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PART II



DEPARTMENT OF THE TREASURY

Office of the Secretary

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FISCAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

**Fiscal Procedures and Auditings; Interim
Regulations**

Title 31—Money and Finance: Treasury
CHAPTER I—MONETARY OFFICES,
DEPARTMENT OF THE TREASURY
PART 51—FISCAL ASSISTANCE TO STATE
AND LOCAL GOVERNMENTS

Fiscal Procedures and Auditing; Interim
Regulations

Notice is hereby given that pursuant to the authority vested in the Secretary of the Treasury by the State and Local Fiscal Assistance Act of 1972 (the Revenue Sharing Act) as amended by the State and Local Fiscal Assistance Amendments of 1972 (31 U.S.C. 1221 et seq.) the Department of the Treasury hereby adopts the following interim regulations in Part 51 of Subpart F of Title 31, Code of Federal Regulations, which became effective November 18, 1975 (40 FR 53355). Additional regulations will be issued at a future date to conform the remaining subparts in part 51 of Title 31, Code of Federal Regulations, to the State and Local Fiscal Assistance Amendments of 1976.

Regulations appearing in Subpart G, Proceedings for Reduction Entitlement, Withholding or Repayment of Funds, numbered §§ 51.80 to 51.105 are redesignated §§ 51.200 to 51.225.

Present § 51.70 of the regulations is redesignated as § 51.100 and paragraph (b) of that section is amended to provide that a use, obligation, or appropriation of entitlement funds shall be consistent with the State or local law requiring a legislative enactment in ordinance or resolution form. Present § 51.70(d)(3) is redesignated as § 51.100(d)(2) and is amended to elaborate upon the extent to which fiscal accounts must be maintained to permit tracing of entitlement funds to a level of expenditure adequate to establish compliance with the provisions of the Act and regulations. A recipient government shall either maintain a separate set of fund accounts, separate bank account, or a memorandum record of voucher numbers and amounts for entitlement funds expended. Present § 51.70(d)(2) is rescinded.

Present § 51.71 is redesignated as § 51.101. Section 51.101(a) provides, in general, that each recipient government shall have an independent audit of its financial statements conducted in accordance with generally accepted auditing standards at least once every three years for the entire three years.

Section 51.101(b) defines "independent audit" as an audit conducted by independent public accountants, or qualified accountants or examiners from a State agency, who have no interest in the financial affairs of the government being audited. Where the audit of a local government, under State or local law, is made by a State official, or where the local government maintains a permanent auditing office responsible directly to the legislative branch, such audit shall be considered an independent audit.

Section 51.101(c)(1) defines "generally accepted auditing standards" as those auditing standards pronounced by the American Institute of Certified Public Accountants and incorporated in its

Statements on Audit Procedures and as further included in summary form in the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions as re-issued in 1974 by the Comptroller General of the United States.

Section 51.101(d) and (e) and § 51.102 set forth certain conditions under which the audit requirements under the Act are not applicable. Section 51.101(d) provides that a recipient government may elect to have the audit requirements not applicable upon the filing of an assurance that its financial statements are audited by independent public accountants or independent auditors, in accordance with State or local law, at least once every three years for the entire three years.

Section 51.101(e)(2) provides that the audit requirements are automatically waived for recipient governments which receive entitlements of less than \$25,000 unless such government is required to have an audit under State or local law. Under § 51.102 the Director may waive the audit requirements when the recipient government assures the Director that its accounts are unauditible, and that such government is making substantial progress towards making its accounts auditible. Request for the waiver, i.e., notification to the Director that its accounts are unauditible, must be made by the recipient government on or before March 31, 1978.

Section 51.103 provides that the Director may rely upon audits conducted by other Federal audit agencies pursuant to other Federal laws, provided such audits meet the requirements of § 51.101.

Section 51.104 requires opinions rendered with respect to audits to be made a part of the audit report in accordance with opinions in general use for attesting to financial statements.

Present § 51.71(b) is redesignated as § 51.105 and is amended to provide that the scope of each audit shall include each separate fund maintained by the recipient government and verification of its fiscal data as reported to it by the Bureau of the Census. Guides for such audits are the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions issued by the Comptroller General of the United States in 1972 (and re-issued in 1974) and the Audit Guide and Standards for Revenue Sharing Recipients, published by the Office of Revenue Sharing.

Because the purpose of these interim regulations is to provide immediate guidance to the States and local governments in order that the requirements of the Act, as amended, be complied with, it is hereby found impractical to issue such regulations with the notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitations of 5 U.S.C. 553(d).

