

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****CFDA 93.044 SPECIAL PROGRAMS FOR THE AGING – TITLE III, PART B—  
GRANTS FOR SUPPORTIVE SERVICES AND SENIOR CENTERS****CFDA 93.045 SPECIAL PROGRAMS FOR THE AGING – TITLE III, PART C—  
NUTRITION SERVICES****CFDA 93.053 NUTRITION SERVICES INCENTIVE PROGRAM****I. PROGRAM OBJECTIVES****Grants for Supportive Services and Senior Centers**

The objective of this program is to assist states and area agencies on aging in facilitating the development and implementation of a comprehensive, coordinated system for providing long-term care in home and community-based settings, in a manner responsive to the needs and preferences of older individuals and their family caregivers, by—

- a. collaborating, coordinating activities, and consulting with other local public and private agencies and organizations responsible for administering programs, benefits, and services related to providing long-term care;
- b. conducting analyses and making recommendations with respect to strategies for modifying the local system of long-term care to better—
  - (1) respond to the needs and preferences of older individuals and family caregivers;
  - (2) facilitate the provision, by service providers, of long-term care in home and community-based settings; and
  - (3) target services to older individuals at risk for institutional placement, to permit such individuals to remain in home and community-based settings;
- c. implementing, through the agency or service providers, evidence-based programs to assist older individuals and their family caregivers in learning about and making behavioral changes intended to reduce the risk of injury, disease, and disability among older individuals; and
- d. providing for the availability and distribution (through public education campaigns, Aging and Disability Resource Centers, the area agency on aging itself, and other appropriate means) of information relating to—
  - (1) the need to plan in advance for long-term care; and
  - (2) the full range of available public and private long-term care (including integrated long-term care) programs, options, service providers, and resources (Older Americans Act [OAA] Section 305(a)(3)).

The target population for these supportive services is individuals with greatest economic and social need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas), and older individuals at risk for institutional placement (OAA Section 306(a)(1)); however, proof of age (or income) is not required as a condition of receiving services.

Supportive services may include a full range of economic and social services, including, but not limited to, (1) access services (transportation, health services [including mental health services] outreach, information and assistance); (2) legal assistance and other counseling services; (3) health screening services (including mental health screening); (4) ombudsman services; (5) provision of services and assistive devices (including provision of assistive technology services and assistive technology devices); (6) services designed to support states, area agencies on aging, and local service providers in carrying out and coordinating activities for older individuals with respect to mental health services, including outreach for, education concerning, and screening for such services, and referral to such services for treatment; (7) activities to promote and disseminate information about life-long learning programs, including opportunities for distance learning; and (8) services designed to assist older individuals in avoiding institutionalization and to assist individuals in long-term care institutions who are able to return to their communities any other services necessary for the general welfare of older individuals (OAA Section 321). Nutrition services are provided under a separate authorization, as described below.

Organizations funded under this program and the nutrition services program (see below) also receive funds from other federal sources as well as from non-federal sources.

### **Grants for Nutrition Services**

The purposes of this grant program are to (1) reduce hunger and food insecurity; (2) promote socialization of older individuals; and (3) promote the health and well-being of older individuals by helping them gain access to nutrition and other disease prevention and health promotion services to delay the onset of adverse health conditions resulting from poor nutritional health or sedentary behavior (OAA Section 330). Services are provided through this program to individuals aged 60 or older, in a congregate setting or in-home. These services include meals, nutrition education, nutrition counseling, and nutrition screening and assessment, as appropriate (OAA Sections 331, 336, and 339). This program is clustered with the grants for supportive services and senior centers for purposes of this program supplement since these services, although separately earmarked, fall under the overall state planning process and process for allocation of funds.

### **Nutrition Services Incentive Program**

The objective of this grant program is to provide resource incentives to encourage and reward effective and efficient performance in the delivery of nutritious meals to older individuals. The Administration on Aging (AoA) is responsible for this program. This program is included as part of this cluster because of its direct relationship to the nutrition services program.

## II. PROGRAM PROCEDURES

### A. Overview

The AoA, a component of the Department of Health and Human Services, administers the supportive services and senior centers program and the nutrition services program in cooperation with states, sub-state agencies, and other service providers. The states receive a formula grant from AoA, which is used by the State Unit on Aging (State Agency) both for its planning, administration, and evaluation of these programs as well as to pass through to other entities.

Planning and Service Areas (PSAs) are designated by the State Agency in accordance with AoA guidelines after considering the geographical distribution of the service populations, location of available services, available resources, other service area boundaries, location of units of general-purpose local government, and other factors. An Area Agency on Aging (Area Agency) is then designated by the state for each PSA after considering the views of affected local governments (states that had a single statewide planning and service area in place prior to fiscal year (FY) 1981 had the option to continue that method of operation; there are currently eight states in this category). A single Area Agency may serve more than one PSA. The Area Agencies, which may be public or private non-profit agencies or organizations, develop and administer counterpart area aging plans, as approved by the State Agency, and, in turn, provide subgrants to or contract with public or private service providers for the provision of services.

With limited exceptions (e.g., ombudsman services, information and assistance, case management), the State Agency and the Area Agencies are precluded from the direct provision of services, unless providing the services is necessary to ensure an adequate supply of services, the services are related to the agency's administrative functions, or where services of comparable quality can be provided more economically by the agency. Federal funds may pay for only a portion of the costs of administration and services with the state and subrecipients required to provide a matching share from other sources.

The term "case management service" means a service provided to an older individual, at the direction of the older individual or a family member of the individual (i) by an individual who is trained or experienced in the case management skills that are required to deliver the services and coordination described below; and (ii) to assess the needs, and to arrange, coordinate, and monitor an optimum package of services to meet the needs, of the older individual. Case management includes services and coordination such as (i) comprehensive assessment of the older individual (including the physical, psychological, and social needs of the individual); (ii) development and implementation of a service plan with the older individual to mobilize the formal and informal resources and services identified in the assessment to meet the needs of the older individual, including coordination of the resources and services with any other plans that exist for various formal services, such as hospital discharge plans; and with the information and assistance services provided under the OAA; (iii) coordination and monitoring of formal and informal service delivery, including coordination and monitoring to ensure that services specified in the plan are being provided; (iv) periodic reassessment and revision of the

status of the older individual with the older individual or, if necessary, a primary caregiver or family member of the older individual; and (v) in accordance with the wishes of the older individual, advocacy on behalf of the older individual for needed services or resources (OAA Section 102(11)).

AoA administers NSIP in cooperation with states, sub-state agencies, and other service providers. Under Section 311(b) (1) and (d) (1) of the OAA, states receive a cash grant from AoA, based on the formula in the OAA. The amount of a state's grant is determined by dividing the number of meals served to eligible persons in the state during the preceding federal fiscal year by the number of such meals served in all states and tribes and applying the resulting ratio to the amount of funds available. Under OAA Section 311(d)(1), a state may choose to use all or any part of its grant to obtain commodities distributed by the USDA through State Distributing Agencies. The amount a state chooses to use in commodities, as well as administrative costs from USDA associated with the purchase of commodities, are deducted from the state's grant from AoA. AoA transfers funds to USDA. USDA remains responsible for the overall management of the commodities program, including ordering, purchase, and delivery of the requested commodities. (See also IV, "Other Information.")

## **B. State Plan and Area Plans**

A State Plan, approved by AoA, is a prerequisite to funding of the supportive services and nutrition programs; however, the State Plan covers the totality of AoA programs for which the state is the recipient under the OAA. The State Plan is developed on the basis of input from the Area Agencies as well as input from the affected populations as a result of public hearings. The State Plan addresses how the state intends to comply with the various requirements of the OAA and, specifically for Title III, its program objectives, designation of Planning and Service Areas (PSAs), and specification of the intrastate allocation formula for distribution of funds to each PSA. The State Plan also contains assurances required by the Act and implementing regulations.

Unless a state is not in compliance with Title III requirements, the State Plan may be submitted on a two-, three-, or four-year cycle, at the option of the state, with annual amendments, as appropriate; however, AoA funding is provided annually. States found to be in noncompliance may be required to submit their State Plans annually until they are determined to be in compliance. Area plans are prepared and submitted to the State for approval for either two, three, or four years, with annual adjustments, as necessary.

## **Source of Governing Requirements**

These programs are authorized under Parts B and C, respectively, of Title III of the OAA, as amended, which is codified at 42 USC 3021-3030. These programs may also be referred to as Part B (supportive services and senior centers) and Part C1 (congregate nutrition services) and C2 (home-delivered nutrition services). Grants to Indian tribes for similar purposes are authorized under another title of the OAA and are not included in this Supplement. Implementing regulations are published at 45 CFR part 1321.

The Nutrition Services Incentive Program (NSIP) is authorized in Title III of the OAA, as amended, which is codified at 42 USC 3030a. There are no implementing regulations.

### Availability of Other Program Information

Additional information about nutrition and supportive services, as reauthorized in 2016 by Pub. L. No. 114-144, is available at the AoA website at <https://acl.gov/about-acl/administration-aging>.

## III. COMPLIANCE REQUIREMENTS

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

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

### A. Activities Allowed or Unallowed

#### 1. State Agency

- a. State Agencies may use any amount of Title III-B (supportive services) funding necessary to conduct an effective ombudsman program (42 USC 3024 (d)(1)(B)).

- b. Grant funds may be used for State Plan administration, including State Plan preparation, evaluation of activities carried out under the Plan, the collection of data and the conduct of analyses related to the need for services, dissemination of information, short-term training, and demonstration projects (42 USC 3028 (a)).
- c. No supportive services, nutrition services, or in-home services may be provided directly by the State Agency unless the State Agency determines that direct provision of services is necessary to ensure an adequate supply of services, where such services are related to the agency's administrative functions, or where such services of comparable quality can be provided more economically by the State Agency (42 USC 3027(a)(8)(A)).

2. *Area Agency*

*Supportive Services and Senior Centers and Nutrition Services*

- a. Funds may be used for plan administration, operation of an advisory council, activities related to advocacy, planning, information sharing, and other activities leading to development or enhancement within the designated service area(s) of comprehensive and coordinated community-based systems of service delivery to older persons (45 CFR section 1321.53).
- b. If approved by the State Agency, an Area Agency may use service funds for program development and coordination activities (45 CFR section 1321.17(f)(14)(i)).
- c. No supportive services, nutrition services, or in-home services may be provided directly by an Area Agency except if, in the judgment of the State Agency, direct provision of services is necessary to ensure an adequate supply of services, where such services are related to the agency's administrative functions, or where such services of comparable quality can be provided more economically by the agency (42 USC 3027 (a)(8)).

*NSIP*

Recipient agencies may use the cash received in lieu of commodities only to purchase domestically produced foods for their nutrition projects (42 USC 3030a(d)(4)).

### 3. *Service Providers*

#### *Supportive Services and Senior Centers and Nutrition Services*

- a. Funds may be used to assist in the operation of multi-purpose senior centers and to meet all or part of the costs of compensating professional and technical personnel required for center operation (42 USC 3030d (b)(2)).
- b. Funds may be used for nutrition services and supportive services consistent with the terms of the agreement between the Area Agency and the service provider (42 USC 3026(a)(1), 3030d(a), and 3030e).
- c. Funds may be used for services associated with access to supportive services for in-home services, and for legal assistance (42 USC 3026 (a)(2)).
- d. Nutrition services may be provided to older individuals' spouses, who may not be eligible for these services in their own right, on the same basis as they are provided to older individuals, and may be made available to handicapped or disabled individuals who are less than 60 years old but who reside in housing facilities occupied primarily by older individuals at which congregate nutrition services are provided (42 USC 3030g-21(2)(I)).
- e. In accordance with procedures established by the Area Agencies, nutrition project administrators may offer meals to individuals providing volunteer services during the meal hours and to individuals with disabilities who reside at home with eligible individuals (42 USC 3030g-21(2)(H)).
- f. Funds may be used for provision of home-delivered meals to older individuals (42 USC 3030f).
- g. Funds may be used to acquire (in fee simple or by lease for ten years or more), alter, or renovate existing facilities or to construct new facilities to serve as multi-purpose senior centers for not less than ten years after acquisition, or 20 years after completion of construction, unless waived by the Assistant Secretary for Aging (42 USC 3030b).

#### *NSIP*

Cash received in lieu of commodities may be used only to purchase domestically produced foods for their nutrition projects (42 USC 3030a(d)(4)).

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

### **1. Matching**

#### **a. State**

- (1) States must contribute from state or local sources at least 25 percent of the cost of State Plan administration as their matching share. This may include cash or in-kind contributions by the state or third parties (42 USC 3028 (a)(1) and 42 USC 3029 (b); 45 CFR section 1321.47).
- (2) All services, whether provided by the State Agency, an Area Agency or other service provider (including any ombudsman services provided under the authority of 42 USC 3024 (d)(1)(D)) must be funded with a non-federal match of at least 15 percent. This percentage must be met on a statewide basis. Funds for ombudsman services provided under the authority of 42 USC 3024 (d)(1)(B) are not required to be matched (42 USC 3024 (d)(1)(D); 45 CFR section 1321.47).

#### **b. State and Area Agencies**

Area Agencies, in the aggregate, must contribute at least 25 percent of the costs of administration of area plans (42 USC 3024 (d)(1)(A); 45 CFR section 1321.47).

- (1) *State* – Since this match is computed based on the aggregate of all Area Agencies in the state, the auditor’s testing of the amount of this match is performed at the State Agency.
- (2) *Area Agencies* – The auditor’s testing of the allowability of the matching (e.g., from an allowable source and in compliance with the administrative requirements and allowable costs/cost principles requirements) should be performed at the Area Agencies.

### **2. Level of Effort –**

#### **2.1 Level of Effort – *Maintenance of Effort***

*State* – The State Agency must spend for both services and administration at least the average amount of state funds it spent under the State plan for these activities for the three previous fiscal years. If the State Agency spends less than this amount, the assistant secretary for aging reduces the state’s allotments for supportive and nutrition services under this part by a percentage equal to the percentage by which the state reduced its expenditures (42 USC 3029 (c); 45 CFR section 1321.49). See III. L.1,



“Reporting – Financial Reporting,” for the reporting requirement regarding maintenance of effort.

## **2.2 Level of Effort – *Supplement Not Supplant***

Not Applicable

## **3. Earmarking**

### **a. State**

- (1) Overall expenditures for administration are limited to the greater of five percent (or \$300,000 or \$500,000 depending on the aggregate amount appropriated or a lesser amount for the U.S. territories) of the overall allotment to a state under Title III unless a waiver is granted by the Assistant Secretary for Aging (42 USC 3028 (b)(1), (2), and (3)).
- (2) After a state determines the amount to be applied to State Plan administration under 42 USC 3028 (b), the state may:
  - (a) Make up to (and including) 10 percent of that amount available for the administration of Area Plans where the state calculates the 10 percent based on the amount remaining after deducting the amount to be applied to State Plan administration (42 USC 3024(d)(1)(A)); and
  - (b) Use any amounts available to the state for State Plan administration which the state determines are not needed for that purpose to supplement the amount available for administration of Area Plans (42 USC 3028(a)(2)).
- (3) Any state which has been designated as a single planning and service area may elect to be subject to the State Plan administration limit (five percent) or the Area Plan administration (10 percent) limit (42 USC 3028(a)(3)).
- (4) A state may transfer:
  - (a) Up to 40 percent of a state’s separate allotments for congregate and home-delivered nutrition services between those two allotments without AoA approval (42 USC 3028 (b)).
  - (b) Not more than 30 percent between programs under Part B and Part C (Parts C1 and/or C2) for use as the state considers appropriate (42 USC 3028(b)).

- (c) An additional 10 percent may be transferred between C1 and C2 with an AoA waiver (42 USC 3028(b)).
- (d) A waiver may be requested to transfer an amount which is above the allowable 30 percent between Parts B and C (42 USC 3030c-3(b)(4)).

A State Agency may not delegate to an Area Agency or any other entity the authority to make such transfers (42 USC 3028(b)(6)).

- (5) The state agency will not fund program development and coordinated activities as a cost of supportive services for the administration of area plans until it has first spent 10 percent of the total of its combined allotments under this program on the administration of area plans (45 CFR section 1321.17(f)(14)).

**b. Area Agency**

As provided in agreements with the State Agency, Area Agencies earmark portions of their allotment. The typical earmarks are:

- (1) A maximum amount or percentage for program development and coordination activities by that agency (42 USC 3024(d)(1)(D); 45 CFR section 1321.17(f)(14)(i)).
- (2) A minimum amount or percentage for services related to access, in-home services, and legal assistance (42 USC 3026(a)(2)).

**J. Program Income**

- 1. Service providers are required to provide an opportunity to individuals being served under all Part B and C services program to make voluntary contributions for services received. These voluntary contributions are to be added to the amounts made available by the state or Area Agency and must be used to expand the service from which they are collected (42 USC 3030c-2(b)).
- 2. Cost-sharing fees may be collected from Title III-B services except information and assistance, outreach, benefits counseling, or case management services. Cost sharing is not allowed for Title III-C services or Title VII Elder Rights Services (ombudsman, legal services, elder abuse prevention or other consumer protection services) (42 USC 3030c-2(a)(2)).

**M. Subrecipient Monitoring**

**1. State Agency**

The State Agency is required to develop policies governing all aspects of programs operated under the State Plan and to monitor their implementation,

including assessing performance for quality and effectiveness and specifying data system requirements to collect necessary and appropriate data (45 CFR sections 1321.11 and 1321.17(f)(9)).

## **2. Area Agencies**

Area Agencies are required to oversee the activities of service providers with respect to provision of services, reporting, voluntary contributions, and coordination of services (45 CFR section 1321.65).

## **N. Special Tests and Provisions**

### **Distribution of Cash**

**Compliance Requirements** States are required to distribute NSIP cash promptly and equitably to recipients of grants or contracts under OAA Title C1 and C2 (42 USC 3030a(d)(4)).

**Audit Objectives** Determine whether states are distributing cash promptly and equitably.

### **Suggested Audit Procedures**

- a. Review the state's procedures for handling NSIP cash to determine whether there is a documented process for distributing cash, including established time frames.
- b. Review a sample of transactions during the audit period in which the state received NSIP cash and determine whether the state complied with its established process, including time frames.

## **IV. OTHER INFORMATION**

The NSIP program may include both cash payments to states and use of cash to purchase commodities from USDA and for USDA administrative expenses. Assistance in the form of commodities is considered federal awards expended in accordance with 2 CFR section 200.40 definition of "Federal financial assistance" and should be valued in accordance with 2 CFR section 200.502(g). Therefore, both cash expenditures for the purchase of food and the value of commodities received from the State Distribution Agencies should be (1) used when determining Type A programs and (2) included in the Schedule of Expenditures of Federal Awards in accordance with 2 CFR section 200.510(b).

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CFDA 93.090 GUARDIANSHIP ASSISTANCE**

#### **I. PROGRAM OBJECTIVES**

The objective of the Guardianship Assistance program is to help agencies authorized to administer Title IV-E programs to provide kinship guardianship assistance payments under Title IV-E of the Social Security Act, as amended, for relatives taking legal guardianship of children who have been in foster care.

#### **II. PROGRAM PROCEDURES**

The Guardianship Assistance program is administered at the federal level by the Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS). Funding is available (at the option of the Title IV-E agency) to the 50 states, the District of Columbia, Puerto Rico and federally recognized Indian tribes, Indian tribal organizations, and tribal consortia (hereinafter referred to as tribes) with approved Title IV-E plans, based on a Title IV-E plan and amendments, as required by changes in statutes, rules, and regulations submitted to and approved by the ACF Children's Bureau Associate Commissioner.

The Guardianship Assistance program provides federal matching funds to Title IV-E agencies with approved Title IV-E plans that provide ongoing assistance and/or non-recurring payments to relatives who have assumed legal guardianship of eligible children for whom they previously cared for as foster parents and enter into a guardianship assistance agreement. This funding became available beginning on October 7, 2008, with the enactment of amendments to the Social Security Act through the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. No. 110-351). The state or tribal Title IV-E agency may implement and claim allowable guardianship assistance program costs beginning on the first day of the quarter in which an approvable Title IV-E plan amendment is submitted to ACF to implement the Guardianship Assistance program (45 CFR section 1356.20(d)(8)). The program is considered an open-ended entitlement program and allows the state (including the District of Columbia and Puerto Rico) or tribe to be funded at a specified percentage (federal financial participation (FFP)) for program costs for eligible children.

The designated Title IV-E agency for this program also administers ACF funding provided for other Title IV-E programs, e.g., Adoption Assistance (CFDA 93.659); Foster Care (CFDA 93.658) and John H. Chafee Foster Care Program for Successful Transition to Adulthood (CFDA 93.674), as well as the Child Welfare Services (CFDA 93.645) and Promoting Safe and Stable Families (CFDA 93.556) programs (Title IV-B of the Social Security Act, as amended) (CFDA 93.556) funds available to states and those tribes qualifying for at least a minimum grant of \$10,000), and the Social Services Block Grant program (CFDA 93.667) (Title XX of the Social Security Act, as amended) (states only). The Title IV-E agency may either directly administer the Guardianship Assistance program or supervise its administration by local level agencies. Where the program is administered by a state, in accordance with the approved Title IV-E plan, it must be in effect in all political subdivisions of the state, and, if administered by

them, program requirements must be mandatory upon them. Where the program is administered by a tribe, it must be in effect in all political subdivisions within the tribal service area(s) and for all populations to be served under the plan. If the program is administered by a political subdivision of a tribe, program requirements must be mandatory upon them (42 USC 671(a)(1-4) and 42 USC 679B(c)(1)(B)).

### **Source of Governing Requirements**

The Guardianship Assistance program is authorized by Title IV-E of the Social Security Act, as amended (42 USC 670 *et seq.*). Implementing regulations are at 45 CFR parts 1355, 1356, and 1357.

States and tribes are required to adopt and adhere to their own statutes and regulations for program implementation, consistent with the requirements of Title IV-E and an approved Title IV-E plan.

### **Availability of Other Program Information**

The Children's Bureau manages a policy issuance system that provides further clarification of the law and guides states and tribes in implementing the Guardianship Assistance program. This information may be accessed at <https://www.acf.hhs.gov/cb/laws-policies>.

## **III. COMPLIANCE REQUIREMENTS**

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

## A. Activities Allowed or Unallowed

### 1. *Kinship Guardianship Assistance Payments*

Funds may be expended for kinship guardianship assistance payments made on behalf of eligible children (see III.E.1, “Eligibility – Eligibility for Individuals”) in the amount (subject to limitations in this paragraph) and manner prescribed in a negotiated, written, and binding kinship guardianship assistance agreement entered into with the prospective relative guardian (42 USC 673(d)(1)(A)(i)). Kinship guardianship assistance payments are made to relative guardians (as defined in an approved Title IV-E plan) based on the circumstances of the relative guardian and the needs of the child (42 USC 673(d)(1)(B)(i)). Kinship guardianship assistance payments cannot exceed the amount of the foster care maintenance payment the child would have received in a foster family home; however, the amount of the payments may be up to 100 percent of the foster care maintenance payment rate which would have been paid on behalf of the child if the child had remained in a foster family home (42 USC 673(d)(2)).

### 2. *Administrative Costs*

- a. Funds may be expended for costs directly related to the administration of the program. Approved public assistance cost allocation plans (states) or approved cost allocation methodologies (tribes) will identify which costs are allocated and claimed under this program (45 CFR section 1356.60(c)).
- b. Funds may be expended as specified in a kinship guardianship assistance agreement for the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child (if the child meets program eligibility requirements), to the extent the total cost does not exceed \$2,000 (42 USC 673(d)(1)(B)(iv)).
- c. Funds expended by the Title IV-E agency for guardianship placements (including nonrecurring costs) are considered an administrative

expenditure and are subject to the matching requirements in III.G.1.e (42 USC 674(a)(3)(E)).

3. *Training*

- a. Funds may be expended for training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the agency administering the plan (42 USC 674(a)(3)(A)).
- b. Funds may be expended for short-term training of relative guardians; state/tribe-licensed or state/tribe-approved child welfare agencies providing services to children receiving Title IV-E assistance; child abuse and neglect court personnel; agency, child, or parent attorneys; guardians ad litem; and court appointed special advocates (42 USC 674(a)(3)(B)).

4. *Demonstration Projects*

Under Section 1130 of the Social Security Act, Title IV-E agencies may be granted authority to operate a demonstration project as set forth in ACF-approved terms and conditions. Any such terms and conditions identify the specific provisions of the Social Security Act that are waived, the additional activities that are allowable, the scope and duration (which may not exceed a maximum of five total years unless specifically approved for further continuation) of the demonstration project and the methodology for determining cost neutrality (either a matched comparison group or a capped allocation) (42 USC 1320a-9 and Section 201 of Pub. L. No. 112-34).

**B. Allowable Costs/Cost Principles**

Both states and tribes are subject to the requirements of OMB Circular A-87 (2 CFR part 225)/2 CFR part 200, subpart E, as implemented by HHS at 45 CFR part 75. States also are subject to the cost allocation provisions and rules governing allowable costs of equipment of 45 CFR part 95 (45 CFR sections 1355.57, 95.503, and 95.705).

**E. Eligibility**

**1. Eligibility for Individuals**

Kinship guardianship assistance payments may be paid on behalf of a child only if program eligibility is established through one of the following methods:

a. *General Eligibility*

All of the following requirements must be met to establish general eligibility:

- (1) The child was removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child (42 USC 673(d)(3)(A)(i)(I)).
- (2) The child was eligible for foster care maintenance payments under 42 USC 672 while residing for at least six consecutive months in the home of the prospective relative guardian (42 USC 673(d)(3)(A)(i)(II)).
- (3) The Title IV-E agency determined that being returned home or adopted are not appropriate permanency options for the child (42 USC 673(d)(3)(A)(ii)).
- (4) The Title IV-E agency determined that the child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child (42 USC 673(d)(3)(A)(iii)).
- (5) With respect to a child who has attained 14 years of age, the child has been consulted regarding the kinship guardianship arrangement (42 USC 673(d)(3)(A)(iv)).
- (6) The kinship guardianship assistance agreement must be a written and binding document entered into through negotiations with the prospective relative guardian and contain information concerning; the amount of, and manner in which, each kinship guardianship assistance payment will be provided under the agreement, and the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child (42 USC 673(d)(1)(A)(i) and 673(d)(1)(B)(i)).
- (7) A kinship guardianship assistance agreement that meets, or is amended to meet, all the requirements of 42 USC 673(d)(1) must be in place with a prospective relative guardian prior to the establishment of the legal guardianship. Payments may only begin once the relative guardian has committed to care for the child and has assumed legal guardianship for the child for whom they have cared as foster parents and for whom they have committed to care on a permanent basis (42 USC 671(a)(28) and 675(7)).
- (8) Any relative guardian must satisfactorily have met a criminal records check, including a fingerprint-based checks of national crime information databases (as defined in 28 USC 534(e)(3)(A)), and for checks described in 42 USC 671(a)(20)(B) on any relative guardian and any other adult living in the home of any relative



guardian, before the relative guardian may receive kinship guardianship assistance payments on behalf of the child (42 USC 671(a)(20)(C)).

- (9) Once a child is determined eligible to receive Title IV-E kinship guardianship assistance payments, he or she remains eligible in accordance with the terms of the kinship guardianship assistance agreement and the payments can continue until: (a) attainment of the age of 18 (or attainment of age 21 if the Title IV-E agency determines that the child has a mental or physical disability which warrants the continuation of assistance); (b) the Title IV-E agency determines that the relative guardian(s) is no longer legally responsible for the support of the child; (c) the Title IV-E agency determines the child is no longer receiving any support from the relative guardian(s); or (d) the occurrence of an event described in the kinship guardianship assistance agreement which requires suspension or discontinuation of kinship guardianship assistance payments (42 USC 673(a)(4)(A) and (B); 42 USC 673(d)(1) and Child Welfare Policy Manual section 8.5A Q/A#3).

A Title IV-E agency may amend its Title IV-E plan to provide for a definition of a “child” as an individual who has not attained 19, 20, or 21 years old (as the Title IV-E agency may elect) (42 USC 675(8)(B)(iii)). This definition of a child will then permit payment of kinship guardianship assistance for a child who is over age 18 (where the Title IV-E agency does not determine that the child has a mental or physical disability which warrants the continuation of assistance up to age 21) only if such a youth is part of an kinship guardianship assistance agreement that is in effect under Section 473 of the Social Security Act and the youth had attained 16 years of age before the agreement became effective. As an additional requirement, a youth over age 18 must also (as elected by the Title IV-E agency) be (a) completing secondary school (or equivalent); (b) enrolled in post-secondary or vocational school; (c) participating in a program or activity that promotes or removes barriers to employment; (d) employed 80 hours a month; or (e) incapable of any of these due to a documented medical condition (42 USC 675(8)(B)).

b. *Sibling Eligibility*

- (1) The child and any sibling of the eligible child (established under the General Eligibility requirements listed in paragraph E.1.a) may be placed in the same kinship guardianship arrangement if the state/tribal agency and the relative agree on the appropriateness of the arrangement for the siblings (42 USC 673(d)(3)(B)(i) and 42 USC 671(a)(31)).

- (2) Kinship guardianship assistance payments may be paid pursuant to a kinship guardianship assistance agreement (in accordance with requirements in paragraph E.1.a.(6)) on behalf of each sibling so placed. If kinship guardianship assistance payments are paid on behalf of the sibling, the Title IV-E agency must pay (in accordance with a kinship guardianship assistance agreement) the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed \$2,000. The sibling does not have to meet the eligibility criteria in 42 USC 673(d)(3)(A) to receive kinship guardianship assistance payments or for the legal guardian to be reimbursed for the nonrecurring expenses related to costs of the legal guardianship (42 USC 673(d)(3)(B)(ii)).
- (3) Siblings of an eligible child must also individually meet the requirements specified in paragraphs E.1.a.(7) and (9) (42 USC 671(a)(28); 675(7) 42 USC 673(a)(4)(A) and (B); and 42 USC 675(8)(B)).

c. *Title IV-E Guardianship Waiver Post-Demonstration Projects*

- (1) After the termination of a demonstration project relating to guardianship conducted by a state under Section 1130 of the Social Security Act, children who, as of September 30, 2008, were receiving assistance or services under the project are deemed to be eligible under the approved Title IV-E state plan for the same assistance and services under the same terms and conditions that applied during the conduct of the project (42 USC 674(g)).
- (2) Post-demonstration assistance and services to eligible children assisted in accordance with terminated guardianship related demonstration projects as noted in paragraph E.1.c.(1) is eligible for Title IV-E claiming whether or not the state opts to operate a Guardianship Assistance program pursuant to 42 USC 673(d) (42 USC 674(g)).

**2. Eligibility for Group of Individuals or Area of Service Delivery**

Not Applicable

**3. Eligibility for Subrecipients**

Not Applicable

## G. Matching, Level of Effort, Earmarking

### 1. Matching

The percentage of required state/tribal funding and associated federal funding (“federal financial participation”) varies by type of expenditure as follows:

- a. Third party in-kind contributions cannot be used to meet the state’s cost sharing requirements (Child Welfare Policy Manual Section 8.1F.Q#2 8/16/02). 45 CFR section 92.24 is not applicable to this program (45 CFR sections 1355.30(c) and 1355.30(n)(1); 45 CFR section 201.5(e)). Tribes directly operating a Title IV-E program are permitted to use in-kind funds from any allowable third-party sources to provide up to the full required non-federal share of administrative or training costs (42 USC 679c(c)(1)(D); 45 CFR section 1356.68(c)).
- b. *Kinship Guardianship Assistance Payments* – The percentage of Title IV-E funding in kinship guardianship assistance payments will be the FMAP percentage. This percentage varies by state and is available at <http://www.aspe.hhs.gov/health/fmap.htm> (42 USC 674(a)(1); 45 CFR section 1356.60(a)).

Separate tribal FMAP rates, which are based upon the tribe’s service area and population, apply to Guardianship Assistance program assistance payments incurred by tribes that are participating in Title IV-E programs through either direct operation of an approved Title IV-E plan or through operation of a Title IV-E agreement or contract with a state Title IV-E agency. The methodology for calculating tribal FMAP rates was provided through a final notice in the *Federal Register* that is available at <http://www.gpo.gov/fdsys/pkg/FR-2011-08-01/pdf/2011-19358.pdf>. Information on specific tribal FMAP rates for many tribes applicable for each FY and a table where such rates can be calculated for unlisted tribes is posted on the Children’s Bureau’s website and is available at <https://www.acf.hhs.gov/cb/focus-areas/tribes>. The calculated FMAP rate for each tribe applies unless it is exceeded by the FMAP rate for any state in which the tribe is located (42 USC 679B(d) and 42 USC 679B(e)).

- c. *Staff Training* – The percentage of federal funding in expenditures for short- and long-term training at educational institutions of employees or prospective employees (including travel and per diem) is 75 percent (42 USC 674(a)(3)(A) and (B); 45 CFR section 1356.60(b)).
- d. *Professional Partner Training* – The percentage of federal funding in expenditures for short-term training of relative guardians; state/tribe-licensed or state/tribe-approved child welfare agencies providing services to children receiving Title IV-E assistance; child abuse and neglect court personnel; agency, child or parent attorneys; guardians ad litem; and, court

appointed special advocates is 75 percent in FY 2013 and thereafter (42 USC 674(a)(3)(B)).

e. *Administrative Costs*

- (1) The percentage of federal funding for non-recurring Title IV-E agency kinship guardianship placement expenditures (not to exceed \$2,000 for each kinship guardianship) is 50 percent (42 USC 674(a)(3)(E)).
- (2) The percentage of federal funding of all other allowable administrative expenditures is 50 percent (42 USC 674(a)(3)(E)).

**2. Level of Effort**

Not Applicable

**3. Earmarking**

Not Applicable

**L. Reporting**

**1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *Form CB-496, Title IV-E Programs Quarterly Financial Report (OMB No. 0970-0205)* – Title IV-E agencies report current expenditures and information on children assisted for the quarter that has just ended and estimates of expenditures and children to be assisted for the next quarter. Prior quarter adjustment (increasing and decreasing) expenditures applicable to earlier quarters must also be separately reported on this form.

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

Part 1, Expenditures, Estimates and Caseload Data, columns (a) through (d) (Sections C and D (Guardianship Assistance Program))

Part 2, Prior Quarter Expenditure Adjustments – Guardianship Assistance, columns (a) through (d)

Part 3, Foster Care, Adoption Assistance and Guardianship Assistance Demonstration Projects, columns (a) through (e)

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****CFDA 93.095 HHS PROGRAMS FOR DISASTER RELIEF APPROPRIATIONS ACT–  
NON-CONSTRUCTION****CFDA 93.096 HHS PROGRAMS FOR DISASTER RELIEF APPROPRIATIONS ACT–  
CONSTRUCTION****I. PROGRAM OBJECTIVES**

The objectives of these programs are to assist in disaster response and recovery and other activities directly related to Hurricane Sandy.

**II. PROGRAM PROCEDURES****Covered Programs and Eligibility**

As described in the terms and conditions of the award, programs in this cluster may be used for purposes consistent with the following Department of Health and Human Services (HHS) programs:

- a. Head Start
- b. Social Services Block Grant
- c. Health services (including mental health services)
- d. Repair or rebuilding of non-federal biomedical or behavioral research facilities

HHS may award grants, cooperative agreements, or contracts to eligible organizations in New York and New Jersey and, as applicable, in other states that were declared as major disaster jurisdictions by the Federal Emergency Management Agency (FEMA). These are as follows:

The states of Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, Ohio, Pennsylvania, Rhode Island, Virginia, and West Virginia, and the District of Columbia.

**Source of Governing Requirements**

This funding is authorized by the Disaster Relief Appropriations Act, Division A (Pub. L. No. 113-2), Title VI and Title X, Chapter 8.

**Availability of Other Program Information**

Additional program information is available from the following websites:

<https://eclkc.ohs.acf.hhs.gov/policy/pi/acf-pi-hs-18-02> (Head Start)

<https://www.acf.hhs.gov/ocs/programs/ssbg/hurricane-sandy-supplemental-funds>

(Social Services Block Grant)

<http://grants.nih.gov/grants/guide/notice-files/NOT-OD-13-106.html> (National Institutes of Health)

### III. COMPLIANCE REQUIREMENTS

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

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

#### A. Activities Allowed or Unallowed

1. The terms and conditions of the award will provide the allowable uses of these funds.
2. Funds provided under CFDA 93.095 and 93.096 may not result in duplication of benefits. If costs are reimbursed by FEMA, under a contract for insurance, or by self-insurance, they cannot be charged to the award (Pub. L. No. 113-2, Division A, 127 Stat. 11, 127 Stat. 34).
3. Funding subject to the Social Services Block Grant (SSBG) requirements may be used for health services, including mental health services and for costs of

renovating, repairing, and rebuilding health care facilities, child care facilities, or other social services facilities (Pub. L. No. 113-2, Division A, 127 Stat. 33).

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

The following specific requirements apply only to awards where the terms and conditions of the award identify funding subject to Head Start requirements found in 45 CFR part 1309:

1. Head Start grantees are required to operate and maintain facilities, real property, modular units, and related assets to ensure their use for the funded project purpose(s) and to adequately protect the federal interest in such facilities, real property, and related assets (45 CFR part 1309).
2. Real property acquired or constructed with Head Start funds or which has undergone major renovation with Head Start funds, may not be conveyed, transferred, assigned, mortgaged, leased, or otherwise encumbered or subordinated unless approved by ACF (45 CFR section 1309.21(b)).
3. A Head Start grantee must file a Notice of Federal Interest (also referred to as “reversionary interest”) when construction or major renovation begins or when an existing facility or land is acquired on which a facility will be built. The Notice of Federal Interest, meeting the requirements of 45 CFR section 1309.21(d)(2), must be filed in the appropriate public records of the jurisdiction in which the property is located (45 CFR section 1309.21(d)(2)). For modular units, the Notice of Federal Interest must be posted in a conspicuous place on the modular unit (45 CFR section 1309.31).

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

### **1. Matching**

Any matching requirements will be indicated in the terms and conditions of the award.

### **2. Level of Effort**

Not Applicable

### **3. Earmarking**

Any earmarking requirements will be indicated in the terms and conditions of the award.



## **H. Period of Performance**

Unless otherwise provided by statute or a waiver has been granted by the Office of Management and Budget (OMB), funds must be expended within 24 months of the beginning date of the period of performance (Pub. L. No. 113-2, Section 904(c)).

1. Funding subject to the SSBG requirements must be spent by September 30, 2017 (Pub. L. No. 113-2, 127 Stat. 33).
2. OMB granted the National Institutes of Health a waiver for construction and infrastructure projects. See Funding Opportunity Announcement RFA-OD-13-007 at <http://grants.nih.gov/grants/guide/rfa-files/RFA-OD-13-007.html>, Part 2. Full Text of Announcement, Section II. Award Information, Award Project Period: “The total project period may not exceed 5 years. Funds will be provided in a single award with a 60-month budget and project period.”

## **L. Reporting**

### **1. Financial Reporting**

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

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

Not Applicable

## **IV. OTHER INFORMATION**

Although funding for programs in this Hurricane Sandy Relief Cluster may be subject to the requirements of the Head Start (CFDA 93.600) or SSBG (CFDA 93.667) programs, they are separate from and, therefore, are not clustered with the Head Start or SSBG programs.

Awards from CFDA 93.095 and 93.096 that are identified in the notice of award as Research and Development (R&D) should be shown on the Schedule of Expenditures of Federal Awards as R&D and should be audited with the R&D cluster rather than this Hurricane Sandy Relief Cluster.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### **CFDA 93.153 COORDINATED SERVICES AND ACCESS TO RESEARCH FOR WOMEN, INFANTS, CHILDREN, AND YOUTH (Ryan White HIV/AIDS Program Part D Women, Infants, Children and Youth WICY Program)**

#### **I. PROGRAM OBJECTIVES**

The objective of this program is to provide family-centered care in an outpatient or ambulatory care setting (directly or through contracts or memoranda of understanding) for low income, uninsured and medically underserved women, infants, children, and youth with HIV.

#### **II. PROGRAM PROCEDURES**

The Department of Health and Human Services (HHS) administers the Ryan White HIV/AIDS Program (RWHAP) Part D Coordinated Services for Women, Infants, Children, and Youth (WICY) through the Health Resources and Services Administration (HRSA)'s HIV/AIDS Bureau (HAB). The RWHAP Part D WICY programs provide family-centered outpatient or ambulatory care setting (directly or through contracts or memoranda of understanding) for low income, uninsured and medically underserved women, infants, children, and youth with HIV. Recipients can also provide additional support services to patients and affected family members.

Grants under the RWHAP Part D WICY are awarded to public and non-profit private entities, including health facilities operated by or pursuant to a contract with the Indian Health Service, (42 USC 300ff-71(a)). Services may be provided directly by the recipient or through contractual agreements or memoranda of understanding with other service providers.

#### **Source of Governing Requirements**

The RWHAP Part D WICY is authorized under Section 2671 of Title XXVI of the PHS Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. No. 111-87) and is codified at 42 USC 300ff-71. The Minority AIDS Initiative (MAI) is authorized under Section 2693(b)(2)(D) of the PHS Act (42 USC 300ff-121(b)(2)(D)).

The RWHAP Part D WICY has no program-specific program regulations.

#### **Availability of Other Program Information**

Further information about the RWHAP Part D WICY is available at <http://www.hab.hrsa.gov/>.

Additional information on allowable uses of funds under the RWHAP Part D WICY is contained in policy notices and standards found at <http://www.hab.hrsa.gov/manageyourgrant/policiesletters.html>.

#### **III. COMPLIANCE REQUIREMENTS**

**In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included**

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

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

#### A. Activities Allowed or Unallowed

##### 1. *Activities Allowed*

- a. Funds may be used for family-centered care involving outpatient or ambulatory care, directly or through contracts or memoranda of understanding, for women, infants, children and youth with HIV. This includes provision of professional, diagnostic, and therapeutic services by a primary care provider, or a referral to and provision of specialty care; and services that sustain program activity and contribute to or help improve those services (42 USC 300ff-71(a) and (h)(3)).

Funds are not required to be used for primary care services when payments are available for such services from other sources (including Titles XVIII, XIX and XXI of the Social Security Act) (42 USC 300ff-71(i)).

- b. Funds may be used for the following support services for patients: (1) family-centered care, including case management; (2) referrals for additional services, including inpatient hospital services, treatment for substance abuse and mental health services, and other social and support services as appropriate; (3) additional services necessary to enable the

patient to participate in the RWHAP Part D WICY, including services to recruit and retain youth with HIV; and (4) provision of information and education on opportunities to participate in HIV/AIDS-related clinical research (42 USC 300ff-71(b)). Affected family members (people not identified with HIV) may be eligible for RWHAP support services in limited situations, but these services for affected individuals must always benefit people with HIV. Examples include but are not limited to, mental health services, and respite care. Services to non-affected family members who meet these criteria may not continue subsequent to the death of the RWHAP client. Refer to HAB Policy Clarification Notice # 16-02: Ryan White HIV/AIDS Program Services: Eligible Individuals & Allowable Uses of Funds for further information on circumstances in which affected family members may be eligible to receive RWHAP funded support services.

- c. Funds must be used for the establishment of a clinical quality management program to assess the extent to which HIV health services are consistent with the most recent Public Health Service guidelines for the treatment of HIV/AIDS and related opportunistic infections, and, as applicable, to develop strategies for ensuring that such services are consistent with the guidelines for improvement in the access to and quality of HIV health services (42 USC 300ff-71(f)(2)). Policy Clarification Notice #15-02 <https://hab.hrsa.gov/sites/default/files/hab/Global/CQM-PCN-15-02.pdf>.
- d. Funds may be used for administrative expenses, which are defined as funds used by recipients for grant management and monitoring activities, including costs related to any staff or activity other than provision of services. Indirect costs included in a federally negotiated indirect rate are considered part of administrative costs (See III.G.3, “Matching, Level of Effort, Earmarking – Earmarking,” for a limitation on expenditures for administrative costs) (42 USC 300ff-71(f)(1), (h)(1), and (h)(2)). Funds may be used for administrative expenses; no more than 10 percent on administrative expenses.

## 2. *Activities Unallowed*

- a. Funds may not be used for AIDS programs or to develop materials, designed to promote or encourage, directly, intravenous drug abuse or sexual activity, whether homosexual or heterosexual (42 USC 300ff-84).
- b. Funds may not be used to purchase sterile needles or syringes for the hypodermic injection of any illegal drug (Consolidated Appropriations Act, 2016 (Pub. L. No. 114-113), Division H, Title V, Section 520, and subsequent appropriations, as applicable). Other elements of syringe services programs may be allowable if in compliance with applicable HHS and HRSA-specific guidance.

- c. Funds may not be used to purchase or improve land or to purchase, construct, or make permanent improvement to any building (Funding Opportunity Announcement, Section IV.6).
- d. Funds may not be used to make cash payments to intended recipients of RWHAP services (Policy Clarification Notice #16-02, Ryan White HIV/AIDS Program Services: Eligible Individuals and Allowable Uses of Funds. [https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN\\_16-02Final.pdf](https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN_16-02Final.pdf))
- e. Charges that are billable to third party payors (e.g., private health insurance, prepaid health plans, Medicaid, Medicare, HUD, other RWHAP funding including ADAP).
- f. To directly provide housing or health care services (e.g., HIV care, counseling and testing) that duplicate existing services.
- g. PrEP or non-occupational Post-Exposure Prophylaxis (nPEP) medications or the related medical services. As outlined in the June 22, 2016 RWHAP and PrEP program letter, the RWHAP legislation provides grant funds to be used for the care and treatment of PLWH, thus prohibiting the use of RWHAP funds for PrEP medications or related medical services, such as physician visits and laboratory costs. RWHAP Part D funds can be used toward Psychosocial Support Services, a component of family-centered care, which may include counseling and testing and information on PrEP to eligible clients' partners and affected family members, within the context of a comprehensive PrEP program.
- h. Fundraising expenses.
- i. Lobbying activities and expenses.
- j. International travel.

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

Costs charged to federal funds under this program must comply with the cost principles at 45 CFR part 75, subpart E, and any other requirements or restrictions on the use of federal funding.

## **J. Program Income**

The Notice of Award provides guidance on the use of program income. The addition method is used for the Ryan White HIV/AIDS Program Part D. Program income must be used for activities described in III.A.1, "Activities Allowed."

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

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

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CFDA 93.210 TRIBAL SELF-GOVERNANCE PROGRAM – IHS COMPACTS/FUNDING AGREEMENTS**

#### **I. PROGRAM OBJECTIVES**

The objective of this program is to “improve and perpetuate the government-to-government relationship between Indian tribes and the United States and to strengthen tribal control over federal funding and program management” by enabling tribes to assume programs, services, functions, and activities (or portions thereof) (PSFAs) of the Indian Health Service (IHS), Department of Health and Human Services (HHS) that are otherwise available to Indian tribes (tribes) or Indians.

#### **II. PROGRAM PROCEDURES**

Title V of the Indian Self-Determination and Education Act (ISDEAA) (Pub. L. No. 106-260), which was signed into law August 18, 2000, provided permanent self-governance authority within IHS. A Self-Governance compact is a legally binding and mutually enforceable written agreement, including such terms as the parties intend shall control year after year, that affirms the government-to-government relationship between a Self-Governance Tribe and the United States. As a result, the provisions of compacts vary significantly, with only minimal cross-cutting compliance requirements.

A funding agreement (FA) is a legally binding and mutually enforceable written agreement that identifies the PSFAs that the Self-Governance Tribe will carry out, the funds being transferred from Service Unit, Area and Headquarters levels in support of those PSFAs, and such other terms as are required, or may be agreed upon, pursuant to Title V. Funding under FAs may be multi-year agreements.

Tribal compactors may provide health care services directly at facilities operated by the compactor or by operating a contract health services program as part of the FA. Contract health services are services provided to IHS-eligible beneficiaries by private sector health-care providers, such as hospitals and physicians, under contract with the tribal compactor.

#### **Source of Governing Requirements**

Title V of the ISDEAA, as amended, is codified at 25 USC 458aaa.

Regulations concerning the general administration of Indian health programs are found at 42 CFR part 136. Regulations implementing ISDEAA Title V and establishing the IHS Tribal Self-Governance program are found at 42 CFR part 137.

### III. COMPLIANCE REQUIREMENTS

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

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

#### A. Activities Allowed or Unallowed

1. Funds may be used to carry out and deliver the health services PSFA. The FA generally identifies the PSFAs to be performed or administered by the tribe (25 USC 458aaa-4(d)).
2. A Self-Governance Tribe may incur costs that are reasonable in amount and appropriate to the investment responsibilities of the Self-Governance Tribe (42 CFR section 137.101(c)).
3. Funds may be used to meet matching or cost participation requirements under any other federal or non-federal program; when used in this manner they are considered non-federal funds (42 CFR section 137.217).

#### B. Allowable Costs/Cost Principles

1. A Self-Governance Tribe must apply the applicable OMB cost principles, except as modified by 25 USC 450j–1, other provisions of law, or any exemptions to



applicable OMB circulars subsequently granted by OMB (42 CFR section 137.167).

2. For contract health services, the tribal compactor is the payer of last resort. Before seeking payment from the tribal compactor, the contract provider must first seek payment from all alternate resources, such as health care providers and institutions; health care programs including programs under the Social Security Act (i.e., Medicare or Medicaid); state or local health care programs; and private insurance. Where a third-party liability is established after the claim is paid, reimbursement from the third party should be sought (42 CFR section 136.61).

### **C. Cash Management**

A Self-Governance Tribe may retain and spend interest earned on any funds paid under a compact or FA (25 USC 458aaa-7(h); 42 CFR section 137.100).

### **E. Eligibility**

#### **1. Eligibility for Individuals**

- a. *Eligibility for services within facilities operated by the IHS (which are billed by IHS to the tribe) or run by a tribal organization for the Federal Government*
  - (1) Individuals of Indian descent belonging to the Indian community served by the local facilities and program are eligible to receive services. An individual may be regarded as within the scope of the Indian health and medical service if he/she is regarded as an Indian by the community in which he/she lives as evidenced by such factors as tribal membership, enrollment, residence on tax-exempt land, ownership of restricted property, active participation in Indian affairs, or other relevant factors in keeping with the general Bureau of Indian Affairs practices in the jurisdiction (42 CFR section 136.12(a)(2)).
  - (2) Non-Indian women pregnant with an eligible Indian's child are eligible for services. In cases where the woman is not married to the eligible Indian under applicable state or tribal law, paternity must be acknowledged in writing by the Indian or determined by order of a court of competent jurisdiction. Services may be provided only during the period of her pregnancy through postpartum (generally six weeks after delivery) (42 CFR section 136.12(a)).
  - (3) Services may be provided to non-Indian members of an eligible Indian's household if a medical officer in charge determines that such services are needed to control an acute infectious disease or a public health hazard (42 CFR section 136.12(a)).

- (4) Otherwise ineligible individuals may receive temporary care and treatment in case of an emergency, as an act of humanity (42 CFR section 136.14(a)).
- (5) Services may be provided on a cost basis to otherwise ineligible persons in accordance with the criteria in Section 813 of the Indian Health Care Improvement Act (25 USC 1621e).

b. *Eligibility for services in the Contract Health Services component of IHS*

- (1) In order to qualify for the Contract Health Services component of IHS:
  - (a) An individual must meet the requirements outlined in paragraph III.E.1.a, above (42 CFR section 136.23(a)); and
  - (b) Must either reside in the United States and on a reservation located within a Contract Health Service Delivery Area (CHSDA) as defined under 42 CFR section 136.22; or, if he/she does not reside on a reservation, reside within a CHSDA; and
  - (c) Be a member of the tribe or tribes located on that reservation or of the tribes or tribes for which the reservation was established; or maintain close economic and social ties with said tribe or tribes (42 CFR section 136.23(a)).
- (2) *Students* – Students continue to be eligible for contract health services during their full-time attendance at programs of vocational, technical, or academic education, including normal school breaks and for a period not to exceed 180 days after the completion of their studies (42 CFR section 136.23(b)).
- (3) *Transients* – Transient persons, such as those who are in travel or are temporarily employed, remain eligible for contract health services during their absence (42 CFR section 136.23(b)).
- (4) *Other Persons* – Other persons who leave the CHSDA in which they are eligible and are neither transients nor students remain eligible for contract health services for a period not to exceed 180 days from such departure (42 CFR section 136.23(c)).
- (5) *Foster Children* – Indian children who are placed in foster care outside a CHSDA by order of a court of competent jurisdiction and who were eligible for contract health services at the time of the court order shall continue to be eligible for contract health services while in foster care (42 CFR section 136.23(d)).

**2. Eligibility for Group of Individuals or Area of Service Delivery**

Not Applicable

**3. Eligibility for Subrecipients**

Not Applicable

**H. Period of Performance**

1. An FA shall have the term mutually agreed to by the parties. Absent notification from a tribe that it is withdrawing or retroceding the operation of one or more PSFAs identified in the FA, the FA shall remain in full force and effect until a subsequent FA is executed (42 CFR section 137.55).
2. All funds paid to an Indian tribe in accordance with a compact or FA shall remain available until expended (25 USC 458aaa-7(i)).

**J. Program Income**

1. For direct care services, the tribal compactor is eligible to pursue reimbursement from all applicable sources (25 USC 1621e, 42 USC 1395qq, and 42 USC 1396j).
2. All Medicare, Medicaid, or other program income earned by a tribe shall be treated as supplemental funding to that negotiated in the FA. The tribe may retain all such income and expend such funds in the current year or in future years except to the extent that the Indian Health Care Improvement Act (25 USC 1601 *et seq.*) provides otherwise for Medicare and Medicaid receipts (25 USC 450j-1 and 25 USC 458 aaa-7(j)). Such funds shall not result in any offset or reduction in the amount of funds the Self-Governance Tribe is authorized to receive under its FA in the year the program income is received or for any subsequent fiscal year (42 CFR section 137.110).
3. *Use of Funds Collected through HHS* – Tribes electing to receive Medicare and Medicaid reimbursement through HHS shall first use such income for the purpose of making any improvements in the hospital or clinic that may be necessary to achieve or maintain compliance with the conditions and requirements applicable generally to facilities of such type under Medicare or Medicaid programs (Pub. L. No. 106-291, 114 Stat. 978; 42 USC 1395qq; and 25 USC 1642).

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### CFDA 93.217 FAMILY PLANNING – SERVICES

#### I. PROGRAM OBJECTIVES

The purpose of the Family Planning – Services Project Grant (FPSPG) program is to provide funds for education, counseling, and comprehensive medical and social services necessary to enable individuals to freely determine the number and spacing of their children; and, by doing so, to help improve pregnancy outcomes, reduce infertility, and promote the health of females, males, and their families.

#### II. PROGRAM PROCEDURES

The FPSPG program is administered by the Office of the Secretary (OS)/Office of the Assistant Secretary for Health (OASH), a component of the Department of Health and Human Services (HHS). Within OS, the Office of Population Affairs is responsible for the program. The program has no statutory funds allocation formula; HHS makes discretionary grant awards whose amounts are based on estimates of the amounts necessary for successful project performance.

Any public or non-profit private entity in a state (which includes each of the 50 states, District of Columbia, Commonwealth of Puerto Rico, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands) may apply for a project grant under the program. The entity applying for the grant must follow Public Health System Reporting Requirements and submit to the state a plan for a coordinated and comprehensive program of family planning services.

Family planning services under the FPSPG program must be voluntary and must be made available without coercion and with respect for the privacy, dignity, and social and religious beliefs of the individuals being served. To the extent possible, entities that receive grants shall encourage family participation in projects assisted under this program.

#### Source of Governing Requirements

The FPSPG is authorized under Title X of the Public Health Service Act, as amended (42 USC 300 *et seq.*). The implementing regulations are at 42 CFR part 59.

#### Availability of Other Program Information

Additional information is available on the HHS Office of Population Affairs website at <http://www.hhs.gov/opa/>.

#### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance**

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

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

## A. Activities Allowed or Unallowed

### 1. Activities Allowed

- a. *Provision of services* – A project supported by the FPSPG must provide a broad range of family planning methods and services, including infertility services and services for adolescents. Services that may be funded for a particular project are identified in the grant application. They may include:
  - (1) *Medical services* – These include providing information on all FDA-approved methods of contraception (including natural family planning methods); counseling services; physical examinations, including cancer detection and laboratory tests; issuance of contraceptive supplies; periodic follow-up examinations; and referral to other medical facilities when medically indicated.
  - (2) *Social services* – These include counseling, referral to and from other social and medical service agencies, and such ancillary services as are necessary to facilitate clinic attendance.
  - (3) *Information and education* – These activities are designed to achieve community understanding of the program’s objectives, inform the community of the availability of program services, and

promote continued participation in the project by persons likely to benefit from its services (42 CFR sections 59.5(a)(1) and (b)).

- b. *Purchase of services* – If the grantee obtains services for its clients by contract or other arrangements with service providers, it must do so according to agreements with the providers that specify payment rates and procedures (42 CFR section 59.5(b)(9)).

2. *Activities Unallowed*

No Title X funds shall be used in programs where abortion is a method of family planning (42 CFR section 59.5(a)(5)).

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

**1. Matching**

The federal share of a FPSPG project's costs may never equal 100 percent nor be less than 90 percent (with certain exceptions). The federal and non-federal shares are stated in the Notice of Grant Award issued to the grantee (42 CFR sections 59.7(b) and (c)).

**2. Level of Effort**

Not Applicable

**3. Earmarking**

Not Applicable

**L. Reporting**

**1. Financial Reporting**

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

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CFDA 93.224 HEALTH CENTER PROGRAM (COMMUNITY HEALTH CENTERS, MIGRANT HEALTH CENTERS, HEALTH CARE FOR THE HOMELESS, AND PUBLIC HOUSING PRIMARY CARE)**

### **CFDA 93.527 GRANTS FOR NEW AND EXPANDED SERVICES UNDER THE HEALTH CENTER PROGRAM**

#### **I. PROGRAM OBJECTIVES**

The purpose of the Health Center Program (HCP) is to improve the health of the nation's underserved communities and vulnerable populations by assuring continued access to comprehensive, culturally competent, quality primary health care services. HCP grants support a variety of community-based and patient-directed public and private nonprofit organizations that provide primary and preventive health care services to the nation's underserved.

#### **II. PROGRAM PROCEDURES**

The purpose of the HCP grants is to support the costs of operating health centers that serve medically underserved populations.

HCP grants (Section 330 grants) are awarded and administered at the federal level by the Bureau of Primary Health Care (BPHC), HRSA, HHS. Based on applications submitted to and approved by HRSA, grants are provided to public and private non-profit organizations including tribal, faith-based and community-based organizations. Factors considered include the population to be served and the current availability of services in the geographical area to be served. Grantees may enter into service and care arrangements via contracts or other formal referral arrangements.

The authorizing statute for the HCP requires health centers to annually develop and submit to HRSA a budget that reflects expenses and revenues (including the Section 330 grant) necessary to accomplish the health center project service delivery plan. As such, the total budget must include projections from all revenue sources, including fees, premiums, and third-party reimbursements reasonably expected to be received to support operations, and state, local, private and other operational funding provided to the health center. The amount of the Section 330 grant funding to be provided by HRSA may not exceed the amount by which the projected cost of operations exceeds the projected non-grant revenue sources (42 USC 254(e)(5)(A), (k)(3)(D), and (k)(3)(I)(i) and 42 CFR section 51c.106).

#### **Source of Governing Requirements**

The HCP is authorized under Section 330 of the Public Health Service Act, as amended by Section 10503 of The Patient Protection and Affordable Care Act (Pub. L. No. 111-148). The statutory provisions are codified at 42 USC 254b. The implementing program regulations for Community Health Centers (CHCs) and Migrant Health Centers (MHCs) are codified at 42 CFR parts 51c and 56, respectively. The Health Care for the Homeless (HCH) and Public Housing Primary Care (PHPC) components do not have program-specific regulations.

## Availability of Other Program Information

Other program information is available from the BPHC website at <http://www.bphc.hrsa.gov/> and <http://www.bphc.hrsa.gov/programrequirements/index.html>.

## III. COMPLIANCE REQUIREMENTS

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

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

### A. Activities Allowed or Unallowed

#### 1. *Activities Allowed*

##### a. Required primary health services include:

- (1) Basic health services related to family medicine, internal medicine, pediatrics, obstetrics, or gynecology that are furnished by physicians and, where appropriate, by physician assistants, nurse practitioners, and nurse midwives (42 USC 254b(b)(1)(A)(i)(I)).
- (2) Diagnostic laboratory and radiological services (42 USC 254b(b)(1)(A)(i)(II)).



- (3) Preventive health services, including prenatal and perinatal services; appropriate cancer screening; well-child services; immunizations against vaccine-preventable diseases; screenings for elevated blood lead levels, communicable diseases, and cholesterol; pediatric eye, ear, and dental screenings; voluntary family planning services; and preventive dental services (42 USC 254b(b)(1)(A)(i)(III)).
  - (4) Emergency medical services (42 USC 254b(b)(1)(A)(i)(IV)).
  - (5) Pharmaceutical services, as may be appropriate for particular centers (42 USC 254b(b)(1)(A)(i)(V)).
  - (6) Referrals to providers of medical services, (including specialty referral when medically indicated) and other health-related services (including substance abuse and mental health services) (42 USC 254b(b)(1)(A)(ii)).
  - (7) Patient case management services (including counseling, referral, and follow-up services) and other services designed to assist health center patients in establishing eligibility for and gaining access to federal, state, and local programs that provide or financially support the provision of medical, social, educational, housing, or other related services (42 USC 254b(b)(1)(A)(iii)).
  - (8) Services that enable individuals to use the services of the health center (including outreach and transportation services and, if a substantial number of the individuals in the population served by the center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals) (42 USC 254b(b)(1)(A)(iv)).
  - (9) Education of patients and the general population served by the health center regarding the availability and proper use of health services (42 USC 254b(b)(1)(A)(v)).
  - (10) Substance abuse services for grantees with HCH grants (42 USC 254b(h)(2)).
- b. Additional health services that may be provided as appropriate to meet the health needs of the population to be served include:
- (1) Behavioral and mental health and substance abuse services 42 USC 254b(2)(A).
  - (2) Recuperative care services (42 USC 254b(b)(2)(B)).

- (3) Environmental health services, including the detection and alleviation of unhealthful conditions associated with water supply, chemical and pesticide exposures, air quality, or exposure to lead; sewage treatment; solid waste disposal; rodent and parasitic infestation; field sanitation; housing; and other environmental factors related to health (42 USC 254b(b)(2)(C)).
  - (4) For MHCs, special occupation-related health services for migratory and seasonal agricultural workers, including screening for and control of infectious diseases (including parasitic diseases) and injury prevention programs (including prevention of exposure to unsafe levels of agricultural chemicals including pesticides) (42 USC 254b(b)(2)(D)).
- c. Funds may be used for the reimbursement of members of the grantee's governing board, if any, for reasonable expenses incurred by reason of their participation in board activities (42 CFR sections 51c.107(b)(3) and 56.108(b)(3)).
- d. Funds may be used for the cost of insurance for medical emergency and out-of-area coverage (42 CFR section 51c.107(b)(6)).
- e. Funds may be used for the acquisition and lease of buildings and equipment (including the costs of amortizing the principal of, and paying the interest on, loans for equipment) (42 USC 254b(e)(2)).
- f. Funds may be used for the costs of providing training related to the provision of required primary health care services and additional health services and to the management of health center programs (42 USC 254b(e)(2)).

## 2. *Activities Unallowed*

- a. Federal funds awarded under the HCP may not be expended for any abortion. These limitations do not apply to an abortion (1) if the pregnancy is the result of an act of rape or incest; or (2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed (Consolidated Appropriations Act, 2017, Pub. L. No. 115-31), Division H, Title V, Sections 506 and 507).
- b. Federal funds awarded under the HCP may not be used to purchase sterile needles or syringes for the hypodermic injection of any illegal drug, provided that this limitation does not apply to the use of funds for elements of a program other than making such purchases if the relevant

state or local health department, in consultation with the Centers for Disease Control and Prevention, determines that the state or local jurisdiction, as applicable, is experiencing, or is at risk for, a significant increase in hepatitis infections or an HIV outbreak due to injection drug use, and such program is operating in accordance with state and local law (Consolidated Appropriations Act, 2016 (Pub. L. No. 114-113), Division H, Title V, Section 520, and subsequent appropriations, as applicable).

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

Costs charged to federal funds under the HCP award funds must comply with the cost principles at 45 CFR part 75, subpart E, and any other requirements or restrictions on the use of federal funding.

## **L. Reporting**

### **1. Financial Reporting**

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

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

*Uniform Data System (UDS) (OMB No. 0915-0193)* – This system is comprised of two separate sets of reports, the Universal Report and Grant Reports. The conditions for their use are:

- a. Grantees that receive a single grant under the HCP or that receive CHC funding only are required to complete the *Universal Report* only.
- b. Grantees that receive multiple awards (in addition to or other than CHC funding) must complete a *Universal Report* for the combined grants and individual *Grant Reports* for their HCH, MCH, and PHPC funding, if applicable.

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

See the Calendar Year 2018 UDS Reporting Manual for additional detail available at:

<https://bphc.hrsa.gov/sites/default/files/bphc/datareporting/reporting/2018-uds-reporting-manual.pdf>

Total accrued cost before donations and after allocation of overhead (Table 8A Line 17 Column c)

Total number of patients (Table 4 Line 6 Column a)

Total accrued medical staff and other medical cost after allocation of overhead excluding medical lab and x-ray cost (Table 8A, Line 1, Column c and Table 8A, Line 3, Column c)

Non-nursing medical visits (excludes nursing (RN) visits) (Table 5, Line 15, Column b and Table 5, Line 11, Column b)

Total accrued BPHC section 330 grants drawn-down for the period from January 1 to December 31, of the calendar measurement year (Table 9E, Line 1g, Column a)

## **N. Special Tests and Provisions**

### **1. Sliding Fee Discounts**

**Compliance Requirements** Health centers must prepare and apply a sliding fee discount schedule (SFDS) so that the amounts owed for health center services by eligible patients are adjusted (discounted) based on the patient's ability to pay as follows:

- a. Sliding fee discounts are applied to fees for health center services provided to all individuals and families with annual incomes at or below 200 percent of the Federal Poverty Guidelines (FPG);
- b. A full discount is applied to fees for health center services provided to individuals and families with annual incomes at or below 100 percent of the FPG, or the health center applies only a nominal charge;
- c. Fees for health center services are discounted based on gradations in family size and income for individuals and families with incomes above 100 and at or below 200 percent of the FPG; and
- d. No sliding fee discount is applied to fees for health center services provided to individuals and families with annual incomes above 200 percent of the FPG.

(42 USC 254(k)(3)(E), (F), and (G); 42 CFR sections 51c.303(e), (f), and (g); and 42 CFR sections 56.303(e), (f), and (g))

**Audit Objectives** Determine whether the health center has applied sliding fee discounts to patient charges consistent with its sliding fee discount schedule.

### **Suggested Audit Procedures**

- a. Review the health center's sliding fee discount schedule(s).
- b. Review a sample of financial records for patients treated during the audit period to determine whether patient charges were appropriately adjusted based on income and family size by applying the health center's sliding fee discount schedule. (**Note:** Auditors are not required to test any documentation used to establish or verify income.)

## **2. Compliance with Consolidated Appropriations Act**

**Compliance Requirements** Federal funds awarded under the HCP may not be expended for any abortion. These limitations do not apply to an abortion (1) if the pregnancy is the result of an act of rape or incest; or (2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed (Consolidated Appropriations Act, 2019, Pub. L. No. 115-245 Division B, Title V, Sections 506 and 507).

**Audit Objectives** Determine whether the health center (HC) performs abortions and if so, whether it has policies and procedures in place to ensure compliance with the Consolidated Appropriations Act, 2019, Pub. L. No. 115-245 Division B, Title V, Sections 506 and 507.

### **Suggested Audit Procedures**

- a. Inquire of the HC staff and examine the accounting records to determine whether any abortions were performed during the audit period. If yes, proceed to b. If no, no further procedures need be undertaken by the auditor.
- b. If abortions were performed during the period, gain an understanding if policies and procedures are in place that address the appropriate use of federal funds awarded under the HCP, specifically related to not utilizing the HCP grant for abortion activities unless one of the exceptions in the Consolidated Appropriations Act described above is met. If no, proceed to c. If yes, proceed to d.
- c. If internal controls over compliance with the Consolidated Appropriations Act described above that preclude certain abortion activities are absent or likely to be ineffective, see the alternative procedures in 2 CFR section 200.514(c)(4), including assessing the control risk at the maximum and considering whether reporting is required because of ineffective internal control.
- d. Plan the testing of internal controls to support a low assessed level of control risk for compliance with the Consolidated Appropriations Act described above which

precludes certain abortion activities and perform the testing of internal control as planned.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### CFDA 93.268 IMMUNIZATION COOPERATIVE AGREEMENTS

#### I. PROGRAM OBJECTIVES

The objective of the Immunization Cooperative Agreement program is to reduce and ultimately eliminate vaccine preventable diseases (VPDs) by increasing and maintaining high immunization coverage. Emphasis is placed on populations at highest risk for under-immunization and disease, including children eligible under the Vaccines for Children (VFC) program.

