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APPENDIX TO PART 44—DEFINITION OF MAJOR PROGRAM AS PROVIDED IN THE SINGLE AUDIT ACT OF 1984

AUTHORITY: 31 U.S.C. 7501-7507; 42 U.S.C. 3535(d).

SOURCE: 51 FR 39086, Sept. 27, 1986 (interim rule) and 51 FR 30480, Aug. 27, 1986 (final rule), unless otherwise noted.

§ 44.1 Purpose.

(a) This part implements the general audit requirements for recipient organizations in OMB Circular A-128 "Audits of State and local governments." The OMB Circular was issued under the Single Audit Act of 1984, 31 U.S.C. 7501-7507. OMB Circular A-128 supersedes Attachment P, "Audit requirements," of Circular A-102, "Uniform requirements for grants to State and local governments."

(1) This part repeats all substantive audit requirements in OMB Circular A-128. If any of the substantive audit requirements in OMB Circular A-128 are revised in the future, HUD shall promulgate regulations to conform this part to those revisions.

(2) The difference between the language of this part and of OMB Circular A-128 generally reflects only the substitution of certain terms and phrases reflecting the implementation of the Circular into the codification for HUD regulations. For example, in certain sections of this part, references to *Federal agencies* in the Circular have been changed to *HUD* and references to *this Circular* are replaced with *OMB Circular A-128*.

(b) The Single Audit Act requires State or local governments that receive \$100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget (OMB) to prescribe

policies, procedures and guidelines to implement the Act. It specifies that OMB shall designate *cognizant* Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantage individuals have the opportunity to participate in contracts for single audits.

(c) Concerning the applicability of the audit requirements of the Single Audit Act, the Act requires:

(1) State or local governments that receive \$100,000 or more a year in Federal financial assistance shall have an audit conducted in accordance with the Act's requirements;

(2) State or local governments that receive between \$25,000 and \$100,000 a year shall have an audit conducted in accordance with the Act's requirements (Government-, Department-, agency- or establishment-wide audit), or a grant-specific financial audit. Such financial audits shall be performed in accordance with the Government Auditing Standards for financial audits issued by the Comptroller General of the United States and include the compliance tests described in OMB's Compliance Supplement for Single Audits of State and Local Governments for the specific Federal assistance programs involved. For those programs not covered by the Compliance Supplement, the financial audit shall include any specific compliance tests required by HUD. If the Federal assistance program is not covered by the *Compliance Supplement* and if no compliance requirements have been established by HUD, the auditor shall design appropriate compliance tests in accordance with government auditing standards. Audits shall be conducted with the frequency described at § 44.4.

(3) State or local governments that receive less than \$25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall comply with audit requirements prescribed by State or local law or regulation.

(d) The Act does not exempt State or local governments from maintaining records of Federal financial assistance

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or from providing access to such records to Federal agencies, as provided in Federal law or in 24 CFR part 85.

(e) The Act is applicable to State and local governments with respect to any fiscal year that begins after December 31, 1984.

[51 FR 39086, Sept. 27, 1986 and 51 FR 30480, Aug. 27, 1986, as amended at 53 FR 8056, Mar. 11, 1988; 55 FR 8463, Mar. 8, 1990]

§ 44.2 Definitions.

Cognizant agency means the Federal agency assigned by OMB to carry out the responsibilities described in this part, which incorporates OMB Circular A-128.

Federal financial assistance means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

Federal agency has the same meaning as the term *agency* in section 551(1) of title 5 U.S.C.

Generally accepted accounting principles has the meaning specified in the generally accepted government auditing standards.

Generally accepted government auditing standards means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions*, developed by the Comptroller General, dated February 27, 1981.

HUD means the Department of Housing and Urban Development.

Independent auditor means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible

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for the special programs and services provided by the United States to Indians because of their status as Indians.

Internal controls means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

Local government means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

Major Federal Assistance Program is defined in the Appendix to this part.

Public accountants means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

Subrecipient means any person or government department, agency, or establishment that receives Federal financial assistance through a State or local government, but does not include an individual that is a beneficiary of such assistance. A subrecipient may also be a direct recipient of Federal financial assistance.

§ 44.3 Scope of audit.

(a) The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.