U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

Special Attention of:

HUD Offices of Community Planning and Development (CPD)
Recipients of CPD Federal Financial Assistance

NOTICE: CPD-16-04

Issued: 04-13-2016
Expires: This Notice is effective until it is amended, superseded, or rescinded.

SUBJECT: Additional Transition and Implementation Guidance for Recipients of Community Planning and Development (CPD) Funds for 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*

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1. PURPOSE.

This Notice provides additional guidance for CPD program grant recipients and responds to questions about implementation of 2 CFR part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Requirements). This Notice discusses the December 7, 2015, conforming amendments to CPD's program regulations that replaced citations to the superseded requirements with citations to the Uniform Requirements in part 200. It also addresses issues specific to CPD programs that were not discussed in HUD's Notice SD-2015-01, *Transition to 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, dated February 26, 2015 (http://portal.hud.gov/hudportal/documents/huddoc?id=15-01sdn.pdf).

2. APPLICABILITY.

The guidance in this Notice applies to the following programs:

- Community Development Block Grant (CDBG) Program (24 CFR part 570).
- CDBG Disaster Recovery Grants (applicable Federal Register Notices available at: https://www.hudexchange.info/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/).
- HOME Investment Partnerships (HOME) Program (24 CFR part 92).
- Housing Trust Fund (HTF) Program (24 CFR part 93).
- Housing Opportunities for Persons With AIDS (HOPWA) Program (24 CFR part 574).
- Emergency Solutions Grants (ESG) Program (24 CFR part 576).
- Continuum of Care (CoC) Program (24 CFR part 578).
- CPD Programs awarded by Notice of Funding Availability (NOFA).

3. BACKGROUND.

On December 26, 2013, the Office of Management and Budget (OMB) published (at 78 Federal Register 78608; https://federalregister.gov/a/2013-30465) the final Uniform Requirements, which are codified at 2 CFR part 200. The Federal award-making agencies implemented the Uniform Requirements by an interim rule on December 19, 2014 (at 79 Federal Register 75871; https://www.federalregister.gov/articles/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-and-budgets-uniform). HUD adopted the Uniform Requirements for all Federal awards made by HUD at 2 CFR part 2400.

The Uniform Requirements superseded, consolidated, and streamlined requirements from eight OMB Circulars:

- A-21, *Cost Principles for Educational Institutions*,
- A-87, *Cost Principles for State, Local and Indian Tribal Governments*,
- A-89, *Catalog of Federal Domestic Assistance*,
- A-102, *Grants and Cooperative Agreements With State and Local Governments*,
- A-110, *Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations*,
- A-122, *Cost Principles for Non-Profit Organizations*,
- A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, and
- The guidance in OMB Circular A-50, *Audit Followup*, on Single Audit Act follow-up.

When OMB published the Uniform Requirements, it also removed 2 CFR parts 215, 220, 225, and 230 (the OMB regulations implementing A-21, A-87, A-110, and A-122). OMB has published several technical corrections and amendments to the Uniform Requirements:

- July 22, 2015 (80 Federal Register 43301, https://www.gpo.gov/fdsys/pkg/FR-2015-07-22/pdf/2015-17753.pdf);
- July 30, 2015 (80 Federal Register 45395; https://www.gpo.gov/fdsys/pkg/FR-2015-07-30/pdf/2015-18745.pdf);

- August 14, 2015 (80 Federal Register 48683; http://www.gpo.gov/fdsys/pkg/FR-2015-08-14/pdf/2015-20044.pdf);
- September 10, 2015 (80 Federal Register 54407; https://www.federalregister.gov/articles/2015/09/10/2015-22074/universal-identifier-and-system-of-award-management-corrections); and
- November 9, 2015 (80 Federal Register 69111; https://www.gpo.gov/fdsys/pkg/FR-2015-11-09/pdf/2015-28441.pdf).

The Uniform Requirements with all amendments to 2 CFR part 200 are available in the electronic Code of Federal Regulations at www.ecfr.gov.