#### II. PROGRAM PROCEDURES

The Immunization Cooperative Agreements program consists of two parts: discretionary Section 317 immunization funding and VFC financed with mandatory Medicaid (CFDA 93.778) funding.

The objective of the discretionary Section 317 Immunization Cooperative Agreement program is to reduce and ultimately eliminate VPDs by increasing and maintaining high immunization coverage. Emphasis is placed on populations at highest risk for under-immunization and disease, which includes VFC-eligible children. The statute refers to development of programs for all individuals for whom vaccines are recommended, including infants, children, adolescents and adults. The intent of the discretionary Section 317 funding is to supplement, not supplant, each grantee's immunization effort at the state/local level. The Centers for Disease Control and Prevention (CDC), through its cooperative agreement guidance, has identified the following areas of activity for programmatic emphasis and funding prioritization: reduce the number of indigenous cases of VPDs; ensure that all children are appropriately vaccinated; improve vaccine safety surveillance; increase routine vaccination coverage levels for adolescents; and increase the proportion of adults who are vaccinated annually against influenza and who have ever been vaccinated against pneumococcal disease.

VFC, which is authorized by and financed through Title XIX of the Social Security Act (Medicaid), is activity-based financial assistance and direct assistance in the form of vaccine-purchase funds and program operations funds to support implementation of the VFC program. VFC is administered by CDC and is funded entirely by the federal government. VFC funds are provided to eligible organizations to develop and operate programs designed to ensure effective delivery of vaccination services to eligible children through enrolled providers of medical care. Grantees are required to encourage a variety of providers to participate in the VFC program and to administer vaccines in an appropriate cultural context. Grantees also are required to ensure that providers comply with the requirements of the VFC program. Other criteria, detailed in annual cooperative agreement application guidance documents, may also apply.

Under VFC, children from birth through 18 years of age are eligible for VFC-purchased vaccine if they are Medicaid-eligible, American Indian/Alaskan Native, or without health insurance.

Children who are insured but whose insurance does not cover vaccination also are eligible to receive VFC vaccine at federally qualified health centers or rural health clinics. The intent of the VFC program is to increase vaccination coverage levels by reducing financial barriers to

vaccination. The VFC program ensures that all eligible children receive the benefits of all recommended vaccines, thus strengthening immunity levels in their communities. The program also ensures that access to newly recommended vaccines for children in low-income and uninsured families does not lag behind that for children in middle- and upper-income families. In addition, the program helps to ensure that there is an adequate supply of routinely recommended vaccines when public health emergencies occur, including vaccine supply shortages.

VFC and Section 317 financial assistance (FA) is provided/obligated directly to immunization grantees for administrative and operations costs. Similarly, Section 317 FA is obligated to grantees for the purchase of vaccines not available through federal contracts. Funds for direct assistance (DA) vaccines are maintained at CDC and are periodically obligated to manufacturer contracts. Grantees are given estimated target budgets for their DA vaccine purchase needs. CDC uses these budgets as a control mechanism for vaccine orders.

Vaccines will be maintained by a federally contracted third-party distributor that receives orders from and ships vaccine to providers. Periodically, when the federal distributors' inventory reaches certain minimum thresholds, the distributor makes a request to CDC for replenishment vaccines. CDC reviews these requests and assigns funding sources to them (VFC or 317) based on the aggregate of grantee-submitted spend plans. Orders for the vaccines are processed and sent to the appropriate manufacturer(s), referencing funds that were previously obligated to the manufacturer contracts. The manufacturer fulfills the order and ships the vaccines to the federally contracted distributor.

### Source of Governing Requirements

These programs are authorized under 42 USC 247b, 42 USC 243, 42 USC 300aa-3, 300aa-25, and 300aa-26, 42 USC 1396s. Regulations specific to discretionary Section 317 grants may be found at 42 CFR part 51b.

## III. COMPLIANCE REQUIREMENTS

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



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

**A. Activities Allowed or Unallowed**

1. Discretionary Section 317 cooperative agreements funds may be used to establish and maintain a preventive health service program, including:
  - a. Research into the prevention and control of diseases that may be prevented through vaccination;
  - b. Demonstration projects for the prevention and control of such diseases;
  - c. Public information and education programs for the prevention and control of such diseases;
  - d. Education, training, and clinical skills improvement activities in the prevention and control of such diseases for health professionals; and
  - e. Operational activities associated with the conduct of a successful immunization program (42 USC 247b(k)(1)).
2. The VFC program is intended primarily as a vaccine purchase and supply program for eligible children. VFC funds may be expended to support costs associated with the following:
  - a. VFC vaccine ordering;
  - b. VFC vaccine distribution for grantees that have not transitioned to a federally contracted vaccine distributor; and
  - c. Direct VFC program operations, such as provider recruitment and enrollment, overall VFC program coordination, vaccine management and accountability, VFC provider accountability and site visit assessments, and VFC program evaluation (42 USC 1396s).

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

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

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**N. Special Tests and Provisions****1. Control, Accountability, and Safeguarding of Vaccine**

**Compliance Requirements** Effective control and accountability must be maintained for all vaccine under the VFC program. Vaccine must be adequately safeguarded and used solely for authorized purposes (42 USC 1396s). This includes administration only to VFC program-eligible children, as defined in 42 USC 1396s(b)(2)(A)(i) through (A)(iv), regardless of the child's parent's ability to pay (42 USC 1396s(c)(2)(C)(iii)).

**Audit Objectives** Determine whether the grantee provides oversight of program-enrolled providers to ensure that proper control and accountability is maintained for vaccine, vaccine is properly safeguarded (based on guidance provided by CDC), and VFC-eligibility screening is conducted.

**Suggested Audit Procedures**

- a. Determine if the grantee has a written procedure for overseeing program-enrolled providers that allows for sampling of provider's inventory records and assessment of storage procedures. Grantees are not required to sample the records of all providers.
- b. Determine if the grantee sampled the provider's inventory records to ensure proper recording of receipt, transfer, and usage of vaccine.
- c. Determine if the grantee reviewed the provider's storage of vaccine for proper safeguarding, including risks of loss from theft, expiration, or improper storage temperature.

- d. Determine if the grantee reviewed a sample of provider medical records for documentation of eligibility screening.
- e. Determine if necessary follow-up procedures were followed if any deficiencies were identified.

## **2. Record of Immunization**

**Compliance Requirements** A record of vaccine administered shall be made in each person's permanent medical record (or in a permanent office log or file to which a legal representative shall have access upon request) (42 USC 300aa-25), which includes:

- a. Date of administration of the vaccine;
- b. Vaccine manufacturer and lot number of the vaccine; and
- c. Name and address and, if appropriate, the title of the health care provider administering the vaccine.

**Audit Objectives** Determine whether the grantee provides oversight of vaccinating providers to ensure that the required information has been recorded for vaccine recipients.

### **Suggested Audit Procedures**

- a. Determine if the grantee has a written procedure for ensuring that the required information has been recorded for vaccine recipients.
- b. Determine if the grantee tested a sample of vaccination records to ascertain if the required information was maintained.
- c. Determine if the grantee took any follow-up action if the required records and information were not maintained.

## **IV. OTHER INFORMATION**

After the end of each month and after the end of each federal fiscal year, CDC advises each grantee of the value of all federally funded vaccine which was distributed, in lieu of cash, directly to the grantee and/or on behalf of the grantee to vaccinating providers located in the grantee's geographical area. The annual dollar value of federally funded vaccine should be treated by the grantee as expenditures under a federal award for purposes of determining audit coverage and reporting on the Schedule of Expenditures of Federal Awards. Vaccinating providers and vaccinated individuals are not considered subrecipients; therefore, the value of vaccine received is not considered as expenditures under a federal award for purposes of determining audit coverage and reporting for those entities.

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**  
**CFDA 93.423 WAIVERS FOR STATE INNOVATION FOR SECTION 1332 OF THE**  
**PATIENT PROTECTION AND AFFORDABLE CARE ACT (PPACA)**

**I. PROGRAM OBJECTIVES**

The purpose of the State Innovation Waiver (1332 Waiver) is to permit states to pursue innovative strategies for providing their residents with access to high-quality, affordable health insurance while retaining the basic protections of the PPACA. The 1332 Waivers allow states to implement innovative ways to provide access to quality health care that is at least as comprehensive and affordable as would be provided absent the waiver, provides coverage to a comparable number of residents of the state as would be provided coverage absent a waiver, and does not increase the federal deficit.

**II. PROGRAM PROCEDURES**

Section 1332 provides the Secretaries of HHS and the U.S. Department of the Treasury (the Treasury) (collectively referred to in this document as “the Departments”) with the discretion to approve a state's proposal to waive specific provisions of the PPACA, provided the proposal meets certain requirements (stated above). Upon receipt of an application, the Center for Consumer Information and Insurance Oversight’s (CCIIO) and Treasury’s Office of Tax Policy will coordinate the review and approval process with the Departments and applicable federal agencies (this may vary based on the type of application). The Centers for Medicare & Medicaid Services (CMS) CCIIO State Marketplace and Insurance Programs Group will provide coordination support, including management of the State Innovation Waiver mailbox. A state seeking a waiver should apply by submitting a completed application in electronic format to ([stateinnovationwaivers@cms.hhs.gov](mailto:stateinnovationwaivers@cms.hhs.gov)).

A State Innovation Waiver Cross-Component Work Group (1332 workgroup) includes subject matter experts and key contacts from the departments and other federal agencies, as needed, to examine the scope of each application. Each application is examined to certify that a waiver meets the guardrail requirements including the comprehensiveness standard (as required under the statute). While the 1332 workgroup does not have approval authority itself, it will ensure that the departments are involved at all levels of the application review process prior to rendering a final decision. Each waiver application is reviewed for completeness, and then approved or denied, as appropriate.

Once a state’s waiver application has been reviewed and approved, there is a coordinated grants management and oversight and monitoring process. The grant funding is inextricably linked to pass-through calculations, which are completed annually based on premium data that states must report back to the Departments every year to fulfill regulatory oversight, monitoring, and compliance requirements.

Section 1332 pass-through funding is the foundation of 1332 waivers. The state is entitled to the equivalent of forgone Exchange financial assistance (e.g., Premium Tax Credits) that the state would have received absent the waiver. This requires modeling both the waiver and non-waiver health insurance markets in the state, specifically Exchange premiums, and the resulting financial

assistance the state would have received absent the waiver. This provides for little discretion related to the amount of pass-through funding and the grant award amount except to devise the most appropriate methodology to model the waiver and non-waiver markets in the state. State Innovation Waivers are available for effective dates beginning on or after January 1, 2017. Funds are available for expenditure by grantees for a period of up to five years effective on the date specified in the grant specific terms and conditions (STCs), and states have the option to extend their waiver program beyond the initial five-year period of performance.

### Source of Governing Requirements

The 1332 Waiver program is authorized by the PPACA (Pub. L. No. 111-148) (March 23, 2010), which was amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152). The Departments promulgated implementing regulations in 2012, which are codified at 45 CFR Part 155 (Health and Human Services) and 31 CFR Part 33 (Treasury), respectively.

### Availability of Other Program Information

1. CCIIO has published general program information, including guidance on application requirements on its website at [https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section\\_1332\\_State\\_Innovation\\_Waivers-.html](https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-.html).
2. CCIIO has also developed a checklist for Section 1332 State Innovation Waiver applications, including specific items applicable to high-risk pool/state-operated reinsurance program applications at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Checklist-for-Section-1332-State-Innovation-Waiver-Applications-5517-c.pdf>.

## III. COMPLIANCE REQUIREMENTS

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

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

## A. Activities Allowed or Unallowed

### 1. Activities Allowed

- a. Individual awards are based on the waiver application approved by the Departments and are subject to the STCs in the Notice of Award (NoA). Activities are allowable as indicated in the grant STCs.
- b. 1332 Waivers allow the state to waive certain provisions of PPACA and the Internal Revenue Code (IRC) to allow for state innovation. Activities are allowable (as approved in the waiver application approval process) that enable the state to:
  - (1) Modify or eliminate qualified health plan (QHP) certification and the Exchanges as the vehicle for determining eligibility for subsidies and enrolling consumers in coverage.
    - (a) *Waives Part I of Subtitle D of the PPACA related to the establishment of QHPs.*
    - (b) *Waives Part II of Subtitle D of the PPACA related to the establishment of health insurance exchanges and related activities.*
  - (2) Modify the rules governing covered benefits and subsidies.
    - (a) *Waives Section 1402 of the PPACA related to cost-sharing subsidies to eligible individuals who purchase non-group health insurance through a health insurance exchange.*
    - (b) *Waives Section 36B of IRC related to premium tax credits to eligible individuals who purchase non-group health insurance through an exchange.*

- (3) Modify or eliminate penalties on large employers who fail to offer affordable coverage to their full-time employees.
  - (a) *Waives Section 4980H of the IRC shared responsibility requirement for large employers (employer mandate).*
  - (b) *Waives Section 5000A of the IRC related to the requirement for individuals to maintain health insurance coverage (individual mandate).*
- c. 1332 Waiver funds may be used for all program services consistent with the four criteria or “guardrails” in the statute:
  - (1) *Comprehensive Coverage* – States must provide coverage that is “at least as comprehensive” as coverage absent the waiver.
  - (2) *Affordable Coverage* – States must provide “coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable” as coverage absent the waiver.
  - (3) *Scope of Coverage* – States must provide coverage to “at least a comparable number of residents” as would have been covered without the waiver.
  - (4) *Federal Deficit* – The waiver must not increase the federal deficit.
    - (a) 1332 waivers allow states to modify the rules regarding covered benefits, subsidies, insurance marketplaces, and individual and employer mandates **only** if they meet these statutory “guardrails.”

## 2. *Activities Unallowed*

- a. 1332 Waiver funds may not be used for any program activities that are beyond the scope of the “guardrails” or are not consistent with the state’s approved waiver application and the grant STCs.
- b. Promotional items and capital or operating costs unassociated with the approved activities are not allowable.

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

- 1. Costs charged to federal funds under the 1332 Waiver program must comply with the cost principles at 45 CFR part 75, subpart E, and any other requirements or restrictions on the use of federal funding outlined in the grant STCs.
- 2. Grantees should supplement 1332 waiver funds with state funds or other sources of funding to implement the waiver program as needed. States are responsible for

making up any budget shortfalls to ensure that they fully implement the activities of their waiver program.

3. Grantees must comply with the HHS Grants Policy Statement and have approved documentation to prove pass-through funds were used for approved 1332 waiver activities. Sufficient evidence (as indicated in the approved waiver application) is required to substantiate any drawdown of funding from the Payment Management System (PMS).
4. Prospective and retroactive payments are allowed depending on the business model and grantee need in congruence with the STCs.
  - a. Grantees may make **prospective drawdowns** of funds prior to the completion of approved, funded activities after providing sufficient evidence of need when requesting to drawdown funds (as outlined in the waiver application).
  - b. Grantees may make **retroactive drawdowns** of funds as reimbursement for invoices received following completion of approved waiver activities (Reinsurance and Small Business Health Options program waivers fall under this category).
5. Agreed upon indirect costs are allowable using the current approved Negotiated Indirect Cost Rate Agreement.

### C. Cash Management

1. Under the 1332 Waiver program, funds awarded in a fiscal year are not required to be expended in that same fiscal year. Grantees may roll over unused funds awarded during the prior year for use in the following fiscal year for purposes of implementing the waiver program.
2. Grantees must comply with the HHS Grants Policy Statement and are required to maintain written policies and procedures to minimize the time elapsing between the transfer of funds from PMS and the disbursement of those funds by the recipient. The amount of time a grantee holds funds may not exceed three days. However, grantees are permitted to have access to the entire award amount in PMS until business needs dictate that they drawdown funds for the 1332 Waiver program.
3. Grantees must comply with the fiscal and budgetary reporting requirements and the grant STCs (SF424 and SF424a).
4. Unless otherwise specified in the grant STCs, grantees will request funds directly from PMS and are not able to hold drawdown funds in their bank account for longer than three days. All funds must either be distributed by the grantee or returned to the Treasury within three days.



5. Grantees are encouraged to use the cash-basis accounting method.
6. Grantees are not required to track the hourly wages of each employee that was paid by the grant vs. paid by program revenue. It is not a program requirement that these employees be tracked by the hour, but rather tracked by a percentage.

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

1. States must comply with the same policies and procedures they use for procurements from their non-federal funds. Non-federal entities other than states, including those operating federal programs as subrecipients of states, must follow the procurement standards set out in 2 CFR 200. They must use their own documented procurement procedures, which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal statutes and the procurement requirements identified in 2 CFR 200.
2. Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations. Grantees must regularly monitor the System for Award Management (SAM) for suspensions and debarments prior to issuing any subawards or contracts. Any parties that are debarred, suspended, or otherwise excluded are ineligible for participation in federal assistance programs or activities.
3. Grantees must comply with the requirement to maintain an active SAM registration. This requires that grantees review and update Central Contractor Registration (CCR) information at least annually after the initial registration, and more frequently if required by changes in the information.

## **L. Reporting**

### **1. Financial Reporting**

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

### **2. Performance Reporting**

As outlined in the grant STCs, grantees are required to submit both quarterly and annual reports that outline specific metrics and programmatic updates requested by the federal partners.

- a. **Quarterly Reporting** – Grantees are required to submit quarterly reports. At a minimum, these reports must highlight information on all ongoing operational challenges, as well as plans for, and results of, associated corrective action. This information is integral to calculating the state's pass-through funding amount and for ensuring the grantee's compliance with the statutory guard rails.

- b. **Annual Reporting** – Grantees are required to submit annual reports related to implementation of the waiver program no later than 90 days after the end of each waiver year. At a minimum, these reports must present an evaluation of the progress of the waiver, including a summary of the post-award forum, data in compliance with sections 1332(b)(1)(A)-(D) of the PPACA, and other information consistent with the grantee's STCs.

### 3. Special Reporting

Depending on the 1332 waiver type, and as outlined in the grant STCs, grantees may be required to submit additional reports prior to pass-through funding determination and release.

- a. **Federal Periodic Review** – Grantees must participate in the annual federal periodic review, which serves as CMS's formal review of the state's annual reporting for the previous year. The review will be held virtually following the final review and approval of the annual report and will include all relevant stakeholders.
- b. **Post-Award Forum** – The grantee must convene a public forum no later than six months after the implementation date of a 1332 waiver, and annually thereafter, to solicit comments on the progress of the waiver. The forum provides a platform for the grantee to involve members of the public in both current and future developments of its 1332 waiver. The forum must also allow members of the public to offer ideas, insights, and provide comments. The grantee must include details on the forum in its quarterly report submission, as well as in its annual report submission. Additional requirements for the public forum are included in the grantee's STCs.

### M. Subrecipient Monitoring

- 1. The Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200) require pass-through entities to evaluate each subrecipient's risk of noncompliance in order to determine the appropriate monitoring level, monitor the activities of subrecipient organizations to ensure that the subaward is in compliance with applicable federal statutes and regulations and terms of the subaward, and verify that subrecipients are audited as required by Subpart F of the Uniform Guidance.
  - a. Grantees must ensure that all requirements imposed by the federal government are flowed down to subrecipients so that the federal award is used in accordance with federal statutes, regulations, and the terms and conditions of the federal award.

- b. Grantees are also responsible for monitoring any additional requirements that its subrecipients must meet for the state to meet its own responsibility to HHS, including identification of any required financial and performance reports.

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CFDA 93.545 CONSUMER OPERATED AND ORIENTED PLAN [CO-OP] PROGRAM**

#### **I. PROGRAM OBJECTIVES**

The purpose of the Consumer Operated and Oriented Plan (CO-OP) program is to foster the creation of qualified nonprofit health insurance issuers to offer qualified health plans in the individual and small group markets in the states in which the issuers are licensed to offer such plans. These CO-OPs are consumer-governed, private, nonprofit health insurers.

#### **II. PROGRAM PROCEDURES**

At the federal level, the CO-OP program is administered by the Department of Health and Human Services, through the Centers for Medicare and Medicaid Services (CMS)/Center for Consumer Information and Insurance Oversight (CCIIO). In addition to improving consumer choice and plan accountability, the CO-OP program also seeks to promote integrated models of care and enhance competition in the Health Insurance Exchanges established under Sections 1311 and 1321 of the Affordable Care Act (ACA).

Established under Section 1322 of the ACA, the CO-OP program provides loans to capitalize eligible prospective CO-OPs with a goal of having at least one CO-OP in each state, although the statute permits the funding of multiple CO-OPs in any state, provided that there is sufficient funding to capitalize at least one CO-OP in each state.

Solvency loans are loans provided by CMS to a loan recipient in order to meet state solvency and reserve requirements, and start-up loans are loans provided by CMS to a loan recipient for costs associated with establishing a CO-OP. Both types of loans must be used consistent with the loan agreement and applicable statutory and regulatory requirements. Solvency loans are structured in a manner that ensures that the loan amount is recognized by state insurance regulators as contributing to the state-determined reserve requirements or other solvency requirements (rather than debt) as specified in the insurance regulations for the state in which the loan recipient will offer a CO-OP qualified health plan. Several, but not all, start-up loans to loan recipients have been structured as surplus notes in the years subsequent to first issuance on a case-by-case basis using specified criteria. For both types of loans, the loan recipient must make loan payments in accordance with the approved repayment schedule in the loan agreement until the loan is paid in full consistent with state reserve requirements, solvency regulations, and requisite surplus note arrangements. For the Start-up Loans, interest accrues from the date of drawdown on the loan amounts that have been drawn down and not yet repaid by the loan recipient. The interest rate for each loan is determined based on the date of award.

Information on what happens when loan recipients fail to make loan payments and conversions can be found in 45 CFR section 156.520 or under 42 USC 18042.

#### **Source of Governing Requirements**

The CO-OP program is authorized by the Patient Protection and Affordable Care Act (Public Law No. 111-148, which was enacted on March 23, 2010), which was amended by the Health

Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152). The two laws are collectively referred to as the “Affordable Care Act.” Section 1322 of the ACA created the Consumer Operated and Oriented Plan program, which is codified at 42 USC 18042, and program regulations are found at 45 CFR sections 156.500 through .520 (45 CFR part 156, subpart F—Consumer Operated and Oriented Plan program).

### Availability of Other Program Information

Additional information is available on the CCIIO website at <http://cciio.cms.gov/> or at <http://www.cms.gov/CCIIO/Programs-and-Initiatives/Insurance-Programs/Consumer-Operated-and-Oriented-Plan-Program.html>.

## III. COMPLIANCE REQUIREMENTS

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

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

### A. Activities Allowed or Unallowed

#### 1. *Activities Allowed*

In accordance with the loan agreement, these include the following categories and specified limitations:

- a. Start-up loan funds must only be used in accordance with the Business Plan and the Start-Up Loan Disbursement Plan.
- b. For both types of loans, the borrower must use the loan funds only for the following purposes: costs identified in the Business Plan and Disbursement Plans, and costs associated with establishing the CO-OP as an operating business.
- c. Costs associated with the initial operations of a CO-OP, including the following:
  - (1) Renting space for issuer administrative operations.
  - (2) Renting or developing information technology systems.
  - (3) Renting or developing provider networks.
  - (4) Hiring a management team with adequate insurance expertise and other administrative personnel.
  - (5) Hiring counsel and consultants to assist with state insurance laws and other licensure requirements.
  - (6) Negotiating and contracting with providers and vendors.
  - (7) Hiring actuaries.
  - (8) Conducting community and prospective member education and educating CO-OP members on the rights and responsibilities of member governance.
  - (9) Developing strategic plans to build enrollment.
  - (10) Establishing and participating in a private purchasing council.
  - (11) Paying for the initial costs of operational and administrative staff.
- d. Cost associated with establishing and maintaining capital reserves for Borrower (including Risk-Based Capital Reserves) consistent with state Reserve Requirements.
- e. Costs associated with providing information to members regarding their coverage, rights, and responsibilities.

## 2. *Activities Unallowed*

- a. Start-up loan funds cannot be used to pay for costs associated with purchase of land and construction of facilities, including clinical facilities.
- b. Start-up loan funds cannot be used for clinical expenses, such as medical services providers' salaries or payments; provider clinical space; clinical equipment; administrative staff associated with clinical functions; and clinical equipment (excluding clinical information technology).
- c. Borrowers cannot use any part of the loan funds for any of the following purposes or activities:
  - (1) To carry on propaganda or other activities attempting to influence legislation at the federal, state, or local level of government.
  - (2) To conduct marketing. "Marketing" for this purpose means activities that promote the purchase of a specific health care plan or explain a product's benefit structure to a specific customer. However "marketing" does not include activities related to community outreach, membership development, and membership education.
  - (3) To meet the matching requirements of any other federal program.
  - (4) To cover or pay excessive executive compensation as determined by the lender in its sole but reasonable discretion.
  - (5) To fund activities unrelated to CO-OP planning and establishment, including, but not limited to, staff retreats and promotional giveaways.
  - (6) To pay for services described in Section 1303(b)(1)(B)(i) of the ACA, which states "Abortions for which public funding is prohibited....The services described in this clause are abortions for which the expenditure of federal funds appropriated for the Department of Health and Human Services is not permitted, based on the law as in effect as of the date that is 6 months before the beginning of the plan year involved."

## L. **Reporting**

### 1. **Financial Reporting**

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

- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *CMS-10392, Monthly Reporting Requirements (OMB No. 0938-1139)*
- e. *CMS-10392, Quarterly Financial Statement or Annual Financial Statement (OMB No. 0938-1139)* – Attachment 4, National Association of Insurance Commissioners (NAIC) Quarterly Statement and Annual Statement: Financial Statement Underwriting and Investment Exhibit Part 3 – Analysis of Expenses

## **2. Performance Reporting**

*CMS-10392, Semi-annual Progress Report (OMB No. 0938-1139)*, Attachment 1, CO-OP Program Semi-Annual Progress Report Access Database

*Key Line Items* – The following sections contain critical information:

- 1. Changes to the Bylaws
- 2. Licensure and Accreditation
- 3. Member Control and Board Elections
- 4. Ethics, Conflict of Interest, and Disclosure Standards for Board of Directors and Executive Officers; Limitation on Government and Issuer Participation
- 5. Consumer Focus
- 6. Standards for Health Plan Issuance and Plan Management
- 9. Updated Business Plan
- 10. Financial Information
- 11. Agents and Brokers

## **3. Special Reporting**

Not Applicable

## **IV. OTHER INFORMATION**

CO-OPs are required to execute promissory notes for both the start-up and solvency loans. Prior loans have continuing compliance requirements. Therefore, the full outstanding balance on the notes must be considered federal awards expended, included in determining Type A programs, and reported as loans on the Schedule of Expenditures of Federal Awards in accordance with 2 CFR part 200, subpart F. Since the loan agreements require audited financial statements, CO-OPs may not elect a program-specific audit and must have an annual single audit.



## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CFDA 93.556 PROMOTING SAFE AND STABLE FAMILIES**

#### **I. PROGRAM OBJECTIVES**

The Promoting Safe and Stable Families (PSSF) program provides funds to states and federally recognized Indian tribes, tribal organizations, and tribal consortia (hereafter “tribe”) to prevent the unnecessary separation of children from their families, improve the quality of care and services to children and their families, and ensure permanency for children by reuniting them with their parents, by adoption or by another permanent living arrangement. The program includes family support, family preservation, family reunification, and adoption promotion and support services.

#### **II. PROGRAM PROCEDURES**

The Children’s Bureau, Administration on Children, Youth, and Families, Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS), administers the PSSF. To be eligible for funds, each state and tribe must submit a five-year comprehensive plan, the Child and Family Services Plan (CFSP). This plan encompasses planning and service delivery for the full child welfare services spectrum. This includes (1) child welfare services under Title IV-B, subparts 1 and 2; (2) a child welfare staff development and training plan; (3) a diligent recruitment of foster and adoptive families plan that reflects the ethnic and racial diversity of children in the state for whom foster and adoptive homes are needed; and (4) child abuse and neglect prevention, foster care, adoption, and foster care independence services, including an education and training voucher program for foster care youth. An Annual Progress and Services Report (APSR) is required that identifies the specific accomplishments and progress made in the past fiscal year toward meeting each goal and objective in the five-year comprehensive plan and any revisions in the statement of goals and objectives or to the training plan, if necessary, to reflect changed circumstances.

The Associate Commissioner of the ACF Children’s Bureau has approval authority for the Title IV-B plans. Following ACF approval, allotments to states are based on the number of children in the states who received supplemental nutrition assistance program benefits in the previous three years. Grants may also be made to tribes that qualify from reserved funds under the allotment formula; no tribe may be funded if its allotment is less than \$10,000. PSSF services are based on several key principles. The welfare and safety of children and of all family members should be maintained while strengthening and preserving the family. It is advantageous for the family as a whole to receive services, which identify and enhance its strengths while meeting individual and family needs. Services should be easily accessible, often delivered in the home or in community-based settings, and respect cultural and community differences. In addition, they should be flexible, responsive to real family needs, and linked to other supports and services outside the child welfare system. Services should involve community organizations and residents, including parents, in their design and delivery. They should be intensive enough to keep children safe and meet family needs, varying between preventive and crisis services.

## Source of Governing Requirements

PSSF is authorized under Title IV-B, subpart 2 of the Social Security Act, as amended, and is codified at 42 USC 629a through 629f. Implementing program regulations are published at 45 CFR parts 1355 and 1357.

## Availability of Other Program Information

The Children's Bureau manages a policy issuance system that provides further clarification of the law and guides states and tribes in implementing the PSSF program. This information may be accessed at <https://www.acf.hhs.gov/cb/laws-policies>.

## III. COMPLIANCE REQUIREMENTS

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

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

### A. Activities Allowed or Unallowed

#### 1. *Activities Allowed*

- a. Programs delivered in accessible settings in the community and responsive to the needs of the community and the individuals and families residing

therein. These services may be provided under public or private non-profit auspices (45 CFR section 1357.10(c)).

- b. Services for children and families designed to protect children from harm and help families (including foster, adoptive, and extended families) at risk or in crisis, including (42 USC 629a(a)(1)):
  - (1) Pre-placement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain with their families, where possible;
  - (2) Service programs designed to help children, where appropriate, return to families from which they have been removed; or be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement;
  - (3) Service programs designed to provide follow-up care to families to whom a child has been returned after a foster care placement;
  - (4) Respite care of children to provide temporary relief for parents and other caregivers (including foster parents);
  - (5) Services designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition;
  - (6) Infant safe haven programs to provide a way for a parent to safely relinquish a newborn infant at a safe haven designated pursuant to a state law; and
  - (7) Case management services designed to stabilize families in crisis such as transportation, assistance with housing and utility payments, and access to adequate health care.
- c. Community-based services to promote the well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families); increase parents' confidence and competence in their parenting abilities; afford children a stable and supportive family environment; strengthen parental relationships and promote healthy marriages and otherwise enhance child development, including through mentoring. Beginning on February 9, 2018, and thereafter, services may also be provided to support and retain foster families so they can provide quality family-based settings for

children in foster care. Family support services may include (42 USC 629a(a)(2); 45 CFR section 1357.10(c)):

- (1) Services, including in-home visits, parent support groups, and other programs designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition;
- (2) Respite care of children to provide temporary relief for parents and other caregivers;
- (3) Structured activities involving parents and children to strengthen the parent-child relationship;
- (4) Drop-in centers to afford families opportunities for informal interaction with other families and with program staff;
- (5) Transportation, information, and referral services to afford families access to other community services, including child care, health care, nutrition programs, adult education literacy programs, legal services, and counseling and mentoring services; and
- (6) Early developmental screening of children to assess the needs of such children, and assistance to families in securing specific services to meet these needs.

- d. Services and activities that are provided to a child who is removed from his/her home and placed in a foster family home or a child care institution and to the parents or primary caregiver of such a child, in order to facilitate the reunification of the child safely and appropriately within a timely fashion and to ensure the strength and stability of the reunification. For periods prior to October 1, 2018, these services may have been provided only during the 15-month period that began on the date the child, pursuant to 42 USC 675(5)(F), was considered to have entered foster care.

For periods beginning on October 1, 2018, and later, family reunification services may be provided on behalf of a child in foster care without a time limit. Additionally, in the case of a child who has been returned home, these services and activities may also be provided, but shall only be provided during the 15-month period that begins on the date that the child returns home.

The services and activities for family reunification services are the following (42 USC 629a(a)(7)):

- (1) Individual, group, and family counseling;
  - (2) Inpatient, residential, or outpatient substance abuse treatment services;
  - (3) Mental health services;
  - (4) Assistance to address domestic violence;
  - (5) Services designed to provide temporary child care and therapeutic services for families, including crisis nurseries;
  - (6) Peer-to-peer mentoring and support groups for parents and primary caregivers;
  - (7) Services and activities designed to facilitate access to and visitation of children by parents and siblings; and
  - (8) Transportation to or from any of the services and activities described above.
- e. Services and activities designed to encourage more adoptions out of the foster care system, when adoption promotes the best interest of the child, including such activities as pre- and post-adoptive services and activities designed to expedite the adoption process and support adoptive families (42 USC 629a(a)(8)).
- f. Administrative costs (defined as costs of auxiliary functions as identified through an agency's accounting system that are allocable, in accordance with the agency's approved cost allocation plan, to the Title IV-B, subpart 2 program cost centers; necessary to sustain the direct effort involved in administering the state plan or an activity providing service to the programs, and centralized in the grantee department or in some other agency) are allowable. Administrative costs include, but are not limited to, the following: procurement; payroll; personnel functions; management; maintenance and operation of space and property; data processing and computer services; accounting; budgeting; and auditing (45 CFR sections 1357.32(h)(1) and (2)). See III.G.3, "Matching, Level of Effort, Earmarking – Earmarking," for a limitation on the amount of administrative costs.
- g. Program costs, which are costs other than administrative costs, incurred in connection with developing and implementing the CFSP (e.g., delivery of services, planning, consultation, coordination, training, quality assurance measures, data collection, evaluations, and supervision) (45 CFR section 1357.32(h)(3)).

2. *Activities Unallowed*

Funds awarded under Title IV-B, subpart 2, may not be used for the purchase or construction of facilities (45 CFR section 1357.32(e)).

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

**1. Matching**

Funds are federally reimbursed at 75 percent of allowable expenditures. The Title IV-B agency's contribution may be in cash, donated funds, and non-public third party in-kind contributions (45 CFR section 1357.32(d)).

**2. Level of Effort**

**2.1 Level of Effort – *Maintenance of Effort***

Not Applicable

**2.2 Level of Effort – *Supplement Not Supplant***

- a. States and tribes (42 USC 629c) may not use federal funds under Title IV-B, subpart 2, to supplant federal or non-federal funds for existing services.
  - (1) “Non-Federal” funds are defined at 42 USC 629a(a)(9) as “State funds, or at the option of a State, State and local funds.” Although state matching may be in the form of cash, donated funds, or non-public third party in-kind contributions, the “supplement not supplant” requirement is limited to non-federal funds as defined in 42 USC 629a(a)(9).
  - (2) The base year for determining compliance with this requirement is the amount of funds that the state expended for services in the state's fiscal year 1992 (42 USC 629b(a)(7); 45 CFR section 1357.32(f)). The regulations have not been updated to reflect the amendments to the Social Security Act made by the Adoption and Safe Families Act (ASFA) that added two new service categories (i.e., time-limited family and reunification services and adoption promotion and support services) to those specified in 45 CFR section 1357.32(f); however, the base year (1992) remains the same for all four service areas under Title IV-B, subpart 2 (42 USC 629b(a) and (b)(1); ACYF-CB-PI-99-07).

- b. The state may not use the amount specified in III.G.3.c, “Matching, Level of Effort, Earmarking – Earmarking,” to supplant any federal funds paid to the state under part E that could be used for monthly caseworker visitation with children who are in foster care and activities designed to improve caseworker retention, recruitment, training, and ability to access the benefits of technology (42 USC 629f(4)(B)(ii)).

### 3. Earmarking

- a. Unless approved by ACF, states must expend a significant portion of their grant, defined as 20 percent, on each of the following: (1) programs of family preservation services, (2) community-based family support services, (3) time-limited family reunification services, and (4) adoption promotion and support services (42 USC 629b(a)(4); 45 CFR section 1357.15(s); ACYF-CB-PI-10-09 (found at <https://www.acf.hhs.gov/cb/resource/pi1009>). This provision is not applicable to tribes per exemption authority (42 USC 629b(b)(2)(A)); 45 CFR section 1357.50(f)(1)(iii)).
- b. States may not expend more than 10 percent of federal funds for administrative costs (42 USC 629b(a)(4)). There is no limitation on the percentage of administrative costs that may be reported as state match. This provision is not applicable to tribes per exemption authority (42 USC 629b(b)(2)(A)); 45 CFR section 1357.50(f)(1)(i)).
- c. A state shall use the special allocation provided pursuant to Pub. L. No. 112-34 to support monthly caseworker visits with children who are in foster care with a primary emphasis on activities designed to improving caseworker decision making on the safety, permanency, and well-being of foster children and on activities designed to increase retention, recruitment and training of caseworkers (42 USC 629f(b)(4)(B)(i)). The limitation on the use of federal funds for administrative costs described in paragraph G.3.b also applies to this special allocation.

## H. Period of Performance

Funds under Title IV-B, subpart 1, must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded (45 CFR section 1357.30(i)).

## L. Reporting

### 1. Financial Reporting

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

- c. *SF-425, Federal Financial Report* – Applicable (expenditure reporting only)

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### CFDA 93.558 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

#### I. PROGRAM OBJECTIVES

The objectives of the state and tribal TANF programs are: to provide time-limited assistance to needy families with children so that the children can be cared for in their own homes or in the homes of relatives; to end dependence of needy parents on government benefits by promoting job preparation, work, and marriage; to prevent and reduce out-of-wedlock pregnancies, including establishing prevention and reduction goals; and to encourage the formation and maintenance of two-parent families.

#### II. PROGRAM PROCEDURES

##### A. Overview

The Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS), administers the TANF program on behalf of the federal government. To be eligible for the TANF block grant, a state (including the District of Columbia, the Commonwealth of Puerto Rico, the United States (U.S.) Virgin Islands, Guam, and American Samoa) must periodically submit a state plan containing specified information and assurances.

##### 1. *States*

Following ACF review of the state plan and determination that it is complete, ACF awards the basic “State Family Assistance Grant” (SFAG) to the state using a formula allocation derived from funding levels under TANF’s predecessor programs. The SFAG is a fixed amount to the state subject to reductions based on any penalties assessed. In addition, SFAG amounts will be adjusted for any federally recognized Indian tribes within the state that operate separate tribal TANF programs. States have significant flexibility in designing programs and determining eligibility requirements within broad federal parameters. While states have flexibility and discretion, there are provisions to ensure accountability for results, including requirements for reporting data on expenditures and individuals receiving benefits under the program, and monetary penalties for failure to meet programmatic requirements such as work participation requirements.

The federal TANF block grant program also has an annual cost-sharing requirement, known as maintenance-of-effort (MOE). A state must spend each fiscal year at least 80 percent of its historic state expenditures to provide benefits and services to eligible clientele. If the state meets both its required minimum overall (“all-family”) and two-parent work participation rates for a federal fiscal year (FFY), then the required MOE spending level decreases to 75 percent of its FFY 1994 historic state expenditures. “Historic state expenditures” means the state’s FFY 1994 share of expenditures in the former Aid to Families with

Dependent Children (AFDC), EA, AFDC-Related Child Care, Transitional Child Care, At-Risk Child Care, and JOBS programs. States may not use more than 15 percent of the total amount of countable expenditures for the fiscal year for administrative activities.

2. *Tribes*

Tribal Family Assistance Plans (TFAP) are developed for a three-year period and submitted to ACF for review and approval. The Tribal Family Assistance Grant (TFAG) is derived from an amount equal to the federal share of expenditures, other than child care costs, by the state or states under the former AFDC, EA, and JOBS programs for FFY 1994 for all American Indian families residing in the service area identified in the TFAP. The TFAG is a fixed amount, subject to reductions based on any penalties assessed. As long as the minimum requirements are met, Indian tribes (tribes) have significant flexibility in designing programs and determining eligibility requirements and may use grant funds to provide cash or non-cash assistance, including direct services, and for administrative activities.

As also stated in IV, “Other Information - Tribal TANF Grantees under a Pub. L. No. 102-477 Demonstration Project (477),” audits of Indian tribal governments with Tribal TANF in their approved 477 plan must follow the guidance in the 477 Cluster found in the Department of the Interior’s section of Part 4 for this Supplement.

**B. Funding**

1. *States*

States have options for how to expend federal grant funds and state maintenance-of-effort (MOE) funds. Certain statutory and regulatory requirements apply depending on whether the source of the funding for a service, or benefit is federal funds alone, state MOE funds, or a combination of the two. For this reason, this supplement explains requirements based on how the state reports expenditures for a given service or benefit.

- a. *Federal Only* – A state should report an expenditure as “federal only” when it uses only federal grant funds, without including any MOE funds.
- b. *Commingled Federal/State* – A state should report an expenditure as “commingled” when it uses both federal grant and MOE funds for the benefit or service. Commingled funding of a service or benefit means that the expenditure is subject to all federal funding restrictions, TANF requirements, and MOE limitations, or the most restrictive of these if they conflict.

- c. *Segregated State* – A state should report an expenditure as “segregated state” if it uses MOE funds in the TANF program operated by the state and uses no federal grant funds for the benefit or service.
- d. *Separate State Program* – A state should report an expenditure as funded by a “separate state program” if it reports state expenditures as MOE as part of a program, operated outside of the TANF program operated by the state.

Federal grant funds and MOE funds must both be used for “expenditures.” A definition of the term “expenditure” is found in 45 CFR section 260.30. In addition, 45 CFR section 260.33 explains the circumstances under which certain state tax relief provisions would count as expenditures.

## 2. *Tribes*

Similar to states, tribes have options for how to expend federal grant funds and, where applicable, state MOE funds. Certain statutory and regulatory requirements apply depending on whether the source of the funding for a service, or benefit, is federal funds alone, state MOE funds, or a combination of the two. For this reason, throughout this supplement, we explain requirements based on how the tribe reports expenditures for a given service or benefit.

- a. *Federal Only* – A tribe should report an expenditure as “federal only” when it uses only federal grant funds, without including any state-donated MOE funds or tribal funds that are expended in the TANF program operated by the tribe.
- b. *Commingled Federal/State-donated MOE* – A tribe should report an expenditure as “commingled” when it uses both federal grant and state-donated MOE funds for the benefit or service. Commingled funding of a benefit or service means that the expenditure is subject to all federal funding restrictions and state MOE limitations, or the most restrictive of these if they conflict.
- c. *Segregated Tribal* – A tribe should report an expenditure as “segregated tribal” if it uses state MOE funds expended separately in the TANF program operated by the tribe and uses no federal grant funds for the benefit or service. See IV, “Other Information,” for guidance on state MOE expended by tribes.

## Source of Governing Requirements

These programs are authorized under Title IV-A of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. No. 104-193) and subsequent amendments thereto, and are codified at 42 USC 601-619.

The governing regulations for states are those in 45 CFR parts 260 – 265. Regulations for tribal TANF are in 45 CFR part 286.

All state and all tribal TANF programs are subject to the provisions in the HHS implementation of 2 CFR part 200 at 45 CFR part 75.

## Availability of Other Program Information

TANF-ACF-PI-2007-08, dated November 28, 2007, on *Using Federal TANF and State Maintenance-of-Effort (MOE) Funds for Families in Areas Covered by a Federal or State Disaster Declaration* presents items to consider with respect to the current TANF program when addressing the needs of families affected by a federally or state-declared disaster. TANF-ACF-PI-2007-08 is available at <https://www.acf.hhs.gov/ofa/resource/policy/pi-ofa/2007/200708/pi200708>

Other general program information regarding the state and tribal TANF programs is available from the Office of Family Assistance (OFA) website at <https://www.acf.hhs.gov/ofa/programs>

## III. COMPLIANCE REQUIREMENTS

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

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

#### A. Activities Allowed or Unallowed

This program refers to states, however, in some cases, subrecipients of states (e.g., local governments) may be responsible for compliance requirements that are referred to in this Supplement as “state.” The auditor should adjust accordingly for the entity being audited. (typical for all requirements)

##### 1. States

##### a. Federal Only

- (1) Funds may be used for expenditures for activities that are not permissible under 42 USC 601, but for which the state was authorized to use Title IV-A or IV-F funds under prior law. The previously authorized activities must have been included in a state’s approved state AFDC plan, JOBS plan, or Supportive Services plan, as in effect on September 30, 1995, or at the state’s option, on August 21, 1996. Examples of such activities are authorized juvenile justice and foster care activities (42 USC 604(a)(2); 45 CFR section 263.11(a)(2)).
- (2) A state may transfer up to 30 percent of its total of current fiscal year funds (not prior fiscal year funds carried into the current fiscal year) received under the SFAG to carry out programs under the Social Services Block Grant (Title XX) (CFDA 93.667) and/or the Child Care and Development Block Grant (CFDA 93.575). However, no more than 10 percent may be transferred to Title XX, and such amounts may be used only for programs or services to children or their families whose income is less than 200 percent of the poverty level. Neither contingency funds under 42 USC 603(b) nor emergency contingency funds under 42 USC 603(c) (Pub. L. No. 111-5) may be transferred under this authority (); (42 USC 604(d)). The poverty guidelines are issued each year in the *Federal Register* and HHS maintains a website that provides the

poverty guidelines (<http://aspe.hhs.gov/poverty/index.shtml>).

When transferred, the funds are subject to the rules of the program to which they are transferred (within statutory restrictions) and should be audited under that program. Please refer to Part IV Item 1, “Transfers out of TANF.”

b. Federal Only and Commingled Federal/State

Funds may not be used to provide medical services other than pre-pregnancy family planning services (42 USC 608(a)(6)).

c. Federal Only, Commingled Federal/State, Segregated State, Separate State Program

- (1) A state may use funds in any manner reasonably calculated to accomplish the purposes of the program, including providing low-income households with assistance in meeting home heating and cooling costs (42 USC 604(a)(1) and 45 CFR section 263.11(a)(1)). As specified in 42 USC 601 and 45 CFR section 260.20, the TANF program has the following purposes (**Note:** In the following sections of this program supplement, these are referenced as TANF purposes 1, 2, 3, and 4, respectively):
  - (a) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
  - (b) End dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
  - (c) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
  - (d) Encourage the formation and maintenance of two-parent families.
- (2) A state may use funds for programs to prevent and reduce the number of out-of-wedlock pregnancies, including programs targeted to law enforcement officials, the educational system, and counseling services that provide education and training of women and men on the problem of statutory rape (42 USC 602(a)(1)(A)(v) and (vi)).
- (3) A state may use funds make payments or provide job placement vouchers to state-approved public and private job placement

agencies providing employment placement services to individuals receiving assistance under TANF (42 USC 604(f)).

- (4) A state may use funds to implement an electronic benefits transfer system (42 USC 604(g)).
- (5) A state may use funds to carry out a program to fund individual development accounts (42 USC 604(h)(2); 45 CFR sections 263.20 through 263.23) established by individuals eligible to receive assistance under TANF (42 USC 604(h); 45 CFR part 263, subpart C).
- (6) A state may contract with charitable, religious, and private organizations to provide administrative and programmatic services and may provide beneficiaries of assistance with certificates, vouchers, or other forms of disbursement that are redeemable with such organization (42 USC 604a(b), 42 USC 604a(k), and 45 CFR section 260.34). However, funds provided directly to participating organizations may not be used for inherently religious activities, such as worship, religious instruction, or proselytization (42 USC 604a(j); 45 CFR section 260.34(c)).

d. Prohibition on Use of Federal TANF and State MOE funds for Juvenile Justice Services

See IV, "Other Information," for area of risk of non-compliance for juvenile justice services.

2. *Tribes*

a. Federal Only

- (1) A tribe may use funds for expenditures for activities that are not permissible under 42 USC 601, but for which the state or tribe was authorized to use Title IV-A or IV-F funds under prior law. The previously authorized activities must have been included in a state's approved state AFDC plan, JOBS plan, or Supportive Services plan, as in effect on September 30, 1995, or at the state's option, on August 21, 1996. Examples of such activities are authorized juvenile justice and foster care activities (42 USC 604(a)(2); 45 CFR section 263.11(a)(2)). Use of such funds in the tribal TANF program is allowed if the geographic area of the tribal TANF program is within the state(s) having had an approved AFDC state plan(s) under Title IV-A that included these activities. If the tribe plans to exercise this option, these activities must be included in the approved tribal TFAP.

- (2) Tribes may not transfer any federal TANF funds to the Social Services Block Grant (Title XX) (CFDA 93.667) or the Child Care and Development Block Grant (CFDA 93.575). Funds may not be used to contribute to or subsidize non-TANF programs (42 USC 604(d); 45 CFR section 286.45 (b)).
- b. Federal Only, Commingled Federal/State-donated MOE, Segregated Tribal
- (1) A tribe may use funds in any manner reasonably calculated to achieve the purposes of the tribal TANF program, including providing low-income households with assistance in meeting home heating and cooling costs (42 USC 604(a)(1) and 45 CFR section 286.35(a)(1)). As specified in 42 USC 601 and 45 CFR section 286.35, the tribal TANF program has the following purposes **(Note: In the following sections of this program supplement, these are referenced as TANF purposes 1, 2, 3, and 4, respectively):**
    - (a) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
    - (b) End dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
    - (c) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
    - (d) Encourage the formation and maintenance of two-parent families.
  - (2) A tribe may use funds for programs to prevent and reduce the number of out-of-wedlock pregnancies, including programs targeted to law enforcement officials, the educational system, and counseling services that provide education and training of women and men on the problem of statutory rape (42 USC 602(a)(1)(A)(v) and (vi)).
  - (3) A tribe may use funds to make payments or provide job placement vouchers to tribe-approved public and private job placement agencies providing employment placement services to individuals receiving assistance under TANF (42 USC 604(f)).
  - (4) A tribe may use funds to implement an electronic benefits transfer system (42 USC 604(g)).



- (5) A tribe may use funds to carry out a program to fund individual development accounts (42 USC 604(h)(2)) established by individuals eligible to receive assistance under Tribal TANF (42 USC 604(h); 45 CFR section 286.40).
- (6) A tribe may contract with charitable, religious, and private organizations to provide administrative and programmatic services and may provide beneficiaries of assistance with certificates, vouchers, or other forms of disbursement which are redeemable with such organization (42 USC 604a(b) and 42 USC 604a(k)). However, tribes that operate their own TANF program under section 412 of the Social Security Act are not required to follow the Charitable Choice rules because the statutory provisions on Charitable Choice apply only to state and local governments (42 USC 604a(j); September 30, 2003, *Federal Register*, (68 FR 56450 and 56463)).
- (7) Tribal TANF grantees that expend federal funds on economic development activities must adhere to the instructions contained in the TANF Program Instruction, TANF-ACF-PI-2005-02, dated April 19, 2005, pertaining to economic development expenditures. This program instruction is available at <https://www.acf.hhs.gov/ofa/resource/policy/pi-ofa/2005/pi2005-2htm> (45 CFR section 286.35(a)(1)).
- (8) Unlike states, tribes are not prohibited from expending funds for medical expenses, if the expenditure is in the context of removing barriers to employment, training, or job-related education. However, funds cannot be used for general medical expenses for families. The expenditure of TANF funds is not intended to subsidize, contribute to, or supplant other available medical services or funding, i.e., Indian Health Service, Public Health Service, tribal health services, state, county, and local health services, or other services covered by Medicaid, Medicare, or private health insurance (42 USC 608(a)(6), 45 CFR section 286.45(b)).

## **E. Eligibility**

### **1. Eligibility for Individuals**

The state or tribal plan provides the specifics on the state or tribal area's definition of financially needy which the state or tribal area uses in determining eligibility. Whenever used in this section, "assistance," has the meaning in 45 CFR section 260.31(a) of the TANF regulations for states and 45 CFR section 286.10 of the tribal TANF regulations for federally recognized tribes operating an approved

tribal TANF program. Plan and eligibility requirements must comply with the following federal requirements:

- a. Federal Only, Commingled Federal/State, Segregated State, and Separate State Program
  - (1) Only a financially needy family that consists of, at a minimum, a minor child living with a parent or other caretaker relative, or a pregnant woman may receive TANF “assistance” or most maintenance-of-effort (MOE)-funded benefits, services, or “assistance” regardless of the TANF purpose that the expenditure is reasonably calculated to accomplish (see III.A.1.c, “Activities Allowed or Unallowed – *Federal Only, Commingled Federal/State, Segregated State, Separate State Program*”). The child must be less than 18 years old, or, if a full-time student in a secondary school (or the equivalent level of vocational or technical training), less than 19 years old. (With respect to segregated or separate state MOE funds, the state could use the definition for minor child given in section 419(2) of the Social Security Act or some other definition applicable in state law provided the state can articulate a rational basis for the age it chooses.) Financially “needy” means financially eligible according to the state’s quantified income and resource (if applicable) criteria to receive the benefit (42 USC 602 and 602(a)(1)(B)(iii), 42 USC 609(a)(7)(B)(IV), and 42 USC 608(a)(1), 619(2); 45 CFR section 263.2(b)(2)). See III.G.2.1, “Matching, Level of Effort, Earmarking – Level of Effort – *Maintenance of Effort*,” for the limited MOE pro-family exception to this requirement.

**Note:** A state may continue to provide federally funded (*Federal Only*) TANF “assistance” pursuant to 42 USC 604(a)(2) using the financial eligibility criteria contained in the state’s approved AFDC, EA, JOBS, or Supportive Services plan as of September 30, 1995 (or at state option, as of August 21, 1996). A state may also continue this assistance notwithstanding the family composition requirement described above. (See III.A.1.a(1), “Activities Allowed or Unallowed.”)

Only the financially “needy” are eligible for services, benefits, or “assistance” pursuant to TANF purpose 1 or 2 (see III.A.1.c., “Activities Allowed or Unallowed – *Federal Only, Commingled Federal/State, Segregated State, Separate State Program*”) (42 USC 601(a)(1) and (2); 45 CFR sections 260.20(a) and (b)). Financially “needy” for TANF and MOE purposes means financial deprivation, i.e., lacking adequate income and resources. For example, a needy family or a needy parent is one who is financially eligible according to the state’s quantified financial

eligibility criteria (income and resource (if applicable) standards, April 12, 1999, *Federal Register* (64 FR 17825), 45 CFR section 263.2(b)(3)).

States may choose to use federal only TANF funds to provide benefits that do not constitute “assistance” to the non-needy pursuant to TANF purpose 3 or 4 only (see III.A.1.c, “Activities Allowed or Unallowed – *Federal Only, Commingled Federal/State, Segregated State, Separate State Program*”) (42 USC 601(a)(3) and (4); 45 CFR sections 260.20(c) and (d)). States may also choose to use MOE funds to provide certain pro-family non-assistance benefits to the non-needy under TANF purpose 3 or 4 (see III.G.2.1, “Matching, Level of Effort, Earmarking – Level of Effort – *Maintenance of Effort*,” for the limited MOE pro-family exception to this requirement).

- (2) Qualified aliens, as defined in 8 USC 1641(b), are the only non-citizens who may receive a TANF public benefit, as defined in 8 USC 1611(c)), using federal TANF or commingled funds. Qualified aliens are lawful permanent residents, asylees, refugees, aliens paroled into the U.S. for at least one year, aliens whose deportations are being withheld, aliens granted conditional entry, Cuban/Haitian entrants, and certain battered aliens. Victims of severe forms of trafficking and certain family members are also eligible for federally funded or administered public benefits and services to the same extent as refugees.

Qualified aliens, nonimmigrants under the Immigration and Nationality Act, and individuals paroled into the U.S. for less than a year are the only noncitizen groups that are eligible for a non-commingled state or local MOE-funded public benefit, as defined in 8 USC 1621(c). Aliens that are not lawfully present in the U.S. may also be eligible for a state or local MOE-funded public benefit if the state has enacted a law after August 22, 1996, affirmatively providing for such eligibility. (8 USC 1621(d)) All expenditures must meet all MOE requirements at 45 CFR part 263, subpart A. See III.G.2.1, “Matching, Level of Effort, Earmarking – Level of Effort – *Maintenance of Effort*.”

States have the authority to decide whether or not to provide a federal TANF-funded public benefit or a MOE-funded public benefit to otherwise qualified aliens (including nonimmigrants and individuals paroled in the U.S. for less than a year in the case of a noncommingled state or local MOE-funded public benefit) (8 USC 1612(b)(1) and 8 USC 1622(a)). If a state has decided not to help eligible aliens, then the state may not deny eligibility to refugees, asylees, aliens whose deportation has been withheld, Amerasians,

and Cuban/Haitian entrants for a period of five years after the date of entry into the U.S. or the date asylum or withholding of deportation was granted. Also, such states may never deny eligibility to legal permanent residents who have worked 40 qualifying quarters after December 31, 1996, and have not received any federal means-tested public benefit during such period (once the five-year bar has expired for a qualified alien entering the U.S. on or after August 22, 1996, as described in the next paragraph), or to aliens who are veterans, members of the military on active duty, and their spouses and unmarried dependents (8 USC 1612(b)(2)(A)(ii) 8 USC 1621(2)(B) and (C), 8 USC 1622(b)(1)-(3)). In other words, Congress did not give states the authority to deny eligibility to all eligible aliens. If the state elects to help all otherwise eligible aliens (as described in the preceding two paragraphs), then this paragraph does not apply.

Unless exempt under 8 USC 1613(b), qualified aliens, as defined in 8 USC 1641(b), entering the U.S. on or after August 22, 1996, are not eligible for a federal means-test public benefit (e.g., federally funded TANF assistance), as defined in 8 USC 1611(c), for a period of five years (8 USC 1613(a)). The five-year bar begins either on the date of the alien's entry into the U.S. as a qualified alien or on the date the alien residing in the U.S. becomes a qualified alien, whichever is later. If the alien entered the U.S. on or after August 22, 1996, but does not have an immigration status that qualifies (as defined in 8 USC 1641(b)), the individual is not eligible for a federal public benefit (as defined in 8 USC 1611(c)). The following qualified aliens are exempt from the five-year bar: refugees, asylees, aliens whose deportation is being withheld, Amerasians, Cuban/Haitian entrants, as well as veterans, members of the military on active duty, and their spouses and unmarried dependent children (8 USC 1613(b)).

If a noncash federal or state and local public benefit meets the specifications in the Attorney General's Final Order (Order No. 2353-2001 published January 16, 2001 at 66 FR 3613), then the state may provide the benefit regardless of immigration status (8 USC 1611 (b)(1)(D) and 8 USC 1621(b)(4)).

b. Federal Only and Commingled Federal/State

- (1) Any family that includes an adult or minor child head of household or a spouse of the head of household who has received assistance under any state program funded by federal TANF funds for 60 months (whether or not consecutive) is ineligible for additional federally funded TANF assistance. However, the state may extend assistance to a family on the basis of hardship, as defined by the

state, or if a family member has been battered or subjected to extreme cruelty. In determining the number of months for which the head of household or the spouse of the head of household has received assistance, the state must not count any month during which the adult received the assistance while living in Indian country or in an Alaskan Native Village and the most reliable data available with respect to that month (or a period including that month) indicate at least 50 percent of the adults living in Indian country or in the village were not employed (42 USC 608(a)(7); 45 CFR sections 264.1(a), (b), and (c)).

(See III.G.3, “Matching, Level of Effort, Earmarking – Earmarking,” for testing the limits related to the number of exemptions.)

- (2) A state may not provide assistance to an individual who is under age 18, is unmarried, has a minor child at least twelve weeks old, and has not successfully completed high school or its equivalent unless the individual either participates in education activities directed toward attainment of a high school diploma or its equivalent, or participates in an alternative education or training program approved by the state (42 USC 608(a)(4); 45 CFR section 263.11(b)).
- (3) A state may not provide assistance to an unmarried individual under 18 caring for a child, if the minor parent and child are not residing with a parent, legal guardian, or other adult relative, unless one of the statutory exceptions applies (42 USC 608(a)(5)).
- (4) A state may not provide assistance for a minor child who has been or is expected to be absent from the home for a period of 45 consecutive days or, at the option of the state, such period of not less than 30 and not more than 180 consecutive days unless the state grants a good cause exception, as provided in its state plan (42 USC 608(a)(10)).
- (5) A state may not provide assistance for an individual who is a parent (or other caretaker relative) of a minor child who fails to notify the state agency of the absence of the minor child from the home within five days of the date that it becomes clear to that individual that the child will be absent for the specified period of time (42 USC 608(a)(10)(C)).
- (6) A state may not use funds to provide cash assistance to an individual during the ten-year period that begins on the date the individual is convicted in federal or state court of having made a fraudulent statement or representation with respect to place of

residence in order to simultaneously receive assistance from two or more states under TANF, Title XIX, or the Food Stamp Act of 1977, or benefits in two or more states under the Supplemental Security Income program under Title XVI of the Social Security Act. If the President of the United States grants a pardon with respect to the conduct that was the subject of the conviction, this prohibition will not apply for any month beginning after the date of the pardon (42 USC 608(a)(8)).

- (7) A state may not provide assistance to any individual who is fleeing to avoid prosecution, or custody or confinement after conviction, for a felony or attempt to commit a felony (or in the state of New Jersey, a high misdemeanor), or who is violating a condition of probation or parole imposed under federal or state law (42 USC 608(a)(9)(A)).

c. Federal Only, Commingled Federal/State, Segregated State

- (1) A state shall require that, as a condition of providing assistance, a member of the family assign to the state the rights the family member may have for support from any other person. This assignment may not exceed the amount of assistance provided (42 USC 608(a)(3)).
- (2) An individual convicted under federal or state law of any offense which is classified as a felony and which involves the possession, use, or distribution of a controlled substance (as defined the Controlled Substances Act (21 USC 802(6))) is ineligible for assistance if the conviction was based on conduct occurring after August 22, 1996. A state shall require each individual applying for TANF assistance to state in writing whether the individual or any member of their household has been convicted of such a felony involving a controlled substance. However, a state may by law enacted after August 22, 1996, exempt any or all individuals from this prohibition or limit the time period that this prohibition applies to any or all individuals 21 USC 862a).
- (3) If an individual in a family receiving assistance refuses to engage in required work, a state must reduce assistance to the family, at least pro rata, with respect to any period during the month in which the individual so refuses or may terminate assistance. Any reduction or termination is subject to good cause or other exceptions as the state may establish (42 USC 607(e)(1); 45 CFR sections 261.13 and 261.14(a) and (b)). However, a state may not reduce or terminate assistance based on a refusal to work if the individual is a single custodial parent caring for a child who is less than 6 years of age if the individual can demonstrate the inability

(as determined by the state) to obtain child care for one or more of the following reasons: (a) the unavailability of appropriate care within a reasonable distance of the individual's work or home; (b) unavailability or unsuitability of informal child care; or (c) unavailability of appropriate and affordable formal child care (42 USC 607(e)(2); 45 CFR sections 261.15(a), 261.56, and 261.57).

- d. Tribes: Federal Only, Commingled Federal/State-Donated MOE

Eligibility for tribal TANF is defined in the approved TFAP. See IV, "Other Information," for guidance on state MOE expended by tribes.

The approved TFAP includes the tribe's proposal for time limits for the receipt of TANF assistance (45 CFR section 286.115), as well as the percentage of the caseload to be exempted from the time limit. These proposed time limits must be approved by ACF (45 CFR section 286.115).

**2. Eligibility for Group of Individuals or Area of Service Delivery**

Not Applicable

**3. Eligibility for Subrecipients**

Not Applicable

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

**1. Matching**

Not Applicable

**2. Level of Effort**

**2.1 Level of Effort – Maintenance of Effort**

See IV, "Other Information," for guidance on state MOE expended by tribes.

The following MOE provisions apply to any state funds that are counted towards the MOE for TANF, whether such state funds are expended as commingled federal/state, segregated state, or separate state program funds.

- a. *State MOE* – Every fiscal year, a state must maintain an amount of "qualified state expenditures" (as defined in 42 USC 609(a)(7)(B) and 45 CFR section 263.2) for eligible families (as defined in 42 USC 609(a)(7)(B)(i)(IV) and 45 CFR section 263.2(b)) at least at

the applicable percentage of the state's historic state expenditures. Therefore, all amounts claimed for or on behalf of eligible families, including amounts that result from state tax provisions, must be the result of expenditure (42 USC 609(a)(7)(A) and (B)(i)(I); 45 CFR sections 260.30 ("expenditure") and 260.33, 45 CFR section 92.3, and 45 CFR section 92.24). States may claim qualified expenditures for eligible family members who are citizens or aliens. However, the particular aliens for whom a state may claim qualified expenditures will depend on the state funds used to provide the benefit or service (see III.E.1.a.(2), "Eligibility – Eligibility for Individuals, *Federal only, Commingled Federal/State, Segregated State, or Separate State Program*") and whether the benefit or service is a federal, state, or local public benefit (8 USC 1611, 1612(b), 1613, 1621-1622, and 1641(b)).

The applicable percentage for each fiscal year is 80 percent of the amount of non-federal funds the state spent in FY 1994 on AFDC or 75 percent if the state meets the TANF work participation rate requirements (42 USC 607(a)) for the fiscal year. This is termed "basic MOE" and the requirement is based on the federal fiscal year. Any MOE expenditures above this required amount are referred to as "excess MOE".

Except as provided in paragraph b, immediately below, qualified expenditures with respect to eligible families may come from all programs, i.e., the state's TANF program as well as programs separate from the state's TANF program. This requirement may be met through allowable state or local cash expenditures for goods and services, cash donations by non-governmental third parties (e.g., a non-profit organization, corporation, or other private party), or the value of third-party in-kind contributions. A state's records must show that all the costs are verifiable and meet all applicable requirements in 45 CFR sections 263.2 through 263.6. Third parties must be aware of and agree with the state's intentions and, accordingly, the state's records must include an agreement between the state and the third party permitting the state to count the expenditure toward its MOE requirement (42 USC 609(a)(7)(A) and 609(a)(7)(B)(i)(I); 45 CFR sections 263.1 and 263.2(e)).

Effective October 1, 2008 (i.e., FY 2009 awards), states may claim only *certain* pro-family non-assistance expenditures that are reasonably calculated to accomplish TANF purpose 3 or TANF purpose 4. These pro-family expenditures consist of the allowable healthy marriage promotion and responsible fatherhood non-assistance activities enumerated in Title IV-A of the Social



Security Act, sections 403(a)(2)(A)(iii) and 403(a)(2)(C)(ii), unless a limitation, restriction, or prohibition under 45 CFR part 263, subpart A applies (45 CFR section 263.2(a)(4)(ii); TANF-ACF-PI-2008-10, dated October 23, 2008, available at <https://www.acf.hhs.gov/ofa/programs/tanf/policy>

States may claim for MOE purposes the qualified pro-family healthy marriage and responsible fatherhood expenditures for *non-assistance* benefits and services provided to or on behalf an individual or family, regardless of financial need or family composition. States must limit the provision of all other qualified MOE-funded assistance and non-assistance benefits to eligible families as defined at 45 CFR section 263.2(b), regardless of the TANF purpose that the expenditure is reasonably calculated to accomplish.

Section 409(a)(7)(B)(iv)(IV) of the Social Security Act prohibits states from counting toward their MOE requirement expenditures made as a condition of receiving federal funds, unless allowed under Title IV, part A of the Social Security Act.

If a state does not meet the basic MOE requirement, a penalty results. The penalty consists of a reduction of the state's federal TANF grant for the following fiscal year in the amount of the difference between the state's qualified expenditures and the state's basic MOE (42 USC 609(a)(7)(A) and 45 CFR section 263.8). If application of a penalty results in a reduction of federal TANF funding, state is required in the immediately succeeding fiscal year to spend from state funds an amount equal to the total amount of the reduction, in addition to the otherwise required basic MOE. The additional funds must be spent in the TANF program, not under "separate state programs." Such expenditures may not be claimed toward as MOE (42 USC 609(a)(12); 45 CFR sections 263.6(f) and 264.50).

- b. *Limitations on "Qualified State Expenditures"* – Expenditures under pre-existing programs, other than those that would have been previously authorized and allowable under the former AFDC, JOBS, Emergency Assistance, Child Care for AFDC recipients, At-Risk Child Care, or Transitional Child Programs may not count toward the state's MOE requirement for the current year except to the extent that the current year's expenditures with respect to eligible families exceed the expenditures made under the state or local program in FY 1995.

*Exception:* If the expenditures are for non-assistance pro-family activities as addressed in paragraph a., then current year

expenditures are not limited to those made with respect to eligible families. If total current fiscal year expenditures for allowable pro-family activities within TANF purpose three or TANF purpose 4 exceed total state expenditures in the program during FY 1995, then the state may claim the excess toward the state's MOE requirement. Thus, to be considered as "exceeding" the FY 1995 level, the expenditures must be new or additional expenditures. (42 USC 609(a)(7)(B)(i)(II)(aa) and 45 CFR section 263.5).

Additional information on application of the "new spending test" for new or additional expenditures may be found in TANF-ACF-PI-2016-04 (<https://www.acf.hhs.gov/ofa/resource/tanf-acf-pi-2016-04>).

