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WASHINGTON

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OCTOBER 12, 1976

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Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

GENERAL REVENUE SHARING

STATE AND LOCAL FISCAL ASSISTANCE AMENDMENTS
OF 1976 (H.R. 13367)

The President today signed H.R. 13367, a three and three-quarters year extension of the Federal Revenue Sharing program.

The bill provides a total of \$25,555,856,277 to be distributed over the 45-month period (January 1, 1977 through September 30, 1980) to eligible State and local governments.

BACKGROUND

- ° History - The General Revenue Sharing program was authorized by Title I of the State and Local Fiscal Assistance Act of 1972, which was signed into law on October 20, 1972. The present law expires on December 31, 1976. Under the current program States and local governments will have received \$30.2 billion.
- ° Use - State and local governments have used these funds to maintain and expand a wide range of programs and services. According to the testimony of governors, mayors, and county officials, failure to extend the General Revenue Sharing program would have resulted in increased property taxes, cutbacks in essential services or more unemployment.
- ° Provisions - The bill which cleared the Congress on September 30, 1976, closely follows President Ford's legislative recommendations to preserve the essential concept of the current Act, provide continued growth in funding, and improve and strengthen the program.
- ° Renewal - President Ford recommended renewal of the General Revenue Sharing program on April 25, 1975, urging "that the Congress act to continue this highly successful and important new element of American Federalism well in advance of the expiration date, in order that State and local governments can make sound fiscal plans."
- ° Extension and Funding - H.R. 13367 extends the General Revenue Sharing program through fiscal year 1980, from January 1, 1977, through September 30, 1980. It authorizes funds to be appropriated to the State and Local Government Fiscal Assistance Trust Fund to pay revenue sharing entitlements in the following amounts: for the period January 1, 1977, to September 30, 1977, \$4.99 billion; for each of fiscal years 1978, 1979, and 1980 a maximum of \$6.85 billion. The actual authorization for each of these

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years will be determined by multiplying \$6.65 billion by the ratio of individual Federal income tax receipts for the calendar year ending more than one year before the end of the entitlement period, to 1975 receipts.

This funding compares to the current annual funding rate of \$6.65 billion. The Concurrent Resolution for Fiscal Year 1977 includes outlays of \$6.7 billion for the program.

Present law provides for the appropriation of revenue sharing funds in the authorizing Act which removes them from the annual appropriations process. H.R. 13367 requires annual appropriation action.

° Nondiscrimination provisions - H.R. 13367 significantly amends the nondiscrimination provisions of the existing bill by broadening their coverage and providing new expedited enforcement mechanisms. Prohibitions against discrimination on the basis of age, handicapped status, and religion are added to those in present law of race, color, national origin, and sex in programs or activities funded in whole or in part with revenue sharing funds. When an allegation of discrimination is made, the unit of government will have to meet a new test of "clear and convincing evidence" that the program or activity is not directly receiving revenue sharing funds.

The bill requires the Secretary of the Treasury to endeavor to enter into agreements with State and Federal agencies to investigate noncompliance with the nondiscrimination provisions. It adds an expedited process for determining noncompliance and ending payments, including hearings by administrative law judges. H.R. 13367 authorizes civil suits by private citizens, after exhaustion of administrative remedies, for redress of any act or practice prohibited by law, and authorizes the Attorney General to intervene in private actions "of general public importance" brought for violation of the nondiscrimination provisions. Courts are authorized to award reasonable attorney fees to a prevailing plaintiff or defendant, other than the United States.

° Other major provisions of H.R. 13367:

-- provides for greater public participation by requiring at least one public hearing on the possible uses of revenue sharing funds and at least one public hearing on the proposed use of revenue sharing funds in relation to the unit of government's entire budget.

-- requires more detailed reporting by State and local governments on the use of revenue sharing funds, including setting forth the amounts and purposes for which the funds have been appropriated, spent, or obligated and showing their relationship to functional items in the government's budget and identifying differences between the actual use of funds received and their proposed use.

-- requires units of government which expect to receive revenue sharing funds to have an independent audit of all their financial statements, in accordance with generally accepted auditing standards, to determine compliance with the revenue sharing law, at least once every three years. This requirement is waived for periods in which a unit of government receives less than \$25,000. Present law does not require an independent audit, nor does it include waiver authority.

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-- repeals the provision limiting the use by local governments of revenue sharing funds to priority expenditure categories such as maintenance and operating expenses for public safety, environmental protection, public transportation, health, and capital expenditures authorized by law. This will give units of local government more flexibility in deciding how to use revenue sharing funds.

-- repeals the prohibition on the use of revenue sharing funds by State or local governments for the matching share needed to receive other Federal grant funds.

-- requires the Advisory Commission on Intergovernmental Relations (ACIR), effective February 1, 1977, to study and evaluate the American Federal fiscal system in terms of the allocation and coordination of public resources among Federal, State and local governments and to report within three years of the first appropriation for the study, to the President and the Congress on its findings and conclusions together with recommendations for legislation it deems advisable.

-- amends the provisions on State maintenance of transfers to local governments to require that States maintain transfers at or above the average of their intergovernmental transfers to localities during the immediately preceding two years. Present law compares the level of transfers to those made in fiscal year 1972.

-- requires the Secretary of the Treasury to report to the Congress not later than March 1 of each year on compliance with requirements on the use of funds by recipients, and to make proposals to remedy significant problems in the administration of the Act through appropriate legislation.

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*For
Brad Patterson*

JEANNA D. TULLY

DIRECTOR

OFFICE OF REVENUE SHARING
DEPARTMENT OF THE TREASURY
WASHINGTON, D. C. 20226

202-634-5157

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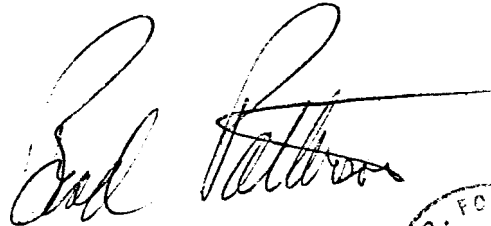
October 13, 1976

NOTE TO JEANNA TULLY

Thank you for your phone call of the other day and for sending me the materials about Revenue Sharing.

May I suggest, please, that you send a follow-up note on behalf of both of us to Mrs. Bellcourt (and send me a copy) since I hesitate to draft a letter here which deals so directly with your own regulations and which bears so closely on an active disciplinary case which your office is handling.

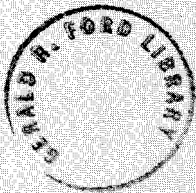
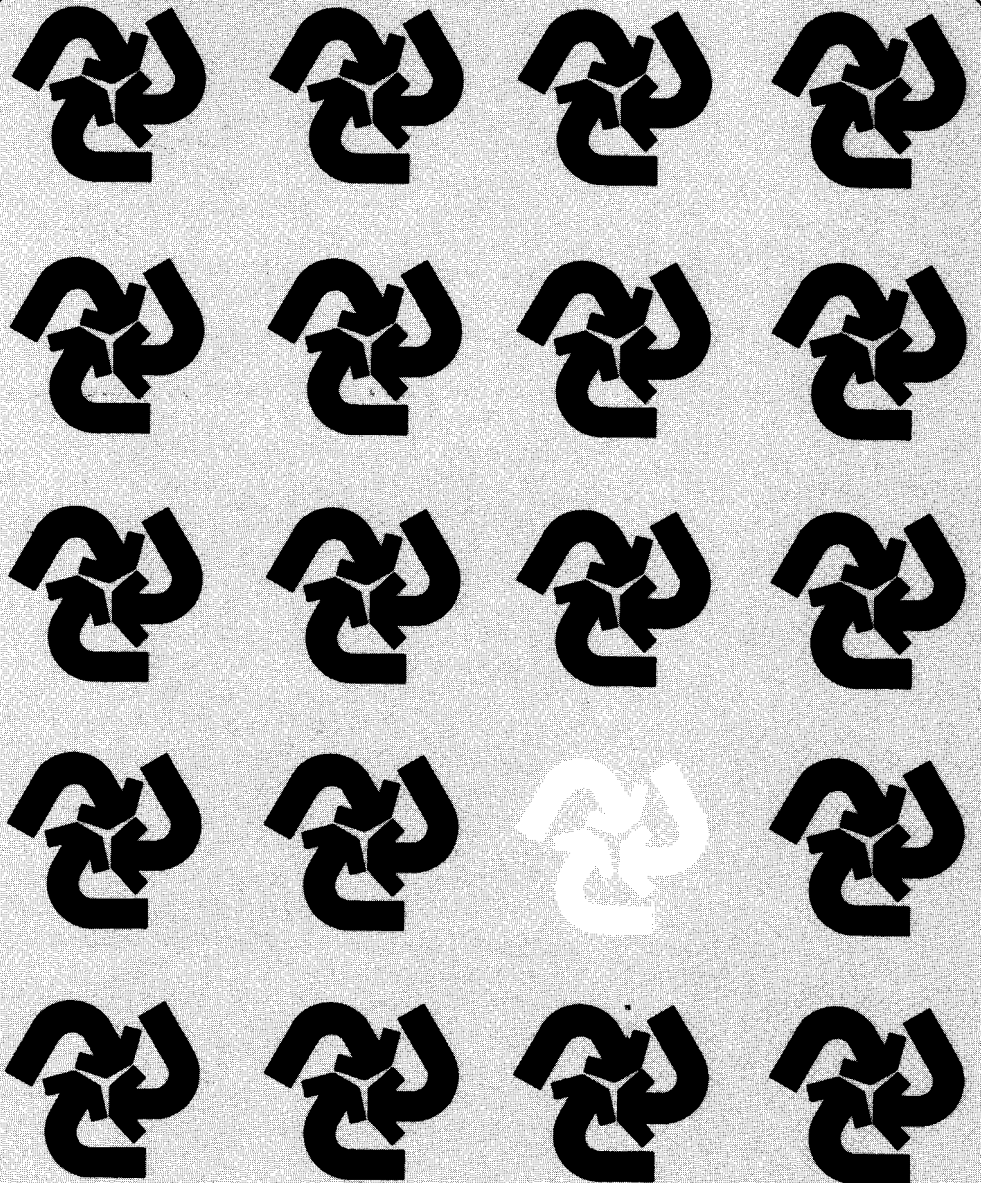
Please advise Mrs. Bellcourt on what her rights are to get access to the audit reports, tell her what you can about the disciplinary proceedings re the Tribal Council.



getting involved

your guide to general revenue sharing

Department
of the Treasury
Office of
Revenue Sharing



Definitions of Common Revenue Sharing Terms

ORS—These initials stand for the **Office of Revenue Sharing**.

