The rule would not have required dealers to offer any warranties on used cars sold, but it would have required that dealers who chose to offer written warranties disclose the basic scope and terms of the warranty coverage provided. Dealers would not have been require to inspect vehicles under the rule, but dealers who were aware of certain specific defects in the car at the time of sale would have been required to disclose their existence.

The rule and accompanying Statement of Basis and Purpose and Regulatory Analysis were published in the **Federal Register** on August 14, 1981. The promulgation date for the rule was August 18, 1981. The Commission submitted the rule to Congress for review under the provisions of the FTC Improvements Act of 1980 on September 9, 1981. Because the required 90 legislative day review period did not expire before Congress adjourned in 1981, the Commission resubmitted the rule on January 28, 1982 for another 90 day review period. The rule was considered by Congress and was vetoed on May 26, 1982. The Commission has taken the rule under consideration in accordance with Section 21(c) of the FTC Improvements Act of 1980, 15 U.S.C. § 57a-1(c) (Supp. IV 1980). Consumers Union has filed a lawsuit challenging the constitutionality of the legislative veto of this rule and is seeking a court order that the Rule become effective. *Consumers Union of U.S., Inc. and Public Citizen, Inc.* v. *FTC et al.*, No. 82-1512 (D. D.C.).

Objectives

The rule was designed to define and prevent deceptive practices in the sale of used cars by dealers that may result in substantial consumer injury. These deceptive practices include oral misrepresentations by dealers about warranty coverage (e.g., misrepresentation that a warranty is offered or of the terms of a warranty, failures to disclose the meaning of warranties and warranty disclaimers prior to sale) and oral misrepresentations about the mechanical condition of used cars (e.g., false claims about condition, failures to disclose known defects, claims about condition made without a reasonable basis).

Legal Authority

Federal Trade Commission Act, §§ 5, and 18, 15 U.S.C. §§ 45 and 57(a).
Magnuson-Moss Warranty Act § 109(b), 15 U.S.C. § 2309(b).

Timing

Under consideration by the Commission following disapproval of the Rule by Congress.

Responsible Person

Susan M. Liss, Division of Marketing Practices, Bureau of Consumer Protection, Washington, D.C. 20580, (202) 523-1670.

By direction of the Commission.

Carol M. Thomas,
Secretary.

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federal register

Tuesday
July 6, 1982

Part III

Department of Health and Human Services

Office of the Secretary

Block Grant Programs; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 16, 74, and 96

Block Grant Programs

AGENCY: Office of the Secretary, HHS.

ACTION: Final rules.

SUMMARY: These rules implement seven block grant programs established by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). The block grants replace a large number of programs now administered by the Federal Government, transfer primary responsibility for their administration to the States, and confer substantial discretion on the States as to use of the block grant funds.

DATES: These rules are effective July 6, 1982.

FOR FURTHER INFORMATION CONTACT:

The following individuals can provide additional information on the block grants indicated:

Community services: Sandra Lichty, Director, Office of State and Project Assistance, Office of Community Services, 1200 19th Street, N.W., Washington, D.C. 20506, (202) 254-5590.

Preventive health and health services: For technical assistance: Tom G. Ortiz, Assistant to the Director for Field Activities, Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, (404) 329-3850.

For fiscal and grants management assistance: Leo A. Sanders, Chief, Grants Management Branch, Centers for Disease Control, 255 E. Paces Ferry Road, N.W., Room 107A, Atlanta, Georgia 30305, (404) 262-6576.

Alcohol and drug abuse and mental health services: Richard A. Millstein, Associate Administrator for Program Planning and Coordination, Alcohol, Drug Abuse and Mental Health Administration, 5600 Fishers Lane, Room 13-C-05, Rockville, Maryland 20857, (301) 443-4564.

Maternal and child health services and primary care: James Corrigan, Associate Director, Bureau of Community Health Services, 5600 Fishers Lane, Room 7-05, Rockville, Maryland 20857, (301) 443-2380.

Social services: Michio Suzuki, Deputy Director, Office of Program Coordination and Review, Office of Human Development Services, 200 Independence Avenue, S.W., Room 306E, Washington, D.C. 20201, (202) 245-7027.

Low-income home energy assistance: Norman Thompson, Director, Office of Energy Assistance, Transpoint Building, 2100 2nd Street, SW., Washington, D.C. 20201, (202) 245-2051.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) ("the Act") established seven block grant programs to be administered by the Secretary of Health and Human Services:

(1) The community services block grant was established by sections 671-683 of the Act, 42 U.S.C. 9901-12, and replaced the following programs that were administered by the Community Services Administration under the Economic Opportunity Act of 1964:

Community Action/Local Initiatives
Senior Opportunities and Services
Community Food and Nutrition

(2) Section 901 of the Act amended the Public Health Service Act by adding a new Title XIX, which contains three block grants. The preventive health and health services block grant established by section 901, 42 U.S.C. 300w-300w-8, replaces the following categorical grant programs:

Rodent Control
Fluoridation
High Blood Pressure
Health Incentive
Home Health Services and Training
Emergency Medical Services
Risk Reduction/Health Education
Rape Crisis

(3) The second block grant established by section 901 is the alcohol and drug abuse and mental health services block grant, 42 U.S.C. 300x-300x-9, which replaces the following programs:

Alcoholism State Formula Grants
Alcohol Abuse and Alcoholism Project Grants and Contracts
Special Grants for Uniform Alcoholism Intoxication and Treatment Act
Drug Abuse State Formula Grants
Drug Abuse Project Grants and Contracts
Mental Health Services

(4) The third block grant established by section 901 is the primary care block grant, 42 U.S.C. 300y-300y-10, which replaced the following programs:

Community Health Centers
Primary Care Research and Demonstrations

(5) Section 2192 of the Act amended Title V of the Social Security Act, 42 U.S.C. 701-09, to establish a maternal and child health services block grant. This block grant replaces the following programs:

Maternal and Child Health
Crippled Children's Services
SSI Disabled Children
Hemophilia
Sudden Infant Death Syndrome
Lead-Based Paint Poisoning Prevention
Genetic Diseases
Adolescent Pregnancy

(6) Section 2352 of the Act amended Title XX of the Social Security Act, 42 U.S.C. 1397-1397f, to establish a social services block grant.

(7) A low-income home energy assistance program is authorized by sections 2601-2611 of the Act, 42 U.S.C. 8621-29, to replace the Home Energy Assistance Act of 1980.

The Secretary has determined that the Department should implement the block grant programs in a manner that is fully consistent with the congressional intent to enlarge the States' ability to control use of the funds involved. Accordingly, to the extent possible, we will not burden the States' administration of the programs with definitions of permissible and prohibited activities, procedural rules, paperwork and recordkeeping requirements, or other regulatory provisions. The States will, for the most part, be subject only to the statutory requirements, and the Department will carry out its functions with due regard for the limited nature of the role that Congress has assigned to us.

Interim final regulations to implement the block grants were published in the **Federal Register** on October 1, 1981 (46 FR 48582), and a 60-day comment period was provided. Based on our evaluation of the comments received and on initial implementation of the block grants, the regulations, revised as appropriate, are now being made final. The provisions of the regulations are discussed below, together with the comments that were received.

Transition to State Operation

Timing of Transition

States became eligible to receive funds under six of the seven block grants beginning October 1, 1981. The exception is the primary care block grant, which does not become effective until October 1, 1982.

Of the six block grants that became operative in fiscal year 1982, four are subject to transition provisions that permit a State to initiate operation under the block grants on October 1, 1981, or at the beginning of any subsequent quarter (January 1, April 1, or July 1, 1982). The four block grant programs subject to these transition provisions are community services, preventive health and health services, alcohol and drug abuse and mental health services, and maternal and child health services. During the period that a State is not obtaining funds under the block grants, the Department will administer the existing programs. The transition period is fiscal year 1982 only; the Department has no authority to award grants under the existing programs replaced by these four block grants after September 30, 1982.

A State must assume operation of a block grant in its entirety. A State may not assume control over only a portion of the block grant while requesting the Department to operate some of the programs that Congress has replaced with that block grant.

The social services and low-income home energy assistance block grants are not subject to the transition provisions in section 1743 of the Act because they do not come within the provisions of section 1741(b) of the Act. That section limits application of the transition provisions to funds that previously went to local governments or other eligible entities and in the future will go directly to the States. Since the social services and low-income home energy assistance funds previously went directly to the States, no transition is provided for. The two programs became effective on October 1, 1981. The regulations have been revised to state explicitly in § 96.110 that these two programs are not subject to the transition provisions.

Section 682(b) of the Act required States to notify the Department prior to October 1, 1981, if they did not intend to seek community services block grant funds for the quarter beginning October 1 but instead desired the Secretary to operate the programs. Similar notice is required 30 days prior to the beginning of each subsequent quarter. If a State does not notify the Department as to whether it desires to obtain block grant funds or to have the Department administer the programs during the quarter, we will consider the State to have requested the Department to operate the programs. There is no indication in the Act or its legislative history that Congress intended the programs to terminate if a State failed to notify the Secretary as to its desires, and the Department will therefore continue to operate the programs until otherwise advised by the State or until the end of fiscal year 1982.

A comment suggested that States should be allowed a one-year transition period for the social services and low-income home energy assistance block grants. Such a transition is, however, not permissible. The Act repealed the Home Energy Assistance Act of 1980 and revised Title XX of the Social Security Act, relating to social services, as of October 1, 1981. As noted above, the social services and low-income home energy assistance block grants are not subject to the transition provision in section 1743 of the Act, which is the only authority under which the Department could continue to operate the repealed programs.

In light of our determination that section 1741 does not apply to the social services and low-income home energy assistance programs, several States asked whether the programs were also exempt from the requirements of sections 1742, 1744, and 1745 in Title XVII of the Act, which relate to reports and public hearings, access to records by the Comptroller General, and State audits. Similar inquiries were received with respect to the primary care block grant. We conclude that sections 1741, 1742, 1743, and 1745 do not apply to the social services and low-income home energy assistance programs since, as explained above, they are not covered by the definition in section 1741. Section 1744 (access to records by the Comptroller General) applies by its terms to all grant programs established or provided for by the Act and thus applies to the social services and low-income home energy assistance programs. None of the provisions in Title XVII applies to the primary care and maternal and child health services block grants because of the exemptions in section 1932 of the Public Health Service Act and section 2194(d) of the Omnibus Budget Reconciliation Act, respectively. A new § 96.16 has been added to the regulations to clarify the applicability of these various provisions.

A consumer group suggested that States that do not apply for block funds should be required to publish a public notice to that effect. We decline, however, to exceed the statutory requirements by regulating the application process unnecessarily. Since public notice is required when a State is developing its block grant applications, the absence of such notice indicates that the State has not yet applied for the block grants.

A comment suggested that, to facilitate planning for expenditure of block grant funds, the Department should identify, by States, all categorical grantees whose programs will be included in a block grant. Upon request, we are providing such information to the States on an informal basis. The individuals listed at the beginning of this preamble, or regional offices of the Department, can identify the categorical grantees in each State and provide information regarding their status for any State that desires such information.

Policies During Continued Federal Operation

With respect to the four block grants subject to the transition provisions, the Department will operate the programs replaced by each block grant generally in accordance with past policies until a State qualifies for the block grant. Renewal grants may be made to current grantees as their grants expire during the course of fiscal year 1982. If such grants are made, they will ordinarily cover the same period of the grantee's operation as has been the practice (but not to exceed one year), although the amount of the grant will normally be reduced because of the reduced funds available. In some cases, awards will be made for less than the ordinary period where we receive State assurances of continued support for grantees funded by the Department under transition provisions after States assume responsibility for administering the program.

A comment suggested that the Department adopt a flexible renewal schedule for categorical grantees during the transition period to allow transfer to the States of the maximum amount of funds possible. Rather than renewing categorical grants for a full year, the comment suggested that a categorical grant be renewed only until the date that the State in which the grantee is located has indicated that it will assume control of the block. We are not adopting this suggestion because a general policy of shortened renewal periods would be inconsistent with congressional intent, as expressed in the Conference Report, that the Department should continue to operate the categorical programs in accordance with previous policies. (H.R. Rep. No. 97-208, 97th Cong., 1st Sess. 923 (1981).) We note, however, that under section 2194(b)(2)(A) of the Act any grant or contract entered into by the Department pursuant to the authority of Title V of the Social Security Act (consolidated health programs for maternal and child health) may be terminated by the State upon three months' notice.

The 60-day consultation and State review process set forth in Office of Management and Budget Circular A-95 (41 FR 2052) will continue to be used for the Department's administration of transition period grants. Also, all awards will be made from fiscal year 1982 funds. Thus, even though a grantee may in the third quarter of fiscal year 1982 be awarded sufficient funds for one year's operation, such funds would not reduce the allotment of fiscal year 1983 funds available to the State. The

Department will remain responsible for monitoring and auditing all awards made by it even after the State has begun receiving funds under the block grant involved.

Current regulations governing the programs replaced by the block grants, including regulations published by the Community Services Administration in the **Federal Register** on August 31, 1981 (46 FR 43690), as corrected on September 3, 1981 (46 FR 44189), will remain in effect for the transition period pursuant to § 96.111 of the regulations. Federal requirements with respect to some of these programs were reduced on October 1, 1981 (46 FR 48593).

Application Process

Required Submissions

The Act requires a State to make an annual submission to the Secretary with respect to each block grant prior to receiving funds. The Secretary is not prescribing any particular format for the submission or elaborating its contents beyond what is specified in the Act. Each State should simply insure that its submission satisfies the statutory requirements.

Comments objected to the fact that the regulations do not require detailed and uniform submissions. The comments suggested that a wide range of information should be required of the States for each block grant, such as a comprehensive State spending plan. Other suggestions for required submissions included an affirmative action plan for filling any jobs generated by the block grant programs, eligibility requirements and fee schedules for clients, descriptions and "linkages" with other block grant and human service programs, and reports of actual services delivered to clients.

We have not prescribed any additional requirements in response to these comments. The block grant statutes themselves establish the contents of the State submissions. For all but one of the block grants, the submission consists of an application containing specified assurances and (for the community services and low-income home energy assistance block grants) a plan describing how the State will carry out the assurances or (for the health-related block grants) a description of the intended uses of the funds. The social services block grant requires only a report on intended uses of the funds. We do not believe that any need for additional material in the applications has been demonstrated.

In submitting their applications, a number of States asked whether the certifications required by the Act to be made by a State's chief executive officer could be made by an official administering the program. We conclude that the chief executive officer of each State must personally make the certifications required by the community services, primary care, preventive health and health services, alcohol and drug abuse and mental health services, and low-income home energy assistance block grant statutes, and the regulations have been revised accordingly. We believe that Congress, in referring expressly to the chief executive officer, intended to require personal assurances, since some of the assurances (such as cooperation with Federal investigations) could involve a number of State agencies. The regulations also allow the certification to be made by an individual authorized to do so by the chief executive officer. Such authorization must include power to make all the required assurances and not simply authority to administer the program. The submissions required by the social services and maternal and child health services block grants may be made by any official authorized under State law to make such submissions on behalf of the State, since the statutes do not refer to any particular official.

A State requested that the Department establish definite application criteria to preclude arbitrary evaluation of the submissions by Federal officials. We do not believe that evaluation criteria are necessary. Since States by statute have wide discretion in their use of the funds, the Department will review the submissions only to determine that they are complete and in accordance with statutory requirements for applications. Funds will be made available to any State filing a complete submission.

Several States asked whether the requirements of OMB Circular A-95 for gubernatorial review of state plans or a project notification and review process by State and areawide clearinghouses would apply to the block grants. OMB has not made the block grant programs subject to Circular A-95 for State administration. If a State wishes to follow the circular, it may do so voluntarily.

Section 1742(a) of the Act requires the States to prepare an annual report on the proposed use of block grant funds containing specified information. We interpret this section as identifying information that a State is to include in the plan required to be submitted with respect to the community services block grant and in the description of the intended uses of funds required with respect to the preventive health and health services and alcohol and drug abuse and mental health services block grants. A service organization noted that the specific application requirements of section 1742 were not carried forward into the regulations. Section 96.10 of the regulations refers to but does not repeat the requirements of section 1742. This approach is consistent with the general format of the regulations, in which we have not set forth statutory provisions verbatim.

Public Participation

The Act requires the States to submit the various plans and descriptions of intended uses of block grant funds for public comment. The manner in which a State obtains public comment is at the State's discretion so long as statutory requirements are met. Opportunity for public comment must be offered before the plan or description will be considered complete.

In addition to these general public participation requirements, the Act also requires the States to conduct public hearings on the proposed use and distribution of funds under the community services, preventive health and health services, alcohol and drug abuse and mental health services, primary care, and low-income home energy assistance block grants. The hearings must be conducted by the State legislature, except that the hearings with respect to the low-income home energy assistance block grant may be conducted by any unit of the State government. The manner in which these hearings are conducted is in the State's discretion. No hearings are required for a State to receive its first year's allotments. Although section 1742(c) of the Act establishes a general requirement for public hearings during the first year for block grants, that provision is superseded by the specific provisions elsewhere in the Act, as is reflected in § 96.16 of the regulations. Thus the first year is exempted from the hearing requirement for the preventive health and health services, alcohol and drug abuse and mental health services, and primary care block grants by sections 1905(b), 1915(b), and 1927(b) of the Public Health Service Act, respectively; and for the community services block grant and low income home energy assistance program by sections 675(b) and 2605(a)(2) of the Omnibus Budget Reconciliation Act, respectively. This interpretation was upheld (with respect to the community services block grant) by the court in *South Eastern Human Development Corporation v. Schweiker*, No. 81-3072 (D.S.D. Jan. 18, 1982).

Comments criticized exemption of the social services, primary care, and maternal and child health services block grants from the public hearing requirements of section 1742(c) of the Act. These exemptions were created by the Act, however, not by the Department's regulations. Section 2194(d) of the Act expressly exempts the maternal and child health services block grant from the provisions of Title XVII, including section 1742. Section 1932 of the Public Health Service Act exempts the primary care block grant program from Title XVII. Section 1742 does not apply to the social services block grant because, as noted above, section 1741(b) limits its application to funds that previously went to local governments or other eligible entities and in the future will go directly to the States. Both the social services and maternal and child health services programs have requirements for public participation, even though a hearing as such need not be conducted. Contrary to the comments' suggestion, States are required to hold public hearings on the proposed use and distribution of primary care block grant funds after the first year of administering the program.

Consumer groups were concerned that deferral of mandatory hearing requirements until the second year of the program would enable States to establish spending patterns unfavorable to the groups' constituents. It is the Act, however, not the Department's regulations, that exempts the first year from the hearing requirement. Again, however, it should be noted that the broader requirements in the various block grant statutes for public participation apply even during the first year. See section 675(d)(2), Pub. L. 97-35 (community services); section 1905(d), PHS Act (preventive health); section 1915(d), PHS Act (alcohol and drug abuse); section 1927(d)(2), PHS Act (primary care); section 505, Soc. Sec. Act (maternal and child health); section 2004, Soc. Sec. Act (social services); section 2605(c)(2), Pub. L. 97-35 (energy assistance).

There were several requests in comments for additional regulation of the State hearing process, including requiring that the hearings be conducted by a neutral third party, and requiring that representatives of consumer organizations and minority groups participate in the hearings. We have not adopted these suggestions, since we believe that Congress intended to let the States decide the form of the hearings and other types of public participation.

Funding Information

Allotments to States

The Department will determine the amount of funds to be allotted as block grants to each State in accordance with the formulas established in the Act. The Office of Management and Budget (OMB) has authority to apportion to the Department through the course of a year the appropriation for the block grants, as provided by the Anti-Deficiency Act (31 U.S.C. 665). The regulations state that the Department will assign allotments to the States consistent with OMB's apportionment of funds.

Commenters were concerned that the OMB apportionment would not allow for seasonal variations in payment under the programs. They stated that the regulation constituted an illegal expansion of OMB's deferral authority and authorized impoundment of funds by OMB. We note that the information in the interim final regulations regarding the apportionment process was provided to explain how OMB routinely regulates appropriations for grant programs pursuant to its authority under the Anti-Deficiency Act. It does not represent a change from past OMB practice. Moreover, when funding is provided under a short-term continuing resolution as it has been this year, block grants, like other Federal funds, are subject to conservative spending limits so as to preserve options to establish final appropriations amounts. The OMB apportionment process takes varying program needs into account consistent with the time period and funding level of any governing continuing resolution. The seasonally varying demands upon the low-income home energy assistance program will be considered by OMB when funds are apportioned.

If a State did not assume operation of a block grant on October 1, 1981, but instead qualifies for the block grant at the beginning of a subsequent quarter, the amount of its allotment for fiscal year 1982 will be reduced by the amount of funds already committed in the State by the Department. In addition, administrative expenses for operation of the community services block grant will be charged against the allotment pursuant to section 682(d) of the Act.

Several State agencies asked that the Department define transition administrative expenses with respect to the community services block grant, and explain how those expenses would be deducted from their allotments. The regulations provide that the total administrative expenses incurred by the Department in administering the community services categorical programs before the block grant is taken over by a State will be deducted from the States' allotments in proportion to the amount of funds distributed in each State prior to the State's assuming operation of the program. The administrative costs include the expense of personnel and supplies used by the Office of Community Services in making grant awards under the categorical programs administered by the Department. These expenses, up to five percent of the State's allotment, will be charged against the State's allotment only for States which choose not to administer the community services block grant in fiscal year 1982.

With respect to several of the block grants, the Act provides that allotments for which States do not qualify, or portions of allotments that are returned to the Department, are to be redistributed pro rata to the qualifying States. Except for the low-income home energy assistance program, funds subject to reallotment will be reallocated on September 1, of each year. Funds reallocated under the low-income home energy assistance program, are included in the total funds available for allotment to States for the succeeding fiscal year.

A State that has not applied for block grant funds asked what would happen to any unawarded categorical funds upon expiration of the Department's authority to operate programs replaced by the blocks. The Act does not allow the Department discretion as to expenditure of these funds. If a State has not qualified for block grant funds during FY 1982, its allotment will be awarded by the Department to grantees under the limited transition authority and any remaining funds will revert to the Treasury.

The size of the State allotments under several of the block grants is determined by reference to amounts awarded by the Department under replaced programs in specified base years. In ascertaining these amounts under the preventive health and health services, alcohol and drug abuse and mental health services, and maternal and child health services block grants, the Department distinguished funds for nonservice projects that provided assistance on a national basis (for example, information clearinghouses). These amounts were pro-rated among all the States rather than assigned as a windfall to the individual States within which the grantees or contractors happened to have been located. Similarly, funds for projects of a regional nature (for example, technical assistance) were distributed to the States whose programs benefited from them. Detailed information on allotment amounts has been distributed to the States.