In addition, expenditures by the state from amounts that originated from federal funds may not count toward meeting a MOE requirement even if the expenditures "qualify" (42 USC 609(a)(7)(B)(iv)(I)).

Except for child-care expenditures, double-counting of expenditures to meet the basic MOE requirement is prohibited (42 USC 609(a)(7)(B)(iv)(II-IV); 45 CFR section 263.6). States may count state funds expended to meet the requirements of the Child Care Development Fund Matching Fund (CFDA 93.596) as basic MOE expenditures, as long as such expenditures meet the requirements of 42 USC 609(a)(7). The maximum amount of child care expenditures that a state may double-count under this provision is the state's Matching Fund MOE amount under CFDA 93.596 (42 USC 609(a)(7)(B)(iv); 45 CFR sections 263.3 and 263.6).

Expenditures for educational services/activities for eligible families to increase self-sufficiency, job training, and work count if the activities or services are not generally available to other state residents without cost and without regard to their income (42 USC 609(a)(7)(B)(i)(I)(cc); 45 CFR section 263.4, TANF-ACF-PI-2005-01, dated April 14, 2005, at <http://www.acf.hhs.gov/programs/ofa/programs/tanf/policy>).

Administrative costs in connection with the activities that correspond to the qualified expenditures may not exceed 15 percent of the total amount of countable expenditures for the fiscal year (42 USC 609(a)(7)(B)(i)(I)(dd); 45 CFR section 263.2(a)(5)).

The basic MOE requirement expressly does not count expenditures for services or activities that only fall under 42 USC 604 (a)(2) (see III.A.1.a(1), "Activities Allowed or Unallowed"). Such

expenditures are not considered “qualified expenditures” (42 USC 609(a)(7)(B)(i)(I); 45 CFR section 263.2(a)(4)).

- c. *Contingency Fund MOE* – A state must spend more than 100 percent of its historic state expenditures for FY 1994 to keep any of the federal contingency funds it received (42 USC 603(b), and 45 CFR sections 264.72(a)(2) and 264.70 through 77). This is termed “Contingency Fund MOE.” The Contingency Fund MOE requirement may be met only through qualified expenditures under the state’s TANF program. Qualified expenditures consist of those defined and provided under 42 USC 609(a)(7)(B)(i) and 45 CFR sections 263.2 (a)(1),(a)(3) through (a)(5), and 263.2(b), but excludes those expenditures described in 42 USC 609(a)(7)(B)(i)(I)(bb) and 45 CFR section 263.2(a)(2) (42 USC 603(b)(6)(B)(ii)(I) and 609(a)(10)).
- d. *1108(b) Territorial Matching Fund MOE Requirement* – See IV, “Other Information,” for guidance on the spending requirements applicable to the receipt of Matching Grant funds under section 1108(b) of the Social Security Act (section 1108(b)) (42 USC 1308(b)).
- e. *Prohibition on Use of Federal TANF and State MOE funds for Juvenile Justice Services* – See IV, “Other Information” for area of risk of non-compliance for juvenile justice services.

## **2.2 Level of Effort – Supplement Not Supplant**

Not Applicable

## **3. Earmarking**

### **a. *Federal Only and Commingled Federal/State***

A state may not spend more than 15 percent for administrative purposes, excluding expenditures for information technology and computerization needed for required tracking and monitoring, of the total combined amounts available under the state family assistance grant, supplemental grant for population increases, and contingency funds (42 USC 604(b)(1) and (2); 45 CFR sections 263.0 and 263.13).

### **b. *Federal Only and Commingled Federal/State***

The average monthly number of families that include an adult or minor child head of household, or the spouse of the head of household, who has received assistance under any state program funded by federal TANF funds for more than 60 countable months (whether or not consecutive)

may not exceed 20 percent of the average monthly number of all families to which the state provided assistance during the fiscal year or the immediately preceding fiscal year (but not both), as the state may elect. To make this determination for a fiscal year, the average monthly number of families with a head of household or spouse of a head of household who received assistance for more than 60 months would be divided by the average monthly number of families that received assistance in that fiscal year, or, if the state chooses, in the previous fiscal year (42 USC 608(a)(7)(C)(ii); 45 CFR sections 264.1(c) and (e)).

(See III.E.1, “Eligibility – Eligibility for Individuals,” for related eligibility testing.)

c. *Tribes: Federal Only and Commingled Federal/State-donated MOE*

The approved TFAP includes a negotiated administrative cost rate for that tribe for that particular year. As approved in the TFAP, no tribal TANF grantee may expend more than 35 percent of the total combined federal TANF funds for administrative costs during the first year, 30 percent during the second year, and 25 percent for the third and all subsequent grant periods. The approved tribal administrative cost rate may be found in a letter of approval issued by the ACF/Division of Tribal Services and/or in the approved TFAP. The tribal administrative cost cap is determined by multiplying the TFAG by the negotiated administrative rate for the fiscal year being tested (45 CFR section 286.50).

**Indirect costs may be applied to the federal TANF funds based on the indirect cost rate negotiated by the Bureau of Indian Affairs, the Department of Health and Human Services’ Division of Cost Allocation, or another federal agency. However, indirect costs applied to TANF funding are subject to and included within the administrative cap limits (45 CFR section 285.55(d)).**

**L. Reporting**

**1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request from Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable to states (cash status only)
- d. *ACF-196T, Tribal TANF Financial Report Form (OMB No. 0970-0345)* – Applicable to tribes; Not Applicable to states. This form is not applicable to tribes administering TANF programs under a Pub. L. No. 102-477 demonstration project. Beginning with the FY 2009 award, tribes must use this form to report TANF expenditures quarterly.

- e. *ACF-196R, TANF Financial Report (OMB No. 0970-0446)* – States are required to submit this report quarterly, beginning in FY 2015, in lieu of the SF-425, *Federal Financial Report* (financial status). Each state files quarterly expenditure data on the state's use of federal TANF funds, state TANF MOE expenditures, and state expenditures of MOE funds in separate state programs. If a state is expending federal TANF funds received in prior fiscal years, it must file a separate quarterly TANF Financial Report for each fiscal year that provides information on the expenditures of that year's TANF funds. This form must be used for reporting regular TANF grant funds and Contingency Fund expenditures. See TANF-ACF-PI-2014-02, available at <http://www.acf.hhs.gov/programs/ofa/resource/tanf-acf-pi-2014-02>, for more information.
- f. *ACF-196-TR, Territorial Financial Report* – Territories report their expenditures and other fiscal data in this report (45 CFR section 265.3(c)). The territories must report quarterly on their use of federal TANF funds, Territorial TANF MOE expenditures, expenditures of MOE funds in separate "state" programs, expenditures made as a result of receiving matching grant funds under 42 USC 1308(b), and expenditures made under the federal Adult Assistance programs (Titles I, X, XIV, and XVI of the Social Security Act) (42 USC subchapters I, X, XIV, and XVI and 42 USC 1308(a)).

See IV, "Other Information," for additional guidance on territories' spending levels.

## 2. Performance Reporting

- a. *ACF-199, TANF Data Report (OMB No. 0970-0338)* and *ACF-343, Tribal TANF Data Report (OMB No. 0970-0215)* (65 FR 8545, Appendix A, February 18, 2000)

One of the critical areas of this reporting is the work participation data, which serve as the basis for ACF to determine whether states and tribes have met the required work participation rates. A penalty may apply for failure to meet the required rates.

### *State Work Participation Rates*

State agencies must meet or exceed their minimum annual work participation rates. The minimum work participation rates are 50 percent for the overall rate and 90 percent for the two-parent rate. A state's minimum work participation rate may be reduced by its caseload reduction credit. HHS may penalize the state by an amount of up to 21 percent of the SFAG for violation of this provision (42 USC 609(a)(4); 45 CFR section 262.1(a)(4)).

*Key Line Items* – The following ACF-199 (TANF Data Report) line items contain critical information for making the preceding determinations and for other program purposes. Compare the data entered on the file for the key line items below to the documentation in the case file for completeness, accuracy, and consistency:

1. Section One – Family-Level Data
  - Item 12 *Type of Family for Work Participation*
  - Item 17 *Receives Subsidized Child Care*
  - Item 28 *Is the TANF family exempt from the federal time limit provisions*
2. Section One – Person-Level Data
  - Item 30 *Family Affiliation Code*
  - Item 32 *Date of Birth*
  - Item 38 *Relationship to Head-of-Household*
  - Item 39 *Parents with a Minor Child*
  - Item 44 *Number of months countable toward the federal time limit*
  - Item 48 *Work-Eligible Individual Indicator*
  - Item 49 *Work Participation Status*
3. Section One – Adult Work Participation Activities
  - Items 50 – 62 *Work Participation Activities*
  - Item 63 *Number of Deemed Core Hours for Overall Rate*
  - Item 64 *Number of Deemed Core Hours for the Two-Parent Rate*
4. Section Three – Active Cases
  - Item 8 *Total Number of Families*

#### *Tribal Work Participation Rates*

Tribal TANF agencies must meet or exceed their minimum annual work participation rates. The minimum work participation rates are contained in the respective tribal TANF plans. Tribal TANF agencies have the option to negotiate and choose from among a number of work participation rates (e.g., separate rates for one- and two-parent families or an “all-families with parents” rate where one- and two-parent families are combined). HHS may penalize the tribe by a maximum of 5 percent of the TFAG for the first violation of this provision. The penalty increases by an additional 2 percent for each subsequent violation up to a maximum of 21 percent (42 USC 612(c) and 612(g)(2); 45 CFR sections 286.195(a)(3) and 286.205).

*Key Line Items* – The following ACF-343 (Tribal TANF Data Report) line items contain critical information used in making a determination of a tribe's Work Participation Rates.

1. Review the tribe's TANF plan for a fiscal year to identify the type of family required to participate in work activities and the minimum number of hours per week that the adults and minor heads of household in the family must participate in work activities (45 CFR section 286.80). Compare the data entered on the file for the key line items below to the documentation in the case file for completeness, accuracy, and consistency:

Item 30	<i>Family Affiliation</i>
Item 48	<i>Work Participation Status</i>
Items 49–62	<i>Adult Work Participation Activities</i>

- b. ACF 209, *SSP-MOE Data Report (OMB No. 0970-0338)* – This report is submitted quarterly beginning with the first quarter of FFY 2000.

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

1. Section One – Family-Level Data
 

Item 9	<i>Type of Family for Work Participation</i>
Item 15	<i>Receives Subsidized Child Care</i>
2. Section One – Person-Level Data
 

Item 28	<i>Date of Birth</i>
Item 34	<i>Relationship to Head-of-Household</i>
Item 41	<i>Work-Eligible Individual Indicator</i>
Item 42	<i>Work Participation Status</i>
3. Section One – Adult Work Participation Activities
 

Items 43 – 55	<i>Work Participation Activities</i>
Item 56	<i>Number of Deemed Core Hours for Overall Rate</i>
Item 57	<i>Number of Deemed Core Hours for the Two-Parent Rate</i>
4. Section Three – Active Cases
 

Item 3	<i>Total Number of SSP-MOE Families</i>
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### 3. Special Reporting

- a. ACF-204, *Annual Report including the Annual Report on State Maintenance-of-Effort Programs (OMB No. 0970-0248)* – Each state must file an annual report containing information on the TANF program and the state's MOE program(s) for that year, including strategies to implement the Family Violence Option, state diversion programs, and other program characteristics. Each state must complete the ACF-204 for each program

for which the state has claimed basic MOE expenditures for the fiscal year. States may submit this electronically through the On Line Data Collection (OLDC) System.

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

1. *Program Name*
2. *Description of Major Program Activities*
3. *Program Purpose(s)*
4. *Program Type*
5. *Total State MOE Expenditures*
6. *Number of Families Served with MOE Funds*
7. *Eligibility Criteria*
8. *Prior Program Authorization*
9. *Total Program Expenditures in FY 1995*

The total MOE expenditures reported in item 5 of the ACF-204 should equal the total MOE expenditures reported in line 24, columns (B) plus (C) of the 4<sup>th</sup> quarter ACF-196R *TANF Financial Report*; or line 17, column (B) of the ACF-196-TR, *Territorial Financial Report*.

- b. An OFA-100, *Emergency Fund Request Form (OMB 0970-0366)* is submitted for each quarter for which a state, territory or tribe operating a TANF program applied for and received funds under one or more of categories described below.

## **N. Special Tests and Provisions**

Special Tests and Provisions 1 through 5 apply to a state's TANF program, not to a Tribal TANF program.

### **1. Child Support Non-Cooperation**

**Compliance Requirements** If the state agency responsible for administering the state plan approved under Title IV-D of the Social Security Act determines that an individual is not cooperating with the state in establishing paternity, or in establishing, modifying or enforcing a support order with respect to a child of the individual, and reports that information to the state agency responsible for TANF, the state TANF agency must (1) deduct an amount equal to not less than 25 percent from the TANF assistance that would otherwise be provided to the family of the individual, and (2) may deny the family any TANF assistance. HHS may penalize a state for up to 5 percent of the SFAG for



failure to substantially comply with this required state child support program (42 USC 608(a)(2) and 609(a)(8); 45 CFR sections 264.30 and 264.31).

**Audit Objectives** Determine whether, after notification by the state Title IV-D agency, the TANF agency has taken necessary action to reduce or deny TANF assistance.

### **Suggested Audit Procedures**

- a. Review the state's TANF policies and operating procedures concerning this requirement.
- b. Test a sample of cases referred by the Title IV-D agency to the TANF agency to ascertain if benefits were reduced or denied as required.

## **2. Income Eligibility and Verification System**

**Compliance Requirements** Each state shall participate in the Income Eligibility and Verification System (IEVS) required by Section 1137 of the Social Security Act as amended. Under the state plan the state is required to coordinate data exchanges with other federally assisted benefit programs, request and use income and benefit information when making eligibility determinations and adhere to standardized formats and procedures in exchanging information with other programs and agencies. Specifically, the state is required to request and obtain information as follows (42 USC 1320b-7; 45 CFR section 205.55):

- a. Wage information from the state Wage Information Collection Agency (SWICA) should be obtained for all applicants at the first opportunity following receipt of the application, and for all recipients on a quarterly basis.
- b. Unemployment Compensation (UC) information should be obtained for all applicants at the first opportunity, and in each of the first three months in which the individual is receiving aid. This information should also be obtained in each of the first three months following any recipient-reported loss of employment. If an individual is found to be receiving UC, the information should be requested until benefits are exhausted.
- c. All available information from the Social Security Administration (SSA) for all applicants at the first opportunity (see *Federal Tax Return Information* below).
- d. Information from the U.S. Citizenship and Immigration Services and any other information from other agencies in the state or in other states that might provide income or other useful information.
- e. Unearned income from the Internal Revenue Service (IRS) (see *Federal Tax Return Information* below).

*Federal Tax Return Information* – Information from the IRS and some information from SSA is federal tax return information and subject to use and disclosure restrictions by 26

USC 6103. Individual data received from the SSA's Beneficiary Earnings Exchange Record (BEER), consisting of wage, self-employment, and certain other income information is considered federal tax return information. However, benefits payments such as Supplemental Security Income (SSI) are SSA data and not federal tax return information. Under 26 USC 6103, disclosure of federal tax return information from IEVS is restricted to officers and employees of the receiving agency. Outside (non-agency) personnel (including auditors) are not authorized to access this information either directly or by disclosure from receiving agency personnel.

The state is required to review and compare the information obtained from each data exchange against information contained in the case record to determine whether it affects the individual's eligibility or level of assistance, benefits or services under the TANF program, with the following exceptions:

- a. The state is permitted to exclude categories of information items from follow-up if it has received approval from ACF after having demonstrated that follow-up is not cost effective.
- b. The state is permitted, with ACF approval, to exclude information items from certain data sources without written justification if it followed up previously through another source of information. However, information from these data sources that is not duplicative and provides new leads may not be excluded without written justification.

The state shall verify that the information is accurate and applicable to the case circumstances either through the applicant or recipient, or through a third party, if such determination is appropriate based on agency experience or is required before taking adverse action based on information from a federal computer matching program subject to the Computer Matching and Privacy Protection Act (45 CFR section 205.56).

For applicants, if the information is received during the application process, the state must use the information, to the extent possible, to determine eligibility. For recipients or individuals for whom a decision could not be made prior to authorization of benefits, the state must initiate a notice of case action or an entry in the case record that no case action is necessary within 45 days of its receipt of the information. Under certain circumstances, action may be delayed beyond 45 days for no more than 20 percent of the information items targeted for follow-up (45 CFR section 205.56).

HHS may penalize a state for up to 2 percent of the SFAG for failure to participate in IEVS (42 USC 609(a)(4) and 1320b-7; 45 CFR sections 264.10 and 264.11).

**Audit Objectives** Determine whether the state has established and implemented the required IEVS system for data matching, and verification and use of such data. (This audit objective does not include federal tax return information, as discussed in the compliance requirements.)

### **Suggested Audit Procedures**

- a. Review state operating manuals and other instructions to gain an understanding of the state's implementation of the IEVS system.
- b. Test a sample of TANF cases subject to IEVS to ascertain if the state:
  - (1) Used the IEVS to determine eligibility in accordance with the state plan.
  - (2) Requested and obtained the data from the state wage information collection agency, the state unemployment agency, SSA (excluding federal tax return information, as discussed in the compliance requirements), the U.S. Citizenship and Immigration Services, and other agencies, as appropriate, and performed the required data matching.
  - (3) Properly considered the information obtained from the data matching in determining eligibility and the amount of TANF benefits.

### **3. Penalty for Refusal to Work**

**Compliance Requirements** State agency must reduce or terminate the assistance payable to the family if an individual in a family receiving assistance refuses to work, subject to any good cause or other exemptions established by the state. HHS may penalize the state by an amount not less than 1 percent and not more than 5 percent of the SFAG for violation of this provision (42 USC 609(a)(14); 45 CFR sections 261.14, 261.16, and 261.54).

**Audit Objectives** Determine whether the state agency is reducing or terminating the assistance grant of those individuals who refuse to engage in work and are not subject to good cause or other exceptions established by the state.

#### **Suggested Audit Procedures**

- a. Review the state's TANF policies and operating procedures concerning this requirement.
- b. Test a sample of TANF cases where the individual is not working and ascertain if benefits were reduced or denied to individuals who are not exempt under state rules or do not meet state good cause criteria.

### **4. Lack of Child Care for Single Custodial Parent of Child under Age Six**

**Compliance Requirements** If an individual is a single custodial parent caring for a child under the age of 6, the state may not reduce or terminate assistance for the individual's refusal to engage in required work if the individual demonstrates to the state an inability to obtain needed child care for one or more of the following reasons: (a) unavailability of appropriate child care within a reasonable distance from the individual's home or work site; (b) unavailability or unsuitability of informal child care by a relative or under other arrangements; or (c) unavailability of appropriate and affordable formal child care arrangements. The determination of inability to find child care is made by the state.

HHS may penalize a state for up to five percent of the SFAG for violation of this provision (42 USC 607(e)(2) and 609(a)(11); 45 CFR sections 261.15, 261.56, and 261.57).

**Audit Objectives** Determine whether the state has improperly reduced or terminated assistance to single custodial parents who refused to work because of inability to obtain child care for a child under the age of 6.

#### **Suggested Audit Procedures**

- a. Gain an understanding of the criteria established by the state to determine benefits for a single custodial parent who refused to work because of inability to obtain childcare for a child who is under the age of 6.
- b. Select a sample of single custodial parents caring for a child who is under 6 years of age whose benefits have been reduced or terminated.
- c. Ascertain if the benefits were improperly reduced or terminated because of inability to obtain childcare.

### **5. Penalty for Failure to Comply with Work Verification Plan**

**Compliance Requirements** The state agency must maintain adequate documentation, verification, and internal control procedures to ensure the accuracy of the data used in calculating work participation rates. In so doing, it must have in place procedures to (a) determine whether its work activities may count for participation rate purposes; (b) determine how to count and verify reported hours of work; (c) identify who is a work-eligible individual; and (d) control internal data transmission and accuracy. Each state agency must comply with its HHS-approved Work Verification Plan in effect for the period that is audited. HHS may penalize the state by an amount not less than one percent and not more than five percent of the SFAG for violation of this provision (42 USC 601, 602, 607, and 609); 45 CFR sections 261.60, 261.61, 261.62, 261.63, 261.64, and 261.65).

**Audit Objectives** Determine whether the state agency is complying with its Work Verification Plan, including adequate documentation, verification, and internal control procedures.

#### **Suggested Audit Procedures**

- a. Review the state's Work Verification Plan and operating procedures concerning this requirement.
- b. Test a sample of TANF cases that have been reported to HHS under 45 CFR sections 265.3(b)(1) and 265.3(d)(1) and ascertain if the work participation rate data have been documented, verified, and reported in accordance with the state's Work Verification Plan.

## IV. OTHER INFORMATION

### 1. *Transfers out of TANF*

As described in III.A.1.a (2), “Activities Allowed or Unallowed,” states (not tribes) may transfer a limited amount of federal TANF funds into the Social Services Block Grant (Title XX) (CFDA 93.667) and the Child Care and Development Block Grant (CFDA 93.575). These transfers are reflected in lines 2 and 3 of both the quarterly *TANF Financial Report* ACF-196R, and the quarterly *Territorial Financial Report* ACF-196-TR. The amounts transferred out of TANF are subject to the requirements of the program into which they are transferred and should not be included in the audit universe and total expenditures of TANF when determining Type A programs. The amount transferred out should not be shown as TANF expenditures on the Schedule of Expenditures of Federal Awards but should be shown as expenditures for the program into which they are transferred.

### 2. *State MOE Expended by Tribes*

A state may provide a tribe state-donated MOE funds that are expended by the tribe. For the tribe, state-donated MOE funds are not federal awards expended, shall not be considered in determining Type A programs, and shall not be shown as expenditures on the Schedule of Expenditures of Federal Awards. However, state-donated MOE funds expended by a tribe shall be included by the auditor of the state when testing III.G.2.1, “Matching, Level of Effort, Earmarking – Level of Effort – *Maintenance of Effort*.”

Tribes may choose to commingle their state-donated MOE funds with federal grant funds. Because of the commingling, the audit of the tribe will include testing of the state-donated MOE and the auditor of the state should consider relying on this testing in accordance with auditing standards and 2 CFR part 200, subpart F. However, the state-donated MOE is not considered federal awards expended by the tribe.

### 3. *Tribal TANF Grantees under a Pub. L. No. 102-477 Demonstration Project (477)*

Audits of Indian tribal governments with tribal TANF in their approved 477 plan must follow the guidance in the 477 Cluster found in the Department of the Interior’s section of Part IV of this Supplement.

### 4. *Spending Levels of the Territories*

A funding ceiling applies to Guam, the Virgin Islands, American Samoa and Puerto Rico. The programs subject to the funding ceiling are the Adult Assistance programs under Titles I, X, XIV, and XVI of the Social Security Act; TANF; Foster Care (CFDA 93.658); Adoption Assistance (CFDA 93.659) and Independent Living (CFDA 93.674) programs under Title IV-E of the Social Security Act; and the matching grant under section 1108(b). Total payments to each Territory may not exceed the following: Guam – \$4,686,000; Virgin Islands – \$3,554,000; Puerto Rico – \$107,255,000; and American Samoa – \$1,000,000. However, the TANF Family Assistance Grant cannot exceed the Territory’s fixed annual amount (42 USC 1308(a) and (c)).

5. *Prohibition on Use of Federal TANF and State MOE funds for Juvenile Justice Services*

ACF has identified juvenile justice services expenditures as an area of risk for non-compliance and issued a Program Instruction (TANF-ACF-PI-2015-02)

(<http://www.acf.hhs.gov/ofa/resource/tanf-acf-pi-2015-02>) to remind TANF jurisdictions that federal TANF and state MOE funds must not be used to provide juvenile justice services, except where authorized under prior law, as explained in the program instruction.

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CFDA 93.563 CHILD SUPPORT ENFORCEMENT**

#### **I. PROGRAM OBJECTIVES**

The objectives of the Child Support Enforcement programs are to (1) enforce support obligations owed by non-custodial parents, (2) locate absent parents, (3) establish paternity, and (4) obtain child and spousal support.

#### **II. PROGRAM PROCEDURES**

The Child Support Enforcement programs are administered at the federal level by the Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS). Under the State Child Support Enforcement program (state program), funding is provided to the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam, based on a state plan and amendments, as required by changes in statutes, rules, regulations, interpretations, and court decisions, submitted to and approved by OCSE. Under the Tribal Child Support Enforcement program (tribal program), funding is provided to federally recognized tribes and tribal organizations based on applications, plans, and amendments, as required by changes in statutes, rules, regulations, and interpretations, submitted to and approved by OCSE.

The state program is an open-ended entitlement program that allows the state to be funded at the federal financial participation (FFP) rate of 66 percent for eligible program costs. Under the tribal program, tribes receive funding for a specified percentage of program costs (during the first three-year period, federal grant funds equal to 90 percent, and for all periods following the initial three-year period 80 percent).

State child support agencies are required to conduct self-reviews of their programs (42 USC 654(15) and 45 CFR part 308).

#### **Source of Governing Requirements**

The Child Support Enforcement programs are authorized under Title IV-D of the Social Security Act, as amended. This includes amendments as the result of the Deficit Reduction Act of 2005 (DRA) (Pub. L. No. 109-171). The state program is codified at 42 USC 651 through 669. Implementing program regulations for the state program are published at 45 CFR parts 301 through 308. In addition, with regard to eligibility and other provisions, these programs are closely related to programs authorized under other titles of the Social Security Act, including the Temporary Assistance for Needy Families (TANF) program (CFDA 93.558), the Medicaid program (CFDA 93.778), and the Foster Care (Title IV-E) program (CFDA 93.658).

The tribal program is authorized under Title IV-D of the Social Security Act, as amended, at 42 USC 655. Implementing program regulations are published at 45 CFR part 309.

Both the state and tribal programs are subject to the administrative requirements of 45 CFR part 92 or 2 CFR part 200, as implemented by HHS at 45 CFR part 75, depending on when the award

was made. Both state and tribal programs also are subject to the OMB cost principles under 2 CFR part 225 – Cost Principles for state, local, and Indian Tribal governments (OMB Circular A-87) or 45 CFR part 75, subpart E, depending on when the award was made. However, with the exception of 45 CFR section 75.202, the guidance in subpart C of 45 CFR part 75 does not apply to federal awards to carry out Title IV-D of the Social Security Act (45 CFR section 75.101(e)). The state program also is subject to 45 CFR part 95.

States and tribes are required to adopt and adhere to their own statutes and regulations for program implementation, consistent with the requirements of Title IV-D and the approved state plan/tribal plan and application.

### III. COMPLIANCE REQUIREMENTS

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

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

#### A. Activities Allowed or Unallowed

##### 1. *Activities Allowed*

Consistent with the approved Title IV-D plan, allowable activities include the following. A more complete listing of allowable types of activities with examples, as appropriate, is included at 45 CFR sections 304.20 through 304.22



for the state program and 45 CFR sections 309.145(a) through (o) for the tribal program.

a. State and tribal programs

- (1) Parent locator services for eligible individuals (45 CFR sections 304.20(a)(2), 304.20(b), and 302.35(c); 45 CFR section 309.145).
- (2) Paternity and support services for eligible individuals (45 CFR section 304.20(a)(3); 45 CFR sections 309.145(b) and (c)).
- (3) Program administration, including establishment and administration of the state plan/tribal plan, purchase of equipment, and development of a cost allocation system and other systems necessary for fiscal and program accountability (45 CFR sections 304.20(b)(1) and 304.24; 45 CFR sections 309.145(a)(1) and (a)(2), 309.145(h), 309.145(i), and 309.145(o)).
- (4) Establishment of agreements with other state, tribal, and local agencies and private providers, including the costs of agreements with appropriate courts and law enforcement officials in accordance with the requirements of 45 CFR section 302.34, and associated administration and short-term training of staff (see paragraph A.2.b, below, for costs of agreements that are unallowable under state programs) (45 CFR section 304.21(a)(state programs); 45 CFR sections 309.145(a)(3)(iii) and 309.145(m) (tribal programs)).

b. State programs

- (1) Necessary expenditures for support enforcement services and activities provided to individuals from whom an assignment of support rights (as defined in 45 CFR section 301.1) is obtained (45 CFR sections 304.20, 304.21, and 304.22).
- (2) Federal financial participation (FFP) is available for services and activities that are necessary and reasonable to carry out the Title IV-D state plan. This change reflects 45 CFR Part 75, Subpart E Cost Principles which all state child support agencies must use in determining allowable costs for work performed under federal grants (45 CFR section 304.20(a)(1).
- (3) FFP is available for bus fare and other minor transportation expenses to allow participation of parents in child support proceedings and related activities such as genetic testing appointments (45 CFR section 304.20(b)(3)(v)).

- (4) FFP is available to increase pro se access to adjudicative and alternative dispute resolution processes in IV-D cases related to the provision of child support services (45 CFR section 304.20(b)(3)(vi).
- (5) FFP for educational and outreach activities intended to inform the public , parent and family members, and young people who are not yet parents about the Child Support Enforcement program, responsible parenting and co-parenting, family budgeting, and other financial consequences of raising children when the parents are not married to each other (45 CFR section 304.20(b)(12).

c. Tribal programs

- (1) The portion of salaries and expenses of a tribe's chief executive and staff that is directly attributable to managing and operating a Tribal Title IV-D program (45 CFR section 309.145(j)).
- (2) The portion of salaries and expenses of tribunals and staff that is directly related to required tribal Title IV-D program activities (45 CFR section 309.145(k)).
- (3) Service of process (45 CFR section 309.145(l)).
- (4) Costs associated with obtaining technical assistance from non-federal third-party sources, including other tribes, tribal organizations, state agencies, and private organizations, that are directly related to operating a Title IV-D program, and costs associated with providing such technical assistance to public entities (45 CFR section 309.145(n)).

2. *Activities Unallowed*

a. State and tribal programs

The following costs and activities are unallowable pursuant to 45 CFR sections 304.23 and 309.155:

- (1) Activities related to administering other titles of the Social Security Act.
- (2) Construction and major renovations.
- (3) Any expenditures that have been reimbursed by fees or costs collected.
- (4) Any expenditures for jailing of parents in child support enforcement cases.

- (5) Costs of counsel for indigent defendants in Title IV-D actions.
- (6) Costs of guardians *ad litem* in Title IV-D actions.

b. State programs

The following costs and activities are unallowable pursuant to 45 CFR section 304.23:

- (1) Education and training programs other than those for Title IV-D agency staff or as described in 45 CFR section 304.20(b)(2)(viii).
- (2) Any expenditures related to carrying out an agreement under 45 CFR section 303.15.
- (3) Any costs of caseworkers (45 CFR section 303.20(e)).
- (4) Medical support enforcement activities performed under cooperative arrangements in accordance with Section 1912(a)(2) of the Act (42 USC 1396k).
- (5) The following costs associated with agreements with courts and law enforcement officials are unallowable: service of process and court filing fees unless the court or law enforcement agency would normally be required to pay the costs of such fees; costs of compensation (salary and fringe benefits) of judges; costs of training and travel related to the judicial determination process incurred by judges; office-related costs, such as space, equipment, furnishings and supplies incurred by judges; compensation (salary and fringe benefits), travel and training, and office-related costs incurred by administrative and support staffs of judges; and costs of agreements that do not meet the requirements of 45 CFR section 303.107 (45 CFR section 304.21(b)).
- (6) FFP is not available for purchased support enforcement services which are not secured in accordance with 304.22 (45 CFR section 304.23(b)).

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

**1. Matching**

*State programs*

The federal share of program costs related to determining paternity, including those related to the planning, design, development, installation, and enhancement of the statewide computerized support enforcement system is 66 percent.

*Tribal programs*

The federal share of program costs is 90 percent for the first three years and 80 percent thereafter. Unless waived by the Secretary, the tribe or tribal organization must provide the 10 percent and 20 percent share, respectively (45 CFR sections 309.130(c), (d), and (e)).

**2. Level of Effort**

Not Applicable

**3. Earmarking**

Not Applicable

**H. Period of Performance**

1. *State programs* – This program operates on a cash accounting basis and each year’s funding and accounting is discrete; i.e., there is no carry-forward of unobligated funds. To be eligible for federal funding, claims must be submitted to ACF within two years after the calendar quarter in which the state made the expenditure. This limitation does not apply to any claim for an adjustment to prior year costs or resulting from a court-ordered retroactive adjustment (45 CFR sections 95.7, 95.13, and 95.19).
2. *Tribal programs* – A tribe or tribal organization must obligate its Federal Title IV-D grant funds no later than the last day of the funding period (equivalent to the federal fiscal year) for which they were awarded (“obligation period”) or the funds must be returned to ACF. Unless an extension is granted by ACF, valid obligations must be liquidated no later than the last day of the 12-month period immediately following the obligation period or the funds must be returned to ACF (45 CFR sections 309.135(b), (c), and (e)).

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****CFDA 93.566 REFUGEE AND ENTRANT ASSISTANCE—STATE-ADMINISTERED PROGRAMS****I. PROGRAM OBJECTIVES**

The objective of the Refugee and Entrant Assistance program is to provide states with funds to assist refugees and Cuban/Haitian entrants in attaining economic and social self-sufficiency as soon as possible after their initial placement in United States (U.S.) communities. (The term “refugee” is used to mean an individual who meets the immigration status requirements under 45 CFR 400.43.)

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

The Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), administers the Refugee and Entrant Assistance program on behalf of the federal government. ORR provides funds to states through two grant programs: (1) Cash and Medical Assistance (CMA) and (2) Refugee Support Services (RSS).

**A. Source of Governing Requirements**

The Refugee and Entrant Assistance program is governed under the following authorities:

- The Refugee Act of 1980 (Pub. L. No. 96-212) (8 USC 1522), as amended by the Refugee Education Assistance Act of 1980 (Pub. L. No. 96-422), Refugee Assistance Amendments of 1982 (Pub. L. No. 97-363), and Refugee Assistance Extension Act of 1986 (Pub. L. No. 99-605).
- Section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act (as included in the fiscal year (FY) 1988 Continuing Resolution (Pub. L. No. 100-202)), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by Section 412(c)(2) of the Immigration and Nationality Act, as amended, including certain Amerasians from Vietnam who are United States citizens; and, as provided under Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100-461), 1990 (Pub. L. No. 101-167), and 1991 (Pub. L. No. 101-513).
- Section 107(b)(1)(A) of the Trafficking Victims Protection Act of 2000 (Pub. L. No. 106-386) (22 USC 7101), as amended by the Trafficking Victims Protection Reauthorization Act of 2003 (Pub. L. No. 108-193) and 2005 (Pub. L. No. 109-164), and Section 107(b)(1)(F) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Pub. L. No. 110-457), insofar as they

state that a victim of a severe form of trafficking in persons, potential child victims, and certain other specified family members shall be eligible for federally funded or administered benefits and services to the same extent as a refugee.

- Section 525, Title V, Division G, Pub. L. No. 110-161 in relation to Iraqi and Afghan aliens granted special immigrant status under Section 101(a)(27) of the Immigration and Nationality Act and their eligibility for resettlement assistance and other benefits available to refugees admitted under Section 207 of the Immigration and Nationality Act; and Sections 1244, Pub. L. No. 110-181 Section 602(b), Title VI, Division F, Pub. L. No. 111-8, regarding the special immigrant status of certain Iraqis and certain Afghans, respectively, as amended by Section 8120, Title VIII, Pub. L. No. 111-118.

Program regulations are at 45 CFR Part 400.

In addition to the HHS implementation of the A-102 Common Rule and the cost principles in 2 CFR part 225 (Office of Management and Budget Circular A-87) and 2 CFR part 200 at 45 CFR part 75, this program also is subject to 45 CFR part 95, subparts E (Cost Allocation Plans) and F (Automatic Data Processing Equipment and Services Conditions for Federal Financial Participation (FFP)).

Additional information is available on the ORR website at <https://www.acf.hhs.gov/orr>.

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

### **1. *Cash and Medical Assistance Grants***

CMA grants are made to states following submission of annual program estimates. CMA grants have four major cost components:

- Refugee Cash Assistance
- Refugee Medical Assistance, including Medical Screening
- Unaccompanied Refugee Minor programming
- Program Administration (overall state Planning and Coordination)

A state may administer the program as a publicly state-administered program or may form a public/private partnership by engaging non-profit organizations to deliver program services and benefits. A state-administered program must follow the TANF rules on financial eligibility and payment levels unless the state receives an approved waiver under 45 CFR 400.300 to continue administering RCA according to the rules of the former Aid to Families with Dependent Children (AFDC) program. Subject to certain limitations, a public/private program may operate according to its own rules.

a. *Refugee Cash Assistance Eligibility*

(1) *Eligibility Criteria*

Eligibility for RCA is limited to refugees who meet all of the following criteria:

- (a) They have resided in the U.S. less than the RCA eligibility period (currently eight months) determined by the ORR Director in accordance with 45 CFR 400.211 (45 CFR 400.53).
- (b) They have been determined ineligible for other federally funded cash assistance programs, such as the following programs authorized by the Social Security Act: TANF, SSI, Old Age Assistance (OAA)(Title I), Aid to the Blind (AB)(Title X), Aid to the Permanently and Totally Disabled (APTD)(Title XIV), and Aid to the Aged, Blind, and Disabled (AABD)(Title XVI)(45 CFR 400.51 and 400.53).
- (c) They meet the financial eligibility requirements of the applicable type of RCA program: AFDC-type (45 CFR 400.45), public/private (45 CFR 400.59), or state-administered (45 CFR 400.66). In all three types, the administering agency may not treat the following as income or resources available to the applicant: resources remaining in the applicant's country of origin, income earned by the applicant's sponsor, or cash assistance the applicant may have received under reception and placement programs administered by the departments of State or Justice (45 CFR 400.45(f)(2), 400.59(b) through (d), and 400.66(b) through (d)).
- (d) They are not full-time students in institutions of higher education (45 CFR 400.53).
- (e) If they are mandatory work registrants, they have not, without good cause, failed or refused to meet the work requirements of 45 CFR 400.75(a), or voluntarily quit a job or refused an offer of appropriate employment within 30 consecutive calendar days immediately prior to the application for assistance. The payment of RCA assistance to an otherwise eligible client must be terminated if the client fails to meet this requirement (45 CFR 400.77 and 400.82(a)).

- (2) Benefit payments in a state-administered AFDC-type RCA program must be based on the AFDC rate (45 CFR 400.45(f)(2)). Benefit payments in a state-administered TANF-type RCA program must be based on the TANF rate (45 CFR 400.66(a)). Benefit payments in a public/private RCA program may neither exceed the rate described in 45 CFR 400.60(a), nor be less than the state's TANF payment rate (45 CFR 400.60(b)).

b. *Refugee Medical Assistance Eligibility*

(1) *Eligibility Criteria*

Eligibility for RMA is limited to refugees who meet one of the following sets of conditions:

- (a) They are not eligible for Medicaid or CHIP but currently receive RCA (45 CFR 400.100(d)); or
- (b) They meet all of the following criteria:
  - (i) They have met the same time eligibility requirement as for RCA (see paragraph E.1.b.(1)(a), above).
  - (ii) They are determined ineligible for Medicaid or CHIP (45 CFR 400.100(a)(1)).
  - (iii) They meet one of the following financial eligibility requirements:
    - (A) In a state with a Medicaid medically needy program, they meet the state's Medicaid medically needy financial eligibility standards or a financial eligibility standard established at 200 percent of the national poverty level (45 CFR 400.101(a)).
    - (B) In a state without a Medicaid medically needy program, they meet the state's AFDC payment standards and methodologies in effect as of July 16, 1996, or a financial eligibility standard established at 200 percent of the national poverty level (45 CFR 400.101(b)).
    - (C) They did not meet either of these standards but spent their resources down to the applicable standard using an appropriate method for deducting incurred medical



expenses. States must allow applicants for RMA to do this (45 CFR 400.103).

- (c) They are not full-time students in institutions of higher education, unless the state has approved their enrollment as part of the refugee's employability plan under 45 CFR 400.79 or a plan for an unaccompanied minor in accordance with 45 CFR 400.100(a).
- (2) Earnings from employment do not affect refugees' eligibility for RMA. They remain eligible for RMA through the remainder of the time eligibility period after receiving earnings from employment. Refugees who become ineligible for Medicaid due to employment earnings and have resided in the U.S. less than the time eligibility period will become eligible for RMA for the remainder of the time eligibility period (45 CFR 400.104) without an additional eligibility determination.

States may not require that a refugee actually receive or apply for RCA as a condition of eligibility for RMA (45 CFR 400.100(d)).

- (3) In providing medical assistance services to eligible refugees, a state must provide at least the same services in the same manner and to the same extent as under the state's Medicaid program (45 CFR 400.105). A state may provide additional services beyond the scope of the state's Medicaid program to eligible refugees if the state provides these services through public facilities to its indigent residents (45 CFR 400.106). A state may provide medical screening to a refugee provided the screening is in accordance with requirements prescribed by ORR and with written approval from ORR (45 CFR 400.107).

c. *Unaccompanied Refugee Minor Assistance Eligibility*

- (1) A person must meet the definition of an unaccompanied minor (45 CFR 400.111).
- (2) A URM remains eligible for assistance until he/she (a) is reunited with a parent; (b) is united with a non-parental adult to whom legal custody or guardianship has been granted; or (c) has reached the age of 18, or older if the state's Title IV-B plan so prescribes (45 CFR 400.116).

2. *Refugee Support Services Grants*

Beginning in FY 2018, Refugee Social Services funding is renamed to Refugee Support Services (RSS). RSS grants are made to states following submission of an Annual Service Plan. RSS grants are allocated to states by formula according

to each state's percentage of the national refugee and entrant population for up to the most recent three years. States are required to use these funds to help refugees become economically self-sufficient as quickly as possible, primarily through the provision of employment services. Under RSS, three set-aside grants are issued, Refugee School Impact (RSI) and Services to Older Refugees (SOR), and Youth Mentoring (YM) to provide services to specific refugee populations. RSI targeted population is refugee school-age children 5–18 years of age. SOR targeted population is 60 and older. YM targeted population is individuals between the ages of 15–24.

a. *Refugee Support Services Eligibility*

- (1) In providing support services, the state must serve refugees in the following order of priority listed under 45 CFR 400.147:
  - (a) All refugees who have resided in the U.S. less than a year and who apply for services;
  - (b) Refugees receiving cash assistance;
  - (c) Unemployed refugees who are not receiving cash assistance; and
  - (d) Employed refugees in need of services to retain employment.
- (2) A state may limit eligibility for services to refugees who are 16 or older who are not full-time students in secondary school, except that such a student may be provided services in order to obtain part-time or temporary (summer) employment while a student or permanent, full-time employment upon completion of schooling (45 CFR 400.152 (a)).
- (3) Except for citizenship and naturalization services and referral and interpreter services, a state may not provide refugee social services to refugees who have been in the U.S. for more than 60 months (45 CFR 400.152(b)).

### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than**

Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. **When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.**

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

#### A. Activities Allowed or Unallowed

Cash and Medical Assistance (CMA) program funds are to be used to pay for:

1. *Refugee Cash Assistance (RCA)* – monthly cash benefits for refugees who do not meet the eligibility requirements of the Temporary Assistance for Needy Families (TANF) (CFDA 93.558) or Supplemental Security Income (SSI) CFDA 96.006) programs (45 CFR 400.53) (see III.E.1, “Eligibility – Eligibility for Individuals”).
2. *Refugee Medical Assistance (RMA)* – medical assistance to refugees who do not meet all eligibility requirements for Medicaid (CFDA 93.778) and the Children’s Health Insurance program (CHIP) (CFDA 93.767) and medical screening to all refugees if done within the refugees’ first 90 days upon arrival to the U.S. (45 CFR 400.100 (see III.E.1, “Eligibility – Eligibility for Individuals”).
3. *Refugee Medical Screening*

A state may charge refugee medical screening costs to RMA if part of the state Plan approved by the ORR Director (45 CFR 400.107). If such screening is done during the first 90 days after a refugee’s initial date of entry into the U.S., it may be provided without prior determination of the refugee’s eligibility under 45 CFR 400.94 or 400.100 and may be charged to RMA. States may charge to RMA the cost of medical screenings done later than 90 days after the refugees’ arrival only if the refugees had been determined ineligible for Medicaid or CHIP under 45 CFR 400.94 and 400.100 (45 CFR 400.107).

4. *Unaccompanied Refugee Minor (URM) Assistance* – child welfare services and foster care to unaccompanied refugee minors (until age 18 or higher age as the state’s Title IV-B plan prescribes) (45 CFR 400.116) (see III.E.1, “Eligibility – Eligibility for Individuals”).
5. *Program Administration* – A state may claim against its CMA grant the reasonable, necessary, and allocable administrative costs:
  - a. Associated with providing RCA, RMA, including medical screening, and assistance and services to unaccompanied refugee minors (45 CFR 400.207).
  - b. Incurred by the local resettlement agencies for providing cash assistance under the public/private RCA program (45 CFR 400.13(e)).
  - c. Incurred for the overall management of the state’s refugee program. Such costs may include development of the state plan, overall program coordination, and salary and the travel costs of the state Refugee Coordinator (45 CFR 400.13(c)).

Refugee Support Services (RSS) program funds are to be used to pay for:

- Employability Services
  - Non-employability Services
  - Refugee School Impact (RSI) Set-aside Services
  - Services to Older Refugees (SOR) Set-aside Services
  - Youth Mentoring (YM) Set-aside Services
1. *Employability Services* – A state may provide the following employability services through the RSS grant:
    - a. Employment services, including development of a family self-sufficiency plan and individual employment plan, job development, job search, and job placement (45 CFR 400.154(a));
    - b. Aptitude and skills testing, employability assessment (45 CFR 400.154(b));
    - c. On-the-job training at the employment site (45 CFR 400.154(c));
    - d. English language training with emphasis on job-related language skills (45 CFR 400.154(d));

- e. Vocational training when part of an employability plan (45 CFR 400.154(e));
  - f. Skills recertification (45 CFR 400.154(f));
  - g. Child care when necessary for job retention/acceptance or participation in an employability service (45 CFR 400.154(g));
  - h. Transportation when necessary for job retention/acceptance or participation in an employability service (45 CFR 400.154(h));
  - i. Translation and interpreter services when necessary for job retention/acceptance or participation in an employability service (45 CFR 400.154(i));
  - j. Case management services directed toward a refugee's attainment of employment as soon as possible after arrival in the U.S. (45 CFR 400.154(j)); and
  - k. Assistance in obtaining employment authorization documents (45 CFR 400.154(j)).
2. *Non-Employability Support Services* – A state may provide non-employability support services, which may include:
- a. Information and referral services (45 CFR 400.155(a));
  - b. Outreach services designed to familiarize refugees with available services and facilitate access to them (45 CFR 400.155(b));
  - c. Social adjustment services including emergency services, health-related services, and home management services (45 CFR 400.155(c));
  - d. Child care, transportation, translation and interpreter services, and case management services which are not directly related to employment or an employability service, when necessary for purposes other than employment or participation in employability services (45 CFR 400.155d through 155g);
  - e. Any other service approved by the ORR Director that is aimed at helping the refugee attain economic self-sufficiency, family stability, or community integration (45 CFR 400.155(h)); and
  - f. Citizenship and naturalization preparation services (45 CFR 400.155(i)).
3. *Refugee School Impact Services* – A state may provide School Impact Services, which may include:

- a. Coordination and partnerships with state school officials, resettlement agencies, health and mental health providers, and community- and faith-based organizations and other local service providers.
  - b. Culturally and linguistically appropriate services, such as special curricula or activities, translation services, and interpreter services.
  - c. After-school classes, weekend tutorials, and online assistance.
  - d. Specialized services for newly arriving ORR-served populations, such as cultural orientation, refugee parents/teacher meetings, and school orientation.
  - e. Integration of ORR-served youth into school systems, such as English as a Second Language (ESL) sessions, mentoring, group activities, and support to lesbian, gay, bisexual, and transgender (LGBT) youth.
4. *Services to Older Refugees* – A state may provide Services to Older Refugees, which may include:
- a. Access to available aging services for older ORR-served populations.
  - b. Access to senior community centers, supportive services, and intergenerational activities.
  - c. Communal nutrition services and meals delivered to homebound clients.
  - d. Transportation.
  - e. Interpretation and translation.
  - f. Home care, adult day care and respite care.
  - g. Elder abuse prevention.
  - h. Nursing home ombudsman services.
  - i. Citizenship and naturalization outreach, civics instruction, counseling, and application assistance.
5. *Youth Mentoring* – A state may provide Youth Mentoring activities which may include:
- a. Development of social and life skills.
  - b. Helping youth to learn American culture while maintaining and celebrating the youth's cultural heritage.

- c. Providing opportunities for social engagement with peers.
- d. Providing information about opportunities to participate in civic and community services activities.
- e. Supporting youth in learning English, math, and other skills.
- f. Providing academic support, such as helping with homework, and assisting with transitions in school such as the transition between middle school and high school or high school to post-secondary education.
- g. Helping youth with career development including skill building, resume drafting, worker's rights, and training opportunities.
- h. Supporting youth in developing health and financial literacy.

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

The following costs may be charged to the state's CMA grant:

1. Certain administrative costs incurred for the overall management of the state's refugee program (see III.A.5, "Activities Allowed or Unallowed"), and
2. Costs incurred by local resettlement agencies to provide cash assistance under public/private RCA programs. All other costs must be allocated among the state's CMA grant, its RSS grant, and any other Refugee Resettlement program grants it may have received.

However, no portion of the cost of case management services (as defined at 45 CFR 400.2) may be allocated to the state's CMA grant; and Administrative costs of managing the services component of the program must be charged to the RSS grant (45 CFR 400.13).

States must track activities, services, and costs for set-aside programs (RSI and SOR) separately from other RSS activities, services, and costs.

## **E. Eligibility**

### **1. CMA and RSS General Eligibility requirements for individuals**

- a. Clients must have either refugee, asylee, entrant, or Amerasian documented status (45 CFR 400.43), be Iraqis or Afghans with Special Immigrant Visas, or, if trafficking victims, must have received a certification or eligibility letter from OTIP. Those meeting this status will be collectively referred to as "refugees."

- b. A client's eligibility period generally begins on the date he/she arrived in the U.S. (45 CFR 400.203(a) and 400.204(a)). The eligibility period for asylees begins from the date the person receives a final grant of asylum.

## **2. Eligibility for Group of Individuals or Area of Service Delivery**

Not Applicable

## **3. Eligibility for Subrecipients**

Not Applicable

# **H. Period of Performance**

## **1. CMA**

A state must obligate its CMA funds awarded for costs attributable to RCA, RMA, and administration during the federal fiscal year (FFY) in which the grant was awarded. Funds awarded for URM assistance remain available for obligation in the FFY following the FFY in which the grant was awarded. However, all CMA funds, including funds awarded for URM services, must be expended by the end of the FFY following the FFY in which the grant was awarded (45 CFR 400.210(a)).

## **2. Refugee Support Services**

A state must obligate its Refugee Support Services funds within one year after the end of the FFY in which the grant was awarded and must expend these funds within two years after the end of the FFY in which the grant was awarded (45 CFR 400.210(b)).

# **L. Reporting**

## **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271 – Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable (RSS)
- d. *ORR-2, CMA Quarterly Report on Expenditures and Obligations* – Applicable (CMA)

## **2. Performance Reporting**

*ORR-6, Performance Report (OMB No. 0970-0036)* – A state is required to submit the ORR-6, Performance Report, on a semi-annual and annual reporting



basis. The report contains a narrative and statistical information on program performance for cash assistance, medical assistance, medical screening, the provision of services to unaccompanied minors, and social services. The current ORR-6 was approved by OMB and all descriptions, Schedules, and reporting timelines described here are according to the approved ORR-6.

### **3. Special Reporting**

Not Applicable

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### CFDA 93.568 LOW-INCOME HOME ENERGY ASSISTANCE

#### I. PROGRAM OBJECTIVES

The Low-Income Home Energy Assistance Program (LIHEAP) is a block grant program in which states (including Territories and Indian tribes) design their own programs, within very broad federal guidelines. There are four components of LIHEAP: (1) block grants, (2) energy emergency contingency funds, (3) leveraging incentive awards, and (4) the Residential Energy Assistance Challenge Program (REACH). The latter three components are only administered when funding for those programs is available and allocated to them.

The objectives of LIHEAP are to help low-income people meet the costs of home energy (defined as heating and cooling of residences), increase their energy self-sufficiency, and reduce their vulnerability resulting from energy needs. A primary purpose is meeting immediate home energy needs. The target population is low-income households, especially those with the lowest incomes and the highest home energy costs or needs in relation to income, taking into account family size. Additional targets are low-income households with members who are especially vulnerable, including the elderly, persons with disabilities, and young children.

#### II. PROGRAM PROCEDURES

##### A. LIHEAP Block Grants

The U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Community Services, administers LIHEAP at the federal level. LIHEAP block grant funds are distributed by formula to the states, the District of Columbia, and the Territories. In addition, federally or state-recognized Indian tribes (including tribal consortia) have the option of requesting direct funding from ACF, rather than being served by the state in which they are located. Tribes that are directly funded by HHS statutorily receive a share of the funds that would otherwise be allotted to the states in which they are located, based on the number of income-eligible households in the tribal service area as a percentage of the income-eligible households in the state, or a larger amount agreed upon in a state/tribe agreement. Over half the states agree to give the tribes located within their state a larger amount than required by the statute.

Under the block grant philosophy, each grantee is responsible for designing and implementing its own LIHEAP program, within very broad federal guidelines. Grantees must administer their LIHEAP programs according to their approved plan and any amendments and in conformance with their own implementing rules and policies. Grantees must establish appropriate systems and procedures to prevent, detect and correct waste, fraud and abuse, by clients, vendors, and administering agencies.

In order to receive funding, each grantee is required to submit annually a LIHEAP Plan which is an application that describes how the grantee's LIHEAP will be administered, including a set of program integrity questions in which the grantee must describe the systems in place to detect and deter fraud, waste, and abuse in its LIHEAP program.

State grantees are required to hold a public hearing each year on the proposed plan for the upcoming year. All grantees must allow for public participation in the development of their annual plans. A separate application is required for those LIHEAP grantees that wish to apply for a leveraging incentive award or a REACH grant.

## **B. Energy Emergency Contingency Funds**

In addition to appropriations for the LIHEAP block grant program, funds may be awarded to meet the additional home energy assistance needs of LIHEAP grantees for a natural disaster or other emergency. Contingency funds that are awarded generally must be used under the normal statutory and regulatory requirements that apply to the LIHEAP block grants, unless special conditions are placed upon their use at the time of the award.

## **C. Leveraging Incentive Awards**

Of the funds appropriated for LIHEAP each year, HHS is allowed to earmark a portion to reward those LIHEAP grantees that have acquired non-federal resources to help low-income persons meet their home heating and cooling needs, as an incentive to augment the federal dollars. This could involve the grantee or private organizations putting some of their own funds into LIHEAP or similar state or private programs, buying fuel at reduced or discount prices through bulk purchases or negotiated agreements, obtaining donations of weatherization materials or fuels, waiving utility fees, or any number of other activities with non-federal resources. Grant awards in the current federal fiscal year are based on leveraging activities carried out during the previous federal fiscal year. Leveraging grants are subject to special terms and conditions, which are specified in the grant awards. In order to receive the leveraging grant, current LIHEAP grantees must submit a Leveraging Report detailing leveraged resources, when ACF solicits such Leveraging Report. Grantees must keep sufficient documentation, or have access to it, to support the calculations in the report.

## **D. Residential Energy Assistance Challenge Program**

Of the funds appropriated for leveraging incentive awards, HHS may set aside a portion for the REACH program. The REACH program makes competitive grants to LIHEAP grantees to help LIHEAP-eligible households reduce their energy vulnerability. The purposes of REACH are to (1) minimize health and safety risks that result from high energy burdens on low-income households, (2) prevent homelessness as a result of inability to pay energy bills, (3) increase efficiency of energy usage by low-income families, and (4) target energy assistance to individuals who are most in need. REACH grants are optional to current LIHEAP grantees that submit a separate REACH Plan (when solicited by ACF). State and territory grantees that are awarded REACH grants must administer their REACH grants through community-based organizations. REACH grants are subject to special terms and conditions, which are specified in the grant awards ([42 USC section 8626 b](#)).

## Source of Governing Requirements

LIHEAP is authorized under Title XXVI of the Omnibus Budget Reconciliation Act of 1981, as amended (Pub. L. No. 97-35, as amended, also known as OBRA 1981), which is codified at 42 USC 8621-8629. Implementing regulations for this and other HHS block grant programs authorized by OBRA 1981 are published at 45 CFR part 96. Those regulations include general administrative requirements for the covered block grant programs. Requirements specific to LIHEAP are in 45 CFR sections 96.80 through 96.89. LIHEAP is also subject to 45 CFR part 75 which is the HHS implementation of 2 CFR part 200, commonly known as the Office of Management and Budget's Uniform Administrative Guidance. According to 45 CFR section 75.101(d), the requirements in subpart C, subpart D, and subpart E do not apply to LIHEAP except for section 75.202 of subpart C and sections 75.351 through 75.353 of subpart D. In addition, grantees are to administer their LIHEAP according to the statutorily required Plans that they submitted to HHS. Grantees are permitted to submit revised LIHEAP Plans within a reasonable amount of time after making significant changes to their policies and/or procedures referenced in their Plans.

As discussed in Appendix I to the Supplement, "Federal Programs Excluded from the A-102 Common Rule and Portions of 2 CFR Part 200," grantees are to use the fiscal policies (including obligation and expenditure of funds) that apply to their own funds in administering LIHEAP. Procedures must be adequate to ensure the proper disbursement of and accounting for federal funds paid to the grantee, including procedures for monitoring the assistance provided (42 USC 8624(b)(10); 45 CFR section 96.30).

## Availability of Other Program Information

The ACF LIHEAP web page (<http://www.acf.hhs.gov/programs/liheap>) provides general information about this program.

## III. COMPLIANCE REQUIREMENTS

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

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

## E. Eligibility

### 1. Eligibility for Individuals

Grantees may provide assistance to (a) households in which one or more individuals are receiving Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Supplemental Nutrition Assistance Program (SNAP) benefits, or certain needs-tested veterans' benefits; or (b) households with incomes which do not exceed the greater of 150 percent of the state's established poverty level, or 60 percent of the state median income. Grantees may establish lower income eligibility criteria, but no household may be excluded solely on the basis of income if the household income is less than 110 percent of the state's poverty level (42 USC 8624(b)(2)). Grantees must give priority to those households with the highest home energy costs or needs in relation to income and household size (42 USC 8624(b)(5)).

### 2. Eligibility for Group of Individuals or Area of Service Delivery

Not Applicable

### 3. Eligibility for Subrecipients

To the extent it is necessary to designate local administrative agencies, the grantee is to give special consideration to local public or private non-profit agencies (or their successor agencies) which were receiving energy assistance or weatherization funds under the Economic Opportunity Act of 1964 or other laws, provided that the grantee finds that they meet program and fiscal requirements set by the grantee (42 USC 8624(b)(6)).

## G. Matching, Level of Effort, Earmarking

### 1. Matching

Not Applicable

## 2. Level of Effort

Not Applicable

## 3. Earmarking

The following limitations apply to LIHEAP block grants and leveraging incentive award funds, as noted. Energy emergency contingency funds generally are subject to the requirements applicable to LIHEAP block grant funds, but the contingency grant award letter should be reviewed to see if different requirements were applied. REACH grants are subject to special terms and conditions described in the award.

### a. *Planning and Administrative Costs*

- (1) No more than 10 percent of a state's LIHEAP funds for a federal fiscal year may be used for planning and administrative costs, including both direct and indirect costs. This limitation applies, in the aggregate, to planning and administrative costs at both the state and subrecipient levels. This cap may not be exceeded by supplementing with other federal funds (42 USC 8624(b)(9)(A); 45 CFR section 96.88(a)).
- (2) A tribal or territorial grantee may spend up to 20 percent of the first \$20,000 and 10 percent of the amount above \$20,000 for administration and planning (45 CFR section 96.88(b)).
- (3) Although as indicated in III.A.5, leveraging incentive award funds may not be used for planning and administrative costs, they may be added to the base on which the maximum amount allowed for planning and administration is calculated according to the federal fiscal year in which the leveraging funds are obligated (45 CFR section 96.87(j)).

### b. *Weatherization*

- (1) No more than 15 percent of the greater of the funds allotted or the funds available to the grantee for a federal fiscal year may be used for low-cost residential weatherization or other energy-related home repairs. The secretary may grant a waiver beginning April 1st, and the grantee may then spend up to 25 percent for residential weatherization or energy-related home repairs (42 USC 8624(k)).
- (2) Leveraging incentive award funds may be used for weatherization without regard to the weatherization maximum in the statute. However, they cannot be added to the base on which the weatherization maximum is calculated (45 CFR section 96.87(j)).

- c. *Energy Need Reduction Services* – No more than five percent of the LIHEAP funds may be used to provide services that encourage and enable households to reduce their home energy needs and, thereby, the need for energy assistance. Such services may include needs assessments, counseling, and assistance with energy vendors (42 USC 8624(b)(16)).
- d. *Identifying and Developing Leveraging Programs*
  - (1) The greater of 0.08 percent of a state's LIHEAP funds (other than leveraging incentive award funds) or \$35,000 may be spent to identify, develop, and demonstrate leveraging programs, without regard to the limit on planning and administering LIHEAP (42 USC 8626a(c)(2); 45 CFR section 96.87(c)(2)).
  - (2) Indian tribes/tribal organizations and territories may spend up to the greater of two percent or \$100 on such activities (45 CFR section 96.87(c)(1)).

## **H. Period of Performance**

- 1. At least 90 percent of the LIHEAP block grant funds payable to the grantee must be obligated in the federal fiscal year in which they are awarded. Up to 10 percent of the funds payable may be held available (or “carried over”) for obligation no later than the end of the following federal fiscal year. Funds not obligated by the end of the following fiscal year must be returned to ACF. There are no limits on the time period for expenditure of funds (42 USC 8626).
- 2. Leveraging incentive award funds and REACH funds must be obligated in the federal fiscal year in which they are awarded or the following federal fiscal year, without regard to the carryover limit. However, they may not be added to the base on which the carryover limit is calculated (45 CFR sections 96.87(j)(1) and (k)). Funds not obligated within these time periods must be returned to ACF (45 CFR section 96.87(k)).
- 3. LIHEAP emergency contingency funds are generally subject to the same obligation and expenditure requirements applicable to the LIHEAP block grant funds, but the contingency award letter should be reviewed to see if different requirements were imposed.

## **L. Reporting**

### **1. Financial Reporting**

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

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

## 2. Performance Reporting

*LIHEAP Performance Data Form (OMB No 0970-0449)* – State grantees must submit this report by January 31<sup>st</sup> regarding the prior federal fiscal year. The first section of the report is the Grantee Survey that covers sources and allocation of funding. The rest of the report is regarding performance metrics, mostly related to home energy burden targeting and reduction, as well as the continuity of home energy service.

## 3. Special Reporting

- a. *LIHEAP Carryover and Reallotment Report (OMB No. 0970-0106)* – Grantees must submit this report no later than August 1 indicating the amount expected to be carried forward for obligation in the following fiscal year and the planned use of those funds. Funds in excess of the maximum carryover limit are subject to reallotment to other LIHEAP grantees in the following fiscal year and must also be reported (42 USC 8626).

*Key Line Items* (not numbered):

- 1. “Carryover amount”
- 2. “Reallotment amount”

- b. *Annual Report on Households Assisted by LIHEAP (OMB No. 0970-0060)* – As part of the application for block grant funds each year, a report is required for the preceding fiscal year of (1) the number and income levels of the households assisted for each component and any type of LIHEAP assistance (heating, cooling, crisis, and weatherization); and (2) the number of households served that contained young children, elderly, or persons with disabilities, or any vulnerable household for each component. Territories with annual allotments of less than \$200,000 and all Indian tribes are required to report only on the number of households served for each program component (42 USC 8629; 45 CFR section 96.82).

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

- 1. *Section 1* – LIHEAP Assisted Households
- 2. *Section 2* – LIHEAP Applicant Households



#### **IV. OTHER INFORMATION**

As described in Part 4, Social Services Block Grant (SSBG) program (CFDA 93.667), III.A, “Activities Allowed or Unallowed,” a state may transfer up to 10 percent of its annual allotment under SSBG to this and six other block grant programs.

Amounts transferred into this program are subject to the requirements of this program when expended and should be included in the audit universe and total expenditures of this program when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amounts transferred in should be shown as expenditures of this program when such amounts are expended.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### CFDA 93.569 COMMUNITY SERVICES BLOCK GRANT

#### I. PROGRAM OBJECTIVES

The objective of the Community Services Block Grant (CSBG) is to provide assistance to states and local communities, working through a network of community action agencies and other neighborhood-based organizations, for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient (particularly families who are attempting to transition off a state program carried out under part A of Title IV of the Social Security Act) and (1) To provide services and activities having a measurable and potential major impact on causes of poverty in the community or those areas of the community where poverty is a particularly acute problem; (2) to provide activities designed to assist low-income participants, including the elderly poor, to: (a) secure and retain meaningful employment; (b) attain an adequate education; (c) make better use of available income; (d) obtain and maintain adequate housing and a suitable living environment; (e) obtain emergency assistance through loans or grants to meet immediate and urgent individual and family needs, including health services, nutritious food, housing, and employment-related assistance; (f) remove obstacles and solve problems which block the achievement of self-sufficiency; (g) achieve greater participation in the affairs of the community; and (h) make more effective use of other related programs; (3) to provide on an emergency basis for the provision of such supplies and services, nutritious foodstuffs, and related services, as may be necessary to counteract conditions of starvation and malnutrition among the poor; and (4) to coordinate and establish linkages between governmental and other social services programs to assure the effective delivery of such services to low-income individuals. In addition to the CSBG block grants to states, the Office of Community Services funds additional discretionary projects for technical assistance including: Center of Excellence (COE) for Human Capacity and Community Transformation (HCCT); 11 Regional Performance and Innovation Consortia (RPIC), a Learning Communities Resource Center, and a Legal Training and Technical Assistance Center.

#### II. PROGRAM PROCEDURES

CSBG is administered at the federal level by the Office of Community Services (OCS), Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS). CSBG funds are awarded to states, territories, and federally and state-recognized Indian tribes and tribal organizations. Funds are distributed in accordance with a pre-established formula after submission of an application to OCS and acceptance of that application as complete in accordance with statutory requirements. In turn, states subgrant the CSBG funds according to statewide formulae to designated community-based non-profit organizations (and, in special circumstances, public organizations) that plan, develop, implement, and evaluate local programs. These instructions are provided for audits of states as defined by the CSBG Act at 42 USC 9902(5), for audits of eligible entities as defined by the CSBG Act at 42 USC 9902(1) and audits of other subrecipients expending CSBG funds. Eligible entities are those entities that were in place the day before October 27, 1998, or as designated by the process codified at 42 USC 9909. For all practical purposes, eligible entities are those entities identified in the state CSBG

plan that are designated to receive a portion of at least 90 percent of the CSBG funds provided to a state. For tribes and tribal organizations that receive CSBG as part of the Public Law 102-477 demonstration projects, refer to the 477 cluster at 4-15.025 for testing guidance. For tribes and tribal organizations that receive CSBG funding directly from the federal government, the auditor should use the testing guidance for the states.

### Source of Governing Requirements

CSBG was reauthorized under the Community Opportunities, Accountability, and Training and Education Act of 1998 (Pub. L. No. 105-285) and is codified at 42 USC 9901 *et seq.* The implementing regulations for this and other block grant programs are published at 45 CFR part 96. Those regulations include both specific requirements and general administrative requirements for the covered block grant programs in lieu of 45 CFR part 75 (the HHS implementation of 2 CFR part 200). Requirements specific to CSBG are in 45 CFR sections 96.90 through 96.92. Separate regulations governing religious organizations as nongovernmental providers of service (Charitable Choice) are codified at 45 CFR part 1050.

### III. COMPLIANCE REQUIREMENTS

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

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

**A. Activities Allowed or Unallowed****1. *Activities Allowed***

- a. States: States are required to distribute at least 90 percent of CSBG funds to eligible entities, see Special Tests and Provisions for testing of the amounts distributed to these entities. States may use retained funds to achieve CSBG goals through activities, including, but not limited to:
  - (1) Training and technical assistance;
  - (2) Statewide coordination and communication among eligible entities;
  - (3) Analysis to better target the distribution of funds to the areas of greatest need;
  - (4) Individual development accounts and other asset-building programs for low-income individuals;
  - (5) Coordinating state-operated programs and services targeted to low-income children and families;
  - (6) State charity tax credits;
  - (7) Supporting innovative programs and activities conducted by community-based organizations to address the goals of the program; and
  - (8) Administrative functions (42 USC 9901 and 9907(b)).
- b. Eligible entities and other subrecipients: Eligible entities and other subrecipients may use CSBG funds for any programs, services, or other activities related to achieving the broad goals of CSBG, such as reducing poverty, revitalizing low-income communities, and assisting low-income individuals and families. Funds may be used to:
  - (1) Promote economic self-sufficiency, employment, education and literacy, housing, and civic participation;
  - (2) Support community youth development programs;
  - (3) Fill gaps in services through information dissemination, referrals, and case management;
  - (4) Provide emergency assistance through grants and loans, and provision of supplies, services, and food stuffs;

- (5) Secure more active involvement of the private sector, faith-based institutions, neighborhood-based organizations, and charitable groups; and
  - (6) Plan, coordinate, and develop linkages among public (federal, state, and local), private, and non-profit resources, including religious organizations, to improve their combined effectiveness in ameliorating poverty (42 USC 9901, 42 USC 9907(1)).
- 2. *Activities Unallowed: Applicable to States and Eligible Entities/Other Subrecipients*
  - a. Funds may not be used to purchase or improve land or to purchase, construct, or permanently improve buildings or facilities, other than low-cost residential weatherization or other energy-related home repairs (this limitation may be waived by ACF) (42 USC 9918(a)).
  - b. Funds may not be used to support any partisan or non-partisan political activity or to provide voters or prospective voters with transportation to the polls or provide similar assistance in connection with an election or any voter registration (42 USC 9918(b)).
  - c. No CSBG funding provided directly to a religious organization may be used for inherently religious activities, such as worship, religious instruction, or proselytization (42 USC 9920(c); 45 CFR section 1050.3(b)).