GRS—These initials stand for **General Revenue Sharing**.

Appropriation—A budgetary action by a government (a vote of the governing body such as a city council, a town council, a county commission or a tribal council) to make available money in its budget for some specific purpose. For example, a county commission votes to appropriate (to make available) \$10,000 to its department of recreation.

Capital Expenditures—Costs to a government which are usually non-recurring, from year to year such as the acquisition of land; construction or major alterations or replacement of buildings; improvements to existing facilities; the purchase of machinery and equipment.

Chief Executive Officer—The elected or legally designated official or officials who have primary responsibility for the conduct of that unit's governmental affairs. Examples are mayor, city manager, county executive or chairman of county board, governor, chief or president.

Entitlement Funds—The amount of money state and local governments receive for any entitlement period.

Entitlement Period—Any of seven pay periods from January 1, 1972 to December 31, 1976, designating various sums of general revenue sharing money to be distributed and varying in length from 6 months to one year.

Fiscal Year—A twelve-month accounting period. It may be the same as the calendar year or it may be different. In many places the fiscal year begins July 1 and ends on June 30.

Local Government—For purposes of this program, a unit of general government below the state government level, such as a city, county, town, township, Indian tribe, Alaskan native village, borough, or parish.

"Matching" Funds—A financial agreement between the Federal government and a state or local government in which the Federal government will provide a specific amount of money if a state or local government will put up a specific amount of money for a program, activity or a construction project. For example, new equipment for a city's vocational rehabilitation center is going to cost \$100,000. The Federal government agrees to pay part of this cost by giving the city \$75,000 **only** if the city will **pay \$25,000 of the cost**. Also contributions by a state or local government in the form of personnel, equipment or facilities may qualify as matching contributions (called "in-kind matching").

Obligation (Encumbrance)—Any contractual or binding financial agreement entered into by a government to pay for services, equipment, or construction projects. In other words, a binding financial agreement for a government is 1) a contract, 2) a purchasing order issued to a company or organization to buy equipment or material or 3) payment of employee salaries for services rendered.

Operating and Maintenance Expenditures—Recurring expenses to a government such as salaries.

Recipient Government—Any general government including Indian tribes and Alaskan native villages eligible to receive General Revenue Sharing money.

Your Government's General Revenue Sharing Trust Fund—Either a separate bank account in which your government must deposit its GRS money **or** a separate set of GRS accounts maintained in your government's financial records or books.

This booklet, prepared by the Office of Revenue Sharing, provides members of the public with an understandable presentation of General Revenue Sharing and its importance to them. Several public interest groups have reviewed this publication in draft and have made helpful and useful suggestions. We acknowledge their assistance and thank them for it. Listed below are the names of those groups which returned their comments to us. However, the Office of Revenue Sharing takes full responsibility for this publication and does not imply endorsement by any organization listed in this preface.

Preface

American Federation of State, County and Municipal Employees
American Library Association
Cabinet Committee on Opportunity for Spanish Speaking People
Center for Community Change
Center for National Policy Review
Common Cause
Federalism Seventy-Six
International City Management Association
Joint Center for Political Studies
Leadership Conference on Civil Rights
League of Women Voters
Municipal Finance Officers Association
National Association for the Advancement of Colored People
National Association of Counties
National Center for Voluntary Action
National Clearinghouse on Revenue Sharing
National Council of La Raza
National Easter Seal Society for Crippled Children and Adults, The
National Governors' Conference
National League of Cities/U.S. Conference of Mayors
National Urban League, Inc.
Office of Government Liaison, United States Catholic Conference

In the right hand margin of this booklet, reference to sections of the general revenue sharing act (Title I of the State and Local Fiscal Assistance Act of 1972) are abbreviated as "Sec." Reference to the Office of Revenue Sharing's regulations is abbreviated as "Reg." For more detailed information concerning the Act or Regulations, consult these references.

We welcome your suggestions which would make this booklet more useful in subsequent editions.

Graham W. Watt
Director
Office of Revenue Sharing

March, 1974

Introduction

On October 20, 1972, the **State and Local Fiscal Assistance Act**, better known as general revenue sharing, was signed into law. The program's basic purpose is to provide state and local governments with the opportunity and the money to deal with community problems at a local level. Traditionally, federal categorical grants have been made for very specific purposes, legislated by Congress and administered by federal agencies. Under the general revenue sharing program, governors and state legislatures, mayors and city councils, county executives and county councils, tribal chiefs and tribal councils, and the people of all of these communities are determining how this money is to be used.

In each state, it will be local officials, responding to local conditions and local constituencies who will decide what should happen; and more importantly, individual citizens can now hold their own elected officials **directly accountable** for the expenditure of revenue sharing funds.

Community members may become involved in the decision-making for this money by talking with local officials, attending council or commission meetings, serving on community advisory groups, writing letters to the editor, encouraging community awareness and discussion. The purpose of this booklet is to provide information about the general revenue sharing program, especially about its aspects which directly encourage public involvement in decision-making. Further information may be obtained from:

*Office of Revenue Sharing
Department of the Treasury
Washington, D.C. 20226*

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Your Involvement

This section discusses your government's general revenue sharing reporting responsibilities to the public and presents suggestions for your participation in local government decision making.

Reporting Responsibilities

Reports are published in local newspapers for the public's information. **This is where you get involved!** Each government receiving GRS money must file reports each year with ORS:

- 1) **The Planned Use Report** shows a government's proposals for the use of its GRS money for a specific entitlement period.
- 2) **The Actual Use Report** indicates a government's actual expenditure of GRS money.

The Planned Use Report

Sec. 121 (b) & (c)

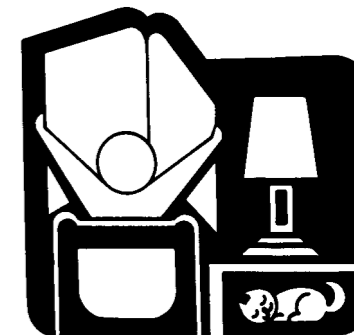
The Act requires that Planned Use Reports be filed with the U. S. Treasury Department and published in a newspaper of general circulation within the geographic area of your government.

- The purpose of this publication requirement is to provide you with information about how your government proposes to use its general revenue sharing money. The published report will inform you of the whole range of funding choices available to your government under the general revenue sharing program.
 - Your government is not legally obligated to carry out the proposed uses of GRS money which are reported on the published Planned Use Report. Therefore, after surveying your community's needs and reading the Planned Use Report, give **your** suggestions for "priority uses" of this money. The reporting mechanism gives you an opportunity to react to your government's views of local spending priorities and to suggest alternatives!
 - ORS supplies the report form to each government.
 - Planned Use Reports must be published in a local newspaper and filed with the ORS before the beginning of an entitlement period. Units of government failing to file the report are not in compliance with the law, and their GRS payments will be delayed until the report is filed.
 - The report must show the amounts and purposes for which your government proposes to use the GRS money it expects to receive for an entitlement period based on an estimate supplied by the ORS.
 - Each government receives its Planned Use Report about 60 days before it must be returned to the ORS.
- Your government must:**
- Publish an exact copy (it may be reduced in size but not abbreviated) of the Planned Use Report in a newspaper of general circulation within its geographic area.



- Look for the publication of your government's reports.

See the Public Participation Planning Calendar.



Allow yourselves enough time to organize, comment, and suggest alternative proposals for GRS money.

The Rules and Regulations for general revenue sharing do specify the filing date of the report with ORS but **not the date of publication** in your local newspapers. Ask your government when these reports are ordinarily published.

The information on the Planned Use Report hopefully will stimulate public discussion of state and local spending priorities for general revenue sharing money. Discussion, in turn, will lead to increased public participation in the decision-making process at the state and local levels.

- Advise all other local news media, including minority and bilingual news media, about the publication of the report.
- Have the chief executive officer sign a statement of assurances (see "Your Government's Responsibilities to the Federal Government" in the Supplementary Information section).
- Make available for public inspection during normal working hours a copy of the report and any documents which explain and support the information submitted on the report.

A Sample Planned Use Report Form For Local Governments

Check your newspapers between May 1 and June 30 for the publication of this form.
This is where you get involved!

Your government's name is printed here. Amount of available GRS money is printed here.

GENERAL REVENUE SHARING REPORT OF PLANNED USE

General Revenue Sharing provides federal funds directly to local and state governments. The law requires each government to publish a report of its plans for the use of these funds to inform its citizens and to encourage their participation in deciding how the money ought to be spent. Your government may spend its General Revenue Sharing money for the purposes listed below.