Payments to States

Payments will be made through electronic funds transfer to those States capable of receiving funds in that manner. Letters of credit will be used in other cases. The procedures followed will be the same as with payments under other Departmental grants.

Under Federal law, the question of when a grantee may draw funds from the Treasury is a different matter from the issue of when the grant award is made. Thus, although the Department may award a State its entire annual allotment on the first day of a fiscal year, the State may not immediately withdraw the entire amount from the Treasury. Rather, the timing and amount of payments are governed by the Intergovernmental Cooperation Act, 42 U.S.C. 4213, which provides in essence that the Federal government must schedule the transfer of funds consistent with program purposes and Treasury regulations, and that States must minimize the time elapsing between acquisition of Federal funds and disbursement of those funds by the State.

Use of Allotments

The permissible uses of the allotments to the States are clearly set forth in the Act. The Act establishes differing requirements, however, with respect to the time period in which the funds may be used. Limits upon obligation in the Act refer to the time within which a State must commit the funds to a statutorily acceptable purpose. Limits upon expenditure in the Act require the State to disburse the funds within a prescribed time. Obligation of funds precedes expenditure. Therefore, funds must be obligated and disbursed within the expenditure period.

The maternal and child health services block grant authorizes the States to obligate and to expend the funds under its allotment in a two-year period—the fiscal year in which the funds are awarded and in the following fiscal year. Three of the block grants allow the States two years to obligate funds but are silent as to expenditure (preventive health and health services, alcohol and drug abuse and mental health services, and primary care). In those cases, any applicable State law relating to expenditure of State funds would apply. If there is no State law, no restriction on time of expenditure would apply. Two block grants permit two years to expend funds but do not expressly address the permissible period for obligation of funds (community services and social services). We interpret these provisions as allowing a two-year period for the obligation (as well as disbursement) of funds. The low-income home energy assistance block grant allows up to 25 percent of the funds to be held available for the following fiscal year, which we believe establishes a two-year limit on the permissible period of obligation. In the case of the primary care and low-income home energy assistance block grants, the Act also establishes special conditions for use of funds after the first year.

A State agency objected to imposition of any time limits upon the use of allotments. Several States requested uniform time frames for obligation and expenditure of block grant funds coordinated with the July 1 fiscal year wherever possible. Both of these suggestions are beyond our authority to adopt, as these limits upon expenditure and obligation are established by the Act, not by the regulations. Similarly, appropriations are contingent upon congressional budget action, which is not correlated with the July 1 fiscal year.

Another State noted that section 1925(a)(2) of the Act allows carryover of primary care block grant funds to a second year if the Secretary determines that the State fulfilled the funding requirements for community health centers and that there is "good cause" for funds remaining unobligated. The State requested a definition of "good cause." We have therefore revised the regulations to provide that good cause exists if planned obligations could not be carried out because of a bona fide reason, or if the State determines that program objectives would be better served by deferring obligation of the funds to the following year.

Transferability of Funds

The Act permits States to transfer limited amounts of allotted funds from certain block grants to other specified block grant programs. The programs that include transfer provisions are the low-income home energy assistance, social services, community services, preventive health and health services, and alcohol and drug abuse and mental health services block grants. The statutory provisions governing the social services and low-income home energy assistance programs specify that funds transferred from other blocks shall be treated as if they are granted under the recipient programs. The Act does not contain explicit provisions regarding use of transferred funds under the other block grants. We received numerous requests for information concerning, for example, the permissible uses of funds transferred into blocks, applicability of "earmarking" requirements under the alcohol and drug abuse and mental health services block grant to transferred funds, and the continued relevance of fiscal requirements in the transferor program.

These questions must be resolved by reference to the specific statutory language involved in each case to determine whether spending limitations apply to all money expended under a block grant program or, instead, only to funds in the allotment under the program. Rather than issue regulations regarding transfers, we have decided to leave resolution of these questions to each State in the first instance. We are aware that this policy may result in interpretations of the transfer provisions (among other provisions) that vary from State to State. As with other State decisions concerning the use of block grant funds, however, we will accept a State's interpretation of statutory requirements pertaining to transferred funds unless it is clearly erroneous. The regulations do interpret the unusual language of the transferability provision in the social services block grant (section 2002(d) of the Social Security Act). We believe that this provision allows a State to transfer funds to the preventive health and health services, alcohol and drug abuse and mental health services, primary care, maternal and child health services, and low-income home energy assistance block grants. In addition, social services block grant funds may be transferred to support health services, health promotion and disease prevention activities, and low-income home energy assistance under other Federal block grants, including block grants administered by other Federal Departments.

State and Federal Oversight

Applicable Financial Standards

A basic purpose of the block grant legislation is to simplify State grant administration and minimize Federal involvement by placing far greater reliance on State government. For this reason, we have declined to issue comprehensive, voluntary "guidelines," as requested by several consumer groups since these could easily be misinterpreted as establishing standards against which State conduct would later be judged. Also, the block grants will be exempted from the usual Departmental grant administration requirements found in 45 CFR Part 74. (Part 74 is based on OMB Circulars A-102, "Uniform

Administrative Requirements for Grants to State and Local Governments" and A-87, "Cost Principles".) Because a Federal requirement for use of the Part 74 rules would be inappropriate for block grants, we are establishing a fiscal and administrative standard providing maximum discretion to the States and placing full reliance on State law and procedures. Under this standard, a State need not look to Part 74 for such matters as property or procurement standards, or what is an allowable or unallowable cost. Rather, the State's laws and procedures covering the administration and expenditure of its own funds will govern. (This standard applies to administration of the block grant funds and is not intended to require States to follow the same legislative appropriations process for block grant funds as they do for their own revenues.) Any expenditures in violation of the State's own laws and procedures would be unauthorized and subject to disallowance.

Several service organizations questioned the legality of "waiving" the requirements of Part 74. They noted that the Act does not specifically waive the requirements, and stated that amendment of the OMB Circulars or direct application to OMB for an exemption was required. Our decision not to apply Part 74 to the block grants was, however, explicitly approved by OMB in a letter to the Secretary and therefore is fully authorized.

Several comments objected to the inapplicability of Part 74 on substantive grounds, expressing the view that the exemption would result in widely varying and inequitable treatment of subrecipients by the States. One group claimed that failure to apply the cost principles in OMB Circular A-122 would allow States to restrict reimbursement for administrative costs unreasonably, restrict advance payments to grantee agencies, interfere with grantee title to property acquired under the grant, and lessen the "flow-through" of funds to localities by centralizing disbursement at the State level. We do not believe that these comments have demonstrated that OMB Circular A-122 should be mandatory. The block grant programs were intended by Congress to relieve States of Federal administrative burdens, and that objective would not be accomplished if States must follow special Federal rules in connection with the block grants that differ from the rules that apply to expenditures of their own funds. A State may, of course, adopt the principles of the OMB Circulars for expenditure for all of its funds, if it wishes to do so. Such action, however, is not required. Moreover, we have no evidence supporting the assertion that States may be unfair to subrecipients and every reason to believe that States will be sensitive to and supportive of their concerns. For example, some States have indicated to us that they intend to establish their own dispute resolution mechanisms to deal fairly with complaints by local grantee. Should the States act in a manner that violates the Act, the Department will promptly consider complaints as provided in the regulations.

A number of community health centers expressed the concern that their real property and equipment, acquired according to 45 CFR Part 74, would be appropriated by the States. State assumption of a block grant does not, however, give a State rights to grantee property acquired under a previous Federal grant. The existing rules in Part 74 will continue to goven the use and dispositon of real property and equipment acquired under HHS categorical grants. Title to such property rest with the grantee, subject to certain "pay-back" or reversionary rights of the Federal government.

We received inquiries regarding the use of block grant funds to match other Federal funds, since Part 74, which we have not made applicable to the block grant programs, prohibits the use of Federal funds to meet matching requirements in connection with other Federal grants. The maternal and child health services, preventive health and health services, alcohol and drug abuse and mental health services, and primary care block grant statutes explicitly prohibit the use of those funds to match any other Federal grants. The community services, social services and low-income home energy assistance block grant programs do not contain an express prohibition against use of those funds for matching, and therefore they may be used to satisfy matching requirements if otherwise authorized. However, most programs that require matching funds (e.g., Medicaid or the primary care block grant) require that the matching funds come from non-Federal sources. Block grant funds may not be used in such cases because they are Federal funds. (By contrast, general revenue sharing funds are, by statute, available to match other Federal funds (31 U.S.C. 1221).) The question whether community services, social services, and low-income home energy assistance block grant funds may be used to match other Federal funds must be answered by reference to the conditions imposed by the particular grant to be matched. Should a State wish to use funds from these three programs for matching, it must determine if the grant program requiring matching funds permits the grantee to use Federal funds for that purpose. In the unlikely event that the statute permits the grantee to use Federal funds, block grant funds may be used as matching funds as long as they are used in a manner consistent with the statutory prohibitions and assurances required by the block grant statutes.

Administrative Costs

We received many requests for a detailed definition of "administrative costs." States were concerned that the Act's 10 percent limitations on administrative costs for certain block grants (or 5 percent limitation in the case of the administrative costs at the State level under the community services block grant) would not be sufficient to cover the cost of providing services under the block grant programs. We decline to restrict the States with a definition of this term. In the final analysis, the State must determine which expenses constitute administrative costs chargeable to grant funds on a case-by-case basis, subject to review on the same basis as other State interpretations of the block grant statutes. This decision will be based upon the intrinsic nature of each program and the standard accounting procedures followed by each State. As a general matter, administrative costs are all the costs of program administration, whether they would be considered direct or indirect costs under categorical grants. There is some indication that Congress intended that States use non-Federal funds to administer block grant programs where necessary. For example, section 2605(b)(9)(B) of the Act expressly requires that States use non-Federal funds for planning and administering the low-income home energy assistance program where a State's costs for those activities exceed 10 percent of the State's allotment. The same condition applies to administrative expenditures under the preventive health and health services and the alcohol and drug abuse and mental health services block grants by virtue of sections 1904(d) and 1914(d) of the Public Health Service Act. The consistent imposition of limits upon administrative expenditures under the various block grants is indicative of congressional intent that States devote a very high percentage of their block grant funds to direct payments or services.

Other comments inquired about administrative cost limits under the maternal and child health services block grant, which has no statutory limitation.

We note that the Congressional Conference Committee deleted a 15 percent limitation that had been included in the bill, although the Conference Committee did state that "the conferees do not intend that States spend that amount or more on administrative and other nonservice expenditures." (H.R. Rep. No. 97-208, 87th Cong., 1st Sess. 790 (1981).) We interpret this statement to be advisory but, in view of the change in the bill's provisions, not mandatory.

Audits

Under the Act, States are primarily responsible for conducting audits of the use of block grant funds. The Act also confers certain responsibilities on the Comptroller General with respect to evaluating the propriety of State expenditures and on the Secretary with respect to investigations into the use of funds. In fulfilling its responsibilities under the Act and other Federal statutes, the Department will rely on State audits if the audits have been conducted in accordance with the Comptroller General's standards for audits of governmental organizations, programs, activities, and functions. Any additional auditing by the Department would build upon the State's work.

The specific requirements pertaining to audits are set forth in the provisions of the Act pertaining to the individual block grants. An exception is the audit requirement applicable to the community services block grant. Although section 675(c)(9) indicates that an annual audit is required, that provision is overridden by section 1745(b), which permits audits every two years. Section 96.91 of the regulations provides that a State may modify the certification required by section 675(c)(9) so as to reflect the provisons of section 1745(b).

The Department received numerous comments on audit procedures. Comments from consumer groups requested, for example, that the audit be conducted by an entity totally independent of any State control, and that the public have access to audit results. The comments argued that uniformity was the only way to ensure State accountability, prevent fraud and waste, and conduct effective national planning. Comments also suggested including specific items in the audit reports. For example, a utility company suggested that States submit data concerning the percentage of low-income home energy assistance funds applied to fuel and utility bills.

We are rejecting these suggestions insofar as they exceed statutory requirements, because we are committed to allowing States maximum flexibility in accordance with the statutory provisions establishing the States as the primary auditors of their own expenditures. Substantial checks on the legality of State expenditures are present in the form of the requirement in the regulations for fiscal accountability and the provisions for Federal audits. Contrary to the implication of the comments, the State audit reports are publicly available. Also, the independence of the State audit is assured by the statutory requirement with respect to each of the block grants that the audit be conducted by an agency that is independent of the program being audited. Although data on use of low-income home energy assistance funds need not be part of the audit, as requested by the comments, some information on the use of low-income home energy assistance funds is already required by the Act and the regulations to be reported by the States.

An organization of public administrators suggested that one audit of all block grant monies, rather than individual audits of each block grant program, was sufficient. The group recommended that States have the option of performing a single comprehensive audit. We agree that if the State can provide the information required by each audit, the format of the audit report is not important.

Recordkeeping

Section 96.30 of the regulations requires that States keep records sufficient to permit the preparation of reports required by statute and to permit the tracing of funds to a level of expenditure adequate to insure that funds have not been spent unlawfully. In addition, as explained below, a report is required with respect to use of funds under the low-income home energy assistance program. Except for these provisions, the Secretary is not prescribing any data collection requirements and is not prescribing the format or content of any information that the Act requires the State to collect.

We received many requests to impose standard recordkeeping criteria and formats upon the States. Although we will of course continue to review the operation of the block grant programs to insure that we have enough information to carry out congressional intent, at this time we do not believe that the need for any additional Federal recordkeeping requirements has been demonstrated, and therefore we are not adopting any. If they find it useful to do so, States may work together to develop recordkeeping standards for their own use.

Enforcement

The Act requires States to comply with their assurances and the statutory provisions and provides for repayment of improperly expended funds and for withholding of funds in certain circumstances. The block grant programs are intended to confer great discretion on the States, which by statute are the primary auditors of their own expenditures. The fundamental check on a State's use of block funds is the State's accountability to its citizens, which is implemented by public disclosure within the State of information concerning use of the funds. Accordingly, when an issue arises as to whether a State has complied with its assurances and the statutory provisions, the regulations provide that the Department will ordinarily defer to the State's interpretation of its assurances and the statutory provisions. Unless the interpretation is clearly erroneous, State action based on that interpretation will not be challenged by the Department. The Department's position is not intended to preclude contrary action by the independent State audit agency in fulfillment of its statutory responsibilities. The Department will provide copies of complaints to the State's auditors for their consideration. Since the auditors might review the State's action without deference to the State's interpretation they may subsequently reach a conclusion different from that of the Department.

If a State expends block grant funds contrary to its plan or a description of intended uses of the funds, such action would require the repayment of those funds only if the expenditure violated the State's assurances or the statutory provisions. Expenditures that do not conform to the plan or description prepared by the State but do comply with the State's assurances and the statutory provisions are improper only because they differ from information submitted as part of the plan or description. Where a State complies with the statute and its assurances, repayment is not provided for by the Act. A State's failure to file a revised plan reflecting changed spending could lead to the withholding of funds until the revision is made.

Several comments on the enforcement provisions in the regulations objected to the absence of criteria to determine when the Department will conduct an investigation of a complaint against a State, and to the deference to a State's interpretations of its assurances and of the block grant statutes. Advocates for human service organizations and minority groups claimed that these policies vest too much discretion in the accused wrongdoer and create a "conflict of interest" by allowing the State to judge whether it has violated its own rules.

We have not included specific criteria in the regulations about investigations, since the nature of complaints is expected to vary widely and preclude any uniform approach to resolving them. The deference to State interpretation opposed by the comments is an appropriate corollary to the respective roles of the Department and the States under the block grant statutes. With respect to all the block grants, the States are the primary auditors of their own expenditures. Several of the block grants expressly prohibit the Secretary from prescribing the manner of a State's compliance with its assurances. Under this statutory regime, we believe it is clear that deference to State interpretations is required.

Comments also suggested that the regulations should provide for an expedited investigation and response. Section 96.50(d) of the regulations allows the Department up to six months, if needed, to respond to a complaint against a State. Unless an expedited procedure is created, the comments contended that a terminated subgrantee or beneficiary group could suffer irreparable harm during the investigation. We note, however, that the six-month period is the maximum amount of time allowed for the Department's initial response to a complaint. If a complaint can be resolved more quickly, we will do so. The six-month period was chosen because six months is a realistic estimate of the time that may be necessary for an adequate investigation. Moreover, filing a complaint with the Department is not a prerequisite to instituting a lawsuit against a State if the State has acted unlawfully. Thus, a grantee suffering irreparable injury as a result of unlawful State action could act directly without awaiting the outcome of a Departmental investigation.

A State found two statements in the preamble to the interim final regulations to be contradictory. The Department stated that it would not challenge a State action based upon the State's interpretation of its assurances and statutory requirements unless the interpretation was clearly erroneous, but the Department reserved the right to "build upon" State audit agency findings when conducting its own investigations. The writer noted that the State audit agency might reach a conclusion different from that of the Department. The State suggested that § 96.30 of the regulations should be clarified as to the consequences of audit agency findings and the process for resolving differences between those findings and the Department's conclusions.

We do not believe that the preamble statements referred to in the comment are inconsistent. The question of the scope of a Federal audit is an entirely separate issue from the deference to be afforded to State interpretations. The statement that Federal audits will build upon properly conducted State audits reflects our intention not to duplicate State work, but rather to limit Federal audits to answering questions that the State audit did not resolve. Section 96.30 of the regulations has been revised to clarify the Department's position. Resolution of differences between State findings and the Department's conclusions will take place through the disallowance or withholding process, if the Department chooses to institute such a proceeding.

Hearings and Sanctions

The Act provides with respect to all of the block grants that a State must repay any funds that are determined to have been spent improperly. Under several of the block grant statutes a hearing before the Department is required before repayment may be ordered. The Department will provide a hearing before ordering repayment even where it is not required by statute, and a hearing procedure is provided in the regulations. Decisions resulting from the hearing may be appealed to the Department's Grant Appeals Board. New regulations governing the Department's grant appeals process (42 CFR Part 16) were published in the **Federal Register** on August 31, 1981 (46 FR 43816).

If a State refuses to repay funds as ordered, the Department may recover them by offsetting the amount against future block grant payments. The Act provides a State with another opportunity for a hearing under several of the block grants before an offset can be made. For those block grants, the repayment hearing procedures will also be used for offset questions. Further appeal, however, which would likely be dilatory, will not be allowed.

We have provided for a comparatively informal hearing procedure rather than a formal hearing before an administrative law judge. There is no evidence that Congress intended the required hearings to be trial-type, on-the-record hearings, and the Secretary has concluded that such a procedure would frequently be less efficient than the procedure adopted. The flexible procedure adopted is designed to resolve questions in a fair and expeditious manner.

In appropriate circumstances the Act requires the Secretary, on his own initiative or after investigation of a complaint, to withhold funds under the block grants until the Secretary has reasonable assurance that a State that has violated statutory provisions or the certifications in its application will not repeat such actions. The hearing procedure established for repayment and offset issues will also be used prior to withholding funds. Any appeals of decisions to withhold funds would be handled by the Secretary or, at his discretion, the Grant Appeals Board. The Board would typically be used to hear appeals when the question underlying the proposed withholding involved disallowed expenditures and the like. The Secretary will retain authority to make the final decision on any withholding.

These provisions regarding penalties against States that expended funds unlawfully were criticized in comments as being too lenient. A comment noted that there was no provision for withholding payments pending resolution of a complaint, and no penalty was imposed upon wrongdoers save repayment of the illegally expended monies. The requirement that States give a reasonable assurance that the violation will not recur was criticized as being vague and unenforceable. We cannot, however, modify the regulations in response to these comments. The allowable sanctions for illegal expenditures by States are set forth in the Act and reflected in the regulations. We do not have the authority to impose more severe penalties against a State.

We received several requests for alteration of the hearing procedure. Denial of status as a party to the complainant in the hearing and appeal was criticized as unfair. The comments asserted that, since the complainant was the injured party, his participation in the hearing was necessary to assure that all of the pertinent facts are brought before the presiding officer. We have concluded that it is unnecessary and inappropriate for complainants to be granted the status of parties at hearings. Under the Act, hearings are held only when the Department has made a preliminary determination that a State has unlawfully expended funds. Under such circumstances, it would be redundant and potentially counterproductive for a complainant to be presenting a case parallel to the Department's. The Department, where appropriate to strengthen its case, will utilize witnesses and information of the complainant, but the Department will be solely responsible for presentation of the case against the State.

One comment suggested that the prohibition on discovery in § 96.65 of the regulations was unnecessarily inflexible. The comment recommended adding criteria for discovery in appropriate cases. Because of the informal nature of the hearing and the statutory obligation of the State to comply with Federal investigations, we do not believe that it is necessary to permit discovery. The Department will have compiled the evidence supporting its position through investigation, and a State would have no apparent need for discovery against the Department, since the facts relating to the challenged practice would be within the State's knowledge.

Instead of allowing the presiding officer the discretion to decide whether to transcribe the hearing, it was suggested that all hearings should be transcribed at Government expense and copies provided to the State. We have not adopted this suggestion because some hearings may be so limited in scope as not to warrant transcription. We expect, however, that any hearing involving substantial issues will be transcribed at Federal expense.

Another comment suggested that the Secretary specify qualifications for the presiding officer to guarantee that the individual is both qualified and neutral. We do not believe that this change is necessary. The Secretary has the authority to appoint many adjudicative officers, including the head of the Grant Appeals Board, without reference to criteria set forth in regulations. The Secretary is mindful to the need for an impartial, competent presiding officer and will exercise his discretion accordingly.

A professional organization suggested amending § 96.66(a) to allow the presiding officer or the Secretary to close the hearing to the public when there was a risk of disclosing confidential medical information. The reference in the regulations to information the disclosure of which might constitute an unwarranted invasion of privacy was intended to cover confidential medical information, and the regulations have been clarified accordingly.

Special Provisions

Nondiscrimination

The Act contains specific provisions prohibiting discrimination with respect to all of the block grants except the social services block grant. Congress has made clear that States and their grantees have the responsibility to prohibit discrimination on the basis of race, color, national origin, age, and handicap. In addition, several of the block grants require that religious and sex discrimination be prohibited as well. The Secretary interprets existing laws against discrimination in Federally assisted programs as applying to the social services block grant.

Several comments requested a statement in the regulations that 45 CFR Parts 80 (prohibiting discrimination on the basis of race, creed, or national origin), 81 (providing a hearing procedure for claims under Part 80), 84 (prohibiting discrimination based upon handicap), and 90 (prohibiting age discrimination) apply to State administration of the block grant programs. The commenters were particularly concerned that the hearing and enforcement provisions of the block grant regulations might appear to supersede the requirements of 45 CFR Part 81. Several organizations offered specific antidiscrimination provisions for inclusion in the block grant regulations.