These interim regulations shall become effective on or after January 1, 1977. It is expected that permanent regulations will be issued in the near future and for this reason, written comments are solicited for consideration by the

Department. Written comments may be submitted, in triplicate, on or before February 4, 1977 to the following address:

Director, Office of Revenue Sharing (Symbols CC), 2401 E St., N.W., Washington, D.C. 20226.

Comments submitted in response to this solicitation are available to the public upon written request pursuant to the Freedom of Information Act and the regulations promulgated thereunder by the Department, 31 CFR 1.1 et seq.

Dated: January 3, 1977.

JEANNA D. TULLY,
 Director,
 Office of Revenue Sharing.

Approved:
 JERRY THOMAS,
 Under Secretary
 of the Treasury.

Part 51 of 31 CFR Chapter I is amended as follows:

1. The sections in Subpart G, currently numbered §§ 51.80-51.105, are renumbered as §§ 51.200-51.225 respectively.

2. Subpart F is revised to read as follows:

Subpart F—Fiscal Procedures and Auditing	
Sec.	
51.100	Procedures applicable to the use of funds.
51.101	Auditing and evaluation.
51.102	Waiver of auditing provisions where financial accounts are unauditible.
51.103	Reliance upon other Federal audit agencies.
51.104	Audit opinions.
51.105	Scope of audits.
51.106	Retention of audit work papers.
51.107	Requirement to submit audit reports.

Subpart F—Fiscal Procedures and Auditing

§ 51.100 Procedures applicable to the use of funds.

A recipient government which receives entitlement funds under the Act shall:

(a) Establish a trust fund and deposit all entitlement funds received and all interest earned thereon in that trust fund. The trust fund may be established on the books and records as a separate set of accounts, or a separate bank account may be established.

(b) Use, obligate, or appropriate such funds within 24 months from the end of the entitlement period to which the entitlement payment is applicable. Such use, obligation or appropriation of entitlement funds shall be consistent with State or local law requiring a legislative enactment in ordinance or resolution form. Any interest earned on such funds while in the trust fund shall be used, obligated, or appropriated within 24 months from the end of the entitlement period during which the interest was received or credited. An extension of time in which to act on the funds, or interest earned thereon, shall be obtained by application to the Director. Such application will set forth the facts and circumstances supporting the need for more time and the amount of additional time requested. The Director may

grant such extensions of time as in his judgment appear necessary or appropriate.

(c) Provide for the expenditure of entitlement funds in accordance with the laws and procedures applicable to the expenditure of its own revenues.

(d) Maintain its fiscal accounts in a manner sufficient to:

(1) Permit the reports required by the Director to be prepared therefrom, and

(2) Permit the tracing of entitlement funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of this part. Such tracing requires that vouchers in support of expenditures funded by the Act shall be identified. Such identification can be made in any one of three ways as follows:

(i) Maintain a separate set of fund accounts; or,

(ii) Maintain a separate bank account; or,

(iii) Keep a memorandum record of the voucher numbers and amounts for the expenditures funded by entitlements received under the Act.

The accounting for entitlement funds shall at a minimum employ the same fiscal accounting and internal audit procedures as are used with respect to expenditures from revenues derived from the recipient government's own sources.

(e) Provide to the Director and to the Comptroller General of the United States, on reasonable notice, access to and the right to examine such books, documents, papers or records as the Director may reasonably require for the purpose of reviewing compliance with the Act and the regulations of this part or, in the case of the Comptroller General, as the Comptroller General may reasonably require for the purpose of reviewing compliance and operations under the Act.

§ 51.101 Auditing and evaluation.

(a) *In general.* Each recipient government which expects to receive entitlement funds for entitlement periods beginning on or after January 1, 1977, shall have an independent audit of its financial statements conducted for the purpose of determining compliance with the provisions of the Act, in accordance with generally accepted auditing standards, not less often than once every three years covering the three year period.

(b) *Independent audit—defined.* For purposes of this section an independent audit is an audit conducted by independent public accountants, or by qualified accountants or examiners from a State or local agency who have no personal interest directly or indirectly in the financial affairs of the government being audited, or in the financial affairs of any of the officers of the government being audited.

(1) In those States in which an audit is required by State law to be made of the State government by a State office or official, such audit shall be considered

to meet the requirements of an independent audit if the principal officer of the State audit agency is:

(i) Elected by the citizens of the State; or

(ii) Elected or appointed by and reports to the State legislature or a committee thereof.

(2) In those States in which an audit is required by State law to be made of local governments (or certain categories of local government) by a State office or official, such audit shall be considered to meet the requirements of an independent audit.