PLANNED EXPENDITURES			THE GOVERNMENT OF	
PRIORITY CATEGORIES (A)	CAPITAL (B)	OPERATING/ MAINTENANCE (C)		
1 PUBLIC SAFETY	\$	\$	ANTICIPATING A GENERAL REVENUE SHARING PAYMENT OF DURING THE FIFTH ENTITLEMENT PERIOD, JULY 1, 1974 THROUGH JUNE 30, 1975, PLANS TO SPEND THESE FUNDS FOR THE PURPOSES SHOWN. ACCOUNT NO. _____ (D) The news media have been advised that a complete copy of this report has been published in a local newspaper of general circulation. I have records documenting the contents of this report and they are open for public scrutiny at _____ (E) ASSURANCES (Refer to instruction E). I assure the Secretary of the Treasury that the non-discrimination and other statutory requirements listed in Part E of the instructions accompanying this report will be complied with by this recipient government with respect to the entitlement funds reported hereon. Signature of Chief Executive Officer _____ Date _____ Name & Title—Please Print _____	
2 ENVIRONMENTAL PROTECTION	\$	\$		
3 PUBLIC TRANSPORTATION	\$	\$		
4 HEALTH	\$	\$		
5 RECREATION	\$	\$		
6 LIBRARIES	\$	\$		
7 SOCIAL SERVICES FOR AGED & POOR	\$	\$		
8 FINANCIAL ADMINISTRATION	\$	\$		
9 MULTIPURPOSE AND GENERAL GOVT.	\$			
10 EDUCATION	\$			
11 SOCIAL DEVELOPMENT	\$			
12 HOUSING & COMMUNITY DEVELOPMENT	\$			
13 ECONOMIC DEVELOPMENT	\$			
14 OTHER (Specify)	\$			
15 TOTALS	\$			

Expenditure Categories (See "Use of GRS Money" in The Act section)

The statement of assurances (See "Your Government's Responsibilities . . ." in Supplement Information section)

Supporting information is located here.

The Actual Use Report

The Act requires that an Actual Use Report be filed with the U. S. Department of Treasury and be published in a newspaper of general circulation within the geographic area of your government. Sec. 121 (a) & (c)

- The report form is supplied by ORS.
- The Actual Use Report must be filed after the end of each entitlement period.
- The report shows the amount and purposes for which GRS money was **actually spent or obligated** (encumbered).
- The report shows any interest earned and any unexpended balance in the trust fund.

Your government must comply with the same publication and publicity requirements for the Actual Use Report as are required for the Planned Use Report.

The Actual Use Report may differ from your government's published Planned Use Report. The Actual Use Report is providing information about actual expenditures, not proposed expenditures. For example, your government may have changed its proposed use of its GRS money because of an unanticipated emergency or because citizens organized and requested GRS money for a community need that had not been considered a priority need in your government's original proposals. Such changes do not require that a new Planned Use Report be filled out and published. Therefore, in order to be aware of changes in your government's proposed uses, the public should monitor actual expenditures of GRS money.

See the Public Participation Planning Calendar.

Compare your government's Actual Use Report with its Planned Use Report for the same period of time.

General Revenue Sharing and Your Government's Budget

The general revenue sharing law states that governments receiving GRS money must use it in accordance with the same rules and procedures that regulate the expenditure of the government's own money. Sec. 123 (a) (4)

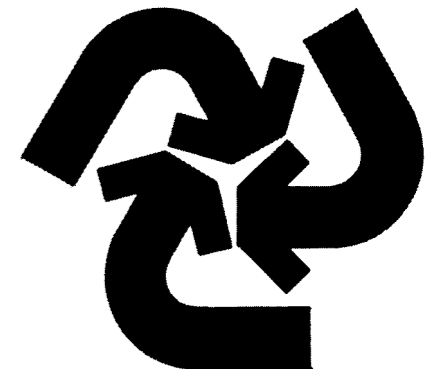
Citizens should learn their government's procedure for preparing and approving its budget and discover where their involvement and assistance may be most effective. **This is where you get involved!**

The general revenue sharing money that your government receives is new **uncommitted money** which makes it different from much of your government's budget which is already committed from year to year for such expenses as salaries, ongoing projects, pensions, repayment of debts and paying interest on bonds and notes. Your involvement in the local decision-making process can determine how this "new money" is to be spent.

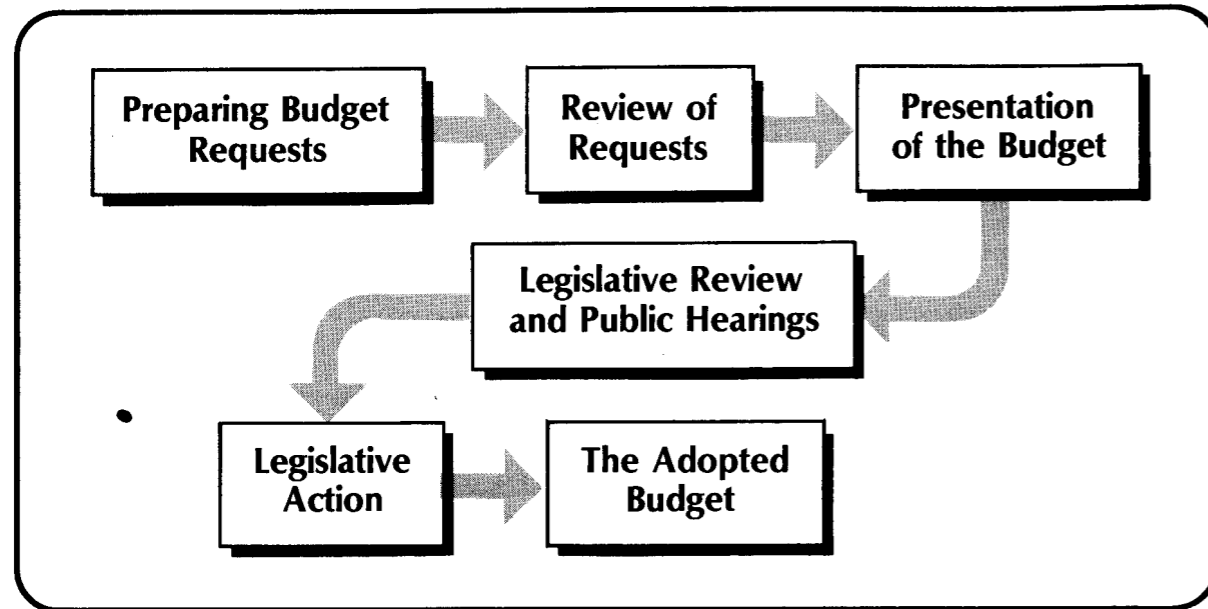
The Budget

Your government's budget consists of legislatively approved appropriations (the state assembly, city council, county commission, tribal council votes approval of the budget.)

Each state and local government receiving GRS money has its own procedural laws for preparing and approving its budget. **Inquire about them!** The diagram shows the basic aspects of this procedure.



The steps in your government's regular budgetary procedure are followed when it determines the uses of GRS money.



1. Preparing Budget Requests

The Government . . . several months before the government's legislative body will meet to discuss the budget, agencies and departments within the government begin to figure out how much money they will need in the next fiscal year. They consider present operating costs and the expense of proposed new or expanded programs, and prepare budget requests which are forwarded to the Chief Executive Officer and his Budget Committee.

The Public . . . citizens actively studying community needs may submit factual budgetary requests to their government's agencies and departments. Moreover, interested groups may assist officials in researching community needs for services and in evaluating existing services during this phase of preparing the budget.

2. Review of Budget Requests

The Government . . . the Chief Executive Officer, budget officials, and departmental administrators meet to review and coordinate the requests from all the parts of the government. They ask the government's financial officers (Comptroller, Department of Revenue, Finance or Assessment) for information about how much money the government will receive in the next year. The requests usually exceed the estimate of funds to be available. Requests are confirmed, denied, or altered to fit within the government's projected income.

The Public . . . informed and well-researched budget requests made by citizens can assist officials as they justify agency and departmental budget requests.

3. Presentation of the Budget

The Government . . . the Chief Executive Officer presents the budget to the legislative body. This document proposes how much money is going to be spent, for what, by whom, (department, agency, committee, etc.) and from where the money will come (property tax, federal grants, license and permit fees, death and gift tax, sales tax from gasoline, liquor, tobacco and general revenue sharing money). It also divides expenditures into three broad categories:

- current expenses (operating and maintenance costs such as salaries, supplies, contractual services)
- capital expenditures (nonrecurring expenses such as the purchase of equipment or the construction of a building)
- debt service

This proposed budget is the government's financial plan of income and expenses for one or more fiscal years.

The Public . . . copies of this budget document are made available to the media, libraries, civic groups, other public interest groups and to individual citizens. Extra copies of the document are on file for public inspection in the Office of the Chief Executive.

4. Legislative Review and Public Hearings

The Government . . . The government's legislative body meets to discuss and study the budget proposed by the Chief Executive Officer and his staff. Legislative committees may study specific parts of the budget document and make recommendations to the legislature as a whole.

The Public . . . the legislative body usually holds public hearings on the various parts of the proposed budget. Community groups and individuals now have the opportunity to formally express their opinions about the budget and can make sound requests and recommendations about any part or proposal.

5. Legislative Action . . . the full legislature votes on the budget after considering testimony at the public hearings and the recommendations of its committees. At this point the vote generally is whether to adopt the entire budget as presented by the executive, to change certain parts, add new provisions or to "cut out" some programs.

Small Governments (5,000 or less population)

The budgetary process for governments of this size is usually less formal and less complex. Generally, citizens living in these smaller communities are much closer to their government's day-to-day operations, having many informal discussions of community needs and governmental expenditures. Citizens have more opportunity for personal contact with their government officials and can easily discuss budgetary requests with them.