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

- 1. *States:* CSBG is exempt from the provisions of OMB cost principles at the state level. As a block grant, state cost principles requirements apply to CSBG at the state level. However, states must apply OMB administrative cost principles (45 CFR part 75, subpart E) to subgrantees receiving CSBG funds (42 USC 9916(a)(1)(B)), 45 CFR 75.101(d)(1)).
- 2. *Eligible entities and other subrecipients:* Eligible entities and other subrecipients of CSBG funds are subject to the cost principles in the Uniform Administrative Requirements in 75 CFR part 75, subpart E.

## **E. Eligibility**

### **1. Eligibility for Individuals or Households**

- a. *States:* The official poverty guideline as revised annually by HHS shall be used to determine eligibility. The poverty guidelines are issued each year in the *Federal Register* and on the HHS website (<http://aspe.hhs.gov/poverty/>). A state may adopt a revised poverty

guideline but it may not exceed 125 percent of the HHS-determined poverty guidelines (42 USC 9902(2)).

- b. *Eligible Entities/Other Subrecipients:* The official poverty guidelines as revised annually by HHS shall be used to determine eligibility. The poverty guidelines are issued each year in the *Federal Register* and on the HHS website (<http://aspe.hhs.gov/poverty/>). The CSBG Act, at 42 USC 9902(2), grants the state the authority to adopt a revised poverty threshold but it may not exceed 125 percent of the HHS-determined poverty guidelines. Audit procedures should be designed to test whether recipients of CSBG services meet the federal poverty guidelines, or a more restrictive poverty threshold established by a state.

## **2. Eligibility for Group of Individuals or Area of Service Delivery**

Not Applicable

## **3. Eligibility for Subrecipients**

Not applicable to eligible entities and other subrecipients

## **H. Period of Performance**

1. States: Amounts unobligated by the state at the end of the fiscal year in which they were first allotted shall remain available for obligation during the succeeding fiscal year (45 CFR section 96.14(a)).
2. *States:* CSBG funds granted by the state to subgrantees are available to the subgrantee for obligation during the federal fiscal year that the grant was made and in the following federal fiscal year (42 USC 9 section 907(a)(2)).
  - a. **Note:** The CSBG Act, at 42 USC 9907(a)(3), requires states to recapture and redistribute unused CSBG funds. However, this provision has been overridden by annual appropriations law by requiring states to carryforward unused funds to be used by the specific entity. Auditors should determine the legal requirements for the period under review.

## **M. Subrecipient Monitoring**

### *1. States*

States must conduct full on-site reviews of each eligible entity once every three years to check conformity with performance goals, administrative standards, financial management rules, and other requirements. States must conduct an onsite review of each newly designated entity immediately after the completion of the first year in which such entity receives CSBG funding. Follow-up reviews, including prompt return visits to eligible entities and their programs, are required for entities that fail to meet the goals, standards, and requirements established by

the state (42 USC 9914(a)). Audit tests should be designed to test whether the state:

- (1) Has performed a full onsite monitoring of each eligible entity within the past three years;
- (2) Has completed a full onsite monitoring of a newly designated entity immediately after the completion of the first year in which the entity received CSBG funds;
- (3) Has conducted appropriate follow up reviews if necessary; and
- (4) Has conducted other reviews as appropriate, including reviews of entities with programs that have had other federal, state, or local grants terminated for cause.
- (5) If a state finds a need for corrective action, the state must (1) inform the subgrantee of the deficiency and require correction; (2) offer training and technical assistance and report to OCS on that assistance, or explain why providing such assistance was not appropriate; (3) receive an improvement plan from the subgrantee within 60 days; and (4) not later than 30 days after receiving the improvement plan either approve it or specify the reasons why it cannot be approved (42 USC 9915). If the subgrantee fails to remedy the deficiency, the state may initiate proceedings to terminate the subgrantees eligibility or reduce its funding (42 USC 9908(b)(8) and 42 USC 9915(a)(5)).

2. *Eligible Entities/Other Subrecipients*

If eligible entities or other sub-recipients of CSBG use a subaward to achieve the objectives of CSBG, the eligible entities and other sub-recipients are required to comply with the provisions of 45 CFR 75.351 through 75.353 (45 CFR 75.101(d)).

**N. Special Tests and Provisions**

**1. States: Subgrant Award and Administration**

**Compliance Requirements** States must (1) use at least 90 percent of their allotted funds under this program for subgrants to eligible entities, (2) subgrant funds in a timely manner to allow subgrantees a sufficient opportunity to obligate the funds to accomplish program purposes, and (3) adhere to expense limits for administrative activities performed (42 USC 9907(a)(1), (a)(2), (a)(3), and (b)(2)) (see III.G.3, Matching, Level of Effort, Earmarking—Earmarking”). There is a concern that some states are (1) not allotting the funds to subgrantees early enough to allow a full period of performance by subgrantees without the possibility of recapture, resulting in unobligated balances of

funds; and (2) inappropriately claiming administrative expenses for subgrant award and monitoring.

**Audit Objectives** To determine if the state (1) complied with the requirement to subgrant 90 percent of its allotted funds in a timely manner, and (2) claimed appropriate administrative expenses.

#### **Suggested Audit Procedures**

- a. Determine the state's procedures for issuance of subgrant awards or contracts, including any standards for administrative lead time.
- b. Determine if the subgrants were made in a timely manner, consistent with CSBG requirements and the state's own procedures.
- c. Determine if the state tracks, by each individual subgrant, the issuance date, expenditure by the subgrantee, and the associated administrative costs.
- d. Determine if the state is appropriately claiming administrative costs in relation to its award and administration of subgrants.

## **2. Eligible Entities/Other Subrecipients: Subgrant Award and Administration**

**Compliance Requirements** Eligible entities and other sub-recipients must comply with the regulation at 45 CFR 75.351 through 45 CFR 75.353 and any referenced regulation contained therein.

**Audit Objectives** To determine if the eligible entity or other sub-recipient complied with the sub-recipient monitoring and management requirements.

#### **Suggested Audit Procedures**

- a. Select a sample of CSBG sub-awards or contracts during the period.
- b. Examine the procedures performed to determine if the sub-recipient/contractor determination was made in accordance with 45 CFR 75.351.
- c. Examine the contract or sub-award to determine if the eligible entity or other sub-recipient communicated the required information as detailed in 45 CFR 75.352(a).
- d. For the sub-awards and contracts that were determined to be sub-recipients, review the procedures for compliance of 45 CFR 75.352(b) through (h) to determine that there is reasonable assurance that the CSBG funds were adequately protected and services were provided to the community as expected.



### **3. Tri-Partite Board Compliance – Only Applicable to Eligible Entities**

The CSBG Act at 42 USC 9910(a), requires non-profit organizations administer CSBG through a board to be composed of:

- One-third (1/3) of the members be elected representatives in the community or their designee (the elected official must be holding office on the date of selection). There is a provision that allows for appointed government officials, or their designee, to be counted in meeting this requirement.
- Not fewer than one-third (1/3) of the board members are chosen in a democratic selection process adequate to assure that these members of the board are representative of the low-income individuals and families served. Additionally, each low-income representative must reside in the neighborhood served.
- The remaining board members are officials and members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

The CSBG Act at 42 USC 9910(b), requires that public organizations administer CSBG through a Tri-Partite board. This board shall have members selected by the organization and shall be composed so as to assure that no less than one-third (1/3) of the members are chosen in accordance with democratic selection procedures adequate to assure that these members:

- Are representative of low-income individuals and families served in the neighborhood served;
- Reside in the neighborhood served; and
- Are able to actively participate in the development, planning, implementation, and evaluation of the programs funded by CSBG; or
- The statute allows states to specify, in the alternative, another mechanism for public organizations to assure decision making and participation by low-income individuals in the development, planning, implementation, and evaluation of programs funded by CSBG.

The CSBG Act does not provide for a grace period for eligible entities to get into compliance, though it is not prohibited by the Act. There are provisions within the Act that prevent the state from delaying or stopping funding or de-designating an eligible without providing technical assistance and the opportunity to correct deficiencies. For this reason, the states are encouraged to develop a policy or procedure that allows a grace period to fill Tri-Partite board vacancies.

**Compliance Requirements** Eligible entities must comply with the Tri-Partite board requirement. If an eligible entity has vacancies during the audit period that reduce the representation of low-income communities or public elected/appointed officials, that exceed the length of time permitted by the state, the auditor should report a finding. If the state has not elected to create a policy or procedure to permit a reasonable amount of time to fill a vacancy, the auditor should report a finding for any vacancy during the period that reduced the required representation below the required threshold.

**Audit Objectives** To determine if the eligible entity maintained a Tri-Partite board during the audit period.

#### **Suggested Audit Procedures**

- a. Obtain the board rosters, including the areas of representation at the beginning and end of the audit period.
- b. For any changes in the board roster, inquire of organization management the dates of the changes.
- c. Obtain the policy or procedure communicated by the state to the eligible entity for adherence to the Tri-Partite board requirement.
- d. Determine if the low-income or public representation vacancies exceeded the length of time permitted by the state.

## **IV. OTHER INFORMATION**

### *Transfers*

As described in Part 4, Social Services Block Grant (SSBG) program (CFDA 93.667), III.A. “Activities Allowed or Unallowed,” a state may transfer up to 10 percent of its annual allotment under SSBG to CSBG and other specified block grant programs for support of health services, health promotion and disease prevention activities, low-income home energy assistance, or any combination of these activities. Amounts transferred into the CSBG are subject to the requirements of the CSBG when expended and should be included in the audit universe and total expenditures of this program when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amounts transferred in should be shown as expenditures of this program when such amounts are expended.

### *McKinney-Vento Homeless Assistance Programs and Corporation for National and Community Service AmeriCorps Programs.*

Since FY 2009, the appropriations acts providing funds for the McKinney-Vento Homeless Assistance programs has included language authorizing grantees under those programs to use other federal funds as match unless prohibited by the statute of the other program. OCS has determined that the CSBG Act does not prohibit the use of CSBG funds as match for the McKinney-Vento Homeless Assistance programs and the Corporation for National and Community Service’ AmeriCorps programs. Any CSBG funds claimed as match for these

Homeless Assistance programs must be used for CSBG purposes and in accordance with the CSBG requirements.

*Tribal CSBG Grantees under a Pub. L. No. 102-477 Demonstration Project (477)*

Audits of Indian tribal governments with the CSBG program in their approved 477 Plan will follow Version 2 reporting and, therefore, must follow the guidance in the 477 Cluster found in the Department of the Interior's section of Part 4 of this Supplement. See the "Note" at the beginning of the 477 Cluster for additional information.

*2019 CSBG Disaster Supplemental*

In federal fiscal year 2019, Congress appropriated additional CSBG funds under the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Pub. L. No. 116-20). These funds are to be issued to states to address the consequences of Hurricanes Florence and Michael, Typhoon Mangkhut, Super Typhoon Yutu, and wildfires and earthquakes occurring in calendar year 2018 and tornadoes and floods occurring in calendar year 2019 in those areas for which a Presidential disaster has been declared. These funds are to be reported on the Schedule of Expenditures of Federal Awards as CSBG funds, though the states and entities are required to account for these expenditures separately. CSBG Disaster Supplemental funds are subject to the requirements of the CSBG and the additional requirement that these funds must be used to address needs directly resulting from the Presidentially-declared disaster. CSBG Disaster Supplemental funds, when expended, should be included in the audit universe and total expenditures of this program when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amounts of CSBG Disaster Supplemental funds should be shown as expenditures of this program when such amounts are expended.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### CFDA 93.489 CHILD CARE DISASTER RELIEF

### CFDA 93.575 CHILD CARE AND DEVELOPMENT BLOCK GRANT

### CFDA 93.596 CHILD CARE MANDATORY AND MATCHING FUNDS OF THE CHILD CARE AND DEVELOPMENT FUND

#### I. PROGRAM OBJECTIVES

The Child Care and Development Fund (CCDF) provides funds to states, territories, and Indian tribes (tribes) to increase the availability, affordability, and quality of child care services. Funds are used to subsidize child care for low-income families where the parents are working or attending training or educational programs, as well as for activities to promote overall child care quality for all children, regardless of subsidy receipt.

#### II. PROGRAM PROCEDURES

The Office of Child Care (OCC), Administration for Children and Families (ACF), Department of Health and Human Services (HHS), administers the CCDF. The CCDF consists of three distinct funding sources: Discretionary Fund (CFDA 93.575), Mandatory Fund (CFDA 93.596), and Matching Fund (CFDA 93.596). Some states, territories, and tribes are also eligible for Child Care Disaster Relief funds (CFDA 93.489); these funds may be used for any allowable CCDF activity as well as for construction or renovation of child care facilities to support recovery from specified federally declared disasters and emergencies. Additionally, under the Temporary Assistance for Needy Families (TANF) program (CFDA 93.558), a state may transfer TANF funds to CCDF and, if so, the funds transferred in are treated as Discretionary Funds (42 USC 604(d); 45 CFR section 98.54(a)).

To receive funds, a state, territory, or tribe must submit a plan containing specific information and assurances. The plan serves as the application for funding for states, territories, and tribes, and is effective for a three-year period. For states, the current 3-year plan covers FY2019-2021. For tribes, the current three-year plan covers FY2020-2022 (see *Source of Governing Requirements* below for more context).

Following ACF approval of the plan, funds are awarded to a Lead Agency based on statutory/regulatory formulas. The Lead Agency is the designated state, territorial or tribal entity that is accountable for administering the CCDF program. State awards are not adjusted by separate direct federal funding of counterpart tribal programs within the state. As long as statutory and regulatory requirements are met (e.g., that the state and territory Lead Agencies offer parents certificates for the purchase of child care services), grantees have flexibility in designing programs and offering services. For example, CCDF funds may be used in collaborative efforts with Head Start (CFDA 93.600), including Early Head Start, programs to provide comprehensive child care and development services for children who are eligible for both programs. In fact, the coordination and collaboration between Head Start/Early Head Start and the CCDF is strongly encouraged by sections 640(g)(1)(D) and (E), 640(h), 641(d)(2)(H)(v),

and 642(e)(3) of the Head Start Act in the provision of full working day, full calendar year comprehensive services. In order to implement such collaborative programs, which share, for example, space, equipment or materials, grantees may layer several funding streams so that seamless services are provided.

*Pub. L. No. 102-477*

Tribes may operate the CCDF program under a consolidated Pub. L. No. 102-477 project. Pub. L. No. 102-477 refers to the Indian Employment, Training, and Related Services Demonstration Act of 1992, which was amended by the Indian Employment, Training, and Related Services Consolidation Act of 2017 (Pub. L. 106-568). The purpose of this initiative is to provide for the integration of employment, training, and related services to improve the effectiveness of those services. Under Pub. L. No. 102-477, funds received from a program must be used and spent in accordance with the applicable rules for that program, subject to any waivers granted by the Secretary of HHS. Tribes participating under a Pub. L. No. 102-477 project submit consolidated plans and reports to the Department of the Interior, which serves as the lead federal agency for Pub. L. No. 102-477. The separate 477 Cluster is applicable for an audit of an Indian tribal government's approved 477 Plan. See IV, "Other Information - Tribal CCDF grantees under a Pub. L. No. 102-477 Project (477)."

### **Source of Governing Requirements**

The Discretionary Fund (CFDA 93.575) is authorized by the CCDBG Act of 1990, as amended (most recently by the CCDBG Act of 2014 (Pub. L. No. 113-186), discussed further below), and codified at 42 USC 9857 *et seq.* The Mandatory and Matching Funds (CFDA 93.596) are authorized under section 418 of Title IV-A of the Social Security Act as amended and codified at 42 USC 618. The Child Care Disaster Relief funds (CFDA 93.489) are appropriated by the Supplemental Appropriations for Disaster Relief Act of 2019 (Pub. L. 116-20). The CCDF (i.e., CFDA 93.575, 93.596, and 93.489) is subject to the regulations at 45 CFR parts 98 and 99.

The CCDBG Act of 2014 made a number of substantive changes to program requirements, including provisions related to eligibility of children, consumer education, and health and safety (including monitoring inspections and criminal background checks). For provisions that were effective upon enactment of the CCDBG Act of 2014, states and territories were required to complete implementation based on a reasonable interpretation of the law by September 30, 2016, unless the state or territory submitted and received approval for a temporary extension under a waiver (**Note:** a copy of any approval letter may be obtained from the state or territory Lead Agency). Some provisions had later effective dates specified in the law.

On September 30, 2016, HHS published a final rule to update the CCDF regulations at 45 CFR parts 98 and 99 based on the reauthorized Act. States and territory Lead Agencies had until October 1, 2018, to comply with most provisions of the rule that went beyond the state's/territory's reasonable interpretation of the Act. States and territory Lead Agencies not in compliance by that deadline were placed on corrective action plans or, for certain background check provisions, received time-limited waiver extensions.

The reauthorized Act did not address how most of its provisions apply to tribal Lead Agencies, so this was clarified in the final rule. Under the rule, tribal Lead Agencies are subject to a tiered set of requirements based on the size of their CCDF funding allocation. For the FY2020–FY2022 CCDF plan cycle, the allocation size was based on the FY 2016 allocation. Tribes had until the start of the FY 2020–2022 tribal plan period (i.e., October 1, 2019) to comply with the new provisions (with the exception of the quality expenditure requirements that apply to all tribes beginning in FY 2017). Tribes not in compliance by that date may be under corrective action periods.

Other than 2 CFR section 200.202 and sections 200.330 through 200.332, as implemented by 45 CFR sections 75.202 and 75.351 through 75.353, CCDF is not subject to the post federal award or cost principles requirements in 2 CFR part 200, subparts D and E, respectively, or the associated HHS implementing regulations at 45 CFR part 75.

### Availability of Other Program Information

OCC’s website (<https://www.acf.hhs.gov/occ>) provides general information on this program.

## III. COMPLIANCE REQUIREMENTS

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

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

**A. Activities Allowed or Unallowed****1. *Activities Allowed***

- a. Funds may be used for child care services in the form of certificates, grants, or contracts (42 USC 9858c(c)(2)(A)).
- b. Funds may be used for activities that improve the quality or availability of child care services, consumer education, and parental choice (42 USC 9858e).
- c. Funds may be used for activities that improve access to child care services, including the use of procedures to permit enrollment of homeless children (after an initial eligibility determination) while required documentation is obtained; training and technical assistance on identifying and serving homeless children and their families; and specific outreach to homeless families (42 USC 9858c(c)(3)(B)(i)).
- d. Funds may be used for any other activity that the Lead Agency deems appropriate to (a) promote parental choice; (b) provide comprehensive consumer education information to help parents and the public make informed choices about child care services and promote involvement by parents and family members in the development of their children in child care settings; (c) deliver high-quality, coordinated early childhood care and education services to maximize parents' options and support parents trying to achieve independence from public assistance; (d) improve the overall quality of child care services and programs by implementing the health, safety, licensing, training and oversight standards established in the CCDBG Act and in state law and regulations; (e) improve child care and development of participating children; and (f) increase the number and percentage of low-income children in high-quality child care settings (42 USC 9857 and 9858c(c)(3)(B)).
- e. Improvements or upgrades to a facility which are not specified under the definitions of construction or major renovation (see III.A.2.c(1) below) may be considered minor remodeling and are, therefore, allowed as follows:
  - (1) For other than sectarian organizations, funds may be used for the minor remodeling of child care facilities
  - (2) For sectarian organizations, funds may be used for the renovation or repair of facilities only to the extent that it is necessary to bring the facility into compliance with the health and safety standards required by 42 USC 9858c(c)(2)(F) (42 USC 9858d(b)).

## 2. *Activities Unallowed*

- a. No funds may be expended through any grant or contract for child care services for any sectarian purpose or activity, including sectarian worship or instruction (42 USC 9858k(a)).
- b. With regard to services to students enrolled in grades 1 through 12, no funds may be used for services provided during the regular school day, for any services for which the students receive academic credit toward graduation, or for any instructional services that supplant or duplicate the academic program of any public or private school (42 USC 9858k(b)).
- c. No funds can be used for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility (42 USC 9858d(b)).
  - (1) “Construction” is defined as the erection of a facility that does not currently exist. “Major renovation” is considered permanent improvement and is defined as (1) structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area; or (2) extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change (45 CFR section 98.2).
  - (2) *Exception:* Tribal Lead Agencies may use funds for the construction and major renovation of child care facilities with ACF approval (42 USC 9858m c)( 6); 45 CFR section 98.
  - (3) *Exception:* State, territory, and tribal Lead Agencies may use Child Care Disaster Relief Funds (CFDA 93.489) for renovating, repairing, or rebuilding child care facilities with ACF approval (Pub. L. 116-20).

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

As indicated in Appendix I to the Supplement, “Federal Programs Excluded from the A-102 Common Rule and Portions of 2 CFR Part 200,” grantees (Lead Agencies) expend and account for CCDF funds in accordance with the laws and procedures they use for expending and accounting for their own funds (45 CFR section 98.67).

## E. **Eligibility**

### 1. **Eligibility for Individuals**

Lead Agencies must have in place procedures for documenting and verifying eligibility in accordance with the following federal requirements, as well as the specific eligibility requirements selected by each Lead Agency in its approved



Plan. A Lead Agency is the designated state, territorial, or tribal entity to which the CCDF grant is awarded and that is accountable for administering the CCDF program.

- a. For state Lead Agencies and territory Lead Agencies, and for those tribal Lead Agencies with allocations of at least \$250,000, children must be under age 13 (or up to age 19, if incapable of self care or under court supervision), who reside with a family whose income does not exceed 85 percent of state/territorial/tribal median income for a family of the same size, and reside with a parent (or parents) who is working or attending a job-training or education program; or are in need of, or are receiving, protective services. Lead Agencies may choose to provide services during periods of job search. Tribal Lead Agencies may elect to use state or tribal median income (42 USC 9858n(4); 45 CFR sections 98.20(a) and 98.81(b)). Tribal Lead Agencies also have the option for categorical eligibility (considering any Indian child within the service area eligible for services) if the tribe's median income is below 85 percent of the state median income, provided that services go to those with the highest need.
- b. State Lead Agencies, territory Lead Agencies, as well as those tribal Lead Agencies with allocations of at least \$250,000, must establish minimum 12-month eligibility periods before re-determining eligibility of CCDF families and must consider a child to be eligible between eligibility re-determinations, regardless of (1) changes in income (as long as income does not exceed 85 percent of state/territory/tribal median income); or (2) temporary changes in participation in work, training, or education activities. If a parent experiences a non-temporary loss of job, education, or training that affects eligibility, Lead Agencies have the option—but are not required—to terminate assistance prior to the next re-determination (i.e., prior to the end of the minimum 12-month eligibility period). However, if a Lead Agency exercises this option, the Lead Agency must provide (prior to terminating the subsidy) a period of continued assistance of at least 3 months to allow parents to engage in job search, resume work, or attend an education or training program as soon as possible. States and territories must have implemented these eligibility provisions by September 30, 2016, unless the state or territory requested and received approval for a temporary extension under a waiver (42 USC 9858c(c)(2)(N)).
- c. Because a child meeting eligibility requirements at the most recent eligibility determination or re-determination is considered eligible between re-determinations as described in paragraph b. above, any payment for such a child shall not be considered an error or improper payment due to a change in the family's circumstances (45 CFR sections 98.21(a)(4) and 98.68(c)(2)). There is no federal requirement for Lead Agencies to recoup CCDF overpayments, except in instances of fraud as defined by the Lead Agency (45 CFR section 98.68(b)(2)).

- d. States and territories must have procedures to permit enrollment of homeless children (after an initial eligibility determination) while required documentation is obtained. States and territories must also have a grace period that allows children experiencing homelessness and children in foster care to receive services while providing families a reasonable time to take any necessary action to comply with immunization and health and safety requirements.
- e. State Lead Agencies, territory Lead Agencies, as well as those tribal Lead Agencies with allocations of at least \$250,000, must establish a sliding fee scale, based on family size, income, and other appropriate factors, that provides for cost sharing by families that receive CCDF child care services (42 USC 9858c(c)(3)(B)(i); 45 CFR section 98.45(k)). Lead Agencies may exempt families meeting criteria established by the Lead Agency from making copayments and must establish a payment rate schedule for child care providers caring for subsidized children (45 CFR section 98.45).
- f. State Lead Agencies, territory Lead Agencies, as well as those tribal Lead Agencies with allocations of at least \$250,000, must, to the extent practicable, implement enrollment and eligibility policies that support the fixed costs of providing child care services by delinking provider reimbursement rates from an eligible child's occasional absences (42 USC 9858c(c)(2)(S)). Lead Agencies are not required to limit authorized child care services strictly based on the work, training, or educational schedule of the parent(s) or the number of hours the parent(s) spend in work, training, or educational activities (45 CFR section 98.21(g)).

## **2. Eligibility for Group of Individuals or Area of Service Delivery**

The award of CCDF funds to a tribe shall not affect the eligibility of any Indian child to receive CCDF services in the state or states in which the tribe is located (42 USC 9858m(c)(5); 45 CFR section 98.80(d)).

## **3. Eligibility for Subrecipients**

Not Applicable

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

The matching and MOE requirements apply only to the Matching Fund (CFDA 93.596). The state's matching and MOE expenditures are closely related. For a state to receive the allotted share of the Matching Fund, the state must meet the MOE requirement and obligate the Mandatory Fund by year end (see III.H, "Period of Performance"). The matching and MOE amounts are reported on the CCDF Financial Report (ACF-696) (see III.L., "Reporting – Financial Reporting").

## 1. Matching

- a. A state is eligible for federal matching funds (limit specified in 42 USC 618 and 45 CFR section 98.63) only for those allowable state expenditures that exceed the state's MOE requirement, provided all of the Mandatory Funds (CFDA 93.596) allocated to the state are also obligated by the end of the fiscal year (45 CFR section 98.53).
- b. State expenditures will be matched at the Federal Medical Assistance Percentage (FMAP) rate for the applicable fiscal year. This percentage varies by state and is available at <http://www.aspe.hhs.gov/health/fmap.htm>. To be eligible an activity must be allowable and be described in the approved state plan (45 CFR section 98.53).
- c. Private or public donated funds may be counted as state expenditures for this purpose subject to the limitations in 45 CFR section 98.53.
- d. No more than 30 percent of state matching claims may be for pre-kindergarten services (45 CFR section 98.53(h)(3)). The same expenditure may not be used for both MOE and matching purposes (45 CFR sections 98.53(d) and 98.53(h)).

## 2. Level of Effort

### 2.1 Level of Effort – *Maintenance of Effort*

If a state requests Matching Funds (CFDA 93.596), state MOE (non-federal) funds for child care activities must be expended in the year for which Matching Funds are claimed in an amount that is at least equal to the state's share of expenditures for FY 1994 or 1995 (whichever is greater) under former sections 402(g) and (i) of the Social Security Act (42 USC 618). Private or public donated funds may be counted as state expenditures for this purpose (45 CFR section 98.53).

No more than 20 percent of the MOE requirement may be met with state expenditures for pre-kindergarten services. The same expenditure may not be used for both MOE and matching purposes (45 CFR sections 98.53(d) and 98.53(h)).

### 2.2 Level of Effort – *Supplement Not Supplant*

Not Applicable

## 3. Earmarking

- a. *Administrative Earmark* – A state/territory Lead Agency may not spend on administrative costs more than five percent of total CCDF awards

expended (i.e., the total of CFDA 93.575, 93.596, and 93.489 with the exception of any Disaster Relief funds spent on construction and renovation) and any state expenditures for which Matching Funds (CFDA 93.596) are claimed (42 USC 9858c(c)(3)(C); Pub. L. 116-20; 45 CFR section 98.52).

Tribal Lead Agencies are allowed 15 percent of the amount expended under CFDA 93.575, 93.596, and 93.489 (with the exception of any Disaster Relief funds spent on construction and renovation) for administrative costs. Tribes with at least 50 children under age 13 are provided a base amount, which may be expended for any purpose consistent with the purpose and requirements of the CCDF. Tribes with fewer than 50 children who are members of a consortium receive a pro rata amount of the base amount in proportion to the number of children under age 13 in relation to 50. The base amount is not included in the amount against which the administrative earmark is calculated. For FY 2017 and later fiscal years, the base amount was \$30,000 (45 CFR sections 98.61(c), 98.83(h), and 98.83(i)).

The following activities are not considered administrative costs (45 CFR section 98.54(b)):

- (1) Eligibility determination and redetermination.
- (2) Preparation and participation in judicial hearings.
- (3) Child care placement.
- (4) Recruitment, licensing, inspection, review, and supervision of child care placements.
- (5) Rate-setting.
- (6) Resource and referral services.
- (7) Training of child care staff.
- (8) Establishment and maintenance of computerized child care information systems.
- (9) Establishment and operation of a certificate program.

- b. *Quality Earmark* – For FY 2018 and FY 2019, states and territory Lead Agencies must spend on quality activities, as provided in the state/territorial plan, not less than eight percent of CCDF funds expended (i.e., the total of CFDA 93.575, 93.596, and 93.489 with the exception of any Disaster Relief funds spent on construction and renovation) and any state expenditures for which Matching Funds (CFDA 93.596) are claimed

(45 CFR section 98.53). This amount rises to nine percent for FY 2020 and succeeding fiscal years. States and territory Lead Agencies must spend at least an additional three percent on quality improvement for infants and toddlers (45 CFR section 98.50(b)).

All tribal Lead Agencies must spend at least seven percent on quality activities for FY 2018 and FY 2019, and this amount rises to eight percent for FY 2020. Tribal Lead Agencies with CCDF allocations of \$250,000 and higher must spend at least an additional three percent on quality improvement for infants and toddlers starting in FY 2019. The base amount (discussed in paragraph 3.a above, *Administrative Earmark*) is not included in the amount against which the quality earmark is calculated (45 CFR sections 98.53(a), and 98.83(g)).

c. *Direct Spending Earmarks*

- (1) From the aggregate amount of Discretionary funds (CFDA 93.575) and Disaster Relief funds (CFDA 93.489) provided for a year (with the exception of Disaster Relief funds used for construction or major renovation), state Lead Agencies, territory Lead Agencies, as well as those tribal Lead Agencies with allocations of at least \$250,000 must reserve funds for administrative costs (described in paragraph 3.a above, *Administrative Earmark*) and the minimum amount required for quality activities (described in paragraph 3.b above, *Quality Spending Earmark*).
- (2) From the remainder, the Lead Agency must use not less than 70 percent to fund direct services. In addition, states and territories must spend not less than 70 percent of the mandatory and federal and state share of Matching funds (CFDA 93.596) to meet the needs of families who: (1) receive Temporary Assistance for Needy Families (TANF) assistance; (2) are attempting through work activities to transition off TANF; and (3) are at risk of becoming dependent on TANF (45 CFR section 98.50(e) and (f)).

**H. Period of Performance**

1. Discretionary Funds (CFDA 93.575) must be obligated by the end of the succeeding fiscal year after award and expended by the end of the third fiscal year after award (42 USC 9858h(c); 45 CFR section 98.60).
2. Mandatory Funds (CFDA 93.596) for states must be obligated by the end of the fiscal year in which they are awarded if the state also requests Matching Funds (CFDA 93.596). If no Matching Funds are requested for the fiscal year, then the Mandatory Funds (CFDA 93.596) are available until liquidated (45 CFR section 98.60(d)).

3. Mandatory Funds (CFDA 93.596) for tribes must be obligated by the end of the succeeding fiscal year after award and liquidated by the end of the third fiscal year after award (45 CFR section 98.60(e)).
4. Matching Funds (CFDA 93.596) must be obligated by the end of the fiscal year in which they are awarded and liquidated by the end of the succeeding fiscal year after award (45 CFR section 98.60(d)).
5. Child Care Disaster Relief Funds (CFDA 93.489) not used for construction or renovation must be obligated by the end of the succeeding fiscal year after award, and expended by the end of the third fiscal year after award (Pub. L. 116-20).
6. Child Care Disaster Relief Funds (CFDA 93.489) used for construction or renovation must be obligated by the end of the fourth fiscal year after award, and expended by the end of the fifth fiscal year after award (Pub. L. 116-20).

For example, availability periods for FY 2020 funds awarded on any date in FY 2020 (October 1, 2019 through September 30, 2020):

<b>If Source of Obligation Is –</b>	<b>Obligation must Be Made by End of –</b>	<b>Obligation must Be Liquidated by End of –</b>
FY 2020 Discretionary (CFDA 93.575)	FY 2021 (i.e., by 9/30/2021)	FY 2022 (i.e., by 9/30/2022)
FY 2020 Mandatory (State) (CFDA 93.596)	FY 2020 (i.e., by 9/30/2020 but ONLY if Matching Funds are used)	No requirement for liquidation by a specific date
FY 2020 Mandatory (Tribes) (CFDA 93.596)	FY 2021 (i.e., by 9/30/2021)	FY 2022 (i.e., by 9/30/2022)
FY 2020 Matching (CFDA 93.596)	FY 2020 (i.e., by 9/30/2020)	FY 2021 (i.e., by 9/30/2021)
FY 2020 Child Care Disaster Relief—Not Used for Construction or Renovation (CFDA 93.489)	FY 2021 (i.e., by 9/30/2021)	FY 2022 (i.e., by 9/30/2022)
FY 2020 Child Care Disaster Relief—Used for Construction or Renovation (CFDA 93.489)	FY 2023 (i.e., by 9/30/2023)	FY 2024 (i.e., by 9/30/2024)

TANF funds (CFDA 93.558) transferred to the CCDF during a fiscal year are treated as Discretionary Funds of the year they are transferred for purposes of the period of availability (45 CFR section 98.54(a)(1)).

In lieu of the obligation and liquidation requirements cited above, tribes are required to liquidate CCDF funds used for construction or major renovation by the end of the second fiscal year following the fiscal year for which the grant is awarded (45 CFR section 98.84(e)).

## **M. Subrecipient Monitoring**

Lead Agencies that use other governmental or non-governmental subrecipients to administer the program must have written agreements in place outlining roles and responsibilities for meeting CCDF requirements. The contents of the written agreement may vary based on the role the subrecipient is asked to assume or the type of product undertaken, but must include, at a minimum, tasks to be performed, a schedule for completing tasks, a budget which itemizes categorical expenditures, and indicators or measures to assess performance. Lead Agencies shall oversee the expenditure of funds by sub-grantees, monitor programs and services, and ensure that sub-grantees that determine individual eligibility operate according to rules established by the program (45 CFR section 98.11).

## **N. Special Tests and Provisions**

### **1. Health and Safety Requirements**

**Compliance Requirements** As part of their CCDF plans, Lead Agencies must certify that procedures are in effect (e.g., monitoring and enforcement) to ensure that providers serving children who receive subsidies comply with all applicable health and safety requirements. This includes verifying and documenting that child care providers (unless they meet an exception, e.g., family members who are caregivers or individuals who object to immunization on certain grounds) serving children who receive subsidies meet requirements pertaining to health and safety. These requirements must address eleven specific areas—including first aid and CPR, safe sleeping practices, and administration of medication—and child care workers must be trained in these areas (42 USC 9858c(c)(2)(I); 45 CFR section 98.41).

**Audit Objectives** Determine whether Lead Agencies ensure that child care providers serving children who receive subsidies meet applicable health and safety requirements.

### **Suggested Audit Procedures**

- a. Request that the Lead Agency identify state health and safety requirements for child care providers serving children who receive subsidies.
- b. Review the Lead Agency's procedures, including any monitoring and enforcement procedures, for ensuring child care provider compliance with relevant health and safety requirements for those providers serving children who receive subsidies. This review should include, at a minimum, relevant information in the Lead Agency's CCDF Plan.
- c. Review a sample of Lead Agency files for child care providers serving children who receive subsidies to verify that the Lead Agency followed its procedures for ensuring child care provider compliance with relevant state health and safety requirements, including training requirements.

## 2. Fraud Detection and Repayment

**Compliance Requirements** Lead Agencies shall recover child care payments that are the result of fraud. These payments shall be recovered from the party responsible for committing the fraud (45 CFR section 98.60).

**Audit Objectives** Determine if the Lead Agency correctly identified and reported fraud and took steps to recover payment.

### Suggested Audit Procedures

- a. Review the Lead Agency's procedures for identifying and recovering payments resulting from fraud, including the Lead Agency's definition of fraudulent child care payments.
- b. Request documentation of any fraudulent payments that have been identified by the Lead Agency. If fraudulent payments occurred, review a sample of those payments to verify that the Lead Agency followed its procedures related to authenticating that a payment was actually fraudulent and as applicable recover payment.

## 3. Tribal Lead Agencies - Protection of Federal Interest in Real Property and Facilities

**Compliance Requirements** CCDF can only be used for construction or major renovation of child care facilities in two instances: (1) a tribal Lead Agency that is approved to use CCDF for construction or major renovation; or (2) a state, territory, or tribal Lead Agency that is approved to use Disaster Relief funds (CFDA 93.489) for construction or major renovation. The requirements for construction and renovation of child care facilities by tribal Lead Agencies are described in 45 CFR section 98.84. As required by this section, OCC established uniform procedures in program instruction CCDF-ACF-PI-2016-05, "Procedures for Requests for Tribal Lead Agencies to Use Child Care and Development Fund (CCDF) Funds for Construction or Renovation of Child Care Facilities" (<https://www.acf.hhs.gov/occ/resource/ccdf-acf-pi-2016-05>). The requirements for using Disaster Relief funds (CFDA 93.489) for construction and renovation are described in program instruction CCDF-ACF-PI-2019-06.

Facilities activities (construction, major renovation, and disposition) are initiated through the submission of Form SF-429 (cover sheet) and applicable Attachments B (*Request to Acquire, Improve or Furnish*) or C (*Disposition or Encumbrance Request*).

In instances where federal interest provisions apply, at the commencement of construction or major renovation of a facility with CCDF funds, the tribal Lead Agency must record a Notice of Federal Interest in the appropriate official records of the jurisdiction in which the facility will be located (unless the facility will be located on tribal lands held in trust by the U.S. government). In the case of Disaster Relief funds (CFDA 93.489), federal interest is limited to ten years, and does not apply to privately-owned family child care homes. The full requirements for the protection of the federal



interest are described in program instructions CCDF-ACF-PI-2016-05 and CCDF-ACF-PI-2019-06.

**Audit Objectives** Determine whether the federal interest in real property and facilities is protected by the required Notice of Federal Interest and language content and the required prior written approvals were obtained from ACF.

#### **Suggested Audit Procedures**

- a. Review the appropriate documentation (e.g., Lead Agency's general ledger accounts and the meeting minutes of its governing body) and inquire of the tribal Lead Agency's management to identify if any of the following transactions, which are subject to the requirements for protecting the federal interest, occurred during the audit period and, if so, that the required prior written approvals were obtained from ACF:
  - (1) Construction or major renovation of a facility, including a modular unit.
  - (2) Sale, lease, or encumbrance, such as a mortgage of real property or a facility (including modular units).
  - (3) Changes in approved use of facilities.
- b. For construction, or major renovation during the audit period, ascertain if the Notice of Federal Interest was required, and if so, whether it was properly recorded in the locality's official real property records and, for a modular unit, if this Notice was properly posted in a conspicuous place. A Notice is not required for a facility on tribal lands held in trust by the U.S. government; however, there is still a federal interest in any facility constructed or renovated with CCDF funds.
- c. Review the Notices of Federal Interest and mortgage agreements and other security instruments executed during the audit period to ascertain if the documents include the required language content.
- d. For sales, leases, and encumbrances and property used for a different purpose during the audit period, review the change in use to ascertain if the tribal Lead Agency obtained and complied with the requirement for ACF prior written approval.

#### **IV. OTHER INFORMATION**

##### *Transfer of Funds to CCDF*

Under the TANF program (CFDA 93.558), a state may transfer TANF funds to CCDF and the funds transferred are treated as Discretionary Funds under CCDF. The amounts transferred into CCDF should be included in the audit universe and in total expenditures of CCDF when determining Type A programs. On the Schedule of Expenditures of Federal Awards (SEFA), the amount transferred in should be shown as CCDF expenditures when expended.

*Tribal CCDF Grantees under a Pub. L. No. 102-477 Project*

Audits of Indian tribal governments with tribal CCDF in their approved 477 Plan with reporting under Version 2 forms (75 FR 57970 (September 26, 2014)) must follow the guidance in the 477 Cluster found in the Department of the Interior's section of Part 4 of this Supplement.

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CFDA 93.356 HEAD START DISASTER RECOVERY FROM HURRICANES HARVEY, IRMA, AND MARIA**

#### **CFDA 93.600 HEAD START**

##### **I. PROGRAM OBJECTIVES**

The objective of the CFDA 93.600 Head Start program (including Early Head Start and Early Head Start-Child Care Partnerships) is to promote school readiness of low-income children (including American Indians, Alaska Natives, and migrant and seasonal farm workers) by enhancing children's cognitive, social, and emotional development.

The objective of the CFDA 93.356 disaster recovery is to provide for Head Start expenses directly related to the consequences of 2017 hurricanes Harvey, Irma, and Maria, including making payments under the Head Start Act.

Comprehensive services are provided to enrolled children, pregnant women, and their families, which include health, nutrition, social, and other services determined to be necessary by family needs assessments, in addition to education and cognitive development services.

##### **II. PROGRAM PROCEDURES**

The Office of Head Start (OHS), Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS), administers the Head Start program and disaster recovery funds.

Services for children ages 3–5 are funded by a Head Start award and services for pregnant women and children ages 0–3 are funded by an Early Head Start award. Early Head Start services may include those delivered through a partnership with existing child care centers or family child care homes under funding specially designated as an Early Head Start – Child Care Partnership award. Grantees may receive one-time awards, primarily for health and safety-related facility improvement activities.

Comprehensive center-based or home-based services are provided to enrolled children, pregnant women, and their families. These include health, nutrition, social, and other services determined to be necessary by a family needs assessment, in addition to education and cognitive development services. Services are designed to be responsive to each child's and family's ethnic, cultural, and linguistic heritage.

OHS makes Head Start awards to local public, nonprofit agencies, and for-profit entities known as Head Start Agencies (HSA). The awards are made for a period not-to-exceed five years. A HSA may enter into an agreement with a delegate agency (subrecipient) for delivery of Head Start services; however, the HSA (pass-through entity) retains legal and fiscal responsibility for the grant. Delegate agencies may be public, non-profit, or for-profit organizations. HSAs must establish and implement procedures for the ongoing monitoring of each delegate agency (42 USC 9836a(d) and 45 CFR sections 1303.30 and 32).

CFDA 93.356 funds may be used for allowable Head Start expenditures as specified in the terms and conditions of the grant award.

### Source of Governing Requirements

The Head Start program is authorized under the Improving Head Start for School Readiness Act of 2007 (Pub. L. No. 110-134 (42 USC 9831-9852)).

On September 7, 2016, OHS promulgated new regulations governing program operations, referred to as the Head Start Program Performance Standards (HSPPS) (45 CFR parts 1301 through 1305). HSPPS became effective beginning November 7, 2016, although some provisions are deferred as noted in the regulations and two sections (45 CFR 1302.90(b)(1) and 45 CFR 1302.53(b)(2)) until September 30, 2019, and a request for further deferral until September 30, 2020, is under consideration. The full implementing program regulations are 45 CFR parts 1301 through 1305.

CFDA 93.356 was established based on appropriations in the Bipartisan Budget Act of 2018 (Pub. L. No. 115-123, 132 Stat. 93) and supplemental appropriations for fiscal year ending September 30, 2018 (Pub. L. No. 116-20).

### Availability of Other Program Information

The Early Childhood Learning and Knowledge Center (ECLKC) (<http://eclkc.ohs.acf.hhs.gov/hsle>) is the OHS website that provides information about the Head Start program. ECLKC also provides information specific to CFDA 93.356 in ACF-IM-HS-17-02, dated September 20, 2017, *Disaster Recovery from 2017 hurricanes* and ACF-PI-HS-18-02, dated April 9, 2018, *hurricanes Harvey, Irma, and Maria Disaster Assistance Funds*.

## III. COMPLIANCE REQUIREMENTS

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

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Y	Y	N	N	Y	N	N	N	N	Y	Y	Y

#### A. Activities Allowed or Unallowed

1. Funds may be used for the following program services consistent with HSPPS:
  - a. Providing for the direct participation of parents of children in the development, conduct, and program direction at the local community level (42 USC 9833 and 42 USC 9837(b)(1));
  - b. Training and technical assistance activities which may include the establishment of local or regional agreements with community experts, institutions of higher education, or private consultants, to make program improvements (42 USC 9835(a)(2)(C));
  - c. Improving the compensation (including benefits) of educational personnel, family service workers, and child counselors to—
    - (1) ensure that compensation is adequate to attract and retain qualified staff;
    - (2) improve staff qualifications and assist with the implementation of career development programs for staff that support ongoing improvement of their skills and expertise; and
    - (3) provide educational and professional development to enable teachers to meet professional standards, including providing assistance to complete post-secondary course work, improve the qualifications and skills of educational personnel to become certified and licensed as bilingual education teachers, or as teachers of English as a second language, and improve the qualifications and skills of educational personnel to teach and provide services to children with disabilities (42 USC 9835(a)(5)(A) and 42 USC 9835(j));

- d. Supporting staff training, child counseling, and other services necessary to address the challenges of children from immigrant, refugee, and asylee families, homeless children, children in foster care, limited English proficient children, children of migrant or seasonal farmworker families, children from families in crisis, children referred to Head Start programs by child welfare agencies, and children who are exposed to chronic violence or substance abuse (42 USC 9835(a)(5)(B)(i));
- e. Ensuring the physical environment is conducive to providing effective program services to children and families and are accessible to children and others with disabilities (42 USC 9835(a)(5)(B)(ii));
- f. Employing additional qualified classroom staff to reduce the child-to-teacher ratio in the classroom and additional qualified family service workers to reduce the family-to-staff ratio for those workers (42 USC 9835(a)(5)(B)(iii));
- g. Ensuring that programs have qualified staff that promote the language skills and literacy growth of children and that provide children with a variety of skills that have been identified, through scientifically based reading research, as predictive of later reading achievement. (42 USC 9835(a)(5)(B)(iv));
- h. Increasing the duration of hours of program operation, including the conversion of part-day programs to full-working day programs and increasing the number of weeks of operation in a calendar year (42 USC 9835(a)(5)(B)(v));
- i. Improving community-wide strategic planning and needs assessments and collaboration efforts, including outreach (42 USC 9835(a)(5)(B)(vi));
- j. Transporting children safely except that not more than 10 percent of designated quality improvement funds may be used for transportation costs (42 USC 9835(a)(5)(B)(vii) and 45 CFR part 1310);
- k. Establishing and implementing procedures to evaluate the performance of delegate agencies and ensure corrective action for deficiencies identified through such evaluations (42 USC 9836a(d));
- l. Correcting areas of noncompliance or deficiencies and developing quality improvement plans (42 USC 9836a(e));
- m. Carrying out activities related to operation of the governing body. This includes activities related to administering and overseeing the Head Start grant; developing or implementing practices that ensure, active, independent, and informed governance of the HSA; and ensuring the necessary membership on the governing body (42 USC 9837(c)(1));

- n. With the consultation and participation of policy councils, and as appropriate, policy committees and community members, the conduct of an annual self- assessment of the HSA's effectiveness and progress in meeting program goals and objectives as well as in implementing and complying with HSPPS (42 USC 9836a(g));
  - o. Offering directly, or through referral to local entities, family literacy services, parenting skills training, substance abuse counseling, including information on the effect of drug exposure on infants and fetal alcohol syndrome (42 USC 9837(b)(4) and 42 USC 9837(b)(5));
  - p. Provision of family needs assessments that include consultation with parents (including foster parents, grandparents, and kinship caregivers) (42 USC 9837(b)(7));
  - q. Outreach and information to parents of limited English proficient children in an understandable and uniform format (42 USC 9837(b)(11));
  - r. Collaboration and coordination with public and private entities to improve the availability and quality of services to Head Start children and families, including outreach to the schools in which children participating in Head Start programs will enroll (42 USC 9837(e) and 42 USC 9837A(a));
  - s. Implementation of a research-based early childhood curriculum (42 USC 9837(f)(3)); and
  - t. In the case of an Early Head Start program or program component, provision, either directly or through referral, of early continuous, intensive, and comprehensive child development and family support services that enhance the physical, social, emotional, and intellectual development of children under the age of 3 (42 USC 9840A(b)).
2. Funds may be used for development and administrative costs, subject to the limitation that no financial assistance shall be extended in any case in which the costs of developing and administering a program exceed 15 percent of the total costs, including the required non-federal contributions to such costs. The term "development and administrative costs" means costs incurred in accordance with an approved Head Start budget that do not directly relate to the provision of program component services, as described under paragraph 1, above (42 USC 9839(b) and 45 CFR section 1301.32 (a)).
3. With ACF prior written approval, HSAs may use funds for capital expenditures (including paying the cost of amortizing the principal, and paying interest on, loans), such as construction of new facilities, purchase of new or existing facilities, major renovations of existing facilities, and purchase of vehicles used for programs conducted at the Head Start facilities (42 USC 9839(f) and (g)). Major renovation means any individual or collection renovation that has a cost

equal to or exceeding \$250,000. It excludes minor renovations and repairs except when they are included in a purchase application (45 CFR section 1305.2).

4. Funds may not be used by HSAs to engage in any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election for public or party office or any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election (42 USC 9851(b)(1)). These prohibitions do not apply to the use of Head Start facilities during hours of operation for any nonpartisan organization to increase the number of eligible citizens who register to vote in elections for federal office (42 USC 9851(b)(2)).
5. HSAs and delegate agencies must use funds from USDA's Child and Adult Care Food Program (CFDA 10.558) as the primary source of payment for children's nutritional services (meals and snacks). Head Start funds may be used only to cover those allowable costs not covered by USDA (45 CFR section 1302.44(b)).
6. Funds may be used for professional medical and oral health services when no other funding source is available. When funds are used for such services, HSAs and delegate agencies must have written documentation of their efforts to access other available sources of funding (45 CFR section 1302.42(e)(2)).
7. Additional requirements for awards made under CFDA 93.356:
  - a. The terms and conditions of the award specify the allowable Head Start expenditures for which the funds must be used. ACF-PI-HS-18-02 lists the following types of allowable expenses.
    - (1) Facilities
    - (2) Materials, Supplies, and Equipment
    - (3) Program Operations
    - (4) Additional Health, Mental Health, Dental, and Nutrition Services
    - (5) Training and Technical Assistance (T/TA)
    - (6) Disaster Recovery Expenses Incurred Prior to Availability of Funds
  - b. HSAs are eligible to submit more than one application for disaster recovery funds and may receive multiple awards depending on the type of funds requested and complexity (e.g., facilities) of funded projects.
  - c. Funds may not be used to pay for costs that are reimbursed by the Federal Emergency Management Agency (FEMA), under a contract for insurance,



or by self-insurance. HSAs must advise ACF in writing of the receipt of such funds and reimburse ACF for any costs incurred under the award that are subsequently reimbursed by FEMA, under a contract for insurance or self-insurance. HSAs may submit Head Start disaster recovery applications during the pendency of FEMA requests and insurance claims (Pub. L. No. 115-123, 132 Stat. 93).

**B. Allowable Costs/Cost Principles**

1. Costs meet general criteria for allowability, including being necessary and reasonable for the performance of the federal award, allocable thereto and adequately documented (45 CFR sections 75.403, 75.404, and 75.405).
2. Shared and indirect costs attributable to common or joint use of personnel, facilities, or services by Head Start programs and other programs must be fairly allocated among the various programs that utilize such services (42 USC 9839(c)).
3. Federal funds (including charges to indirect cost pools) may not be used to pay any part of the compensation of an individual employed by a HSA, if such compensation, including non-federal funds, exceeds an amount equal to the rate payable for level II of the Executive Schedule under section 5313 of title 5, United States Code (42 USC 9848(b)).

**F. Equipment/Real Property Management**

1. Real property, equipment, and intangible property, that are acquired or improved with a federal award must be held in trust by the non-federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The HHS awarding agency may require the non-federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a federal award and that use and disposition conditions apply to the property (45 CFR section 75.323 and 45 CFR section 1303 – Subpart E).
2. Real property acquired or improved under a federal award must be used for the authorized purpose so long as it is needed for that purpose, during which time the HSA may not dispose of, replace or encumber the property without prior ACF approval (45 CFR section 75.318; 45 CFR section 75.308(c)(1)(xi)).
3. Equipment acquired under a federal award must be used for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project. A HSA may not dispose of, replace, or encumber title to equipment without prior ACF approval (45 CFR section 75.319; 45 CFR section 75.308(c)(1)(xi)).
4. Property records must be maintained for equipment acquired under a federal award that include a description of the property, a serial number or other

identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of federal participation in the project costs for the federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

## **L. Reporting**

### **1. Financial Reporting**

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

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

*SF-429 – Real Property Status Report and SF-429-A General Reporting (OMB No. 4040-0016)*. These forms are filed annually based upon the end of the budget period. The annual SF-429 is required for all grantees and must indicate whether the grantee has reportable real property. If so, a separate SF-429-A must be completed for each parcel of real property reported and accompany the annual SF-429.

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

*SF-429*

- 1. *Federal Agency and Organizational Element to Which Report is Submitted*
- 2. *Federal Grant(s) or Other Identifying Number(s) Assigned by Federal Agency(ies)*
- 3. *Recipient Organization Name*
- 4b. *EIN*
- 7. *Report End Date*

*SF-429-A*

13. *Period and type of Federal interest*

14a. *Description of Real Property*

14b. *Address of Real Property*

14f. *Real Property Cost*

Any non-federal match associated with facilities activities becomes part of the federal share of the facility (45 CFR section 1303.44(c) and 45 CFR section 1305.2 definition of federal interest).

14g. *Has a deed, lien, covenant, or other related documentation been recorded to establish federal interest in this real property?*

14h. *Has federally required insurance coverage been secured for this real property?*

15. *Has a significant change occurred with the real property, or is there an anticipated change expected during the next reporting period?*

**Note:** If the response to the question is “Yes,” but only in anticipation of an expected change, the auditor is not expected to review this line item.

16. *Real Property Disposition Status*

## **M. Subrecipient Monitoring**

HSAs must establish and implement procedures for the ongoing monitoring of their own Head Start and Early Head Start operations, as well as those of their delegate agencies, to ensure that these operations effectively implement federal regulations, including procedures for evaluating delegate agencies and procedures for defunding them. Grantees must inform delegate agency governing bodies of any identified deficiencies in delegate agency operations identified in the monitoring review and assist them in developing plans, including timetables, for addressing identified problems (42 USC 9836a(d) and 45 CFR sections 1304.51(i)(2) and (3)).

## **N. Special Tests and Provisions**

### **1. Protection of Federal Interest in Real Property and Facilities**

**Compliance Requirements** Head Start uses specific terms related to real property and facilities, which are defined at 45 CFR section 1305.2, including construction, facility, federal interest, major renovation, and modular unit.

Facilities activities (purchase, construction, major renovation, subordination of a federal interest, refinancing, and disposition) are initiated through the submission of Form SF-

429 (cover sheet) and applicable Attachments B (*Request to Acquire, Improve or Furnish*) or C (*Disposition or Encumbrance Request*).

With written prior approval from ACF, a HSA may use Head Start funds to purchase, construct, or renovate (major) a facility, including using Head Start funds to pay ongoing purchase costs which include principal and interest on approved loans (45 CFR sections 1303.40 through 1303.44).

A HSA that uses Head Start funds to purchase real property or purchase, construct, or renovate (major) a facility appurtenant to real property (either owned or leased) must record a Notice of Federal Interest (also referred to as “reversionary interest”) (45 CFR sections 1303.46). The Notice of Federal Interest must include the required language content from 45 CFR section 1303.47(a) and be properly recorded in the official real property records for the jurisdiction where the facility is or will be located. A similar Notice of Federal Interest is required for leased facilities on land the HSA does not own (45 CFR section 1303.47(b)).

A HSA that uses Head Start funds to purchase or renovate (major) a modular unit must post a Notice of Federal Interest which includes the required language content in clearly visible locations on the exterior and the interior of the modular unit (45 CFR sections 1303.46(b)(4) and 47(c)).

A HSA cannot mortgage, use as collateral for a credit line or for other loan obligations, or sell or transfer to another party, a facility, real property, or a modular unit it has purchased, constructed, or renovated (major) with Head Start funds, without the prior written approval of ACF (45 CFR sections 1303.48 and 1303.51). A HSA must include specific language in any mortgage agreement or other security instrument that encumbers real property or a modular unit constructed or purchased with Head Start fund to ensure protection of ACF interests (45 CFR section 1303.49).

A HSA must have written approval from ACF before it can use real property, a facility, or a modular unit subject to federal interest for a purpose other than that for which the HSA’s application was approved (45 CFR section 1303.48(b)).

**Audit Objectives** Determine whether the federal interest in real property and facilities is protected by the required Notice of Federal Interest and language content and the required prior written approvals were obtained from ACF.

### **Suggested Audit Procedures**

- a. Review the HSA’s general ledger accounts and the meeting minutes of its governing body and inquire of HSA management to identify if any of the following transactions, which are subject to the requirements for protecting the Federal interest, occurred during the audit period and, if so, that the required prior written approvals were obtained from ACF:
  - (1) Purchase of real property or purchase, construction, or major renovation of a facility, including a modular unit.

- (2) Sale, lease, or encumbrance, such as a mortgage of real property or a facility (including modular units).
  - (3) Changes in approved use of facilities.
- b. For purchase, construction, or major renovation during the audit period, ascertain if the required Notice of Federal Interest was properly recorded in the locality's official real property records and, for a modular unit, if this Notice was properly posted on the exterior and interior of the modular unit.
- c. Review the Notices of Federal Interest and mortgage agreements and other security instruments executed during the audit period to ascertain if the documents include the required language content.
- d. For sales, leases, and encumbrances and property used for a different purpose during the audit period, review the change in use to ascertain if the HSA obtained and complied with the requirement for ACF prior written approval.

## **2. Program Governance**

**Compliance Requirements** OHS has found a high correlation between HSAs that fail to comply with the program governance requirements and HSAs that have serious fiscal problems, which puts both the HSA and the Head Start programs they administer at risk.

The governing body has legal and fiscal responsibility for the HSA. The HSA governing body must include not less than one member with a background and expertise in fiscal management or accounting and not less than one licensed attorney familiar with issues that come before the governing body. If the types of persons described above are not available to serve as members of the governing body, the governing body must use a consultant, or another individual(s) with relevant expertise who must work directly with the governing body (42 USC 9837(c)(1)(B)).

A HSA must share accurate and regular financial information with the governing body and the policy council, including monthly financial statements, including credit card expenditures and the financial audit (42 USC 9837(d)(2)(A) and (E)).

The governing body's responsibilities include approving financial management, accounting, and reporting policies, and compliance with laws and regulations related to financial statements, including the

- a. approval of all major financial expenditures of the agency;
- b. annual approval of the operating budget of the agency;
- c. selection (except when a financial auditor is assigned by the state under state law or is assigned under local law) of independent financial auditors who shall report all critical accounting policies and practices to the governing body; and

- d. monitoring of the agency's actions to correct any audit findings and of other action necessary to comply with applicable laws (including regulations) governing financial statement and accounting practices (42 USC 9837(c)(1)(E)(iv)(VII)(aa) through (dd)).

Appropriate training and technical assistance shall be provided to the members of the governing body and the policy council (42 USC 9837(d)(3)).

**Audit Objectives** Determine whether the entity complied with the program governance requirements for (a) composition and qualifications of board members, and (b) providing financial information to the governing body and the public, and (c) providing training to the governing body and policy council.

### **Suggested Audit Procedures**

1. Identify the HSA's governing body member who is an attorney and ascertain if that individual is licensed and has the required familiarity with issues that come before the governing body, or that the governing body used a consultant, or another individual with relevant expertise with the required qualifications who worked directly with the governing body.
2. Identify the HSA's governing body member with fiscal management or accounting expertise and ascertain if that individual has the required background and expertise or that the governing body used a consultant, or another individual with the required qualifications who worked directly with the governing body.
3. Ascertain if the HSA shared the required monthly financial information with the governing body and the policy council.
4. Determine whether the HSA has established written policies and procedures that identify major financial expenditures approvable by the governing body. If the HSA does not have written policies and procedures that identify or define major financial expenditures determine whether the HSA has an identifiable practice for identifying major financial expenditures submitted for approval to the governing body. Ascertain if written policies and procedures or an identifiable procedure exists and whether the policy, procedure or practice was followed by the HSA. If no such policy, procedure or practice exists and no governing body minutes reflect approval of expenditures identified as major financial expenditures, the auditor should determine that major financial expenditures are not submitted to the governing body for approval.
5. Governing body minutes or similar records should also reflect approval of all funding applications (Head Start and disaster recovery), selection of the independent auditor, attention to corrective action on audit findings and the annual report to the public.

6. Ascertain if the governing body of the HSA approved major financial expenditures and the budget, selected the independent auditors, and monitored corrective action on audit findings.
7. Ascertain if governing body members have received training and technical assistance to ensure ability to meet fiscal responsibilities.

#### **IV. OTHER INFORMATION**

For purposes of evaluation of this new Head Start cluster for major program determination purposes, the cluster cannot be considered to have been audited in one of the prior two years if the expenditures of the new program were less than or equal to 25% of the Type A threshold.

Monitoring of HSAs and delegate agencies by OHS has identified the following areas of risk for deficiencies in internal controls and non-compliance.

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

1. Many Head Start grantees, such as community action agencies, have multiple funding streams and few revenue sources other than federal awards. Federal programs only cover costs that are reasonable, allowable, and allocable for the accomplishment of the program objectives leaving the entity with limited options to cover unallowable costs.
2. OMB M-18-18 allows the federal agencies to permit the use of the higher thresholds by the grant recipients and states that "agencies should apply this exception to all recipients." ACF adopted a simplified acquisition threshold of \$250,000 and a micro-purchase threshold of \$10,000 as described in ACF Grants Policy Note No. 18-01 (internal) and updated grant terms and conditions accordingly. This action allows the maximum flexibility to grant recipients for early implementation, effectively June 20, 2018, with the approval of the federal cognizant agency for indirect costs rates. Grant recipients should document any change based on this exception in its internal procurement policies.
3. The Head Start program often provides the largest proportion of the overall funding of HSAs and funds are immediately available to be drawn down in the Payment Management System. These factors create a risk that shared costs are over-allocated or billed entirely to Head Start. In some cases, costs of shared central services, such as equipment, information and communications systems, and rent are charged entirely to Head Start when the costs should be allocated to all programs that benefit.
4. A large portion of Head Start costs are payroll and grantees may fail to maintain adequate documentation of shared staff time or charge those costs based on the application budget rather than reconciling to actual hours worked. For example:
  - a. A teacher working for both Head Start and Child Care or a director for multiple programs erroneously charged entirely to Head Start.

- b. Double charging the same costs by including them in the indirect cost rate and direct charging them through allocation (e.g., administrative staff).
  - c. Large dollar costs charged through journal entries to move costs between programs or between program years without adequate support.
  - d. Rent charged at full fair market value instead of depreciation or use allowance under capital or related party leases.
5. Transactions with related parties resulting in excessive charges. For example, in the area of professional services (e.g., financial services, information technology, mental health professionals, and nutrition consultants), grantees awarding contracts to related parties without competitive procurement or paying rental rates in excess of fair market value. Applicable only to expenditures charged to CFDA 93.356:
- a. Failure to notify ACF of FEMA or insurance proceeds or reimbursements for expenses already funded with Head Start disaster recovery funds.
  - b. Failure to obtain prior written approval from ACF for purchase, construction, or major renovation of facilities. Major renovation means any individual or collection renovation that has a cost equal to or exceeding \$250,000. It excludes minor renovations and repairs except when they are included in a purchase application (45 CFR section 1305.2).
  - c. Failure to document costs and their relationship to the consequences of hurricanes Harvey, Irma, Maria, and allowability based on the specific terms and conditions of the award.



## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CFDA 93.645 STEPHANIE TUBBS JONES CHILD WELFARE SERVICES PROGRAM**

#### **I. PROGRAM OBJECTIVES**

The purpose of the Stephanie Tubbs Jones Child Welfare Services (CWS) program is to promote state and tribal flexibility in the development and expansion of a coordinated child and family services program that utilizes community-based agencies and ensures all children are raised in safe, loving families.

#### **II. PROGRAM PROCEDURES**

The Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Administration on Children, Youth and Families, Children's Bureau, administers the CWS program on the federal level. Funds are awarded directly to states and tribes. State agencies can have agreements and contracts with other public agencies and with private agencies for provision of appropriate services. Each state receives a base amount of \$70,000. Additional funds are distributed in proportion to the state's population of children under age 21 multiplied by the complement of the state's average per capita income. The funds must go to, and be administered only by, the state child welfare agency, federally recognized tribes, tribal organizations, or tribal consortia (hereafter "tribe").

To be eligible for funds, each state and tribe must submit a five-year comprehensive plan, the Child and Family Services Plan (CFSP). This plan encompasses planning and service delivery for the full child welfare services spectrum. This includes (1) Child Welfare Services, services promoting safe and stable families under Title IV-B, subpart 2; (2) a child welfare staff development and training plan; (3) a diligent recruitment of foster and adoptive families plan that reflects the ethnic and racial diversity of children in the state for whom foster and adoptive homes are needed; (4) and child abuse and neglect prevention, foster care, adoption, and foster care independence services. The plan must include how the state or tribe intends to meet specific goals, provide services, and coordinate services. The Children's Bureau has approval authority for the CFSP. An Annual Progress and Services Report (APSR) is required that identifies the specific accomplishments and progress made in the past fiscal year (FY) toward meeting each goal and objective in the five-year comprehensive plan and any revisions in the statement of goals and objectives or to the training plan, if necessary, to reflect changed circumstances. The Associate Commissioner of the ACF Children's Bureau has approval authority for the Title IV-B plans.

#### **Source of Governing Requirements**

The CWS program is authorized under Title IV-B, subpart 1 (sections 421–428) of the Social Security Act as amended, and is codified at 42 USC 620-628a. Implementing program regulations are published at 45 CFR parts 1355 and 1357.

## Availability of Other Program Information

The Children's Bureau manages a policy issuance system that provides further clarification of the law and guides states and tribes in implementing the CWS program. This information may be accessed at <https://www.acf.hhs.gov/cb/laws-policies>.

## III. COMPLIANCE REQUIREMENTS

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

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

### A. Activities Allowed or Unallowed

#### 1. *Activities Allowed*

- a. Funds may be used for the following purposes (42 USC 621):
  - (1) Protecting and promoting the welfare of all children;
  - (2) Preventing the abuse, neglect, or exploitation of children;

- (3) Supporting at-risk families through services that allow children to remain with their families or return to their families in a timely manner;
  - (4) Promoting the safety, permanence, and well-being of children in foster care and adoptive families; and
  - (5) Providing training, professional development, and support to ensure a well-qualified workforce.
- b. Funds may be used for administrative costs, subject to the limitation in III.G.3.b, “Matching, Level of Effort, Earmarking – Earmarking,” below. The term “administrative costs” means costs for the following but only to the extent incurred in administering the state plan for this program: procurement; payroll management; personnel functions (other than the portion of the salaries of supervisors attributable to time spent directly supervising the provision of services by caseworkers); management; maintenance and operation of space and property; data processing and computer services; accounting; budgeting; auditing; and travel expenses (except those related to the provision of services by caseworkers or oversight of the program) ((42 USC 622(b)(14) and (c) and 624(e)).

2. *Activities Unallowed*

Funds may not be used for the purchase or construction of facilities (45 CFR section 1357.30(f)).

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

**1. Matching**

Funds are federally reimbursed at 75 percent of allowable expenditures. The Title IV- B agency’s contribution may be in cash, donated funds, and non-public third-party in-kind contributions (42 USC 623 and 45 CFR section 1357.30(e)(1)). The Federal Financial Participation rate may be reduced (and the state matching rate increased by a corresponding amount) based on a determination that the state failed to meet performance standards for caseworker visits with children in foster care in the preceding federal fiscal year (FFY) (see II.L.2 “Performance Reporting” below). The Children’s Bureau notifies states of any adjustment to the matching requirements through correspondence to the state agency. (Tribes are not subject to the caseworker visit data requirements.)