In addition to adopting the Uniform Requirements at 2 CFR part 2400, HUD also amended 24 CFR parts 84 and 85, which had implemented A-102 and A-110 for HUD programs. The revisions to parts 84 and 85 removed all substantive provisions, and added a saving provision covering existing Federal awards. This provision, in 24 CFR 84.1(b) and 85.1(b), states that Federal awards made before December 26, 2014, will continue to be governed by the 2013 edition of 24 CFR part 84 or 85, *or as provided under the terms of the Federal award*. The regulations further provide that "Where the terms of a Federal award made prior to December 26, 2014, state that the award will be subject to regulations as may be amended, the Federal award shall be subject to 2 CFR part 200."

HUD published conforming changes to its program regulations on December 7, 2015 (80 Federal Register 75931; https://www.gpo.gov/fdsys/pkg/FR-2015-12-07/pdf/2015-29692.pdf). The rule substituted references to appropriate sections of 2 CFR part 200 for the references to the requirements that were superseded by 2 CFR part 200. The effective date of HUD's conforming rule is January 6, 2016.

4. EFFECTIVE DATE.

Questions have been asked about when the Uniform Requirements are effective. As a general rule, new requirements in 2 CFR part 200 are not retroactive.

a. Competitive Grants (except HOPWA) - The Uniform Requirements apply to CPD program grants that were subject to the General Section for HUD's FY 2014 NOFA because the FY 2014 General Section was amended to include language referencing compliance with 2 CFR part 200.

NOTE: FY 2014 Continuum of Care grants were awarded under the requirements of the General Section for the FY 2013 NOFA and, therefore, are not subject to 2 CFR part 200.

NOTE: Unlike other CDBG Disaster Recovery grants, National Disaster Resilience Competition grants were competitively awarded and are subject to the FY 2014 General Section. The grants are subject to 2 CFR part 200.

All FY 2015 CPD program grants that are subject to the General Section of the FY 2015 NOFA must comply with 2 CFR part 200.

b. CDBG, ESG, and HOME Programs – The CDBG, ESG, and HOME programs, plus non-competitive CDBG Disaster Recovery Grants (because the requirements for disaster grants are based on the CDBG Program), have grant agreements that require compliance with the program regulations "as now in effect and as may be amended from time to time" or similar language. HUD's Transition Notice intended that existing grant agreements for these programs would be subject to part 200 requirements as of the December 26, 2014, effective date. Section 11 of Transition Notice SD-2015-01 stated:

> The grant agreements for some HUD programs (e.g., Community Development Block Grant, HOME Investment Partnerships, Emergency Solutions Grants, Indian Housing Block Grants, Native Hawaiian Block Grants, Indian Community Development Block Grants) incorporate the regulations "as now in effect and as may be amended from time to time" and, therefore, 2 CFR part 200 will be applicable to these grants.

However, there was confusion about applicability of part 200 to grant agreements for FY 2014 and earlier fiscal years, in particular, where grant recipients made funding decisions before December 26, 2014, but did not sign contracts or agreements obligating funds until after that date. In addition, the CDBG, ESG, and HOME regulations contained many cross-references to sections of parts 84 and 85. Although parts 84 and 85 were revised in December 2014 to reflect the applicability of 2 CFR part 200, many grant recipients were, nonetheless, unclear on how part 200 would apply. More confusion ensued from the timing of the publication of program conforming regulations, which were not published until December 7, 2015, and did not become effective until January 6, 2016. In recognition of the confusion that may have existed, HUD will not make findings of noncompliance with the Uniform Requirements (i.e., the part 200 requirements) if a grantee used CDBG, CDBG-DR, ESG, or HOME funds in accordance with comparable requirements under parts 84 or 85 (2013 edition) between December 26, 2014 and January 6, 2016.

c. HOPWA

Fiscal Year 2015: 2 CFR part 200 applies.