The budget is usually prepared, presented to the legislative body for review and approved at two or three meetings.

Amending the "Adopted Budget"

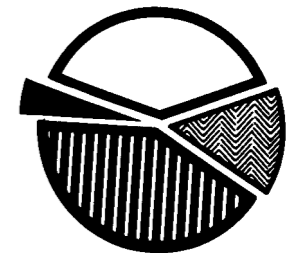
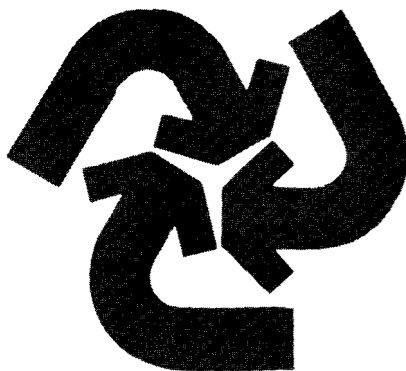
A local government's and even a state's budget can be amended during the fiscal year, and the process for amendment is very similar to the process of approving a budget. The legislative body votes on all amendments to the budget. Citizens may suggest amendments to the budget during the year.

The Budget Calendar

Most governments have a budget calendar which determines the beginning date of their fiscal year, the date for presenting the budget to the legislative body, the date by which the budget must be approved, the general scope of the budget, and the responsibility and authority for budget preparation and execution. The deadline dates of a government's budget calendar are set by state law, city charter, county resolution, ordinance, etc.



See the Public Participation Planning Calendar.



Inquire about your government's budget calendar

Annual Financial Report

Generally, governments publish an annual financial report which provides information about their financial condition, organization of the government, tabulations and other statistics. This report is usually filed after the close of the fiscal year and is available for public inspection in the Office of the Chief Executive.

Interested members of the public may find this report helpful in researching the spending trends of their government, determining what money is already "committed" for the coming year (salaries, pensions) and in establishing justification for budget requests.

Information Sources in Your Community

The following officials, departments and organizations should be helpful in finding out more about your local government, your government's budget, and how revenue sharing decisions are made. The size and type of your government will determine who performs these functions. **This is where you get involved!**



The Budget

Director of Finance
Treasurer
Comptroller
Tax Commissioner/Commissioner of Revenue
Auditor
Tribal Clerk or Treasurer
Budget Director
Independent CPA firm responsible for auditing government's funds

General Administration

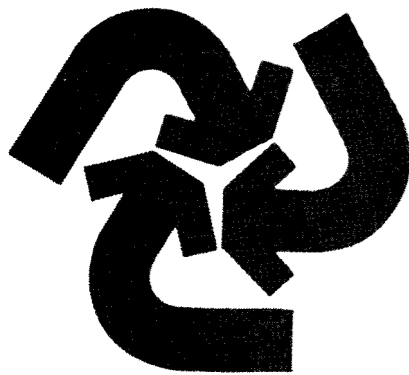
City Manager or Mayor
Board of Supervisors
Board of Trustees
The Governor's Office
Secretary/Treasurer
City, County or Township Clerk
County Administrative Officer
Councilmen
Aldermen
Selectmen
Public Information Officer
Commissioners
Tribal Chief

Background Information and Assistance

Reference Librarian of local public library
Local Newspaper Files
State Library Agency
Regional Federal Agency Library and Information Center

Legal Assistance—For help in interpreting revenue sharing laws and local government laws

City Attorney
State Attorney General or State's Attorney
Corporation Counsel
District Attorney
Legal Counsel (independent legal firm retained by the government)



Problems Involving Discrimination

Director of Personnel
Equal Employment Opportunity Office
Affirmative Action Office
Human Relations Commission

An Organized Citizen Group and Public Hearings

The City Council of Phoenix, Arizona, conducted a public hearing on a staff-prepared list of projects to be funded by GRS money. Citizens urged Phoenix officials to place higher priorities on human needs and social services. Nearly 90% of the staff-proposed GRS budget was for one-time, nonrecurring expenses, with most of the emphasis placed on capital expenditures. Representatives of the Southwestern Indian Development had met with City officials soon after the general revenue sharing program passed Congress and asked that funds be included for Indian requests. The staff did not accept their original request, but included \$50,000 for social services after the group renewed their request at the public hearing.

Citizen Reaction to Government's Spending Recommendation

Approximately \$4 million in general revenue sharing money was received by New Castle County, Delaware, during the first year of the program. The majority of this money was planned for one-time expenditures (capital expenditures). The County Executive recommended that \$485,000 be spent on "human and social needs." An organization called the "Human Resources Coalition" requested that more of the county's revenue sharing money be spent for social services. A compromise was reached and the county agreed to spend \$705,000 for social services.

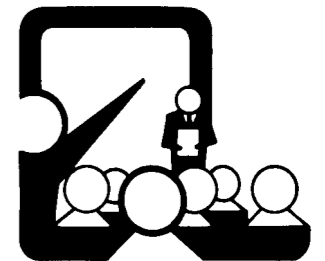
Examples of the Public Participating in the Local Decision Making Process for General Revenue Sharing

The county council set up a screening committee to distribute this money. The committee was composed of two representatives of the County Executive, two representatives of the county council, two representatives of the Human Resources Coalition and one representative of the United Fund.

The original \$705,000 was increased by \$50,000 in accumulated interest making the total \$755,000. Of this amount, \$255,000 was given to the Housing Authority, \$50,000 for aging programs, \$15,000 for salary and expenses of the revenue sharing planner and the remaining \$435,000 was divided among 18 other social service programs.

Citizen Requests at Public Hearings

Jefferson County, which encompasses the Birmingham, Alabama area, received over \$4 million in general revenue sharing during the First Entitlement Period. The County Board of Commissioners immediately decided to convene public hearings to discuss how the money should be allocated. The commissioners advertised the time, place and nature of the hearings in several Birmingham newspapers. Social service groups were the main attendees of the hearings. Therefore, when the Commissioners decided how the funds would be spent, it was not surprising that over one third of the total allocation went for social services and social development programs. The county spent \$1,247,500 to enlarge the home for the aged and the poor. Part of this money paid for hospital beds and other furnishings, and \$47,500 was used to pay for a substantial part of the new quarters for the mental health center.



A Community Organization

The San Francisco Study Center reports that in the City of San Francisco, during November of 1972, just before the first general revenue sharing money was to be received, the Mayor and the Board of Supervisors held a joint public hearing to ascertain citizen views on how the money should be spent. In January, the Mayor's office released a Preliminary Revenue Sharing Program, followed by a series of three neighborhood hearings to get citizen reactions. Finally, in April, the Mayor released his revised Program and forwarded it to the Board for review and approval.

Response to some of the citizens' requests included \$250,000 for the Haight Ashbury neighborhood, to be used in whatever manner the residents might agree upon; \$100,000 for a consumer fraud division within the District Attorney's Office; and \$100,000 for a child care services coordination program.

Of particular interest was the approval of \$100,000 for recreation and park improvement in Visitacion Valley, a mixed ethnic and income neighborhood in southern San Francisco. During the summer of 1972, a group of residents active in the affairs of that neighborhood secured a grant from a local foundation to hire a professional community organizer to put together a democratic organization. They began moving on small issues of immediate interest to large numbers of residents in order to gain credibility, experience and wide participation. Within seven months they were able to hold a Community Congress (attended by over 300 people) to elect officers, adopt a Constitution and Platform, and select a name: The All Peoples' Coalition.

One of the key issues concerned the inadequate recreation and park facilities and programs in the area. The All Peoples' Coalition sought out concerned persons, organized them into committees, researched and decided upon desirable solutions, and began negotiating with the Recreation and Parks Department for implementation. The Department was clearly impressed by their display of being an informed, assertive organization, and when the Mayor's Office requested suggestions from the Department for possible revenue sharing projects, the All Peoples' Coalition proposals were immediately included.

Citizens Advisory Committee

Concurrent with the passage of the general revenue sharing legislation, the City Board of Directors (City Council) of Texarkana, Arkansas, (population over 21,000) began to re-examine the citizen participation process and management systems that were being used for community development planning. After careful examination and reflection, it was decided to enlist the support of the citizens in setting community goals through the vehicle of a citizens advisory committee.

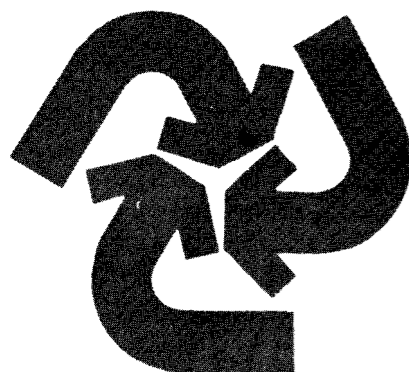
On May 17, 1973, a general citizens meeting was held to explain the general revenue sharing process to the residents of Texarkana. As a result of the support shown at this meeting, a Citizen Advisory Committee for Revenue Sharing was appointed by the Directors on May 21, 1973.

The committee, composed of 33 members, was selected through proportional representation from the City's nine planning districts. This was done to insure the greatest possible representation from the city at large.

The City Board of Directors assembled this committee for the purpose of proposing five-year goals, determining priorities and formulating one-year objectives that could aid the City Council in allocating general revenue sharing funds.

The Advisory Committee also meets to receive applications and supporting testimony from city agencies, community groups, and private non-profit organizations desiring general revenue sharing money. From these applications and requests, projects are selected to be funded with general revenue sharing money.

Among the community requests funded with general revenue sharing money were a private non-profit halfway house for mentally retarded and emotionally disturbed males which received \$10,000 for a housing facility; the Texarkana Historical Museum received \$4,500 for cultural and historical exhibits to be developed and displayed in the community; and \$18,000 was given to the



"Street Sign Program" of a local PTA to purchase street signs and develop crosswalks that will help to control the flow of traffic around schools.

