended changes, or to note inconsistencies or conflicts, in writing to the Governor's Budget and Planning Office, Attention: Uniform Grant Management Standards, P.O. Box 12428, Austin, Texas 78711.

Sec. 5.150. Uniform Cost Principles and Cost Allocation Plans

(a) The Uniform Grant Management Standards (UGMS), Chapter II, "Cost Principles for State and Local Governments and Other Affected Entities" sets out the basic cost principles applicable to all grants administered by a state agency which are awarded to cities, counties, other political subdivisions of the state and entities receiving state-administered funds from federal block grants. This chapter specifically includes, therefore, all federal categorical grants, federal block grants, and state grants.

(b) The basis of Chapter II is OMB Circular A-87, which designates the Department of Health and Human Services (HHS) as the federal agency responsible for issuing instructions for use by grantees in the preparation of cost allocation plans. OMB Circular A-87 is included in its entirety, with annotations showing differences between federal and state law and practices.

(c) Cities, counties, and other political subdivisions of the state seeking to establish a cost allocation plan and indirect cost rate should contact the federal Office of Management and Budget to request an assignment of a cognizant federal agency to review and approve any such plan. In those cases in which funds are received from two or more state agencies, recipients should contact the Governor's Budget and Planning Office to receive an assignment of a state single audit coordinating agency. This agency may, but is not required, to review and approve the cost allocation plan.

Sec. 5.151. Uniform Administrative, Accounting and Reporting Standards

The basis of the Uniform Grant Management Standards (UGMS) Chapter III, "State Uniform Administrative Requirements for Grants and Cooperative Agreements", is the Common Rule of OMB Circular A-102, which has been adopted by reference in sec. 5.144 of this title (relating to Adoption by Reference). Applicable provisions of the Common Rule have been reprinted in UGMS, with annotations showing where state law and practices differ from the Common Rule. (See "State Uniform Administrative Requirements for Grants and Cooperative Agreements", Subpart A---General, sec.____.4 for applicability to state and federal funds.)

Sec. 5.167. State of Texas Single Audit Circular

(a) The basis of the Uniform Grant Management Standards (UGMS) Chapter IV, "State of Texas Single Audit Circular", is Office of Management and Budget (OMB) Circular A-133. This state audit circular is to be used in conducting single audits of state financial assistance to recipients and subrecipients. All awarding agencies are responsible for ensuring compliance with OMB Circular A-133 when federal funds are involved and for coordinating the single audit of state funds with affected federal agencies when both federal and state funds are awarded.

(b) The concept of single audit is designed to maximize the efficient and effective use of public resources, to minimize work flow disruptions for grant recipients and to provide state awarding agencies consistent audit procedures and assurances. Under these rules, a designated state single audit coordinating agency will assure that the single audit effort is well-coordinated among state funding agencies and with the federal cognizant agency. The federal cognizant agency is responsible for assuring that the independent audit is performed for federal funds in accordance with the provisions of OMB Circular A-133. No attempt is made to emulate the federal cognizant agency by the designation of the state single audit coordinating agency. Rather, the purpose is to provide an audit coordination effort at the state level to bolster the single audit concept. It must be thoroughly understood that the single audit process is available but will not replace state agency program monitoring and review of subrecipients' compliance with contractual terms and conditions throughout the grant period. As indicated by Circular A-133 and this state single audit circular, any supplemental audit work should build upon the audit accomplished by the single audit.

(c) Chapter 2105, Texas Government Code, requires that all subrecipients of federal block grants be included under provisions of the Uniform Grant and Contract Management Standards.

(1) When a single audit is needed and two or more state agencies provide funds to a recipient covered by this circular, the subrecipient may request the designation of a state single audit coordinating agency from the Governor's Budget and Planning Office. If only one state agency provides funds, no state single audit coordinating agency will be necessary and the grant recipient should work directly with its state funding agency.

(2) To have a state single audit coordinating agency designated, a recipient must submit a written request to the Governor's Budget and Planning Office, P.O. Box 12428, Austin, Texas 78711. This request must list the state agencies providing financial assistance with the grant amounts for the year to be audited and indicate that the governing body has authorized the initiation of the single audit.

(3) Within 30 days after the receipt of the request, the Governor's Budget and Planning Office, after consultation with the state auditor, will designate a state single audit coordinating agency. The following criteria will be used in selecting the appropriate state single audit coordinating agency:

(A) state agency request or agreement to be the coordinating agency;

(B) state agency capability;

(C) amount and source of funds awarded to the grantee; and

(D) state agency workload.

(E) Request for change. A state agency or a recipient may request a change in the designation of the state single audit coordinating agency. The designation of a state single audit coordinating agency will remain in force until eliminated or revised by the Governor's Budget and Planning Office. All previous state single audit coordinating agency designations by the Governor's Budget and Planning Office will become the state single audit coordinating agencies upon the effective date of these rules.