The complaint and hearing provisions in the block grant regulations were not intended to apply to discrimination issues and the regulations have been clarified accordingly. The provisions of 45 CFR Part 80, 81, 84, and 90 apply by their terms to all programs receiving Federal financial assistance, however, and it is unnecessary to make them applicable to the block grant programs by specific reference to them in the block grant regulations. No additional regulations are being issued at this time, although regulations implementing novel aspects of the block grant nondiscrimination provisions are being developed and will be published in the future.

Waivers

Several States requested clarification of the scope of the provision in § 96.15 of the regulations explaining where to apply for waiver of the requirements applicable to the block grant programs. Each block grant statute specifies those provisions that may be waived. For example, the Secretary may waive the prohibition against the use of community services, primary care, maternal and child health services, social services and alcohol and drug abuse and mental health services block grant funds for construction if the facts of a particular case justify the exemption. Unless there is express statutory language allowing the Secretary to waive a provision, no waiver of the requirements of the block grant statutes is permitted. The Secretary has delegated his waiver authority to the heads of the Operating Divisions responsible for administering the block grants.

Direct Funding of Indian Tribes and Tribal Organizations

Five of the block grant programs permit the Secretary to provide grant funds directly to Indian tribes and tribal organizations that request such funds. The block grants involved are community services, preventive health and health services, alcohol and drug abuse and mental health services, primary care, and low-income home energy assistance. With respect to each of these block grants, the Act provides that direct funding is available if (1) the Indian tribe or tribal organization requests funds, and (2) the Secretary determines that the tribal members would be better served by direct Federal funding than by funding through the States.

The Act's provisions on direct funding were intended to continue the long-standing government-to-government relationship between the United States and the tribes. The provisions also implement a self-determination policy for Indian tribes and seek to overcome jurisdictional problems between some States and their resident tribes regarding the provision of services.

By regulation, the Secretary has determined that members of Indian tribes and tribal organizations would be better served by direct Federal funding than by funding through the States in every instance that the Indian tribe or tribal organization requests direct funding. The tribes and tribal organizations are closer to their members than the State governments and are better able to ascertain their needs and to implement solutions. Our experience in the last five years has demonstrated that the performance of Indian tribal grantees is comparable to that of other grantees. A tribe or tribal organization may conclude that it is better served through the State government. The Secretary encourages Indian tribes and tribal organizations to work with the States and determine whether they might benefit from arrangements that could be developed. If a tribe concludes that it would be better served by Federal funding, however, and therefore applies for a direct grant, the Secretary will concur with that assessment and will provide funds directly to the tribe or tribal organization.

Eligibility

The minimum conditions that an Indian tribe or tribal organization must meet to qualify for direct funding are defined in the Act and vary among the block grants. A number of issues relating to eligibility are dealt with in the regulations or were raised in comments on the interim final regulations.

One set of questions involved standards of eligibility under the low-income home energy assistance program and the community services block grant, since the Act does not clearly define the class of potentially eligible tribes and tribal organizations for these two block grants. No definition whatever of an eligible Indian tribe or tribal organization is contained in the Act for the low-income home energy assistance program. Definitions similar to those established by statute for the other block grants were therefore included in the interim final regulations for this program. Under section 674(c)(5) of the community services block grant statute, the Secretary has the discretion to award direct funding to an Indian tribe that has been recognized as such by a State, or that is "considered by the Secretary of the Interior to be an Indian tribe or Indian organization for any purpose." During the initial administration of this program, questions were raised about the eligibility of urban Indian organizations and tribes that have limited rights under arrangements with the Interior Department. In response, the Secretary of Health and Human Services has determined that his discretion regarding direct funding should be exercised only with respect to State recognized tribes and those tribes included on the list of Federally recognized tribes published by the Secretary of the Interior in accordance with Department of Interior regulations at 25 CFR Part 54. In addition, the Secretary will provide direct funding to the Alaska Native villages and the regional and village corporations established pursuant to the Alaska Native Claims Settlement Act (45 U.S.C. 1601). We have amended § 96.44 of the regulations to apply the definition of "Indian tribe" and "tribal organization" found in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) to the community services block grant. This standard is consistent with the Secretary's intention to make direct funding available only where appropriate to continue a government-to-government relationship. It clarifies that direct funding is not available for urban Indian groups and other entities with respect to which a government-to-government relationship does not exist.

One comment asked that we establish special rules for participation by Alaska Native villages in the block grant programs. The commenter was concerned that the unique configuration of the Alaska Native population, which resides in over two hundred widely scattered Native villages, would hinder program administration by the State. The writer predicted problems in coordinating services to Native and non-Native populations and to non-profit regional corporations and Alaska Native villages. We have concluded that the block grant programs can be successfully operated by the State of Alaska without excluding Alaska Native villages from the opportunity to apply for direct funding. The villages and the regional corporations are included in the definition of "Indian tribe" in the Indian Self-Determination and Education Assistance Act used to determine eligibility for the various block grant programs. Their government-to-government relationship with the United States is recognized by the Alaska Native Claims Settlement Act and by their participation in Indian Self-Determination and Education Assistance Act programs. We understand that the regional corporations provide many health and social services for their member villages and we expect that many will continue to do so with respect to the block grant programs. Administration of Alaska Native funds largely by the regional corporations should substantially reduce problems of coordination. However, where a village does not want the regional corporation to administer its allotment of block grant funds, that decision should be left to the village. The comment noted that coordination of services to the Native and non-Native populations would be enhanced if either a tribal organization or the State served all of the residents of designated geographic areas. In our view, the statutes do not preclude contracts or cooperative arrangements between State and Native organizations for area-wide services. We decline, however, to specify the arrangements to be entered into between the State of Alaska and its Native population.

A tribal organization stated that § 96.44(b) of the regulations appears to restrict eligibility for the community service block grant to State recognized tribes. That is not correct. In keeping with our policy of not repeating clear statutory language in the regulations, the regulations only clarify the meaning of State recognition. Federally recognized tribes are also eligible to apply for the block grant, as provided by section 674(c)(5) of the Act.

Some comments related to State recognition of tribes. A few tribal commenters opposed the concept of State recognition, arguing that tribal recognition is exclusively a Federal function under the Constitution. The comments also noted that many States have no formal policy or procedure for recognizing a tribe and argued that the structure of the block grant programs creates an incentive against State recognition, since funds for directly funded tribes would reduce a State's allotment. The provisions for funding State-recognized tribes are, however, created by the Act with respect to two of the block grant programs and they are therefore retained in the final regulations.

The interim final rules included a requirement that an Indian tribe would be considered to be a State recognized tribe only if the State in which the Indians reside had expressly determined that they were an Indian tribe in accordance with State procedures for making such determinations. This provision was intended to make clear, for example, that State actions incidentally referring to a group as a tribe do not constitute State recognition for the purpose of receiving block grant funds. Similarly, incorporation of a tribal organization under the laws of a State would not by itself constitute State recognition of the group as a tribal organization. This requirement raised questions, however, in a few States that do not have formal procedures for State recognition but nevertheless have longstanding relationships with Indian tribes. We have therefore clarified the final regulations to provide that verification by the State's chief executive officer that a tribe is recognized by that State will constitute evidence of State recognition.

The definition of "tribal organization" in the Indian Self-Determination and Education Assistance Act adopted by the Act and by these regulations requires that such an organization must be "controlled, sanctioned, or chartered" by the governing body of an Indian tribe. Tribes and Indian organizations asked that we specify the form of tribal support for a tribal organization. Comments asked for details concerning the duration, terms and format of tribal resolutions. We decline, however, to impose requirements concerning the form of the sanction or resolution. We are not requiring that tribes and tribal organizations follow the same procedures as those used by the Bureau of Indian Affairs and Indian Health Service to qualify for grants and contracts under the Indian Self-Determination and Education Assistance Act (25 CFR 272.14 and 272.16 and 42 CFR 36.104, respectively). Instead, we will defer to procedures developed by tribes and tribal organizations with respect to tribal representation.

Some tribes objected to their exclusion from eligibility for the maternal and child health services and social services block grants, stating that since they were eligible for five of the block grant programs, they should not be excluded from the other two programs. This restriction is imposed by the statute, however, not by the Department's regulations, and therefore cannot be changed.

The interim final regulations provided that in fiscal year 1982, tribal eligibility for block grant funds is contingent upon qualification for the block by the State in which the tribe or tribal organization is located. Comments from tribes claimed that linkage of their direct funding to State qualification for a block was contrary to the congressional intention that independent funding be provided to tribes. They stated that the unique relationship between the Federal government and the Indian tribes, recognized by numerous treaties and statutes, requires substantial direct funding for Indians regardless of whether their State of residence is participating in the block grant programs. We have reviewed our position in light of these comments and in recognition of the disadvantages to tribes in States that chose not to administer block grant programs this year, and have revised the regulations to allow direct funding of eligible Indian tribes and tribal organizations for the remainder of this fiscal year even if the State is not operating the block grant involved.

Several tribes contended that the eligibility limitations imposed under the preventive health and health services and the alcohol and drug abuse and mental health services block grants by §§ 96.45(b) and 96.46(b) of the regulations make participation practically impossible for most tribes and tribal organizations. The Act limits the amount of the allotment to any particular Indian tribe or tribal organization based upon the amount of funds awarded to that tribe or organization in 1980 (alcohol and drug abuse and mental health services) or 1981 (preventive health and health services) under predecessor programs. The cited regulations interpret those provisions as referring only to direct grants and not to tribal grantees that received funds under formula or Statewide grants, nor to subgrantees that received funds from any program replaced by the block grants or transferred to the Indian Health Service. We believe, however, that the regulations properly interpret the Act and that Congress intended that only a narrow group of Indian tribes and tribal organizations should be eligible for funding under these two block grants.

Funding Level

Many tribes objected to the funding distribution schemes in the low-income home energy assistance and community services block grants, which are based on population data. They asserted that Indians are traditionally underrepresented in United States census data and they suggested, therefore, that tribal health and population statistics, rather than the ratio of Indian to non-Indian individuals or households in a State, should form the basis for a tribe's allotment. In lieu of using tribal census data, several tribes requested imposition of a minimum funding set-aside, equivalent to the proportion of funds they received under the categorical programs replaced by the block grants.

We do not have the authority to alter the fund distribution systems set forth at sections 674(c) and 2604(d) of the Act, which are based on population living at statutorily defined poverty levels. We have used the most reliable population data available, primarily "The Population and Housing Census 1980 Advance Report," "The Tribe List and Extract," prepared by the Census Bureau for the Office of Revenue Sharing, and supplemental data from the Census Bureau. Where census date were not available, we used population estimates from the Bureau of Indian Affairs and in one instance from a State Indian Commission. Finally, where no independent data were available, we used the tribes' own estimates of their population. In computing the poverty levels, we adjusted the 1980 population figures based on data from the 1970 census. We will revise these figures with poverty level data from the 1980 census as soon as they are available. We encourage States and tribes to negotiate different, mutually satisfactory shares of tribal and State funds if they have any more accurate data.

State-Tribal Relationships

The preamble to the interim final regulations stated that "The fact that a tribe or tribal organization is receiving direct Federal funds does not, however, disqualify its members from receiving services from the State." This sentence was confusing to some commenters who raised various questions regarding access to and eligiblity for services, duplicate funding, and responsibility for specific services. For example, some comments took the position that if the Federal government made a grant to a tribe, the State was not required to provide any service to tribal members. Other comments interpreted the statement in the preamble as mandating duplicate payments or services for Indian individuals. Finally, comments asked for clarification of the respective responsibilities of States and tribes for service delivery under these programs.

The preamble statement was intended to reaffirm the Department's policy that an Indian individual may not be excluded from access to Federally funded facilities simply because the Indian's tribe may have access to similar services. This policy ensures that Indian people are not treated differently from other residents of a State based on their status as Indians. At the same time, we do not intend to require duplicate cash payments or other tangible benefits to Indians by making them eligible for services under programs operated both by a State and a tribe. A new § 96.42(f) has been added to the regulations to clarify this issue. States are not required to confer eligibility for tangible benefits on Indian people in the service population of a tribe that has received an allotment of block grant funds. Thus, for example, States are not required to provide cash payments or weatherization assistance to Indians included in the service population of a tribe receiving funds under the low-income home energy assistance program. The regulation does prohibit a State from denying Indians access to intangible benefits. This is intended to cover benefits that are not subject to abuse by individuals seeking duplicate services; examples of intangible benefits include counseling or a course of treatment at health facility.

These questions underscore the importance of State and tribal cooperation and planning in the use of the block grant funds. In this way duplication can be avoided, administrative costs kept to a minimum, and maximum use made of funds.

Both States and tribes raised questions about coordination of funding. A State suggested that it should be notified of each application or award to a tribe or tribal organization so that it can adjust its expenditure plans. A tribal organization requested notification of State requests for block grant funds, noting that § 96.43(c) of the regulations requires submission of tribal requests for block grant funds within 75 days of a State request. The comment claimed that without direct notification from the Federal government it would be practically impossible for the tribes to know whether to apply for funds.

We will continue to provide information to both the tribes and the States on an informal basis. When the Secretary notified the tribes of the availability of direct funding in September 1981, he included in his letter the names and addresses of contact people for each block grant. In addition, there are officials in each of the ten regional offices of the Department and in the Office of Community Services in Washington, D.C. who are ready to provide information to tribes and the States.

Administration

The regulations provide that Indian tribes and tribal organizations receiving direct funding have the same rights and obligations as States, unless otherwise provided or unless a State's rights and obligations have no relevance to an Indian tribe or tribal organization. Thus, for example, a tribe or tribal organization must submit an application containing the same information as that required from the States, except that the regulations permit the deletion of certain certifications that we have concluded are not appropriate for tribes and tribal organizations.

In this final rule we are permitting further modification of the certifications required under the community services block grant. New § 96.44(d) permits a tribe or tribal organization to certify that it will provide at least one of the services or activities required under the community services block grant. As presently drafted, the regulations appear to require Indian tribes receiving direct funding to expend funds for all of the purposes specified in section 675(c)(1). We believe it is appropriate to give additional flexibility to the tribes and tribal organizations in view of the size of the tribal service population, the scope of the program activities, and the limited size of the tribal allotments.

There were several comments regarding administration of the block grants by Indian tribes. The tribes opposed flat-rate limitations on administrative costs, and suggested negotiation of a satisfactory indirect cost rate based upon the needs of each tribe. Two tribes asked that audit expense be chargeable to the direct services portion of grant funds. We do not believe, however, that Indian tribes and tribal organizations should be permitted to spend less of their block grant funds for direct services than States. The congressional intention that the vast majority of block grant funds be spent for direct services is clear from the strict percentage limitations imposed by statute upon administrative costs. Therefore, we will not establish different rules on administrative cost limitations for tribes and tribal organizations than are established by statute for the States.

We received requests from tribes and tribal organizations to clarify the roles of each with respect to the application process. The block grant programs that permit direct Indian participation permit tribes and tribal organizations to request and to apply for block grant funds. (The exception is the low-income home energy assistance program, which requires that Indian tribes request funds but allows tribal organizations to apply on behalf of requesting tribes.) We expect that tribes and tribal organizations will coordinate their requests and applications in a manner that prevents duplication of effort and takes advantage of the flexibility allowed by the Act. However, the Act does not require that we dictate the details of the request and application procedure, and we will leave these details to the discretion of the Indian people.

Under section 2604(d)(3) of the Act, a tribal government may request direct funding for an "other entity," neither a tribe nor a tribal organization, to provide energy assistance to those tribal members that the tribe cannot serve. Several comments asked for guidance regarding selection of other entities. In making case-by-case determinations of whether an "other entity" should serve an Indian population, the Secretary will consider these factors: The ability of the other entity to provide low-income home energy assistance, existing tribal-State agreements as to the size and location of the population to be served, and the relevant history of State services to this population. The regulations have been revised accordingly by adding § 96.48(e).

Provisions Relating to Particular Block Grants

Community Services Block Grant

Under the community services block grant, 90 percent of the funds allotted to a State for fiscal year 1982 must be used to make grants to "eligible entities," as defined in the statute, or to organizations serving seasonal or migrant farmworkers. Different requirements apply beginning in fiscal year 1983.

The definition of "eligible entity" has been revised by section 17 of the Older Americans Act Amendments of 1981 (Pub. L. 97-115; December 29, 1981). The Amendments added a new sentence to section 673(1) of the Act as follows:

> "The term eligible entity includes any limited purpose agency designated under title II of the Economic Opportunity Act of 1964 for fiscal year 1981 which served the general purposes of a community action agency under title II of such Act, and any grantee which received financial assistance under section 221 or 222(a)(4) of the Economic Opportunity Act of 1964 in fiscal year 1981."

Title II of the Economic Opportunity Act (42 U.S.C. 2808) allowed the funding of agencies other than community action agencies for special projects, or in areas where there was no designated community action agency. Section 222(a)(4) of the Economic Opportunity Act (42 U.S.C. 2809(a)(4)) established the Rural Housing Development and Rehabilitation Program.

Even though the definition of eligible entity has been thus expanded, at least two territories eligible for allotments do not have any eligible entities within their jurisdictions. We believe that Congress required that the bulk of 1982 funds be awarded to eligible entities so as to assure an orderly transition to State administration. That rationale is not applicable in those jurisdictions that do not have any eligible entities. Accordingly, we are revising the regulations by adding a new § 96.112(b) to provide that a State or territory that does not have any eligible entity may spend its 1982 funds as if they were 1983 funds.

Primary Care Block Grant

Because the primary care block grant will not be fully operational until fiscal year 1983, some comments suggested deferral of that part of the regulations. States are developing portions of the program in the present fiscal year, however, and guidance is appropriate. In addition, the language of the Act authorizing the primary care block is similar in many areas to that creating the remaining blocks. Simultaneous consideration of all the block grant programs is therefore desirable to allow for uniform regulations wherever possible.

Comments from many of the Federally funded community health centers (CHCs) authorized by section 330 of the Public Health Service Act (42 U.S.C. 254c) requested clarification in the regulations of several of the statutory requirements pertaining to State support for CHCs and the transition from Federal to State funding. The centers noted that there was no procedure in the interim final regulations for Secretarial review of a State decision to "defund" a CHC in fiscal year 1983 under section 1926(a)(2) of the Public Health Service Act, and offered suggestions on criteria and procedures for the defunding review. For example, they requested that the Secretary allow the CHC to participate as a party in the defunding review.

In response to these comments, a procedure has been established in the regulations to allow for review of State determinations under section 1926(a)(2) that a center does not meet the requirements for continued funding. Under the procedure, a State must advise the Department of any such determination together with the basis for the determination. The Department will allow the center 30 days to respond to the State's explanation, after which the Department will issue its final decision (also within 30 days) as to whether the State will be permitted to defund the center. The regulation requires that funding continue while the State's defunding decision is reviewed. In light of this provision, States should schedule their review so that the Department's review of a defunding decision is completed before a new grant award is required.

Many comments requested a definition of the State matching share required by section 1926(a)(4) of the Public Health Service Act. They urged restricting the match to cash from State revenues and prohibiting use of in-kind payment or other Federal funds. One comment noted that primary care block grant funds may not be used to match other block grants under section 1926(b)(4) of the Act and urged that other block grant money should not be used to match primary care funds. We interpret the statutory reference to "State funds" for matching to include anything that may be considered a bona fide State expenditure. This interpretation would prohibit a State from matching CHC monies with other Federal payments to the State. However, it would allow a State to match Federal grant funds by detailing State personnel to the center or providing similar in-kind benefits.

Comments also requested a definition of the term "significantly less" in section 1927(c)(3) of the statute. That section requires certification that the State will provide for independent review of funding reductions to CHCs when the center receives "significantly less" suport in fiscal year 1984 than it did in fiscal year 1983. The comments suggested that a narrow definition of "significantly less" would allow States to reduce their support substantially. We are not defining "significantly less" because Congress declined to do so. We believe that States should be allowed the flexibility to determine the exact funding levels based upon the individual circumstances of each locality.

One comment addressed the provision of section 1927(c), which requires States to submit assurances, satisfactory to the Secretary, that the State has sufficient administrative capability. The comment argued that the Department may not perfunctorily approve a State's claim that it can administer the program. Since the statute refers to the submission of assurances, rather than a more elaborate form of demonstration, we believe that it is proper for the Department to rely on a State's assurances without more. A State's compliance with its assurance is, of course, subject to review by the Department and any deficiencies in administrative capabilities can be acted upon in this manner.

A comment requested the Department to explain that section 1926(a)(4)(B) is voluntary. That provision allows a State "at the request of a community health center" to reduce the amount of a State's contribution to the center by the value of certain supplies and services furnished in kind. We agree with the comment that the provision by its terms calls for a request by the center before it is invoked.

Maternal and Child Health Services Block Grant

Comments from child welfare organizations requested regulations stating when expenditure of State allotments for inpatient services would be allowed under the maternal and child health services block grant. Under section 504(b)(1) of the Social Security Act, funds may be used for inpatient services only for crippled children, high-risk pregnant women and infants, and such other inpatient services as the Secretary may specifically approve. The comments argued that requesting Secretarial approval on a case-by-case basis was not in the best interest of children.

A State may submit information to the Secretary describing other categories of beneficiaries for which it proposes to provide inpatient services. This information may be submitted at any time, including at the beginning of the fiscal year when the State submits its report of intended expenditures. The Secretary will review each class of proposed exemptions and determine whether the expenditure for that class should be allowed. By securing express prior approval of classes of inpatient care, we expect that the need for individual emergency approvals will be greatly reduced.

Comments asked the Secretary to issue regulations defining a "substantial proportion" and a "reasonable proportion" of the State allotment. Section 505(2)(C)(i) of the Social Security Act requires that States spend a "substantial proportion" of their funds on health services for mothers and children; section 505(2)(C)(ii) requires that States spend a "reasonable proportion" of the funds for prenatal care for mothers and primary, preventive, and rehabilitative care for children. We decline to adopt definitions of these terms since Congress, through adoption of this language, instead of fixed percentages as used elsewhere in the Act, plainly indicated an intent to allow flexibility to the States.

Comments requested that the Secretary issue regulations to define the "special consideration" that States are to afford to continued funding of existing special projects as provided by section 505(2)(C)(i) of the Social Security Act. We do not believe, however, that it is appropriate to define this provision, since this is plainly a subject on which Congress intended for the States to have substantial discretion.

Child welfare groups also suggested that the Secretary should require States to ensure that providers funded under the maternal and child health services block grant participate in the Medicaid Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program for children under twenty-one. Although section 505(2)(E) of the Social Security Act requires that the States coordinate services offered under the EPSDT program with those offered under the maternal and child health services block grant, there is no authority in the Act to require participation in the EPSDT program; therefore we are not imposing this condition.