Public Participation Planning Calendar

Use this chart to help plan the times at which you can participate in your government's decision making process on the uses of GRS money. **This is where you get involved!**

PUR=Planned Use Report
 AUR=Actual Use Report
 ORS=Office of Revenue Sharing

Entitlement Period	When Does Your Government's Governing Body Meet to Discuss Uses of GRS Money?	Period Covered By PUR	Date PUR Was Published	Date PUR is Due at ORS	Post - PUR		
					Meetings, Hearings Etc. Held to Discuss Alternative Uses of GRS Money	Period Covered By AUR**	Date AUR is Due at ORS
1) Jan. 1, 1972 to Jun. 30, 1972	?	Not required	?	--	?	Jan. 1, 1972	--
2) Jul. 1, 1972 to Dec. 31, 1972	?	Not required	?	--	?		--
3) Jan. 1, 1973 to Jun. 30, 1973	?	Jan. 1, 1973 to Jun. 30, 1973	?	Jun. 20, 1973	?	Jun. 30, 1973	Sept. 1, 1973
4) Jul. 1, 1973 to Jun. 30, 1974	?	Jul. 1, 1973 to Jun. 30, 1974	?	Sept. 14, 1973	?	Jul. 1, 1973 to Jun. 30, 1974	Sept. 1, 1974
5) Jul. 1, 1974 to Jun. 30, 1975	?	Jul. 1, 1974 to Jun. 30, 1975	?	Jun. 30, 1974	?	Jul. 1, 1974 to Jun. 30, 1975	Sept. 1, 1975
6) Jul. 1, 1975 to Jun. 30, 1976	?	Jul. 1, 1975 to Jun. 30, 1976	?	Jun. 30, 1975	?	Jul. 1, 1975 to Jun. 30, 1976	Sept. 1, 1976
7) Jul. 1, 1976 to Dec. 31, 1976	?	Jul. 1, 1976 to Dec. 31, 1976	?	Jun. 30, 1976	?	Jul. 1, 1976 to Dec. 31, 1976	Jan., 1977

*The Planned and Actual Use Reports may be returned on or before the listed due dates. These reports **must be published** (see section on reports for publication requirements) **prior** to returning them to the Office of Revenue Sharing. However, there is **no specified publication date**.

**Each Actual Use Report will show the actual amount of money received and spent by your government during each Federal fiscal year (July 1 - June 30).

Citizens' Check List (Are You Informed?)

Since GRS money becomes a part of a local or state government's regular budget, citizens' opportunities to participate in the decision-making process concerning their government's expenditures are increased if they understand their government's entire budget and its use in determining local priorities.

Listed below are check points which will help you to understand and to evaluate the impact of general revenue sharing money in your community.

It is important to note that most citizens are served by more than one level of government. For example, a person residing within a city might also receive services from county and state governments.

Amount Received

- How much GRS money has been received by your local and county governments?
- How much GRS money has been received by your state government?

Use of GRS Money

- What proposals did your government announce for the use of GRS money?
- Did you see your government's Planned Use Report published in the newspaper?
- How has GRS money been spent?
- To what extent do GRS expenditures coincide with published proposed uses?
- How much GRS money was spent for capital improvements?
- How much GRS money was spent for current expenses (such as salaries, and supplies)?
- How much GRS money was spent for programs or projects in each of the permitted expenditure areas (public safety, environmental protection, public transportation, recreation, health, libraries, social services for the poor or aged, capital expenditures, and financial administration)?

Your Government's Process for Setting Spending Priorities

- What departments, agencies and individuals are responsible for determining and coordinating the spending priority process in your government?
- Does your government's charter require that public hearings be held before the budget is adopted?
- What is your government's timetable for preparing and adopting its budget?
- Do departments normally consider community group requests prior to submitting their annual budget requests?
- Is public discussion and debate of spending priorities encouraged by your government?
- Does your government survey the community's needs each year as part of its budget preparations?

The Community's Involvement in Decision-Making

- Was there information and publicity about establishing spending priorities for use of GRS money?



- What community groups became involved in determining GRS expenditures?
- What was the community's reaction to the Planned Use Reports?
- What was the process for community involvement:
 - Public Hearings?
 - Select Committees?
 - Appointed Advisory Groups?
 - Solicitation of requests for funding projects?
 - Citizens attending regular council meetings?
 - Citizen groups organizing, studying community needs and problems and suggesting uses of GRS money?
 - Citizens expressing their reaction to their government's use of GRS money at the voting booth?

Role of Media

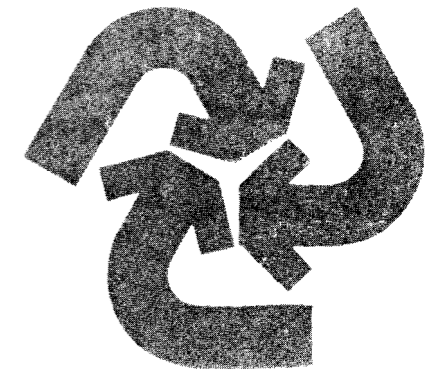
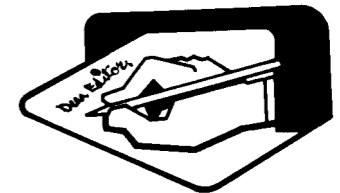
- What was the editorial reaction to GRS proposed and actual uses?
- Were there news stories about the publication of Planned Use and Actual Use Reports?
- Were the minority and bilingual press in your community (if any) advised of the publication of the Planned and Actual Use Reports?
- Did the media encourage public discussion of priority uses of your community's GRS money?

GRS and Civil Rights

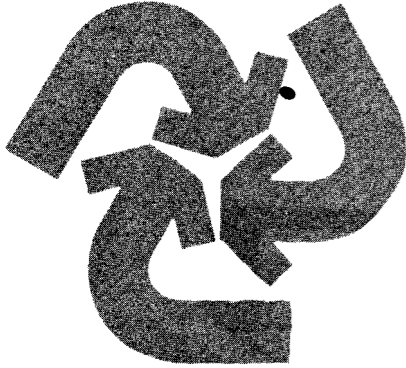
- Do your government's departments and agencies practice fair hiring and non-discriminatory promotion policies?
- If your government is purchasing land or building public facilities with revenue sharing funds, will they provide service to all segments of the community?
- If your government is improving streets, alleys, roads, recreation and health facilities or libraries with GRS money in some areas, will all neighborhood areas be receiving comparable service because of these expenditures?
- If your government is selling or leasing facilities funded by GRS to private groups, are these groups open to all segments of the community?
- If your government is paying contracts for construction projects, goods and/or services with GRS money, do the contractors and unions involved have non-discriminatory hiring and personnel policies?

Public Participation Impact on General Revenue Sharing Money

- Do members of the public have an impact on their government's decisions for use of GRS money?
- Are members of the public learning how to influence the budget-making and priority-setting processes in your community?



- Do any community groups join together to suggest alternative spending priorities to their government?
- Do members of the public better understand their government's own laws and procedures for determining local spending priorities?
- Do members of the public realize that GRS money is a part of their community's regular budget?
- Are your government's officials responsive to citizen requests and suggestions for the use of GRS money?
- Are members of the public and public interest groups evaluating the use of GRS money in the community?
- Are there public interest groups that will continuously monitor their government's use of GRS money?
- Do members of the public organize into committees to study community issues and needs?
- Is the GRS money used for priority needs of the community?
- Is GRS money used to provide new services in your community?
- Are existing services already provided by your government improved or expanded because of citizen requests?



The Act

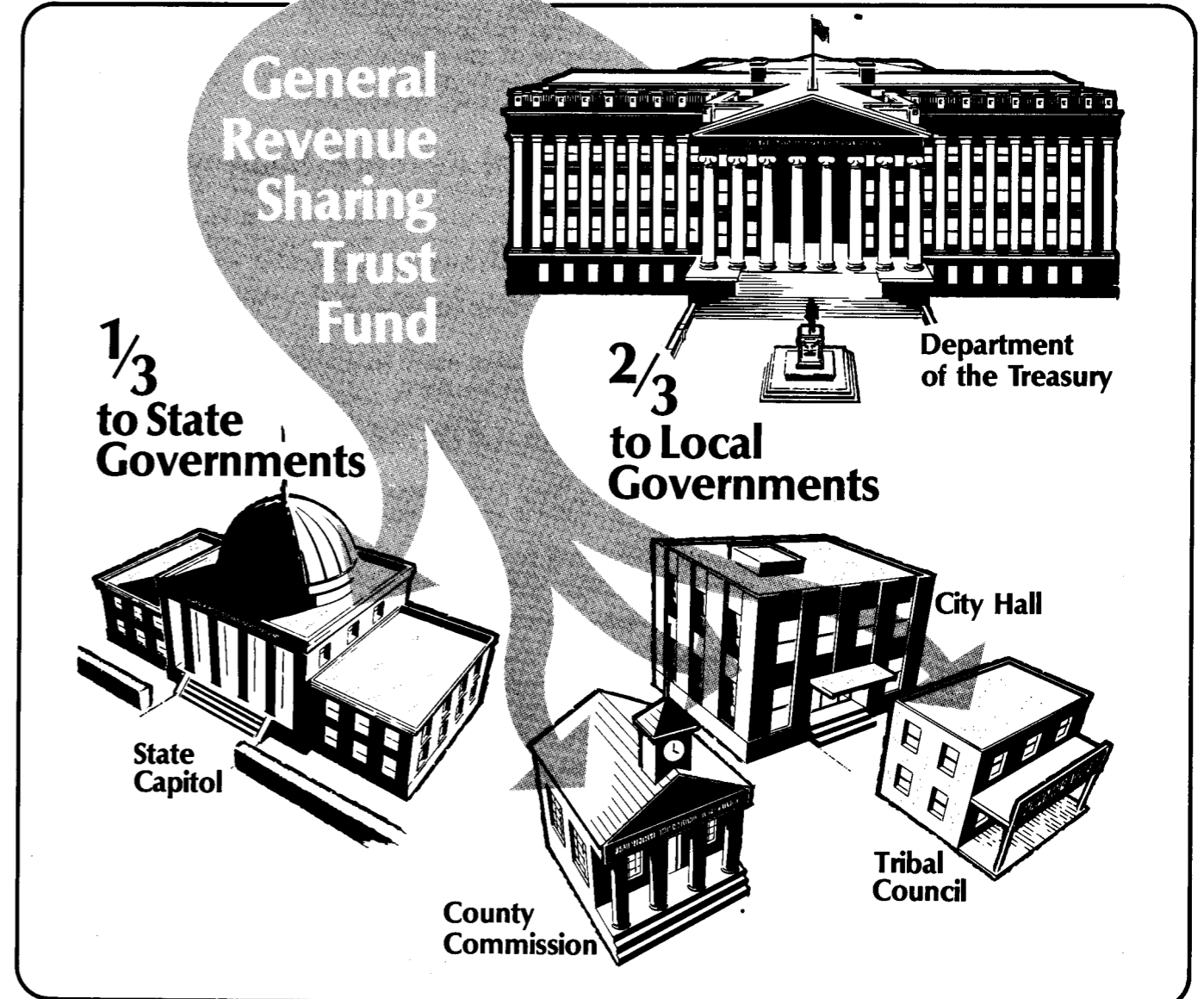
This section outlines the uses of general revenue sharing money and the restrictions and prohibitions on its use.