**2. Level of Effort**

Not Applicable

### 3. Earmarking

- a. No more than 10 percent of the expenditures of the state or tribe with respect to activities funded from amounts provided under Title IV-B, subpart 1 may be used for administrative costs (42 USC 622(b)(14) and (c) and 624(e)).
- b. A state may not use federal funds under Title IV-B, subpart 1 for child care, foster care maintenance or adoption assistance payments in excess of the amount of Title IV-B, subpart 1 funds it spent on these activities from such payments for FY 2005 (42 USC 624(c)). This limitation is not applicable to tribes.
- c. A state cannot use more than the amount it spent in FY 2005 using non-federal funds on foster care maintenance payments as match for the Title IV-B, subpart 1, program (42 USC 624(d)). This limitation is not applicable to tribes.

### H. Period of Performance

Funds under Title IV-B, subpart 1, must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded (45 CFR section 1357.30(i)).

### L. Reporting

#### 1. Financial Reporting

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

#### 2. Performance Reporting

States are required to annually collect and report data on monthly caseworker visits with children in foster care. This report addresses established specific performance requirements as follows:

- a. *For FFY 2015 and each FFY thereafter:* The total number of visits made by caseworkers on a monthly basis to children in foster care during a fiscal year must not be less than 95 percent of the total number of such visits that would occur if each child were visited once every month while in care.
- b. *For FFY 2012 and each FFY thereafter:* At least 50 percent of the total number of monthly visits made by caseworkers to children in foster care during a fiscal year must occur in the child's residence.

States failing to meet any one of the above performance requirements in a FFY will be subject to a reduction in the rate of Federal Financial Participation (FFP) for Title IV-B, subpart 1 expenditures in the subsequent FFY in proportion to the amount that the state failed to reach the applicable requirement (section 424(f) of the Act). The full federal allotment will remain available to the state, but the state must increase its match rate to access the full federal allotment.

The requirements for caseworker visitation reporting are addressed in Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Children's Bureau (CB) Program Instructions (PIs). The reporting element requirements are covered in Program Instruction ACYF-CB-PI-12-01 available through a link as follows:

<https://www.acf.hhs.gov/cb/resource/pi1201>

The annual monthly caseworker visitation data submission procedures are addressed through an annual program instruction covering multiple program information reports. The latest issuance of this guidance to states is through Program Instruction ACYF-CB-PI-19-02 available through a link as follows:

<https://www.acf.hhs.gov/cb/resource/pi1902>

The information on the caseworker visitation reporting procedures are included under "Section C. 2015- 2019 Final Report Requirements, 7. Statistical and Supporting Information, d. Monthly Caseworker Visit Data:" on page 17 of that PI.

### **3. Special Reporting**

Not Applicable

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CFDA 93.658 FOSTER CARE–TITLE IV-E**

#### **I. PROGRAM OBJECTIVES**

The objective of the Foster Care program is to help agencies authorized to administer Title IV-E programs to provide safe, appropriate, 24-hour, substitute care for children who are under the jurisdiction of the administering Title IV-E agency and need temporary placement and care outside their homes.

#### **II. PROGRAM PROCEDURES**

##### **Overview**

The Foster Care program is administered at the federal level by the Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS). Funding is provided to the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and federally recognized Indian tribes, Indian tribal organizations and tribal consortia with approved Title IV-E plans, based on a Title IV-E plan and amendments, as required by changes in statutes, rules, and regulations submitted to and approved by the ACF Children's Bureau Associate Commissioner. This program is considered an open-ended entitlement program and allows the state or tribe to be funded at a specified percentage (federal financial participation) for program costs for eligible children.

The Foster Care program provides federal matching funds to Title IV-E agencies with approved Title IV-E plans for maintenance assistance payments to provide safe and stable out-of-home care to eligible children placed in qualifying foster care settings. The program also provides matching funds for child placement and other administrative or training costs associated with serving these children and others determined to be candidates for the Title IV-E Foster Care program or those either found to be at-risk of becoming or identified as a sex trafficking victim.

The designated state or tribal agency for this program, which is authorized under Title IV-E of the Social Security Act, as amended, also administers ACF funding provided for other Title IV-E programs, e.g., Adoption Assistance (CFDA 93.659); Guardianship Assistance (CFDA 93.090) at agency option and John H. Chafee Foster Care Program for Successful Transition to Adulthood (CFDA 93.674), as well as Child Welfare Services (CFDA 93.645) and Promoting Safe and Stable Families (CFDA 93.556) programs (Title IV-B of the Social Security Act, as amended) (CFDA 93.556) funds available to states and those tribes qualifying for at least a minimum grant of \$10,000; and the Social Services Block Grant program (CFDA 93.667) (Title XX of the Social Security Act, as amended) (states only). The Title IV-E agency may either directly administer the Foster Care program or supervise its administration by local level agencies. Where the program is administered by a state, in accordance with the approved Title IV-E plan, it must be in effect in all political subdivisions of the state, and, if administered by them, program requirements must be mandatory upon them. Where the program is administered by a tribe, it must be in effect in all political subdivisions within the tribal service area(s) and for all populations to be served under the plan. If the program is administered by a political

subdivision of a tribe, program requirements must be mandatory upon them (42 USC 671(a)(1-4) and 42 USC 679B(c)(1)(B)).

### **Source of Governing Requirements**

The Foster Care program is authorized by Title IV-E of the Social Security Act, as amended (42 USC 670 *et seq.*). This includes those amendments made by the Preventing Sex Trafficking and Strengthening Families Act (Pub. L. No. 113-183 and the Family First Prevention Services Act (Pub. L. No. 115-123). Implementing regulations are at 45 CFR parts 1355, 1356, and 1357.

States and tribes are required to adopt and adhere to their own statutes and regulations for program implementation, consistent with the requirements of Title IV-E and the approved Title IV-E plan.

The regulations at 45 CFR part 75 specifying uniform administrative requirements, cost principles, and audit requirements for HHS awards are applicable to the Foster Care program. However, in accordance with 45 CFR sections 75.101(e)(1)(iii) and 75.101(e)(2), except for 45 CFR section 75.202, the guidance in subpart C of 45 CFR part 75 does not apply.

### **Availability of Other Program Information**

The Children's Bureau manages a policy issuance system that provides further clarification of the law and guides states and tribes in implementing the Foster Care program. This information may be accessed at <https://www.acf.hhs.gov/cb/laws-policies>.

## **III. COMPLIANCE REQUIREMENTS**

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

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

## A. Activities Allowed or Unallowed

### 1. *Activities Allowed*

- a. Funds may be expended for foster care maintenance payments on behalf of eligible children, in accordance with the Title IV- E agency's foster care maintenance payment rate schedule and in accordance with 45 CFR section 1356.21, to individuals serving as foster family homes, to child-care institutions, or to public or private child-placement or child-care agencies. Such payments may include the cost of (and the cost of providing, including certain associated administrative and operating costs of a child care institution) food, clothing, shelter, daily supervision, school supplies, personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation, as well as reasonable travel for the child to remain in the same school he or she was attending prior to placement in foster care (42 USC 672(b)(1) and (2), (c)(2), and 675(4)).
- b. Beginning October 1, 2018, Title IV-E agencies may claim Title IV-E foster care maintenance payments and administrative costs consistent with 45 CFR 1356.60(c) for a child placed with a parent in a licensed residential family-based treatment facility for substance abuse for up to twelve months (42 USC 672(j) and 672(a)(2)(C)).
- c. Funds may be expended for training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the agency administering the plan (42 USC 674(a)(3)(A)). All training activities and costs funded under Title IV-E shall be included in the Title IV- E agency's training plan for Title IV-B (45 CFR section 1356.60(b)(2)).
- d. Funds may be expended for short-term training of (1) relative guardians; (2) state/tribe-licensed or state/tribe-approved child welfare agencies



providing services to children receiving Title IV-E assistance; (3) child abuse and neglect court personnel; (4) agency, child or parent attorneys; (5) guardians ad litem; and (6) court appointed special advocates (42 USC 674(a)(3)(B B)).

- e. Funds may be expended for short-term training, including associated travel and per diem, of current or prospective foster parents and staff of licensed or approved child-care institutions at the initiation of or during their period of care (45 CFR section 1356.60(b)(1)(ii)).
- f. Funds may be expended for costs directly related to the administration of the program that are necessary for the proper and efficient administration of the Title IV-E plan. The approved public assistance cost allocation plan (states) or approved cost allocation methodology (tribes) shall identify which costs are allocated and claimed under this program. Examples of allowable costs for the administration of the Foster Care program include those associated with eligibility determination and redetermination; referral to services; preparation for and participation in judicial determinations; hearings and appeals; rate setting; placement of the child; development of the case plan; case reviews; case management and supervision; recruitment and licensing of foster homes and institutions; costs related to data collection and reporting; and a proportionate share of related agency overhead (45 CFR section 1356.60(c)).
- g. Funds may be expended for activities defined as sex trafficking administrative activities (see list of examples below). These activities are meant to combat sex trafficking on behalf of any child or youth in the placement, care, or supervision of the Title IV-E agency who is at-risk of becoming a sex trafficking victim or who is identified as a sex trafficking victim. Such children do not need to be Title IV-E eligible and include those who are not removed from home; those who have run away from foster care and are under age 18 or such higher age elected under Section 475(8) of the Social Security Act; and youth who are not in foster care who are receiving services under the John H. Chafee Foster Care Program for Successful Transition to Adulthood (CFDA 93.674) and at the option of the agency, youth under age 26 who were or were never in foster care (42 USC 671(a)(9), USC 671(a)(34), and 671(a)(35)).

Examples of activities allowable as sex trafficking administration include:

- (1) Developing and implementing policies and procedures to identify, document in agency records, and determine appropriate services for victims of sex trafficking,
- (2) Conducting sex trafficking screenings and documenting victims of sex trafficking in agency files,

- (3) Determining appropriate services for individuals identified as such victims, including referrals to services,
- (4) Completing reports required for law enforcement and ACF of children or youth who the agency identifies as being a sex trafficking victim,
- (5) Developing and implementing protocols to locate and assess children missing from foster care, including screening the child to identify if the child is a possible sex trafficking victim.

Since the Title IV-E agency is not limited to performing the activities described above on behalf of individuals meeting Title IV-E eligibility requirements, application of a Title IV-E foster care participation rate is not needed in allocating these allowable administrative costs to the Title IV-E Foster Care program. (42 USC 671(a)(9) and (a)(34), as amended by Pub. L. No. 113-183, and the Child Welfare Policy Manual section 8.1 Q/A#7.)

- h. To the extent that allowable activities constituting training and administrative costs are allocated to the program through application of a Title IV-E participation rate (sometimes called the eligibility, penetration, or discount rate), this rate must be calculated by dividing the number of Title IV-E foster care eligible children by the total number of children in foster care pursuant to the definition of foster care in 45 CFR section 1355.20. The numerator is comprised of the total number of children in foster care determined to meet all Title IV-E eligibility requirements. A Title IV-E agency may also include in the numerator otherwise eligible children placed with relatives pending foster family home approval or licensure (for the lesser of the average time it takes to license a foster home or twelve months) and children moving from a facility that is not licensed to one that is for up to one month pursuant to Section 472(i)(1) of the Social Security Act. The denominator is comprised of the total number of children who are in foster care, including those that are Title IV-E eligible and those that are not or have not yet been determined Title IV-E eligible. Any methodology for claiming administrative costs, including the calculation of the participation rate described above, must be a part of the state's approved cost allocation plan or a tribe's approved cost allocation methodology (42 USC 672(i) and 674(a)(3), 2 CFR part 225 or 45 CFR part 75, as applicable, in accordance with 45 CFR section 75.110, 45 CFR section 95.507(b)(4), 45 CFR section 1355.20, and Child Welfare Policy Manual section 8.1C Q/A#8).
- i. With any required ACF approval, funds may be expended for costs related to design, implementation and operation of a statewide or tribal service area-wide data collection system (45 CFR sections 1356.60(d) and 95.611).

- j. Funds may be expended for costs related to design, implementation and operation of a statewide or tribal automated child welfare information system (S/TACWIS) that received any required ACF approval by July 31, 2016, or a comprehensive child welfare information system (CCWIS) which receives any required ACF approval on or after August 1, 2016. Funds for S/TACWIS costs are available only for expenditures made prior to or during the transition period of August 1, 2016 through July 31, 2018. Funds are available for CCWIS qualifying costs for expenditures made on or after August 1, 2016 (45 CFR sections 1355.52, 1355.56, 1355.57, 1356.60(e) and 95.611).
- k. Under Section 1130 of the Social Security Act, Title IV-E agencies may be granted authority to operate a demonstration project as set forth in ACF-approved terms and conditions. Any such terms and conditions applicable to the program identify the specific provisions of the Social Security Act that are waived, the additional activities that are deemed as allowable, and the scope and duration (which may not exceed a maximum of five total years unless specifically approved for further continuation) of the demonstration project. All demonstration project operational activities, excluding project evaluation, must end no later than September 30, 2019. The demonstration project must remain cost neutral to the federal government, as provided for in a methodology contained in the approved project terms and conditions involving either a matched comparison group or a capped allocation (42 USC 1320a–9 and Section 201 of Pub. L. No. 112-34).

Allowable activities for which funds may be expended under an approved demonstration project are as follows:

- (1) Costs incurred prior to project implementation for the development of the project that are included in an approved Developmental Cost Plan (42 USC 1320a–9 and Section 201 of Pub. L. No. 112-34).
- (2) Costs incurred at any point during the project lifespan for project evaluation in accordance with an approved Project Evaluation Plan (42 USC 1320a–9 and Section 201 of Pub. L. No. 112-34).
- (3) Costs for otherwise Title IV-E allowable program activities provided as part of the operation of a demonstration project (i.e., to the extent that geographic and Title IV-E funding category components are included in the scope of the approved project) on behalf of Title IV-E eligible children to the extent that the approved cost neutrality limit or payment schedule (if applicable) is not exceeded (42 USC 1320a–9 and Section 201 of Pub. L. No. 112-34).

- (4) Costs for approved specified project intervention activities performed as part of the operation of a demonstration project on behalf of designated children and families (including those approved activities cited as otherwise Title IV-E unallowable) to the extent that the approved cost neutrality limit or payment schedule (if applicable) is not exceeded (42 USC 1320a-9 and Section 201 of Pub. L. No. 112-34).
- (5) Costs for other activities performed throughout the jurisdiction of the Title IV-E agency deemed as allowable through specifically approved Title IV-E waiver provisions (including those approved activities cited as otherwise Title IV-E unallowable) to the extent that the approved cost neutrality limit or payment schedule (if applicable) is not exceeded (42 USC 1320a-9 and Section 201 of Pub. L. No. 112-34).

## 2. *Activities Unallowed*

- a. Costs of social services provided to a child, the child's family, or the child's foster family which provide counseling or treatment to ameliorate or remedy personal problems, behaviors, or home conditions are unallowable (45 CFR section 1356.60(c)(3)).
- b. Costs claimed as foster care maintenance payments that include medical, educational or other expenses not outlined in 42 USC 675(4)(A).
- c. Costs of conducting investigations of allegations of sex trafficking or other forms of child abuse or neglect or for providing social services, such as counseling or treatment, to victims of sex trafficking or other children or youth (Child Welfare Policy Manual section 8.1 Q/A#7).

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

Both states and tribes are subject to the requirements of 2 CFR part 200, subpart E, as implemented by HHS at 45 CFR part 75. States also are subject to the cost allocation provisions and rules governing allowable costs of equipment of 45 CFR part 95 (45 CFR sections 1355.57, 95.503, and 95.705).

## **E. Eligibility**

### **1. Eligibility for Individuals**

Foster care benefits may be paid on behalf of a child only if all of the following requirements are met:

- a. Foster care maintenance payments are allowable only if the foster child was removed from the home of a relative specified in Section 406(a) of the Social Security Act, as in effect on July 16, 1996, and placed in foster

care by means of a judicial determination, as defined in 42 USC 672(a)(2), or pursuant to a voluntary placement agreement, as defined in 42 USC 672(f), (42 USC 672(a)(1) and (2) and 45 CFR section 1356.21).

(1) Judicial Determination

(a) *Contrary to the welfare determination* – A child’s removal from the home (unless removal is pursuant to a voluntary placement agreement) must be in accordance with a judicial determination to the effect that continuation in the home would be contrary to the child’s welfare, or that placement in foster care would be in the best interest of the child. The judicial determination must be explicitly stated in the court order and made on a case by case basis. The precise language “contrary to the welfare” does not have to be included in the removal court order, but the order must include language to the effect that remaining in the home will be contrary to the child’s welfare, safety, or best interest (45 CFR section 1356.21(c)).

(i) *Prior to March 27, 2000* – For a child who entered foster care before March 27, 2000, the judicial determination of contrary to the welfare must be in a court order that resulted from court proceedings that are initiated no later than six months from the date the child is removed from the home, consistent with Departmental Appeals Board (DAB) Decision Number 1508 (DAB 1508). The Departmental Appeals Board, through Decision Number 1508, ruled that a petition to the court stating the reason for the state agency’s request for the child’s removal from home, followed by a court order granting custody to the state agency is sufficient to meet the contrary to the welfare requirement (*Federal Register*. January 25, 2000, Vol. 65, Number 16, pages 4020 and 4088-89).

(ii) *On or after March 27, 2000* – For a child who enters foster care on or after March 27, 2000, the judicial determination of contrary to the welfare must be in the first court ruling that sanctions the child’s removal from home (45 CFR section 1356.21(c)). Acceptable documentation is a court order containing a judicial determination regarding contrary to the welfare or a transcript of the court proceedings reflecting this determination (45 CFR section 1356.21(d)). For the first twelve months

that a tribe's Title IV-E plan is in effect, the tribe may use *nunc pro tunc* orders and affidavits to verify reasonable efforts and contrary to the welfare judicial determinations for Title IV-E foster care eligibility (42 USC 679c(c)(1)(C)(ii)(I), as added by Section 301, Pub. L. No. 110-351).

- (b) *Reasonable efforts to prevent removal determination* – Within 60 days from the date of the removal from home pursuant to 45 CFR section 1356.21(k)(ii), there must be a judicial determination as to whether reasonable efforts were made or were not required to prevent the removal (e.g., child subjected to aggravated circumstances such as abandonment, torture, chronic abuse, sexual abuse, parent convicted of murder or voluntary manslaughter or aiding or abetting in such activities) (45 CFR sections 1356.21(b)(1) and (k)). The judicial determination must be explicitly documented, i.e., so stated in the court order and made on a case by case basis.
  - (i) *Prior to March 27, 2000* – For a child who entered care foster care before March 27, 2000, the judicial determination that reasonable efforts were made to prevent removal or that reasonable efforts were made to reunify the child and family satisfies the reasonable efforts requirement (*Federal Register*, January 25, 2000, Vol. 65, Number 16, pages 4020 and 4088).
  - (ii) *On or after March 27, 2000* – For a child who enters foster care on or after March 27, 2000, the judicial determination that reasonable efforts were made to prevent removal or were not required must be made no later than 60 days from the date of child's removal from the home (45 CFR section 1356.21(b)(1)). Acceptable documentation is a court order containing a judicial determination regarding reasonable efforts to prevent removal or a transcript of the court proceedings reflecting this determination (45 CFR section 1356.21(d)). For the first twelve months that a tribe's Title IV-E plan is in effect, the tribe may use *nunc pro tunc* orders and affidavits to verify reasonable efforts and contrary to the welfare judicial determinations for Title IV-E foster care eligibility (42 USC 679c(c)(1)(C)(ii)(I), as added by Section 301, Pub. L. No. 110-351).

- (c) *Reasonable efforts to finalize a permanency plan* – A judicial determination regarding reasonable efforts to finalize the permanency plan must be made within twelve months of the date on which the child is considered to have entered foster care and at least once every twelve months thereafter while the child is in foster care. The judicial determination must be explicitly documented and made on a case by case basis. If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made within this timeframe, the child is ineligible at the end of the twelfth month from the date the child was considered to have entered foster care or at the end of the month in which the subsequent judicial determination of reasonable efforts was due, and the child remains ineligible until such a judicial determination is made (45 CFR section 1356.21(b)(2)).
  - (i) *Prior to March 27, 2000* – For a child who entered foster care before March 27, 2000, the judicial determination of reasonable efforts to finalize the permanency plan must be made no later than March 27, 2001, because such child will have been in care for twelve months or longer (January 25, 2000, *Federal Register*, Vol. 65, Number 16, pages 4020 and 4088).
  - (ii) *On or after March 27, 2000* – For a child who enters foster care on or after March 27, 2000, the judicial determination of reasonable efforts to finalize the permanency plan must be made no later than twelve months from the date the child is considered to have entered foster care (45 CFR section 1356.21(b)(2)). Acceptable documentation is a court order containing a judicial determination regarding reasonable efforts to finalize a permanency plan or a transcript of the court proceedings reflecting this determination (45 CFR section 1356.21(d)). For the first twelve months that a tribe's Title IV-E plan is in effect, the tribe may use *nunc pro tunc* orders and affidavits to verify reasonable efforts and contrary to the welfare judicial determinations for Title IV-E foster care eligibility (42 USC 679c(c)(1)(C)(ii)(I), as added by Section 301 Pub. L. No. 110-351).

(2) Voluntary Placement

- (a) *Agreement* – A voluntary placement agreement must be entered into by a parent or legal guardian of the child who is a relative specified in Section 406(a) (as in effect on July 16, 1996) and from whose home the child was removed (42 USC 672(a)(2)(A)(i); 45 CFR section 1356.22(a)). A voluntary placement agreement entered into between a youth age 18 or older and the Title IV-E agency can meet the removal criteria in Section 472(a)(2)(A)(i) of the Social Security Act. In this situation, the youth age 18 or older is able to sign the agreement as his/her own guardian (Program Instruction ACYF-CB-PI-10-11 dated July 9, 2010, section B).
  - (b) *Best interests of the child determination* – If the removal was by a voluntary placement agreement, it must be followed within 180 days by a judicial determination to the effect that such placement is in the best interests of the child (42 USC 672(e); 45 CFR section 1356.22(b)).
- b. The child's placement and care are the responsibility of either the Title IV-E agency administering the approved Title IV-E plan or any other public agency under a valid agreement with the cognizant Title IV-E agency (42 USC 672(a)(2)).
- c. A child (except if in placement (new or an existing placement) on or after October 1, 2018, with a parent residing in a licensed residential family-based treatment facility for substance abuse) must meet the eligibility requirements of the former Aid to Families with Dependent Children (AFDC) program (i.e., meet the state-established standard of need as of July 16, 1996, prior to enactment of the Personal Responsibility and Work Opportunity Reconciliation Act) (42 USC 672(a)). Tribes must use the Title IV-A state plan (as in effect as of July 16, 1996) of the state in which the child resided at the time of removal (42 USC 679c(c)(1)(C)(ii)(II)). Program eligibility is limited to an individual defined as a "child." This classification ordinarily ceases at the child's 18th birthday (42 USC 672(a)(3), and 42 USC 675(8)(A)). If, however, the state in which the child was living at removal had as a Title IV-A state plan option (as in effect as of July 16, 1996), a Title IV-E agency may provide foster care maintenance payments on behalf of youth who have attained age 18, but are under the age of 19, and who are full-time students expected to complete their secondary schooling or equivalent vocational or technical training before reaching age 19 (45 CFR section 233.90(b)(3)).

A Title IV-E agency may also amend its Title IV-E plan to provide that an individual in foster care who is over age 18 (where an existing eligibility age extension provision for a full-time student expected to complete secondary schooling prior to attaining age 19 is not applicable) and has not



attained 19, 20, or 21 years old (as the Title IV-E agency may elect) remains eligible as a child when the youth meets prescribed conditions for continued maintenance payments. For a youth age 18 or older who is entering or re-entering foster care after attaining age 18 consistent with the criteria above, AFDC eligibility is based on the youth without regard to the parents/legal guardians or others in the assistance unit in the home from which the youth was removed as a younger child (e.g., a child-only case). A youth over age 18 must also (as elected by the Title IV-E agency) be (1) completing secondary school (or equivalent), (2) enrolled in post-secondary or vocational school, (3) participating in a program or activity that promotes or removes barriers to employment, (4) employed 80 hours a month, or (5) incapable of any of these due to a documented medical condition (42 USC 675(8)(B) and Program Instruction ACYF-CB-PI-10-11 dated July 9, 2010, section B).

The requirement to conduct annual AFDC redeterminations for purposes of determining continuing Title IV-E eligibility has been eliminated to ease an administrative burden. The Title IV-E agency must (for periods beginning on or after April 8, 2010) establish AFDC eligibility only at the time the child is removed from home or a voluntary placement agreement is entered (42 USC 672(a)(3)(A) and section 8.4A, Question and Answer No. 24 of the Child Welfare Policy Manual).

- d. Beginning October 1, 2018, a child placed with a parent residing in a licensed residential family-based treatment facility for substance abuse who meets all the Title IV-E foster care eligibility requirements except the AFDC eligibility requirements in sections 472(a)(1)(B) and (3) of the Social Security Act shall be eligible for Title IV-E foster care maintenance payments for a period of not more than twelve months. The recommendation for such placement must be specified in the child's case plan before the placement. The treatment facility must provide, as part of the treatment for substance abuse, parenting skills training, parent education, and individual and family counseling and these services must be provided under an organizational structure and treatment framework that involves understanding, recognizing, and responding to the effects of all types of trauma and in accordance with recognized principles of a trauma-informed approach and trauma-specific interventions to address the consequences of trauma and facilitate healing. Although the treatment facility must be licensed, there is no requirement that it meet the Title IV-E licensing and background check requirements for a childcare institution. Eligibility is limited for a period of not more than twelve months to foster care maintenance payments which includes such things as the cost of providing food, clothing, shelter, and daily supervision. Since a licensed residential family-based treatment facility for substance abuse is not a childcare institution, the Title IV-E foster care maintenance payments may not include the costs of administration and operation of the facility. Title IV-E agencies may claim administrative costs during the twelve-month

period consistent with 45 CFR 1356.60(c) for the administration of the Title IV-E program, which includes such things as case management (42 USC 672(a)(2)(C) and 672(j)).

- e. The provider, whether a foster family home or a child-care institution must be fully licensed by the proper state or tribal foster care licensing authority responsible for licensing such homes or childcare institutions. The term “child care institution” as defined in 45 CFR section 1355.20 includes a private child care institution, or a public child care institution which accommodates no more than 25 children, which is licensed by the state in which it is situated or has been approved, by the agency of such state responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but does not include detention facilities, forestry camps, training schools, or facilities operated primarily for the purpose of detention of children who are determined to be delinquent (42 USC 671(a)(10) and 672(c)). Effective October 1, 2010, the existing statutory definition of a childcare institution includes a supervised setting in which an individual who has attained 18 years of age is living independently, consistent with conditions the Secretary establishes in regulations (42 USC 672(c)(2)).
- f. Beginning October 1, 2019 (or the elected delayed effective date of up to two years), limitations on Title IV-E foster care maintenance payments are applicable for new placements made in a child care institution if that facility does not meet specified setting requirements. A “specified setting”, as per Section 472(k) of the Social Security Act (Act) includes only those child care institutions as follows:
  - (1) A qualified residential treatment program (QRTP) as defined in Section 472(k)(4) of the Act.
  - (2) A setting specializing in providing prenatal, post-partum, or parenting supports for youth.
  - (3) In the case of a child who has attained 18 years of age, a supervised setting in which the child is living independently.
  - (4) A setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, sex trafficking victims, in accordance with section 471(a)(9)(C) of the Act.

A QRTP placement must also meet additional requirements to avoid Title IV-E funding limitations as follows:

- (5) An assessment to determine the appropriateness of such placement must be completed by a “qualified individual” within 30 days after the placement as per Section 475A(c)(1) of the Act. If this deadline

is not met, no foster care maintenance payments may be claimed for the duration of the placement (including those for the first two weeks of care) on behalf of the child.

- (6) A court determination on the appropriateness of this placement must be made within 60 days of the start of each such placement. If this deadline is not met, foster care maintenance payments on behalf of the child may be Title IV-E claimed for only the first 60 days of the placement.
- (7) If the required assessment determines that the placement of a child in a QRTP is not appropriate, a court disapproves such a placement under Section 475A(c)(2) of the Act, or other circumstances exist where the child is transitioning from a QRTP placement to another setting further Title IV-E foster care maintenance payments claiming is limited, as per Section 472(k)(3)(B) of the Act, to the period necessary to transition, up to 30 days after the cited action takes place.

If the placement in a child care institution does not meet the requirements for a specified setting, Title IV-E foster care maintenance payments are limited to covering a two-week period for each placement. Payments for any continuous child care institution placements with a start date prior to the effective date for Section 472(k)(2) of Act are not time limited.

Otherwise allowable administrative costs for an eligible child placed in a child care institution may be Title IV-E claimed for the period of such placement regardless of whether the facility meets the specified setting requirements (42 USC 672(k) and 42 USC 675A(c)).

- g. Beginning October 1, 2019 (or the elected delayed effective date of up to two years for Section 472(k) of the Act), the definition of a foster family home is revised from the one in federal regulations at 45 CFR 1355.20(a) to include only the home of an individual or family that meets requirements as follows:
  - (1) Is licensed or approved by the Title IV-E agency in the state in which it is situated as a foster family home.
  - (2) Is licensed or approved by a tribal authority with respect to a foster family home on or near an Indian Reservation, or a tribal authority of a tribal Title IV-E agency with respect to a foster family home in the tribal Title IV-E agency's service area
  - (3) Meets the standards established for the licensing or approval.
  - (4) Provide care for not more than six children in foster care. This limitation may be exceeded, at the option of the Title IV-E agency

as requested, for any of the reasons specified at Section 472(c)(1)(B)(i-iv) of the Act.

- (5) The individual(s) in whose care a child has been placed in foster care reside in the home with the child and the Title IV-E agency has determined such individual(s) as being:
  - (a) Licensed or approved to be a foster parent; and
  - (b) Deemed capable of adhering to the reasonable and prudent parent standard; and
  - (c) Providing 24-hour substitute care for children placed away from their parents or other caretakers

A foster family home may not then include “group homes, agency-operated boarding homes or other facilities licensed or approved for the purpose of providing foster care...” as previously permitted in federal regulations at 45 CFR 1355.20(a) if that facility is not the home of an individual or family where the foster parent resides (42 USC 672(c)(1)).

- h. The foster family home provider must satisfactorily have met a criminal records check, including a fingerprint-based check, with respect to prospective foster and adoptive parents (42 USC 671(a)(20)(A)). This involves a determination that such individual(s) have not committed any prohibited felonies in accordance with 42 USC 671(a)(20)(A)(i) and (ii). The requirement for a fingerprint-based check took effect on October 1, 2006, unless prior to September 30, 2005, the state has elected to opt out of the criminal records check requirement or state legislation was required to implement the fingerprint-based check, in which case a delayed implementation is permitted until the first quarter of the state’s regular legislative session following the close of the first regular session beginning after October 1, 2006. The requirement applies to foster care maintenance payments for calendar quarters beginning on or after the state’s effective date for implementation (Pub. L. No. 109, Section 152(c)(1) and (3)). States that opted out of the criminal records check requirement at Section 471(a)(20) of the Social Security Act prior to September 30, 2005, had until October 1, 2008, to implement the fingerprint-based check requirement. Effective October 1, 2008, a state is no longer permitted to opt out of the fingerprint-based check requirement. The opt-out provision does not impact tribes since they only became eligible to administer a Title IV-E plan on October 1, 2009.

The statutory provisions apply to all prospective foster parents who are newly licensed or approved after the Title IV- E agency’s authorized date for implementation of the fingerprint-based background check provisions. Title IV-E agencies may also require that certain other adult individuals

living in the home be subject to a criminal records check. The completion or lack of completion of criminal records checks for persons other than prospective foster parents does not, however, impact Title IV-E eligibility (42 USC 671(a)(20)(B); Pub. L. No. 109-248, Section 152(c)(2); 45 CFR sections 1356.30(b) and (c); and the Child Welfare Policy Manual section 8.4F Q/A#4).

- i. A Title IV-E agency must check, or request a check of, a state-maintained child abuse and neglect registry in each state the prospective foster and adoptive parents and any other adult(s) living in the home have resided in the preceding five years before the state can license or approve a prospective foster or adoptive parent. This requirement became effective on October 1, 2006, unless the state requires legislation to implement the requirement, in which case a delayed implementation is permitted until the first quarter of the state's regular legislative session following the close of the first regular session beginning after October 1, 2006. The requirement applies to foster care maintenance payments for calendar quarters beginning on or after that date. Tribes first became eligible to administer a Title IV-E plan effective October 1, 2009, and must, therefore, comply with this requirement (42 USC 671(a)(20)(B); Pub. L. No. 109-248, Section 152(c)(2) and (3)).
- j. The licensing file for the child-care institution must contain documentation that verifies that safety considerations with respect to staff of the institution have been addressed (45 CFR section 1356.30(f)). Effective October 1, 2018, unless a legislative delay is approved, the safety considerations in the child-care institution licensing file must consist of proof that criminal background checks, including: fingerprint-based criminal records checks of national crime information databases (as defined in section 534(f)(3)(A) of Title 28, United States Code) and child abuse and neglect registry checks for all adults working at the child-care institution were conducted. Title IV-E agencies may use alternative procedures to conduct these criminal records and child abuse registry checks. However, if the agency elects to use an alternate procedure, such procedures must still provide for conducting both checks on every adult working in the institution and the agency must describe in its approved Title IV-E Plan why alternative procedures for conducting the checks are appropriate for the agency (42 USC 671(a)(20)(D)).
- k. Foster care administrative costs for the provision of child-placement services generally are allowable only when performed on behalf of a foster child that is eligible to receive Title IV-E foster care maintenance payments (42 USC 674(a)(3)(E) and 45 CFR section 1356.60). The following exceptions apply:
  - (1) Activities specifically associated with the determination or redetermination of Title IV-E eligibility are allowable regardless of

the outcome of the eligibility determination (DAB Decision No. 844).

- (2) Otherwise allowable activities performed on behalf of Title IV-E eligible foster children placed in unallowable facilities and unlicensed relative homes can be allowable under limited circumstances as follows:
  - (a) For the lesser of twelve months or the average length of time it takes the state or tribe to issue a license or approval of the home when the child, otherwise Title IV-E eligible, is placed in the home of a relative who has an application pending for a foster family home license or approval (42 USC 672(i)(1)(A)).
  - (b) For not more than one calendar month for an otherwise Title IV-E eligible child transitioning from an unlicensed or unapproved facility to a licensed or approved foster family home or childcare institution (42 USC 672(i)(1)(B)).
- (3) In the case of any other child not in foster care who is potentially eligible for benefits under a Title IV-E plan approved under this part and at imminent risk of removal from the home, only if:
  - (a) Reasonable efforts are being made in accordance with 42 USC 671(a)(15) to prevent the need for, or if necessary to pursue, removal of the child from the home; and
  - (b) The Title IV-E agency has made, not less often than every six months, a determination (or redetermination) as to whether the child remains at imminent risk of removal from the home (42 USC 672(i)(2)).
  - (c) Pre-placement administrative costs may be paid on behalf of a child determined to be a candidate for foster care only if all of the following requirements are met:
    - (i) A child who is a potentially Title IV-E eligible child is at imminent risk of removal from the home and the Title IV-E agency is either pursuing the removal of the child from the home or providing reasonable efforts to prevent the removal in accordance with Section 471(a)(15) of the Social Security Act (42 USC 672(i)(2)(A)).
    - (ii) No earlier than the month in which the Title IV-E agency has made and documented a determination that the child is a candidate for foster care as

evidenced by at least one of the following (section 8.1D, Question and Answer No. 2 of the Child Welfare Policy Manual):

- (A) A defined case plan which clearly indicates that, absent effective preventive services, foster care is the planned arrangement for the child.
  - (B) An eligibility determination form which has been completed to establish the child's eligibility under Title IV-E. Eligibility forms used to document a child's candidacy for foster care should include evidence that the child is at serious risk of removal from home.
  - (C) Evidence of court proceedings in relation to the removal of the child from the home, in the form of a petition to the court, a court order or a transcript of the court's proceedings. These proceedings include those where the Title IV-E agency is required to obtain a judicial determination sanctioning or approving such an attempt to prevent removal with respect to reasonable efforts or initiates efforts to obtain the judicial determinations related to the removal of a child from home.
- (iii) The Title IV-E agency determines that the planned out-of-home placement for the child will be a foster care setting (section 8.1D, Question and Answer No. 11 of the Child Welfare Policy Manual).
- (iv) In order to claim child specific candidate administrative costs, the Title IV-E agency may either (section 8.1C, Question and Answer No. 3 of the Child Welfare Policy Manual):
- (A) individually determine those children who are Title IV-E foster care candidates and claim 100 percent of the child specific allowable administrative costs incurred on behalf of these children, or

- (B) allocate costs to benefiting programs considering a determination both of candidacy for foster care and of potential Title IV-E eligibility; using a Title IV-E foster care participation rate is one acceptable means of allocation.
- (v) The Title IV-E agency re-determines at least every six months that the child remains at imminent risk of removal from the home. If the Title IV-E agency does not make this determination at the six-month point, it must cease claiming administrative costs on behalf of the child (42 USC 672(i)(2)(B) and section 8.1D, Question and Answer No. 5 of the Child Welfare Policy Manual).
- (vi) Candidate administration on behalf of eligible children is limited to any allowable Title IV-E administrative cost that comports with or is closely related to one of the listed activities at 45 CFR section 1356.60(c)(2). The costs of investigations, physical or mental examinations or evaluations and services related to the prevention of placement are not foster care administrative costs and are therefore not reimbursable (section 8.1B, Question and Answer No. 1 of the Child Welfare Policy Manual).

## **2. Eligibility for Group of Individuals or Area of Service Delivery**

Not Applicable

## **3. Eligibility for Subrecipients**

Not Applicable

# **L. Reporting**

## **1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable
- d. *CB-496, Title IV-E Programs Quarterly Financial Report (OMB No. 0970-0205)* – Title IV-E agencies report current expenditures and



information on children assisted for the quarter that has just ended and estimates of expenditures and children to be assisted for the next quarter. Prior quarter adjustment (increasing and decreasing) expenditures applicable to earlier quarters must also be separately reported on this form.

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

1. *Part 1, Expenditures, Estimates and Caseload Data*, columns (A) through (D) (Sections A and E (Foster Care Program))
2. *Part 2, Prior Quarter Expenditure Adjustments – Foster Care*, columns (A) through (E)
3. *Part 3, Foster Care, Adoption Assistance and Guardianship Demonstration Projects*, columns (A) through (F)

## **2. Performance Reporting**

Not Applicable

## **3. Special Reporting**

Not Applicable

## **N. Special Tests and Provisions**

### **1. Payment Rate Setting and Application**

**Compliance Requirements** Title IV-E agencies establish payment rates for maintenance payments (e.g., payments to foster parents, childcare institutions or directly to youth). Payment rates may also be established for Title IV-E administrative expenditures (e.g., payments to child placement agencies or other contractors, which may be either subrecipients or vendors) and for other services. Payment rates must provide for proper allocation of costs between foster care maintenance payments, administrative expenditures, and other services in conformance with the cost principles. The Title IV-E agency's plan approved by ACF must provide for periodic review of payment rates for foster care maintenance payments at reasonable, specific, time-limited periods established by the Title IV-E agency to assure the rate's continuing appropriateness for the administration of the Title IV-E program (42 USC 671(a)(11); 45 CFR section 1356.21(m)(1); 45 CFR section 1356.60(a)(1) and (c)).

**Audit Objectives** Determine whether (1) the Title IV-E agency reviewed foster care maintenance payment rates for continued appropriateness in accordance with its established periodicity schedule; (2) the Title IV-E agency established foster care maintenance and administrative expenditure payment rates which provide only for costs which are necessary for the proper and efficient administration of the program and which are for allowable costs (i.e., reasonable, allowable, and properly allocated in compliance with the applicable cost principles and program requirements); and (3) charges to the

program were based upon the established payment rates properly applied and the charges to the program were properly classified as foster care maintenance payments or administrative expenditures.

### **Suggested Audit Procedures**

- a. Identify the Title IV- E agency's schedule for the required periodic review to determine the continued appropriateness of amounts paid as foster care maintenance payments and ascertain if the current foster care maintenance payment rates were last reviewed and adjusted in accordance with the Title IV-E agency established schedule.
  - b. Review the Title IV-E agency's policies and procedures for establishing foster care maintenance and administrative expenditure payment rates to ascertain if these policies and procedures will properly determine that the costs charged to the program based upon these payment rates will be allowable.
  - c. Test a sample of Title IV-E foster care maintenance and administrative expenditure payment rates to ascertain if the rates have been properly calculated in accordance with the Title IV- E agency's policies and procedures to ensure only allowable costs are charged to the program.
  - d. Test a sample of Title IV-E foster care rate-based maintenance payments to ascertain if they were based upon the established payment rates per the Title IV-E agency's rate schedule and that these rates were properly applied to ensure that only costs allowable as maintenance payments were charged to the program.
  - e. Test a sample of Title IV-E foster care rate based administrative expenditures to ascertain if they were based upon the established payment rates per the Title IV-E agency's rate schedule and that these rates were properly applied to ensure that only costs allowable as administrative expenditures were charged to the program.
2. Operation of a Foster Care Demonstration Project (Applicable Only for Title IV-E Agencies with ACF Approval to Operate a Foster Care Demonstration Project)

**Compliance Requirements** Those Title IV-E agencies that receive approval to operate a foster care demonstration project for a specified period of time must do so in accordance with ACF-approved terms and conditions that define the operational parameters and the waivers granted. The funding for operation of such a project is subject to a cost neutrality limit that is calculated either through an experimental design (involving experimental group cases and either a control or matched comparison group process) or an established capped allocation table for identified populations (including agency-wide) in specific funding categories.

All Title IV-E agencies that operate a foster care demonstration project are also simultaneously continuing to operate the traditional (non-demonstration) foster care program for some portion of the agency's service population and/or funding. Operation of a foster care demonstration project, therefore, includes both the continuation of

assistance payments and, where applicable, administration or training under the existing approved Title IV-E Plan and provision of project interventions or other waiver-based services for an identified population. Demonstration project operational costs, to the extent that they provide payments, administration or training that is allowable for traditional Title IV-E foster care funding, must be in compliance with all applicable Title IV-E requirements (unless waived) and are subject to separate identification as part of financial reporting. Funding is also available, subject to separate ACF approvals, for the costs of demonstration project developmental and evaluation costs.

**Audit Objectives** Determine for those Title IV-E agencies with an approved operational foster care demonstration project whether (1) the Title IV-E agency properly tracked and classified those costs consisting of demonstration project operational, developmental, or evaluation costs; (2) the Title IV-E agency separately identified those project operational costs that are reportable as Title IV-E allowable costs (without a waiver) from other project operational costs; (3) the Title IV-E agency properly identified the applicable project operational cost neutrality limits and cumulative project operational costs for each relevant funding category; and (4) the Title IV-E agency properly tracked and classified those costs consisting of Title IV-E foster care (non-demonstration) costs.

### **Suggested Audit Procedures**

- a. Determine whether a Title IV-E agency is operating a foster care demonstration project and, if so, review the applicable terms and conditions as approved by ACF.
- b. Review the Title IV- E agency’s cost tracking procedures for segregating costs properly classified as a component of the approved foster care demonstration project as developmental costs, evaluation costs, or operational costs.
- c. Test a sample of Title IV-E claims (current quarter and any prior quarter adjustments) reported on Form CB-496 Part 3 designated as foster care demonstration project developmental or evaluation costs to determine that the claims are properly classified and reported and that they comply with applicable approvals.
- d. Test a sample of Title IV-E claims (current quarter and any prior quarter adjustments) reported on Form CB-496 Part 3 designated as foster care demonstration project operational costs in each of the funding categories reported to determine that the claims are properly classified as project operational costs based on (1) the funding category is within the scope of the project’s operational costs, (2) the type of cost, (3) the population served, and (4) the applicable period.
- e. Test a sample of Title IV-E claims (current quarter and any prior quarter adjustments) reported on Form CB-496 Part 3 designated as foster care demonstration project operational costs in each of the funding categories reported to determine that the claims are properly reported as either “Title IV-E Operations” costs (i.e., Title IV-E allowable without the approved demonstration

project) or as “Project Intervention and Other Waiver Based Expenditures” (i.e., Title IV-E allowable only with the approved demonstration project).

- f. Review the Title IV-E agency’s Form CB-496 Part 3 reported “Cumulative Cost Neutrality Limit” (for the current quarter and the next quarter estimate) in applicable funding categories to ensure that it is consistent with a calculation through the applicable period as designated in the demonstration project’s approved terms and conditions or, if applicable, an ACF approved quarterly payment schedule.
- g. Review the Title IV-E agency’s Form CB-496 Part 3 reported “Currently Reported and Cumulatively Funded Operational Costs” (for the current quarter and the next quarter estimate) in applicable funding categories to ensure that it is consistent with a calculation through the applicable period based on any such claims submitted on reports for previous periods.
- h. Test a sample of Title IV-E claims (current quarter and any prior quarter adjustments) reported on Form CB-496 Part 1 as foster care (non-demonstration) costs in each of the funding categories identified in the project’s approved terms and conditions as included within project operational costs to determine that the claims are properly classified as outside of project operational costs based on (1) specific exclusions contained in the project’s approved terms and conditions, (2) the type of cost, (3) the population served, and (4) the applicable period.

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CFDA 93.659 ADOPTION ASSISTANCE—TITLE IV-E**

#### **I. PROGRAM OBJECTIVES**

The objective of the Adoption Assistance program is to facilitate the placement of children with special needs in permanent adoptive homes and thus prevent long, inappropriate stays in foster care.

#### **II. PROGRAM PROCEDURES**

##### **A. Overview**

The Adoption Assistance program is administered at the federal level by the Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS). The Adoption Assistance program provides federal matching funds to Title IV-E agencies with approved Title IV-E plans that provide ongoing subsidy and/or non-recurring payments to parents who adopt eligible children with special needs and enter into an adoption assistance agreement.

Funding is provided to the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Federally recognized Indian tribes, Indian tribal organizations and tribal consortia may also apply for Title IV-E funding via the submission of a Title IV-E plan. Funding is based on an approved Title IV-E plan and amendments, as required by changes in statutes, rules, and regulations, submitted to and approved by the ACF Children's Bureau Associate Commissioner. The Adoption Assistance program is an open-ended entitlement program. Federal financial participation in state or tribal expenditures for adoption assistance agreements is provided at the Medicaid match rate for medical assistance payments, which varies among states and tribes. Monthly payments to families made on behalf of eligible adopted children also vary from Title IV-E agency to Title IV-E agency. Federal financial participation (FFP) is made at an open-ended 50 percent match rate for administrative expenditures and at an open-ended 75 percent for most categories of state/tribal Title IV-E training expenditures. In addition, the program authorizes federal matching funds for Title IV-E agencies that reimburse the non-recurring adoption expenses of adoptive parents of special needs children (regardless of AFDC or SSI eligibility) as administrative expenditures at an open-ended 50 percent FFP rate.

The designated Title IV-E agency for this program also administers ACF funding provided for other Social Security Act programs (e.g., Foster Care (CFDA 93.658), Guardianship Assistance (CFDA 93.090) at agency option and John H. Chafee Foster Care Program for Successful Transition to Adulthood (CFDA 93.674) programs (Title IV-E of the Social Security Act); Child Welfare Services (CFDA 93.645) and Promoting Safe and Stable Families (CFDA 93.556) programs (Title IV-B of the Social Security Act, as amended) (CFDA 93.556 funds available to states and those tribes qualifying for at least a minimum grant of \$10,000); and the Social Services Block Grant program

(CFDA 93.667) (Title XX of the Social Security Act, as amended) (states only). The Title IV-E agency may either directly administer the Adoption Assistance program or supervise its administration by local level agencies. Where the program is administered by a state, in accordance with the approved Title IV-E plan, it must be in effect in all political subdivisions of the state, and, if administered by them, program requirements must be mandatory upon them. Where the program is administered by a tribe, it must be in effect in all political subdivisions within the tribal service area(s) and for all populations to be served under the plan. If the program is administered by a political subdivision of a tribe, program requirements must be mandatory upon them.

Depending on the circumstances, the child may also need to meet the eligibility requirements of the Aid to Families with Dependent Children (AFDC) program (i.e., meet the state-established standard of need as of July 16, 1996, prior to enactment of the Personal Responsibility and Work Opportunity Reconciliation Act [PRWORA]) or the Supplemental Security Income (SSI) program. In cases where program eligibility requires an assessment of SSI program eligibility, the child will need to meet either all criteria or for an applicable child [defined in III.E.1.a.(1)(a), Eligibility for Individuals, of this program supplement] only the medical and disability criteria. Tribes must use the Title IV-A state plan (as in effect as of July 16, 1996) of the state in which the child resided at the time of removal in determining the child's AFDC eligibility.

An adoption assistance agreement is a written agreement between the prospective adoptive parents, the Title IV-E agency, and other relevant agencies (such as a private adoption agency) specifying the nature and amount of assistance to be given on a monthly basis to parents who adopt eligible special needs children. A child with special needs is defined as a child who the Title IV-E agency has determined cannot or should not be returned home; has a specific factor or condition, as defined by the state or tribe, because of which it is reasonable to conclude that the child cannot be adopted without financial or medical assistance; and for whom a reasonable effort has been made to place the child without providing financial or medical assistance.

## **B. Other**

### *Adoption Savings*

Title IV-E agencies are required to enter into an adoption assistance agreement with the prospective adoptive parents of any child who meets specified criteria by applying differing, and less restrictive, program eligibility criteria (specified in III.E.1.a.(1)(a) and (c), "Eligibility - Eligibility for Individuals," of this program supplement). This results in some number of children who, under previously applied program eligibility criteria, would not have been determined as Title IV-E eligible, but who will now be determined as Title IV-E eligible for adoption assistance. Each Title IV-E agency is required to calculate and spend an amount equal to any savings in Title IV-E agency expenditures as a result of applying the differing program eligibility criteria for a FFY for services permitted under Title IV-B or IV-E. These non-federal funds are a component of this program and are hereafter referred to as "adoption savings."

Beginning in FFY 2015, each Title IV-E agency is required to annually calculate and report on adoption savings. The calculation must be in accordance with procedures established by the Children's Bureau. The report must identify the methodology used to calculate the savings, how savings are spent, and on what services.

### Source of Governing Requirements

The Adoption Assistance program is authorized by Title IV-E of the Social Security Act, as amended (42 USC 670 *et seq.*). This includes those amendments made by the Preventing Sex Trafficking and Strengthening Families Act (Pub. L. No. 113-183) and the Family First Prevention Services Act (Pub. L. No. 115-123). Implementing regulations are published at 45 CFR parts 1355 and 1356.

States and tribes are required to adopt and adhere to their own statutes and regulations for program implementation, consistent with the requirements of Title IV-E and the approved Title IV-E Plan.

The regulations at 45 CFR part 75 specifying uniform administrative requirements, cost principles, and audit requirements for HHS awards are applicable to the Adoption Assistance program. However, in accordance with 45 CFR sections 75.101(e)(1)(iii) and 75.101(e)(2), except for 45 CFR section 75.202, the guidance in subpart C of 45 CFR part 75 does not apply.

### Availability of Other Program Information

The Children's Bureau manages a policy issuance system that provides further clarification of the law and guides states and tribes in implementing the Adoption Assistance program. This information may be accessed at <https://www.acf.hhs.gov/cb/laws-policies>.

## III. COMPLIANCE REQUIREMENTS

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

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

## A. Activities Allowed or Unallowed

### 1. *Adoption Assistance Subsidies*

Funds may be expended for adoption assistance subsidy payments made on behalf of eligible children (see III.E.1, “Eligibility – Eligibility for Individuals”), in accordance with a written and binding adoption assistance agreement. Subsidy payments are made to adoptive parents based on the need(s) of the child (i.e., developmental, cognitive, emotional behavioral) and the circumstances of the adopting parents (42 USC 673(a)(2)). Subsidy payment amounts cannot be based on any income eligibility requirements of the prospective adoptive parents (45 CFR section 1356.41(c)). Adoption assistance subsidy payments cannot exceed the foster care maintenance payment (in accordance with the Title IV- E agency’s rate schedule) the child would have received in a foster family home; however, the amount of the subsidy payments may be up to 100 percent of that foster care maintenance payment rate (42 USC 673(a)(3)).

### 2. *Administrative Costs*

- a. Program Administration – Funds may be expended for costs directly related to the administration of the program. Approved public assistance cost allocation plans (states) or approved cost allocation methodologies (tribes) will identify which costs are allocated and claimed under this program (45 CFR section 1356.60(c)).
- b. Nonrecurring Costs – Funds may be expended by a Title IV-E agency under an adoption assistance agreement for nonrecurring expenses up to \$2,000 (gross amount), for any adoptive placement (45 CFR section 1356.41(f)(1)). Nonrecurring adoption expenses are defined as reasonable and necessary adoption fees, court costs, attorney fees and other expenses that are directly related to the legal adoption of a child with special needs. Other expenses may include those costs of adoption incurred by or on behalf of the adoptive parents, such as, the adoptive home study, health and psychological examination, supervision of the placement prior to



adoption, transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the placement or adoptions process (45 CFR section 1356.41(i)).

- c. Adoption Placement Costs – Funds expended by the Title IV-E agency for adoption placements (including nonrecurring costs) are considered an administrative expenditure and are subject to the matching requirements in III.G.1.e, “Matching, Level of Effort, Earmarking – Matching” (45 CFR section 1356.41(f)(1)).

### 3. *Training*

- a. Funds may be expended for short-term training of current or prospective adoptive parents and members of the staff of state/tribe-licensed or state/tribe-approved child care institutions (including travel and per diem) at the initiation of or during their period of care (42 USC 674(a)(3)(B) and 45 CFR section 1356.60(b)(1)(ii)).
- b. Funds may be expended for short-term training of (1) relative guardians; (2) state/tribe-licensed or state/tribe-approved child welfare agencies providing services to children receiving Title IV-E assistance; (3) child abuse and neglect court personnel; (4) agency, child or parent attorneys; (5) guardians ad litem; and (6) court appointed special advocates (42 USC 674(a)(3)(B)).
- c. Funds may be expended for training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the agency administering the plan (42 USC 674(a)(3)(A)).

### 4. *Demonstration Projects*

Under Section 1130 of the Social Security Act, Title IV-E agencies may be granted authority to operate a demonstration project as set forth in ACF-approved terms and conditions. Any such terms and conditions applicable to the program identify the specific provisions of the Social Security Act that are waived, the additional activities that are deemed as allowable, and the scope and duration (which may not exceed a maximum of 5 total years unless specifically approved for further continuation) of the demonstration project. The demonstration project must remain cost neutral to the federal government, as provided for in a methodology contained in the approved project terms and conditions involving either a matched comparison group or a capped allocation (42 USC 1320a–9 and Section 201 of Pub. L. No. 112-34).

**B. Allowable Costs/Cost Principles**

Both states and tribes are subject to the requirements of OMB cost principles in 2 CFR part 200, subpart E, as implemented by HHS at 45 CFR part 75. States also are subject to the cost allocation provisions and rules governing allowable costs of equipment of 45 CFR part 95 (45 CFR sections 1355.57, 95.503, and 95.705).

**E. Eligibility****1. Eligibility for Individuals**

- a. Adoption assistance subsidy payments may be paid on behalf of a child only if all the following requirements are met:

- (1) Categorical Eligibility

- (a) Applicable and Non-Applicable Children – An applicable child is a child for whom an adoption assistance agreement was entered into in fiscal year (FY) 2010 or later and who meets the applicable age requirement (differs over a multi-fiscal year phase-in period beginning in FY 2010), or a child who has been in foster care under the responsibility of the Title IV-E agency for at least 60 consecutive months, or a sibling to either such child if both are to have the same adoption placement (42 USC 673(e)(2) and (e)(3)). The applicable age requirement is met only if the child has attained that age any time before the end of the federal fiscal year during which the adoption assistance agreement is entered into. The applicable age for FY 2010 agreements includes children who will turn age 16 or older in that FY. In subsequent FYs through FY 2017, the age to apply the revised “applicable child” program rules decreases by two years. The applicable age for agreements entered into in FY 2018 through FY 2024 is dependent on the date of the agreement. For agreements entered into in FY 2018 between October 1 and December 31, 2017, children of any age may be eligible according to the revised criteria in FY 2018. However, for agreements entered into between January 1, 2018 and June 30, 2024, only those children who turn 2 or older in the FY the agreement is entered into may be eligible according to the revised criteria. As of July 1, 2024, a child of any age covered by a newly entered into agreement will meet the applicable child definition (see applicable age table below) (42 USC 673(e)(1)(B)).

**Applicable Age Table – Based on Date Adoption Assistance Agreement is Entered Into**

<b>In the case of fiscal year:</b>	<b>The applicable age is:</b>
2010	16
2011	14
2012	12
2013	10
2014	8
2015	6
2016	4
2017	2
2018 (through December 31, 2017)	Any age
2019 to 2023	2
2024 (through June 30, 2024)	2
2024 (July 1, 2014 or later)	Any age
2025 (or fiscal years thereafter)	Any age

A child who is referred to as “not an applicable child” is one for whom an adoption assistance agreement was entered into in FY 2009 or earlier or in a later FY if the applicable child requirements pertinent to the FY in which the adoption assistance agreement was entered into are not satisfied. In this instance, the revised “applicable child” eligibility criteria do not apply and the eligibility requirements in place prior to October 1, 2009, apply (42 USC 673(a)(2)(A)(i)).

- (b) Adoption agreements entered into prior to the beginning of FY 2010, or agreements entered into during FY 2010 or *thereafter for a “non-applicable child”* – The child is categorically eligible if:
  - (i) the child was eligible, or would have been eligible, for the former AFDC program (i.e., met the state-established standard of need as of July 16, 1996, prior to enactment of the PRWORA (tribes must use the Title IV-A state plan in effect as of July 16, 1996 of the state in which the child resided at the time of removal in determining the child’s AFDC eligibility (42 USC 679c(c)(1)(C)(ii)(II))) except for his/her removal from the home of a relative pursuant to either a voluntary placement agreement or as a result of a judicial determination to the effect that continuation in the home of removal would have been contrary to the welfare of the child; or

- (ii) the child is eligible for SSI; or
  - (iii) the child is a child whose costs in a foster family home or childcare institution are covered by the foster care maintenance payments being made with respect to his/her minor parent (42 USC 673(a)(2)(A)(i)(I)).
- (c) Adoption agreements entered into during FY 2010 or *thereafter for an “applicable child”* – The child is categorically eligible if the child:
  - (i) at the time of the initiation of adoption proceedings, was in the care of a public or private child placement agency by way of a voluntary placement, voluntary relinquishment or a court-ordered removal with a judicial determination that remaining at home would be contrary to the child’s welfare; or
  - (ii) meets the disability or medical requirements of the SSI program; or
  - (iii) was residing with a minor parent in foster care (who was placed in foster care by way of a voluntary placement, voluntary relinquishment, or court-ordered removal); or
  - (iv) was eligible for adoption assistance in a previous adoption in which the adoptive parents have died or had their parental rights terminated (42 USC 673(a)(2)(A)(ii)(I) and 673(a)(2)(C)(ii)); and
  - (v) does not fit within the following prohibited class for the payment of an adoption assistance payment (including payments of non-recurring expenses under 42 USC 673(a)(1)(B)(i)), i.e., an “applicable child” who is not a citizen or resident of the U.S. and was either adopted outside the U.S. or brought to the U.S. for the purpose of being adopted (42 USC 673(a)(7) as added by Pub. L. No. 110-351).
- (2) The following additional eligibility provisions must be met in addition to the establishment of categorical eligibility:
  - (a) The child was determined by the Title IV-E agency as someone who cannot or should not be returned to the home of his or her parents (42 USC 673(c)(1));

- (b) The child was determined by the Title IV-E agency to be a child with special needs. Special needs means that there is a specific factor or condition (such as ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance under Title IV-E and medical assistance under Title XIX. In the case of an applicable child, the child is also considered to have special needs if that applicable child meets all of the medical or disability requirements for SSI and the Title IV-E agency determines that it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance under Title IV-E and medical assistance under Title XIX. The criteria for the factor or condition element of the special needs determination will be met if an applicable child meets all the medical or disability requirements for SSI (42 USC 673(c)(1)(B) and 673(c)(2)(B), as amended/added by Pub. L. No. 110-351).
- (c) The Title IV-E agency has made reasonable efforts to place the child for adoption without a subsidy. The only exception to this requirement is where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of the parents as a foster child (42 USC 673(c)(1)(B) and 673(c)(2) as amended/added by Pub. L. No. 110-351).
- (d) The agreement for the subsidy was signed and was in effect before the final decree of adoption and contains information concerning the nature of services; the amount and duration of the subsidy; the child's eligibility for Title XX services and Title XIX Medicaid; and covers the child should he/she move out of state with the adoptive family (42 USC 675(3)).
- (e) The prospective adoptive parent(s) must satisfactorily have met a criminal records check, including a fingerprint-based check (42 USC 671(a)(20)(A)). This involves a determination that such individual(s) have not committed any prohibited felonies in accordance with 42 USC 671(a)(20)(A)(i) and (ii). The requirement for a fingerprint-based check took effect on October 1, 2006, unless prior to September 30, 2005, the state has elected to

opt out of the criminal records check requirement or state legislation was required to implement the fingerprint-based check, in which case a delayed implementation is permitted until the first quarter of the state's regular legislative session following the close of the first regular session beginning after October 1, 2006. The requirement applies to adoption assistance payments for calendar quarters beginning on or after the state's effective date for implementation (Pub. L. No. 109-248, Section 152(c)(1) and (3)). States that opted out of the criminal records check requirement at Section 471(a)(20) of the Social Security Act prior to September 30, 2005 had until October 1, 2008 to implement the fingerprint-based check requirement. Effective October 1, 2008, a state is no longer permitted to opt out of the fingerprint-based check requirement. The opt-out provision does not impact tribes since they only became eligible to administer a Title IV-E plan on October 1, 2009.

The statutory provisions apply to all prospective adoptive parents who are newly approved after the Title IV-E agency's authorized date for implementation of the fingerprint-based background check provisions. Title IV-E agencies may also require that certain other adult individuals living in the adoptive home be subject to a criminal records check. The completion or lack of completion of criminal records checks for persons other than prospective adoptive parents does not, however, impact Title IV-E eligibility (42 USC 671(a)(20)(B); Pub. L. No. 109-248, Section 152(c)(2); 45 CFR sections 1356.30(b) and (c); and the Child Welfare Policy Manual section 8.4F Q/A#4).

- (f) The prospective adoptive parent(s) and any other adult living in the home who has resided in the provider home in the preceding five years must satisfactorily have met a child abuse and neglect registry check. This requirement became effective on October 1, 2006, unless the state requires legislation to implement the requirement, in which case a delayed implementation is permitted until the first quarter of the state's regular legislative session following the close of the first regular session beginning after October 1, 2006. The requirement applies to foster care maintenance payments for calendar quarters beginning on or after that date. Tribes first became eligible to administer a Title IV-E plan effective on October 1, 2009, and must, therefore, comply with this requirement (42 USC

671(a)(20)(B); Pub. L. No. 109-248, Sections 152(c)(2) and (3)).

- (g) Once a child is determined eligible to receive Title IV-E adoption assistance, he or she remains eligible and the subsidy continues until (i) the age of 18 (or 21 if the Title IV-E agency determines that the child has a mental or physical disability which warrants the continuation of assistance); (ii) the Title IV-E agency determines that the parent is no longer legally responsible for the support of the child; or (iii) the Title IV-E agency determines the child is no longer receiving any support from the parents (42 USC 673(a)(4)(A) and (B)).

Beginning on October 1, 2010, a Title IV-E agency may amend its Title IV-E plan to provide for a definition of a “child” as an individual who has not attained 19, 20, or 21 years of age (as the Title IV-E agency may elect) (42 USC 675(8)(B)(iii)). This definition of a child will then permit payment of adoption assistance for a child who is over age 18 (where the Title IV-E agency does not determine that the child has a mental or physical disability which warrants the continuation of assistance up to age 21) if such a youth is part of an adoption assistance agreement that is in effect under Section 473 of the Social Security Act and the youth had attained 16 years of age before the agreement became effective. As an additional requirement, a youth over age 18 must also (as elected by the Title IV-E agency) be (i) completing secondary school (or equivalent), (ii) enrolled in post-secondary or vocational school, (iii) participating in a program or activity that promotes or removes barriers to employment, (iv) employed 80 hours a month, or (v) incapable of any of these due to a documented medical condition (42 USC 675(8)(B)).

- b. Nonrecurring expenses of adoption may be paid on behalf of a child only if all of the following requirements are met:
  - (1) The agreement may be a separate document or part of an agreement for state/tribe or federal adoption assistance payment or services (45 CFR section 1356.41(b)).
  - (2) The agreement indicates the nature and amount of the nonrecurring expenses to be paid (45 CFR section 1356.41(a)).
  - (3) The agreement was signed at the time of, or prior to, the final decree of adoption and claims must be filed with the Title IV-E

agency within two years of the date of the final decree of adoption (45 CFR section 1356.41(e)(2)).

- (4) The state or tribe has determined that the child is a child with special needs (45 CFR section 1356.41(d)).
  - (5) The child has been placed for adoption in accordance with applicable state or tribal laws (45 CFR section 1356.41(d)).
  - (6) The child need not meet the categorical eligibility requirements at Section 473(a)(2) (45 CFR section 1356.41(d)).
  - (7) The costs incurred by or on behalf of adoptive parents are not otherwise reimbursed from other sources (45 CFR section 1356.41(g)).
- c. There may be no income-eligibility requirement (means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance subsidy payments or nonrecurring expenses of adoption (45 CFR sections 1356.40(c) and 1356.41(c)).
  - d. In the case of a child adopted after the dissolution of a guardianship where the child was receiving Title IV-E guardianship assistance payments, the child's eligibility for adoption assistance is to be determined without consideration of the placement of the child with the relative guardian and any kinship guardianship assistance payments made on behalf of the child. Thus, if such a child is adopted, the Title IV-E agency would apply the adoption assistance criteria for the child as if the guardianship had never occurred (42 USC 673(a)(1)(D) as added by Section 101(c) of Pub. L. No. 110-351).

## **2. Eligibility for Group of Individuals or Area of Service Delivery**

Not Applicable

## **3. Eligibility for Subrecipients**

Not Applicable

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

## **1. Matching**

The percentage of required state/tribal funding and associated federal funding ("federal financial participation" (FFP)) varies by type of expenditure as follows:

- a. Third party in-kind contributions cannot be used to meet the state's cost sharing requirements (Child Welfare Policy Manual Section 8.1F Q/A#2)



8/16/02). The matching and cost sharing provisions of 45 CFR section 92.24/45 CFR section 75.306 do not apply to this program (45 CFR sections 1355.30(c) and 1355.30(n)(1); 45 CFR section 201.5(e)). However, for program expenditures made in FY 2012 and thereafter, tribes receiving Title IV-E are permitted to use in-kind funds from any allowable third-party sources to provide up to the full required non-federal share of administrative or training costs (42 USC 679c(c)(1)(D), 45 CFR section 1356.68(c)).

- b. Adoption Assistance Subsidy Payments – The percentage of Title IV-E funding in Adoption Assistance subsidy payments will be the federal Medical Assistance Program (FMAP) percentage. This percentage varies by state and is available at <http://www.aspe.hhs.gov/health/fmap.htm> (42 USC 674(a)(1); 45 CFR section 1356.60(a)).

Separate tribal FMAP rates, which are based upon the tribe's service area and population, apply to Foster Care program maintenance payments incurred by tribes that are participating in Title IV-E programs through either direct operation of an approved Title IV-E plan or through operation of a Title IV-E agreement or contract with a state Title IV-E agency. The methodology for calculating tribal FMAP rates was provided through a final notice in the *Federal Register* that is available at <http://www.gpo.gov/fdsys/pkg/FR-2011-08-01/pdf/2011-19358.pdf>. Information on specific tribal FMAP rates for many tribes applicable for each FY and a table where such rates can be calculated for unlisted tribes is posted on the Children's Bureau's website and is available at <https://www.acf.hhs.gov/cb/focus-areas/tribes>. The calculated FMAP rate for each tribe applies unless it is exceeded by the FMAP rate for any state in which the tribe is located (42 USC 679B(d) and 42 USC 679B(e)).