(d) At the earliest practical date, but not later than 60 days prior to beginning a single audit, the recipient shall notify the state grantor agencies and the state single audit coordinating agency that the audit plan is being formulated. Each state grantor agency should assure that special audit issues are identified and transmitted to the recipient during this early warning period. Any subsequent additional costs of compliance which are outside the scope of OMB Circular A-133 or

the State of Texas Single Audit Circular are allowable expenses to the contract being audited, as long as they are paid from nonfederal funds. The state single audit coordinating agency shall have an opportunity to review the scope of the audit and, at its option, participate in an engagement conference with the independent auditor prior to commencement of the single audit. The state single audit coordinating agency shall contact the federal cognizant agency at the earliest practicable point as necessary to coordinate when federal and state funds are involved.

(e) The state single audit coordinating agency must be provided a completed audit report by the recipient. A desk review will be accomplished by the state single audit coordinating agency to determine that the audit report covers the major elements of the State of Texas Single Audit Circular. Upon receipt of the audit report, the state single audit coordinating agency is responsible for carrying out the duties described in sec. ___400(a)(1) through (8), Uniform Grant Management Standards.

(f) When the state single audit coordinating agency determines that the audit report meets the report requirements of this audit circular, the recipient will be so notified by letter and instructed to distribute the audit report to all state funding agencies for their review. A copy of the notification letter should accompany the distributed reports.

(g) Each state funding agency is responsible for reviewing the portion of the audit dealing with its programs and is also responsible for the necessary follow-up and resolution of audit findings that relate to its individual programs. Each affected state funding agency must notify the state single audit coordinating agency after the audit findings have been resolved as required by the appropriate funding agencies.

(h) The recipient must notify the state single audit coordinating agency and the state grantor agencies when cross-cutting audit findings have been resolved.

(i) If assigned, the federal cognizant agency is responsible for negotiating, approving and auditing indirect cost allocation plans. In the absence of a signed negotiation agreement from the federal cognizant agency, the state single audit coordinating agency, may, at its discretion, perform these duties as they pertain to state funds. In the event that neither the federal cognizant agency nor the state single audit coordinating agency performs these duties, the major state funding agency or another state agency designated by the governor's office may perform these duties as they pertain to state funds.

VI. APPENDIX B: Uniform Grant and Contract Management Act of 1981

Texas Government Code - Title 7 - Chapter 783: Uniform Grant and Contract Management

Sec. 783.001. Short Title.

This chapter may be cited as the Uniform Grant and Contract Management Act.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 783.002. Policy.

It is the policy of the state to promote the efficient use of public funds in local government and in programs requiring cooperation among local, state, and federal agencies.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 783.003. Definitions.

In this chapter:

(1) "Assurance" means a statement of compliance with federal or state law that is required of a local government as a condition for the receipt of grant or contract funds.

(2) "Financial management conditions" means generally applicable policies and procedures for the accounting, reporting, and management of funds that state agencies require local governments to follow in the administration of grants and contracts.

(3) "Local government" means a municipality, county, or other political subdivision of the state, but does not include a school district or other special-purpose district.

(4) "State agency" means a state board, commission, or department, or office having statewide jurisdiction, but does not include a state college or university.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 783.004. Governor's Office.

The governor's office is the state agency for uniform grant and contract management.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 783.005. Uniform Assurances.

(a) The governor's office shall develop uniform and concise language for any assurances that a local government is required to make to a state agency.

(b) The governor's office may:

- (1) categorize assurances according to the type of grant or contract;
- (2) designate programs to which the assurances are applicable; and
- (3) revise the assurances.

(c) The standards for assurances developed under this chapter may not affect methods of distribution or amounts of federal funds received by a state agency or a local government.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 783.006. Standard Financial Management Conditions.

(a) The governor's office shall compile and distribute to each state agency an official compilation of standard financial management conditions.

(b) The governor's office shall develop the compilation from Federal Management Circular A-102 or from a revision of that circular and from other applicable statutes and regulations.

(c) The governor's office shall include in the compilation official commentary regarding administrative or judicial interpretations that affect the application of financial management standards.

(d) The governor's office may:

- (1) categorize the financial management conditions according to the type of grant or contract;
- (2) designate programs to which the conditions are applicable; and
- (3) revise the conditions.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 783.007. Uniform Assurances and Standard Conditions Required; Variations.

(a) A state agency shall use the uniform assurances developed under Sec. 783.005 and the standard financial management conditions developed under Sec. 783.006 applicable to a local government receiving financial assistance from the agency unless a federal statute or regulation or a state statute requires or specifically authorizes a variation in the assurances or conditions.

(b) An agency may establish a variation from uniform assurances or standard conditions only by rule in accordance with Chapter 2001.

(c) The agency shall state a reason for the variation along with the proposed rule, and the reason must be based on the applicable federal statute or regulation or state statute.

(d) The agency shall file a notice of each proposed rule that establishes a variation from uniform assurances or standard conditions with the governor's office.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(50), eff. Sept. 1, 1995.

Sec. 783.008. Audit Coordination.

(a) A local government receiving state-administered financial assistance may request by action of its governing body a single audit or coordinated audits by all state agencies from which it receives funds.

(b) On receipt of a request for a single audit or audit coordination, the governor's office in consultation with the state auditor shall not later than the 30th day after the date of the request designate a single state agency to coordinate state audits of the local government.

(c) The designated agency shall, to the extent practicable, assure single or coordinated state audits of the local government for as long as the designation remains in effect or until the local government by action of its governing body withdraws its request for audit coordination.

(d) This section does not apply to an audit performed by the comptroller or state auditor.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

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