Some Specifics of The General Revenue Sharing Program

Eligibility

All general governments as classified by the U. S. Census Bureau are eligible to receive GRS moneys. These governments include:

- 50 State Governments and the District of Columbia
- Cities, Counties, Towns, Villages, Boroughs and Townships
- Indian Tribes and Alaskan Native Villages



Amount of Money Each Unit of Government Receives

- Determined by formulas rather than applications.
- Formulas designed by the U. S. Congress which use data to measure a government's size (population), its need (per capita income), its effort to meet its need (taxes) and to determine the amount of GRS money to be received by a government.
- Population, income and tax data used in the formulas are surveyed, collected and compiled from your government by the Bureau of the Census for the Office of Revenue Sharing.

Distribution of GRS Money

Moneys are distributed during seven entitlement periods (pay periods). The entitlement periods, dates and amounts of money distributed nationally are:

1. January 1, 1972—June 30, 1972—\$2,650,000,000
2. July 1, 1972—December 31, 1972—\$2,650,000,000
3. January 1, 1973—June 30, 1973—\$2,987,500,000
4. July 1, 1973—June 30, 1974—\$6,050,000,000
5. July 1, 1974—June 30, 1975—\$6,200,000,000
6. July 1, 1975—June 30, 1976—\$6,350,000,000
7. July 1, 1976—December 31, 1976—\$3,325,000,000

The Use of General Revenue Sharing Money

General Revenue Sharing is financial assistance to meet local needs at the local level. Therefore, it is important that you know your community needs and know how GRS money may be used for these needs.

State Governments (receive 1/3 of all GRS money)

May spend GRS money for anything that is legal under state law and does not violate the restrictions of the GRS legislation.

Local Governments (receive 2/3 of all GRS money)

Unlike state governments, local governments are required to spend GRS within broad categories of permissible expenditures.*

1. Any capital expenditures permitted by your state and local law. (See Supplementary Information section for examples of capital expenditures.)
2. Operating and Maintenance expenses for:

Environmental Protection (including sewage disposal; sanitation and pollution abatement; smoke regulation; inspection of water supply; sanitary engineering; street cleaning and waste collection; disposal or recycling activities and educational programs in such areas as water treatment and soil erosion)

Financial Administration (including expenses for accounting, auditing, budgeting, investing, tax collection, fiscal affairs, as distinguished from general administrative costs like the chief executive's salary, voter registration and legislative expenses)

*Debts created by bonds or loans may be repaid with GRS money if:

1. Only the principal is repaid from GRS (no GRS money may be used to pay interest on the debt);
2. The debt was incurred for a permitted expenditure;
3. The money raised by going into debt was spent after January 1, 1972 and it was not spent in violation of the restrictions of the Act.

No applications for GRS money are required.

\$30.2 billion to be distributed over 5 year period.



GRS money may be spent in any or all of these categories; the categories are not listed in order of importance.

Health (including prevention, diagnosis, evaluation and treatment of medical and mental health conditions, physical rehabilitation services and educational programs in public health)

Libraries (including the operation of a bookmobile, purchasing of new books or development of specialized educational programs for the blind and handicapped, and the upgrading of the general book collection)

Public Safety (including law enforcement; fire protection and building code inspection; police academy; civil defense; inspection of buildings, plumbing, electrical facilities, gas lines, boilers and elevators)

Public Transportation (including highways; transit systems; streets; grade crossings; snow and ice removal and training public transportation drivers)

Recreation (including participation and spectator sports programs; art, music and dance exhibitions; arts and crafts and other cultural activities; museums and zoos; park and playground activities)

Social Services for the poor or aged (including food; clothing; shelter; day care; job training) (see Section on Supplementary Information for examples of social service expenditures.)

Secondary Recipients

Private organizations, nongovernmental agencies or other governmental units such as a fire district may request and receive GRS money from state and/or local governments if the government's financial laws permit such transfers of money.

Your government may decide to fund a secondary recipient with its GRS money. However, the GRS law does not require such expenditures.

Restrictions on the Use of General Revenue Sharing Money for Local and State Gov'ts

No Matching

**Sec. 104
Reg. 51.30**

No state or local government may use, directly or indirectly, any revenue sharing funds to obtain federal funds under any program which requires a government to make a contribution in order to receive the federal funds.

Nondiscrimination

**Sec. 122
Reg. 51.32**

Any program or activity funded by GRS money cannot exclude persons from participation in it, deny persons its benefits or subject them to discrimination on the basis of race, color, sex or national origin. (See Discriminatory Actions Prohibited in the Supplementary Information section)

State and Local Laws

Sec. 123 (a) (4)

Governments receiving GRS money must use it only in accordance with the same rules and procedures that regulate the expenditure of their government's own money.

Rules Example. If state and local laws prohibit your government from using its own moneys to operate an ambulance service, it could not use revenue sharing funds to run an ambulance service even though such a project would fall into the priority category of "health."

Procedures Example. If state and local law require public hearings for your government's proposed budget before its own moneys can be appropriated, then revenue sharing moneys also must be included in public hearings.



2 Year Limitation

Sec. 123 (a) (2)
Reg. 51.33

Recipient governments must use, obligate or appropriate their revenue sharing funds within 24 months of the end of the entitlement period for which each check was issued.

Davis-Bacon Act

Sec. 123 (a) (6) and (7)
Reg. 51.33

When a recipient government pays with GRS money 25% or more of the total costs of any contracted or subcontracted construction project (costing over \$2,000), the government must include in its contracts prevailing wage determinations for laborers and skilled workers and labor practices as established under the Davis-Bacon Act. This Act is administered by the U. S. Department of Labor.

Prevailing Rates of Pay

When a recipient government pays its own employees 25% or more of the total wages in any employment category with GRS money, then each of the workers in the category (such as firemen, policemen) receiving a portion of his or her wages in revenue sharing funds must be paid at least the prevailing rate of pay which persons receive who are employed in similar occupations by that government. All employees of the government who are not within an employment category (such as the fire chief, the police chief) and who receive any portion of their pay in revenue sharing funds must also be paid at least the prevailing rate.

Revenue Sharing Trust Fund

Sec. 123 (a) (1)
Reg. 51.40 (a)

A government receiving GRS money must put it into a trust fund. This may be done by opening a separate bank account or by establishing a separate set of accounts on the government's books.

Auditing and Fiscal Procedures

Reg. 51.40 (d)

The GRS regulations require a recipient government to maintain its fiscal accounts in such a manner as to:

permit the preparation of Planned and Actual Use Reports required by the Secretary of the Treasury;

document compliance with the matching funds prohibition;

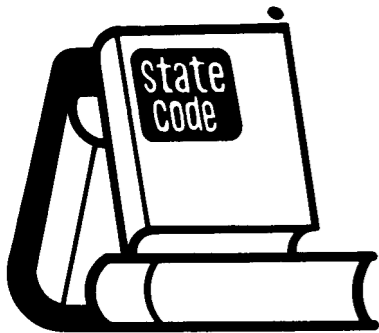
allow the tracing of GRS moneys to a level of expenditure that would indicate whether the funds were used in violation of the restrictions and prohibitions of the Act.

Additional Restrictions for Local Governments Only

Direct welfare payments are not permitted; however, payment for services to welfare recipients are allowable.

Operating expenses for **general** education are not permitted; however, capital expenditures for education such as construction of a school facility or the purchase of educational equipment are permissible.

Operating expenses for **general** government such as paying the chief executive's salary, and voter registration are not permitted.



The fiscal records must be available for public inspection during normal working hours.

Supplementary Information

This section presents more detailed explanations about various aspects of the general revenue sharing program.

Filing A Complaint

Citizen Complaint

There are **no forms** and there are **no formal procedures** for submitting a complaint alleging a violation of the use of general revenue sharing money. If you believe that there has been a violation of the State and Local Fiscal Assistance Act of 1972, provide the Office of Revenue Sharing with a written explanation detailing the nature of the alleged violation. Included with this explanation should be supporting documentation of the alleged misuse.