- Competitive renewals:
  - Notice CPD-15-01 ("Standards for Fiscal Year 2015 HOPWA Permanent Supportive Housing Renewal Grant Applications") provided that "the Office of Management and Budget (OMB) has published a final rule entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," which supersedes the OMB Circulars identified in 24 CFR 574.605 and replaces them with a uniform set of requirements at 2 CFR part 200, which was effective December 26, 2014. These requirements apply to FY 2015 (Permanent Supportive Housing) PSH renewal grant awards made under this notice. HUD will publish conforming amendments to the HOPWA regulations soon to remove outdated references to the OMB Circulars." (See: http://portal.hud.gov/hudportal/documents/huddoc?id=15-01cpdn.pdf.)
- Formula:
  - The FY 2015 Formula Grant Agreement provides in Article III: "The Grantee shall comply with all applicable program requirements, as they may be amended

from time to time. Such program requirements include the Act, Regulations, program directives, HUD Handbooks and Notices, Executive Orders and any other applicable Federal requirements. Other applicable Federal requirements include, but are not limited to, 2 CFR part 200 ("Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards")…." Accordingly, these HOPWA grants are subject to Part 200. (See: https://www.hudexchange.info/resources/documents/2015-HOPWA-Operating-Instructions-for-Formula-Grants.pdf.)

Fiscal Year 2014: 2 CFR part 200 applies as of December 26, 2014.

- Competitive renewals:
  - Attachment 4 of the Grant Agreement required compliance with "OMB recently published Guidance for Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards which supersedes several OMB Circulars, including A-87 and A-122. HUD is preparing regulations to implement the guidance in Departmental programs, including HOPWA. Grantee agrees to comply with the HUD implementing regulations when they become effective." The Operating Instructions explained: "Competitive grants, unlike formula grants, are subject to the regulations as they are in effect at the time of the application unless otherwise provided in the grant agreement. Please note, however, that FY14 renewal competitive grants will be subject to HUD rules implementing the new OMB guidance entitled "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards". (See: https://www.hudexchange.info/resources/documents/2014-HOPWA-Operating-Instructions-for-Competitive-Grants.pdf.)

- Formula:
  - The operating instructions provided: "OMB recently published Guidance for Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards which would supersede the Circulars listed here. HUD is implementing regulations in accordance with the guidance and expects the new regulations will become effective December 26, 2014. FY 2014 grant recipients will be required to comply with the HUD implementing regulations when they become effective, but shall not use them before the effective date." The Grant Agreement provided, "This Agreement shall be governed and controlled by the Act, the applicable regulations, as may be amended from time to time, program directives, and any other applicable federal requirements, including those set forth in Executive Orders and Office of Management and Budget Circulars, as currently established and may be amended from time to time." (See: https://www.hudexchange.info/resources/documents/2014-HOPWA-Operating-Instructions-for-Formula-Grants.pdf.)

Fiscal Year 2013 and prior grants:

- Competitive renewals:

- HOPWA competitive grants awarded in FY 2013 and prior years are not subject to 2 CFR part 200. HOPWA competitive grants awarded in FY 2013 and earlier remain subject to 24 CFR part 84 or 85 in place at the time of the award in accordance with the terms and conditions of the award.

- Formula:
  - The FY 2013 HOPWA formula grant agreement contained the following language: "Regulations; Approved Application: This Agreement shall be governed and controlled by the Act, the Regulations, program directives, and any other applicable federal requirements, including those set forth in Executive Orders and Office of Management and Budget Circulars, as currently established and may be amended from time to time." Accordingly, FY 2013 HOPWA formula grants (and formula grants from earlier years with language incorporating requirements as "may be amended from time to time") are subject to 2 CFR part 200 as of December 26, 2014.

5. PROCUREMENT STANDARDS; PROCUREMENT EXCEPTION.

The Uniform Requirements provided one exception to the general effective date for the revised procurement standards. A non-federal entity (defined in 2 CFR §200.69 as "a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient") may delay implementation of the revised procurement standards.

Rather than implementing the procurement standards in 2 CFR §§200.317 - 200.326 as described above in Section 4 of this Notice, the non-Federal entity may continue to comply with the procurement standards in 24 CFR parts 84 or 85 (2013 edition), as applicable, for three additional fiscal years.[1] Per 2 CFR 200.110(a), if "a non-Federal entity chooses to use the previous procurement standards for all or part of these three fiscal years before adopting the procurement standards in this part, the non-Federal entity must document this decision in its internal procurement policies."