Social Services Block Grant

Section 2005 of the Social Security Act (42 U.S.C. 1397d) permits States to use social services block grant funds for room and board in only three circumstances: (1) For cost of subsistence during rehabilitation; (2) for temporary emergency shelter as part of a protective service, and (3) for room and board provided for a short term as an integral but subordinate part of a social service. We received many requests to explain the services included in the third category. The comments requested rules as to the eligibility for block grant funding of room and board costs associated with residential treatment facilities, summer camps for disadvantaged children, and social services provided to hospital inpatients. Section 96.71 of the regulations defines the third class of exceptions. Social services block grant funds may be used for room and board where the short term room and board is a minor but essential adjunct to another service of which it is a part and is necessary to achieve the objective of the other service. The regulation prohibits services whose primary benefit it provision of food and housing from receiving block grant funds for food and housing expenses. For example, the restriction prohibits use of these monies for foster care maintenance payments. Funding for foster care maintenance payments is available under the Title IV–B and IV–E Programs. However, there are services which provide room and board that are eligible for funding. Programs such as residential treatment that provide room and board as part of a plan to provide a distinct social service could be eligible for social services block grant funds for that purpose. Evaluation of particular programs is the responsibility of the State administering the program.

Low-Income Home Energy Assistance Program

The regulations include a number of provisions that apply only to the low-income home energy assistance program. Since that program has a specific procedure for reallotment of unused funds at the end of each fiscal year, the regulations specify a report to be submitted by recipients of the funds. The regulations also require the submission of a report necessary to provide certain information to Congress, as required by the Act. States must annually report the number and income levels of households assisted under the program. This information may be reported in the form collected by the State.

Under section 2604(e) of the Act, a State may request the Secretary to make direct payments to Supplemental Security Income (SSI) recipients out of the State's allotment. The regulations provide that any such request must be submitted at least six months before the State wishes the payment to be made but in any case by September 1 of the preceding fiscal year. Section 96.83 of the regulations was revised to incorporate this requirement.

Under section 2605(b)(2)(B) of the Act, eligibility for assistance under the block grant depends on household income. In making determinations of household income, the States should take note of provisions in certain Federal statutes that may prohibit benefits granted under those statutes from being counted as income under other Federal statutes. Examples of such statutes are listed in regulations governing the Supplemental Security Income program in the appendix to 20 CFR 416.1182 and in 20 CFR 416.1236. We have not ascertained which, if any, of these statutes may prohibit the inclusion of grants as income under section 2605(b)(2)(B). States should refer questions concerning the applicability of such statutes to their own attorneys or to the Federal agencies administering them.

Although certain territories are eligible for funds under this program, the Act does not otherwise define the rights and responsibilities of territories. The regulations therefore establish that eligible territories will be treated the same as States unless otherwise provided. In connection with funding of the territories, it is necessary for the Secretary to determine the appropriate level of funding under section 2604(b)(1) of the Act. That section requires the Secretary to apportion not less than one-tenth of one percent, and not more than one-half of one percent, of the total appropriation to carry out the program to Puerto Rico and the Insular Areas on the basis of need. Preliminary tables of allocations were circulated to the States and territories through the National Governors Association in September and November 1981. These tables reflected a proposal to fund the territories at the same relative levels as they received under the 1981 program. Under this allocation method, the total amount allocated to the territories would be about 0.14 percent, which is within the statutory range. Comments were received from several of the territories urging that higher funding levels should be established. We have concluded, however, that we should retain the funding levels originally proposed since they are based on a congressional determination of need for the 1981 program and the comments did not include any information demonstrating that changed conditions required a higher relative level of funding as compared to the States than existed in 1981.

A municipality asked that we define the term "home energy supplier" in section 2605(b)(7) of the Act to include owners of rental properties. The expanded definition is unnecessary, in our view, because the Act confers sufficient discretion upon the States and subrecipients to make payments to landlords if they wish.

The definition of "household" in section 2603(2)(A) of the Act has been changed by a technical amendment in the Older Americans Act Amendments of 1981, Pub. L. 97–115, (December 29, 1981). The new definition provides:

"the term 'household' means any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily provided in common or who make undesignated payments for energy in the form of rent."

The most recent continuing appropriations act, Pub. L. 97–92, includes additional statutory language regarding the use of funds under the low-income home energy assistance program.

Section 130 of Pub. L. 97–92 provides:

"Notwithstanding any other provision of this joint resolution, each State shall establish such fiscal control procedures as are necessary to assure that funds made available under this resolution for the low-income home energy assistance programs are used for payments in accordance with section 2605(b)(1) and (2) of the Omnibus Budget Reconciliation Act of 1981 and that each eligible household receiving such payments does not use the payment for any other purpose than the purpose described in section 2602(a)."

Notice and Comment Procedures and Waiver of Delayed Effective Date

The block grant programs were enacted on August 13, 1981, and became effective on October 1, 1981. Because the Secretary was required to begin disbursing funds a few weeks after the statute was passed, it was impossible to publish a proposed rule, allow the public a period for submitting comments, revise the rule, and publish a final rule before the States would receive their first allotments. Several comments objected to the decision to publish interim final rules. The comments took issue with our determination under the Administrative Procedure Act that it was impracticable, unnecessary, and contrary to the public interest to use notice and comment procedures. By the time these final rules are published, however, some States will have operated the program for several months. We believe that it was preferable to provide guidance to the States in the early stages of implementation through interim final regulations than to remain silent or give advice on an ad hoc basis. In any event, we reviewed and considered each of the more than two hundred written comments we received on the interim final regulations, and adopted appropriate suggestions.

We have determined that there is good cause to waive the customary 30 day delay in the effective date of the final rules. The changes made in the interim final regulations are in large part simply clarifications and therefore a delayed effective date is unjustified. Substantive changes in provisions for the transition year, such as the revision allowing funding of Indian tribes in States that have not qualified for a block grant, are properly made effective immediately because of the short time remaining in the current fiscal year.

Impact Analysis

Executive Order 12291

E.O. 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department concludes that the regulations implementing the block grant programs are not major rules within the meaning of the Executive Order, because they do not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

One comment argued that the rules should be subjected to an impact analysis because the block grants will involve spending large sums, in excess of the $100 million economic effect threshold established in the Executive Order. However, the Executive Order was not intended, and has not been interpreted, to classify as "major" rules that merely set forth the terms and conditions for spending appropriated funds. The essential requirement for a rule to be classified as major is that it "result in"—create or cause—economic effects that otherwise would not exist. In this case, the effect of the block grant rules is not to determine whether or not the money will be spent, but the procedures by which it will be spent, and it is that effect—which is negligible—against which the threshold criterion is applied. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small governmental entities.

Several comments argued that a significant impact upon a large number of small entities was likely. However, the comments offered no specific showing of the likelihood of such impact or statement of what the effect might be. The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. Actual delivery of services will be performed in large part by proprietary, public, and not-for-profit organizations including day care centers, medical practitioners, neighborhood service centers, United Way agencies, and units of local government, as well as by State agencies. Because these regulations provide States with great authority to prescribe management, organization, funding, and eligibility practices for service delivery, they do not directly impact small entities, either favorably or adversely. Instead, impacts will depend on future State decisions.

We are not required to perform a regulatory impact analysis where the effect of the proposed regulation is speculative, and will be caused by decisions made independently of the Federal government. Therefore, the Secretary hereby certifies that a regulatory flexibility analysis is not required.

List of Subjects

45 CFR Part 16

Administrative practice and procedure, Grant programs-health, Grant programs-social programs.

45 CFR Part 74

Accounting, Administrative practice and procedures, Grant programs-health, Grant programs-social program, Insurance, Reporting and recordkeeping, Surety bonds.

45 CFR Part 96

Administrative practice and procedure, Aged, Alcoholism, Child welfare, Community action program, Drug abuse, Energy, Grant programs—energy, Grant programs—health, Grant programs—Indians, Grant programs—social programs, Health, Indians, Investigations, Low and moderate income housing, Maternal and child health, Mental health programs, Public health, Reporting and recordkeeping requirements, Social security.

For the reasons set forth in the preamble, Title 45 of the Code of Federal Regulations is amended as follows:

1. Part 96 is added to 45 CFR Subtitle A to read as follows:

PART 96—BLOCK GRANTS

Subpart A—Introduction

Subpart B—General Procedures

Subpart C—Financial Management

Subpart D—Direct Funding of Indian Tribes and Tribal Organizations

Subpart E—Enforcement

Subpart F—Hearing Procedure

Subpart G—Social Services Block Grants

Subpart H—Low-Income Home Energy Assistance Program

Subpart I—Community Services Block Grants

Subpart J—Primary Care Block Grants

Authority: Secs. 671–82, 901, 1741–45, 2191–94, 2351–55, 2601–11, Pub. L. 97–35, 95 Stat. 511–19 (42 U.S.C. 9901–11), 95 Stat. 535–59 (42 U.S.C. 300w–300w–8, 42 U.S.C. 300x–300x–9, 42 U.S.C. 300y–300y–10), 95 Stat. 762–64 (31 U.S.C. 1243 note), 95 Stat. 818–30 (42 U.S.C. 701–709), 95 Stat. 867–74 (42 U.S.C. 1397–1397f), 95 Stat. 893–902 (42 U.S.C. 8621–29).

Subpart A—Introduction

§ 96.1 Scope.

This part applies to the following block grant programs:

(a) Community services (Pub. L. 97–35, secs. 671–682) (42 U.S.C. 9901–9912).

(b) Preventive health and health services (Pub. L. 97–35, sec. 901) (42 U.S.C. 300w–300w–8).

(c) Alcohol and drug abuse and mental health services (Pub. L. 97–35, sec. 901) (42 U.S.C. 300x–300x–9).

(d) Primary care (Pub. L. 97–35, sec. 901)(42 U.S.C. 300y–300y–10).

(e) Maternal and child health services (Pub. L. 97–35, secs. 2191–94) (42 U.S.C. 1305).

(f) Social services (Pub. L. 97–35, secs. 2351–55) (42 U.S.C. 1397–1397e).

(g) Low-income home energy assistance (Pub. L. 97–35, secs. 2601–11) (42 U.S.C. 8621–8629).

§ 96.2 Definitions.

(a) "Secretary" means the Secretary of Health and Human Services or his designee.

(b) "Department" means the Department of Health and Human Services.

(c) "Reconciliation Act" means the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35).

§ 96.3 Information collection approval numbers.

Information collection requirements pertaining to the block grant programs have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, Pub. L. 96511 (44 U.S.C. Chapter 35) and have been assigned OMB numbers:

0930–0080 Alcohol and Drug Abuse and Mental Health Services Block Grant Reporting Requirements
0920–0106 Preventive Health and Health Services Block Grant Reporting Requirements
0915–0023 Primary Care Block Grant Reporting Requirements
0915–0024 Maternal and Child Health Services Block Grant Reporting Requirements
0980–0125 Social Services Block Grant Reporting Requirements
0980–0126 Community Services Block Grant Reporting Requirements
0960–0261 Low-Income Home Energy Assistance Block Grant Reporting Requirements

Subpart B—General Procedures

§ 96.10 Prerequisites to obtain block grant funds.

(a) No particular form is required for a State's application or the related submission required by statute. The provisions in section 1742(a) of the Reconciliation Act (31 U.S.C. 1243 note) relating to the contents of a report on proposed uses of funds must be satisfied; the specified information should be included in the plan required for the community services block grant (section 675(d) of the Reconciliation Act) (42 U.S.C. 9904(d)) and in the description of intended uses of funds required for the preventive health and health services, and alcohol and drug abuse and mental health services block grants (sections 1905(d) and 1915(d) of the Public Health Service Act (as amended by the Reconciliation Act) respectively (42 U.S.C. 300w–4(d) and 42 U.S.C. 300x–4(d)).

(b) The certifications required by the community services, primary care, preventive health and health services, alcohol and drug abuse and mental health services, and low-income home energy assistance block grant statutes to be made by the State's chief executive officer must be made by that individual personally, or by an individual authorized to make such certifications on behalf of the chief executive officer.

§ 96.11 Basis of award to the States.

The Secretary will award the block grant funds allotted to the State in accordance with the apportionment of funds from the Office of Management and Budget. Such awards will reflect amounts reserved for Indian Tribes and Tribal Organizations and, in FY 1982, any amounts awarded by the Department under transition authorities. The grant award constitutes the authority to carry out the program and to draw and expend fund.

§ 96.12 Grant payment.

The Secretary 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). When matching funds are involved, the Secretary shall take into account the ratio that such payment bears to such State's total expenditures under its awards.

§ 96.13 Reallotments.

The Secretary will re-allot to eligible States those funds available as of September 1 of each fiscal year under the reallotment provisions pertaining to the alcohol and drug abuse and mental health services, maternal and child health services, and preventive health and health services block grants. The reallotment procedure for the low-income home energy assistance block grant is specified in section 2607 of the Reconciliation Act (42 U.S.C. 8626) and § 96.81 of this part.

§ 96.14 Time period for obligation and expenditure of grant funds.

(a) *Obligations.* Amounts unobligated by the State at the end of a fiscal year shall remain available for obligation during the succeeding fiscal year for all block grants except:

(1) *Primary care.* Amounts are available only if the Secretary determines that the State acted in accordance with section 1926(a)(1) of the Public Health Service Act (42 U.S.C. 300y–5(a)(1)) and there is good cause for funds remaining unobligated.

(2) *Low-income home energy assistance.* Amounts are available only in accordance with section 2607(b)(2) of the Reconciliation Act (42 U.S.C. 8626(b)(2)), which limits the amount to 25 percent of the amount allotted to the State for the prior fiscal year.

(b) *Expenditure.* No limitations exist on the time for expenditure of block grant funds, except those imposed by statute with respect to the community services, maternal and child health services, and social services block grants.

§ 96.15 Waivers.

Applications for waivers that are permitted by statute for the block grants should be submitted to the Assistant Secretary of Health in the case of the preventive health and health services, alcohol and drug abuse and mental health services, primary care, and maternal and child health services block grants; to the director, Office of Community Services in the case of the community services block grant; to the Assistant Secretary for Human Development Services in the case of the social services block grant; and to the Associate Commissioner for Family Assistance in the case of the low-income home energy assistance program.

§ 96.16 Applicability of Title XVII of the Reconciliation Act (31 U.S.C. 1243 note).

This section interprets the applicability of the general provisions governing block grants set forth in Title XVII of the Reconciliation Act (31 U.S.C. 1243 note):

(a) Except as otherwise provided in this section or unless inconsistent with provisions in the individual block grant statutes, sections 1741–45 apply to the community services, preventive health and health services, and alcohol and drug abuse and mental health services block grants.

(b) The requirement in section 1742(c) of the Reconciliation Act relating to public hearings does not apply to any of the block grants governed by this part. Instead, the requirements concerning hearings (as well as other forms of public participation) in the individual block grant statutes apply.

(c) The primary care and maternal and child health services block grants are not subject to any requirements of Title XVII.

(d) The social services and low-income home energy assistance programs are subject only to section 1744.

(e) The alcohol and drug abuse and mental health services block grant is not subject to the provisions of section 1745 relating to audits.

(f) The applicability of section 1742(a) relating to the contents of a report on proposed uses of funds is specified in § 96.10. The applicability to the community services block grant of the audit requirements in section 1745(b) is specified in § 96.91.

Subpart C—Financial Management

§ 96.30 Fiscal and administrative requirements.

(a) Except where otherwise required by Federal law or regulation, a State shall obligate and expend block grant funds in accordance with the laws and procedures applicable to the obligation and expenditure of its own funds. Fiscal control and accounting procedures must be sufficient to (1) permit preparation of reports required by the statute authorizing the block grant and (2) permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of the statute authorizing the block grant.

(b) The Department will accept any State audit conducted in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, activities, and functions. Any Departmental audit will supplement and not duplicate any such State audit.

Subpart D—Direct Funding of Indian Tribes and Tribal Organizations

§ 96.40 Scope.

This subpart applies to the community services, alcohol and drug abuse and mental health services, preventive health and health services, primary care, and low-income home energy assistance block grants.

§ 96.41 General determination.

(a) The Secretary has determined that Indian tribes and tribal organizations would be better served by means of grants provided directly by the Secretary to such tribes and organizations out of the State's allotment of block grant funds than if the State were awarded its entire allotment. Accordingly, where provided for by statute, the Secretary will, upon request of an eligible Indian tribe or tribal organization, reserve a portion of a State's allotment and, upon receipt of the complete application and related submission that meets statutory requirements, grant it directly to the tribe or organization.

(b) An Indian tribe or tribal organization may request direct funding under a block grant program included in this subpart regardless of whether the State in which it is located is receiving funds under the block grant program.

§ 96.42 General procedures and requirements.

(a) An Indian tribe or tribal organization applying for or receiving direct funding from the Secretary under a block grant program shall be subject to all statutory and regulatory requirements applicable to a State applying for or receiving block grant funds to the extent that such requirements are relevant to an Indian tribe or tribal organization except where otherwise provided by statute or in this Part.

(b) A tribal organization representing more than one Indian tribe will be eligible to receive block grant funds on behalf of a particular tribe only if the tribe has by resolution authorized the organization's action.

(c) If an Indian tribe or tribal organization whose service population resides in more than one State applies for block grant funds that, by statute, are apportioned on the basis of population, the allotment awarded to the tribe or organization shall be taken from the allotments of the various States in which the service population resides in proportion to the number of eligible members or households to be served in each State. If block grant funds are required to be apportioned on the basis of grants during a base year, the allotment to the Indian tribe or tribal organization shall be taken from the allotment of the State whose base year grants included the relevant grants to the tribe or organization.

(d) The audit required under the block grant programs shall be conducted by an entity that is independent of the Indian tribe or tribal organization receiving grant funds from the Secretary.

(e) Beginning with fiscal year 1983, any request by an Indian tribe or tribal organization for direct funding by the Secretary must be submitted to the Secretary, together with the required application and related materials, by September 1 preceding the Federal fiscal year for which funds are sought. A separate application is required for each block grant.

(f) A State receiving block grant funds is not required to use those funds to provide tangible benefits (e.g., cash or goods) to Indians who are within the service population of an Indian tribe or tribal organization that received direct funding from the Department under the same block grant program for the same fiscal year. A State, however, may not deny Indians access to intangible services funded by block grant programs (e.g., treatment at a community health center) even if the Indians are members of a tribe receiving direct funding for a similar service.

§ 96.43 Procedures during FY 1982.

(a) This section applies to the fiscal year beginning October, 1, 1981.

(b) A request for direct funding must be received by the Secretary before the Secretary has awarded all of the allotment to the State involved. The application and related submission may be submitted later but must be submitted within 75 days after the beginning of the quarter in which the State qualified for block grant funds, (or by [insert date 45 days after publication] in the case of an Indian tribe located in a State that has not qualified for block grant funds in FY 1982) except that the application and related submission for the low-income home energy assistance program must be submitted by December 15, 1981. A separate request and application are required for each block grant.

§ 96.44 Community Services.

(a) This section applies to direct funding of Indian tribes and tribal organizations under the community services block grant.

(b) The terms "Indian tribe" and "tribal organization" as used in the Reconciliation Act have the same meaning given such terms in section 4(b) and 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b). The terms also include organized groups of Indians that the State in which they reside has determined are Indian tribes. An organized group of Indians is eligible for direct funding based on State recognition if the State has expressly determined that the group is an Indian tribe. In addition, the statement of the State's chief executive officer verifying that a tribe is recognized by that State will also be sufficient to verify State recognition for the purpose of direct funding.

(c) For purposes of section 674(c)(2) of the Act (42 U.S.C. 9903(c)(2)) an "eligible Indian" means a member of an Indian tribe whose income is at or below the poverty line defined in section 673(2) of the Act (42 U.S.C. 9902(2)). An "eligible individual" under section 674(c)(2) of the Reconciliation Act (42 U.S.C. 9903(c)(2)) means a resident of the State whose income is at or below the poverty line.

(d) An Indian tribe or tribal organization will meet the requirements of section 675(c)(1) (42 U.S.C. 9904(c)(1)) if it certifies that it agrees to use the funds to provide at least one of the services or activities listed in that section.

(e) An Indian tribe or tribal organization is not required to comply with section 675(b) (42 U.S.C. 9904(b)) or to provide the certifications required by the following other provisions of the Reconciliation Act.

(1) Section 675(c)(2)(A) (42 U.S.C. 9904(c)(2)(A));

(2) Section 675(c)(3) (42 U.S.C. 9904(c)(3)); and

(3) Section 675(c)(4) (42 U.S.C. 9904(c)(4)).

§ 96.45 Preventive health and health services.

(a) This section applies to direct funding of Indian tribes and tribal organizations under the preventive health and health services block grant.

(b) For the purposes of determining eligible applicants under section 1902(d) of the Public Health Service Act, a grantee that received a grant directly from the Secretary in FY 1981 under any of the programs replaced by the preventive health and health services block grant that was specifically targeted toward serving a particular Indian tribe or tribal organization will be considered eligible if the grantee is an Indian tribe or tribal organization at the time it requests funds under this part. Grantees that received funds under formula or Statewide grants, and subgrantees that received funds from any program replaced by the preventive health and health services block grant, are not eligible.

§ 96.46 Alcohol and drug abuse and mental health services.

(a) This section applies to direct funding of Indian tribes and tribal organizations under the alcohol and drug abuse and mental health services block grant.

(b) For the purpose of determining eligible applicants under section 1912(c) of the Public Health Service Act (42 U.S.C. 300x-1(c)) an entity that received a treatment grant or contract directly from the Secretary in FY 1980 specifically targeted toward serving a particular Indian tribe or tribal organization will be considered eligible if the entity is an Indian tribe or tribal organization at the time it requests funds under this part. Entities that received funds under formula or statewide grants, and those grantees who had the responsibility for their treatment grant support transferred to the Indian Health Service, are not eligible.

(c) An Indian tribe or tribal organization is not required to comply with section 1915(b) (42 U.S.C. 300x-4(b)) or to provide the certifications required by section 1915 (c)(2) through (c)(8) of the Public Health Service Act (42 U.S.C. 300x-4 (c)(2) through (c)(8)). Also, the services identified in section 1914(a)(1) of the Public Health Service Act (42 U.S.C. 300x-3(a)(1)) need not be provided by means of grants to community mental health centers.

§ 96.47 Primary care.

Applications for direct funding of Indian tribes and tribal organizations under the primary care block grant must comply with 42 CFR Part 51c (Grants for Community Health Services).

§ 96.48 Low-income home energy assistance.

(a) This section applies to direct funding of Indian tribes under the low-income home energy assistance program.