Complaints should be filed in writing and sent to:

Compliance Manager
Office of Revenue Sharing
U. S. Department of the Treasury
1900 Pennsylvania Avenue, N. W.
Washington, D. C. 20226
Phone: (202) 634-5187

By including the following information in any written complaint you will be assisting the ORS:

- Name, address and phone number of person and/or organization filing the complaint (complainant).
- Names of other individuals having knowledge of alleged misuse of GRS money who may be contacted by ORS.
- Name of Chief Executive Officer of your government.
- Specific use of GRS money that is being or has been allegedly misused.
- The reason why complainant believes that GRS money is being misused.
- Newspaper clippings about use of GRS money, if available, and as much other supporting documentation as can be obtained.
- No complaint will be investigated concerning the allegation that GRS money could have been used better by your government, as long as the money was used in accordance with the restrictions on the use of the GRS money. This is a problem which should be dealt with at the local level.

ORS Action After Receipt of Complaint

1. Complaint will be acknowledged and examined.
2. If the examination of the complaint indicates a possible violation of the law, the ORS will:
 - a. notify the Chief Executive of the receipt of the complaint;
 - b. in the case of a local government, the Governor also will be notified;

- c. conduct an investigation into the alleged violation, or;
 - d. refer the complaint to the federal agency which has legal jurisdiction.
3. The affected government will have the opportunity to respond to the complaint, and should possible evidence of noncompliance be gathered in the investigation, the government will be given every opportunity to **comply voluntarily**.
 4. If the affected government does not comply voluntarily then ORS will begin formal legal action.
 5. Upon conclusion of the legal action (a hearing has been held, proposed findings and conclusions have been submitted, the administrative law judge has issued an order and any appeals have been resolved), if any government is judged to be in violation of the law, it will be given **60 days to correct** the situation in which the violation has occurred. For any government failing to take such corrective action, the Office of Revenue Sharing will:
 - a. not only recover the illegally spent GRS money
 - b. but will also **withhold all** future GRS money until the Secretary of the Treasury is satisfied that full compliance with the GRS law is achieved.

ORS Action After Receipt of Discrimination Allegation

Reg. 51.32
(d)-(h)

Complaints alleging discrimination are handled in the same manner as other complaints.

It is important that possible discriminatory actions or situations involving GRS money be reported as soon as possible, preferably before the money has been spent.

Please note.

1. If an ORS investigation results in possible evidence of discrimination, the ORS will notify the recipient government and the State Governor in an attempt to secure voluntary compliance.
2. If the affected government does not comply voluntarily, then ORS will begin formal legal action.
3. Upon conclusion of such legal actions (a hearing has been held, proposed findings and conclusions have been submitted, an administrative law judge has issued an order and appeals have been resolved), if the government is judged to be in violation of the law and has not demonstrated in 60 days that it will comply, then ORS may:
 - a. refer the case to the Attorney General of the U.S.
 - b. issue an order in accordance with Title IV of the Civil Rights Act of 1964 to withhold or to terminate or demand forfeiture of all of the government's GRS money.
 - c. take any other legal action to achieve the government's compliance with the law.

Discriminatory Actions Prohibited

Sec. 122
Reg. 51.32

Insuring civil rights of persons (noncitizens as well as citizens) is emphasized in the general revenue sharing law. In this section, the civil rights regulations of the general revenue sharing law are outlined. The public's understanding of these regulations is important to community involvement in local government decision making and in the monitoring of the use of GRS money.

Any aspect of a program or activity which receives an appropriation of GRS money **may not** directly or through contractual or other arrangements **on the basis of race, color, national origin or sex:**

1. deny any person a service or a benefit;
2. provide any service or benefit which is different from that provided to others;
3. subject a person to segregated treatment in any facility;
4. subject a person to segregated treatment in any matter related to receiving service or benefits;
5. deny any person an opportunity to participate as an employee;
6. treat an individual differently from others in determining admission, enrollment, eligibility, membership or other requirements that a person must meet to be provided any service or benefit;
7. use any methods of discriminatory program administration (such as promotion test, hindering access to information, etc.)
8. limit access to or use of any facility through site selection.

See "GRS and Civil Rights" in the Citizens Check List.

The revenue sharing regulations state that a recipient government may use GRS money in a specific geographic area or for a specific group of persons within its jurisdiction, if the purpose of the expenditure is to eliminate a prior imbalance in facilities or services which resulted from previous discriminatory actions.

Capital Expenditures for Local Governments

The general revenue sharing law lists "ordinary and necessary capital expenditures authorized by law" as permissible expenditures of GRS money (Section 103 (a) (2)).

The Office of Revenue Sharing defines ordinary and necessary capital expenditures as those expenditures which result in the acquisition of, or the addition to, fixed assets.

Here are some examples; they are not meant to be all-inclusive.

- 1) The purchase of cars, trucks, fire trucks, tractors, library bookmobiles, grass-mowers, snowplows for trucks, sanders or highway maintenance equipment is permissible.
- 2) Expenditures for heating plants, restrooms, garages, cafeterias, libraries or any other type of building or improvement to a building has been allowed as have the cost of temporary repairs to already existing structures.
- 3) A capital expenditure may relate to **any area of governmental activity, not just permitted categories listed in Section 103 (a) (1)** (See Use of GRS money). For example, the cost of constructing or equipping a school building or library is permitted, even though the cost of operating and maintaining a school may not be paid with a local government's GRS money.
- 4) Various supplementary costs to capital improvements which include but are not limited to, attorney's fees for a title search, architects' fees, court costs incurred to acquire property or defend title to property and property surveys are permissible GRS expenditures.
- 5) Broad areas of capital outlay include acquisition of land; construction or renovation of buildings; improvement to existing facilities; and the purchase of machinery and equipment.

Remember, definitions of permissible capital expenditures are determined by your state and local law. Should state or local law define capital expenditure in a narrower or stricter way than the Office of Revenue Sharing does, the state and local law must be followed.

General Revenue Sharing / Money Used for Social Services for Poor or Aged

The Office of Revenue Sharing has established criteria to aid local governments in determining uses of their GRS money for social services for the poor or aged.

Here are some examples which will serve as illustrations. This list is not meant to be all-inclusive.

- 1) Administrative expenses incurred in the operation of programs for the poor or aged have been allowed as ordinary and necessary operating expenses. For example, the cost of administering a Food Stamp Program is considered an ordinary and necessary expense of providing social services to the poor. GRS money can also be used for administrative expenses incurred in programs for the poor or aged conducted by community organizations such as a neighborhood council.
- 2) The cost of operating a Community Action Program providing services for the poor or aged has been held to be a valid expenditure of GRS money.
- 3) The funding of an agency which administers a number of subagencies, only one of which provides social services, was ruled not to constitute a priority expenditure, since the GRS money would not be used exclusively on social services for the poor or aged. However, GRS money used to fund the sub-agency which provides social services for the poor or aged would be permitted.
- 4) Salaries of social workers, case workers, librarians working with the blind and handicapped, and others working in programs with the poor or aged may be paid from GRS money.
- 5) The operating expenses of neighborhood social centers, libraries and other neighborhood facilities which are of benefit to the poor or aged may be partially funded with general revenue sharing money to the extent that such funding reflects the use made of those facilities for the benefit of the poor or aged.
- 6) Direct welfare payments to the poor or aged are not permitted by the Act, but the payment of a portion of a poor tenant's rent is a permissible expenditure if the money goes to the landlord and not to the tenant.
- 7) General revenue sharing money may also be used to operate and maintain public housing.
- 8) A day care center and day care services may be funded through general revenue sharing. The local unit of government must determine eligibility for the use of a day care center, as families with working mothers may well exceed the Bureau of the Census definition of a low income family.
- 9) Nursing homes for the poor or homes for the aged may be funded with general revenue sharing money.
- 10) Local governments may contract with nongovernmental agencies (nonprofit organizations, community agencies) for numerous social services as long as such contractual arrangements with these agencies are legal under state or local law.

Other examples of social service uses on which general revenue sharing money may be expended include:

- Interest-free loans to aid welfare recipients in securing jobs
- Adult education programs which benefit the poor or aged
- Youth development programs which aid poor or disadvantaged young persons
- Youth employment programs which either directly hire poor or disadvantaged youths or assist them to secure jobs in the private sector
- Library activities which serve the aged, homebound, and handicapped citizen

As can be seen from these examples, any activity which can reasonably be classified a social service for the poor or aged may be funded with general revenue sharing.

Indian Tribes and Alaskan Native Villages

Many Indian tribes and Alaskan native villages qualify as units of local government eligible to receive general revenue sharing funds. The program takes into consideration the rather unique status and structure of such governments in the following ways:

1. A population ratio formula is used to compute the tribe's/Alaskan native government's amount of GRS money. **Sec. 108 (b) (4)**
Example: if 1/3 of the county area* is populated by eligible tribal/Alaskan native persons then 1/3 of the GRS funds allocated to the county area are paid to the tribal/Alaskan native government.
2. Only the Indian/Alaskan native population **residing** on land under the jurisdiction of the Indian/Alaskan native government is counted in this population figure.
3. GRS money received by tribal or Alaskan native governments must be expended for the benefit of tribal/Alaskan native persons living in each county area. **Reg. 51.34**
4. This section of the regulations (51.34) is **not meant to exclude** non-residents and non-Indian/non-Alaskan natives from any service or facility supported through revenue sharing funds. However, the tribal/Alaskan native persons residing on the lands must at least have a reasonable opportunity to derive benefits of the tribal/Alaskan native government's GRS money.