As an example, if a grant recipient with a local fiscal year that started on July 1st and ended June 30th wanted to take advantage of this exception for the three-year period, the three additional years would cover the period July 1, 2015, through June 30, 2018, after which point it would be required to comply with the procurement standards of 2 CFR part 200. (Note that this applies to the grant recipient's fiscal year, which may be different from its Consolidated Plan program year.)

Contract procurement actions initiated on or after December 26, 2014, must be undertaken in compliance with 2 CFR 200.317-326, unless the recipient has invoked the three-year delay described above. A contractor who is hired to provide goods or services (such as a construction contract or an IT services contract) is not required to comply with any of the Uniform Requirements (including the previously-cited procurement regulations) in carrying out the

[1] Pursuant to a May 17, 2017, Federal Register Notice (https://www.gpo.gov/fdsys/pkg/FR-2017-05-17/pdf/2017-09909.pdf), OMB has extended the grace period for non-federal entities for an additional year.

contract work. However, the work performed by the contractor may require compliance with part 200 in its own right. (An example of the latter might be a city contracting with a private firm to prepare and advertise construction bids on its behalf.) If a recipient procures a contractor to undertake grant administration work on the recipient's behalf, both the procurement process itself and the contractor's work will be subject to part 200 requirements if the procurement was initiated on or after December 26, 2014. (An example of this would be a city that contracts with a private for-profit company to serve as its grant administrator.)

6. EFFECT ON AGREEMENTS BETWEEN THE RECIPIENTS OF CDBG, CDBG DISASTER RECOVERY, ESG, AND HOME GRANTS AND OTHER ENTITIES, INCLUDING SUBRECIPIENTS.

Agreements between a recipient and another entity which constitute a sub-award of funds to that entity must contain language requiring the entity to comply with the Uniform Requirements. Examples of such agreements include:

- Subrecipient agreements.
- Funding/grant agreements between a State and a unit of local government or other recipient, when the State has adopted part 200 requirements in whole or in part as its requirements.
- Funding agreements between a CDBG Urban County and participating local governments.
- Agreements between a grant recipient and a Community-Based Development Organization (CBDO).
- Intergovernmental agreements between units of local government or governmental entities.
- Agreements governing CDBG Revolving Loan Funds.

Any new subrecipient or similar agreements which are executed on or after December 26, 2014, must incorporate and apply the part 200 requirements to the sub-award. Any funds covered by an existing agreement between a recipient and another entity that were obligated by that entity on or after December 26, 2014, are subject to the part 200 requirements. (This includes program income received and retained by a sub-awardee.) Whether a recipient must amend an existing subrecipient or similar agreement that was executed prior to December 26, 2014, in order to incorporate part 200 requirements, will depend on the wording of the current agreement and the status of the agreement.

Situations in which a recipient may not need to amend an existing subrecipient or comparable agreement to incorporate part 200 requirements include the following:

- If the existing agreement contains language stating that the agreement "is subject to the current Federal regulations as may be amended" (or similar language), it is not necessary to amend the agreement because such language automatically makes the part 200 requirements applicable as of the effective date of the regulation. The recipient must treat the 2 CFR part 200 requirements as being applicable to that agreement as of December 26, 2014.

- If the existing agreement specifically references the prior (part 84 or 85) requirements, the agreement need not be amended to apply the part 200 requirements, providing that no further obligation of funds by the sub-awardee occurs under this agreement after December 26, 2014. (This would cover situations in which all the funds were expended or obligated for activities before December 26, 2014, but the sub-awardee has not completed all activity steps or has not submitted a final report.) A recipient may grant a no-cost time extension to such agreements without amending the agreement to apply part 200, but a grantee may not add additional funding to such an agreement.

- If all activities under the agreement are completed, all funds have been expended, and the sub-awardee's only remaining obligations are ongoing performance reporting, completion of an audit, complying with reversion of assets or deed restriction requirements, etc., there is no need to amend the agreement.