(b) The terms "Indian tribe" and "tribal organization" as used in the Reconciliation Act have the same meaning given such terms in section 4(b) and 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) except that the terms shall also include organized groups of Indians that the State in which they reside has expressly determined are Indian tribes or tribal organizations in accordance with State procedures for making such determinations.

(c) For purposes of section 2604(d) of the Act (42 U.S.C. 8623(d)), an organized group of Indians is eligible for direct funding based on State recognition if the State has expressly determined that the group is an Indian tribe. A statement by the State's chief executive officer verifying that a tribe is recognized by that State will also be sufficient to verify State recognition for the purpose of direct funding.

(d) The plan required by section 2604(d)(4) of the Reconciliation Act (42 U.S.C. 8623(d)(4)) shall contain the certification and information required for States under section 2605 (b) and (c) of that Act (42 U.S.C. 8624 (b) and (c)). An Indian tribe or tribal organization is not required to comply with section 2605(a)(2) of the Act (42 U.S.C. 8624(a)(2)).

(e) Where a tribe requests that the Secretary fund another entity to provide energy assistance for tribal members, as provided by section 2604(d)(3) of the Act (42 U.S.C. 8623(d)(3)), the Secretary shall consider the following factors in selecting the grantee: the ability of the other entity to provide low-income home energy assistance, existing tribal-State agreements as to the size and location of the service population, and the history of State services to the Indian people to be served by the other entity.

Subpart E—Enforcement

§ 96.50 Complaints.

(a) This section applies to any complaint (other than a complaint alleging violation of the nondiscrimination provisions) that a State has failed to use its allotment under a block grant in accordance with the terms of the act establishing the block grant or the certifications and assurances made by the State pursuant to that act. The Secretary is not required to consider a complaint unless it is submitted as required by this section.

(b) Complaints with respect to the preventive health and health services, alcohol and drug abuse and mental health services, primary care, and maternal and child health services block grants, must be submitted in writing to the Assistant Secretary of Health. Complaints with respect to the social services block grant must be submitted in writing to the Assistant Secretary for human Development Services. Complaints with respect to the low-income energy program must be submitted in writing to the

Commissioner of Social Security. (The address in each case is 200 Independence Ave. SW., Washington, D.C. 20201.) Complaints with respect to the community services block grant must be submitted in writing to the Director, Office of Community Services, 1200 19th Street, NW., Washington, D.C. 20506. The complaint must identify the provision of the act, assurance, or certification that was allegedly violated; must specify the basis for the violations if charges; and must include all relevant information known to the person submitting it.

(c) The Department shall promptly furnish a copy of any complaint to the affected State. Any comments received from the State within 60 days (or such longer period as may be agreed upon between the State and the Department) shall be considered by the Department in responding to the complaint. The Department will conduct an investigation of complaints where appropriate.

(d) The Department will provide a written response to complaints within 180 days after receipt. If a final resolution cannot be provided at that time, the response will state the reasons why additional time is necessary.

(e) The Department recognizes that under the block grant programs the States are primarily responsible for interpreting the governing statutory provisions. As a result, various States may reach different interpretations of the same statutory provisions. This circumstance is consistent with the intent of and stautory authority for the block grant programs. In resolving any issue raised by a complaint or a Federal audit the Department will defer to a State's interpretation of its assurances and of the provisions of the block grant statutes unless the interpretation is clearly erroneous. In any event, the Department will provide copies of complaints to the independent entity responsible for auditing the State's activities under the block grant program involved. Any determination by the Department that a State's interpretation is not clearly erroneous shall not preclude or otherwise prejudice the State auditors' consideration of the question.

§ 96.51 Hearings.

(a) The Department will order a State to repay amounts found not to have been expended in accordance with law or the certifications provided by the State only after the Department has provided the State an opportunity for a hearing. The hearing will be governed by Subpart F of this part and will be held in the State if required by statute.

(b) If a State refuses to repay amounts after a final decision that is not subject to further review in the Department, the amounts may be offset against payments to the State. If a statute requires an opportunity for a hearing before such an offset may be made, the hearing will be governed by Subpart F of this part and will be held in the State if required by statute.

(c) The Department will withhold funds from a State only if the Department has provided the State an opportunity for a hearing. The hearing will be governed by Subpart F of this part and will be held in the State if required by statute.

§ 96.52 Appeals.

(a) Decisions resulting from repayment hearings held pursuant to § 96.51(a) of this part may be appealed by either the State or the Department to the Grant Appeals Board.

(b) Decisions resulting from offset hearings held pursuant to § 96.51(b) of this part may not be appealed.

(c) Decisions resulting from withholding hearings held pursuant to § 96.51(c) of this part may be appealed to the Secretary by the State or the Department as follows:

(1) An application for appeal must be received by the Secretary no later than 60 days after the appealing party receives a copy of the presiding officer's decision. The application shall clearly identify the questions for which review is sought and shall explain fully the party's position with respect to those questions. A copy shall be furnished to the other party.

(2) The Secretary may permit the filing of opposing briefs, hold informal conferences, or take whatever other steps the Secretary finds appropriate to decide the appeal.

(3) The Secretary may refer an application for appeal to the Grant Appeals Board. Notwithstanding Part 16 of this title, in the event of such a referral, the Board shall issue a recommended decision that will not become final until affirmed, reversed, or modified by the Secretary.

(d) Any appeal to the Grant Appeals Board under this section shall be governed by Part 16 of this title except that the Board shall not hold a hearing. The Board shall accept any findings with respect to credibility of witnesses made by the presiding officer. The Board may otherwise review and supplement the record as provided for in Part 16 of this title and decide the issues raised.

Subpart F—Hearing Procedure

§ 96.60 Scope.

The procedures in this subpart apply when opportunity for a hearing is provided for by § 96.51 of this part.

§ 96.61 Initiation of hearing.

(a) A hearing is initiated by a notice of opportunity for hearing from the Department. The notice will:

(1) Be sent by mail, telegram, telex, personal delivery, or any other mode of written communication;

(2) Specify the facts and the action that are the subject of the opportunity for a hearing;

(3) State that the notice of opportunity for hearing and the hearing are governed by these rules; and

(4) State the time within which a hearing may be requested, and state the name, address, and telephone number of the Department employee to whom any request for hearing is to be addressed.

(b) A State offered an opportunity for a hearing has the amount of time specified in the notice, which may not be less than 10 days after receipt of the notice, within which to request a hearing. The request may be filed by mail, telegram, telex, personal delivery, or any other mode of written communication, addressed to the designated Department employee. If no response is filed within that time, the offer is deemed to have been refused and no hearing will be held.

(c) If a hearing is requested, the Department will designate a presiding officer, and (subject to § 96.51 of this part) the hearing will take place at a time and location agreed upon by the State requesting the hearing, the Department, and the presiding officer or, if agreement cannot be reached, at a reasonable time and location designated by the presiding officer.

§ 96.62 Presiding officer.

(a) A Department employee to whom the Secretary delegates such authority, or any other agency employee designated by an employee to whom such authority is delegated, may serve as the presiding officer and conduct a hearing under this subpart.

(b) The presiding officer is to be free from bias or prejudice and may not have participated in the investigation or action that is the subject of the hearing or be subordinate to a person, other than the Secretary, who has participated in such investigation or action.

(c) The Secretary is not precluded by this section from prior participation in the investigation or action that is the subject of the hearing.

(d) A different presiding officer may be substituted for the one originally designated under § 96.61 of this part without notice to the parties.

§ 96.63 Communications to presiding officer.

(a) Those persons who are directly involved in the investigation or presentation of the position of the Department or any party at a hearing that is subject to this subpart should avoid any off-the-record communication on the matter to the presiding officer or his advisers if the communication is inconsistent with the requirement of § 96.68 of this part that the administrative record be the exclusive record for decision. If any communication of this type occurs, it is to be reduced to writing and made part of the record, and the other party provided an opportunity to respond.

(b) A copy of any communications between a participant in the hearing and the presiding officer, e.g., a response by the presiding officer to a request for a change in the time of the hearing is to be sent to all parties by the person initiating the communication.

§ 96.64 Intervention.

Participation as parties in the hearing by persons other than the State and the Department is not permitted.

§ 96.65 Discovery.

The use of interrogatories, depositions, and other forms of discovery shall not be allowed.

§ 96.66 Hearing procedure.

(a) A hearing is public, except when the Secretary or the presiding officer determines that all or part of a hearing should be closed to prevent a clearly unwarranted invasion of personal privacy (such as disclosure of information in medical records that would identify patients), to prevent the disclosure of a trade secret or confidential commercial or financial information, or to protect investigatory records compiled for law enforcement purposes that are not available for public disclosure.

(b) A hearing will be conducted by the presiding officer. Employees of the Department will first give a full and complete statement of the action which is the subject of the hearing, together with the information and reasons supporting it, and may present any oral or written information relevant to the hearing. The State may then present any oral or written information relevant to the hearing. Both parties may confront and conduct reasonable cross-examination of any person (except for the presiding officer and counsel for the parties) who makes any statement on the matter at the hearing.

(c) The hearing is informal in nature, and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views will be made or considered, but either party may comment upon or rebut all such data, information, and views.

(d) The presiding officer may order the hearing to be transcribed. The State may have the hearing transcribed, at the State's expense, in which case a copy of the transcript is to be furnished to the Department at the Department's expense.

(e) The presiding officer may, if appropriate, allow for the submission of post-hearing briefs. The presiding officer shall prepare a written decision, which shall be based on a preponderance of the evidence, shall include a statement of reasons for the decision, and shall be final unless appealed pursuant to § 96.52 of this part. If post-hearing briefs were not permitted, the parties to the hearing will be given the opportunity to review and comment on the presiding officer's decision prior to its being issued.

(f) The presiding officer shall include as part of the decision a finding on the credibility of witnesses (other than expert witnesses) whenever credibility is a material issue.

(g) The presiding officer shall furnish a copy of the decision to the parties.

(h) The presiding officer has the power to take such actions and make such rulings as are necessary or appropriate to maintain order and to conduct a fair, expeditious, and impartial hearing, and to enforce the requirements of this subpart concerning the conduct of hearings. The presiding officer may direct that the hearing be conducted in any suitable manner permitted by law and these regulations.

(i) The Secretary or the presiding officer has the power to suspend, modify, or waive any provision of this subpart.

§ 96.67 Right to counsel.

Any party to a hearing under this part has the right at all times to be advised and accompanied by counsel.

§ 96.68 Administrative record of a hearing.

(a) The exclusive administrative record of the hearing consists of the following:

(1) The notice of opportunity for hearing and the response.

(2) All written information and views submitted to the presiding officer at the hearing or after if specifically permitted by the presiding officer.

(3) Any transcript of the hearing.

(4) The presiding officer's decision and any briefs or comments on the decision under § 96.66(e) of this part.

(5) All letters or communications between participants and the presiding officer or the Secretary referred to in § 96.63 of this part.

(b) The record of the hearing is closed to the submission of information and views at the close of the hearing, unless the presiding officer specifically permits additional time for a further submission.

Subpart G—Social Services Block Grants

§ 96.70 Scope.

This subpart applies to the social services block grant.

§ 96.71 Definitions.

(a) Section 2005 (42 U.S.C. 1397d (a)(2) and (a)(5)) (a)(2) and (a)(5) of the Social Security Act establishes prohibitions against the provision of room and board and medical care unless, among other reasons, they are an "integral but subordinate" part of a State-authorized social service. "Integral but subordinate" means that the room and board provided for a short term or medical care is a minor but essential adjunct to the service of which it is a part and is necessary to achieve the objective of that service. Room and board provided for a short term shall not be considered an integral but subordinate part of a social service when it is provided to an individual in a foster family home or other facility the primary purpose of which is to provide food; shelter, and care or supervision, except for temporary emergency shelter provided as a protective service.

(b) As used in section 2005(a)(5) of the Social Security Act (42 U.S.C. 1397d (a)(5)) with respect to the limitations governing the provision of services by employees of certain institutions, "employees" includes staff, contractors, or other individuals whose activities are under the professional direction or direct supervision of the institution.

§ 96.72 Transferability of funds.

Under section 2002(d) of the Social Security Act (42 U.S.C. 1397a(d)), funds may be transferred in accordance with the provisions of that section to the preventive health and health services, alcohol and drug abuse and mental health services, primary care, maternal and child health services, and low-income home energy assistance block grants. In addition, funds may be transferred to other Federal block grants for support of health services, health promotion and disease prevention activities, or low-income home energy assistance (or any combination of those activities).

Subpart H—Low-income Home Energy Assistance Program

§ 96.80 Scope.

This subpart applies to the low-income home energy assistance program.

§ 96.81 Reallotment report.

As part of the reallotment procedure established by section 2607 of the Reconciliation Act (42 U.S.C. 8626) each recipient of funds must submit a report to the Secretary by August 1 of each year containing the following information:

(a) The amount of the State's original allotment that the State desires to remain available for expenditure in the succeeding fiscal year, not to exceed 25 percent of the original allotment; and

(b) The amount of funds, if any, to be subject to reallotment.

§ 96.82 Required report.

In accordance with the authority in section 2610(a) of the Reconciliation Act, (42 U.S.C. 8629) each State receiving funds shall submit to the Department by October 31 of each year a report of the number and income levels of the households assisted by the funds during the preceding fiscal year (OMB clearance No. 0960–0261).

§ 96.83 Request for direct Federal payments to SSI recipients.

A State that wants the Secretary to make direct payments from the State's allotment to recipients of Supplemental Security Income in accordance with section 2604(e) of the Reconciliation Act (42 U.S.C. 8623(e)) must submit such a request at least six months before the State wishes the payment to be made, but, in any case, by September 1 of the preceding fiscal year. Such a request may be withdrawn at any time.

§ 96.84 Territories.

Except as otherwise provided, a territory eligible for funds shall have the same rights and responsibilities as a State.

Subpart I—Community Services Block Grants

§ 96.90 Scope.

This subpart applies to the community services block grant.

§ 96.91 Audit requirement.

Pursuant to section 1745(b) of the Reconciliation Act (31 U.S.C. 1243 note) an audit is required with respect to the 2-year period beginning on October 1, 1981, and with respect to each 2-year period thereafter. In its application for funds, a State may modify the assurance required by section 675(c)(9) of the Reconciliation Act (42 U.S.C. 9904(c)(9)) to conform to the requirements of section 1745(b).

Subpart J—Primary Care Block Grants

§ 96.100 Scope.

This subpart applies to the primary care block grant.

§ 96.101 Review of a State decision to discontinue funding a community health center.

Where a State determines for FY 1983, pursuant to section 1926(a)(2) of Public Health Service Act (42 U.S.C. 300y–5(a)(2)), that a community health center does not meet the criteria for continued funding set forth in section 330 of the Public Health Service Act (42 U.S.C. 254c), the State must advise the Department of the decision and the basis upon which it was made. The Department will permit the center 30 days to respond to the State's determination. After evaluating the reasons advanced by the State and the center, the Department will determine within 30 days after the center's response a grant under the Public Health Service Act. The State may not discontinue funding the center until the Department has completed its review.

§ 96.102 Carryover of unobligated funds.

In implementing section 1925(a)(2) of the Public Health Service Act (42 U.S.C. 300y–4(a)(2)), the Secretary will determine that there is good cause for funds remaining unobligated if planned obligations could not be carried out because of a bona fide reason or if the State has determined that program objectives would be better served by deferring obligation of the funds to the following year.

Subpart K—Transition Provisions

§ 96.110 Scope.

Except as otherwise stated, this subpart applies to the community services, preventive health and health services, alcohol and drug abuse and mental health services, and maternal and child health services block grants for the fiscal year beginning October 1, 1981. The social services block grant and the low-income home energy assistance program are not subject to the provisions of this subpart.

§ 96.111 Continuation of pre-existing regulations.

The regulations previously issued by the Department and the Community Services Administration to govern administration of the programs replaced by the block grants specified in § 96.1 of this part shall continue in effect until revised to govern administration of those programs by the Department in those circumstances in which States have not qualified for block grants.

§ 96.112 Community services block grant.

(a) For the fiscal year beginning October 1, 1981, only, a State may choose to operate programs under the community services block grant or, instead, have the Secretary operate the programs replaced by the block grant. If a State does not notify the Secretary in accordance with the statutory deadlines each quarter, it will be deemed to have requested the Secretary to operate the programs for the following quarter.

(b) A State or territory that does not have any "eligible entity" as that term is defined in section 673(1) of the Reconciliation Act (42 U.S.C. 9902), as amended by section 17 of Pub. L. 97–115 (December 29, 1981), may distribute its allotment for the fiscal year beginning October 1, 1981, according to the requirements applicable to the fiscal year beginning October 1, 1982.

(c) For any quarter in which the Secretary administers the programs, the Department's administration costs will be deducted from the State's allotment. The Department's total administration costs for making grants during fiscal year 1982 and for any monitoring of these grants in fiscal year 1983 will be deducted from each State's allotment in proportion to the total amount of grants awarded from the allotment during the period of administration by the Department (but not to exceed 5 percent of the State's fiscal year 1982 allotment).

PART 16—PROCEDURES OF THE DEPARTMENTAL GRANT APPEALS BOARD

2. Appendix A to Part 16 is amended by revising paragraph B. (a), introductory text, and adding paragraph B(a)(5) to read as follows:

Appendix A—What Disputes the Board Reviews

* * * * *

B. *Mandatory grant programs.*

(a) The Board reviews the following types of final written decisions in disputes arising in HHS programs authorizing the award of mandatory grants:

* * * * *

(5) Decisions relating to repayment and withholding under block grant programs as provided in 45 CFR 96.52.

* * * * *

PART 74—ADMINISTRATION OF GRANTS

3. Section 74.4(a) is amended by revising the first sentence to read as follows:

§ 74.4 Applicability of this part.

(a) *General.* Except where inconsistent with Federal statutes, regulations, or other terms of a grant, this part applies to all HHS grants, other than the block grant programs identified in 45 CFR 96.1. * * *

Dated: June 2, 1982.

Richard S. Schweiker,

Secretary, Department of Health and Human Services.

[FR Doc. 82-18247 Filed 7-6-82; 8:45 am]

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July 6, 1982

Part IV

Office of Personnel Management

Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations; Meeting of the National Eligibility Committee for the Combined Federal Campaign

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing regulations governing solicitation of Federal civilian and uniformed services personnel for contributions to private voluntary organizations under the authority of Executive Order No. 12353, Charitable Fund-Raising, of March 23, 1982. These regulations provide a system for administering the annual solicitation campaigns and establish requirements for organization participation.

EFFECTIVE DATE: July 6, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph S. Patti, Special Assistant for Regional Operations, (202) 632-5544.

SUPPLEMENTARY INFORMATION: On Monday, May 11, 1982, the U.S. Office of Personnel Management (OPM) published proposed regulations to govern the Combined Federal Campaign (CFC) (47 FR 20268-20283, May 11, 1982). The proposed regulations were issued to implement Executive Order 12353, March 23, 1982, and to replace, in its entirety, the *Manual on Fund-Raising Within the Federal Service for Voluntary Health and Welfare Organizations.*

They were developed to provide precise criteria for participation in and the operation of the CFC. Major changes were made in an attempt to meet objections raised in past years by various parties associated with the CFC and to balance judiciously the many considerations which must be taken into account in order to create the most equitable system for all parties concerned: Federal employees and members of the Armed Forces, the charities, the recipients of the charities' services, and the general public.

The proposed regulations provided for:

1. More precise and objective criteria for eligibility of organizations to participate in the CFC.
2. The selection of local community federated fund-raising organizations to serve as Principal Combined Fund Organizations (PCFOs) to manage local CFCs under the direction and control of local Federal Coordinating committees and the Director of OPM.
3. The encouragement of contributors to designate their contributions to specific charities or to be advised, with clear notification, that contributions not specifically designated to a particular charity would be deemed designated to the PCFO.
4. The return to the original, and still valid, form of fund-raising at places of Federal employment by national organizations and federations of local agencies by the elimination after one year of the participation of local unaffiliated agencies coupled with the encouragement for them to join existing federations, or form new ones in order to participate.

Comments on the proposed regulations were invited. More than 6,500 were received—from national and local voluntary agencies and groups, local Federal CFC organizations, Federal Executive Boards, Federal employees, Federal agencies, unions, and private citizens. In addition, the Director of OPM invited representatives from national voluntary agency groups and agencies to meet personally to discuss the proposed regulations. He met with individuals representing all of the national voluntary groups and 15 charitable agencies, in some cases more than once.

Most of the commenters (70%) were supportive of the proposed regulations; another 7% supported them but had specific suggestions. Of the remaining 23% of the commenters, most suggested that the proposed regulations were being considered too late in the year to run effective CFCs in the fall of 1982 or that more time was needed for thorough study of the proposed regulations and that, therefore, the current regulations should remain in effect for the fall 1982 CFC. Others of these comments had general and/or specific suggestions and objections.

In many cases both support and objections came from members or affiliates of the same groups and agencies. Some member agencies of national voluntary groups (United Way, National Health Agencies, National Service Agencies, International Service Agencies and the American Red Cross) commented in favor of proposed regulations; other members of the same groups had objections to various provisions. Affiliates of some national voluntary agencies did the same. Organizations representing minorities and women were also on both sides of many issues.

In response to the timing of the proposed regulations, OPM believes that the changes are important enough to require implementation at this time. While the number of responses is very large, the number of issues raised is not. OPM believes that there has been sufficient time to analyze and consider all comments received, and that it would take just as long to run the fall 1982 CFC under the current procedures at this time as it would under the new regulations.

Most of the general objections centered on contentions that (1) the identification of a local Principal Combined Fund Organization would result in the United Way exerting undue control over the management of the CFC since local United Ways will likely, in most cases, be selected as Principal Combined Fund Organizations; (2) all CFC participants other than United Ways would be precluded from receiving any shares of undesignated contributions since the PCFOs would be responsible for deciding how the undesignated contributions would be distributed within local CFC areas; (3) charitable organizations that serve minorities and women would be prohibited from participation in the CFC because the eligibility criteria require an organizational structure encompassing all or most of the United States and because of the provision that they provide direct and substantial service throughout the country and in specific CFC locations; and (4) local charities, not affiliated with local federated fund-raising organizations, would be eliminated from participation in the CFC after the fall 1982 campaign.

In response to the first general objection concerning the concept of the Principal Combined Fund Organization, OPM believes that this arrangement will strengthen the administration of local CFCs because of the expertise of these already-existing federated fund-raising organizations, and that substantial administrative cost to the government will thereby be reduced. Specific changes to the proposed regulations resulted from comments on this issue, however, and are discussed in more detail below. They involve strengthening the direction and control over PCFOs by the local Federal Coordinating Committees and the Director and insuring that other major CFC participants have a voice in campaign arrangements. Some commenters were under the mistaken impression that PCFOs would take over all aspects of the local campaign operations, including even solicitation of employees. This is definitely not the intent—the CFC remains a fund-raising program in which Federal employees solicit Federal employees for the benefit of worthy charitable organizations that meet important human needs.