- c. Staff and Adoptive Parent Training – The percentage of federal funding in expenditures for short- and long-term training at educational institutions of employees or prospective employees, and short-term training of current or prospective foster or adoptive parents and members of staff of state/ tribe-licensed or state/tribe-approved child care institutions (including travel and per diem) is 75 percent (42 USC 674(a)(3)(A) and (B); 45 CFR section 1356.60(b)).
- d. Professional Partner Training – The percentage of federal funding in expenditures for short-term training of (1) relative guardians; (2) state/tribe-licensed or state/tribe-approved child welfare agencies providing services to children receiving Title IV-E assistance; (3) child abuse and neglect court personnel; (4) agency, child or parent attorneys; (5) guardians ad litem; and (6) court appointed special advocates is 75 percent in FY 2013 and thereafter (42 USC 674(a)(3)(B)).
- e. Administrative Costs

- (1) The percentage of federal funding for expenditures for planning, design, development, and installation and operation of a statewide or tribal service area-wide automated child welfare information system meeting specified requirements (and expenditures for hardware components for such systems) is 50 percent (42 USC 674(a)(3)(C) and (D); 45 CFR sections 1355.52 and 1356.60(d)).
- (2) The percentage of federal funding for adoption placement non-recurring cost expenditures is 50 percent for Title IV-E agency expenditures up to \$2000 for each adoptive placement (45 CFR section 1356.41(f)(1)).
- (3) The percentage of federal funding of all other allowable administrative expenditures, is 50 percent (42 USC 674(a)(3)(E); 45 CFR sections 1356.41(f) and 1356.60(c)).

## **2. Level of Effort**

### **2.1 Level of Effort – *Maintenance of Effort***

A Title IV-E agency is required to spend an amount equal to any savings (hereafter referred to as “adoption savings”) in state or tribal expenditures under Title IV-E as a result of applying the differing program eligibility rules to applicable children for a fiscal year for any services that may be provided under Title IV-B or IV-E (42 USC 673(a)(8)) as follows:

- a. For periods prior to FFY 2015, Title IV-E agencies had the flexibility to determine the methodology for calculating adoption savings and were not required to provide a specific accounting of adoption savings funds to ACF.
- b. Effective October 1, 2014, all Title IV-E agencies must:
  - (1) Calculate the adoption savings (if any) resulting from the application of differing program eligibility rules (42 USC 673(a)(2)(A)(ii)) to all applicable children for a fiscal year, using a methodology specified by ACF or an alternate methodology proposed by the Title IV-E agency and approved by ACF (42 USC 673(a)(8)(A) as amended by Pub. L. No. 113-183 and Program Instruction ACYF-CB-PI-15-06, dated May 22, 2015).
  - (2) Report (see III.L.1.d, “Reporting – Financial Reporting,” of this program supplement) annually to ACF (i) the methodology used to make the calculation of adoption savings, without regard to whether any savings are found; (ii) the amount of any annual adoption savings; and (iii) how such adoption savings are spent, accounting for and

reporting the spending separately from any other spending reported to ACF under Title IV-B or IV-E ((42 USC 673(a)(8)(B) as amended by Pub. L. No. 113-183 and Program Instruction ACYF-CB-PI-15-09, dated December 2, 2015).

- (3) Adoption savings must be expended for services that may be provided under the Title IV-B or IV-E programs; at least 30 percent of which must be spent on post-adoption services, post-guardianship services and services to support positive permanent outcomes for children at risk of entering foster care. At least two-thirds (2/3) of the 30 percent must be spent on post-adoption and post-guardianship services ((42 USC 673(a)(8)(D)(i) as amended by Pub. L. No. 113-183).
- (4) There is no requirement that adoption savings be expended in the same FFY for which they are calculated. Title IV-E agencies must, however, use adoption savings to supplement and not supplant any federal or non-federal funds used to provide any service under Title IV-B or IV-E ((42 USC 673(a)(8)(D)(ii), as amended by Pub. L. No. 113-183). (**Note:** The auditor would be required to test compliance with the earmarking requirements of paragraph (b)(3) only during the audit period in which the Title IV-E agency reports (or expects to report) in its annual report (see paragraph (b)(2)) that the earmarking percentages have been met for one or more FFYs for which they are applicable).

## **2.2 Level of Effort – *Supplement Not Supplant***

Not Applicable

## **3. Earmarking**

Not Applicable

## **L. Reporting**

### **1. Financial Reporting**

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

- d. *CB-496, Title IV-E Programs Quarterly Financial Report (OMB No. 0970-0205)* – Title IV-E agencies report current expenditures and information on children assisted for the quarter that has just ended and estimates of expenditures and children to be assisted for the next quarter. Prior quarter adjustment (increasing and decreasing) expenditures applicable to earlier quarters must also be separately reported on this form.

Beginning with the FFY 2015 reporting period, the Annual Adoption Savings Calculation and Accounting Report, CB-496 Part 4, must be submitted to provide information on the calculation and expenditure of adoption savings. The CB-496 Part 4 is due once a year with the CB-496 quarterly submission for the fourth quarter of the FFY. This report captures adoption savings calculations based on utilization of the Children's Bureau methodology, or an approved alternate methodology, and relevant CB-496 Part 1 reported expenditures submitted on quarterly reports for the current FFY.

A separate calculation of adoption savings is required for the current FFY (Column A) and for prior reported FFYs (Column B). The current FFY calculation considers title IV-E Adoption Assistance claims reported on Form CB-496 Part 1 quarterly submissions for the current FFY as current quarter amounts and any prior-quarter adjustment of expenditures (increasing or decreasing) identified (Part 2, Column D) as for applicable periods within the current FFY. The prior reported FFYs calculation considers any relevant reported prior-quarter adjustment of expenditures (increasing or decreasing) submitted on a Form CB-496 Part 1 report for quarterly periods within the current FFY but identified (Part 2, Column D) as applicable to periods in prior FFYs subject to adoption savings reporting.

The CB-496 Part 4 also contains a report of the expenditure of adoption savings for the current reporting FFY. The report separately identifies amounts expended during the current reporting FFY (Column A) and amounts spent in an earlier FFY subject to adoption savings reporting (Column B), but either not previously reported or adjusted from a previously reported amount.

The CB-496 Part 4 report further contains information on cumulative (beginning with FFY 2015) calculated and expended adoption savings amounts.

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

1. *Part 1, Expenditures, Estimates and Caseload Data*, columns (A) through (D) (Sections B and D (Adoption Assistance Program))

2. *Part 2, Prior Quarter Expenditure Adjustments – Adoption Assistance*, columns (A) through (E)
3. *Part 3, Foster Care, Adoption Assistance and Guardianship Assistance Demonstration Projects*, columns (A) through (F)
4. *Part 4, Annual Adoption Savings Calculation and Accounting Report*, columns (A) through (C)

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CFDA 93.667 SOCIAL SERVICES BLOCK GRANT**

#### **I. PROGRAM OBJECTIVES**

The purpose of the Social Services Block Grant (SSBG) program is to provide funds to states (including the District of Columbia and five territories) to provide services for individuals, families, and entire population groups in one or more of the following areas: (1) achieving or maintaining economic self-support and self-sufficiency to prevent, reduce, or eliminate dependency; (2) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests; (3) preserving, rehabilitating, or reuniting families; (4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of intensive care; and (5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

#### **II. PROGRAM PROCEDURES**

The SSBG program is administered by the Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS). Funds are awarded based on the state's population following receipt and review of the state's report on the proposed use of funds for the coming year, which serves as the state's plan. States have the flexibility to determine what services will be provided, consistent with the statutory goals and objectives, who is eligible, and how funds will be distributed among services and entities within the state, including whether to provide services directly or obtain them from other public or private agencies and individuals. The state must also conduct a public hearing on the proposed use and distribution of funds, as included in the report, as a prerequisite to the receipt of SSBG funds.

Under the block grant philosophy, each state is responsible for designing and implementing its own SSBG program, within very broad federal guidelines. States must administer their SSBG program according to their approved plan and any amendments and in conformance with their own implementing rules and policies.

#### **Source of Governing Requirements**

The SSBG program is authorized under Title XX of the Social Security Act, as amended, and is codified at 42 USC 1397 through 1397e. The implementing regulations for this and other block grant programs authorized by Omnibus Budget Reconciliation Act of 1981 are published at 45 CFR part 96. Those regulations include both specific requirements and general administrative requirements in lieu of 45 CFR part 75 (the HHS implementation of 2 CFR part 200) for the covered block grant programs. Requirements specific to SSBG are in 45 CFR sections 96.70 through 96.74.

As discussed in Appendix I to this Supplement, "Federal Programs Excluded from the A-102 Common Rule and Portions of 2 CFR Part 200," states are to use the fiscal policies that apply to their own funds in administering SSBG. Procedures must be adequate to ensure the proper

disbursal of and accounting for federal funds paid to the grantee, including procedures for monitoring the assistance provided (45 CFR section 96.30).

### III. COMPLIANCE REQUIREMENTS

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

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

#### A. Activities Allowed or Unallowed

##### 1. *Activities Allowed*

- a. Services provided with SSBG funds may include, but are not limited to, child care services, protective services for children and adults, services for children and adults in foster care, services related to the management and maintenance of the home, day care services for adults, transportation services, family planning services, training and related services, employment services, information, referral, counseling services, the preparation and delivery of meals, health support services, and appropriate combinations of services designed to meet the special needs of children, seniors, individuals with developmental or physical disabilities, and individuals facing substance use disorders (42 USC 1397a(a)). Uniform

definitions for these services are included in Appendix A to 45 CFR part 96 – Uniform Definitions of Services.

Expenditures for these services may include expenditures for administration, including planning and evaluation, personnel training and retraining directly related to the provision of those services (including both short- and long-term training at educational institutions), and conferences and workshops, and assistance to individuals participating in such activities (42 USC 1397a(a)).

- b. A state may purchase technical assistance from public or private entities if the state determines that such assistance is required in developing, implementing, or administering the SSBG program (42 USC 1397a(e)).
- c. A state may transfer up to 10 percent of its annual allotment to the following block grants for support of health services, health promotion and disease prevention activities, low-income home energy assistance, or any combination of these activities: Preventive Health and Health Services Block Grant (CFDA 93.991); Block Grants for Prevention and Treatment of Substance Abuse (CFDA 93.959); Maternal and Child Health Services Block Grant to the states (CFDA 93.994); Low-Income Home Energy Assistance (CFDA 93.568); and Community Services Block Grant (93.569) (42 USC 1397a(d); 45 CFR section 96.72).

## 2. *Activities Unallowed*

Funds may not be used for:

- a. Purchase or improvement of land, or the purchase, construction, or permanent improvement (other than minor remodeling) of any facility (unless the restriction is waived by ACF) (42 USC 1397(d)(a)(1)).
- b. Cash payments for costs of subsistence or for the provision of room and board (other than costs of subsistence during rehabilitation, room and board provided for a short term as an integral but subordinate part of a social service, or temporary shelter provided as a protective service) (42 USC 1397(d)(a)(2)).
- c. Wages of any individual as a social service (other than payment of wages of Temporary Assistance for Needy Families (TANF) (CFDA 93.558) recipients employed in the provision of child day care services) (42 USC 1397(d)(a)(3)).
- d. Medical care (other than family planning services, rehabilitation services, or initial detoxification of an alcoholic or drug-dependent individual) unless it is an integral but subordinate part of an allowable social service under SSBG (unless the restriction is waived by ACF) (42 USC 1397(d)(a)(4)).



- e. Social services (except services to substance use disorder or rehabilitation services) provided in and by employees of any hospital, skilled nursing facility, intermediate care facility, or prison, to any individual living in such institution (42 USC 1397(d)(a)(5)).
- f. The provision of any educational service that the state makes generally available to its residents without cost and without regard to their income (42 USC 1397(d)(a)(6)).
- g. Any child day care services unless such services meet applicable standards of state and local law (42 USC 1397(d)(a)(7)).
- h. The provision of cash payments as a service (this limitation does not apply to payments to individuals with respect to training or attendance at conferences or workshops) (42 USC 1397(d)(a)(8)).
- i. Any item or service (other than an emergency item of service) furnished by an entity, physician, or other individual during the period of exclusion from reimbursement by various provisions of federal regulations (42 USC 1397(d)(a)(9)).
- j. The state may not use the amount transferred in from TANF (CFDA 93.558) for programs, services or activities for individuals, children, or their families whose incomes exceed the 200 percent of the federal poverty guidelines. The official poverty guideline is revised annually by HHS (42 USC 604(d)(3)(A) and 9902(2)). The poverty guidelines are issued each year in the *Federal Register* and HHS maintains a web page that provides the poverty guidelines (<http://aspe.hhs.gov/poverty/>). Additional information on this transfer in is provided in IV, “Other Information.”

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

As discussed in Appendix I of this Supplement, “Federal Programs Excluded from the A-102 Common Rule and Portions of 2 CFR Part 200,” SSBG is exempt from the provisions of the OMB cost principles. State cost principles requirements apply to SSBG.

## **H. Period of Performance**

SSBG funds must be expended by the state in the fiscal year allotted or in the succeeding fiscal year (42 USC 1397a(c)).

## **L. Reporting**

### **1. Financial Reporting**

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

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

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

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**IV. OTHER INFORMATION**

*Transfers out of SSBG*

As discussed in III.A, “Activities Allowed or Unallowed,” funds may be transferred out of SSBG to other federal programs. The amounts transferred out of SSBG are subject to the requirements of the program into which they are transferred and should not be included in the audit universe and total expenditures of SSBG when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amount transferred out should not be shown as SSBG expenditures but should be shown as expenditures for the program into which they are transferred.

*Transfers into SSBG*

A state may transfer up to 10 percent of the combined total of the state family assistance grant, supplemental grant for population increases, and bonus funds for high performance and illegitimacy reduction, if any, (all part of TANF) for a given fiscal year to carry out programs under the SSBG. Such amounts may be used only for programs or services to children or their families whose income is less than 200 percent of the poverty level. The amount of the transfers is reflected on the quarterly ACF-196/ACF-196R, TANF Financial Report. The amounts transferred into this program are subject to the requirements of this program when expended and should be included in the audit universe and total expenditures of this program when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amounts transferred in should be shown as expenditures of this program when such amounts are expended.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### CFDA 93.676 UNACCOMPANIED ALIEN CHILDREN PROGRAM

#### I. PROGRAM OBJECTIVES

The objective of the Unaccompanied Alien Children Program is to provide for the care and placement of unaccompanied alien children who are apprehended by the U.S. Department of Homeland Security, Immigration, and Customs Enforcement agents, Border Patrol agents, or other federal law enforcement agencies and transferred into the custody of the Office of Refugee Resettlement pending resolution of their claims for relief under U.S. immigration law case or release to parent, adult family members or another responsible adult sponsor.

#### II. PROGRAM PROCEDURES

The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS), administers this program. ORR enters into cooperative agreements with non-federal entities to provide temporary shelter and other child welfare-related services to unaccompanied alien children in ORR custody. Residential care services begin once an unaccompanied alien child (UAC) arrives at an ORR facility and ends when the UAC is released from ORR custody to a sponsor, turns 18 years of age, or the UAC's immigration case results in a final disposition of removal from the United States. Residential care and other child welfare-related services are provided by state-licensed residential care programs in the least restrictive setting appropriate for the UAC's age and needs.

##### Source of Governing Requirements

This program is authorized under the Homeland Security Act of 2002 (Pub. L. No. 107-296 (6 USC 279)).

##### Availability of Other Program Information

An ORR policy guide is on the ORR website (<https://www.acf.hhs.gov/orr>) at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied>.

#### III. COMPLIANCE REQUIREMENTS

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

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

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

#### **A. Activities Allowed or Unallowed**

Funds may only be used for activities and categories listed in the approved budget to provide temporary shelter and other child welfare-related services for the care of an UAC placed with the non-federal entity by ORR.

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

1. Less-than-arm's-length leasing arrangements exceeding allowable costs. Grantees may lease facilities from parties with which they have a less-than-arm's length relationship, but are limited in what amount they may charge based on 45 CFR 75.465(b) and (c). Under these limitations, only depreciation, maintenance costs, taxes, and insurance are allowable. Common arrangements that fall within these restrictions are leases with parent or affiliated organizations, leases with partially or wholly-owned subsidiaries, and leases where the lessor is an entity that is partially or wholly-owned by individuals who are executives, board members, or employees of the grantee organization.
2. Excessive charges for facilities expenditures related to leasing agreements. Grantees that lease facilities under an arm's length arrangement are unable to incur and charge ownership type costs to the grant. This includes normal costs of ownership such as significant maintenance/repair costs, capital improvements, property taxes and property insurance typically maintained by the property owner. Arm's length leases in which the grantee is required to pay any combination of property taxes, property insurance, and significant maintenance/repair costs (also referred to as single, double, or triple net leases) are unallowable for the purposes of reimbursement eligibility under the federal award. Costs associated with leasing arm's length facilities are limited to fair market rental fees as explained in 45 CFR 75.465(a).

3. Improper direct charging of costs related to the acquisition, construction, or improvement of real property. Funding under this program cannot be directly used for any of these purposes. Expenses such as direct charges of acquisition costs, mortgage principal and interest payments, and direct charges for alterations to real property which are considered capital improvements and required to be capitalized and depreciated under GAAP are unallowable as direct charges to UAC awards. Only depreciation properly calculated, recorded, and supported by the grantee organization in accordance with GAAP may be charged to UAC awards.
4. Related party transactions improperly categorized by the grantee. Procurements that are issued to parent/subsidiary/affiliated organizations where the relationship falls within the definition of less-than-arm's-length cannot be considered competitively awarded as defined by 45 CFR 75.327(c). Consequently, it is improper to categorize these transaction types under the contract budget line item and include additional revenue in excess of actual expenditures incurred (i.e., profit). These transactions should be treated under the original nature of the work performed (i.e., salaries, supplies) and charged based on the actual expenditures incurred and evidenced by the grantee.
5. Budgeted costs are utilized as the basis for calculating drawdowns and for fulling required reporting to ACF. Amounts approved under budget line items in grant awards are not automatically approved for drawdown. Drawdowns and the related reporting of expenditures to ACF via the Standard Form (SF)-425, "Federal Financial Report." (Included are the actual costs for ownership of facilities, which cannot charged based on estimated amounts.) This reporting must be based on actual expenditures incurred with any excesses/shortfalls rolled forward to subsequent periods for drawdowns requests and reporting. Additionally, SF-425 reporting must be based on the entity's basis for accounting (e.g., cash, accrual).
6. Record retention non-compliance regarding facility files/depreciation schedules. Grantee organizations records pertinent to a federal award must be retained for a period of three (3) years from the date of submission of the final expenditure report in accordance with 45 CFR 75.361. Therefore, records related to depreciation expense ( purchase settlements, appraisals, construction invoices, useful life determinations) charged to a federal award for such events as the acquisition (through any method, including donation) and major renovation of real property must be maintained for the life of the period that depreciation is being expensed.

## **L. Reporting**

### **1. Financial Reporting**

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

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

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

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CFDA 93.686 ENDING THE HIV EPIDEMIC: A PLAN FOR AMERICA**

#### **I. PROGRAM OBJECTIVES**

The objective of this program is to reduce new Human Immunodeficiency Virus (HIV) infections in the United States to fewer than 3,000 per year by 2030. To achieve this objective, the program provides financial and technical resources to the 39 Ryan White HIV/AIDS Program (RWHAP) Part A funded Eligible Metropolitan Areas (EMAs) or Transitional Grant Areas (TGAs) whose service area includes one or more of the identified 48 HIV high burden counties and the EMAs of Washington, DC, and San Juan, PR; the RWHAP Part B funded states identified as having a rural HIV burden (Alabama, Arkansas, Kentucky, Mississippi, Missouri, Oklahoma, and South Carolina); and the RWHAP Part B Program of the state of Ohio on behalf of Hamilton County. These resources are awarded to the indicated RWHAP Part As and Bs to implement strategies, interventions, approaches, and core medical and support services to reduce new HIV infections in the United States.

#### **II. PROGRAM PROCEDURES**

The Department of Health and Human Services (HHS) leads the planning efforts for the Ending the HIV Epidemic: A Plan for America initiative (EHE) which is implemented through the Health Resources and Services Administration (HRSA) and other HHS Agencies. While the EHE initiative is a multi-agency effort, the program procedures outlined in this Compliance Supplement are only applicable to assistance awards issued and managed by HRSA's Bureau of HIV/AIDS.

Under this program, cooperative agreements are awarded annually to 39 RWHAP Part A funded Eligible Metropolitan Areas (EMAs) or Transitional Grant Areas (TGAs) whose service area includes one or more of the identified 48 HIV high burden counties and the EMAs of Washington, DC, and San Juan, PR; seven RWHAP Part B funded states identified as having a rural HIV burden (Alabama, Arkansas, Kentucky, Mississippi, Missouri, Oklahoma, and South Carolina); and the RWHAP Part B Program of the state of Ohio on behalf of Hamilton County. (For a complete list of EHE initiative eligible jurisdictions visit:

<https://www.hrsa.gov/grants/find-funding/hrsa-20-078> and download Notice of Funding Opportunity- HRSA 20-078.)

HRSA assesses the technical merit of each funding application through an objective review process. Application instructions and critical indicators for review criteria are provided to inform applicants and reviewers of proposal expectations and standards for evaluation.

Competing applications are reviewed by nonfederal reviewers for technical merit recommendations. Applications are reviewed and evaluated against the following criteria: (1) Need; (2) Response; (3) Evaluative Measures; (4) Impact; (5) Resources and Capabilities; and (6) Support Requested. The highest ranked applications receive consideration for award within available funding ranges.

Applicants must describe how proposed activities will expand access to HIV care and treatment in the targeted jurisdictions to treat people with HIV rapidly and to effectively reach sustained viral suppression. Additionally, applicants must demonstrate how their proposed strategy will respond quickly to HIV cluster detection efforts for those people with HIV needing care and treatment.

Jurisdictions funded under the EHE initiative use assistance resources in conjunction with the RWHAP Parts A and B systems of HIV care and treatment to develop, implement, and/or enhance innovative approaches to engage people with HIV who are newly diagnosed, not in care, and/or not virally suppressed, as well as to provide rapid access to a comprehensive continuum of high quality care and treatment services. This program is designed to provide additional funding to EHE initiative jurisdictions to deliver HIV care and treatment services and systems enhancements to meet the goals of the initiative. Technical assistance and systems coordination services are also provided to jurisdictions to assist the recipients on (1) implementation of work plan activities, innovative approaches, and interventions, (2) coordinating and integrating their initiative plans, funding sources, and programs with the existing HIV care delivery systems, and (3) identifying existing and new stakeholders to build capacity and advance progress in achieving the goals of the initiative.

Funded jurisdictions may use a variety of service delivery mechanisms. Jurisdictions may provide some or all services directly or through subaward agreements with other service providers/subrecipients.

### **Source of Governing Requirements**

The EHE initiative is authorized under Section 311(c) (42 USC 243(c)) and title XXVI (42 USC 300ff-11 *et seq.*) of the Public Health Service Act.

The EHE initiative has no specific program regulations.

### **Availability of Other Program Information**

Further information about the EHE initiative is available at <http://www.hab.hrsa.gov/>.

Information on allowable uses of funds under the RWHAP is contained in policy notices and standards found at <http://www.hab.hrsa.gov/manageyourgrant/policiesletters.html>. However, due to the unique nature of this funding, EHE initiative recipients will have the opportunity to implement a broader approach to addressing HIV in their communities than what exists in services authorized by the RWHAP legislation. Notice of Funding Opportunity HRSA-20-078 ([https://grants.hrsa.gov/2010/Web2External/Interface/Common/EHBDisplayAttachment.aspx?dm\\_rtc=16&dm\\_attid=81272b5b-dc96-4828-97db-67a83536da45](https://grants.hrsa.gov/2010/Web2External/Interface/Common/EHBDisplayAttachment.aspx?dm_rtc=16&dm_attid=81272b5b-dc96-4828-97db-67a83536da45)) provides additional information regarding the use of these funds, including which of the RWHAP statutory requirements are applicable to this funding.

## **III. COMPLIANCE REQUIREMENTS**

**In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included**



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

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

## A. Activities Allowed or Unallowed

### 1. *Activities Allowed*

- a. Funds may be used to support EHE initiative services and infrastructure associated with a broader approach to addressing HIV in the community than exists in services authorized by the RWHAP legislation. For example, the only requirement for determining eligibility is that the individual has an HIV diagnosis. There is no requirement that individuals served are low-income or that initial eligibility is documented prior to services being provided. Initiative services (e.g., linkage to care) are services and activities that do not fit neatly within the RWHAP service categories. These services may be innovative and creative with a focus on ending the HIV epidemic. HRSA prior approval is required for use of funds outside of existing allowable RWHAP costs and service categories. Infrastructure activities are associated with the development and expansion of data systems. This may include technical assistance on the type, design, and building of new data systems, bridging existing systems to achieve data integration, improving data entry to decrease burden and increase accuracy, training of staff and providers on collecting and using data, and employing experts to provide accurate and in-depth data analysis.

- b. Funds may be used to support core medical services for eligible clients. Core medical services encompass the following services: (1) outpatient and ambulatory health services; (2) AIDS Drug Assistance Program treatments defined under 42 USC 300ff-26; (3) AIDS pharmaceutical assistance; (4) oral healthcare; (5) early intervention services described in 42 USC 300ff-51(e); (6) health insurance premium and cost sharing assistance for low-income individuals in accordance with 42 USC 300ff-15; (7) home healthcare; (8) medical nutrition therapy; (9) hospice services; (10) home and community-based health services as defined under 42 USC 300ff-14(c); (11) mental health services; (12) substance abuse outpatient care; and (13) medical case management, including treatment adherence services. Core medical and support services are important to assist in the diagnosis of HIV infection, linkage to care for people with HIV, retention in care, and the provision of HIV treatment. Services must relate to HIV diagnosis, care, and support, and must adhere to established clinical practice standards consistent with [HHS HIV clinical treatment guidelines](#). However, to increase innovation and to ensure access to the hardest-to-reach populations, there is no requirement to expend 75 percent of the award on core medical services (PCN 16-02, [https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN\\_16-02Final.pdf](https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN_16-02Final.pdf).)
- c. Funds may be used to pay the costs of providing support services that are needed for people with HIV to achieve their medical outcomes. These services include, but are not limited to, outreach services, non-medical case management, medical transportation, translation, and referrals for healthcare and support services. Support services are subject to approval of the Secretary of HHS or designee. (PCN 16-02, [https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN\\_16-02Final.pdf](https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN_16-02Final.pdf).)
- d. Funds may be used for administrative expenses. However, no more than 10 percent of the award can be used for administrative expenses. Administrative expenses at the recipient level are activities related to: routine grant administration and monitoring activities, including the receipt and disbursement of program funds, the development and establishment of reimbursement and accounting systems, the preparation of routine programmatic and financial reports, compliance with grant conditions and audit requirements; and all activities associated with the recipient's contract award procedures; the development of requests for proposals, contract proposal review activities, negotiation and awarding of contracts, monitoring of contracts through telephone consultation, written documentation or onsite visits, reporting on contracts, and funding reallocation activities.

Administrative expenses at the subrecipient level include: (1) usual and recognized overhead activities, including established indirect rates for

agencies; (2) management oversight of specific programs funded under the EHE initiative; and (3) other types of program support such as quality assurance, quality control, and related activities (exclusive of clinical quality management). (PCN 15-01, <https://hab.hrsa.gov/sites/default/files/hab/Global/pcn1501.pdf>.)

- e. Funds may be used for the establishment of a clinical quality management (CQM) program to assess the extent to which medical services that are provided to patients are consistent with the most recent HHS HIV clinical treatment guidelines and related opportunistic infections, and, as applicable, to develop strategies for ensuring that such services are consistent with the guidelines, and to ensure that improvements in the access to and quality of HIV health services are addressed. However, no more than 5 percent of the award can be used for clinical quality management expenses. For further guidance on CQM, refer to PCN 15-02, <https://hab.hrsa.gov/sites/default/files/hab/Global/clinicalqualitymanagementpcn.pdf>.
- f. Funds may be used for planning and evaluation activities. Planning and evaluation cost are associated with stakeholder engagement and process and outcome evaluation activities. Planning and evaluation costs may not exceed ten (10) percent of the grant award. Collectively, recipient administration and planning and evaluation cost may not exceed fifteen (15) percent of the grant award (42 USC 300ff-28(b)(4)).

## 2. *Activities Unallowed*

- a. Funds may not be used to make payments for any item or service to the extent that payment has been made or can reasonably be expected to be made for that item or service under any state compensation program, under an insurance policy (except for a program administered by or providing the services of the Indian Health Service), or under any federal or state health benefits program or by an entity that provides health services on a prepaid basis (42 USC 300ff-15(a)(6) and 300ff-27(b)(7)(f)).
- b. Funds may not be used to purchase sterile needles or syringes for the hypodermic injection of any illegal drug (Consolidated Appropriations Act, 2016 (Pub. L. No. 114-113), Division H, Title V, Section 520, and subsequent appropriations, as applicable. Other elements of syringe services programs may be allowable if in compliance with applicable HHS and HRSA-specific guidance. For further guidance on use of HRSA funds on syringe services programs, see <https://www.hiv.gov/sites/default/files/hhs-ssp-hrsa-guidance.pdf>.
- c. Funds may not be used to purchase or improve land or to purchase, construct or make permanent improvement to any building (42 USC

300ff-14(i) and 300ff-22(f)). (Minor alterations and renovations to an existing facility to make it more suitable for the purposes of the award program are allowable with prior HRSA approval.)

- d. Funds may not be used to contract with or grant financial assistance to any providers of care that do not have a participation agreement under the state plan approved under title XIX of the Social Security Act, or, if not qualified to receive payments under such state plan (42 USC 300ff-14(g)).
- e. Funds may not be used to support clinical research.
- f. Funds may not be used to purchase Pre Exposure Prophylaxis (PrEP) medications and related medical services or Post-Exposure Prophylaxis (PEP), as the person using PrEP or PEP does not have HIV and therefore not eligible for EHE initiative-funded or RWHAP-funded medication. For further guidance, see the HAB Program Letter on PrEP at [https://hab.hrsa.gov/sites/default/files/hab/Global/prepletter062216\\_0.pdf](https://hab.hrsa.gov/sites/default/files/hab/Global/prepletter062216_0.pdf).
- g. Funds may not be used to support international travel.
- h. Funds may not be used to make cash payments to intended recipients of services (42 USC 300ff-14(i) and 300ff-22(f)).

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

Costs charged to federal funds under this program must comply with the cost principles at 45 CFR part 75, subpart E, and any other requirements or restrictions on the use of federal funding.

## **J. Program Income**

The Notice of Award provides guidance on the use of program income. The addition method is used for EHE initiative award recipients. Program income must be used for activities described in III.A.1, “Activities Allowed.”

## **L. Reporting**

### **1. Financial Reporting**

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

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CFDA 93.718 HEALTH INFORMATION TECHNOLOGY REGIONAL EXTENSION CENTERS PROGRAM**

#### **I. PROGRAM OBJECTIVES**

The purpose of the Health Information Technology (HIT) Regional Extension Centers (REC) program is to furnish assistance, defined as education, outreach, and technical assistance, to help providers in their geographic service areas select, successfully implement, and meaningfully use certified electronic health record (EHR) technology to improve the quality and value of health care. Regional centers will also help providers achieve, through appropriate available infrastructures, exchange of health information in compliance with applicable statutory and regulatory requirements, and patient preferences.

#### **II. PROGRAM PROCEDURES**

The Health Information Technology for Economic and Clinical Health (HITECH) Act, part of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) authorizes incentive payments for eligible Medicare and Medicaid providers' meaningful use of certified EHR technology. The detailed criteria to qualify for meaningful use incentive payments are established by the secretary of HHS through the formal rulemaking process with Stage 1 Meaningful Use criteria released July 13, 2010. In 2015 providers are expected to have adopted and be actively utilizing an EHR in compliance with the meaningful use definition or they will be subject to financial penalties under Medicare (per Sections 4101(b) and 4102(b) of ARRA).

Providers seeking to meaningfully use EHRs face a variety of challenging tasks. Those tasks include assessing needs, selecting, and negotiating with a system vendor or reseller, implementing project management, and instituting workflow changes to improve clinical performance and ultimately, outcomes. Past experience has shown that robust local technical assistance can result in effective implementation of EHRs and quality improvement throughout a defined geographic area.

The REC program, administered by the Office of the National Coordinator for Health Information Technology (ONC), within the Office of the Secretary, Department of Health and Human Services, has established 62 regional centers, each serving a defined geographic area. Entities eligible to serve as regional centers are domestic, nonprofit institutions or organizations, or group thereof.

Awards under this program were made as four-year cooperative agreements with one four-year budget period. Each regional center will provide federally supported individualized technical assistance to a minimum of 1,000 priority primary-care providers in the four years of the cooperative agreement. Funding for years 3 and 4 are contingent upon the Regional Extension Center receiving a positive biennial evaluation at the end of year two.

Pursuant to requirements of the HITECH Act, priority in providing technical assistance under the REC program must be given to providers that are primary-care providers (physicians and/or

other health care professionals with prescriptive privileges, such as physician assistants and nurse practitioners) in any of the following settings:

- a. individual and small group practices (ten or fewer professionals with prescriptive privileges) primarily focused on primary care;
- b. public and critical access hospitals;
- c. community health centers and rural health clinics; and
- d. other settings that predominantly serve uninsured, underinsured, and medically underserved populations.

The regional centers are expected to leverage and undertake activities that are in synergy with the expertise, capability, and activities of federally supported practice networks, where locally available, including, but not limited to, those supported by the Indian Health Service, the Health Resources and Services Administration, the Substance Abuse and Mental Health Services Administration, the Department of Veterans Affairs, the Department of Defense, and relevant Centers for Medicare & Medicaid Services demonstration projects.

### Source of Governing Requirements

This program is authorized by Section 3012 of the Public Health Service Act, as added by ARRA, specifically Title XIII of Division A and Title IV of Division B (the HITECH Act) (42 USC 300jj-32). There are no program regulations for this program.

### Availability of Other Program Information

Additional program information can be found at <https://www.healthit.gov/topic/regional-extension-centers-recs>.

## III. COMPLIANCE REQUIREMENTS

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

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Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	Y	N	Y	Y	N	N	N

#### A. Activities Allowed or Unallowed

1. Project funds (cooperative agreement funds and required cost-sharing amounts) may be used in two categories: core support, which includes outreach and educational activities, management activities, local workforce support, and participation peer-learning and knowledge transfer activities, and direct assistance support, for use in providing direct on-site technical assistance to providers. Consistent with the category funding limitations established in the award for the two categories of support, project funds may be used for the following types of activities:
  - a. Planning and implementing outreach, education, and on-site technical assistance programs necessary to assist providers in the REC's geographic service area to meet meaningful use criteria established by the secretary of HHS. This dissemination of knowledge about the effective strategies and practices to select, implement, and meaningfully use certified EHR technology to improve quality and value of healthcare includes activities such as (1) materials designed to be widely and rapidly disseminated, both for provider self-study and for use by other regional centers; (2) support of regional communities of practice for providers and those who support their health IT implementation; (3) health IT training events for clinical professionals and their support staff; and (4) instruction and assistance on using health IT to enhance the patient-provider relationship and encourage patient self-management. Training events, programs, and communities of practice may be co-sponsored with other local resources, such as (but not necessarily limited to) state and local health services oversight agencies, professional organizations, provider organizations, and consumer organizations.
  - b. Participating in activities of the consortium facilitated by the REC and comprised of all of the regional centers, including (1) participating in national meetings and hosting regional network meetings; (2) using the client management, tracking, reporting application (furnished through the Health Information Technology Research Center); and (3) making tools



and materials developed using funding provided through the cooperative agreement available for sharing with other regional centers, interested stakeholders, and the public, directly and/or via the REC.

- c. Activities related to assessing the health IT needs of priority primary-care providers and selecting and negotiating contracts with vendors or resellers (of EHR systems, hardware and network infrastructure, and IT services), as well as assisting those providers in holding vendors accountable for adhering to service-level agreements. This includes designing group purchasing plans and helping providers select the highest-value option (defined as that which offers the greatest opportunity to achieve and maintain meaningful use of EHRs and improved quality of care at the most favorable cost of ownership and operation, including both the initial acquisition of the technology, cost of implementation, and ongoing maintenance and predictable needed upgrades over time).
- d. Practice and workflow redesign necessary to achieve meaningful use of EHRs. This includes working with the priority primary-care providers and their EHR vendor(s) to implement and troubleshoot the use of the EHR system for the consistent documentation of essential clinical information in structured format; instituting electronic administrative transactions, electronic prescribing, electronic laboratory ordering and resulting, sharing key clinical data across practice settings; providing patient access to their health information; public health reporting; and policies and practices that protect the privacy and security of personal health information.
- e. Assistance to priority primary-care providers in connecting to available health information exchange infrastructure(s), including local health information exchange organizations and state-based shared utilities or directory services, in compliance with applicable statutory and regulatory requirements, patient preferences, and the state plans for health information exchange (HIE) (developed and HHS-approved under cooperative agreements issued by ONC pursuant to Section 3013 of the PHS Act as added by ARRA (CFDA 93.719)).
- f. Activities that support providers in implementing best practices with respect to the privacy and security of personal health information, including (1) implementation and maintenance of physical and network security, user-based access controls, disaster recovery, encryption and storage of backup media; (2) human resources training and policies; and (3) identification of state laws and regulatory requirements that impact privacy and security policies for electronic interoperable health information exchange.

- g. Reviewing the utilization of the EHRs within participating practices, and providing appropriate feedback and support to improve low utilization of features essential for meaningful use (e.g., electronic prescribing).
    - h. Helping priority primary-care providers to understand, and implement technology and process changes needed to attain meaningful use requirements and demonstrate this attainment, as defined by the secretary through Medicare and Medicaid regulations and guidance.
    - i. Partnering with local resources, such as community colleges, to promote integration of health IT into the initial and ongoing training of health professionals and supporting staff. Regional centers may provide internship opportunities for local training programs, provide instructors for didactic programs, and use local training programs' graduates to fulfill the workforce needs of their extension activities and the implementation, maintenance, and use needs of the centers' participating providers.
- 2. Project funds may not be used for the following:
  - a. Pre-award costs.
  - b. Purchase or improvement of land, or purchase, construction, or making permanent improvements to any building except for minor remodeling. (42 USC 300-jj(c) and Funding Opportunity Announcement, Sections I. and IV.6).

## **E. Eligibility**

### **1. Eligibility for Individuals**

Not Applicable

### **2. Eligibility for Group of Individuals or Area of Service Delivery**

Each regional center shall aim to provide assistance and education to all providers in a region, but shall prioritize any direct assistance first to the following:

- a. Public or not-for-profit hospitals or critical access hospitals.
- b. Federally qualified health centers (as defined in Section 1861(aa)(4) of the Social Security Act).
- c. Entities that are located in rural and other areas that serve uninsured, underinsured, and medically underserved individuals (regardless of whether such area is urban or rural).

- d. Individual or small group practices (or a consortium thereof) that are primarily focused on primary care.

**Note:** A practice otherwise meeting the definition of individual or small- group physician practice may participate in shared-services and/or group purchasing agreements, and/or reciprocal agreements for patient coverage, with other physician practices without affecting their status as individual or small-group practices for purposes of the regional centers (42 USC 300jj-32(c)(4)(D) and Funding Opportunity Announcement, Appendix E).

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

Not Applicable

## **G. Matching, Level of Effort, Maintenance of Effort**

### **1. Matching**

Based on an assessment of current national economic conditions, the secretary of HHS waived the 50 percent limitation on HHS funding for annual capital and operating and maintenance funds needed to establish and maintain a regional center (42 USC 300-jj(c)(5)). In place of these funding requirements, the secretary has structured the funding partnership between HHS and the regional centers that requires recipients to contribute 10 percent of project costs each year of the cooperative agreement.

### **2. Level of Effort**

Not Applicable

### **3. Earmarking**

Not Applicable

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

Regional centers that choose to offer group purchasing of EHR software, IT support services, and/or hardware must provide a choice of offerings. The selection process for vendors must be open and competitive and the selection committee must include representatives of the priority primary-care providers actively practicing within the regional center's geographic service area (Funding Opportunity Announcement, Section I).

## **J. Program Income**

Program income generated by the REC shall be retained by the REC and first be used to finance the non-federal share of the project. After the cost sharing requirement is met,

program income generated shall be added to funds committed to the project by ONC and used to further eligible project or program objectives (Funding Opportunity Announcement, Sections III and IV).

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### CFDA 93.767 CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP)

#### I. PROGRAM OBJECTIVES

Title XXI of the Social Security Act (Act) authorizes the Children's Health Insurance Program (CHIP) to assist state efforts in initiating and expanding the provision of child health assistance to uninsured, low-income children. Under Title XXI, states may provide child health assistance primarily for obtaining health benefits coverage through (1) obtaining coverage under a separate child health program that meets specific requirements, (2) expanding benefits under the state's Medicaid plan under Title XIX of the Act, or (3) a combination of both.

#### II. PROGRAM PROCEDURES

##### Overview

The following paragraphs are intended to provide a high-level, overall description of how CHIP generally operates. It is not practical to provide a complete description of program procedures because CHIP operates under both federal and state laws and regulations and states are afforded flexibility in program administration. Accordingly, the following paragraphs are not intended to be used in lieu of or as a substitute for the federal and state laws and regulations applicable to this program.

##### *Administration*

Title XXI authorizes grants to states that initiate or expand health insurance programs for low-income, uninsured children. Under Title XXI, CHIP is jointly financed by the federal and state governments and is administered by the states. Within broad federal guidelines, each state determines the design of its program, eligible groups, benefit packages, payment levels for coverage and administrative and operating procedures. States can design their CHIP program in one of three ways:

1. **Separate CHIP:** a program under which a state receives federal funding to provide child health assistance to uninsured, low-income children that meets the requirements of section 2103 of the Social Security Act.
2. **Medicaid Expansion CHIP:** a program under which a state receives federal funding to expand Medicaid eligibility to optional targeted low-income children that meets the requirements of section 2103 of the Social Security Act.
3. **Both a Separate CHIP and a Medicaid Expansion:** a state receives federal funding to implement both a Medicaid expansion and a separate CHIP.

CHIP provides an allotment of funds to states on a matched basis. Federal payments under Title XXI to states are based on state expenditures under approved plans that could be effective on or after October 1, 1997.

To be eligible for funds under this program, states must submit a state child health plan (CHIP state plan). CHIP state plans and amendments to those plans are approved by CMS on behalf of the secretary of the Department of Health and Human Services. The amendments are reviewed by an intra-departmental team, which must decide whether to approve or disapprove the amendment within a 90-day period. This “90-day clock” can be stopped by CMS sending the state a formal written request for additional information from the state and can be restarted at the same point when a response is formally received from the state. Copies of CHIP state plans are available on Medicaid.gov at <https://www.medicaid.gov/chip/state-program-information/index.html>.

States must take reasonable measures to determine the legal liability of third parties to pay for services furnished under the CHIP state plan. Such reasonable measures include:

- Collect health insurance information during the initial eligibility application process and the redetermination process.
- Conduct diagnosis and a trauma code edits to identify specific codes which could denote trauma related injury.
- Conduct data exchanges with:
  - State wage information collection agencies,
  - SSA wage and earnings files,
  - State title IV-A agencies,
  - State motor vehicle accident report files, and
  - State workers' compensation or Industrial Accident Commission files.

### *Waivers*

The state may apply for a waiver of CHIP federal requirements under section 1115 of the Social Security Act. Waivers are intended to provide flexibility needed to enable states to try experimental, pilot, or demonstration projects that, in the judgment of the secretary, are likely to assist in promoting the objectives of the CHIP program. Where approved by the secretary, and subject to specific safeguards for the protection of enrollees and the program, waivers allow exceptions to CHIP state plan requirements that permit the state to implement innovative programs or activities on a time-limited basis, permit states to try new or different approaches to the efficient and cost-effective delivery of health care services to children, or adapt their programs to the special needs of particular areas or groups of enrollees. The secretary will approve only demonstration projects that are consistent with key principles of the CHIP statute.

States' waiver authority is found at 42 USC 1397gg(e)(2)(A), which extends to CHIP the Medicaid waiver authority at 42 USC 1315.

### Source of Governing Requirements

This program is authorized by Section 4901(a) of the Balanced Budget Act of 1997 (BBA), Pub. L. No. 105-33, as amended by Pub. L. No. 105-100, which added Title XXI to the Social Security Act (Act), and subsequent amendments to Title XXI. Title XXI authorizes CHIP to assist state efforts to initiate and expand the provision of child health assistance to uninsured, low-income children. Title XXI is codified at 42 USC 1397aa-1397jj. The regulations for this program are found at 42 CFR part 457.

The Children's Health Insurance Reauthorization Act of 2009 (CHIPRA 2009) (Pub. L. No. 111-3) reauthorized CHIP through FY 2013. The Patient Protection and Affordable Care Act (ACA) (Pub. L. No. 111-148) reauthorized CHIP through 2019 and extended CHIP funding through FY 2015. The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) Pub. L. No. 114-10) extended CHIP funding through FY 2017. Most recently, Congress extended federal funding for the Children's Health Insurance Program (CHIP) through September 30, 2027, through the Helping Ensure Access for Little Ones, Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable Act (referred to as the HEALTHY KIDS Act and included in Pub. L. No. 115-120) and the Advancing Chronic Care, Extenders and Social Services Act (referred to as the ACCESS Act and included in Pub. L. No. 115-123).

This program is subject to the requirements of 45 CFR part 75 (the HHS implementation of 2 CFR part 200) and 45 CFR part 95.

### Availability of Other Program Information

States and other interested parties can access information on the department's policies on this and other issues at <http://www.medicaid.gov/>.

## III. COMPLIANCE REQUIREMENTS

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

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

## A. Activities Allowed or Unallowed

### 1. *Activities Allowed*

States have general flexibility in allocating their individual allotments toward activities needed to operate the CHIP (42 USC 1397ee(a)). In addition to expenditures for child health assistance under the plan for targeted low-income children, other allowable activities, to the extent permitted by 42 USC 1397ee(c), include payment of other child health assistance for targeted low-income children; expenditures for health services initiatives for improving the health of children (targeted and other low income) under the plan; expenditures for outreach activities; expenditures for translation and interpretation services in connection with the enrollment, retention, and use of services under Title XXI by individuals for whom English is not their primary language (as found necessary by the secretary for the proper and efficient administration of the chip state plan); and other reasonable costs incurred by the state to administer the plan (42 USC 1397ee).

### **Managed Care**

A state may use managed care for the delivery of some or all its CHIP benefits and services for either all or a subset of the CHIP populations served under the CHIP state plan. Under managed care, the delivery of benefits and services are through contracted arrangements between state CHIP agencies and managed care plans that accept a set per member per month capitation payment for the services.

States must comply with the managed care regulations at 42 CFR Part 457, Subpart L, for utilization of a managed care delivery system. These regulations align CHIP rules with those of other health insurance coverage programs, such as Medicaid and the Marketplace, to modernize how states purchase managed care for beneficiaries, and to strengthen the consumer experience and key consumer protections.



CHIP managed care guidance can be found at <https://www.medicaid.gov/chip/managed-care/index.html>.

### **Health Services Initiatives (HSI)**

Under section 2105(a)(1)(D)(ii) of Title XXI of the Act (42 USC 1397ee(a)(1)(D)(ii)), states have the option to develop state-designed health services initiatives (HSIs) that improve the health of low income and targeted low-income children. Under regulations at 42 CFR 457.10, HSIs must include activities that protect the public health, protect the health of individuals, improve or promote a state's capacity to deliver public health services, or strengthen the human and material resources necessary to accomplish public health goals related to improving the health of children. HSIs may also be directed at low-income pregnant women or parents; however, HSIs may only provide services for adults if the project directly improves the health of children.

Federal funding for HSIs is expended from a state's available CHIP allotment for a fiscal year. Under section 2105(c)(2)(A) (42 USC 1397ee(c)(2)(A)) of the Act, claims for HSIs and certain other expenditures such as administrative expenses cannot exceed 10 percent of the total amount of title XXI funds claimed by the state each quarter. states must fund CHIP benefits before using allotment for HSIs.

HSIs are implemented through an amendment to the CHIP state plan. states' approved HSI programs are described in section 2.2 of the CHIP state plan template. HSI budget information is provided at section 9.10 of the CHIP state plan.

### **Premium Assistance**

A state may pay premiums for employer sponsored insurance on behalf of a CHIP beneficiary if it is cost effective to do so. When providing premium assistance, states must ensure that children have access to all mandatory benefits provided under the CHIP state plan, and that they are not required to incur greater out-of-pocket costs for premiums, deductibles, co-payments or similar cost sharing charges than under the CHIP state plan. Individual state premium assistance programs are described in the CHIP state plan.

#### **2. *Activities Unallowed***

Federal funds may not be expended under the CHIP state plan to pay for any abortion or to assist in the purchase, in whole or in part, of health coverage that includes coverage of abortion, except if necessary to save the life of the mother or if the pregnancy is the result of incest or rape (42 USC 1397ee(c)).

**B. Allowable Costs/Cost Principles**

1. CHIP regulations under 42 CFR 457.628(a) make the Medicaid overpayment requirements under section 1903(d)(2) of the Social Security Act (42 USC 1396b(d)(2)) and 42 CFR 433.312 through 433.322 (related to overpayments) applicable to CHIP in the same manner as they apply to state Medicaid programs. states have up to one year from the date of discovery of an overpayment for Medicaid services to recover, or to attempt to recover, such overpayment before making an adjustment to refund the federal share of the overpayment. Except in the case of overpayments resulting from fraud, the adjustment to refund the federal share must be made no later than the deadline for filing the quarterly expenditure report for the quarter in which the one-year period ends, regardless of whether the state recovers the overpayment.
2. CHIP regulations under 42 CFR 457.628(a) make the Medicaid requirements at 42 CFR sections 433.50 through 433.74 regarding sources of non-federal share and Health Care-Related Taxes and Provider Related Donations applicable to CHIP in the same manner as they apply to state Medicaid programs. Before calculating the amount of FFP, certain revenues received by a state will be deducted from the state's medical assistance expenditures. The revenues to be deducted are (1) donations made by health care providers or related entities (except for bona fide donations and, subject to a limitation, donations made by providers for the direct costs of out-stationed eligibility workers); and (2) impermissible health care-related taxes that exceed a specified limit (42 USC 1396b(w); 42 CFR section 433.57).
  - (a) "Provider-related donations" are any donations or other voluntary payments (in-cash or in-kind) made directly or indirectly to a state or unit of local government by: (1) a health care provider, (2) an entity related to a health care provider, or (3) an entity providing goods or services under the CHIP state plan and paid as administrative expenses. "Bona fide provider-related donations" are donations that have no direct or indirect relationship to payments made under Title XIX (42 USC 1396 *et seq.*) to (1) the donating provider, (2) providers furnishing the same class of items and services as the donating provider, or (3) any related entity (42 CFR sections 433.58(d) and 433.66(b)).
  - (b) Permissible health care-related taxes are those taxes that are broad-based; are uniformly applied to a class of health care items, services, or providers; and do not hold a taxpayer harmless for the costs of the tax. A tax program for which CMS has granted a waiver may also be considered permissible health care-related taxes. Health care-related taxes that do not meet these requirements are impermissible health care-related taxes (42 CFR section 433.68(b)).

These provisions apply to all 50 states and the District of Columbia, except those states whose entire Medicaid program is operated under a waiver granted under Section 1115 of the Social Security Act (42 CFR part 433).

3. 42 CFR 457.628(b) makes 45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards (except as specifically excepted) applicable to the CHIP program.
4. In the “Medicaid and Children’s Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability” final rule, published in the *Federal Register* on May 6, 2016 (81 FR 27498), CMS adopted medical loss ratio (MLR) requirements for Medicaid and CHIP managed care programs. The state must require each Medicaid managed care plan to calculate and report a MLR for rating periods starting on or after July 1, 2017, and require each CHIP managed care plan to calculate and report a MLR for rating periods in CHIP managed care contracts as of the state fiscal year beginning on or after July 1, 2018. If a state elects to mandate a minimum MLR, that minimum MLR must be at least 85 percent. The regulation, at 42 CFR section 438.8(e)(4), incorporates the standards adopted for the private insurance market MLR (45 CFR section 158.150) for the treatment of fraud prevention expenses in the numerator of the MLR calculation. The MLR is reported for a rating period, using data from that rating period.

With regard to capitation rate setting for CHIP managed care plans, under 42 CFR 457.1203(a), states must use payment rates based on public or private payment rates for comparable services for comparable populations, consistent with actuarially sound principles as defined at Section 457.10. In addition, for both Medicaid and CHIP managed care plans, the rates must be developed so that the managed care plan is projected to meet an 85% MLR (42 CFR 457.1203(c)(1)).

## **E. Eligibility**

Auditors may combine III.A, “Activities Allowed or Unallowed,” III.B, “Allowable Costs/Cost Principles,” and III.E, “Eligibility.” Therefore, compliance requirements related to amounts provided to, or on behalf of, eligible individuals and presumptively eligible individuals may be combined with III.A, “Activities Allowed or Unallowed” and III.B, “Allowable Costs/Cost Principles” such as, was the service incurred during the period the individual was eligible to receive benefits and was the provider paid the correct amount for the service billed.”

The state verifies the financial and non-financial factors of eligibility, with two exceptions described below, by checking electronic data sources in accordance with federal requirements at 42 CFR 457.380 and state requirements as documented in the CHIP state plan, verification plan and eligibility manual). The state is required (as described at 42 CFR 457.965) to maintain facts in the case file to support the eligibility determination. When data sources used by the state are not available to the auditor, or information is not required to be available for the period under audit, auditors would not

be expected to test verification other than the requirement to maintain information in the case file. For states that accept applicant self-attestation for household size or income, and do not require further verification or documentation, the auditors are not expected to test beyond the requirements of the state.

The exceptions to the verification process described above are eligibility determinations made by an Exchange, either the Federally Facilitated Exchange (FFE) or a state-based Exchange, elements of a determination made by an express lane agency, and presumptive eligibility determinations made by qualified entities. In states that have an agreement with the FFE or state-based exchange, through which the Exchange determines CHIP eligibility, the state relies on the verifications conducted by the Exchange and auditors are not expected to test verification. When express lane eligibility is used, the CHIP agency relies upon elements of a determination made by an express lane agency. For presumptive eligibility determinations, the qualified entity accepts attestation of all needed information and states may not require verification or documentation of any eligibility criteria. When testing a presumptive eligibility determination, auditors are not expected to test verification.

## **1. Eligibility for Individuals**

### **a. Eligibility Determination**

- (1) Eligibility for CHIP is based on the application of modified adjusted gross income and household definition, in addition to other permissible eligibility standards, for example standards relating to geographic area, age (up to, but not including age 19), and insurance status. States have flexibility in determining eligibility levels for individuals for whom the state will receive enhanced matching funds within the guidelines established under the Act. Generally, a state may not cover children with higher family income without covering children with a lower family income, nor deny eligibility based on a child having a preexisting medical condition. States are required to include in their CHIP state plans a description of the standards used to determine eligibility of targeted low-income children. CHIP state plans should be consulted for specific information concerning individual eligibility requirements (42 CFR 457.315 and 457.320, 42 USC 1397bb(b)).

States have the option to extend eligibility to low-income targeted pregnant women. There is no income eligibility level for pregnant women in CHIP that is lower than the state's Medicaid level, and states must cover pregnant women up to 185 percent of the federal poverty level before they can elect the option to include pregnant women in the CHIP state plan (Pub. L. No. 111-3, Section 111).

- (2) CHIP beneficiaries must either be U.S. citizens or qualified non-citizens (aliens). Qualified aliens, as defined at 8 USC 1641, who entered the United States on or after August 22, 1996, are not eligible for a separate child health program under Title XXI (CHIP) for a period of five years, beginning on the date the alien became a qualified alien, unless the alien is exempt from this 5-year bar under the terms of 8 USC 1613, or unless the state has adopted the option to provide coverage to these lawfully residing children, as authorized under Section 214 of CHIPRA (42 USC 1396b(v)(4)(ii)). States must provide coverage under a separate child health program under Title XXI to all other otherwise eligible qualified aliens who are not barred from coverage under 8 USC 1613 (42 CFR section 457.320(b)(6)).

States may elect to provide medical assistance, notwithstanding section 401(a), 402(b), 403, and 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, to children and pregnant women who are lawfully residing in the United States and who are otherwise eligible for such assistance. This optional coverage in CHIP is only applicable if the state has elected to apply this allowance with respect to such category of children or pregnant women under Title XIX (Pub. L. No. 111-3, Section 214 (42 USC 1396b(v)(4))).

- (3) States must accept applications submitted online, by telephone, via mail, or in person. This includes electronic, telephonically recorded, and handwritten signatures and handwritten signatures. The CHIP agency must have facts in the case record to support the agency's eligibility determination, including a record of verification of income and citizenship or satisfactory immigration status for each individual. The state must provide notice of its decision concerning eligibility and provide timely and adequate notice of the basis for discontinuing assistance (42 CFR sections 457.330, 457.340).
- (4) States are directed, at 42 CFR 457.340(d), to determine eligibility promptly and without undue delay. The determination of eligibility may not exceed 45 days.
- (5) Regulations 42 CFR 457.348 and 457.350 require coordination between the CHIP agency and other insurance affordability programs, including the federal and state exchanges. Typically, electronic accounts must be transferred from the CHIP agency to the exchange and vice versa. States utilizing the FFE must enter into an agreement in which the FFE makes either a determination or an assessment of CHIP eligibility and sends the individual's electronic account to the agency for enrollment (FFE

determination) or a final determination and enrollment (FFE assessment). Additional information may be found in the July 25, 2016 CMCS Informational Bulletin on Coordination of Eligibility and Enrollment between Medicaid, CHIP and the Federally Facilitated Marketplace

(<https://www.medicaid.gov/sites/default/files/federal-policy-guidance/downloads/cib072516.pdf>).

- (6) When determining eligibility for a child, the CHIP agency may rely on elements of a determination made by an express lane agency (as defined in Section 4 of the CHIP state plan template) as to whether a child satisfies one or more requirements of CHIP eligibility. The CHIP agency may use an income determination from an express lane agency without regard to differences in budget unit, income disregards, deeming, or other differences in methodology between the express lane agency and CHIP. Auditors are not expected to test verification of express lane determinations relied upon by the CHIP Agency. This policy is set out at sections 2107(e)(1)(H) and 1902(e)(13) of the Social Security Act [42 USC 1397gg(e)(1)(H) and 1396a(e)(13) respectively]; more information is available in state Health Official Letter #10-003, issued on February 4, 2010 (<https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SHO10003.pdf>).

b. Eligibility Verification

- (1) States must request information from reliable electronic data sources, including other agencies in the state and other state and federal programs to the extent that such information is determined useful in verifying the financial eligibility of an individual. As described in the state's verification plan and in state policies and procedures, this may include information from agencies such as the state Wage Information Collection Agency, the Social Security Administration, and the Internal Revenue Service. States may also use information related to eligibility or enrollment from other state programs such as the Supplemental Nutrition Assistance Program. If information provided by or on behalf of an individual is reasonably compatible with information obtained from the electronic data sources, as described in the state's verification plan, then the agency must determine or renew eligibility based on such information and may not require the individual to provide any further documentation. If the information is not reasonably compatible, then the agency must provide the individual with a reasonable period of time to explain the discrepancy or furnish additional information (42 CFR 457.380; 42 CFR 435.952).

- (2) States may choose to accept self-attestation of information needed to determine or renew eligibility except with respect to income and citizenship or immigration status. When self-attestation is accepted, further information, including documentation, cannot be required from the individual. In such cases, the auditor would not be expected to test documentation other than required by the state. States must follow the requirements described at 42 CFR 457.380, for verification and documentation of income and citizenship and immigration status.

c. Periodic Renewal

As required at 42 CFR 457.343, states must renew enrollees' CHIP eligibility once every 12 months and no more frequently than once every 12 months. When renewing eligibility, states must first attempt to renew based on reliable information available to the agency without requiring information from the individual. If sufficient information is not available to complete a renewal, or if the state has information that suggests that the beneficiary is ineligible, the state must provide the beneficiary with a prepopulated renewal form and inform the individual of any additional information or documentation needed to determine eligibility.

d. Presumptive Eligibility

Presumptive eligibility (PE) is a state option to facilitate enrollment and immediate access to services for children who are likely eligible for CHIP without having to wait for a full application to be processed. Regulation 42 CFR 457.355 outlines the requirements for establishing a program of presumptive eligibility for children. The options elected by each state are described in the CHIP state plan.

When electing the PE option, states designate qualified entities, such as health care providers, community-based organizations, and schools to make PE determinations. These qualified entities are trained on the state's PE screening process and state-specific requirements for PE. In many states, qualified entities also help individuals to complete the full application process. A qualified entity is responsible for collecting and recording all information necessary to make a PE determination.

To be determined presumptively eligible, an individual must meet the basic requirements of eligibility as a targeted low-income child, including household income at or below the standard established by the state. In addition to the basic requirements of the eligibility group, states may, but are not required to, consider state residency and U.S. citizenship or eligible immigration status when making a PE determination. Other information that would be collected on a full application, cannot be required for a PE determination. In addition, individuals attest to all

information needed for a PE determination. States may not require verification or documentation of any eligibility criteria as a condition of presumptive eligibility.

The PE period begins the day on which the qualified entity makes the PE determination. The end date varies depending on whether or not the individual submits a CHIP application. If the individual submits a CHIP application by the last day of the month following the month in which PE was determined, the PE period will continue until full CHIP eligibility is either approved or denied. If the individual does **not** submit a CHIP application, the PE period ends on the last day of the month following the month in which PE was determined. States must adopt reasonable standards regarding the number of PE periods that will be authorized for an individual.

**2. Eligibility for Group of Individuals or Area of Service Delivery**

Not Applicable

**3. Eligibility for Subrecipients**

Not Applicable

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

**1. Matching**

- a. The state matching rate for its CHIP expenditures is determined in accordance with the federal matching rate for such expenditures, referred to as the enhanced federal medical assistance percentage (Enhanced FMAP) for a state. That is, the CHIP state matching rate is calculated by subtracting the Medicaid FMAP rate from 100, taking 30 percent of the difference, and then adding it to the Medicaid FMAP rate. The Enhanced FMAP is calculated in accordance with 42 USC 1397ee(b), which provides that the Enhanced FMAP for a state shall not exceed 85 percent except during the periods of October 1, 2015 through September 30, 2019, where the enhanced FMAP was increased by 23 percentage points (not to exceed 100 percent) and October 1, 2019 through September 30, 2020, where the enhanced FMAP is reduced to an increase of 11.5 percentage points (not to exceed 100 percent). The increase to the enhanced FMAP does not apply to certain categories of expenditures as described in the last sentence of 42 USC 1397ee(b). Calculated FMAPs and enhanced FMAPs may be found at <http://www.aspe.hhs.gov/health/fmap.htm> (42 USC 1397ee(a) and (b)).
- b. A qualifying state as described under 42 USC 1397ee(g) may elect to be paid from the state's allotment for any of FYs 2009 through 2027, an amount equal to the additional amount that would have been paid to the



state under Title XIX with respect to expenditures if the enhanced FMAP had been substituted for the FMAP (42 USC 1397ee(g)(4)). The qualifying states are Connecticut, Hawaii, Maryland, Minnesota, New Hampshire, New Mexico, Rhode Island, Tennessee, Vermont, Washington, and Wisconsin (as determined by CMS on the basis of the criteria in Pub. L. No. 108-74, Section 1(g)(2) and Pub. L. No. 108-127, Section 1).

## **2. Level of Effort**

### **2.1 Level of Effort – *Maintenance of Effort***

- a. In order to receive federal matching funds for CHIP expenditures at the enhanced matching rate, each state must continue to maintain its Medicaid eligibility standards and the methodologies that were applied in its Medicaid state plans as of June 1, 1997 (42 USC 1397ee(d)(1) and 1397jj(b)).
- b. Three states, New York, Florida, and Pennsylvania, maintain “existing comprehensive state-based programs.” For these three states only, the amount of the state’s allotment for a fiscal year is reduced by the amount that the “children’s health insurance expenditures” for the previous fiscal year is less than the total of such expenditures for FY 1996. For purposes of this provision, the term “children’s health insurance expenditures” means the state share of Title XXI (CHIP) expenditures; the state share of expenditures under Title XIX (Medicaid) attributable to an enhanced FMAP under section 1905(u) of the Act (42 USC 1396d(u)); and state expenditures for health benefits coverage under an existing comprehensive state-based program (42 USC 1397cc(d)(1) and 1397ee(d)(2)).
- c. The maintenance of effort (MOE) provisions at section 2105(d)(3) and section 1902(a)(74) and 1902(gg)(2) of the Act (42 USC 1397ee(d)(3) and 1396a(a)(74) and (gg)(2)) specify that as a condition of receiving federal funding for CHIP or Medicaid (with certain exceptions), states must maintain Medicaid and CHIP “eligibility standards, methodologies, and procedures” for children that are no more restrictive than those in effect on March 23, 2010. The MOE requirement was first implemented under the American Recovery and Reinvestment Act (ARRA) and extended by the Patient Protection and Affordable Care Act (ACA). Section 3002 of the Helping Ensure Access for Little Ones, Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable Act (referred to as the HEALTHY KIDS Act and included in Pub. L. No. 115-120) extends the MOE requirements for children in CHIP and Medicaid through FY 2023, and Section 50101 of the Advancing

Chronic Care, Extenders and Social Services Act (referred to as the ACCESS Act and included in Pub. L. No. 115-123), extends the MOE requirements for children in CHIP and Medicaid through FY 2027. Section 3002 of the HEALTHY KIDS Act amends the MOE provisions such that starting in FY 2020 and through FY 2027, the MOE provision is applicable to children in families with incomes that do not exceed 300 percent of the FPL. States with eligibility levels above 300 percent of the Federal Poverty Level (FPL) will have the option of maintaining or reducing existing coverage levels to 300 percent FPL at that time.

## **2.2 Level of Effort – *Supplement Not Supplant***

Not Applicable

## **3. Earmarking**

Expenditures not directly related to providing child health insurance assistance under the plan are limited to 10 percent of the state's total expenditures through CHIP. The following expenditures are subject to the 10 percent limit:

(a) payment for other child health assistance for targeted low-income children; (b) expenditures for health services initiatives under the state child health assistance plan for improving the health of children; (c) expenditures for outreach activities; (d) expenditures for translation and interpretation services in connection with the enrollment, retention, and use of services under Title XXI by individuals for whom English is not their primary language (as found necessary by the secretary for the proper and efficient administration of the CHIP state plan); and (e) other reasonable costs incurred by the state to administer the state child health assistance plan (42 USC 1397ee(c)). States may apply for a waiver, or variance of this 10 percent cap under 42 USC 1397ee(c)(2). If applicable, information regarding such a waiver is in the CHIP state plan.

The 10 percent limit is applied on an annual fiscal-year basis and is calculated based on (a) the total amounts of expenditures, and (b) the quarter in which such expenditures are claimed by the state for the fiscal year (42 USC 1397ee).

## **H. Period of Performance**

The availability of amounts for FY 2009 and each fiscal year thereafter, shall remain available for expenditure by the state through the end of the succeeding fiscal year (i.e., the year of award and one subsequent fiscal year) (42 USC 1397dd(e)).

## **L. Reporting**

### **1. Financial Reporting**

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

- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable for cash status; Not Applicable for expenditure reporting
- d. *CMS-21, Quarterly Children's Health Insurance Program Statement of Expenditures for Title XXI (OMB No. 0938-0731)*

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

- 1. *CMS-21 Base* – The CMS-21 consists of three parts: CMS-21 Base, CMS-21B, and CMS-21C. Only CMS-21 Base is expected to be tested for compliance.

## 2. Performance Reporting

Not Applicable

## 3. Special Reporting

Not Applicable

## N. Special Tests and Provisions

### 1. Provider Eligibility (Screening and Enrollment)

**Compliance Requirements** In order to receive CHIP payments, providers must: (1) be licensed in accordance with federal, state, and local laws and regulations to participate in the CHIP (42 CFR sections 431.107 and 447.10; and Section 1902(a)(9) of the Social Security Act (42 USC 1396a(a)(9)); (2) screened and enrolled in accordance with 42 CFR Part 455, Subpart E (sections 455.400 through 455.470); and make certain disclosures to the state (42 CFR part 455, subpart B, sections 455.100 through 455.106). CHIP managed care network providers are subject to the same disclosure, screening, enrollment, and termination requirements that apply to Medicaid fee-for-service providers in accordance with 42 CFR Part 438, Subpart H.

**Audit Objectives** To determine whether CHIP providers of medical services have the required medical licenses and are eligible to participate in CHIP in accordance with federal, state, and local laws and regulations, and whether the providers have made the required disclosures to the state.

### Suggested Audit Procedures

- a. Obtain an understanding of the CHIP state plan's provisions for licensing and entering into agreements with providers.

- b. Select samples from both CHIP fee-for-service providers and managed care network providers to ascertain if the:
  - (1) The provider is screened, licensed, and enrolled in accordance with the CHIP state plan and the requirement of 42 CFR 455 subpart E.
  - (2) The agreement with the provider complies with the requirements of the CHIP state plan including the disclosure requirement of 42 CFR 455 subpart B.
  - (3) The provider complied with the requirements of the CHIP state plan, including the disclosure requirements of 42 CFR 455 subpart B.