Situations in which a recipient must amend an existing subrecipient or comparable agreement include the following:

- The regulations and grant agreements for the CDBG, ESG, and HOME programs (and non-competitive CDBG Disaster Recovery Grants) require compliance with the program regulations "as now in effect and as may be amended from time to time" or similar language. All subrecipient or similar sub-award agreements must also contain such language. If a recipient's agreements do not currently contain such "subject to current regulations" language, existing agreements must be amended to include such language, thus requiring compliance with the Uniform Requirements.

- If a grantee amended, renewed or extended an existing agreement on or after December 26, 2014, in order to add new funds to the agreement, or to authorize the sub-awardee to continue obligating funds, the agreement must be amended to apply part 200 requirements unless the agreement contains "subject to current regulations" language (as described above).

- If an entity is in the midst of implementing activities under an existing agreement which only cites part 84 or part 85 requirements, the agreement must be amended to apply the part 200 requirements to all obligations of funds on or after December 26, 2014.

- If an existing agreement lacks an end date, or fails to apply the Uniform Requirements to the sub-awardee, it is considered deficient and must be amended to reflect the Uniform Requirements as well as to ensure the inclusion of an end date, as required by program regulations.

Grantees are given 120 days from the date of this Notice to amend agreements to incorporate and apply the part 200 requirements, where the agreement must be amended as described above.

Grant recipients are encouraged to be explicit with respect to including the new requirements, in order to promote a clear understanding and enhanced compliance by sub-awardees. For example, instead of simply stating that a subrecipient must comply with the requirements of 2

CFR part 200, the agreement should list the specific provisions (and the regulatory citations) that apply to the entity.

The above guidance also will apply to situations in which a recipient has elected, for its own purposes, to incorporate or reference the Uniform Requirements into other types of agreements which govern the participation of other entities in the program but which do not specifically obligate funds to sub-awardees. Examples of such agreements may include:

- CDBG or HOME cooperation agreements between urban counties and participating local jurisdictions.
- Joint agreements between a CDBG urban county and a metropolitan city.
- HOME Consortia agreements.
- Interdepartmental or intralocal agreements which spell out which grant administration duties will be handled by which departments/offices of the local government.

7. PROGRAM INCOME

Questions have been raised about what rules apply to program income.

a. For formula programs (except HOPWA), the Part 200 requirements (as included in the conforming changes to program regulations) will apply to any program income which is obligated by the grant recipient on or after January 6, 2016, regardless of when the program income was received, and regardless of what year's Action Plan the program income is associated with. This is consistent with the general principles expressed in Section 4 regarding the effective date.

b. For competitive programs (except HOPWA), the applicability of the Uniform Requirements to program income will be governed by the Notice of Funding Availability (NOFA) for the grant which generated the program income. If, however, program requirements allow a grant recipient to treat program income from a competitive grant as program income to a formula grant program, then the Uniform Requirements will apply to the use of program income as described in the previous paragraph.

c. For HOPWA grant recipients, the HOPWA formula and competitive grant agreements provide direct instruction for the use of program income. This action is authorized under 2 CFR 200.307(e). HOPWA grantees should reference their grant agreement requirements regarding the use of program income.

8. SINGLE AUDITS.

Questions have been asked about the auditors' test for compliance against program requirements. 2 CFR 200.110(b) states the following: "The standards set forth in Subpart F—Audit Requirements of this Part and any other standards which apply directly to Federal agencies will be effective December 26, 2013 and will apply to audits of fiscal years beginning on or after December 26, 2014." Auditees are advised to share the guidance in Section 4 with

auditors, should issues arise in the course of a single audit with respect to whether the new requirements in 2 CFR part 200 are applicable.

9. INDIRECT COST ISSUES

A number of questions have been raised with respect to indirect costs.

a. What is the difference between overhead expenses, the cost of doing business, and service delivery costs in relation to indirect costs?

Answer: All of the above terms represent different ways of classifying costs. The term *indirect costs* is defined at 2 CFR 200.56 as "those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved…." Since most people do not typically deal with the concept of a *cost objective*, *indirect costs* can more plainly be defined as any costs incurred by a grant recipient or subrecipient that cannot be identified directly with a HUD award, project, or activity (without disproportionate effort).