In response to the second general objection, concerning the distribution of undesignated funds, OPM never intended that the distribution of undesignated contributions be restricted to organizations that serve local organizations only. International service and other agencies were intended to be eligible to receive undesignated funds, although the decision on the distribution of these funds remains with the PCFOs. The regulations have been revised, however, to clarify this provision.

The distribution of undesignated contributions has been one of the major sources of controversy with the CFC since its inception. Over the years, various methods and formulas have been used in attempts to insure their equitable distribution. None have stilled the controversy over the methods or forestalled legal action to overturn them. OPM is convinced that, to resolve the controversy, the employee-contributor must distribute all funds; either by being strongly encouraged to make a rational choice of a specific beneficiary or beneficiaries of his or her contribution, or to be clearly warned that a decision not to do so is a rational choice to have the contributions allocated by the PCFO—an organization made up of representatives of his or her local community, experienced in evaluating needs and allocating scarce charitable contributions.

In response to the third general objection regarding eligibility of legal defense, minority, and women's organizations, OPM is persuaded that some of the earlier criteria were overly restrictive and has modified both the general eligibility requirements and the direct and substantial presence criterion to meet most of the germane objections.

In response to the fourth major objection, regarding the elimination of local unaffiliated charities, OPM believes that fund-raising activities must comply with the requirement in section 1 of Executive Order No. 12353 that the CFC be limited to national voluntary agencies. The regulations do permit local unaffiliated organizations one year of grace to participate in the CFC before they must join other national federated fund-raising organizations to be eligible for participation in the future. The regulations, in addition, provide the means for the eventual participation of these local non-federated agencies as part of national federations.

Comments were received on a number of specific areas. In response to those that advanced the clarity of the proposed regulations or that pointed out technical problems, we incorporated the suggestions in the final regulations. Others that we did not believe did so were not incorporated.

Most of the specific comments centered on four areas. A summary of those and OMP's responses follows:

Eligibility Requirements

As mentioned above in the discussion of the general comments, there were many comments on specific national agency eligibility requirements, particularly the requirements in section 950.430 (a) and (c) regarding national scope and in 405(a)(2)(ii) regarding the 50% and 20% support requirements. Some commenters desired more restrictive criteria, most did not. OPM changed the requirement that at least 50% of an organization's revenue be from government sources to a requirement that not more than 50% of an organization's revenue be from Federal government agencies. OPM also more specifically defined "recently founded" organizations and provided for a one-year grace period for other organizations to meet this requirement.

A few commenters suggested that OPM require CFC participants to meet applicable charitable solicitation, nondiscrimination, and other laws of the State and local governments in which CFCs exist. OPM believes that these are concerns that are more appropriately left in the hands of the charitable organizations and the governments concerned. The Federal Government does not generally enforce compliance with laws not of its making.

Principal Combined Fund Organization

In response to the general suggestions described earlier, OPM has made specific changes. The first requires that an organization serving as a PCFO not be identified by its organizational or corporate title in any CFC material other than specific places on the pledge card and the campaign brochure (see §§ 950.101(c), 950.521(e)(2)(iii) and Appendix A to Subpart E). Second, changes were made in § 950.509(j) to provide that all campaign arrangements and material be approved by local Federal Coordinating Committees after other individuals and organizations are permitted to comment on them.

A number of commenters were of the opinion that there may be a conflict of interest in having PCFOs act as central receipt and accounting points for CFCs. OPM believes that there is not sufficient reason to change the regulations in light of the reporting and audit requirements in Subpart E and the fact that in the fall 1981 campaign, the local representatives of the national voluntary groups selected group representatives to serve that function in over 27% of the CFCs.

Distribution of Funds

Many of the commenters who voiced objections had specific objections and suggestions about the identification of agencies in the contributor's leaflet and about the method of distributing undesignated funds.

In the first area, commenters complained that specific agencies would lose their group identities if they were listed in alphabetical order and thus the groups would not receive an appropriate share of designations; and that by not having agencies listing under a group title, contributors would be led to believe that groups include all related charities when, in fact, agencies of the same general type can be found in different groups. Others commented that, by encouraging designations and permitting designation to groups, smaller, less-recognized agencies would be at a disadvantage.

To be as fair as possible, in § 950.521(e)(2)(ii) OPM adopted the suggestion that agencies be listed according to categories of service, each identified by its group affiliation, with federated groups enumerated separately at the end of the listing.

In the second area, commenters complained that § 950.513(a) restricted the distribution of undesignated fund to only organizations in the local CFC community, suggested that there should be a formula or method prescribed for the distribution, and noted that there exists a potential conflict of interest in having the organizations at least at this time most likely to be selected as PCFO's, local United Ways, decide on the distribution.

In response, OPM has removed the restriction in § 950.513(a) that undesignated funds be allocated "to meet the needs of that community" to permit them to be distributed to any participant in the local CFC.

Almost all of the commenters suggesting the use of formulas proposed formulas or variations of formulas or methods that have been used or were proposed for use in the past, none of which have ever been considered to be acceptable to all CFC participants or local Federal officials. OPM believes that the fairest way, after encouraging designations for the first time in the history of CFC, is to have the decisions made, as stated earlier, by local organizations, representative of the communities, experienced in making such decisions. In response to several requests, OPM has eliminated the local Volunteer Evaluation and Allocation

Committee as duplicative of the function of the PCFOs.

OPM appreciates the concern and effort shown by those commenters who, as a result of close analysis of the proposed rules, provided detailed comments and suggestions aimed at helping OPM develop rules which would be as fair as possible to all parties and be able to be efficiently administered by the Federal Government.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. The nominal costs to voluntary agencies, which are primarily associated with developing the initial application, are essentially the same as under current procedures.

List of Subjects in 5 CFR Part 950

Government employees, Charitable contributions.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, the Office of Personnel Management amends 5 CFR by adding new Part 950 to read as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATION

Authority: E.O. 12353

Subpart A—Administration and General Provisions

§ 950.101 Definitions.

For purposes of this Part:

(a) The term "national voluntary health and welfare agencies and such other national voluntary agencies as may be appropriate" means national entities that:

(1) Meet all eligiblity requirements established in this Part, except as limited hereinafter;

(2) Are not "action" organizations within the meaning of 26 CFR 1.501(c)(3)–1(c)(3) and are eligible to receive tax deductible contributions under 26 U.S.C. 170; and

(3) Provide or substantially support one or more of the following services:

(i) Relief of needy, poor or indigent children and of orphans, including adoption services;

(ii) Relief of needy, poor or indigent adults; and of the elderly;

(iii) Delivery of health care to the needy, poor, indigent, ill or infirm;

(iv) Education and training of personnel for the delivery of health care to the needy, poor and indigent;

(v) Health research;

(vi) Education, training, care and relief of physcially and mentally handicapped persons;

(vii) Delivery of legal services to the poor and indigent, and defense of human and civil rights secured by law;

(viii) Relief of victims of crime, war, casualty, famine, natural disasters, and other catastrophes;

(ix) Treatment, care, rehabilitation, and counseling of juvenile delinquents, criminals, released convicts, persons who abuse drugs or alcohol, persons who are otherwise in need of social adjustment and rehabilitation, and the families of such persons;

(x) Assistance, consistent with the mission of the Department of Defense, to members of the armed forces and their families;

(xi) Protection of families in short or long-term need of family and child care services, child and marriage counseling, foster care, and management and maintenance of the home;

(xii) Neighborhood and community-wide services which assist the needy as part of the whole community, including provision of emergency relief and shelter, recreation, safety, transportation, and the preparation or delivery of meals;

(xiii) Information and counseling with respect to the obtaining of any of the foregoing services; or

(xiv) Lessening the burdens of government with respect to the provisions of any of the foregoing services.

(b) Campaign terms:

"Director" shall mean the Director of the United States Office of Personnel Management, or his delegate;

"Employee" shall mean any person employed by the government of the United States or any branch, unit, or instrumentality thereof, including persons in the civil service and in the uniform services;

"Combined Federal Campaign" or "Campaign" or "CFC" shall mean the fund-raising program established and administered by the Director pursuant to Executive Order 12353, and any subsidiary units of such program;

"Community" shall mean a community that is defined either by generally recognized geographic bounds or by its relationship to an isolated government installation;

"Direct Contributions" shall mean gifts, in cash or in donated in-kind material, given by individuals and/or other non-governmental sources directly to the spending health and welfare organization.

"Indirect Contributions" shall mean gifts, in cash or in donated in-kind material, given to the spending health and welfare organizations by another health and welfare organization, but not transfers, dues or other funds from affiliated organizations or government, which are not to be considered as public "contributions."

(c) The term "Principal Combined Fund Organization" (or Organization) means the organization in a local Combined Federal Campaign that has been selected and so prescribed in § 950.509 of this Part to manage and administer the local Combined Federal Campaign, subject to the direction and control of the local Federal Coordinating Committee and the Director. All of its Campaign duties shall be conducted under the title "Principal Combined Fund Organization for ———— (local CFC)" and not under the corporate title of the qualifying federation.

§ 950.103 Summary description of the program.

(a) *Eligibility of National Voluntary Agencies.* National voluntary agencies apply to the Director each year for on-the-job solicitation privileges in the Federal Government. Early each calendar year, the Director issues a list of agencies that have met the prescribed standards as to program objective, eligibility, administrative integrity, and financial responsibility.

(b) *Assigned Campaign Periods.* In the United States, Combined Federal Campaigns are held when set by the Director, usually in the fall; the DOD Overseas Combined Federal Campaign is also usually held during the fall. The solicitation period for a Combined Federal Campaign is normally limited to six weeks, but may be extended for good cause by the local Federal Coordinating Committee.

(c) *Combined Federal Campaign.* At locations where there are 200 or more Federal personnel, all campaigns must be consolidated into a single, annual drive, known as the Combined Federal Campaign. The campaign is managed by the organization designated as the Principal Combined Fund Organization, in accord with § 950.509 of this Part, under the supervision of the local Federal Coordinating Committee and the Director. Such campaigns are conducted under administrative arrangements that provide for individual voluntary agency recognition, description of each voluntary agency's services, and allocation of contributions in accordance with specific designations by donors.

(d) *Decentralized Operations.* The federalism principle shall guide Campaign organization. Following designation of a Principal Combined Fund Organization, local representatives of that Organization initiate campaigns in their local community by direct contact with the heads of Federal offices and installations. Each Federal agency conducts its own solicitation among its employees, using campaign materials, supplies, and speakers furnished by or through the Principal Combined Fund Organization, under the direction of the local Federal Coordinating Committee and the Director.

(e) *Solicitation Methods.* Employee solicitations are conducted during duty hours using methods that permit true voluntary giving and reserve to the individual the option of disclosing any gift or keeping it confidential.

(f) *Off-the-Job Solicitation.* Many worthy voluntary agencies do not participate in the on-the-job program because they do not wish to join in its coordinated arrangements or because they cannot meet the requirements for eligibility. Such voluntary agencies may solicit Federal employees at their homes as they do other citizens of the community, or appeal to them through union, veteran, civic, professional, political, legal defense, or other private organizations. In addition, limited arrangements may be made for off-the-job solicitations on military installations and at entrances to Federal buildings.

(g) *Prohibited Discrimination.* The Campaign is a means for promoting true voluntary charity among members of the Federal community. Because of the participation of the Government in organizing and carrying out the Campaign, all kinds of discrimination prohibited by law to the Government must be proscribed in the Campaign. Accordingly, discrimination for or against any individual or group on account of race, color, religion, sex, national origin of citizens, age, handicap, or political affiliation is prohibited in all aspects of management and execution of the Campaign. Nothing herein denies eligibility to any voluntary agency, which is otherwise eligible under this Part to participate in the Campaign, merely because such voluntary agency is organized by, on behalf of, or to serve persons of a particular race, color, religion, sex, national origin, age, or handicap.

§ 950.105 Federal policy on civic activity.

Federal personnel are encouraged to participate actively in the work of voluntary agencies—as members of policy boards or committees, heads of local campaign units, or volunteer workers—to the extent consistent with Federal agency policy and prudent use of official time. They are encouraged also to devote private time to such volunteer work.

§ 950.107 Preventing coercive activity.

True voluntary giving is basic to Federal fund-raising activities. Actions that do not allow free choices or even create the appearance that employees do not have a free choice to give or not to give, or to publicize their gifts or to keep them confidential, are contrary to Federal fund-raising policy. The following activities are not in accord with the intent of Federal fund-raising policy and, in the interest of preventing coercive activities in Federal fund-raising, are not permitted in Federal fund-raising campaigns:

(a) Supervisory solicitation of employees supervised;

(b) Setting 100% participation goals;

(c) Providing and using contributor lists for purposes other than the routine collection and forwarding of contributions and installment pledges;

(d) Establishing personal dollar goals and quotas; and

(e) Developing and using lists of noncontributors.

Subpart B—Organization and Functional Responsibilities

§ 950.201 Development of policy and procedures.

(a) *Director, U.S. Office of Personnel Management.* Under Executive Order 12353, Charitable Fund-Raising, the Director is responsible for establishing fund-raising policies and procedures in the Executive Branch. With the advice of appropriate interested persons and organizations and of the executive departments and agencies concerned, he makes all basic policy, procedural, and eligibility decisions for the program. The Director may authorize the conduct of demonstration projects in one or more CFC locations to test alternative arrangements from those specified in this Part for the conduct of fund raising activities in Federal agencies.

(b) *Eligibility Committees.* A National Eligibility Committee shall consist of a chairman and such other members selected by the Director as he deems necessary, who shall serve at the pleasure of the Director. Local eligibility shall be determined by the local Federal Coordinating Committees. The National Eligibility Committee is responsible for recommending to the Director:

(1) Eligibility determinations on national federations and national voluntary agencies;

(2) Modification of eligibility standards and requirements as needed; and

(3) Any other matters as requested by the Director.

§ 950.203 Program administration.

(a) *Federal Agency Heads.* The head of each Federal executive department and agency is responsible for:

(1) Seeing that voluntary fund-raising within the Federal department or agency is conducted in accordance with the policies and procedures prescribed by this Part;

(2) Designating a top-level representative as Fund-Raising Program Coordinator to work with the Director as necessary in the administration of the fund-raising program within the Federal agency;

(3) Assuring full participation and cooperation in local fund-raising campaigns by all installations of the Federal agency;

(4) Assuring that the policy of voluntary giving and clear employee choice is upheld during the fund-raising campaign; and

(5) Providing a mechanism to look into employee complaints of undue pressure and coercion in Federal fund-raising. Federal agencies shall provide procedures and assign responsibility for the investigation of such complaints. Personnel offices shall be responsible for informing employees of the proper organization channels for pursuing such complaints.

(b) *Fund-Raising Program Coordinators.* The responsibilities of Federal agency Fund-Raising Program Coordinators are to:

(1) Cooperate with the Director, the local Federal Coordinating Committee, and the Principal Combined Fund Organization in the development and operation of the program;

(2) Maintain direct liaison with the Office of the Director in the administration of the program;

(3) Publicize program requirements throughout the Federal department or agency;

(4) Answer inquiries about the program from officials and employees and from external sources; and

(5) Investigate and arrange for any necessary corrective action on complaints that allege violation of fund-raising program requirements within the Federal agency.

§ 950.205 Program coordination.

The Director coordinates the Federal agencies' administration of the fund-raising program and maintains liaison with voluntary agencies.

§ 950.207 Local voluntary agency representatives.

Federated and national voluntary agencies provide their State and local representatives with policy and procedural guidance on the Federal program. The local representatives are responsible for furnishing educational materials, speakers, and campaign supplies as may be required and appropriate to the Federal program.

§ 950.209 Local Federal agency heads.

The head of the Federal department or agency provides the heads of the local Federal offices and installations with copies of the Federal fund-raising regulations. The local Federal agency heads are responsible for:

(a) Cooperating with representatives of the local Federal Coordinating Committee, the Principal Combined Fund Organization, and local Federal officials in organizing local Federal campaigns;

(b) Undertaking official campaigns within their offices or installations and providing active and vigorous support with equal emphasis for each authorized campaign;

(c) Assuring that personal solicitations on the job are organized and conducted in accordance with the procedures set in these regulations;

(d) Assuring that authorized campaigns are kept within reasonable administrative limits of official time and expense.

§ 950.211 Local Federal coordinating committees.

(a) When there are a number of Federal agency offices and installations in the same local area, some interagency coordination is necessary in order to achieve effective community-wide campaigns and to improve general understanding and compliance with the fund-raising program. The Director assigns the responsibility for local coordination to existing organizations of Federal agency heads whenever possible and to special committees where needed. The local Federal Coordinating Committee is authorized to make all decisions within the provisions and policies established in this Part on all aspects of the local campaign, including eligibility and the supervision of the local community campaign and the Principal Combined Fund Organization. Such decisions may be appealed, however, to the Director.

(b) *Authorized Local Federal Coordinating Committee.* Coordinating responsibility is assigned by the Director to one of the following organizations:

(1) Federal Executive Boards. The boards exist in principal cities of the United States for the purpose of improving interagency coordination. They are composed of local Federal agency heads who have been designated as Board members by the heads of their departments and agencies under Presidential authority.

(2) Federal Executive Associations and Federal Business Associations, self-organized associations of local Federal officials, and the Department of Defense National Policy Coordinating Committee.

(3) Fund-Raising Program Coordinating Committee. These committees are established in communities where there is no Federal Coordinating Committee in existence. Leadership in organizing such a committee is the responsibility of the head of the local Federal installation that has the largest number of civilian and uniformed services personnel. Local Federal agency heads or their designated representatives serve on the committee and determine all organizational arrangements.

(c) *Employee union representation.* In order to ensure employee participation in the planning and conduct of the CFC, employee representatives from the principal employee unions of local Federal installations should be invited to serve in whatever organization exercises local coordinating responsibilities.

(d) *Fund-raising responsibilities.* Within the limits of the policies, procedures, and arrangements made nationally, the fund-raising responsibilities of local Federal Coordinating Committees are to:

(1) Facilitate local campaign arrangements. The Federal Coordinating Committee (i) names a high-level chairman for the authorized Federal campaigns, (ii) provides lists of Federal activities and their personnel strength, (iii) cooperates on interagency briefing sessions and kick-off meetings, and (iv) supports appropriate publicity measures needed to assure campaign success.

(2) Administer program requirements. The Coordinating Committee is responsible for organizing the local Combined Federal Campaign, supervising the activities of the Principal Combined Fund Organization, and acting upon any problems relating to a voluntary agency's noncompliance with the policies and procedures of the Federal fund-raising program.

(3) Develop understanding of campaign program policies and procedures and voluntary agency programs. The local Federal Coordinating Committee serves as the central medium for communicating program, policies and procedures of the Campaign and for understanding the organizations employees are being

asked to support and how employees can obtain services they may need from these organizations.

(e) *Principal Combined Fund Organization.* The local Federal Coordinating Committee will supervise a local Principal Combined Fund Organization. The Principal Combined Fund Organization will raise money from Federal employees and administer the local campaign, under the direction of the local Federal Coordinating Committee.

(f) *Communication and Resolution Procedures Through the Director, Office of Personnel Management.* Each local Federal agency head will receive fund-raising directions through his Federal agency channels and will raise questions that pertain to fund-raising activities within his Federal agency by the same means. However, the local Federal Coordinating Committee refers unresolved local fund-raising questions or problems that are common to several Federal agencies directly to the Director. The Director communicates directly with the chairman of the local Federal Coordinating Committee for information about the local fund-raising situation.

§ 950.213 Avoidance of conflicts of interest.

Any Federal employee who serves on the Eligibility Committee, a local Federal Coordinating Committee, or as a Federal agency fund-raising program coordinator must not participate in any decision situations where, because of membership on the board or other affiliation with a voluntary agency, there could be or appear to be a conflict of interest.

Subpart C—Campaign Arrangements for Voluntary Agencies

§ 950.301 Types of voluntary agencies.

Voluntary agencies are private, nonprofit, self-governing organizations financed primarily by contributions from the public. Some are national in scope, with a national organization that provides services at localities through State or local chapters or affiliates. Others are primarily local, both in form of organization and extent of services.

§ 950.303 Types of fund-raising methods.

(a) The methods used by voluntary agencies in public fund-raising will be either federated or independent. A national *federated* group must meet the same eligibility criteria as a national agency, and have at least 10 local voluntary agency presences in at least 200 local combined campaigns. In federated campaigns, local voluntary agency representatives join contractually into a single organization for fund-raising purposes. A local United Way, united fund, community chest, or other local federated group may be considered and supported as a single agency. Local chapters or affiliates of national agencies can form local federations or be admitted as additional participating members of national federated groups.

(b) An *independent* campaign is one conducted by a local unit of a national voluntary agency through its own fund-raising organization. National voluntary agencies may conduct independent campaigns or participate in a federation.

§ 950.305 Considerations in making federal arrangements.

(a) *On-the-Job-Solicitation.* In order to have only *one on-the-job solicitation,* i.e., a Combined Federal Campaign, individual appeals must be combined into a single joint campaign of eligible health and welfare organizations in conformance with the policies and procedures prescribed in this Part.

(b) *Campaign Arrangements Established Nationally.* Basic campaign arrangements are established by the Director. Local Federal agency heads and Coordinating Committees are not authorized to vary from the established arrangements except to the extent that local variations are expressly provided for in this Part.

(c) *Number of Solicitations.* Not more than one on-the-job solicitation will be made in any year at any location on behalf of voluntary agencies, except in the case of an emergency or disaster appeal for which specific prior approval has been granted by the Director.

(d) *Responsible Conduct.* In the event a national voluntary agency fails to adhere to the eligibility requirements or to the policies and procedures of the Federal program, solicitation privileges may be withdrawn by the Director at any time after due notice to the voluntary agency and opportunity for consultation.

§ 950.307 Definition of terms used in Federal arrangements.

(a) *Domestic Area.* The 50 United States, and the Commonwealth of Puerto Rico.

(b) *Overseas Area.* All other points in the world where Federal employees or members of the uniformed services are stationed.

(c) *Recognized National Voluntary Agency.* A voluntary agency that has been declared eligible by the Director for participation in campaigns in the Federal establishment.

(d) *National Voluntary Agency "Supported Primarily through United Ways, United Funds, and Community Chests."* A voluntary agency that generally solicits within the Federal establishment as a participating member of United Ways, united funds, community chests, or other local federated groups that are members in good standing of, or are recognized by, United Way of America.