## 2. Refunding of Federal Share of CHIP Overpayments to Providers

**Compliance Requirements** Regulation 42 CFR 433 Subpart F outlines the requirements SMAs are to follow related to refunding the federal share of Medicaid overpayments made to providers. Pursuant to 1903(d)(2)(C) of the Social Security Act (the Act) (42 USC 1396b), states have up to one (1) year from the date of discovery of the overpayment to recover or attempt to recover the overpayment before the federal share must be refunded to CMS via Form CMS-64 Summary, Line 9C1- Fraud, Waste & Abuse Amounts, regardless of whether recovery is made from the provider. Federal regulations at 42 CFR 457.628 make the regulations at CFR 433.312-433.322 applicable to CHIP, for which the federal share must be refunded to CMS via Form CMS-21 Summary, Line 4 - Adjustments Decreasing Claims - Collections. The state must credit the federal share to CMS as outlined under 42 CFR 433.320(a)(2) either in the quarter in which the recovery is made or in the quarter in which the one-year period ends following discovery, whichever is earlier, with limited exceptions. Under 42 CFR 433.316(d), for overpayments resulting from fraud, if not collected within one year of discovery, the SMA has until 30 days after the final judgment of a judicial or administrative appeals process to return the federal share.

Additionally, in accordance with 42 CFR 433.320(a)(4), the state will be charged interest for any non-recovered, non-refunded overpayment amounts. Any appeal rights offered to the provider does not extend the date of discovery per 42 CFR 433.316(h).

The repayment of the federal share is not required in cases where the state is unable to obtain recovery because the provider has filed for bankruptcy or the provider is otherwise out of business as outlined in 42 CFR 433.318.

42 CFR 433.320(c)(1) allows for downward adjustments previously credited to CMS if it is properly based on the approved CHIP state plan, federal law and regulations governing Medicaid, and the appeals resolution process specified in state administrative policies and procedures. States are not able to enter into settlement agreements with providers that reduces the federal share of the

overpayment in order to avoid the expense of litigation. The Departmental Appeals Board (DAB) decision No. 1391 from February 19, 1993, (<https://www.hhs.gov/sites/default/files/static/dab/decisions/board-decisions/1993/dab1391.html>) addressed overpayment settlements between the states and providers. This decision affirmed that states may not reduce the federal share by settling overpayment receivables for less than the actual amount of the overpayment based on anticipated success in litigation or made simply to avoid administrative costs or litigation expenses.

**Audit Objectives** Determine whether the SMA reported and returned CHIP provider overpayments in accordance the federal requirements.

**Suggested Audit Procedures**

- a. Review applicable federal laws and regulation, including 1903(d)(2)(C) of the Act (42 USC 1396b), 42 CFR 433 Subpart F, and the Departmental Appeals Board Decision No. 1391.
- b. Obtain an understanding of the process to identify overpayments.
- c. Perform tests to ascertain if the federal share has been returned accurately in accordance with federal laws and regulations, including ensuring the full amount was refunded and any downward adjustments were made.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****CFDA 93.775 STATE MEDICAID FRAUD CONTROL UNITS****CFDA 93.777 STATE SURVEY AND CERTIFICATION OF HEALTH CARE PROVIDERS AND SUPPLIERS (Title XVIII) MEDICARE****CFDA 93.778 MEDICAL ASSISTANCE PROGRAM (Medicaid; Title XIX)**

**Note:** In accordance with 2 CFR section 200.519, when the auditor is using the risk-based approach for determining major programs, the auditor should consider that the Department of Health and Human Services (HHS) has identified the Medical Assistance Program (Medicaid) as a program of higher risk.

Medicaid is the largest dollar federal grant program and, under OMB budgetary guidance and Pub. L. No. 107-300, HHS is required to provide an estimate of improper payments for Medicaid. Improper payments mean any payments that should not have been made or that were made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. This includes payments for services provided to ineligible providers, payments for an ineligible service, duplicate payments, payments for services not received, and payments that do not account for credit for applicable discounts.

While not precluding an auditor from determining that the Medicaid cluster qualifies as a low-risk program (if prior audits have shown strong internal controls and compliance with Medicaid requirements), the above should be considered as part of the risk assessment process and audit documentation should support the consideration. In addition, even though the state Medicaid Fraud Control Units (MFCUs) and State Survey and Certification of Health Care Providers and Suppliers have substantially fewer federal expenditures than Medicaid, they are clustered with Medicaid because these programs provide significant controls over the expenditures of Medicaid funds. It is unlikely that the expenditures for these two programs would be material to the Medicaid cluster; however, noncompliance with the requirements to administer these controls may be material.

**I. PROGRAM OBJECTIVES****Medical Assistance Program**

The Social Security Amendments of 1965 created Medicaid by adding Title XIX to the Social Security Act, 42 USC 1396 *et seq.* Under the program, the federal government provides matching funds to states to enable them to provide medical assistance to residents who meet certain eligibility requirements. The objective is to help states provide medical assistance to residents whose incomes and resources are insufficient to meet the costs of necessary medical services. Medicaid serves as the nation's primary source of health coverage for low-income populations.

States are not required to participate. Those that do must comply with federal Medicaid laws under which each participating state administers its own Medicaid program, establishes

eligibility standards, determines the scope and types of services it will cover, and sets the rate of payment. Benefits vary from state to state, and because someone qualifies for Medicaid in one state, it does not mean he or she will qualify in another. The federal Centers for Medicare & Medicaid Services (CMS) monitors the state-run programs and establishes requirements for service delivery, quality, funding, and eligibility standards.

### **Medicaid Fraud Control Units (MFCUs)**

Under section 1902(a)(61) of the Social Security Act, states are required as part of their Medicaid state plans to maintain a MFCU, unless the secretary of HHS waives the requirement after making the determination that a MFCU would not be cost-effective because minimal fraud exists in connection with the provision of covered services to eligible individuals under the state plan and that beneficiaries under the plan would be protected from abuse and neglect in connection with the provision of medical assistance under the plan without a MFCU. The mission of the MFCUs is to investigate and prosecute fraud by Medicaid providers. The state MFCUs also review complaints alleging abuse or neglect of patients in health care facilities receiving payments under the Medicaid state plan and may review complaints of misappropriation of patients' private funds in such facilities. States are required to refer to the MFCU all suspected violations of applicable Medicaid laws and regulations by providers.

### **State Survey and Certification of Health Care Providers and Suppliers**

The objective of the State Survey and Certification of Health Care Providers and Suppliers program is to determine whether the providers and suppliers of health care services under the Medicare program are in compliance with regulatory health and safety standards and conditions of participation/coverage. For certain types of providers, compliance with these health and safety standards are also required as a condition of Medicaid participation, and the Medicaid program contributes to program costs accordingly.

## **II. PROGRAM PROCEDURES**

### **A. Overview**

The following paragraphs are intended to provide a high-level, overall description of how Medicaid generally operates. It is not practical to provide a complete description of program procedures because Medicaid operates under both federal and state laws and regulations and states are afforded flexibility in program administration. Accordingly, the following paragraphs are not intended to be used in lieu of or as a substitute for the federal and state laws and regulations applicable to this program.

#### *Administration*

The Medicaid program is jointly financed by the federal and state governments and administered by the states. For purposes of this program, the term "state" includes the 50 states, the District of Columbia, and five United States territories: the US Virgin Islands, Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Medicaid operates through state Medicaid agencies, with states paying providers of medical services directly or through the use of managed care plans. Participating

providers must accept the Medicaid payment amount as payment in full. Federal law and regulation set forth mandatory and optional eligibility groups and services. States are required to cover mandatory eligibility groups and services and may elect to cover optional groups and services. Within these broad federal rules, each state decides eligible beneficiary groups, types and range of services, payment levels for services, and administrative and operating procedures. CMS administers the Medicaid program in cooperation with state governments. CMS oversees state operations through its organization consisting of a headquarters and field offices. CMS uses technical assistance extensively to promote improvements in state operation of the program, and compliance with federal rules, as well as enforcement mechanisms when appropriate. The HHS Office of Inspector General (OIG) is the agency responsible for the federal oversight of the state MFCUs. As stated in 42 CFR 1007.5, a key requirement of the governing regulations is that a unit must be a single identifiable entity of state government. In order to receive the federal grant funds necessary to sustain their operations, the units must submit a reapplication for federal assistance to the OIG on an annual basis.

The State Survey and Certification of Health Care Providers and Suppliers program is administered by CMS in a manner similar to Medicaid and includes an approved state plan that addresses federal requirements.

### *Medicaid State Plans*

States administer the Medicaid program under a CMS-approved state plan for each state. The Medicaid state plan is a comprehensive written statement submitted by the State Medicaid Agency (SMA) describing the nature and scope of its Medicaid program. A state plan for Medicaid consists of preprinted material that covers the basic requirements, and individualized content that reflects the characteristics of each particular state's program. The state plan references the applicable federal regulation and statute for each requirement.

The state plan contains all information necessary for CMS to determine whether the state plan can be approved to serve as a basis for determining the availability of federal financial participation. The state plan must specify a single state agency (hereinafter referred to as the "State Medicaid Agency – SMA") established or designated to administer or supervise the administration of the state plan. The state plan must also include a certification by the state attorney general that cites the legal authority for the SMA to administer or supervise the administration of the state plan and make rules and regulations that it follows in administering the plan or that are binding upon local agencies that administer the plan.

The state plan also describes methodologies to pay providers for covered care and services under the Medicaid program. The payment methodologies must be clear and auditable to ensure that payments are disbursed only to qualified providers, in the appropriate amount, for medically necessary services covered by the Medicaid program and provided to eligible beneficiaries under a fee-for-service arrangement. Payments must also be based on claims that are adequately supported by medical records, and payments must not be duplicated.



At any time, a state may propose changes to the state plan through a state plan amendment (SPA). A state submits a SPA to CMS when a state proposes to modify its state plan to make changes to its Medicaid program design, policies, or operational approach. States must submit SPAs to CMS to reflect changes in federal and state law, regulation, policy, or court decisions. Federal and state governments use the SPA process to negotiate and agree on the terms of the amendment. The SPA submission is reviewed by CMS to determine whether the proposal meets federal requirements. If more information is required to determine whether the proposal can be approved, CMS sends the state a request for additional information (RAI) within 90 days after receipt of the SPA. States have 90 days from the issuance of the RAI to provide a response to CMS. If the state does not respond within this 90-day period, CMS may choose to disapprove the SPA. Once the state submits the requested information, a new 90-day review clock begins and CMS must decide to approve or disapprove the SPA. While CMS maintains state submission records, copies of approved SPAs are available on CMS' Medicaid.gov website <https://www.medicaid.gov/state-resource-center/medicaid-state-plan-amendments/index.html> or can be obtained from the SMA. More information about SPA and 1915 waiver processing can also be found at Medicaid.gov at <https://www.medicaid.gov/state-resource-center/spa-and-1915-waiver-processing/index.html>.

In accordance with an approved state plan or approved waiver (see the Waivers and Demonstrations section below), CMS makes quarterly grant awards to the state to cover the federal share of Medicaid expenditures for services and program administration. The grant award authorizes the state to draw federal funds as needed to pay the federal portion, as determined through the application of the Federal Medical Assistance Percentage (FMAP) or other applicable federal matching rate set by statute, of approved Medicaid expenditures. The amount of the quarterly grant is initially determined on the basis of quarterly budget estimates submitted by the SMA on the Form CMS-37. Thirty days after the end of the quarter, states must submit the Form CMS-64, which includes expenditures and recoveries and other items that reduce expenditures for the quarter and prior period expenditures. Quarterly, CMS reviews the state's expenditures for accuracy and allowability, then CMS issues a finalization grant reconciling the initial grant award determined on the basis of budget estimates to the actual expenditures reported on the Form CMS-64. The amounts reported on the Form CMS-64 and its attachments must be actual expenditures for which all supporting documentation, in readily reviewable form, has been compiled and is available immediately at the time the claim is filed. States use the Medicaid Budget and Expenditure System (MBES) to electronically submit the Form CMS-37 and Form CMS-64 directly to CMS.

### *Waivers and Demonstrations*

The SMA may apply for a waiver of federal requirements, subject to CMS approval. The most common modes to waive federal requirements are under the authority of section 1115 called demonstrations and waivers under 1915 of the Social Security Act (SSA). Additionally, section 1115 demonstration authority permits states to request federal financial participation for costs that would not otherwise be included as expenditures under state plan programs.

Section 1115 demonstrations and section 1915 waivers of provisions of the SSA are intended to provide the flexibility needed to enable states to test new or different approaches to the efficient and cost-effective delivery of health care services, or to adapt their programs to the special needs or groups of beneficiaries. Demonstrations and waivers are not interchangeable, however they both allow exceptions to state plan requirements and permit a state to implement innovative programs or activities on a time-limited basis, subject to specific safeguards for the protection of beneficiaries and the program, and provided that there is an evaluation of the program.

Actions that states may take if section waivers of 1915 are obtained include, but are not limited to: (1) implementing a primary care case-management system or a specialty physician system; (2) designating an entity to act as a central broker in assisting Medicaid beneficiaries to choose among competing health care plans; (3) limiting beneficiaries' choice of providers to providers that fully meet reimbursement, quality, and utilization standards, which are established under the state plan and are consistent with access, quality, and efficient and economical furnishing of care; and (4) including as medical assistance, under its state plan, home and community-based services (HCBS) furnished to beneficiaries who would otherwise need inpatient care that is furnished in a hospital, nursing facility or other institutional settings, and is reimbursable under the state plan. A state may also obtain a waiver of statutory requirements to provide an array of HCBS, which may permit an individual to avoid institutionalization (42 CFR part 441, subpart G). Depending on the type of requirement being waived, a waiver may be effective for initial periods ranging from two to five years, with varying renewal periods. Copies of approved demonstrations and waivers are available from the SMA and posted on <https://www.medicaid.gov/>.

Actions that states may take within the confines of a section 1115 demonstration include, but are not limited to: (1) sharing with beneficiaries (through the provision of additional services) cost-savings made possible through the beneficiaries' use of more cost effective medical care; (2) enhancing alignment between Medicaid policies and commercial health insurance products to facilitate smoother beneficiary transition; and (3) advancing innovative delivery system and payment models to strengthen provider network capacity and drive greater value for Medicaid.

### *Beneficiary Eligibility*

Beneficiary eligibility for Medicaid is generally based on financial (e.g., income and resources, as applicable) and non-financial (e.g., age, pregnancy, disability, and citizenship/immigration status, as applicable) criteria. Income eligibility is most often expressed in terms of a percent of the Federal Poverty Level (FPL), which is defined and updated by the HHS on an annual basis. Resources may include things like savings, non-home property, stocks, and other non-cash assets.

States must cover mandatory eligibility groups. States may provide coverage to members of optional groups and medically needy individuals (i.e., individuals who are eligible for Medicaid after deducting medical expenditures from their income). The eligibility groups

covered in a state and the eligibility criteria are specified in the state plan. The state plan will also describe the income methodology used for determining eligibility.

States must provide payment for premiums and cost-sharing for “Qualified Medicare Beneficiaries” (QMBs). These are older adults and people with disabilities entitled to Medicare Part A, whose income does not exceed 100 percent of the federal poverty level and resources do not exceed three times the Supplemental Security Income (SSI) resource limit, adjusted annually by the increase in the consumer price index (Section 1860D-14(a)(3)(D) of the Social Security Act (42 USC 1395w-114)).

The state plan will specify if determinations of eligibility are made by agencies other than the SMA and will define the relationships and respective responsibilities of the SMA and the other agencies. States must allow individuals and families to apply online, by telephone, via mail, or in person and must require that all initial applications be signed under penalty of perjury. Electronic signatures, including those that are telephonically recorded, and handwritten signatures transmitted via any other electronic method, must be accepted. The state agency must have facts in the case record to support the agency’s eligibility determination, including a record of citizenship or immigration status verification for each individual. The state must provide notice of its decision concerning eligibility and provide timely and adequate notice of the basis for denial or terminating assistance (42 CFR sections 431.17, 431.210, 431.211, 435.907, 435.914, 435.917, 435.918; 42 USC 1320b-7).

### *Services*

Medicaid expenditures include payments for services rendered to eligible beneficiaries, such as hospitalizations, prescription drugs, nursing home stays, outpatient hospital care, and physicians’ services. A listing of mandatory and optional Medicaid services can be found at <https://www.medicaid.gov/medicaid/benefits/list-of-benefits/index.html>. For a Medicaid payment to be considered valid, it must comply with the requirements of Title XIX, as amended (42 USC 1396 *et seq.*), and implementing federal regulations. Determinations of payment validity are made by individual states in accordance with approved state plans under broad federal guidelines.

Some states have managed care arrangements under which the state enters into a contract with a managed care plan, such as an insurance company (“managed care organization”), to arrange for medical services to be available for beneficiaries. The state pays a fixed rate per person (capitation rate) without regard to the actual medical services utilized by each beneficiary. Managed care plans are required to provide certain services in accordance with the managed care plan’s contract with the state and pursuant to federal regulations at 42 CFR 438.

Medicaid expenditures also include administration and training, the State Survey and Certification Program, and the establishment and operation of state Medicaid Fraud Control Units.

## **B. Control Systems**

### *Utilization Control and Program Integrity*

The state plan must provide methods and procedures to safeguard against unnecessary or improper utilization of care and services. A SMA may satisfy these requirements by assuming direct responsibility for assuring them or by contracting with a quality improvement organization (QIO) (formerly known as peer review organization (PRO)) to perform such reviews. The reviewer must establish and use written criteria for evaluating the appropriateness and quality of Medicaid services. The SMA must have procedures for the ongoing post-payment review, on a sample basis, of the necessity, quality, and timeliness of Medicaid services. The SMA may conduct this review directly or may contract with a QIO.

In addition, the state must have (1) methods of determining criteria for identifying suspected fraud cases; (2) methods for investigating these cases; and (3) procedures, developed in cooperation with legal authorities, for referring suspected fraud cases to law enforcement officials. Suspected provider fraud must be referred to the state MFCU.

### *Inpatient Hospital and Long-Term Care Facility Audits*

States are required to establish, as part of the state plan, standards, and methodologies for reimbursing inpatient hospital and long-term care facilities based on payment rates that represent the cost to operate such facilities efficiently and economically and provide services to Medicaid beneficiaries. The SMA must provide for the filing of uniform cost reports by each participating provider. These cost reports are used by the SMA to aid in the establishment of payment rates. The SMA must provide for periodic audits of the financial and statistical records of the participating providers. Such audits could include desk audits of cost reports in addition to field audits. These audits are an important control for the SMA in ensuring that established payment rates are proper.

### *Automated Data Processing (ADP) Risk Analyses and System Security Reviews*

The Medicaid program is highly dependent on extensive and complex computer systems that include controls for ensuring the proper payment of Medicaid benefits. States are required to establish a security plan for ADP systems that include policies and procedures to address: (1) physical security of ADP resources; (2) equipment security to protect equipment from theft and unauthorized use; (3) software and data security; (4) telecommunications security; (5) personnel security; (6) contingency plans to meet critical processing needs in the event of short- or long-term interruption of service; (7) emergency preparedness; and (8) designation of an agency ADP security manager.

State agencies must establish and maintain a program for conducting periodic risk analyses to ensure appropriate, cost effective safeguards are incorporated into new and existing systems. State agencies must perform risk analyses whenever significant system changes occur. On a biennial basis, state agencies shall review the ADP system security of installations involved in the administration of HHS programs. At a minimum, the

reviews shall include an evaluation of physical and data security operating procedures, and personnel practices.

As part of complying with the above requirement, a state may obtain a statement on Standards for Attestation Engagements (AT) Section 801, Reporting on Controls at a Service Organization Service Organization Control (SOC) 1 type 2 report from its service organization (if the state has a service organization). A SOC 1 type 1 report does not address the effectiveness of a service organization's controls and would need to be supplemented by additional testing of controls at the service organization.

The specific areas covered by a SOC 1 type 2 report differ according to each individual service organization's operations; however, in every instance, the type 2 report procedures assess the sufficiency of the design of an organization's controls and test their effectiveness. A number of commonly covered areas include:

- a. Control Environment
- b. Systems Development and Maintenance
- c. Logical Security
- d. Physical Access
- e. Computer Operations
- f. Input Controls
- g. Output Controls
- h. Processing Controls

#### *Medicaid–Enterprise Systems*

The MES are the set of required mechanized claims processing and information retrieval systems, including the eligibility and enrollment systems and other supporting systems, unless this requirement is waived. CMS provides general systems guidelines (42 CFR sections 433.110 through 433.131) but does not provide detailed system requirements or specifications for states to use in the development of MES systems. As a result, these systems will vary from state to state. The system may be maintained and operated by the state or a contractor overseen by the state.

A module of the MES is normally used to process payments for most Medicaid services. The Operations Management business area supports the Claims Receipt, Claims Adjudication, and Point-of-Service subsystems to process provider claims for Medicaid care and services to eligible medical assistance recipients. Many edits and controls are generally implemented to identify aberrant billing practices for follow-up by the state.

The state plan will describe the administration of each state's claims-processing subsystems.

The state may use other MES modules, or other systems, to process some or all Medicaid payments, such as claims from state agencies (e.g., state-operated intermediate care facility for individuals with intellectual disabilities (ICF/IID) and certain selected types of claims). The claims payments processed these ways may be material to the Medicaid program.

### **C. Related Programs**

#### *Medicare Buy-In Program*

The Medicare Buy-In Program, which includes QMB (Qualified Medicare Beneficiary), SLMB (Specified Low-Income Medicare Beneficiary), and QI (Qualified Individual) commonly referred to as the Medicare savings programs, is designed to protect low-income Medicare beneficiaries from the significant and growing costs required to cover Medicare premiums, deductibles, and copayments. The program connects the two largest public health programs in the country, Medicare and Medicaid, as Medicaid pays for all or part of the Medicare premium and/or cost-sharing amounts for individuals who are financially eligible.

The QMB program serves individuals with modest assets with combined incomes that do not exceed 100 percent of the federal poverty level. For example, in 2019 the asset limit for the QMB program is \$7,730/individual and \$11,600/couple. If individuals are eligible for the QMB program, the state Medicaid program pays their Medicare Part B premiums and copayments as well as Medicare Part A premiums for those who are not eligible for premium-free Part A.

For individuals with slightly higher incomes, the SLMB program pays only the Part B premium. To be eligible for the SLMB program, an individual must have income that exceeds 100 percent but is less than 120 percent of the federal poverty level. The SLMB program has the same asset limits as the QMB program.

The QI program also pays only the Part B premium. The QI program serves individuals with income at or above 120 percent but less than 135 percent of the federal poverty level. The QI program has annual allotments for each state annually. The QI program has the same asset limits as the QMB program.

#### *Indian Health Care*

Federal Medicaid statute includes several protections specific to American Indians and Alaska Natives (AI/AN). These include:

- a. Special treatment for certain AI/AN financial interests—as described at 42 CFR 435.603(e)(3), certain types of AI/AN income are excluded when determining household income based on modified adjusted gross income (MAGI).

- b. Protections related to the imposition of enrollment fees, premiums, and cost sharing charges—as described at 42 CFR section 447.56(a)(1)(x), AI/ANs cannot be charged any enrollment fees or premiums if they are eligible to receive items or services furnished by an Indian health care provider, and they are exempt from all cost sharing if they are both eligible to receive and have received items or services furnished by an Indian health care provider or through referral under contract health services (CHS), now, Purchased Referred Care (PRC). In addition, 42 CFR section 447.56(c)(2) prohibits any cost sharing-related reduction in payment due under Medicaid to the Indian health care provider serving an AI/AN (i.e., a state must pay these providers the full Medicaid payment rate for furnishing the service).
- c. Managed care protections – Network and coverage requirements related to AI/AN protections within managed care are codified at 42 CFR 438.14(b). These protections address network adequacy, access, and disenrollment for AI/AN beneficiaries.
- d. Requirements for payment to Indian Health Service (IHS) and tribal facilities – States receive 100 percent FMAP for Medicaid services provided to AI/ANs through an IHS or tribal facility. Per State Health Official letter #16-002, states receive 100 percent FMAP for services provided to AI/ANs by non-IHS/tribal providers when a care coordination agreement is in place between an IHS/tribal facility and a non-IHS provider, and other requirements of the State Health Official letter are met. Payment methodologies, including rates, for all services provided by IHS/tribal facilities and non-IHS/tribal providers are described in the Medicaid state plan.

#### *Payment Error Rate Measurement (PERM) Program*

The PERM program is utilized by HHS to calculate national improper payment rates for Medicaid and CHIP. The regulations at 42 CFR part 431, subpart Q, specify requirements for estimating improper payments in Medicaid and CHIP. The PERM program annually measures the national Medicaid and CHIP improper payment rates and uses a 17-state three-year rotation process. The national Medicaid and CHIP improper payment rates include findings from the most recent three cycle measurements so that all states are captured in one rate. The national improper payment rates are comprised of three components: fee-for-service, managed care, and eligibility.

#### *Medicaid Eligibility Quality Control (MEQC) Program*

The regulations at 42 CFR part 431, subpart Q, specify the requirements for the MEQC program, which is designed to reduce erroneous expenditures by monitoring the accuracy of eligibility determinations and work in conjunction with the PERM program. The MEQC program requires each state to conduct an MEQC pilot in the two years between the state's PERM review periods and report case findings to CMS, and implement corrective action to address all errors and technical deficiencies found to ensure continuous oversight of both Medicaid and CHIP state eligibility determinations. States

have flexibility to review error prone areas identified through their PERM findings and must review areas not reviewed under the PERM program, such as denials and terminations.

### Source of Governing Requirements

The federal law that authorizes these programs is Title XIX of the Social Security Act (Title XIX), enacted in 1965 and subsequently amended (42 USC 1396 *et seq.*). The federal regulations applicable to the Medicaid program are found in 42 CFR parts 430 through 456, 1002, and 1007.

Awards under the Medical Assistance Program (CFDA 93.778) are subject to the requirements of 45 CFR part 95 and the cost principles under Office of Management and Budget Circular A-87/2 CFR part 200, subpart E.

Federal requirements for the establishment and continued operations of the MFCUs are contained in 42 USC 1396b(a)(6), 1396b(b)(3), and 1396b(q); and 42 CFR part 1007.

### Availability of Other Program Information

The HHS OIG issues fraud alerts, some of which relate to the Medicaid program. These alerts are available from the HHS OIG home page, Special Fraud Alerts section (<https://oig.hhs.gov/compliance/alerts/index.asp>).

Up-to-date program information, including State Medicaid Director and State Health Official letters, is available through Medicaid.gov at <http://www.medicaid.gov/Federal-Policy-Guidance/Federal-Policy-Guidance.html>.

## III. COMPLIANCE REQUIREMENTS

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



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

### General Audit Approach for Medicaid Payments

To be allowable, Medicaid costs for medical services must be (1) covered by the state plan or CMS approved waivers/demonstrations; (2) reviewed by the state consistent with the state's documented procedures and system for determining medical necessity of claims; (3) properly coded; and (4) paid at the rate allowed by the state plan. Furthermore, beneficiaries must be eligible (or presumptively eligible) at the time of service, whether covered under fee-for-service or managed care. Additionally, Medicaid costs must be net of beneficiary cost-sharing obligations and applicable credits (e.g., insurance, recoveries from other third parties who are responsible for covering the Medicaid costs, and drug rebates), paid to eligible providers, and only provided on behalf of eligible individuals.

Due to the complexity of Medicaid program operations, it is unlikely the auditor will be able to support an opinion that Medicaid expenditures are in compliance with applicable laws and regulations (i.e., are allowable under the state plan) without relying upon the systems and internal controls. Examples of complexities include:

1. Dependence upon large and complex ADP systems to process the large volume of Medicaid transactions for fee for services arrangements.
2. Medical services are normally provided directly to an eligible beneficiary without prior approval by the state.
3. Medical service providers normally determine the scope and medical necessity of the services.
4. Notice to the state that a service was rendered is after-the-fact when a claim for payment is issued.
5. Payments systems do not include a review of original detailed documentation supporting the claim prior to payment.
6. Complex payment structures rates for various medical services may exist, including significance of proper coding of services for fee for service (e.g., billing by diagnosis-

related groupings (DRG)). Managed care and waiver based programs are dependent on the respective SPA and resulting agreements with the providers.

7. Payment rates and policies differ among service types and delivery methods, such as fee for service arrangements, managed care, and waivers (e.g., inpatient hospital, physicians, prescription drugs and drug rebates, and risk-based capitation payments for a specific set of covered services).
8. State contracts with third parties, such as managed care plans, to provide or arrange for services for all or part of beneficiary care. These organizations may sub-contract with providers or other managed care and/or administrative services organizations.

Medicaid has required control systems that should aid the auditor in obtaining sufficient audit evidence for Medicaid expenditures. These control systems are discussed in the preceding Program Procedures section under Control Systems and are: (1) utilization control and program integrity; (2) inpatient hospital and long-term care facility audits; (3) ADP risk analyses and system security reviews (e.g., of the MES); and (4) MES claims processing and other modules normally include edits and controls that identify unusual items for follow up by the utilization control and program integrity function. The first three generally are performed by specialists retained by the SMA. The following table indicates the major types of Medicaid services (i.e., excludes administrative expenses) to which these controls will likely relate:

Type of Medicaid Payment	1	2	3	4
Inpatient Hospital	X	X	X	X
Physicians (including dental)	X		X	X
Prescription Drugs (net of rebates)	X		X	X
Institutional Long-Term Care	X	X	X	X
Managed Care Waiver	X	X	X	X
Home and Community Based Waiver Program	X		X	

Each of the above Medicaid payment types is tested for compliance with applicable laws and regulations under one of the following: III.A, “Activities Allowed or Unallowed;” III.B, “Allowable Costs/Cost Principles;” or III.E.1, “Eligibility – Eligibility for Individuals.” Based on the assessed level of control risk, the auditor should design appropriate tests of the allowability of Medicaid payments, which may include a sample of medical claims. Given the complexity of medical records, if medical claims are sampled, the auditor should consider engaging the assistance of specialists in the medical community to assist in the review. The auditor may consider using the same specialists used by the state. CMS suggests that appropriate privacy measure be taken to protect health information (i.e., medical claims).

**A. Activities Allowed or Unallowed**

1. *Summary* – FFP funds can be used only for Medicaid benefit payments (as specified in the state plan, federal regulations, or an approved waiver/demonstration), expenditures for administration and training, expenditures for the State Survey and Certification Program, and expenditures for the establishment and operation of state MFCUs (42 CFR sections 435.10, 440.210, 440.220, and 440.180). Payments may only be made to providers determined by the SMA to be eligible to participate in the Medicaid program. See III.N.4 “Provider Eligibility (Screening and Enrollment)” for related testing.
2. *Case Management Services* – Medicaid case management services may fall under the category of an administrative expense or as an optional medical state plan benefit. The term “case management services” means services that will assist individuals eligible under the plan in gaining access to needed medical, social, educational, and other services. Services, programs, and providers to which the individual is gaining access do not have to be specifically medical in nature and may include services for securing shelter, personal needs, and so forth (e.g., services provided by community mental health boards, county offices of aging). Case management services are an area of risk because of the high growth of expenditures and prior experience that indicates problems with the documentation of case management expenditures.

With the exception of case management services provided through capitation (a process in which payment is made on a per beneficiary basis) or prepaid health plans, federal regulations typically require the following documentation for case management services: date of service; name of recipient; name of provider agency and person providing the service; nature, extent, or units of service; and place of service (42 USC 1396n(g); 42 CFR part 434).

Administrative case management – Services must be assessed as a Title XIX benefit (e.g., outreach services provided by public school districts to Medicaid recipients).

Case Management/targeted case management provided as an optional state plan service – Services must be provided to an eligible Medicaid recipient, and must include: a comprehensive assessment and periodic reassessment of individual needs, development (and periodic revision) of a care plan that is based on the information collected through the assessment, making referrals help the eligible individual obtain needed services and monitoring to ensure the care plan is implemented and services are meeting the individual’s needs.

3. *Managed Care* – A state may obtain a waiver of statutory requirements under 1915(b), or amend its state plan under 1932(a) authority, or within a 1115 demonstration, in order to develop a system that more effectively addresses the health care needs of its population. For example, a waiver/SPA/Demonstration may involve the use of managed care plans for the delivery of some or all

Medicaid benefits for selected beneficiaries. Managed care network providers must be eligible to participate in the program at the time services are rendered, payments to managed care plans should only be for eligible beneficiaries for the proper period and use the proper rate cell, and the capitation payment should be actuarially sound. FFS Medicaid medical service payments (e.g., hospital and doctors charges) should not be made for services that are covered by managed care. States should ensure that capitated payments to managed care plans are discontinued when a beneficiary is no longer enrolled for services. All Medicaid managed care guidance can be found at <https://www.medicaid.gov/medicaid/managed-care/guidance/index.html>.

Examples of payment risks in Medicaid managed care can exist at the plan level and the provider level. At the plan level these can include marketing and provider contracting (e.g., failing to notify the state when an agreement with a provider is terminated for fraud, failing to notify the state of a deceased member, and deliberate underutilization by the plans). At the network provider level billing practices that also occur in Medicaid fee-for-service (upcoding, double-billing, billing for services not rendered) can lead to inflated capitation rates. Plans are to have controls in place to identify and investigate provider fraud and abuse (42 CFR 438 subpart H).

4. *Medicaid Health Insurance Premiums* – A state may pay premiums for employer sponsored insurance or private group health insurance, on behalf of a Medicaid beneficiary, if it is cost effective to do so. When providing premium assistance, states must ensure that participating beneficiaries have access to all benefits available to other Medicaid beneficiaries, and that they are not required to incur greater out-of-pocket costs for premiums, deductibles, co-payments, or similar cost sharing charges than other Medicaid beneficiaries. A state's policy related to premium assistance are described in the Medicaid state plan.
5. *Disproportionate Share Hospital* – FFP is available for payments to qualifying hospitals that serve a disproportionate number of low-income patients with special needs. The state plan must specifically define a disproportionate share hospital and the method of calculating the rate for these hospitals. Section 1923 of the Social Security Act limits DSH payments on a state-wide basis to annual DSH allotments and on a hospital-specific basis to each qualifying hospital's uncompensated care costs. Section 1923(j) of the Social Security Act 42 USC 1396r 4 (*OMB PRA 0938-0746*) also requires each state to obtain, and submit to CMS, an annual independent certified audit of their Medicaid DSH program.
6. *Home and Community-Based Services (HCBS)* – A state may obtain a waiver of statutory requirements to provide an array of HCBS which may permit an individual to avoid institutionalization primarily through 1915 (c) of the Act (42 CFR part 441, subpart G). States may also offer HCBS under their state plan under authority provided by section 1915(i) of the Social Security Act. States must operate their HCBS programs in accordance with certain “assurances,” including three assurances related to quality of care. To meet these assurances,

states must demonstrate that they have systems to effectively monitor the adequacy of service plans, the qualifications of providers, and the health and welfare of beneficiaries.

7. *Medicare Part B Buy-In* – 42 CFR section 431.625(d)(1) specify

FFP funds are available for state payment of

- Medicare Part B premiums for cash assistance recipients (SSI/SSP) and “deemed” cash recipients;
- Part A or B premiums, deductibles, coinsurance, and copays for QMBs; and
- Part B premiums for SLMBs and QIs.

FFP is not available for state payment of Part B premiums for other categories of Medicaid for individuals 65 years old and older or who have blindness and disability.

**B. Allowable Costs/Cost Principles**

1. States must have a system to identify medical services that are the legal obligation of third parties, such as private health or accident insurers. Such third-party resources should be exhausted prior to paying claims with program funds. Where third-party liability is established after the claim is paid, reimbursement from the third party should be sought (42 USC 1396K; 42 CFR sections 433.135 through 433.154).
2. The state is required to refund the federal share of state warrants that are canceled and uncashed checks beyond 180 days of issuance (escheated warrants) and overpayments made to providers of medical services within specified time frames (42 CFR sections 433.300 through 433.320, and 433.40).

Under Section 6506 of the Affordable Care Act (42 USC 1396b(d)(2)), states have up to one year from the date of discovery of an overpayment for Medicaid services to recover, or to attempt to recover, such overpayment before making an adjustment to refund the federal share of the overpayment. Except in the case of overpayments resulting from fraud, the adjustment to refund the federal share must be made no later than the deadline for filing the quarterly expenditure report (Form CMS-64) for the quarter in which the one-year period ends, regardless of whether the state recovers the overpayment.

3. Before calculating the amount of FFP, certain revenues received by a state will be deducted from the state’s medical assistance expenditures. The revenues to be deducted are (1) donations made by health care providers or related entities (except for *bona fide* donations and, subject to a limitation, donations made by providers for the direct costs of out-stationed eligibility workers); and

(2) impermissible health care-related taxes. The requirements for provider-related donations and health care-related taxes are specified in section 1903(w) of the Social Security Act and implementing regulations at 42 CFR 433 subpart B.

These provisions apply to all 50 states and the District of Columbia, except those states whose entire Medicaid program is operated under a waiver granted under Section 1115 of the Social Security Act (42 CFR part 433).

4. Section 1927 of the Social Security Act (42 USC 1396r-8) requires manufacturers that wish to have their covered outpatient drugs covered by Medicaid to enter into an agreement with CMS under which the manufacturers agree to pay rebates for drugs dispensed and paid for by state Medicaid agencies under the state plan (“rebate agreement”). Those rebates are shared between the state and federal governments. Generally, in order for payment to be available for covered outpatient drugs, drug manufacturers are required to have entered into a rebate agreement and meet various product and price reporting requirements, in addition to paying rebates. As part of the product and price reporting requirements, manufacturers must certify to CMS all covered outpatient drugs and, on a quarterly basis, are required to provide their average manufacturer’s price and their best price for each covered outpatient drug, as applicable. Based on these data, CMS calculates a unit rebate amount for each drug, which it then provides to states. No later than 60 days after the end of the quarter, the SMA must provide to manufacturers drug utilization data, including drug utilization data of those Medicaid beneficiaries enrolled in managed care organizations. Within 30 days of receipt of the utilization data from the state, the manufacturers are required to pay the rebate or provide the state with written notice of disputed items not paid because of discrepancies found.
5. In the “Medicaid and Children’s Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability” final rule, published in the *Federal Register* on May 6, 2016 (81 FR 27498), CMS adopted medical loss ratio (MLR) requirements for Medicaid and CHIP managed care programs. The state must require each Medicaid managed care plan to calculate and report a MLR for rating periods starting on or after July 1, 2017, and require each CHIP managed care plan to calculate and report a MLR for rating periods in CHIP managed care contracts as of the state fiscal year beginning on or after July 1, 2018. If a state elects to mandate a minimum MLR, that minimum MLR must be at least 85 percent. The regulation, at 42 CFR section 438.8(e)(4), incorporates the standards adopted for the private insurance market MLR (45 CFR section 158.150) for the treatment of fraud prevention expenses in the numerator of the MLR calculation. The MLR is reported for a rating period, using data from that rating period.

With regard to capitation rate setting for Medicaid managed care plans, under 42 CFR sections 438.4 and 438.5, several requirements exist: (1) the rates must be approved by CMS, which uses the services and expertise of the Office of the Actuary, (2) the source of data used by the state actuary for claims experience

must be valid and reliable, and (3) the rate adjustments must be approved and valid. In addition, for Medicaid and CHIP managed care plans, the rates must be developed so that the managed care plan is projected to meet an 85 percent MLR (42 CFR sections 438.4(b)(9) and 457.1203(c)(1)).

6. *Non-Disproportionate Share Hospital Supplemental Payments* – States make supplemental payments to hospitals and other providers such as nursing homes and physician groups that serve high-cost Medicaid beneficiaries. The limit against which non-disproportionate share hospital supplemental payments are measured is codified at 42 CFR 447.272 for Institutional Services and 42 CFR 447.321 for Outpatient Hospital and Clinic Services.

## **E. Eligibility**

As discussed in the General Audit Approach for Medicaid Payments, the auditor may coordinate III.A, “Activities Allowed or Unallowed,” III.B, “Allowable Costs/Cost Principles,” and III.E, “Eligibility.” Therefore, compliance requirements related to amounts provided to, or on behalf of, eligible individuals and presumptively eligible individuals are combined with III.A, “Activities Allowed or Unallowed” and III.B, “Allowable Costs/Cost Principles” such as, was the service incurred during the period the beneficiary was eligible to receive benefits and was the provider paid the correct amount for the service billed.”

The state verifies the financial and non-financial factors of eligibility, with the exceptions described below, by checking electronic data sources in accordance with federal requirements at 42 CFR 435.948 through 435.956 and state requirements as documented in the state plan, verification plan and eligibility manual. The state is required (as described at 42 CFR 435.914) to maintain facts in the case file to support the eligibility determination. When data sources used by the state are not available to the auditor, or information is not required to be available for the period under audit, auditors would not be expected to test verification other than the requirement to maintain information in the case file. For states that accept applicant self-attestation for certain factors of eligibility such as household composition, and do not require further verification or documentation, the auditors are not expected to test beyond the requirements of the state.

The exceptions to the verification process described above are eligibility determinations made by an Exchange, either the Federally Facilitated Exchange (FFE) or a state-based Exchange, findings from an express lane agency, and presumptive eligibility determinations made by qualified entities. In states that have delegated eligibility determinations to the FFE or a state-based exchange, the state relies on the verifications conducted by the Exchange and auditors are not expected to test verification. When express lane eligibility is used, the SMA relies upon elements of the determination made by an express lane agency. For presumptive eligibility determinations, the qualified entity accepts attestation of all needed information and states may not require verification or documentation of any eligibility criteria. When testing a presumptive eligibility determination, auditors are not expected to test verification.

## 1. Eligibility for Individuals

To participate in Medicaid, federal law requires states to cover certain groups of individuals. Examples of these mandatory eligibility groups are Infants and Children under Age 19, Pregnant Women, and Individuals Receiving Supplemental Security Income (SSI). States may also elect to extend coverage to optional groups of individuals. Examples of optional eligibility groups are Individuals Needing Treatment for Breast or Cervical Cancer, Optional State Supplement Recipients, and Family Opportunity Act Children with a Disability. In addition, states have the option to provide coverage to medically needy individuals who have income and/or resources that exceed the eligibility standards otherwise applicable to such individuals. Mandatory, optional, and medically needy coverage options are described at 42 CFR part 435, subparts B, C, and D and the options elected by a state are detailed in the Medicaid state plan.

Eligibility for Medicaid includes both financial and non-financial requirements and each eligibility group has its own specific standards. Financial eligibility for most individuals is based on modified adjusted gross income or MAGI, which is described at 42 CFR 435.603. MAGI-based income is calculated using the financial methodologies defined in section 36B of the Internal Revenue Code with certain exceptions, such as the exclusion of certain types of AI/AN income (described above) and special rules for individuals who do not expect to file taxes or to be claimed as a tax dependent (non-filer rules). MAGI-based financial eligibility determinations include only an income test; states cannot apply a resource test when determining eligibility based on MAGI.

Certain groups of individuals are excepted from the use of MAGI. MAGI-excepted individuals are described at 42 CFR 435.603(j) and include individuals whose eligibility does not require a determination of income by the agency, such as individuals who are eligible based on their receipt of SSI; individuals whose eligibility for Medicaid is determined based on being age 65 or older, or having blindness or a disability (often referred to as aged, blind or disabled, or ABD); and individuals being evaluated for coverage as medically needy.

When making non-MAGI financial eligibility determinations, states generally apply the income and resource methodologies of the most closely associated cash assistance program. For most individuals, the SSI financial eligibility methodology would be applied, including SSI rules related to both income and resources, in accordance with 42 CFR 435.601 and 435.602. MAGI-excepted eligibility determinations may include a resource or asset test.

Certain non-financial requirements, such as age limitations, pregnancy, or parent/caretaker requirements, apply only to specific eligibility groups. Other non-financial requirements apply to all eligible individuals. Medicaid beneficiaries must generally be residents of the state in which they are receiving Medicaid, and they must be either US citizens or qualified non-citizens (aliens). Qualified aliens, as defined at 8 USC 1641, who entered the United States on or



after August 22, 1996, are not eligible for Medicaid for a period of five years, beginning on the date the alien became a qualified alien, unless the alien is exempt from this five-year bar under the terms of 8 USC 1613. States must provide Medicaid to certain qualified aliens in accordance with the terms of 8 USC 1612(b)(2), provided that they meet all other eligibility requirements. States may provide Medicaid to all other otherwise eligible qualified aliens who are not barred from coverage under 8 USC 1613 (the five-year bar). States also have the option to provide Medicaid coverage to lawfully residing pregnant women and children under age 21 in accordance with 42 USC 1396b(v)(4). All aliens who otherwise meet the Medicaid eligibility requirements are eligible for treatment of an emergency medical condition under Medicaid, as defined in 8 USC 1611(b)(1)(A), regardless of immigration status or date of entry.

To facilitate immediate access to services for individuals who are likely Medicaid eligible, without having to wait for a final eligibility determination to be made, states may establish a program of presumptive eligibility (PE). Under this option, the state authorizes certain health care providers, schools, and/or other outside entities (referred to as “qualified entities”) to screen for Medicaid eligibility and immediately enroll individuals who appear to be eligible. PE is time limited and ends within two months unless the individual submits a full Medicaid application.

The processes used by states to determine and renew eligibility for Medicaid must comply with certain federal requirements, which are described at 42 CFR part 435, subpart J. State processes for presumptive eligibility are described at 42 CFR part 435, subpart L. However, states have flexibility within this framework to establish processes that meet the unique needs of their state. Specific requirements to be considered when auditing eligibility determinations for individuals include:

a. Eligibility Determination

- (1) States must accept applications submitted online, by telephone, via mail, or in person. This includes electronic, telephonically recorded, and handwritten signatures. The SMA must have documentation in the case record to support the agency’s eligibility determination, including a record of verification of income and citizenship or satisfactory immigration status for each individual. The state must provide notice of its decision concerning eligibility and provide timely and adequate notice of the basis for denial or termination of assistance (42 USC 1320b-7(d); 42 CFR sections 435.907, 435.914, 435.917, 431.17, 431.211, 431.213, 431.214).
- (2) Federal law requires that certain types of information be collected during the application process. As a condition of eligibility, each individual seeking Medicaid must furnish his or her Social Security number (SSN) as described at 42 CFR 435.910. If the individual does not recall his/her SSN or has not been issued an

SSN, the state must assist the individual in obtaining or applying for an SSN. This requirement does not apply if the individual (a) is not eligible to receive an SSN, (b) does not have an SSN and may be issued an SSN only for a valid non-work reason, or (c) refuses to obtain a SSN because of well-established religious objections.

- (3) States are directed, at 42 CFR 435.912, to determine eligibility promptly and without undue delay. For individuals applying for Medicaid on the basis of disability, the determination of eligibility may not exceed 90 days. For all other applicants, the determination of eligibility may not exceed 45 days.
- (4) 42 CFR 435.1200 requires coordination between SMAs and other insurance affordability programs, including the federal and state exchanges. Typically, electronic accounts must be transferred from the Medicaid/CHIP agency to the exchange and vice versa. states utilizing the FFE must enter into an agreement in which the FFE makes either a determination or an assessment of MAGI Medicaid/CHIP eligibility and sends the individual's electronic account to the SMA for enrollment (FFE determination) or a final determination and enrollment (FFE assessment). Additional information may be found in the July 25, 2016 CMCS Informational Bulletin on Coordination of Eligibility and Enrollment between Medicaid, CHIP, and the Federally Facilitated Marketplace.
- (5) When determining eligibility for a child, SMAs may rely on elements of a determination made by an express lane agency (as defined in section 2.1(e) of the Medicaid state plan) as to whether a child satisfies one or more requirements of Medicaid eligibility. The SMA may use an income determination from an express lane agency without regard to differences in budget unit, income disregards, deeming, or other differences in methodology between the express lane agency and Medicaid. Auditors are not expected to test verification of express lane determinations relied upon by the SMA. Additional information may be found in section 1902(e)(13) of the Social Security Act [42 USC 1396a(e)(13)] and State Health Official Letter #10-003 issued on February 4, 2010.

b. Eligibility Verification

- (1) States must request information from reliable electronic data sources, including other agencies in the state and other state and federal programs to the extent that such information is determined useful in verifying the financial eligibility of an individual. As described in the state's verification plan for MAGI determinations,

and in state policies and procedures for both MAGI and non-MAGI determinations, this may include information from agencies such as the State Wage Information Collection Agency, the Social Security Administration, and the Internal Revenue Service. States may also use information related to eligibility or enrollment from other state programs such as the Supplemental Nutrition Assistance Program. For MAGI determinations, if information provided by or on behalf of an individual is reasonably compatible with information obtained from the electronic data sources, as described in the state's verification plan, then the agency must determine or renew eligibility based on such information and may not require the individual to provide any further documentation. If the information is not reasonably compatible, then the agency must provide the individual with a reasonable period of time to explain the discrepancy or furnish additional information (42 CFR sections 435.948 and 435.952).

- (2) States may choose to accept self-attestation of information needed to determine or renew eligibility except with respect to income, SSN, and citizenship or immigration status. When self-attestation is accepted, further information, including documentation, cannot be required from the individual. In such cases, auditors would not be expected to test documentation other than required by the state. States must follow the requirements described at 42 CFR 435.948 through 435.956, for verification and documentation of income and citizenship and immigration status.
- (3) Asset Verification Program—Section 1940 of the Social Security Act (42 USC 1396w) requires states to have a mechanism in place to verify assets, through access to information held by financial institutions, for purposes of determining or renewing Medicaid eligibility when an asset test is applicable for aged, blind, and disabled Medicaid applicants or recipients.

c. Periodic Renewal

As required at 42 CFR 435.916, states must renew MAGI-based determinations of eligibility once every 12 months and no more frequently than once every 12 months. For non-MAGI beneficiaries, states must renew eligibility at least once every 12 months as described in the Medicaid state plan. When renewing eligibility, states must first attempt to renew based on reliable information available to the agency without requiring information from the individual. If sufficient information is not available to complete a renewal, or if the state has information that suggests that the beneficiary is ineligible, the state must provide the beneficiary with a renewal form and inform the individual of any additional information or documentation needed to determine eligibility.

For MAGI-based determinations, the renewal form must be prepopulated with the most recent and reliable information known to the agency. Consistent with regulations at 42 CFR 435.930(b), the agency must continue to furnish Medicaid to beneficiaries who have returned their renewal form and all requested documentation unless and until they are determined to be ineligible for eligibility under all groups covered by the state.

d. Presumptive Eligibility

States have the option to establish PE for specific eligibility groups, as described at 42 CFR part 435 subpart L. In general, states must provide PE for pregnant women and children before extending PE to most other MAGI-based eligibility groups. The options elected by each state are described in the Medicaid state plan.

When electing the PE option, states designate qualified entities, such as health care providers, community-based organizations, and schools to make PE determinations. These qualified entities are trained on the state's PE screening process and state-specific requirements for PE. In many states, qualified entities also help individuals to complete the full application process. A qualified entity is responsible for collecting and recording all information necessary to make a PE determination.

To be determined presumptively eligible, an individual must meet the basic requirements of an eligibility group for which PE is available. For example, to be presumptively eligible for the Infants and Children Under Age 19 group, the individual must be a child aged 18 or younger and must have household income at or below the standard established by the state for this group. When determining income, states may use a simplified method such as gross income. In addition to the basic requirements of the eligibility group, states may, but are not required to, consider state residency and US citizenship or eligible immigration status when making a PE determination. Other information that would be collected on a full application, cannot be required for a PE determination. In addition, individuals attest to all information needed for a PE determination. States may not require verification or documentation of any eligibility criteria as a condition of presumptive eligibility.

The PE period begins the day on which the qualified entity makes the PE determination. The end date varies depending on whether or not the individual submits a Medicaid application. If the individual submits a Medicaid application by the last day of the month following the month in which PE was determined, the PE period will continue until full Medicaid eligibility is either approved or denied. If the individual does not submit a Medicaid application, the PE period ends on the last day of the month following the month in which PE was determined. States must adopt

reasonable standards regarding the number of PE periods that will be authorized for an individual.

**2. Eligibility for Group of Individuals or Area of Service Delivery**

Not Applicable

**3. Eligibility for Sub-recipients**

Not Applicable

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

**1. Matching**

The state is required to pay part of the costs of providing Medicaid services and part of the costs of administering the program. The percentage of federal funding is determined based on the amount of the expenditure and the application of the FMAP that is determined for each state using a formula set forth in section 1905(b) of the Social Security Act (42 USC 1396d), or other applicable federal matching rates specified by the statute.

**2. Level of Effort**

Not Applicable

**3. Earmarking**

A state waiver may contain an earmarking requirement.

**L. Reporting**

**1. Financial Reporting**

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable for expenditure reporting for the administrative costs of the state MFCUs; Not applicable for expenditure reporting all other components of the cluster
- d. *CMS-64, Quarterly Statement of Expenditures for the Medical Assistance Program (OMB No. 0938-1265)* – Required to be used in lieu of the SF-425, Federal Financial Report (for all components of the cluster other administrative costs of the state MFCUs), prepared quarterly, and submitted electronically to CMS within 30 days after the end of the

quarter (Note: The Paperwork Reduction Act clearance for this report expires in April 2021).

## 2. Performance Reporting

Not Applicable

## 3. Special Reporting

Not Applicable

## N. Special Tests and Provisions

### 1. Utilization Control and Program Integrity

**Compliance Requirements** The state plan must provide methods and procedures to safeguard against unnecessary utilization of care and services. In addition, the state must have (1) methods of determining criteria for identifying suspected fraud cases; (2) methods for investigating these cases; and (3) procedures, developed in cooperation with legal authorities, for referring suspected fraud cases to law enforcement officials (42 CFR parts 455, 456, and 1002). Suspected fraud must be referred to the state MFCUs (42 CFR part 455.21). See Special Test #6, MFCU.

The SMA must establish and use written criteria for evaluating the appropriateness and quality of Medicaid services. The agency must have procedures for the ongoing post-payment review, on a sample basis, of the need for, and the quality and timeliness of, Medicaid services. The SMA may conduct this review directly or may contract with an independent entity (42 CFR sections 456.5, 456.22, and 456.23). The SMA must ensure that each managed care organization with which it contracts is evaluated annually on quality, timeliness, and access to the health care services by an external quality review organization (EQRO). The state must ensure that the EQRO conducting such reviews is competent and independent (42 CFR 438, Subpart E).

**Audit Objectives** Determine whether the state has established and implemented procedures to: (1) safeguard against unnecessary utilization of care and services, including long term care institutions; (2) identify suspected fraud cases; (3) investigate these cases; and (4) refer those cases with sufficient evidence of suspected fraud cases to law enforcement officials. Consider testing in conjunction with Special Test #6, MFCU.

### Suggested Audit Procedures

- a. Obtain the procedures used by the SMA to conduct utilization reviews and identify suspected fraud.
  - (1) Evaluate the qualifications of the personnel conducting the reviews and identifying suspected fraud. Ascertain that the individuals possess the necessary skill or knowledge by considering the following:
    - (a) professional certification, license, or specialized training;

- (b) the reputation and standing of licensed medical professionals in the view of peers if relevant; and (c) experience in the type of tasks to be performed.
- (2) Ascertain if the personnel performing the utilization review and identifying suspected fraud are organized sufficiently independent of other Medicaid operations to objectively perform their function.
- (3) Ascertain if the SMA or independent entity's sampling plan was properly designed and executed.
- b. Test a sample of the cases examined by SMA or the independent entity and ascertain if such examinations were in accordance with the SMA's procedures.
- c. For states with managed care obtain and evaluate the procedures used by the SMA to select its EQROs and the procedures used by the EQRO to conduct its reviews.
  - (1) Consider the qualifications of the personnel conducting the external quality reviews (EQR).
  - (2) Consider whether the personnel performing the EQR are sufficiently independent of the state Medicaid agency and the Medicaid managed care organizations.
  - (3) Test a sample of EQRO evaluations.
- d. Test a sample of the identified suspected cases of fraud and ascertain if the agency took appropriate steps to investigate and, if appropriate, make a referral.

## **2. Inpatient Hospital and Long-Term Care Facility Audits**

**Compliance Requirements** The SMA pays for inpatient hospital services and long-term care facility services through the use of rates that are economic and efficient and are in accordance with the state plan. To the extent the state pays reconciled costs, the SMA must provide for the filing of uniform cost reports for each participating provider in order to establish payment rates. The SMA must provide for the periodic audits of financial and statistical records of participating providers. The specific audit requirements will be established by the state plan (42 CFR section 447.253).

**Audit Objectives** Determine whether the SMA performed inpatient hospital and long-term care facility audits as required and established in the state plan.

### **Suggested Audit Procedures**

- a. Review the state plan and SMA operating procedures and document the types of audits performed (e.g., desk audits, field audits), the methodology for determining when audits are conducted, and the objectives and procedures of the audits.

- b. Through examination of documentation, determine if the sampling plan was carried out as planned.
- c. Select a sample of audits and ascertain if the audits were in compliance with the SMA's audit procedures.

### **3. ADP Risk Analysis and System Security Review**

**Compliance Requirements** SMAs must establish and maintain a program for conducting periodic risk analyses to ensure that appropriate and cost effective safeguards are incorporated into new and existing systems. SMAs must perform risk analyses whenever significant system changes occur. SMAs shall review the ADP system security installations involved in the administration of HHS programs on a biennial basis. At a minimum, the reviews shall include an evaluation of physical and data security operating procedures, and personnel practices. The SMA shall maintain reports on its biennial ADP system security reviews, together with pertinent supporting documentation, for HHS on-site reviews (45 CFR section 95.621).

**Audit Objectives** Determine whether the SMA has performed the required ADP risk analyses and system security reviews.

#### **Suggested Audit Procedures**

- a. Review the SMA's policies and procedures, and document the frequency, timing, and scope of ADP security reviews. This should include any Service Organization Control (SOC) 1 type 2 reviews following statement on Standards for Attestation Engagements (AT) Section 801, Reporting on Controls at a Service Organization that may have been performed on outside processors (service organizations).
- b. Evaluate the appropriateness and extent of reliance on such reviews based on the qualifications of the personnel performing the risk analyses and security reviews and their organizational independence from the ADP systems.
- c. Review the work performed during the most recent risk analysis and security review to determine if findings were identified and what actions the SMA took to address the findings.

### **4. Provider Eligibility (Screening and Enrollment)**

**Compliance Requirements** In order to receive Medicaid payments, providers must: (1) be licensed in accordance with federal, state, and local laws and regulations to participate in the Medicaid program (42 CFR sections 431.107 and 447.10; and Section 1902(a)(9) of the Social Security Act (42 USC 1396a(a)(9)); (2) screened and enrolled in accordance with 42 CFR part 455, subpart E (sections 455.400 through 455.470); and make certain disclosures to the state (42 CFR part 455, subpart B, sections 455.100 through 455.107). Medicaid managed care network providers are subject to the same disclosure, screening,



enrollment, and termination requirements that apply to Medicaid fee-for-service providers in accordance with 42 CFR part 438, subpart H.

**Audit Objectives** Determine whether Medicaid providers of medical services have the required medical licenses and are eligible to participate in the Medicaid program in accordance with federal, state, and local laws and regulations, and whether the providers have made the required disclosures to the state.

### **Suggested Audit Procedures**

Obtain an understanding of the state plan's provisions for licensing and entering into agreements with providers. Select samples from both Medicaid fee-for-service providers and managed care network providers to determine if:

- a. The provider is screened, licensed, and enrolled in accordance with the state plan and the requirement of 42 CFR 455 subpart E.
- b. The agreement with the provider complies with the requirements of the state plan, including the disclosure requirement of 42 CFR 455 subpart B.
- c. Determine whether the provider complied with the requirements of the state plan, including the disclosure requirements of 42 CFR 455 subpart B.

## **5. Provider Health and Safety Standards**

**Compliance Requirements** Providers must meet the prescribed health and safety standards for hospital, nursing facilities, and ICF/IID (42 CFR part 442). The standards may be modified in the state plan.

**Audit Objectives** Determine whether the state ensures that hospitals, nursing facilities, and ICF/IID that serve Medicaid patients meet the prescribed health and safety standards.

### **Suggested Audit Procedures**

- a. Obtain an understanding of the state plan provisions that ensure that payments are made only to institutions that meet prescribed health and safety standards.
- b. Select a sample of providers who received payments for each provider type (i.e., hospitals, nursing facilities, and ICF/IID) and ascertain if the SMA has documentation that the provider has met the prescribed health and safety standards.

## **6. Medicaid Fraud Control Unit (MFCU)**

**Compliance Requirements** States are required as part of their Medicaid state plans to maintain a MFCU unless the HHS secretary determines that a MFCU would not be cost-effective.

**Audit Objectives** Determine whether the state ensures suspected fraud or other criminal violations are referred to an office with authority to prosecute cases of provider fraud, and to ensure that the state accurately reports overpayment recoveries resulting from MFCU activities on the CMS-64. Consider testing in conjunction with Special Test #1, Utilization Control and Program Integrity.

### **Suggested Audit Procedures**

- a. Ascertain if the state has a MFCU and, if not, it has received a waiver from the HHS secretary and has alternate policies and procedures in place to detect Medicaid fraud and abuse.
- b. Obtain an understanding of the state's policies and procedures that ensure violations of Medicaid laws and regulations by providers are identified and are referred to an office with authority to prosecute cases of provider fraud.
- c. Select a sample of violations of Medicaid laws and regulations by providers and ascertain if the cases were referred to the state MFCU or, if the state does not have a MFCU, to an office with authority to prosecute cases of provider fraud.
- d. Obtain records of actual overpayment recoveries collected as a result of MFCU activities and compare the total amount for each applicable quarter to the amount reported for the corresponding quarter on the CMS-64.

## **7. Refunding of Federal Share of Medicaid Overpayments to Providers**

**Compliance Requirements** 42 CFR 433 subpart F outlines the requirements SMAs are to follow related to refunding the federal share of Medicaid overpayments made to providers. Pursuant to 1903(d)(2)(C) of the Social Security Act (the Act) (42 U.S.C. 1396b), states have up to one (1) year from the date of discovery of the overpayment to recover or attempt to recover the overpayment before the federal share must be refunded to CMS via Form CMS-64 Summary, Line 9C1- Fraud, Waste & Abuse Amounts, regardless of whether recovery is made from the provider. The state must credit the federal share to CMS as outlined under 42 CFR 433.320(a)(2) either in the quarter in which the recovery is made or in the quarter in which the one-year period ends following discovery, whichever is earlier, with limited exceptions. Under 42 CFR 433.316(d), for overpayments resulting from fraud, if not collected within one year of discovery, the SMA has until 30 days after the final judgment of a judicial or administrative appeals process to return the federal share.

Additionally, in accordance with 42 CFR 433.320(a)(4), the state will be charged interest for any non-recovered, non-refunded overpayment amounts. Any appeal rights offered to the provider does not extend the date of discovery per 42 CFR 433.316(h).

The repayment of the federal share is not required in cases where the state is unable to obtain recovery because the provider has filed for bankruptcy or the provider is otherwise out of business as outlined in 42 CFR 433.318.

42 CFR 433.320(c)(1) allows for downward adjustments previously credited to CMS if it is properly based on the approved state plan, federal law and regulations governing Medicaid, and the appeals resolution process specified in state administrative policies and procedures. States are not able to enter into settlement agreements with providers that reduces the federal share of the overpayment in order to avoid the expense of litigation. The Departmental Appeals Board (DAB) decision No. 1391 from February 19, 1993 (<https://www.hhs.gov/sites/default/files/static/dab/decisions/board-decisions/1993/dab1391.html>) addressed overpayment settlements between the states and providers. This decision affirmed that states may not reduce the federal share by settling overpayment receivables for less than the actual amount of the overpayment based on anticipated success in litigation or made simply to avoid administrative costs or litigation expenses.

**Audit Objectives** Determine whether the SMA reported and returned Medicaid provider overpayments in accordance the federal requirements.

### **Suggested Audit Procedures**

- a. Review applicable federal laws and regulation, including 1903(d)(2)(C) of the Act (42 USC 1396b), 42 CFR 433 subpart F, and the Departmental Appeals Board Decision No. 1391.
- b. Obtain an understanding of the process to identify overpayments.
- c. Perform tests to ascertain if the federal share has been returned accurately in accordance with federal laws and regulations, including ensuring the full amount was refunded and any downward adjustments were made.

## **8. Medicaid National Correct Coding Initiative (NCCI)**

**Compliance Requirements** Effective October 1, 2010, SMAs were required to incorporate NCCI methodologies into the state Medicaid programs pursuant to the requirements of Section 6507 of the Affordable Care Act (section 1903(r) of the Social Security Act).

The purpose of the NCCI Program is to promote correct coding, prevent coding errors, prevent code manipulation, reduce improper payments and reduce the paid claims improper payment rate. The Annual Report to Congress - Medicare and Medicaid Integrity Programs - **Fiscal Year 2017** (<https://www.cms.gov/About-CMS/Components/CPI/Downloads/FY-2017-Medicare-and-Medicaid-Integrity-Programs-Report-to-Congress.pdf>) reported that the NCCI program saved at least \$698.1 million in Medicare in FY 2017.

In paying applicable Medicaid claims, states' MES are required to completely and correctly implement the following six Medicaid NCCI methodologies to ensure that only proper payments of procedures are reimbursed.

- a. NCCI Procedure-to-Procedure (PTP) edits for practitioner and ambulatory surgical center (ASC) claims.
- b. NCCI PTP edits for outpatient hospital services, including emergency department, observation care, and outpatient hospital laboratory services.
- c. Medically Unlikely Edit (MUE) units of service (UOS) edits for practitioner and ASC services.
- d. MUE UOS edits for outpatient hospital services including emergency department, observation care, and outpatient hospital laboratory services.
- e. MUE UOS edits for durable medical equipment (DME) billed by providers.
- f. NCCI PTP edits for durable medical equipment (added in October 2012).

States are also required to use:

- all four components of each Medicaid NCCI methodology;
- the most recent quarterly Medicaid NCCI edit files for states;
- the Medicaid NCCI edits in effect for the date of service on the claim line or claim;
- the claim-adjudication rules in the Medicaid NCCI methodologies; and
- all modifiers for Healthcare Common Procedure Coding System (HCPCS) codes and Current Procedural Terminology (CPT) codes needed for the correct adjudication of applicable Medicaid claims.

The NCCI Medicaid Policy Manual and the NCCI Medicaid Technical Guidance Manual contain additional requirements for implementation of the NCCI methodologies.

The Medicaid NCCI methodologies must be applied to Medicaid fee-for-service claims submitted with, and reimbursed on the basis of, HCPCS codes and CPT codes. This includes claims reimbursed on a fee-for-service basis in state Medicaid Primary Care Case Management managed care programs. Application of NCCI methodologies to fee-for-service claims processed by other entities, including limited benefit plans or Managed Care Organizations, is not required; however, if SMAs require the application of NCCI methodologies to fee-for-service claims processed by such entities, then such entities must meet NCCI program requirements, including compliance with the NCCI Medicaid Policy Manual and the NCCI Medicaid Technical Guidance Manual.

**Audit Objectives** To determine whether SMAs have implemented the required six NCCI methodologies and met the NCCI program requirements, as described in the NCCI Medicaid Policy Manual and the NCCI Medicaid Technical Guidance Manual.

**Suggested Audit Procedures**

- a. Ascertain if each of the six NCCI methodologies have been implemented.
- b. Ascertain if the SMA downloaded the correct quarterly files from the Medicaid Integrity Institute and implemented in their system timely.
- c. Process test claims to ascertain if:
  - (1) SMAs implemented NCCI edits as automated edits;
  - (2) SMAs apply edits in the required order;
  - (3) SMAs correctly denied payment for all units of service on test claims that trigger medically unlikely edits;
  - (4) SMAs correctly used medically unlikely edits on test claims with date spans;
  - (5) SMAs followed NCCI program requirements for using modifiers for test claims for procedure-to-procedure edits;
  - (6) SMAs are paying for services that should have been denied by NCCI edits by using test claims; and
  - (7) SMAs are incorrectly denying payment for services; by using test claims.
- d. Ascertain if the SMA has Confidentiality Agreement(s) in place as required by the Technical Guidance Manual, Sections 7.1.1 and 7.1.2.

**IV. OTHER INFORMATION***Portion of Medicaid (Title XIX) Expenditures Claimed at CHIP Enhanced FMAP*

As described in Part 4, CHIP (CFDA 93.767), III.A.1, “Activities Allowed or Unallowed,” certain qualifying states meeting the criteria provided in section 2105(g) of the Social Security Act, 42 USC 1397ee(g), may opt to receive the CHIP enhanced FMAP for certain Medicaid program expenditures. For certain qualifying states that choose this option, the enhanced portion of such expenditures (that is, the portion that is equal to the difference between the CHIP enhanced FMAP and the standard Medicaid FMAP) is funded by their available CHIP allotments. Qualifying states were permitted to use up to 20 percent of their CHIP allotment to fund the enhanced portion of such Medicaid expenditures for allotments through the fiscal year 2008 CHIP allotment and up to 100 percent of their available CHIP allotments beginning with the fiscal year 2009 CHIP allotment. The qualifying states, determined by CMS under section 2105(g) of the Social Security Act, 42 USC 1397ee(g) are Connecticut, Hawaii, Maryland, Minnesota, New Hampshire, New Mexico, Rhode Island, Tennessee, Vermont, Washington, and Wisconsin.

Amounts transferred into the state's Medicaid program are subject to the requirements of the Medicaid program when expended and should be included in the audit universe and total expenditures of this program when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amounts transferred in should be shown as expenditures of this program when such amounts are expended.