The above terms, other than *indirect* costs, are not defined under part 200 and should not be used interchangeably. For example, the term *overhead* is often used as a shorthand reference to *indirect costs* – however, the expenses commonly thought of as *overhead* (such as utility expenses) could be classified as either direct or indirect costs, depending on whether the cost can be identified directly with a cost objective (such as a HUD award, project, or activity) without disproportionate effort. Thus, if the purpose of classifying a cost is to determine whether it must be charged on a direct or indirect basis, the term *indirect costs* must be used.

Some HUD awards may allow program funds to be used to pay *service delivery costs* or *activity delivery costs* that are included in the costs of carrying out an activity. These terms typically refer to costs that may include both direct and indirect components and, thus, apply more broadly than *indirect costs.*

b. Is there a defined list of indirect costs? If so, can HUD provide a list or description?

Answer: There is no list that defines specific items of cost as *indirect* since costs are not intrinsically direct or indirect. As noted above, classifying a particular item of cost as direct or indirect depends on whether it can be identified directly with a cost objective (such as a HUD award, project, or activity) without disproportionate effort. All costs, however, must comply with 2 CFR Part 200, "Subpart E—Cost Principles." Subpart E contains principles for selected items of cost at 2 CFR 200.420 – 200.475. These principles apply whether or not a particular item of cost listed in the Uniform Requirements is properly treated as a direct cost or an indirect cost. Recipients should look to these principles and selected items of cost for guidance in determining the allowability of the items of cost included in the indirect cost pool for a cost allocation plan.

c. When/how and to whom should an agency with a HUD direct grant request an Indirect Cost Rate determination?

Answer: Procedures for negotiation and approval of indirect cost rates are specified in the applicable appendix to 2 CFR part 200. For example, Appendix IV contains requirements for *indirect cost rate proposals* prepared by nonprofit organizations and Appendix VII contains requirements for states and local government and Indian tribe indirect cost proposals. (*Indirect cost rate proposal* means the documentation prepared by a non-Federal entity to substantiate its request for the establishment of an indirect cost rate.)

It should first be noted that every organization is not required to submit an indirect cost proposal to its cognizant agency for negotiation and approval of an indirect cost rate. A governmental department or agency unit that receives more than $35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant agency for indirect costs. Other governmental departments or agencies must develop indirect cost proposals in accordance with the requirements of this Part and maintain the proposal and related supporting documentation for audit. These governmental departments or agencies are not required to submit their proposals, unless they are specifically requested to do so by the cognizant agency for indirect costs.

As discussed in more detail below, non-Federal entities that recover indirect costs through the use of a 10% de minimis rate also are not required to obtain approval from their cognizant agencies for such use. (See 2 CFR 200.414(f).)

In the case of an entity that is required to obtain prior approval (e.g., a larger governmental entity or nonprofit organization), the *indirect cost proposal* must be submitted to its *cognizant agency* for indirect costs. In most cases, the Federal agency with the largest dollar value of Federal awards with an organization will be the *cognizant agency* with responsibility for the negotiation and approval of the indirect cost rates. If the *cognizant agency* is determined to be HUD, and submission of an indirect cost proposal for the CPD program is required, the request should be submitted by the grant recipient to the CPD Division in the appropriate field office. The field office should forward the request to HUDCPDIndirectCostRates@hud.gov for submission to the Department of Health and Human Services (HHS). See the next question for guidance on the HHS review procedure.

d. What is HUD's/Department of Health and Human Services' (HHS') specific process for approving an indirect cost plan?

Answer: HUD contracts with HHS to review and negotiate indirect costs on HUD's behalf. The contract gives HHS six months to review and negotiate the indirect cost rate.

e. Can HUD and HHS work together to communicate the timeliness of approving the indirect cost proposals?

Answer: We will work with HHS to see if timeliness can be improved, but timeliness may be affected by the availability of funding.

f. Can HUD/HHS provide templates for non-federal agencies to create an indirect cost proposal?