(3) Audits of local recipient governments made by a permanent (internal) auditing office or officer shall be considered to meet the requirements of an independent audit if the principal officer of the audit agency is:

(i) Elected by the citizens of the local recipient government; or,

(ii) Elected or appointed by and reports to the governing body of the local recipient government or a committee thereof.

(4) Audits other than those specified in paragraphs (b) (1), (2) and (3) of this section shall not be considered to be independent audits.

(c) *Generally accepted auditing standards and independent public accountant—defined.* (1) As used in paragraph (a) of this section, and as defined in § 51.2(h), "generally accepted auditing standards" means those auditing standards pronounced by the American Institute of Certified Public Accountants and incorporated in its Statements on Audit Standards, and further included in summary form in the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions as reissued in 1974 by the Comptroller General of the United States.

(2) As used in paragraph (a) of this section and as defined in § 51.2(j) "independent public accountant" means independent certified public accountants, and licensed public accountants licensed on or before December 31, 1970, certified or licensed by a regulatory authority of a State or other political subdivision of the United States.

(d) *Election by recipient government.* A recipient government may elect to have the requirements of paragraph (a) of this section not applicable to that government upon the filing of a written assurance by the chief executive officer that:

(1) The financial statements of the recipient government are audited by independent public accountants as defined in § 51.2(j) of this part, or by independent auditors as defined in paragraph (b) of this section, and that such financial statements are audited in accordance with State or local law, and

(2) The audits of the recipient government are conducted in accordance with generally accepted auditing standards, and

(3) The audits of the recipient government will be conducted not less often than every three years and will include an audit of the entire three years.

(e) *Inapplicability of audit requirement.* The requirement of paragraph (a) of this section shall not apply where:

(1) The recipient government conducts a series of independent audits over a period not to exceed three fiscal years which cover, in the aggregate, all of the accounts of such government for the three year period; or

(2) The recipient government's entitlement for any of its fiscal years is less than \$25,000, except where there is a State or local law requiring an audit of such government's financial statements which must be complied with in accordance with § 51.100(c) of this part.

§ 51.102 Waiver of auditing provisions where financial accounts are un-auditable.

The Director may, upon written application of the chief executive officer of the recipient government on or before March 31, 1978, waive the provisions of § 51.101 of this part for any fiscal period if in the course of determining compliance with § 51.101, the independent auditor renders an opinion that the financial accounts of such recipient government are not auditable, and the chief executive officer of such recipient government assures the Director that the accounts are not auditable and clearly sets forth the arrangements which have been made or taken toward making such financial accounts auditable. The Director shall satisfy himself by investigation or inquiry that the recipient government is achieving substantial progress, toward making its financial accounts auditable. A recipient government which fails to apply to the Director on or before March 31, 1978 that its financial accounts are not auditable shall not be entitled to the waiver provisions of this section.

§ 51.103 Reliance upon other Federal audit agencies.

The Director may rely upon audits of the financial statements of recipient governments conducted in accordance with other Federal laws, for any fiscal period, provided that such audits substantially satisfy the requirements for audits contained in § 51.101(a) of this part.

§ 51.104 Audit opinions.

Opinions made with respect to audits must be rendered as a part of the audit report and shall be in accordance with the opinion in general use for attesting to financial statements. Examples of opinions are set out in the appendix of the Audit Guide and Standards for Revenue Sharing Recipients published by the Office of Revenue Sharing and available to each recipient government.

§ 51.105 Scope of audits.

(a) *In general.* The scope of each audit required under § 51.101(a) of this part shall include each separate fund (self balancing group of accounts) maintained by the recipient government. The audit shall be of the financial and compliance type described in The Standards for Audit of Governmental Organizations, Programs, Activities and Functions issued by the Comptroller General of the

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United States in 1972, and as described further in the Audit Guide and Standards for Revenue Sharing Recipients published by the Office of Revenue Sharing. The audit for compliance shall pertain only to entitlement funds of the recipient government received under the Act.

(b) Verification of fiscal data reported to the Bureau of the Census. The scope of the audit shall include also a verification of the recipient government's fiscal data as reported by it to the Bureau of the Census.

§ 51.106 Retention of audit workpapers.

Audit workpapers and related audit reports shall be retained for three years after the issuance of the audit report, and shall be available upon request to the Director and the Comptroller General or to their representatives.

§ 51.107 Requirement to submit audit reports.

The Director may require the chief executive officer of a recipient government to submit a copy of its audit reports at such times as he may request.

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