### *Improper Payments*

Auditors should be alert to the following that have been identified in audit findings both as non-compliance and material weaknesses: If these items are identified, the auditors should determine if further review is appropriate.

#### 1. Beneficiary Eligibility Determinations

Findings related to internal control deficiencies for eligibility determinations include:

- eligibility determination and renewal were not performed timely and/or performed within the timeliness standards;
- eligibility determinations are not made accurately;
- lack of internal controls over obtaining adequate documentation to support eligibility determinations, when applicable;
- eligibility system data was not accurate;
- beneficiary information was not verified according to the state's verification plan;
- program staff did not have sufficient knowledge of program requirements and policies due to high turnover and/or a lack of training; and
- MEQC review staff were not functionally and physically separate from both the eligibility determination staff and the Medicaid policy staff.

#### 2. Medicaid Claims Processing

Findings related to significant weaknesses in Medicaid claims processing include:

- inadequate documentation to support the payments claimed in the CMS-64;
- payments reported on the CMS-64 were not readily traceable to the individual claims or information in the sub-system or the financial statements;
- inadequate internal control over utilization, fraud, and accuracy of the Medicaid claims;
- lack of understanding of when to report payments in the CMS-64;

- inadequate internal control to assure that payments to providers were made in compliance with federal regulations, e.g. payments for services that were not medically necessary and providers were not eligible Medicaid providers;
- review of cost report and recoupment of rate adjustments were not timely.

3. Other areas of weaknesses identified include:

- inadequate monitoring and oversight of subcontractors;
- inadequate monitoring and oversight to assure provider licensing, agreements or required certification were in effect and up-to-date, and that the related documentation was in file or in the state MES;
- inadequate internal control related to implementation of MES module;
- inadequate internal control regarding user access to the MES modules, including terminated employees' user access rights; and
- MES module was not programmed and updated timely and accurately with proper information.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****CFDA 93.870 MATERNAL, INFANT, AND EARLY CHILDHOOD HOME VISITING GRANT PROGRAM****I. PROGRAM OBJECTIVES**

The goals of the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) programs are to (1) strengthen and improve the programs and activities carried out under Title V of the Social Security Act, (2) improve coordination of services for at-risk communities, and (3) identify and provide comprehensive services to improve outcomes for families who reside in at-risk communities.

The MIECHV programs include grants to states and six jurisdictions (District of Columbia, Puerto Rico, US Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands). Per Section 511(h)(2)(B) of the Social Security Act (42 USC 711(h)(2)(B)), nonprofit organizations with an established record of providing early childhood home visiting programs or initiatives in a state or several states are eligible for funding to provide services in states that are not participating in the programs. The legislation requires that awardees demonstrate improvement in six benchmark areas: improved maternal and newborn health; prevention of child injuries, child abuse, neglect, or maltreatment, and reduction of emergency department visits; improvement in school readiness and achievement; reduction in crime or domestic violence; improvement in family economic self-sufficiency; and improvements in the coordination and referrals for other community resources and supports.

These programs are intended to support and strengthen cooperation and coordination and promote linkages among various programs that serve pregnant women, expectant fathers, young children, and families in tribal communities and result in high-quality, comprehensive early childhood systems in every community.

**II. PROGRAM PROCEDURES**

The Health Resources and Services Administration (HRSA) administers the MIECHV programs in partnership with the Administration for Children and Families (ACF), with awards under this CFDA number made by HRSA (ACF awards are made under CFDA 93.508). HRSA and ACF are Operating Divisions of the Department of Health and Human Services (HHS).

Grants are awarded to states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, and America Samoa to conduct needs assessments, and to those entities and nonprofit organizations providing services in states that are not participating in the programs, to develop the infrastructure needed for the widespread planning, adopting, implementing, and sustaining of evidence-based maternal, infant, and early childhood home visiting programs; and provide high-quality, voluntary, evidence-based home visiting services to pregnant women and families with young children from birth to age 5. Nonprofit organizations are required to carry out the program based on the needs assessment conducted by the state.



Also, to the greatest extent practicable, nonprofit organizations are subject to the program requirements that apply to states (e.g., coordination with other programs under Title V of the Social Security Act and the 10 percent limitation on costs associated with administering the award).

### Source of Governing Requirements

These programs are authorized under the Social Security Act, Title V, 511(c) (42 USC 711(c)), as amended by the Bipartisan Budget Act of 2018 (P.L.115-123), Title VI, Subtitle A.

### Availability of Other Program Information

The HRSA Maternal and Child Health Bureau website provides general information on this program at <http://mchb.hrsa.gov/programs/homevisiting/>.

The Notices of Funding Opportunity (NOFO) under CFDA 93.870 include HRSA-18-172 (formula grants), HRSA-17-102, and HRSA-17-101. These may be found online at <https://grants.hrsa.gov/webexternal/fundingOpp.asp>. The NOFOs also are available in the archives at <https://www.grants.gov/> through an advanced search using CFDA 93.870.

HHS launched Home Visiting Evidence of Effectiveness (HomVEE) to conduct a thorough and transparent review of the home visiting research literature and provide an assessment of the evidence of effectiveness for home visiting programs models that target families with pregnant women and children from birth to age 5. Information on this process and a list of the 18 evidence-based models can be found at <https://homvee.acf.hhs.gov/HRSA-Models-Eligible-MIECHV-Grantees>

## III. COMPLIANCE REQUIREMENTS

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

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

## A. Activities Allowed or Unallowed

### 1. *Activities Allowed*

As specified in the NOFOs, funds may be used to:

- a. identify unmet needs and target at-risk communities; based on the statewide needs assessment developed in 2010, or as updated to meet the requirement set forth in section 50603 of the Bipartisan Budget Act of 2018.
- b. develop the infrastructure and capacity needed to implement and sustain evidence-based maternal, infant, and early childhood home visiting programs in those communities; and
- c. provide home visiting services to eligible families (home visiting is defined as an evidence-based program, implemented in response to findings from a needs assessment, that includes home visiting as a primary service delivery strategy (excluding programs with infrequent or supplemental home visiting), and is offered on a voluntary basis to pregnant women or children birth to age five targeting the participant outcomes in the legislation which include improved maternal and child health, prevention of child injuries, child abuse, or maltreatment, and reduction of emergency department visits, improvement in school readiness and achievement, reduction in crime or domestic violence, improvements in family economic self-sufficiency, and improvements in the coordination and referrals for other community resources and supports).

### 2. *Activities Unallowed*

As stated in the NOFOs, funds may not be used to support the delivery or costs of direct medical, dental, mental health, or legal services; however, some limited

direct services may be provided (typically by the home visitor) to the extent required in fidelity to an evidence-based model approved for use.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****CFDA 93.914 HIV EMERGENCY RELIEF PROJECT GRANTS (RYAN WHITE HIV/AIDS PROGRAM PART A)****I. PROGRAM OBJECTIVES**

The objective of this program is to improve access to a comprehensive continuum of high-quality community-based primary medical care and support services in metropolitan areas that are disproportionately affected by the incidence of Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS). The statute refers to both people with HIV and those who have AIDS (as reported to and confirmed by the Centers for Disease Control and Prevention (CDC)). These terms are used interchangeably in this compliance supplement but refer to this total universe of eligible individuals.

Emergency financial assistance, in the form of formula-based funding, supplemental project-based funding, and formula-based Minority AIDS Initiative (MAI) funding is provided to eligible metropolitan areas (EMAs) and transitional grant areas (TGAs) to develop, organize, and operate health and support services programs for people with HIV and their care givers.

The supplemental grants are discretionary awards and are awarded, following competition, to EMAs and TGAs that demonstrate need beyond that met through the formula award. They must also demonstrate the ability to use the supplemental amounts quickly and cost effectively. Other criteria, contained in annual application guidance documents, may also apply. All EMAs and TGAs that are receiving formula assistance are also receiving supplemental assistance, and will continue to receive such assistance unless they fail to meet the legislative requirements related to unobligated balances.

**II. PROGRAM PROCEDURES**

The Health Resources and Services Administration (HRSA), a component of the Department of Health and Human Services (HHS), administers the HIV emergency relief programs. Eligibility for Ryan White HIV/AIDS Program (RWHAP) Part A grants depends, in part, on the number of confirmed AIDS cases within a statutorily specified “metropolitan area.” The secretary of HHS uses the Office of Management and Budget’s (OMB) census-based definitions of a Metropolitan Statistical Area (MSA) in determining the geographic boundaries of a RWHAP metropolitan area. HHS relies on the OMB geographic boundaries in effect when a jurisdiction was or is (if newly eligible) initially funded under RWHAP Part A. A metropolitan area is not eligible if it does not have an overall population of 50,000 or more.

HRSA uses data reported to and confirmed by CDC to determine eligibility. An EMA is a metropolitan area for which there has been reported to, and confirmed by, the Director of the CDC a cumulative total of more than 2,000 cases of AIDS for the most recent five calendar-year period for which data are available. A TGA is a metropolitan area for which there has been reported to, and confirmed by, the Director of the CDC a cumulative total of at least 1000, but fewer than 2000, cases of AIDS during the most recent period of five calendar years for which data are available. MAI funding is awarded using a formula that is based on the distribution of HIV/AIDS cases among racial and ethnic minorities.

After subtracting the amount available for MAI project assistance, HRSA must make at least two-thirds (66 2/3 percent) of the appropriated amount available for the EMAs' and TGAs' formula allocation and award the remainder as supplemental funding on the basis of demonstrated need and other factors. EMAs and TGAs are funded from the formula, supplemental, and MAI allocation on the basis of a single application and a combined award.

Funds are made available to the chief elected official of the EMA or TGA in accordance with statutory requirements and program guidelines. Day-to-day responsibility for the grant is ordinarily delegated to the jurisdiction's public health department, and some administrative functions may be outsourced to a private entity. The chief elected official of the jurisdiction is also required to establish or designate an HIV health services planning council, which carries out a planning process, coordinating with other state, local and private planning, and service organizations, and establishes the priorities for allocating funds. Newly eligible areas designated as TGAs in FY 2007 and beyond are exempt from the requirement to establish and use an HIV health services planning council, but must provide a process for obtaining community input as prescribed in the RWHAP Part A legislation.

Consistent with funding and service priorities established through the public planning process, the receiving jurisdiction uses the funds to provide assistance to public entities or private non-profit or for-profit entities to deliver or enhance HIV/AIDS-related core medical and support services and, within established limits, for associated administrative and clinical quality management activities. Administrative activities include EMA or TGA oversight of service provider performance and adherence to their subrecipient obligations. Most of these service providers are non-profit organizations.

### **Source of Governing Requirements**

This program is authorized under sections 2601 - 2610 of Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. No. 111-87), and is codified at 42 USC 300ff-11 through 300ff-20. The MAI is authorized under Section 2693(b)(2)(A) of the Public Health Service Act, 42 USC 300ff-121(b)(2)(A).

All HRSA awards are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements at 45 CFR part 75. As per 45 CFR part 75.201 and 301, recipients may use a fixed-award instrument to obtain services based on a reasonable estimate of actual cost and based on performance and results related to improvement of program outcomes.

There are no program regulations specific to this program.

### **Availability of Other Program Information**

Additional information about this program is available at <http://hab.hrsa.gov/>.

Additional information on allowable uses of funds under this program is contained in policy notices and standards found at <http://www.hab.hrsa.gov/manageyourgrant/policiesletters.html> and <http://hab.hrsa.gov/manageyourgrant/files/fiscalmonitoringparta.pdf>.

### III. COMPLIANCE REQUIREMENTS

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

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

#### A. Activities Allowed or Unallowed

##### 1. *Activities Allowed*

Funds may be used only for core medical services, support services, clinical quality management, and administrative expenses (42 USC 300ff-14(a)).

- a. Core medical services with respect to people with HIV (including co-occurring conditions, i.e., one or more adverse health conditions of an individual with HIV, without regard to whether the individual has AIDS or whether the conditions arise from HIV) means (1) outpatient and ambulatory health services; (2) AIDS Drug Assistance Program treatments; (3) AIDS pharmaceutical assistance; (4) oral health care; (5) early intervention services meeting the requirements of 42 USC 300ff-14(e); (6) health insurance premium and cost sharing assistance for low-income individuals; (7) home health care; (8) medical nutrition therapy; (9) hospice services; (10) home and community-based health services; (11) mental health services; (12) substance abuse outpatient care; and (13)

medical case management, including treatment adherence services (42 USC 300ff-14(c)(3)).

- b. Support services means services that are needed for people with HIV to achieve their medical outcomes (those outcomes affecting the HIV-related clinical status of an individual with HIV) (for example, respite care for persons caring for people with HIV, outreach services, medical transportation, linguistic services, referrals for health care and support services, and such other services specified by HRSA) (42 USC 300ff-14(d)).
- c. Clinical quality management means assessing the extent to which HIV health services provided to patients under the grant are consistent with the most recent Public Health Service guidelines for the treatment of HIV/AIDS and related opportunistic infections, and as applicable, developing strategies for ensuring that such services are consistent with the guidelines for improvement in the access to and quality of HIV health services (42 USC 300ff-14(h)(5)(A)). Policy Clarification Notice #15-02 <https://hab.hrsa.gov/sites/default/files/hab/Global/CQM-PCN-15-02.pdf>.
- d. Administrative expenses at the recipient level include activities related to
  - (1) routine grant administration and monitoring (for example, development of applications, receipt and disbursement of program funds, development and establishment of reimbursement and accounting systems, development of a clinical quality management program, preparation of routine programmatic and financial reports, and compliance with grant conditions and audit requirements); (2) contract development, solicitation review, award, monitoring, and reporting; and (3) activities carried out by the HIV health services planning council (42 USC 300ff-14(h)(3) and 300ff-12(b)).
- e. Subrecipient administrative expenses include usual and recognized overhead activities, including those that are reimbursed through approved indirect cost rates; management oversight of funded activities; and other types of program support such as quality assurance, quality control, and related activities (42 USC 300ff-14(h)(4)).

## 2. *Activities Unallowed*

- a. Funds may not be used to make payment for any item or service if payment has already been made or can reasonably be expected to be made under any state compensation program, under an insurance policy or any federal or state health benefits program, or by an entity that provides health services on a pre-paid basis except for programs administered by or

providing the services of the Indian Health Service (42 USC 300ff-15(a)(6)).

- b. Funds may not be used to purchase or improve land or to purchase, construct or make permanent improvement to any building. Minor remodeling is allowed (42 USC 300ff-14(i)).
- c. Funds may not be used to make cash payments to intended recipients of RWHAP services (42 USC 300ff-14(i)) and Ryan White HIV/AIDS Program Services: Eligible Individuals and Allowable Uses of Funds, Policy Clarification Notice #16-02  
[https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN\\_16-02Final.pdf](https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN_16-02Final.pdf).
- d. Funds may not be used to purchase sterile needles or syringes for the hypodermic injection of any illegal drug (Consolidated Appropriations Act, 2016, Division H, Title V, Section 520 (Pub. L. No. 114-113) and subsequent appropriations, as applicable). Other elements of syringe services programs may be allowable if in compliance with applicable HHS and HRSA-specific guidance.
- e. Funds may not be used for AIDS programs or to develop materials, designed to promote or encourage, directly, intravenous drug use or sexual activity, whether homosexual or heterosexual (42 USC 300ff-84).

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

Costs charged to federal funds under this program must comply with the cost principles at 45 CFR part 75, subpart E, and any other requirements or restrictions on the use of federal funding

## **E. Eligibility**

### **1. Eligibility for Individuals**

Eligible beneficiaries are low-income individuals or families of people with HIV. To the maximum extent practicable, services are to be provided to eligible individuals regardless of their ability to pay for the services and their current or past health condition (42 USC 300ff-15(a)(7)(A)).

### **2. Eligibility for Group of Individuals or Area of Service Delivery**

Not Applicable



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

The EMA or TGA may make funds available to public or private non-profit entities or to private for-profit entities if they are the only available providers of quality HIV care in the area (42 USC 300ff-14(b)(2)).

### **J. Program Income**

The Notice of Award provides guidance on the use of program income. The addition method is used for this program. Program income must be used for activities described in III.A.1, “Activities Allowed.”

### **M. Subrecipient Monitoring**

1. The Department of Health Human Service (HHS) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards (*45 CFR Part 75*) requires pass-through entities: (1) to evaluate each subrecipient's risk of noncompliance in order to determine the appropriate monitoring level; (2) monitor the activities of subrecipient organizations to ensure that the subaward is in compliance with applicable federal statutes and regulations and terms of the subaward; and (3) verify that subrecipients are audited as required under this guidance. Specifically, the grantee must conduct monitoring activities in accordance with sections 75.351 through 75.353 of Subpart D of 45 CFR Part 75.
2. Grantees must ensure that all requirements imposed by the federal government are passed down to subrecipients so that the HHS award is used in accordance with federal statutes, regulations, and the terms and conditions of the award.

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CFDA 93.917 HIV CARE FORMULA GRANTS (RYAN WHITE HIV/AIDS PROGRAM PART B)**

#### **I. PROGRAM OBJECTIVES**

The objective of this program is to assist states and territories in improving the quality, availability, and organization of healthcare and support services for low-income, uninsured, and underinsured people with Human Immunodeficiency Virus (HIV).

#### **II. PROGRAM PROCEDURES**

The Department of Health and Human Services (HHS) administers the RWHAP Part B through the Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau (HAB). Grants are awarded annually, on a formula basis, to all 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands following submission of an application to, and approval by, HAB. The responsible state agency, usually the state health department, is designated by the governor.

The application addresses how the state plans to address each of the six specified program components: (1) HIV care consortia, (2) home and community-based care, (3) health insurance continuation program, (4) provision of treatments, (5) state direct services, and (6) Minority AIDS Initiative (MAI). This includes the state's plans for the AIDS Drug Assistance Program (ADAP). ADAP funding is provided to the state as a separate formula amount in addition to the base formula grant amount and can only be used for ADAP services.

States may use a variety of service delivery mechanisms. States may provide some or all services directly or may enter into subawards with local HIV care consortia, associations of public and non-profit healthcare and support service providers, and community-based organizations that plan, develop, and deliver services for low-income, uninsured, and underinsured people with HIV. The state also may delegate some of its authority to monitor provider agreements to a "lead agency" (fiscal agent), with specific responsibilities contained in a formal agreement between the state and that agency. Finally, the state may provide subawards to healthcare or other service providers.

#### **Source of Governing Requirements**

The RWHAP Part B formula grant program is authorized under Sections 2611-2623 of Title XXVI of the Public Health Service Act as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. No. 111-87) and codified at 42 USC 300ff-21 through 300ff-31b. The MAI is authorized under Section 2693(b)(2)(B) of the Public Health Service Act, 42 USC 300ff-121(b)(2)(B).

There are no regulations specific to the RWHAP Part B.

## Availability of Other Program Information

Further information about the RWHAP Part B is available at <http://www.hab.hrsa.gov>.

Additional information on allowable uses of funds under this program is contained in policy notices and standards found at <http://hab.hrsa.gov/program-grants-management/policy-notices-and-program-letters> and <http://hab.hrsa.gov/sites/default/files/hab/Global/fiscalmonitoringpartb.pdf>.

## III. COMPLIANCE REQUIREMENTS

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

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

### A. Activities Allowed or Unallowed

#### 1. *Activities Allowed*

- a. Grant funds (and required matching funds) may be used for core medical services, support services, planning and evaluation, clinical quality management, and administrative expenses (42 USC 300ff-22(a); 42 USC 300ff-28(b)).

- (1) Core medical services with respect to people with HIV (including the co-occurring conditions of the individual) means (1) outpatient and ambulatory health services; (2) AIDS Drug Assistance Program treatments; (3) AIDS pharmaceutical assistance; (4) oral healthcare; (5) early intervention services meeting the requirements of 42 USC 300ff-22(d); (6) health insurance premium and cost sharing assistance for low-income individuals; (7) home healthcare; (8) medical nutrition therapy; (9) hospice services; (10) home and community-based health services; (11) mental health services; (12) substance abuse outpatient care; and (13) medical case management, including treatment adherence services (42 USC 300ff-22(b)(3)).
- (2) Support services means services that are needed for people with HIV to achieve their medical outcomes (those outcomes affecting the HIV-related clinical status of people with HIV) (for example, respite care for persons caring for people with HIV, outreach services, medical transportation, linguistic services, referrals for healthcare and support services, and such other services specified by HRSA). Expenditures for or through consortia are considered support services ((42 USC 300ff-22(c); 42 USC 300ff-23(f)).
- (3) Clinical quality management means assessing the extent to which HIV health services provided to patients under the grant are consistent with the most recent Public Health Service guidelines for the treatment of HIV/AIDS and related opportunistic infections, and as applicable, developing strategies for ensuring that such services are consistent with the guidelines for improvement in the access to and quality of HIV health services (42 USC 300ff-28(b)(3)(E)(i)). Policy Clarification Notice #15-02 <https://hab.hrsa.gov/sites/default/files/hab/Global/CQM-PCN-15-02.pdf>.
- (4) Administrative expenses at the recipient level include activities related to (1) routine grant administration and monitoring (for example, development of applications, receipt and disbursement of program funds, development and establishment of reimbursement and accounting systems, development of a clinical quality management program, preparation of routine programmatic and financial reports, and compliance with grant conditions and audit requirements); (2) contract development, solicitation review, award, monitoring, and reporting; and (3) planning and evaluation activities (42 USC 300ff-28(b)(3)(C)).
- (5) Subrecipient administrative expenses include usual and recognized overhead activities, including those that are reimbursed through approved indirect cost rates; management oversight of funded

activities; and other types of program support, such as quality assurance, quality control, and related activities (42 USC 300ff-28(b)(3)(D)).

- b. Any drug rebates received on drugs purchased from funds provided to establish a program of therapeutics must be used to support the types of activities otherwise eligible for funding under RWHAP Part B, with priority given to activities related to providing therapeutics (42 USC 300ff-26(g)). To assess whether a state or subrecipient is giving priority to activities related to providing therapeutics, the state (or subrecipient) should be able to demonstrate, that, before undertaking any type of activities other than ADAP purchases for medications or insurance that are allowed under paragraph 1. a. above, it (1) has no waiting list for ADAP services; (2) the ADAP formulary includes the required classes of HIV antiretroviral medications and opportunistic infection-related medications; and (3) the financial eligibility to access the ADAP is established at no less than 200 percent of the federal poverty level (the poverty guidelines are available at <http://aspe.hhs.gov/poverty/> and are also published each year in the *Federal Register*).
- c. Rebates may be used for allowable RWHAP Part B services that exceed the recipient's RWHAP Part B implementation work plan. Rebates are not part of the recipient's RWHAP Part B award, and, therefore, are not subject to the 10 percent administrative cost cap nor to the requirement to spend 75 percent on core medical services (see III.G.3.b and h, "Matching, Level of Effort, and Earmarking – Earmarking," below). Rebates can be used to meet both a recipient's state matching and maintenance of effort (MOE) requirements. (42 USC 300ff-26(g) and Policy Clarification Notice #15-04, Utilization and Reporting of Pharmaceutical Rebates, [https://hab.hrsa.gov/sites/default/files/hab/Global/pcn\\_15-04\\_pharmaceutical\\_rebates.pdf](https://hab.hrsa.gov/sites/default/files/hab/Global/pcn_15-04_pharmaceutical_rebates.pdf)).

## 2. *Activities Unallowed*

- a. Funds may not be used to purchase or improve land, or to purchase, construct, or permanently improve (other than minor remodeling) any building or other facility (42 USC 300ff-28(b)(6)).
- b. Funds may not be used to make cash payments to intended recipients of RWHAP services (42 USC 300ff-28(b)(6)) and Ryan White HIV/AIDS Program Services: Eligible Individuals and Allowable Uses of Funds, Policy Clarification Notice #16-02 [https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN\\_16-02Final.pdf](https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN_16-02Final.pdf) ).
- c. Funds may not be used to make payments for any item or service to the extent that payment has been made or can reasonably be expected to be

made for that item or service under any state compensation program, under an insurance policy, or under any federal or state health benefits program (or by an entity that provides health services on a prepaid basis except for a program administered by or providing the services of the Indian Health Service (42 USC 300ff-27(b)(7)(F)).

- d. Funds may not be used for inpatient hospital services, or nursing home or other long-term care facilities (42 USC 300ff-24(c)(3)).
- e. Funds may not be used to pay any costs associated with creation, capitalization, or administration of a liability risk pool (other than those costs paid on behalf of individuals as part of premium contributions to existing liability risk pools) or to pay any amount expended by a state under Title XIX of the Social Security Act (Medicaid) (42 USC 300ff-25(b)).
- f. Funds may not be used to develop materials designed to promote or encourage, directly, intravenous drug use or sexual activity, whether homosexual or heterosexual (42 USC 300ff-84).
- g. Funds may not be used to purchase sterile needles or syringes for the hypodermic injection of any illegal drug (Consolidated Appropriations Act (Pub. L. No. 114-113), 2016, Division H, Title V, Section 520 and subsequent appropriations, as applicable). Other elements of syringe services programs may be allowable if in compliance with applicable HHS and HRSA-specific guidance.
- h. ADAP rebates cannot be shared with other entities including, but not limited to, RWHAP Part A recipients, high-risk insurance pools, Marketplace plans, Medicaid, or any other state or federal program (42 USC 300ff- 31(b)).
- i. International travel.

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

Costs charged to federal funds under this program must comply with the cost principles at 45 CFR part 75, subpart E, and any other requirements or restrictions on the use of federal funding.

## **E. Eligibility**

### **1. Eligibility for Individuals**

To be eligible to receive assistance in the form of therapeutics, an individual must have a medical diagnosis of HIV/AIDS and be (a) a low-income individual (as defined by the state), (b) a resident of the state, and (c) uninsured or underinsured (42 USC 300ff-26(b)).

## 2. Eligibility for Group of Individuals or Area of Service Delivery

A state must use Emerging Communities funding in the geographic area specified as an Emerging Community, as defined in 42 USC 300ff-30(d)—a metropolitan area for which there has been reported to and confirmed by the Centers for Disease Control and Prevention a cumulative total of at least 500, but fewer than 1,000, cases of AIDS during the most recent period of 5 calendar years for which such data are available (42 USC 300ff-32(b)(1) and 300ff-30).

## 3. Eligibility for Subrecipients

- a. To receive funding from the state under a consortium agreement, an applicant consortium must agree to provide, directly or through agreements with other service providers, essential health services and essential support services, and must meet specified application and assurance requirements. These include conducting a needs assessment within the geographic area served and developing a plan (consistent with the state's comprehensive plan required by 42 USC 300ff-27(b)(5)) to meet identified service needs following a consultation process (42 USC 300ff-23(c)(2)).
- b. For consortia otherwise meeting these requirements, the state shall give priority first to consortia that are receiving assistance from HRSA for adult and pediatric HIV-related care demonstration projects and then to any other existing HIV care consortia (42 USC 300ff-23(e)).

## G. Matching, Level of Effort, Earmarking

### 1. Matching

- a. States and territories (excluding Puerto Rico) with greater than one percent of the aggregate number of national cases of HIV/AIDS in the two-year period preceding the federal fiscal year in which the state is applying for a grant must, depending on the number of years in which this threshold requirement has been met, provide matching funds as follows (42 USC 300ff-27(d)):

Year(s) in Which Matching Required	Minimum Percentage of Non-Federal Matching	Ratio of Non-Federal to Federal Expenditures
First	16 2/3	\$1 non-federal/\$5 federal
Second	20	\$1 non-federal/\$4 federal
Third	25	\$1 non-federal/\$3 federal
Fourth and subsequent	33 1/3	\$1 non-federal/\$2 federal

- b. All recipients are subject to a matching requirement for ADAP supplemental funds in an amount equal to \$1 for every \$4 of federal funds

(42 USC 300ff-28(a)(2)(F)(ii)(III)). Those recipients that are required to match the base formula funds may request and receive a waiver from this additional matching requirement.

## **2. Level of Effort**

### **2.1 Level of Effort – *Maintenance of Effort***

The state will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the state for the one-year period preceding the fiscal year for which the state is applying for RWHAP Part B funds (42 USC 300ff-27(b)(7)(E)).

### **2.2 Level of Effort – *Supplement Not Supplant***

Funds awarded under a grant must supplement and not supplant other funds available to the entity for the provision of early intervention services for the fiscal year involved (42 USC 300ff-22(d)(2)(B)).

## **3. Earmarking**

- a. The state may not use more than 10 percent of the amounts received under the grant for planning and evaluation activities (42 USC 300ff-28(b)(2)).
- b. The state may not use more than 10 percent of the amounts received under the grant for administration (42 USC 300ff-28(b)(3)(A)).
- c. A state may not use more than a total of 15 percent of the amounts received for the combined costs for administration, planning and evaluation and clinical quality management (42 USC 300ff-28(b)(4)). States and territories that receive a minimum allotment (between \$50,000 and \$500,000) may expend up to the amount required to support one full-time equivalent employee for any or all of these purposes (42 USC 300ff-28(b)(5)).
- d. The aggregate of expenditures for administrative expenses by subrecipients may not exceed 10 percent of the total amount of grant funds subawarded by the state (without regard to whether particular entities spend more than 10 percent for such purposes) (42 USC 300ff-28(b)(3)(B)).
- e. Unless waived by the secretary, for the purpose of providing health and support services to women, youth, infants, and children with HIV, including treatment measures to prevent the perinatal transmission of HIV, a state shall use for each of these populations not less than the percentage of RWHAP Part B funds in a fiscal year constituted by the ratio of the population involved (women, youth, infants, or children) in the state with AIDS to the general population in the state of individuals with AIDS (42



USC 300ff-22(e)). This information is provided to the state by HRSA with reporting requirements (i.e., annual progress report) as listed on the Notice of Award (NoA). Recipients demonstrate compliance with the WICY expenditure requirement in their annual progress report and may request a waiver as part of the annual progress report.

- f. A state shall use a portion of the funds awarded to establish a program to provide therapeutics to treat HIV/AIDS or prevent the serious deterioration of health arising from HIV/AIDS in eligible individuals, including measures for the prevention and treatment of opportunistic infections. The specific amount for ADAP will be provided in the grant agreement. Of the specific amount in the grant agreement for this purpose, the state may use not more than 5 percent to encourage, support, and enhance adherence to, and compliance with, treatment regimens (including related medical monitoring) unless the secretary (or designee) approves a 10 percent limit (42 USC 300ff-26(c)).
- g. A state shall establish a clinical quality management program to determine whether the services provided under the grant are consistent with the most recent Public Health Service guidelines for the treatment of HIV disease and related opportunistic infection and, as applicable, to develop strategies for bringing these services into conformity with the guidelines. Funds used for this purpose may not exceed the lesser of 5 percent of the amount received under the grant or \$3,000,000 and are not considered administrative expenses for purposes of the limitation under paragraph 3.b above (42 USC 300ff-28(b)(3)(E)).
- h. Unless waived by the secretary, HHS (or designee), not less than 75 percent of the amount remaining after reserving amounts for state administration and a clinical quality management program shall be used to provide core medical services to eligible people with HIV (including services regarding the co-occurring conditions of those individuals) (42 USC 300ff-22(b)).

## **J. Program Income**

- 1. The Notice of Award provides guidance on the use of program income. Generally, the addition method is used for this program; program income may also be used to satisfy all or part of the state matching requirements. Program income must be used for activities described in III.A.1, “Activities Allowed.”
- 2. The terms and conditions of award under the RWHAP Part B regarding program income do not apply to drug rebates. Rather, drug rebates must be used as specified in III.A.1.b and c, “Activities Allowed or Unallowed – Activities Allowed.”

**M. Subrecipient Monitoring**

1. The Department of Health Human Service (HHS) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards (*45 CFR Part 75*) requires pass-through entities: (1) to evaluate each subrecipient's risk of noncompliance in order to determine the appropriate monitoring level; (2) monitor the activities of subrecipient organizations to ensure that the subaward is in compliance with applicable federal statutes and regulations and terms of the subaward; and (3) verify that subrecipients are audited as required under this guidance. Specifically, the grantee must conduct monitoring activities in accordance with sections 75.351 through 75.353 of Subpart D of 45 CFR Part 75.
2. Grantees must ensure that all requirements imposed by the federal government are passed down to subrecipients so that the HHS award is used in accordance with federal statutes, regulations, and the terms and conditions of the award.

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CFDA 93.918 GRANTS TO PROVIDE OUTPATIENT EARLY INTERVENTION SERVICES WITH RESPECT TO HIV DISEASE (RYAN WHITE HIV/AIDS PROGRAM PART C)**

#### **I. PROGRAM OBJECTIVES**

The objective of the Ryan White HIV/AIDS Program (RWHAP) Part C Early Intervention Services (EIS) is to provide outpatient, high-quality, early intervention services and primary care related to the Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS).

#### **II. PROGRAM PROCEDURES**

The Department of Health and Human Services (HHS) administers the RWHAP Part C EIS through the Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau (HAB). Grants are awarded to public and non-profit private entities, including federally qualified health centers under Section 1905(1)(2)(B) of the Social Security Act (42 USC 1396d (1)(2)(B)).

Grants also are awarded to (1) grantees under Section 1001 (regarding family planning) other than states, (2) comprehensive hemophilia diagnostic and treatment centers, (3) rural health clinics, (4) health facilities operated by or pursuant to a contract with the Indian Health Service, (5) community-based organizations, clinics, hospitals, and other health facilities that provide early intervention services to those people with HIV, or (6) non-profit private entities that provide comprehensive primary care services to populations at risk for HIV/AIDS, including faith-based and community-based organizations. Providers must be qualified Medicaid-participating providers unless an exception is granted by HRSA (42 USC 300ff-52(a)(1)(A) through (G) and 42 USC 300ff-52(b)).

The RWHAP Part C EIS enables provision of a comprehensive primary health care and support services in an outpatient setting, including (1) HIV counseling and testing, (2) periodic medical evaluation, clinical and diagnostic services, (3) provision of therapeutic measures for preventing and treating the deterioration of the immune system, and for preventing and treating conditions arising with HIV/AIDS; and (4) referrals to appropriate providers of health care and support services. RWHAP Part C EIS recipients work with their community and public health partners to improve outcomes across the HIV care continuum, so that individuals diagnosed with HIV are linked and engaged in care and started on ART as early as possible.

Minority AIDS Initiative (MAI) funds are provided to recipients based on the percentage of the RWHAP Part C EIS populations served within racial/ethnic minority communities.

Services may be provided directly by the recipient or through contractual agreements with other service providers/subrecipients.

## Source of Governing Requirements

The RWHAP Part C EIS is authorized under Sections 2651 - 2667 of Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. No. 111-87) and is codified at 42 USC 300ff-51 through 300ff-67. The MAI is authorized under Section 2693(b)(2)(C) of the Public Health Service Act (42 USC 300ff-121(b)(2)(C)).

The RWHAP Part C EIS has no specific program regulations.

## Availability of Other Program Information

Further information about the RWHAP Part C EIS is available at <http://www.hab.hrsa.gov/>.

Additional information on allowable uses of funds under the RWHAP Part C EIS is contained in policy notices and standards found at

<http://www.hab.hrsa.gov/manageyourgrant/policiesletters.html>.

## III. COMPLIANCE REQUIREMENTS

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

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

**A. Activities Allowed or Unallowed****1. *Activities Allowed***

- a. Funds may be used for counseling (whether or not associated with HIV testing) and testing for HIV (42 USC 300ff-51(e)(1)(A) and (B) and 42 USC 300ff-62(f)).
- b. Funds may be used to provide clinical and diagnostic services regarding HIV/AIDS and periodic medical evaluations of individuals with HIV. Funds also may be used for providing therapeutic measures for preventing and treating the deterioration of the immune system and related conditions (including STD, hepatitis C, and tuberculosis) (42 USC 300ff- 51(e)(1)(D) and (E)).
- c. Funds may be used to refer people with HIV to providers of health and support services, as appropriate. This includes recipients of funding under the RWHAP Part A and Part B for the provision of health and support services; biomedical research facilities of institutions of higher education that offer experimental treatment for such disease; community- based organizations or other entities that provide such treatment; and, in the case of pregnant women, recipients of funding under RWHAP Part D (42 USC 300ff-51(e)(1)(C) and -51(e)(2)(A-C)).
- d. At least 75 percent of funds must be used for core medical services for an individual with HIV including, the co-occurring conditions of the individual. Core medical services encompass the following services: (1) outpatient and ambulatory health services; (2) AIDS Drug Assistance Program treatments defined under 42 USC 300ff-26; (3) AIDS pharmaceutical assistance; (4) oral healthcare; (5) early intervention services described in 42 USC 300ff-51(e); (6) health insurance premium and cost sharing assistance for low-income individuals in accordance with 42 USC 300ff-15; (7) home healthcare; (8) medical nutrition therapy; (9) hospice services; (10) home and community-based health services as defined under 42 USC 300ff-14(c); (11) mental health services; (12) substance abuse outpatient care; and (13) medical case management, including treatment adherence services (42 USC 300ff-51(b)(1)(A) and - 51(c)).
- e. Funds may be used to pay the costs of providing support services that are needed for people with HIV to achieve their medical outcomes. These services include, but are not limited to, outreach services, non-medical case management, medical transportation, translation, and referrals for healthcare and support services. Support services are subject to approval of the Secretary of HHS or designee (42 USC 300ff-51(b)(1)(B) and 51(d)).

- f. Funds may be used for the establishment of a clinical quality management program to assess the extent to which medical services that are provided to patients are consistent with the most recent Public Health Service guidelines for the treatment of HIV/AIDS and related opportunistic infections, and, as applicable, to develop strategies for ensuring that such services are consistent with the guidelines, and to ensure that improvements in the access to and quality of HIV health services are addressed (42 USC 300ff-64 (g)(5)). Policy Clarification Notice #15-02 <https://hab.hrsa.gov/sites/default/files/hab/Global/CQM-PCN-15-02.pdf>.
- g. Funds may be used for administrative expenses; no more than 10 percent on administrative expenses (42 USC 300ff- 51(b)(1)(C)).

2. *Activities Unallowed*

- a. Funds may not be used to make payments for any item or service to the extent that payment has been made or can reasonably be expected to be made for that item or service under any state compensation program, under an insurance policy (except for a program administered by or providing the services of the Indian Health Service), or under any federal or state health benefits program or by an entity that provides health services on a prepaid basis (42 USC 300ff-64(f)(1)).
- b. Funds may not be awarded to for-profit entities to carry out required early intervention services unless they are the only available providers of quality HIV care in the area (42 USC 300ff-51(e)(3)(A)).
- c. Funds may not be used to fund AIDS programs or to develop materials, designed to promote or encourage, directly, intravenous drug abuse or sexual activity, whether homosexual or heterosexual (42 USC 300ff-84).
- d. Funds may not be used to purchase sterile needles or syringes for the hypodermic injection of any illegal drug (Consolidated Appropriations Act, 2016 (Pub. L. No. 114-113), Division H, Title V, Section 520 and subsequent appropriations, as applicable. Other elements of syringe services programs may be allowable if in compliance with applicable HHS and HRSA-specific guidance.
- e. Funds received under this grant will not be expended for any purpose other than the purposes for which the grant was awarded (42 USC 300ff-64(g)(1)).
- f. Funds may not be used to purchase or improve land or to purchase, construct or make permanent improvement to any building (42 USC 300ff-64(g)(1)).
- g. Payments for clinical research.

- h. Payments for nursing home care.
- i. PrEP or nPEP medications or medical services. As outlined in the June 22, 2016 RWHAP and PrEP program letter, the RWHAP legislation provides grant funds to be used for the care and treatment of PLWH, thus prohibiting the use of RWHAP funds for PrEP medications or related medical services, such as physician visits and laboratory costs. However, RWHAP Part C recipients and subrecipients may provide prevention counseling and information, which should be part of a comprehensive PrEP program.
- j. International travel.
- k. Funds may not be used to make cash payments to intended recipients of RWHAP services (42 USC 300ff-28(b)(6) and Ryan White HIV/AIDS Program Services: Eligible Individuals and Allowable Uses of Funds, Policy Clarification Notice #16-02  
[https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN\\_16-02Final.pdf](https://hab.hrsa.gov/sites/default/files/hab/program-grants-management/ServiceCategoryPCN_16-02Final.pdf).

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

Costs charged to federal funds under this program must comply with the cost principles at 45 CFR part 75, subpart E, and any other requirements or restrictions on the use of federal funding.

## **J. Program Income**

The Notice of Award provides guidance on the use of program income. The addition method is used for RWHAP Part C EIS. Program income must be used for activities described in III.A.1, “Activities Allowed.”

## **L. Reporting**

### **1. Financial Reporting**

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

### **2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable



## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CFDA 93.958 BLOCK GRANTS FOR COMMUNITY MENTAL HEALTH SERVICES**

#### **I. PROGRAM OBJECTIVES**

The objective of the Community Mental Health Services Block Grant (MHBG) program is to provide funds to states and territories to enable them to carry out their respective plans for providing comprehensive community-based mental health services for adults with serious mental illness and children with serious emotional disturbances. To ensure creative and cost-effective delivery of services, states are encouraged to develop solutions to address the specific mental health concerns of their local communities.

#### **II. PROGRAM PROCEDURES**

The Substance Abuse and Mental Health Services Administration (SAMHSA), an operating division of the Department of Health and Human Services (HHS), administers the block grant program. MHBG-funded activities include (1) a comprehensive, community-based system of mental health care for adults who have a serious mental illness and children and youth who have a serious emotional disturbances, including case management, treatment, rehabilitation, employment, housing, education, medical, dental, and other support services that enable individuals to function in the community and reduce the rate of psychiatric hospitalization; (2) outreach for homeless individuals who also suffer from serious mental illness and the development of special services for individuals with serious illness living in rural areas; (3) systemic integration of social, educational, juvenile justice, and substance abuse services with health and mental health services for children with a serious emotional disturbance to ensure that care is appropriate to their multiple needs (including services provided under the Individuals with Disabilities Act); (4) collecting and reporting an estimate of the incidence and prevalence in the state of serious mental illness among adults and serious emotional disturbance among children; and (5) staffing and training for mental health services providers necessary to implement the state plan.

MHBG funds are allocated to the states according to a formula legislated by Congress. States may then distribute these funds to cities, counties, or service providers within their jurisdictions. Funds may only be used for carrying out the state plan, evaluating programs and services carried out under the plan, or planning, administration, and education activities relating to providing services under the plan.

The state must submit to SAMHSA an annual application that includes a plan to meet the community mental health services objectives described above and signed assurances required by the Act. The state plan addresses how the state intends to comply with the various requirements of Title XIX, Part B, subparts I and III of the Public Health Service Act (42 USC 300x) and its program objectives by addressing the five criteria listed in the statute.

#### **Source of Governing Requirements**

This program is authorized under Title XIX, Part B, subparts I and III of the Public Health Service Act (42 USC 300x *et seq.*). Criteria for the state plan may be found at 42 USC 300x-1.

The 45 CFR part 96 provides regulations for the general administrative requirements for the covered block grant programs. These regulations are in lieu of the general administrative requirements included in 45 CFR part 75 (the HHS implementation of 2 CFR part 200). Section 75.202 and sections 75.351 through 75.353 of Subpart D, and Subpart F of 45 CFR 75 are applicable to the MHBG. In addition, states are to administer the MHBG program according to the plans that they submitted to SAMHSA.

States are to use the fiscal policies that apply to their own funds in administering MHBG. Procedures must be adequate to assure the proper disbursement of and accounting for federal funds paid to the grantee, including procedures for monitoring the assistance provided (45 CFR section 96.30).

Under the block grant philosophy, each state is responsible for designing and implementing its own MHBG program, within very broad federal guidelines. States must administer their MHBG program according to their approved plan and any amendments and in conformance with their own implementing rules and policies.

### **Availability of Other Program Information**

SAMHSA published a notice in the *Federal Register* on July 6, 2001 (66 FR 35658) that details approval requirements for non-recurring expense exclusions from maintenance-of-effort calculations. A second SAMHSA *Federal Register* notice, published on November 23, 2001 (66 FR 58746-58747), addresses retroactive application of the non-recurring expense exclusion.

## **III. COMPLIANCE REQUIREMENTS**

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

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

## A. Activities Allowed or Unallowed

### 1. *Activities Allowed*

Services provided with grant funds shall be provided only through appropriate, qualified community programs (which may include community mental health centers, child mental health programs, psychosocial rehabilitation programs, mental health peer support programs and mental health primary consumer-directed programs). Services under the plan will be provided through community mental health centers only if the services are provided as follows:

- a. Services principally to individuals residing in a defined geographic area (service area);
- b. Outpatient services, including specialized outpatient services for children, the elderly, individuals with serious mental illness, and residents of the centers who have been discharged from inpatient treatment at a mental health facility;
- c. Twenty-four-hours-a-day emergency care services;
- d. Day treatment and other partial hospitalization services or psychosocial rehabilitation services; or
- e. Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of such admission (42 USC 300x-2(b) and (c)).

### 2. *Activities Unallowed*

The state shall not use grant funds to:

- a. Provide inpatient hospital services. An inpatient is a person who is formally admitted to the inpatient service of a hospital for observation, care, diagnosis, or treatment;
- b. Make cash payments to intended recipients of health services;
- c. Purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or any other facility, or purchase major medical equipment;
- d. Satisfy any requirement for the expenditure of non-federal funds as a condition for the receipt of federal funding; or
- e. Provide financial assistance to any entity other than a public or non-profit entity. A state is not precluded from entering into a procurement contract for services, since payments under such a contract are not financial assistance to the contractor (42 USC 300x-5(a)).

**B. Allowable Costs/Cost Principles**

As discussed in Appendix I to this Supplement, “Federal Programs Excluded from the A-102 Common Rule and Portions of 2 CFR Part 200,” MHBG is exempt from the provisions of OMB cost principles. State cost principles requirements apply to MHBG (45 CFR section 96.30).

**C. Cash Management**

SAMHSA will make payments at such times and in such amounts to each state from its awards in advance or by way of reimbursement in accordance with section 203 of the Intergovernmental Cooperation Act (42 USC 4213) and Treasury Circular No. 1075 (31 CFR Part 205) (45 CFR section 96.12).

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

**1. Matching**

Not Applicable

**2. Level of Effort**

**2.1 Level of Effort – *Maintenance of Effort***

- a. The state shall for each fiscal year maintain aggregate state expenditures for community mental health services at a level that is not less than the average level of such expenditures maintained by the state for the two state fiscal years preceding the fiscal year of the grant. Expenditures for the two previous fiscal years are reported in the state plan. The secretary may exclude from the

aggregate state expenditures funds appropriated to the principal agency for authorized activities which are of a non-recurring nature and for a specific purpose (42 USC 300x-4(b); *Federal Register*, July 6, 2001 (66 FR 35658), and November 23, 2001 (66 FR 58746-58747), as specified in II, “Program Procedures – Availability of Other Program Information”).

- b. The state shall for each fiscal year expend an amount not less than an amount equal to the amount expended in fiscal year 1994 for systems of integrated services for children with serious emotional disturbance (42 USC 300x-2(a)(1)(C)) (42 USC 300x-2(a)(1)(C)). FY 1994 expenditures are reported in the state plan.

## **2.2 Level of Effort – *Supplement Not Supplant***

Not Applicable

## **3. Earmarking**

- a. The state may not expend more than 5 percent of grant funds for administrative expenses with respect to the grant (42 USC 300x-5(b)).
- b. States must allocate 10 percent of grant funds awarded for FFY 2018 to implement programs showing strong evidence of effectiveness for individuals with a diagnosis of Early Serious Mental Illness or a first episode psychosis only. (Pub. L. No. 114-113 (129 Stat. 2609) and MHBG 10 Percent Set-Aside Guidance February 8, 2016 (<http://www.samhsa.gov/grants/block-grants/resources>)).

## **H. Period of Performance**

Any amounts paid to the state for a fiscal year shall be available for obligation and expenditure until the end of the fiscal year following the fiscal year for which the amounts were paid (42 USC 300x-62).

## **L. Reporting**

### **1. Financial Reporting**

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

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**M. Subrecipient Monitoring**

The state must conduct monitoring activities in accordance with sections 75.351 through 75.353 of Subpart D of 45 CFR 75.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### CFDA 93.959 BLOCK GRANTS FOR PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

#### I. PROGRAM OBJECTIVES

The objective of the Substance Abuse Prevention and Treatment Block Grant (SABG) program is to provide funds to states, territories, and one Indian tribe for the purpose of planning, carrying out and evaluating activities to prevent and treat Substance Abuse (SA) and other related activities as authorized by the statute.

The SABG is the primary tool the federal government uses to fund state SA prevention and treatment programs. While the SABG provides federal support to addiction prevention and treatment services nationally, it empowers the states to design solutions to specific addiction problems that are experienced locally.

#### II. PROGRAM PROCEDURES

The Substance Abuse and Mental Health Services Administration (SAMHSA), an operating division of the Department of Health and Human Services (HHS), administers the SABG program. For purposes of this guidance, the term “state” includes the 50 states, the District of Columbia, American Samoa, Guam, the Marshall Islands, the Federated states of Micronesia, the Commonwealth of the Northern Marianas, Palau, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and the Red Lake Band of Chippewa Indians. The states generally subaward funds for the provision of services to public and non-profit organizations. Service providers may include for-profit organizations, but for-profits may not receive financial assistance.

Examples of SABG activities are:

1. *Alcohol Treatment and Rehabilitation* – Direct services to patients experiencing primary problems for alcohol, such as community outreach, detoxification, outpatient counseling, residential rehabilitation, hospital based care (not inpatient hospital services), abuse monitoring, vocational counseling, case management, central intake, and program administration.
2. *Drug Treatment and Rehabilitation* – Direct services to patients experiencing primary problems with illicit drugs, such as outreach, detoxification, methadone maintenance and detoxification, outpatient counseling, residential rehabilitation, including therapeutic communities, hospital based care (not inpatient hospital services), vocational counseling, case management central intake, and program administration.
3. *Primary Prevention Activities* – Education, counseling, and other activities designed to reduce the risk of substance abuse.

The SABG funds are allocated to the states according to a formula legislated by Congress. States may then distribute these funds to cities, counties, or service providers within their

jurisdictions based on need. Of the SABG funds dispensed to each state annually, Congress has specified that the state will expend not less than 20 percent for programs for individuals who do not require treatment for substance abuse. The programs should (1) educate and counsel the individuals on such abuse; and (2) provide for activities to reduce the risk of such abuse by the individuals. SABG statutory “set asides” were established to fund programs targeting special populations, such as services for substance using pregnant women and women with dependent children, and, in certain “designated states,” for screening for human immunodeficiency virus (HIV).

The submit to SAMHSA for approval, an annual application which includes a state plan for SA prevention and treatment services objectives described above and signed assurances required by the Act and implementing regulations. The entire application, including the plan, must be reviewed by SAMHSA to ensure that all of the requirements of the law and regulations are met.

The state plan addresses how the state intends to comply with the various requirements of Title XIX, Part B, subparts II and III of the Public Health Service Act (42 USC 300x-21-66) and its program objectives and specific allocations by (1) conducting state and local demand and need assessments; (2) establishing statewide prevention and treatment improvement plans with specific multi-year goals for narrowing identified service gaps, implementing training efforts, and fostering coordination among SA treatment, primary health care, and human service agencies; and (3) addressing human resource requirements, clinical standards and identified treatment improvement goals, and ensuring coordination of all health and human services for addicted individuals.

### **Source of Governing Requirements**

This program is authorized under Title XIX, Part B, subparts II and III of the Public Health Service Act (42 USC 300x-21-67). The implementing regulations are published at 45 CFR part 96. Those regulations include general administrative requirements for the covered block grant programs in 45 CFR sections 96.46 through 96.120. Specific SABG requirements are included in 45 CFR sections 96.121 through 96.137. Section 75.202 and sections 75.351 through 75.353 of Subpart D, and Subpart F of 45 CFR 75 are applicable to the SABG. With the exceptions noted, 45 CFR 75.101(d) exempts SABG from the general administrative requirements of 45 CFR part 75.

States are to administer their SABG programs according to the plan that they submitted to SAMHSA. States are to use the fiscal policies that apply to their own funds in administering the SABG. Procedures must be adequate to assure the proper disbursement of and accounting for federal funds paid to the grantee, including procedures for monitoring the assistance provided (45 CFR section 96.30).

### **Availability of Other Program Information**

SAMHSA published a notice in the *Federal Register* on July 6, 2001 (66 FR 35658), that details approval requirements for non-recurring expense exclusions from maintenance-of-effort calculations. A second SAMHSA *Federal Register* notice, published on November 23, 2001 (66 FR 58746-58747), addresses retroactive application of the non-recurring expense exclusion.



### III. COMPLIANCE REQUIREMENTS

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

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

#### A. Activities Allowed or Unallowed

##### 1. *Activities Allowed*

- a. SABG funds may be expended to provide for a wide range of activities to prevent and treat substance abuse and may be expended to deal with the abuse of alcohol, the use or abuse of illicit drugs, the abuse of licit drugs, and the use or abuse of tobacco products as identified in the Overview section above (sections 1921 to 1954 of the PHS Act, 42 USC 300x-21--300x-35; 58 FR 17062 No. 60, March 1993).
- b. The state may use grant funds for loans from a revolving loan fund for provision of housing in which individuals recovering from alcohol and drug abuse may reside in groups. Individual loans may not exceed \$4,000 (45 CFR section 96.129).

## 2. *Activities Unallowed*

- a. The state shall not use grant funds to provide inpatient hospital services except when it is determined by a physician that (a) the primary diagnosis of the individual is SA and the physician certifies this fact; (b) the individual cannot be safely treated in a community based non-hospital, residential treatment program; (c) the service can reasonably be expected to improve an individual's condition or level of functioning; and (d) the hospital based SA program follows national standards of SA professional practice. Additionally, the daily rate of payment provided to the hospital for providing the services to the individual cannot exceed the comparable daily rate provided for community based non-hospital residential programs of treatment for SA and the grant may be expended for such services only to the extent that it is medically necessary (i.e., only for those days that the patient cannot be safely treated in a residential community based program) (42 USC 300x-31(a) and (b); 45 CFR sections 96.135(a)(1) and (c)).
- b. Grant funds shall not be used to make cash payments to intended recipients of health services (42 USC 300x-31(a); 45 CFR section 96.135(a)(2)).
- c. Grant funds shall not be used to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or any other facility, or purchase major medical equipment. The secretary may provide a waiver of the restriction for the construction of a new facility or rehabilitation of an existing facility, but not for land acquisition (42 USC 300x-31(a); 45 CFR sections 96.135(a)(3) and (d)).
- d. The state shall not use grant funds to satisfy any requirement for the expenditure of non-federal funds as a condition for the receipt of federal funding (42 USC 300x-31(a); 45 CFR section 96.135(a)(4)).
- e. Grant funds may not be used to provide financial assistance (i.e., a subgrant) to any entity other than a public or non-profit entity. A state is not precluded from entering into a procurement contract for services, since payments under such a contract are not financial assistance to the contractor (42 USC 300x-31(a); 45 CFR section 96.135 (a)(5)).
- f. The state shall not expend grant funds to purchase sterile needles or syringes for the hypodermic injection of any illegal drug, provide, that such limitation does not apply to the use of funds for elements of a program other than making such purchases if the relevant state or local health department, in consultation with the Centers for Disease Control and Prevention, determines that the state or local jurisdiction, as applicable, is experiencing, or is at risk for, a significant increase in hepatitis infections or an HIV outbreak due to injection drug use, and such program is operating in accordance with state and local law (42 USC 300ee-5; 45 CFR section 96.135 (a)(6); and Pub. L. No. 114-113, Division H, Title V, Section 520).

- g. Grant funds may not be used to enforce state laws regarding sale of tobacco products to individuals under the age of 18, except that grant funds may be expended from the primary prevention set-aside of SABG under 45 CFR section 96.124(b)(1) for carrying out the administrative aspects of the requirements such as the development of the sample design and the conducting of the inspections (45 CFR section 96.130 (j)).
- h. No funds provided directly from SAMHSA or the relevant state or local government to organizations participating in applicable programs may be expended for inherently religious activities, such as worship, religious instruction, or proselytization (42 USC 300x-65 and 42 USC 290kk; 42 CFR section 54.4).

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

As specified in Appendix I to this Supplement, “Federal Programs Excluded from the A-102 Common Rule and Portions of 2 CFR Part 200,” SABG is exempt from the provisions of the OMB cost principles. State cost principles requirements apply to SABG.

## **C. Cash Management**

SAMHSA will make payments at such times and in such amounts to each state from its awards in advance or by way of reimbursement in accordance with section 203 of the Intergovernmental Cooperation Act (42 U.S.C. 4213) and Treasury Circular No. 1075 (31 CFR Part 205). (45 CFR section 96.12).

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

### **1. Matching**

Not Applicable

### **2. Level of Effort**

#### **2.1 Level of Effort – *Maintenance of Effort***

- a. The state shall for each fiscal year maintain aggregate state expenditures for authorized activities by the principal agency at a level that is not less than the average level of such expenditures maintained by the state for the two state fiscal years preceding the fiscal year for which the state is applying for the grant. The “principal agency” is defined as the single state agency responsible for planning, carrying out and evaluating activities to prevent and treat SA and related activities. The secretary may exclude from the aggregate state expenditures funds appropriated to the principal agency for authorized activities which are of a non-recurring nature and for a specific purpose (42 USC 300x-30; 45 CFR

sections 96.121 and 96.134; and *Federal Register*, July 6, 2001 (66 FR 35658), and November 23, 2001 (66 FR 58746-58747), as specified in II, “Program Procedures – Availability of Other Program Information”).

- b. The state must maintain expenditures at not less than the calculated fiscal year 1994 base amount for SA treatment services for pregnant women and women with dependent children. The fiscal year 1994 base amount was reported in the state’s fiscal year 1995 application (42 USC 300x-27; 45 CFR section 96.124(c)).
- c. Section 8002(c)(3) of the 21<sup>st</sup> Century Cures Act (P.L. 114-255 repealed section 1924(d) of Title XIX, Part B, Subpart II of the Public Health Service Act (42 U.S.C. 300x-24(d)). State and jurisdictions are no longer required to demonstrate compliance with the maintenance of effort requirement regarding tuberculosis and human immunodeficiency virus.

## 2.2 Level of Effort – *Supplement Not Supplant*

- a. The Block Grant will not be used to supplant state funding of alcohol and other drug prevention and treatment programs (45 CFR section 96.123(a)(10)).

## 3. Earmarking

- a. The state shall expend not less than 20 percent of SABG for primary prevention programs for individuals who do not require treatment of SA. The programs should educate and counsel the individuals on such abuse and provide for activities to reduce the risk of such abuse by the individuals (42 USC 300x-22; 45 CFR sections 96.124 (b)(1) and 96.125).
- b. Designated states, i.e., any state whose cases of Acquired Immunodeficiency Syndrome (AIDS) is ten or more per 100,000 individuals (as indicated by the number of such cases reported to and confirmed by the Centers for Disease Control and Prevention for the most recent calendar year for which data are available), shall expend not less than 2 percent and not more than 5 percent of the award amount to carry out one or more projects to make available to individuals early intervention services for HIV disease (EIS HIV) at the sites where the individuals are undergoing SA treatment. If the state carries out two or more projects, the state will carry out one such project in a rural area of the state unless the Secretary waives the requirement (42 USC 300x-24; 45 CFR section 96.128(a)(1), (b), and (d)). **Note:** The applicable percentage is based on the percent change in a current year allotment to the base year allotment under the Alcohol, Drug Abuse and Mental Health Services (ADMS) Block Grant. Any “designated state” whose percentage

change in allotment is greater than 5 percent is required to obligate and expend 5 percent of the SABG allotment for the applicable federal fiscal year (FFY) to establish one or more projects designed to provide EIS HIV at the site(s) at which individuals are receiving SA treatment.

In FFY 2011, SAMHSA amended the EIS HIV program policy to allow states that were previously considered a “designated state” during any of the three prior FFYs for which a state was applying for a grant and whose AIDS case rates dropped below the AIDS case rate threshold, to opt to continue to set aside 5 percent of the award amount for EIS HIV. Such states are authorized to obligate and expend 5 percent of SABG funds for EIS HIV in accordance with section 1924(b)(4) and 45 CFR section 96.128(a)(2).

- c. The state may not expend more than 5 percent of the grant to pay the costs of administering the grant (42 USC 300x-31; 45 CFR section 96.135 (b)(1)).
- d. The state may not expend grant funds for providing treatment services in penal or correctional institutions in an amount more than that expended for such programs by the state for fiscal year 1991 (42 USC 300x-31; 45 CFR section 96.135(b)(2)).

## **H. Period of Performance**

Any amounts awarded to the state for a fiscal year shall be available for obligation and expenditure until the end of the fiscal year following the fiscal year for which the amounts were awarded (42 USC 300x-62).

## **L. Reporting**

### **1. Financial Reporting**

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

### **2. Performance Reporting**

Not Applicable

### **3. Special Reporting**

Not Applicable

**M. Subrecipient Monitoring**

The state must conduct monitoring activities in accordance with sections 75.351 through 75.353 of Subpart D of 45 CFR 75.

**IV. OTHER INFORMATION**

As described in Part 4, Social Services Block Grant (SSBG) program (CFDA 93.667), III.A, “Activities Allowed or Unallowed,” a state may transfer up to 10 percent of its annual allotment under SSBG to this and other specified block grant programs.

Amounts transferred into this program are subject to the requirements of this program when expended and should be included in the audit universe and total expenditures of this program when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amounts transferred in should be shown as expenditures of this program when such amounts are expended.

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CFDA 93.994 MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT TO THE STATES**

#### **I. PROGRAM OBJECTIVES**

The objective of the program of grants to states under the Maternal and Child Health (MCH) Block Grant program is to provide funds to the 50 states, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, the Federated States of Micronesia, Palau, the Marshall Islands, and the Northern Marianas (States) for improvement of the health of all mothers and children consistent with applicable health status goals and national health objectives established under the Social Security Act.

Specifically, MCH Block Grants are intended to (1) provide and ensure mothers and children (especially those with low income or limited availability of services) access to quality maternal and child health services; (2) reduce infant mortality and the incidence of preventable diseases and disabling conditions among children; (3) reduce the need for inpatient and long-term care services; (4) increase the number of children appropriately immunized against disease and the number of low-income children receiving health assessments and follow-up diagnostic and treatment services; (5) promote the health of mothers and infants by providing prenatal, delivery, and postpartum care for low-income, at-risk pregnant women; (6) promote the health of children by providing preventive and primary care services for low-income children; (7) provide rehabilitation services for blind and disabled individuals under 16 years of age receiving benefits under Title XVI of the Social Security Act (Supplemental Security Income) to the extent medical assistance for such services is not provided under Title XIX (Medicaid); and (8) provide and promote family-centered, community-based, coordinated care for children with special health care needs and to facilitate the development of community-based systems of services for those children and their families.

#### **II. PROGRAM PROCEDURES**

The MCH Block Grant program was created by the Omnibus Budget Reconciliation Act (OBRA) of 1981. Under that legislation, a number of categorical grants programs were consolidated into the single MCH Block Grant program. These were maternal and child health services for children with special health care needs; supplemental security income for children with disabilities; lead-based paint poisoning prevention programs; genetic disease programs; sudden infant death syndrome programs; and adolescent pregnancy grants. Extensive amendments to the authorizing statute in 1989 increased state programmatic and fiscal accountability under the program. These include requirements for States to define health status measures and to develop measurable objectives for program efforts as well as to report progress on key maternal and child health indicators. The program is administered by the Division of State and Community Health, Maternal and Child Health Bureau (MCHB), Health Resources and Services Administration (HRSA), a component of the Department of Health and Human Services (HHS). MCH Block Grant funds are awarded to States in accordance with a pre-established formula after submission to and approval of their applications by HRSA. The application addresses how the state plans to implement prioritized tasks based on a statewide

needs assessment (required to be conducted every five years) for all mothers and children, including those with special health care needs. The state health agency is responsible for overall program administration according to its approved plan but services may be carried out by the recipient or by local non-profit agencies that are funded in accordance with an allocation methodology determined by the recipient (and approved by HRSA).

### Source of Governing Requirements

The MCH Block Grant program is authorized under the 1981 Omnibus Budget Reconciliation Act, as amended, and is codified at 42 USC 701 through 709. The implementing regulations for this and other HHS block grant programs are published at 45 CFR part 96. Those regulations include both specific requirements and general administrative requirements for the covered block grant programs in lieu of 45 CFR part 75 (the HHS implementation of 2 CFR part 200).

### Availability of Other Program Information

Further information about this program is available at <http://www.mchb.hrsa.gov/>.

## III. COMPLIANCE REQUIREMENTS

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

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



**A. Activities Allowed or Unallowed****1. *Activities Allowed***

- a. Funds may be used to provide health services and related activities, including planning, administration, education, and evaluation (42 USC 704(a)).
- b. Funds may be used to purchase technical assistance from public or private entities if required to develop, implement, or administer the MCH Block Grant (42 USC 704(c)).
- c. Funds may be used for salaries and other related expenses of National Health Service Corps personnel assigned to the state (42 USC 704(a)).
- d. Funds may be used to continue funding of special projects in the state funded under Title V of the Social Security Act prior to the enactment of the MCH Block Grant program on August 31, 1981 (42 USC 705(a)(5)(C)(i)).

**2. *Activities Unallowed***

- a. Funds may not be used to purchase or improve land, to purchase, construct, or permanently improve buildings or facilities (other than minor remodeling), or to purchase major medical equipment unless a waiver has been granted by HRSA (42 USC 704(b)(3)).
- b. Funds may not be used to make cash payments to intended recipients of services (42 USC 704(b)(2)).
- c. Funds may not be provided for research or training to any entity other than a public or non-profit private entity (42 USC 704(b)(5)).
- d. Funds may not be used for inpatient services, other than for children with special health care needs or high-risk pregnant women and infants or other inpatient services approved by the Associate Administrator for Maternal and Child Health (42 USC 704(b)(1)). Infants are defined as persons less than one year of age (42 USC 706(a)(2)(E)).
- e. Funds may not be used to make payments for any item or service (other than an emergency item or service) furnished by an individual or entity excluded under Titles V, XVIII (Medicare), XIX (Medicaid), or XX (Social Services Block Grant) of the Social Security Act (42 USC 704(b)(6)).
- f. MCH Block Grant funds may not be transferred to other block grant programs (42 USC 702(a)(3) and 705(a)(5)(B)).

**B. Allowable Costs/Cost Principles**

The MCH Block Grant program is exempt from the provisions of the OMB cost principles. State cost principles requirements apply to the MCH Block Grant program.

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

For every four dollars of federal funds expended, States must match three dollars of non-federal funds (42 USC 703(a)).

**2. Level of Effort****2.1. Level of Effort – *Maintenance of Effort***

The state must maintain the level of funds provided solely by the state for maternal and child health programs at a level at least equal to the level provided in FY 1989 (42 USC 705(a)(4)).

**2.2. Level of Effort – *Supplement Not Supplant***

Not Applicable

**3. Earmarking**

- a. Unless a lesser percentage is established in the state's notice of award for a given fiscal year, the state must use at least 30 percent of payment amounts for preventive and primary care services for children (42 USC 705(a)(3)(A)).
- b. Unless a lesser percentage is established in the state's notice of award for a given fiscal year, the state must use at least 30 percent of payment amounts for services for children with special health care needs (42 USC 705(a)(3)(B)).
- c. A state may not use more than 10 percent of allotted funds for administrative expenses (42 USC 704(d)).

**H. Period of Performance**

Funds available to States from their allotment for any fiscal year are available for obligation by the state in that fiscal year or in the succeeding fiscal year. No payment may be made to a state from allotments for a fiscal year for expenditures made after the end of the following fiscal year (42 USC 703(b)).

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

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

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

*Maternal and Child Health Services Block Grant Application/Annual Report (OMB No. 0915-0172)* – The state must submit an annual report by July 15 of each year (at the time it submits the annual application). The reporting forms and instructions are contained in a document entitled “Guidance and Forms for the Title V Application/Annual Report.” Reports are prepared electronically

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

- 1. *Form 2* – MCH Budget/Expenditure Details
- 2. *Form 3a* – Budget and Expenditure Details by Types of Individuals Served
- 3. *Form 3b* – Budget and Expenditure Details by Types of Services
- 4. *Form 4* – Number and Percentage of Newborns and Others Screened, Cases Confirmed and Treated
- 5. *Form 5a* – Count of Individuals Served By Title V
- 6. *Form 5b* – Total Percentage of Populations Served by Title V
- 7. *Form 6* – Deliveries and Infants Served by Title V and Entitled to Benefits under Title XIX

#### **IV. OTHER INFORMATION**

Federal funds from other block grant programs (e.g., Social Services Block Grant (CFDA 93.667) and Preventive Health and Health Services Block Grant (CFDA 93.991)) may be transferred into the MCH Block Grant program. MCH Block Grant funds, however, may not be transferred to other block grant programs (42 USC 702(a)(3) and 705(a)(5)(B)). Funds transferred into the MCH Block Grant are subject to the requirements of this program when expended and should be included in the audit universe and total expenditures of this program when determining Type A programs. On the Schedule of Expenditures of Federal Awards, the amounts transferred in should be shown as expenditures of this program when such amounts are expended.