(e) *Federated Community.* A federated community is a geographical location within the domestic area where a federated fund-raising program exists. In a federated community, recognized national voluntary agencies can join a federated campaign group or participate individually. However, voluntary agencies "supported primarily through United Ways, united funds, and community chests" are authorized to solicit on-the-job in a federated community only as participating members of the local United Way, fund, or chest.

§ 950.309 Federated and overseas campaigns.

(a) *Authorized Federated Groups.* (1) United Way of America and any local United Way, united fund, community chest, or other local federated group that is a member in good standing of, or is recognized by, United Way of America and that meets the eligibility requirements in these regulations is authorized on-the-job solicitation privileges in its local campaign area on behalf of any of its member voluntary agencies that also meet these requirements. Certifications as to the eligibility requirements on behalf of local United Ways, united funds, and community chests and each member voluntary agency will be made by United Way of America to the Director.

(2) The American Red Cross, the National Health Agencies, the International Service Agencies, the National Service Agencies, and such other federated groups which shall meet the eligibility standards under this Part, as determined by the Director, shall be authorized on-the-job solicitation privileges on behalf of their member voluntary agencies that also meet all requirements of this Part. Certification for each subunit that they meet such requirements will be made to the Director.

(3) A member voluntary agency of a federated group need meet only the specific eligibility requirements of Section 950.405. Failure by a member voluntary agency to meet the requirements will disqualify the federated group that certified such voluntary agency from soliciting contributions, unless after notice to the

group of intent to cancel, corrective action is taken to the satisfaction of the Director. If appropriate corrective action is not taken, the Director may disqualify the federated group.

(b) *Local Federated Agencies.* To be eligible for participation in the Federal fund-raising program, the local federated group must be broadly representative in its board and committee membership of the community and must be making bona fide efforts to meet community needs. Requirements for participation in a local federated group must be in writing, available to the public, reasonable, and applied fairly and uniformly to all local voluntary agencies requesting participation. Procedures must be provided by the federated group for at least one review of any decision denying participation requested by a local voluntary agency. The review must be conducted by a committee or other body within the federated group that did not participate in the original decision. A written statement of the reasons for denial must be provided to the applicant voluntary agency. Where a local chapter or affiliate of a national voluntary agency is precluded from independent participation in the Federal fund-raising program because the local voluntary agency is not approved for federated participation, such chapter or affiliate may request the Director, after securing a report by the federated group, to determine whether or not the reasons for its non-approval were "arbitrary and capricious."

(c) *"Causes."* Solicitation for a health or other "cause," e.g., for "Mental Health" or "Heart Disease," without identification of the specific voluntary agency for which the funds are sought, is not authorized. All funds collected from Federal personnel must be allocated only to specific voluntary agencies.

(d) *Designation of Federated Area.* The recognition of a local Federal Coordinating Committee by the Director designates the community served by that Committee as a recognized local campaign site. Two or more authorized local Federal Coordinating Committees are authorized to develop coordinated solicitations best suited to the needs of their localities.

(e) *Overseas Campaign.*—(1) *DoD Overseas Combined Federal Campaign.*

(i) A Combined Federal Campaign is authorized for all Department of Defense activities in the overseas areas during a six-week period in the fall. Voluntary agencies that may participate in the Overseas Combined Federal Campaign will consist of: The American Red Cross; the United Service Organization; those national health agencies recognized for campaigns in the domestic area (the Federal Service Campaign for the National Health Agencies); and those international service agencies recognized for campaigns in the domestic area, and any national or federated voluntary agency recognized for overseas campaigns. Any of these voluntary agencies is eligible to be a Principal Combined Fund Organization.

(ii) Contributors to the DoD Overseas Combined Federal Campaign designate their gifts to one or more of the eligible agencies or the Principal Combined Fund Organization. The Principal Combined Fund Organization for the overseas campaign shall pay the amounts collected directly to the designated voluntary agencies, less "shrinkage" and the processing fee, if any, that is approved in advance of the campaign by the Federal official in the overseas area responsible for the local campaign arrangements.

(2) *Local Voluntary Agency Campaigns.* The heads of overseas offices and installations may, at their discretion, permit the solicitation of their military and civilian personnel for local voluntary agencies. Such campaigns will be conducted in accordance with the basic policies and procedures of the Federal program and at times which do not conflict with the DoD Overseas Combined Federal Campaign period. The eligibility standards in Subpart D will be used as guidelines in determining the eligibility of local voluntary agencies. Federal leadership in organizing such campaigns will be assumed by the head of the overseas Federal establishment that has the largest number of Government personnel in the campaign area.

(3) *Optional Participation by Certain Civilian Agencies.* Federal civilian departments and agencies that have traditionally considered their overseas personnel as members of the National Capital Area for fund-raising purposes may continue this practice.

(4) *On-Base Health and Welfare Activities.* On-base morale, welfare and recreational activities may be supported from CFC funds.

§ 950.311 Off-the-job solicitation at places of employment.

Voluntary agencies that are not recognized for the on-the-job program may be authorized off-the-job solicitation privileges at places of Federal employment under such reasonable conditions as may be specified by the local head of the Federal installation involved, provided that such conditions are not inconsistent with this Part. Dual solicitation is not authorized, so this privilege cannot be made available to any voluntary agency that is included in the on-the-job program.

(a) *Family Quarters on Military Installations.* Voluntary agencies may be permitted to solicit at private residences or at similar on-post family public quarters in unrestricted areas of military installations at the discretion of the local commander. However, such solicitation may not be conducted by military or civilian personnel in their official capacity during duty or non-duty hours, nor may such solicitation be conducted as an official command-sponsored project. This restriction is not intended to prohibit or to discourage military and civilian personnel from participating as private citizens in voluntary agency activities during their off-duty hours.

(b) *Public Entrances of Federal Buildings and Installations.* Voluntary agencies that engage in limited or specialized methods of solicitation—for example, the use of "poppies" or other similar tokens by veterans organizations—may be permitted to solicit at entrances or in concourses or lobbies of Federal buildings or installations normally open to the general public. Solicitation privileges will be governed by the rules issued by the General Services Administration pursuant to the Public Buildings Cooperative Use Act of 1976 or later modification, or other applicable Government legal authority.

Subpart D—Eligibility Requirements for National Voluntary Agencies

§ 950.401 Purpose.

These eligibility requirements are established to ensure that:

(a) Only responsible and worthy voluntary agencies are permitted to solicit on the job in Federal installations;

(b) The funds contributed by Federal personnel will be used effectively and for the announced purposes of the soliciting voluntary agencies; and

(c) All recognized national voluntary agencies meet requirements of Executive Order 12353 of March 23, 1982.

§ 950.403 General requirements for National Agencies.

(a) *Type of Agency.* Only nonprofit, tax-exempt, charitable organizations, supported by voluntary contributions from the general public and providing direct and substantial health and welfare and other appropriate national voluntary services through their national organization, affiliates or representatives are eligible for approval. All such services must be consistent with the policies of the United States Government.

(b) *Integrity of Operations.* Only voluntary agencies having a high degree of integrity and responsibility in the conduct of their affairs will be approved. Funds contributed to such organizations by Federal personnel must be effectively used for the announced purposes of the voluntary agency.

(c) *National Scope.* A national voluntary agency must demonstrate that:

(1) It is organized on a national scale with a national board of directors that represents its constituent parts, and exercises close supervision over the operations and fund-raising policies of any local chapters or affiliates.

(2) It has earned good will and acceptability throughout the United States, particularly in cities or communities within which or nearby are Federal offices or installations with large numbers of personnel.

(3) It has national scope, that is, scale, goodwill, and acceptability; this may be demonstrated as follows:

(i) By a voluntary agency's provision of a service in many (c. one quarter) States, or in several foreign countries, or in several parts of one large foreign nation;

(ii) By derivation of contributor support from many parts of the Nation;

(iii) By the extent of public support and the number and the geographical spread of contributors; and

(iv) By the national character of any public campaign, which may be shown by a large number (c. 75) of local chapters, affiliates, or representatives which promote such a campaign.

(d) *Type of Campaign.* Approval will be granted only for fund-raising campaigns in support of current operations. Capital fund campaigns are not authorized.

§ 950.405 Specific requirements.

(a) *Eligibility.* To be eligible for approval by the Director for participation in the Combined Federal Campaign, a national voluntary agency must be one:

(1) That is either a health or welfare or other appropriate voluntary agency, as defined in section 950.101 of this Part;

(2) That is voluntary and broadly supported by the public, meaning (i) that it is organized as a not-for-profit corporation or association under the laws of the United States, a State, a territory, or the District of Columbia; (ii) that it is classified as tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; and (iii) that, with the exception of voluntary agencies whose revenues are affected by unusual or emergency circumstances, as determined by the Director, it has received at least 50 percent of its revenues from sources other than the Federal Government or at least 20 percent of its revenues from direct and/or indirect contributions in the year immediately preceding any year in which it seeks to participate in the Combined Federal Campaign (organizations founded within the past three years participating in the CFC before this Part became effective will have three (3) years, and all other organizations in the CFC will have one (1) year to comply with the 50 percent/20 percent requirement);

(3) That is directed by an active board of directors, a majority of whose members serve without compensation; that adopts and employs the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations;* That prepares and makes available to the general public an annual financial report prepared in accordance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* and is certified, using the form in Appendix B to this Subpart, by an independent certified public accountant; that provides for an annual external audit by an independent certified public accountant;

(4) That can demonstrate to the Director, if its fund-raising and administrative expense is in excess of 25 percent of total support and revenue, that its actual expense for those purposes is reasonable under all the circumstances in its case;

(5) That ensures that its publicity and promotional activities are based upon its actual program and operations, are truthful and nondeceptive, and include all material facts; and

(6) That has a direct and substantial presence in the local campaign community, meaning that employees in the solicitation area, or their families, should be able to receive services from a particular voluntary agency within a reasonable distance from their employment stations, or receive benefits from national voluntary agencies which can be shown to affect a large number of local employees, with specific demonstrable assistance. Such presence shall be demonstrated to the Director or local Federal Coordinating Committee documenting that the services are known to and accessible to Federal employees in the local community; examples of direct and substantial services are: providing local services; personal counseling in health, welfare or other appropriate services (if by telephone, with a local phone number); local disease prevention program or inoculations; local representatives in a cooperating attorney or referral network; screening for detection of problems or need for services or referrals; treatments (of illnesses, poverty, and handicaps); and local educational or informational services. However, international organizations that provide health and welfare services overseas, which meet the eligibility criteria except for the direct and substantial present criterion, shall be eligible to solicit funds from Federal personnel.

(b) *Fund-Raising Practice.* The voluntary agency's publicity and promotional activities must assure protection against unauthorized use of its contributors lists; must permit no payment of commissions, kickbacks, finders fees, percentages, bonuses, or overrides for fund-raising; and must permit no general telephone solicitation of the public.

(c) *Reports.*—(1) *Annual Report.* The voluntary agency must prepare an annual report to the general public that includes a full description of the voluntary agency's activities and accomplishments and the names of chief administrative personnel.

(2) *Combined Reports.* Voluntary agencies which represent more than one subunit must prepare a combined annual financial report to the general public in accordance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations.* The combined report shall include all income and expenditures for the national operations and all chapters, committees, affiliates, or satellites.

(3) *Source of Funds and Costs Report.* The voluntary agency must file a special report with the Director that discloses, on a consolidated basis, the agency's (including chapters and affiliates) sources of funds, fund-raising expense, and use of net funds in its most recent fiscal year.

§ 950.407 Application requirements.

(a) *Federated Groups.* The American Red Cross, United Ways and local community chests or united funds that are members in good standing of or are recognized by United Way of America, the National Health Agencies, the International Service Agencies, the National Service Agencies, and such other federated groups shall be recognized under Subpart C, do not need to apply separately as National Agencies. For purposes of this Part, the

American Red Cross and its chapters are recognized as operating an accounting and financial system in substantial compliance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* and certification to this effect by local chapters is not required.

(b) *National Agencies.* In order to be considered for solicitation privileges in domestic or overseas campaigns in the Federal service, each national voluntary agency must file an application annually. National voluntary agencies that have already been approved for fund-raising privileges in the Federal service are not required to submit the information requested in paragraphs (f)(1), (2), (3), (4), and (8) of this section, except where there has been a substantial or significant change in these items; for example, a change in purpose of the organization or a decline in chapter coverage or activity. They are required to furnish information in paragraphs (f)(5), (6), (7), (9), (10), (11), and (12).

(c) *Time and Place of Filing.* Applications must be filed with the Office of the Director, United States Office of Personnel Management, Washington, D.C. 20415. Applicants are urged to file as early as possible in each calendar year.

(d) *National Eligibility.* The Director, with the assistance of a National Eligibility Committee of government officials, employee organization leaders, and private citizens, uses the information filed with the agency's application and derived from other responsible sources to make his decision on an agency's eligibility. The National Eligibility Committee shall consider the applications fairly, hold meetings and hearings as appropriate, and make recommendations to the Director. National eligibility shall only give a presumption of local eligibility; voluntary agencies must also meet the requirements of section 950.405(a)(6). Where a local chapter of an eligible national voluntary agency is denied participation in a local campaign, it may appeal to the Director, whose decision shall be final.

(e) *Notice of Decision.* Applicants for national eligibility are to be notified of the decisions as soon as possible after filing. If dissatisfied with the Director's decision, the applicants may request reconsideration of the decision by the Director. The Director's decision upon reconsideration will be final.

(f) *Form and Content of Application.* Applications shall be filed in the following form and will include the information, documents, and data specified:

(1) Corporate name and fiscal year;

(2) Origin, purpose, and structure of organization, including information to show that the voluntary agency meets the general and specific requirements of this Subpart;

(3) A list of chapters, affiliates, or representatives in alphabetical order by State; and under the State, a list of cities with chapter, affiliate, or representative by names and addresses;

(4) Demonstration of the good will and acceptability of the organization throughout the United States;

(5) Outline of the program, particularly the nature of the direct services provided by the voluntary agency and under what subparagraph of section 950.101(a)(3) the application is made, written assurance of compliance with all requirements of section 950.101(a)(2) and sections 950.403 through 950.405;

(6) Description of board of director's administrative activity in past year and list of current board members' names, addresses, and businesses or professions;

(7) Certification by an independent certified public accountant of compliance with an acceptable financial system and adoption of the Uniform Standards;

(8) Statement of compliance with all factors in the section on fundraising practice;

(9) Copy of latest annual report;

(10) Copy of latest financial report prepared in accordance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* and certification by an independent certified public accountant that the report was prepared in conformity with the Standards;

(11) Copy of latest external audit by an independent certified public accountant; and

(12) A special report to the Director, consistent with the reporting requirements of the Standards. The report must include the voluntary agency's sources of funds, expenditures by program service, and supporting services with fundraising and other expenditures listed separately. The report must cover the most recent fiscal year and represent a consolidated statement of national and affiliate income and expenditures. The amount of contributions received from United Ways, united funds or community chests, from Federal service campaigns, and the total from all other sources, especially transfers, dues, or other funds from affiliated organizations, must be separately identified and shown. All entries must be reported in dollar and percent of total contribution. The report must be furnished in accordance with the format shown in the appendix to this Subpart.

(g) The Director shall be authorized to investigate facts and circumstances on issues relating to eligibility raised under this Part.

§ 950.409 Public announcement of recognized agencies and assigned periods.

Early in the calendar year the Director will announce the names of all national voluntary agencies eligible for participation in the Federal fundraising program for the ensuing campaign year.

BILLING CODE 6325-01-M

APPENDIX A TO SUBPART D
SOURCE OF FUNDS AND COSTS REPORT
(for the year ending__________)

Organization: ________________________________

Public support

Received Directly: . . . . $
Contributions . . . . ________
Special Events (net of direct benefit costs of $__________). . . . . ________
Legacies and bequests . . . . ________
Subtotal . . . . ________

Received Indirectly:
Federated campaigns (e.g., United Way) . . . . . ________
Federal service campaigns . . . . ________
Other Contributions. . . . . ________
Subtotal . . . . ________

Total Support from the Public . . . . ________

Revenue:
Grants from Federal government agencies (including grants in-kind) . . . . ________
Grants from state or local government agencies (including Medicaid) . . . . ________
Memberships . . . . ________
Program service fees (including Medicare). . . . ________
Sales of materials and services to member units (net of direct expenses) . . . . ________
Sales of materials and services to the public (net of direct expenses . . . . ________
Transfers, dues, etc. from affiliated organizations, etc. . . . . ________
Investment Income . . . . ________
Gains on investment transactions. . . . . ________
Other Income. . . . . ________

Total revenue . . . . ________

Total public support and revenue. . . . . . ________

Expenses
Program services
(program). . . . . ________
(program). . . . . ________
(program). . . . . ________
(program). . . . . ________
Subtotal . . . . ________

Supporting services . . . . ________
Management and general . . . . ________
Fund raising . . . . ________
Subtotal . . . . ________

Total expenses . . . . ________

Excess (deficiency) of public support and revenue over expenses. . . . . ________

BILLING CODE 6325-01-C

APPENDIX B TO SUBPART D

Certificate

Name of Organization ——————

I certify that the above-named organization has adopted, and has prepared its financial statements in accordance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* (1974 Edition) prepared and published by the National Health Council, Inc., the National Assembly of National Voluntary Health and Welfare Organizations, Inc. and the United Way of America.

Signature: ——————

Address: ——————

Subpart E—The Local Combined Federal Campaign

§ 950.501 Authorized local voluntary agencies.

A local voluntary agency shall meet the same criteria as a national voluntary agency, except national scope, but shall be evaluated under these criteria by the local Federal Coordinating Committee recognized by the Director for that Community. After one year from the effective date of this Part, only local groups affiliated with a federated or other eligible national voluntary agency, as determined by the local Federal Coordinating Committee or the Director, are eligible to participate in the local campaign.

§ 950.503 Participation in Federal campaigns by local affiliated agencies.

(a) Arrangements will be established by each local Federal Coordinating Committee to evaluate those local affiliates of eligible national agencies that seek to solicit separately from local federated groups. These procedures will require eligible local voluntary agencies to preregister with the local Federal Coordinating Committee to participate in that year's Combined Federal Campaign. Arrangements will be made by the Central Receipt and Accounting Point to distribute contributions to authorized voluntary agencies after appropriate adjustments are made for "shrinkage" and approved administrative costs.

(b) *Application Procedures.* In order to be eligible for participation in the Combined Federal Campaign, each local voluntary agency must submit an application for registration in the CFC to the local Federal Coordinating Committee. Applications may be submitted jointly for member agencies in federated groups. The Federal Coordinating Committee is responsible for reviewing and taking action on the applications based on eligibility requirements in this Part, especially those of Subpart D. The Local Federal Coordinating Committee may request a qualified screening organization to assist in the processing and review of applications against the eligibility requirements and in recommending approval or denial of the application, but the local Federal Coordinating Committee must make the actual decisions. If the Federal Coordinating Committee determines that eligibility requirements are not met, reasons for that determination will be provided to the voluntary agency within 60 days of the receipt of the application.

§ 950.505 Responsibility of local Federal coordinating committees.

Each Federal Coordinating Committee is required to organize a Combined Federal Campaign in the local area for which it has fund-raising responsibility. The heads of Federal departments and agencies will request their local officials to cooperate fully with the decisions of the Federal Coordinating Committee in all aspects of CFC arrangements. The Federal Coordinating Committee makes all final decisions on the local campaign, subject to appeal to the Director.

§ 950.507 Local CFC plan.

(a) *CFC as Uniform Fund-Raising Method.* The Combined Federal Campaign is the only authorized fund-raising method in all areas in the United States in which 200 or more Federal employees are located. All voluntary agencies wishing to participate in fund-raising within the Federal service must do so within the framework of a local Combined Federal Campaign.

(b) *Non-Participation.* In the event that any voluntary agency does not follow these regulations for participation in a local CFC, fund-raising privileges in local Federal establishments are forfeited during that fiscal year. Voluntary withdrawal will not prejudice eligibility for the next year's Campaign.

(c) *Red Cross Participation.* In local communities where the American Red Cross is not a participating member of the local United Way, it will be regarded as a separate campaign organization in the combined campaign. American Red Cross chapters have independent authority with respect to fund-raising policy, so responsibility for deciding on participation in CFC rests with the local chapter board of directors. As with the other national organizations, in the event local American Red Cross chapters choose not to participate in CFC, they are not authorized to have a separate campaign in local Federal offices or installations during the fiscal year involved, except in the case of an emergency or disaster appeal for which specific prior approval has been granted by the Director.

(d) *Exceptions in Areas of Less than 200 Federal Employees.* Where there are fewer than 200 Federal employees in the local campaign area, it may not be practicable to hold a Combined Federal Campaign. Therefore, in such areas local Federal officials are not required to arrange for a Combined Federal Campaign. However, if they believe it would be desirable from the standpoint of the local community or the Federal Government to have such a campaign, they may contact the Director to arrange a Combined Federal Campaign regardless of the number of employees involved. Where a CFC is not conducted because of lack of sufficient Federal employees, the local united fund is authorized to solicit within the Federal establishment during the fall of the year and other Federated groups are authorized to conduct a separate spring campaign. Where the American Red Cross is not a member of the local united fund and the area will not have a CFC, then the Red Cross may conduct an independent campaign during the month of March. However, payroll deductions for charitable contributions are only authorized in conjunction with Combined Federal Campaigns.

§ 950.509 Organizing the local campaign: The principal combined fund organization.

The Local Federal Coordinating Committee shall organize the local community campaign. It will appoint a campaign chairman who will carry out campaign duties in conformance with the policies and procedures prescribed in this Part. From among the federations approved for participation in the local CFC, the local Federal Coordinating Committee shall select a Principal Combined Fund Organization to manage the campaign and to serve as fiscal agent. In doing so the Federal Coordinating Committee shall select whichever applicant organization it finds to be the local federated group in the CFC geographic area that provides through one specific, annual public solicitation for funds the greatest support for charitable agencies that depend on public subscriptions for support; that, in the judgment of the Federal Coordinating Committee, can most effectively provide the necessary campaign services and administrative support for the successful Campaign.

(a) In deciding whether an organization is the Principal Combined Fund Organization in the CFC geographic area, the Federal Coordinating Committee will consider:

(1) The number of local charitable voluntary agencies or affiliates in the CFC geographic area that rely on the applicant organization for financial support and that meet the prescribed eligibility criteria for participation in the CFC;

(2) The number of dollars raised by the applicant organization in the CFC geographic area during its last completed annual public solicitation for funds;

(3) The percentage of such dollars disbursed to the charitable voluntary agencies; and

(4) The local capacity of the applicant organization to provide the necessary campaign services and administrative support (including operation of the Central Receipt and Accounting Point) to the local Federal Coordinating Committee for a successful Federal campaign in conformance with the policies and procedures prescribed in this Part.