Answer: Given the diverse categories of organizations that charge indirect costs to Federal awards and, within a particular category, the varying degrees of complexity possible, it

would be extremely difficult to develop useful templates. However, guides for indirect cost determination are available on websites of agencies that are more actively involved in the review and approval of indirect cost rates (e.g., the Department of Labor).

g. If a grant recipient has an approved indirect cost rate (ICR) that is above the expenditure limit (i.e., ICR is 13 percent; administration limit is 10 percent), can a grant recipient recover indirect costs?

Answer: This question is based on a common misconception: the indirect cost rate (or de minimis rate, if applicable) is NOT applied to the grant award amount. It is applied to the direct cost base (such as direct salaries or "modified total direct cost" as defined at 2 CFR 200.68). Since the direct cost base is only a subset of the total grant amount, it's entirely possible for a grant recipient to charge indirect costs at a rate higher than the administration percentage and still be within the cap.

h. What documentation is required to support the 10% de minimis rate and who approves this rate?

Answer: The provision in part 200 that allows recovery of indirect costs through the use of a de minimis rate (2 CFR 200.414(f)) specifies that entities "may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely." If chosen, this methodology, once elected, must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time. Thus, provided that a non-Federal entity has not received a negotiated rate and meets the other criteria specified in 2 CFR 200.414(f), it may use the de minimis rate without HUD approval in the absence of some other statutory or regulatory provision requiring such approval.

i. Does the existence of a de minimis indirect cost rate provision require a grant recipient to permit a subrecipient to charge indirect costs to the subaward? What if the grant recipient has a policy of not allowing any charges for indirect costs, or not allowing a subrecipient to charge administrative costs, e.g., it will only pay activity delivery costs or require administrative costs to be a "local match"?

Answer: As noted in the Frequently Asked Questions (FAQs) published by OMB on the Council on Financial Assistance Reform (COFAR) website (see link in Section 11 below), cost principles specified in part 200 are designed to provide that the Federal awards pay their fair share of the costs recognized under these principles except where restricted or prohibited by statute (e.g., the statutory restrictions on the amount of program administrative costs that may be charged to the CDBG program). (See section 200.100(c).) This stated intent applies whether costs are charged on a direct or indirect basis. Further, whether indirect costs are recovered through the use of the de minimis rate or through an indirect cost rate specified in an indirect cost proposal is irrelevant.

With respect to whether a pass-through entity may prohibit a subrecipient from charging indirect costs, the guidance published on the COFAR website is clear. It is not permissible for a pass-through entity to prohibit a subrecipient from charging indirect costs to a subaward unless the restriction is statutorily based (such as limiting indirect costs if the

charges would result in non-compliance with a cap on administrative costs). Further, the imposition of a local match requirement solely for the purpose of precluding use of grant funds for indirect costs would also be impermissible. As with any instance where a non-Federal entity does not comply with the guidance, the pass-through entity will be vulnerable to any of the measures available in sections 200.338-200.342, Remedies for Non-Compliance, depending on the Federal awarding agencies' oversight of their Federal awards.

10. MONITORING FOR COMPLIANCE WITH THE NEW REQUIREMENTS.

    CPD monitoring for compliance with the Uniform Requirements will be based on the part 200 effective date for the program being monitored. However, CPD's monitoring guidance (Handbook 6509.2) has not yet been updated so CPD may not monitor expenditures against the Uniform Requirements until after its monitoring Exhibits are amended to reflect the 2 CFR part 200 requirements. As stated in Section 4 of this Notice, because the conforming regulations were not published until December 7, 2015, HUD will not make findings of noncompliance with the Uniform Requirements (i.e., the part 200 requirements) if a grantee used CDBG, CDBG-DR, ESG, or HOME funds in accordance with comparable requirements under parts 84 or 85 (2013 edition) between December 26, 2014 and January 6, 2016.

11. FOR ADDITIONAL INFORMATION.

Grant recipients should contact their Field Office or Headquarters Representatives. CPD Field Offices should contact their Headquarters Program Office contacts. Additionally, recipients can obtain additional information by accessing the FAQ at the COFAR website at: https://cfo.gov/wp-content/uploads/2015/09/9.9.15-Frequently-Asked-Questions.pdf