(b) An organization seeking to be designated the Principal Combined Fund Organization in a CFC area shall submit its application for such designation to the local Federal Coordinating Committee for approval within thirty days after the Director has determined eligible federations. All such applicants must pledge to manage the campaign fairly and equitably; to conduct organization operations separate from other voluntary agency operations; to consider advice from, be responsible to reasonable requests for information from, and to consult with other agencies; and to be subject to the decisions and supervision of the local Federal Coordinating Committee and the Director. Upon submission of a complaint by a local Federal Coordinating Committee or a federated or national voluntary agency, the Director may revoke the designation as a Principal Combined Fund Organization if in his discretion he finds these pledges are not fulfilled.

(c) Applications shall include the following: (1) The names of the voluntary agencies in the area that rely on the applicant organization for financial support and that meet the eligibility criteria set in this Part;

(2) The boundaries of the area covered by the public donation solicitation of the applicant organization;

(3) The number of dollars raised in the CFC geographic area by the applicant during its last completed annual public solicitation for funds;

(4) The percentage of such dollars disbursed to the charitable agencies;

(5) Agreement to transmit contributions, as designated by Federal emloyees, to charitable organizations approved for participation and listing in the local CFC (minus only "shrinkage"—that is, uncollectible pledges and gifts—and the approved fee for administrative cost reimbursement);

(6) Certification that it, and its participating member organizations, are in compliance with all applicable eligibility requirements specified in this Part for participation in the CFC;

(7) Fee, if any, proposed to be charged by the applicant organization for reimbursement for administrative costs; and

(8) Statement that the applicant organization is organized to provide the necessary campaign services and support to the local Federal Coordinating Committee for a successful Federal campaign in conformance with the policies and procedures prescribed in this Part.

(d) Member agencies of federations and other voluntary agencies certified for listing and receipt of designations through the approved local or national admission process shall be eligible to receive designations.

(e) The Principal Combined Fund Organization shall provide a form for the employee to indicate any amounts he may wish to designate to affiliated and non-affiliated beneficiaries. The Principal Combined Fund Organization shall pay the amount collected to the employee-designated beneficiary agency less "shrinkages" and the amount necessary to reimburse the Principal Combined Fund Organization for administrative expenses.

(f) The fee, if any, charged for administrative cost reimbursement must be approved in advance by the local Federal Coordinating Committee and published in the campaign literature.

(g) All contributions not designated to specific voluntary agencies or specific federated groups shall be deemed to have been designated to the Principal Combined Fund Organization. A statement of that fact shall be clearly stated on the face of each pledge card in red ink, which shall also state the name of the federated group which is the Principal Combined Fund Organization in that local Campaign.

(h) The Principal Combined Fund Organization shall issue a report to the local Federal Coordinating Committee within a reasonable time following the campaign setting forth the following information:

(1) Amounts contributed and pledged,

(2) Number of contributors,

(3) Amounts designated to each participating federated group and voluntary agency,

(4) Amount designated to the Principal Combined Fund Organization, and

(5) Costs of administering the campaign, including the Central Receipt and Accounting Point.

(i) *CFC Committee.* Where necessary, the local Federal Coordinating Committee may designate a committee from among its principal members, called the CFC Committee, to give top leadership and direction to the planning, conduct and evaluation of the local combined campaign. The Federal Coordinating Committee, however, may not redelegate any final authority for the campaign to the CFC Committee. The Chairman of the Campaign need not be the Chairman of the organization designated as the local Federal Coordinating Committee.

(j) *Action Steps by the Local Federal Coordinating Committee*—(1) The Chairman of the local Federal Coordinating Committee is not authorized to establish a Local Joint Work Group of Federal respresentatives and representatives of the Principal Combined Fund Organization. The Chairman shall direct the Principal Combined Fund Organization to assemble necessary information and data, and to submit a plan detailing materials and a timetable for campaign arrangements. This shall include the dates for preparation, printing and distribution of materials, kick-offs, training sessions, report meetings and award ceremonies. All of these, including the specific materials to be used, shall be submitted to the full local Federal Coordinating Committee for approval on a day to be announced broadly to participating voluntary agencies and federated groups and to the Director. An adequate period shall be provided for participating federated group and voluntary agencies to review and comment on all proposals.

(2) The local Federal Coordinating Committee will set a date or dates each year for local eligibility hearings. Such meeting or meetings shall be reported to the Director, and given wide publicity in the local community and to the voluntary agencies and federated groups which have applied for eligibility.

(k) *Loaned Executive Program.* One or more loaned Federal executives may be used in a Combined Federal Campaign. The Loaned Executive Program was authorized by President Nixon in a memorandum to heads of departments and agencies dated March 3, 1971. A Loaned Executive may be detailed from his agency on a full or part-time basis, for a specific period of time, to conduct or assist in the operation of a Combined Federal Campaign. The employing agency will decide who will serve as a Loaned Executive, if anyone, and the length of the detail. Executives may not be loaned or assigned to any specific voluntary organization but only to the official Combined Federal Campaign group. When assigned to the CFC, the executive shall be placed on administrative leave.

§ 950.511 Basic local CFC ground rules.

(a) The arrangements outlined in §§ 950.511 through 950.525 constitute basic ground rules for the local Combined Federal Campaign. Certain local variations are permissible if specifically authorized in this Subpart. However, any modification of ground rules in specific instances must be requested by Federal Coordinating Committees from the Director. Modifications will be granted only in the most exceptional circumstances.

(b) The local Federal Coordinating Committee will approve the:

(1) Campaign Name. The name will include the words "Combined Federal Campaign;" the year for which contributions are solicited; and approximate identification of the locality; as for example: "1981 San Antonio Area Combined Federal Campaign."

(2) Campaign Period. The solicitation period may be any period between September 1 and November 30.

(3) Campaign Area. The exact geographical area to be covered by the combined campaign will be determined nationally, taking into account past practice and the feasible scope for a single, coordinated campaign. The jurisdiction of the organization named as the local Federal Coordinating Committee will set the basic area of the Campaign, based upon past practices. Any changes in campaign area must be approved by the Director.

§ 950.513 Contributions.

(a) The contributor's information leaflet will clearly state that the Federal employee is encouraged to direct his gift to specific voluntary agencies. A single form of pledge card and leaflet-brochure will be produced under standards set in this Part, and approved by the Director. The leaflet will explain that when such gifts are earmarked to a specific voluntary agency, the Principal Combined Fund Organization will remit such funds, minus approved administrative costs, directly to that agency (or to its federation if all members of that federated group agree) as those funds are collected. The leaflet will also clearly state that when the Federal employee decides not to designate, the gift will be deemed designated to the Principal Combined Fund Organization for distribution.

(b) Several boxes will be provided on the pledge form so that the donor may indicate his choice, if any, of one or more of the voluntary agencies listed to receive all or part of his gift. A minimum of five boxes for such purposes will be shown on the face of and on all copies of the pledge card itself. Separate designation slips are not authorized under any circumstances. The pledge card must be arranged so that each Federal employee receives the pertinent CFC and voluntary agency information and the pledge card as a single package (as examples, inserted in a slot or pocket in the contributor's information leaflet).

(c) If contributions are designated to organizations not participating in the local CFC, they will not be accepted but will be returned to the contributor.

§ 950.515 Dollar goals.

(a) A dollar goal for the overall combined campaign is recommended. Generally, it provides a focus for group spirit and unity of purpose that contributes materially to success. By apportioning the goal equitably among the Federal offices and installations, each Federal agency shares responsibility in the team effort and has a mark with which to gauge its progress.

(b) In developing the proposed goal, the local Federal Coordinating Committee should take into account past giving experience in local Federal campaigns, the needs and reasonable expectations of the voluntary agencies in the current campaign situation, and the probability of a substantial increase in the level of giving due to the single campaign and payroll payment plan. The objective should be to set a goal that is attainable, which can be exceeded in an enthusiastic and purposeful campaign.

(c) Dollar goals are not required. An alternative approach is to rely on "suggested giving" as the principal incentive. For example, the "goal" could be 75 percent participation at the suggested giving level.

§ 950.517 Suggested giving guides and voluntary giving.

(a) Suggested giving guides for contributions are authorized for local construction. Guides for cash giving or direct-payment pledges may be included in terms of percent of annual income, number of hours pay, or suggested size of gift in relation to various income levels. Guides may be printed in the contributor's leaflet or on the pledge form. They will be accompanied by a statement explaining that the guide is provided because employees often ask for one, but that the decision to give and the amount is up to each employee.

(b) Federal agencies are not authorized to furnish individual employee suggested giving guides based upon the employee's specific pay or grade; a guide of this kind is comparable to an individual quota or assessment, which is prohibited.

(c) The contributor's leaflet or the pledge form must include the express statement that the employee has the right to make his gift confidentially in a sealed envelope which will be delivered unopened to the Combined Federal Campaign headquarters.

§ 950.519 Central receipt and accounting for contributions.

(a) The Principal Combined Fund Organization shall provide and administer the Central Receipt and Accounting Point or it may arrange for an appropriate financial institution to provide such service on its behalf, under the direction of the local Federal Coordinating Committee. Any charges by such institution to provide the necessary services are the responsibility of the Principal Combined Fund Organization and should be included in the latter organization's administrative costs factor.

(b) The central accounting point will tabulate all contributions designated to specified agencies on the pledge cards and then tabulate the contributions designated to the Principal Combined Fund Organization.

The amounts payable to the specified voluntary agencies are subject to deduction "shrinkage" and of the approval percentage, if any, for reimbursement of administrative costs to the Principal Combined Fund organization.

(c) Provision must be made by the Principal Combined Fund Organization for the audit of CFC funds. If the CFC is over $100,000, an independent audit must be performed. Copies of the audits must be submitted to appropriate local Federal officials and made available for inspection by any voluntary agency or federation participating in the CFC.

(d) In addition to the usual method of cash contribution and direct payment of pledges, the use of voluntary payroll withholding is authorized for members of the uniformed services and civilian personnel at CFC locations. Local voluntary agencies may decide whether or not to provide for direct payment of pledges; however, cash contributions must be permitted. Keyworker collection of installment pledges is prohibited.

§ 950.521 Campaign and publicity materials.

(a) Campaign and publicity materials will be developed in the local area under direction of the local Federal Coordinating Committee, and will be printed and supplied by the Principal Combined Fund Organization. All disputes over materials will be resolved by the local Federal Coordinating Committee, except that failure to follow this Part or other directive of the Director may be appealed to the Director. All publicity materials must have the approval of the local Federal Coordinating Committee before being used.

(b) Distribution of any bona fide educational material of the voluntary agencies or provision of other services to employees at Federal establishments must be handled through the Federal agency occupational health units, and not the CFC coordinators. While there is no intent to restrict the normal educational or service activities that voluntary agencies provide in Federal agencies, no special distribution of materials or services should be planned during the campaign, nor should promotional efforts be made that would have the effect of giving undue publicity to a particular voluntary agency or category of voluntary agencies during the campaign period. Violation of this requirement by any voluntary agency may be grounds for the local Federal Coordinating Committee to disqualify the voluntary agency from further participation in the local CFC for that year after due notice to the voluntary agency concerned.

(c) A single Contributor's Information Leaflet, a one-part list of participating voluntary agencies, and a single, joint Pledge Form and Payroll Withholding Authorization (the latter two preferably to be placed in an insert slot or otherwise assembled in the former) are to be distributed by keyworkers to each potential contributor. The Pledge Form and Payroll Withholding Authorization must be one form. All CFC literature, keyworker solicitors, and materials released as a part of the campaign must inform employees of their right to make a choice and will provide full information about the voluntary agencies, federated groups and the Principal Combined Fund Organization. Employees will be informed that while the Federal Government encourages its employees to make a choice, it does not mandate that they choose.

(d) Campaign materials must constitute a simple and attractive package that has fund-raising appeal and essential working information. Treatment should focus on the combined campaign and homogeneous appeal without undue use of voluntary agency symbols or other distractions that compete for the contributor's attention. Extraneous instructions concerning the routing of forms, tallying of contributors, etc., which are primarily for keyworkers, must be avoided.

(e) Specific campaign and publicity materials: (1) Contributor's Leaflet.

(i) This will be the only informational material distributed to individual contributors. It will describe the CFC arrangement, explain the payroll deduction privilege, and will include the information required by section 950.513 of this Part. The leaflet should be constructed to contain a pocket or a slot to hold the CFC pledge card.

(ii) The leaflet will provide instructions about how an employee may obtain more specific information about voluntary agencies participating in the campaign, their programs, and their finances. It will also inform employees of their right to pursue complaints of undue pressure or coercion in Federal fundraising activities. The leaflet will advise civilian employees to consult with their personnel offices and military personnel with their commanding officers to identify the organization handling such complaints in their respective Federal agency.

(iii) A Privacy Act notice must be printed on the leaflet.

(2) Separate list of participating voluntary agencies.

(i) This brochure will list each voluntary agency approved by the appropriate Federal officials for participation in the CFC with a brief statement of about 30 words on its programs. Opposite the name of each voluntary agency a number will be provided beginning with the number 101 so that contributors desiring to indicate a choice of agency or agencies to whom they wish their gift to be directed may insert such number or numbers in the designation boxes provided for that purpose on the pledge card. Each voluntary agency which is a member of a federated group shall be entitled, at its local option, to have that group designation added, in parenthesis, at the end of its statement.

(ii) The listing of voluntary agencies will also include therein the following generic titles reflecting the approved categories of services as a means to assist employees in making rational designations: children and family services, community coordination services, local federal personnel services, provision of basic needs and economic opportunity, health services/services to handicapped, international services, neighborhood services, acquisition of knowledge and skills, youth and recreation services, specialized and miscellaneous services. The order of assignment of these categories, and the order of voluntary agencies under them, will be reassigned by lot each year by the local Federal Coordinating Committee.

(iii) Federated groups will be listed, in an order set by lot each year, at the end of the list of voluntary agencies, under the title "Campaign Groups," with identification numbers keyed to the numbers of their participating federated groups. The federated group which is the Principal Combined Fund Organization will be so identified.

(iv) An illustration of the prescribed format is shown below.

Children & Family Services

101 (name of agency and group affiliation)
(description of program)
102 (name of agency and group affiliation)
(description of program)
103 (name of agency and group affiliation)
(description of program)

Community Coordination

201 (name of agency and group affiliation)
(description of program)
202 (name of agency and group affiliation)
(description of program)
203 (name of agency and group affiliation)
(description of program)

Local Federal Personnel Services

301 (name of agency and group affiliation)
(description of program)
302 (name of agency and group affiliation)
(description of program)
303 (name of agency and group affiliation)
(description of program)

* * * * *

Campaign Groups

701—International Service Agencies
702—National Service Agencies
703—National Health Agencies
704—American Red Cross
705—United Way/Community Chest, etc.
of ———

(The statement: "This group also has been designated as the Principal Combined Fund Organization for ———" shall be added after the title of federated organization serving that function.)

(3) Pledge Form and Payroll Withholding Authorization.

(i) When completed, this working form will go to the Central Receipt and Accounting Point for the local area. The format for the pledge card is set by the Director and is available from the Office of Personnel Management.

(ii) One copy of this form will be used as the Payroll Withholding Authorization. When completed, this copy will go to the contributor's payroll office. Since there are some 1,400 separate payroll offices serving Federal personnel, the withholding authorization must be in a standard format and bear adequate identification of the local campaign.

(iii) The name and mailing address of the local CFC Central Receipt and Accounting Point will be printed at the top of the form. The name must be the same as that for the campaign and include the year: for example, "1981 San Antonio Area Combined Federal Campaign."

(iv) The box entitled "Identification No." will be used for the contributor's Social Security Number, except in the case of Federal agencies that have a separate payroll identification numbering system. There is no requirement to use this space and it should only be used when it aids in accounting or campaign managment.

(f) Other campaign materials that are authorized include: (1) Chairman's Guide. For use of campaign chairmen in individual Federal installations;

(2) Keyworker's Guide. Instructions for keyworkers about CFC arrangements, solicitation methods, and forwarding procedures;

(3) Keyworker's Report Envelope. With tally sheets (which may be printed on the envelope) on which the keyworker will list the names of contributors or the number of confidential envelopes enclosed;

(4) Miscellaneous Campaign Items. Contributor's receipts, window stickers, posters, progress charts, awards, etc.;

(5) Publicity Items. News stories and fillers for the local press and house organs, employee letters, speeches of campaign leaders, division chairmen, films, television and radio material supporting the campaign; and

(6) Awards. To recognize campaign achievements by Federal agencies, Federal agency chairmen, etc. Awards should be identified as "Combined Federal Campaign" awards. The presentation of awards and plaques by individual voluntary agencies or categories of voluntary agencies for CFC accomplishments is not permitted.

(g) National materials provided and made available for use by local CFCs will be developed by an organization named by the Director. The Director will provide opportunity for comment on such materials by interested parties prior to approval. He must approve all material prior to use.

§ 950.523 Payroll Withholding.

The following policies and procedures are authorized for payroll withholding operations in accordance with Office of Personnel Management regulations in 5 CFR Part 550, Pay Administration.

(a) *Applicability.* Voluntary payroll allotments will be authorized by all Federal departments and agencies for payment of charitable contributions to local Combined Federal Campaign organizations.

(b) *Allotters.* The allotment privilege will be made available to Federal personnel as follows:

(1) Employees whose net pay regularly is sufficient to cover the allotment are eligible. An employee serving under an appointment limited to 1 year or less may make an allotment to a Combined Federal Campaign when an appropriate official of the employing Federal agency determines the employee will continue his employment for a period sufficient to justify an allotment. (This includes part-time and intermittent employees who are regularly employed.)

(2) Members of the Uniformed Services are eligible, excluding those on only short-term assignment (less than 3 months). (The Department of Defense has modified its military pay allotment regulations to authorize allotments for CFC charitable contributions by uniformed service members.)

(c) *Authorization.* (1) Allotments will be wholly voluntary and will be based upon contributors' individual written authorizations.

(2) Authorization forms in standard format will be printed by the Principal Combined Fund Organization at each location. The forms and other campaign materials will be distributed to employees when charitable contributions are solicited.

(3) Completed authorization forms should be transmitted to the payroll offices as promptly as possible, preferably by December 15. However, if forms are received after that date they should be accepted and processed by payroll offices.

(d) *Duration.* Authorizations will be in the form of a term allotment for one full year—26, 24 or 12 pay periods depending upon the allotter's pay schedule—starting with the first pay period beginning in January and ending with the last pay period that begins in December. (The standardization of beginning and ending dates, except for individual discontinuances, is intended to simplify payroll operations and minimize costs.) However, the fact that an employee or military member will not be on duty for the full year should not preclude acceptance of a payroll allotment if he has sufficient time in service remaining to make the allotment practicable. Three months or more would be considered a reasonable period of time for which to accept an allotment.

(e) *Amount.* (1) Allotters will make a single allotment which is apportioned into equal amounts for deductions each pay period during the year.

(2) The minimum amount for allotment will be determined by the local Federal Coordinating Committee but will be not less than $1.00 bi-weekly, with no restriction on size of increment above the minimum.

(3) No change of amount will be authorized during the term of an allotment.

(4) For the purpose of simplicity and economy in payroll operations, no deduction will be made for any period in which the allotter's net pay, after all legal and previously authorized deductions, is insufficient to cover the allotment. No adjustment will be made in subsequent periods to make up for deductions missed.

(f) *Remittance.* (1) One check will be sent by the payroll office each pay period, in the gross amount of deductions on the basis of current authorizations, to the Central Receipt and Accounting Point at each location for which the payroll office has received allotment authorizations.

(2) The check will be accompanied by a statement identifying the agency and the number of employee deductions. There will be no listing of allotters included or of allotter discontinuances.

(g) *Discontinuance.* (1) Allotments will be discontinued automatically:

(i) On expiration of the one-year withholding period:

(ii) On death, retirement, or separation of allotter from the Federal service.

(2) The allotter may revoke his authorization at any time by requesting it in writing from the payroll office. Discontinuance will be effective the first pay period beginning after receipt of the written revocation in the payroll office.

(3) A discontinued allotment will not be reinstated.

(h) *Transfer.* (1) When an allotter moves to another organizational unit served by a different payroll office in the same CFC location, whether in the same office or a different department or agency, his allotment authorization will be transferred to the new payroll office.

(2) When there is a delay in receiving the transferred authorization in the new payroll office, or when the allotter moves to a location covered by another CFC, the allotter should be permitted to complete a new authorization for the remainder of the one-year withholding period, which will supersede and revoke his previous authorization.

(3) When the allotter moves to a location not covered by a CFC, the allotment will automatically be

terminated unless expressly continued by the individual.

(i) *Accounting.* (1) Federal payroll offices will oversee establishment of individual allotment accounts, deductions each pay period, and reconciliation of employee accounts in accordance with agency and General Accounting Office requirements. The payroll office will accept responsibility for the accuracy of remittances, as supported by current allotment authorizations, and internal accounting and auditing requirements.

(2) The Principal Combined Fund Organization is responsible for the accuracy of transmittal of contributions. It shall transmit at least monthly for campaigns of $100,000 or more or quarterly if less than that amount, minus only the shrinkage factor and approved fee for administrative cost reimbursement. An independent audit will be provided when the CFC receipts exceed $100,000.

(3) Federated and national voluntary agencies, or their designated agents, will accept responsibility for: (i) the accuracy of distribution among the voluntary agencies of remittances from the Principal Combined Fund Organization; and (ii) arrangements for independent audit agreed upon by the participating voluntary agencies.

§ 950.525 National coordination and reporting.

(a) The Office for Regional Operations, U.S. Office of Personnel Management, is responsible under the Director for CFC arrangements.

(b) All local coordinating committees are required to notify the Office for Regional Operations of their campaign areas, their chairman's name and address, and the address of their Central Receipt and Accounting Point.

(c) All chairmen of local Federal Coordinating Committees are required to furnish reports of campaign results to the Office of Regional Operations by January 15 of each year. A reporting format will be furnished to CFC locations prior to that date requesting information on the results of the campaign, including the following:

(1) Basic data (number solicited, number of contributors);

(2) Payroll deductions (number authorizing, total pledged);

(3) Designations;

(4) Amount of undesignated receipts received by Principal Combined Fund Organization;

(5) Campaign costs; and

(6) Narrative summary evaluation of CFC arrangement based upon campaign experience. A copy of the report will be furnished to the local Federal Coordinating Committee, the Principal Combined Fund Organization, and a copy will be made available for inspection by other participating voluntary agencies and federated groups.

(d) All local activities will be coordinated with the national campaign under procedures issued by the Director through the Federal Personnel Manual system and a handbook of instructions (or other appropriate issuance) for use by participating voluntary organizations.

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