Example: an Indian//Alaskan native government uses GRS money to initiate a noon lunch program which provides a hot midday meal to the elderly persons of the tribe/Alaskan native village. All elderly tribal/Alaskan native persons and any elderly non-Indian/non-Alaskan natives (at the discretion of the tribal/Alaskan native governments) in any of the counties* covered by jurisdiction of the Indian/Alaskan native government may participate in this program. The regulations merely require that tribal/Alaskan native persons be assured of the opportunity to participate.

Restrictions on Use of General Revenue Sharing Money by Secondary Recipients

Governments receiving shared revenues directly may transfer some or all of their GRS money to nonprofit organizations, private associations or other governmental units. These secondary recipients must comply with the following restrictions on the use of GRS money:

1. GRS money must be used only in accordance with the laws and procedures (including state and local law) that regulate the use and expenditure of a secondary recipient's money;
2. GRS money may not be used to "match;" that is, to obtain other federal money;
3. GRS money cannot be used to cause, to initiate or have the effect of discrimination on the basis of race, color, national origin, or sex;
4. When 25% or more of GRS money is used to pay the total cost of a sub-contracted or contracted construction project (costing \$2,000 or more), then the Davis-Bacon Act wage determinations and labor standards must be followed.
5. In the case of local (not state) governments transferring GRS money to secondary recipients, secondary recipients must:
 - a) use the GRS money in the permitted expenditure areas (see Uses of GRS Money in The Act section);
 - b) not use GRS money for direct welfare payments;
 - c) not use GRS money to pay operating expenses for general education.

*There are no counties in Alaska. However, for the allocation and use of GRS money, the Bureau of the Census' enumeration districts are used.

Your government is not required by the general revenue sharing law to transfer its GRS money to secondary recipients, but the law does give it such an opportunity.

Your Governments' Responsibilities to the Federal Government

As your government reports to you the planned and actual uses of GRS moneys, it must also indicate to the Federal government its agreement to comply with certain administrative requirements of the law. Knowledge of these requirements will facilitate the public's scrutiny of the use of general revenue sharing money.

Assurances

In order to participate in the general revenue sharing program, each government must assure the Secretary of the Treasury of its intention to comply with the following requirements which are found in the legislation:

It will—

- Sec. 123 (a) (1)** 1. establish trust fund and deposit all GRS money into it;
- Sec. 123 (a) (2)** 2. use, appropriate, or obligate GRS money within 24 months from the end of the entitlement period for which each check was issued;
- Sec. 123 (a) (3)** 3. use GRS money only for priority expenditures listed in Section 103 of the Act (local governments only);
- Sec. 123 (a) (4)** 4. expend GRS money only in accordance with the laws and procedures which apply to the use of the state and local government's own moneys;
- Sec. 123 (a) (5)** 5. keep records adequate to establish compliance with the restrictions and prohibitions of the program, provide access to these records for the purpose of reviewing compliance with the Act, and submit whatever reports which may be required by the Secretary of the Treasury;
- Sec. 123 (a) (6)** 6. comply with the provisions of the Davis-Bacon Act when 25% or more of the costs of a contracted construction project are paid with GRS money;
- Sec. 123 (a) (7)** 7. pay prevailing wage rates to government employees (See Section on Restrictions of GRS money);
- Sec. 123 (a) (8)** 8. in the case of an Indian tribe or Alaskan native government, spend GRS money for the benefit of the tribe or village members living in each county;
- Sec. 122** 9. not discriminate in any program or activity funded in whole or in part with GRS money on the basis of race, color, national origin or sex;
- Sec. 104** 10. not use GRS money to participate either directly or indirectly in any federal matching program.

These assurances are part of each Planned Use Report. The chief executive officer of your government has assured the Secretary of the Treasury of his or her intention to comply with the restrictions when he or she signs the Planned Use Report.

Certifications

Sec. 103 (b) and 104 (e)

The chief executive officer must certify that his or her jurisdiction has not used shared revenues either:

- 1) to obtain federal matching funds or
- 2) in a category of expenditures not covered by the broad categories of Section 103. These certifications are part of each **Actual Use Report** and become effective when the chief executive officer signs the report.

Other Office of Revenue Sharing Publications Available at the Government Printing Office

What is General Revenue Sharing?

A publication answering questions most frequently asked by government officials about the general revenue sharing program.

Catalogue Number—T 1.2: R 32/6

Price—40c

Audit Guide and Standards for Revenue Sharing Recipients

A publication to aid state and local government auditors and public accountants to understand the audit requirements for GRS money.

Catalogue Number—T 1.10/2: AU 2

Price—90c

Regulations Governing the Payment of Entitlements Under Title I of the State and Local Fiscal Assistance Act of 1972

A publication containing indexed Regulations and the text of the General Revenue Sharing Act.

Catalogue Number—T1.10:IN5

Price—15c

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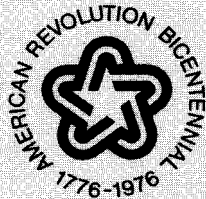
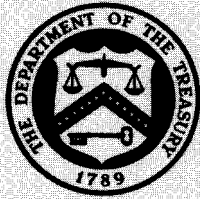
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31 Code of Federal Regulations
Subtitle B, Part 51
Federal Assistance to State
and Local Governments

Regulations
Governing the Payment
of Entitlements
Under Title I of the State
and Local Fiscal
Assistance Act
of 1972

Department of the Treasury
Office of Revenue Sharing

Revised November 1975



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

Revenue Sharing

The Department of the Treasury hereby publishes in its entirety the regulations in Part 51 of Subtitle B of Title 31, Code of Federal Regulations, which became effective April 5, 1973 (38 FR 9132) for entitlement periods beginning on or after January 1, 1973 and which have since been amended. Amendment to the regulations was made 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) approved October 20, 1972.

These complete regulations include all previous amendments and, specifically, amendments filed on October 22, 1975 to 31 CFR Part 51, creating a new subpart for civil rights regulations, and amendments filed October 23, 1975, indicating changes in the designation of subparts and section numbers as well as clarifying existing policy and changing existing procedures.

Dated: November 10, 1975.

**JOHN K. PARKER,
Acting Director,
Office of Revenue Sharing.**

Approved: Richard R. Albrecht,
General Counsel.

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AUTHORITY: Pub. L. 92-512; and 5 U.S.C. 301.

Subpart A—General Information

§ 51.0 Scope and application of regulations.

(a) *In general.* The rules and regulations in this part are prescribed for carrying into effect the State and Local Fiscal Assistance Act of 1972 (Title I, Public Law 92-512) applicable to entitlement periods beginning January 1, 1973. Subpart A sets forth general information and definitions of terms used in this part. Subpart B of this part prescribes reports required under this part and publicity concomitant thereto. Subpart C of this part contains rules regarding the computation, allocation and adjustment of entitlement. Subpart D of this part prescribes prohibitions and restrictions on the use of funds. Subpart E of this part prescribes fiscal procedures and auditing requirements. Subpart F of this part contains rules relating to procedure and practice requirements where a recipient government has failed to comply with any provision of this part.

(b) *Saving clause.* Any cause of action arising out of noncompliance with the interim regulations covering payments made for the first and second entitlement periods (January 1, 1972, through June 30, 1972, and July 1, 1972, through December 31, 1972) shall continue to be covered by such regulations and any proceeding commenced thereon shall be governed by the procedures set forth in Subpart F of this part.

§ 51.1 Establishment of Office of Revenue Sharing.

There is established in the Office of the Secretary of the Treasury the Office of Revenue Sharing. The office shall be headed by a Director who shall be appointed by the Secretary of the Treasury. The Director shall perform the functions, exercise the powers and carry out the duties vested in the Secretary of the Treasury by the State and Local Fiscal Assistance Act of 1972, Title I, Public Law 92-512.

§ 51.2 Definitions.

As used in this part (except where the

context clearly indicates otherwise, or where the term is defined elsewhere in this part) the following definitions shall apply:

(a) "Act" means the State and Local Fiscal Assistance Act of 1972, Title I of Public Law 92-512, approved October 20, 1972.

(b) "Chief executive officer" of a unit of local government means the elected official, or the legally designated official, who has the primary responsibility for the conduct of that unit's governmental affairs. Examples of the "chief executive officer" of a unit of local government may be: The elected mayor of a municipality, the elected county executive of a county, or the chairman of a county commission or board in a county that has no elected county executive, or such other official as may be designated pursuant to law by the duly elected governing body of the unit of local government; or the chairman, governor, chief, or president (as the case may be) of an Indian tribe or Alaskan native village.

(c) "Department" means the Department of the Treasury.

(d) "Entitlement" means the amount of payment to which a State government or unit of local government is entitled as determined by the Secretary pursuant to an allocation formula contained in the Act and as established by regulation under this part.

(e) "Entitlement funds" means the amount of funds paid or payable to a State government or unit of local government for the entitlement period.

(f) "Entitlement period" means one of the following periods of time:

(1) The 6-month period beginning January 1, 1973, and ending June 30, 1973.

(2) The fiscal year beginning July 1, 1973, and ending June 30, 1974.

(3) The fiscal year beginning July 1, 1974, and ending June 30, 1975.

(4) The fiscal year beginning July 1, 1975, and ending June 30, 1976.

(5) The 6-month period beginning July 1, 1976, and ending December 31, 1976.

(g) "Governor" means the Governor of any of the 50 States or the Commissioner of the District of Columbia.

(h) "Independent public accountants" means independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States.

(i) "Indian tribes and Alaskan native villages" means those Indian tribes and Alaskan native villages which have a rec-

ognized governing body and which perform substantial governmental functions. Certification to the Secretary by the Secretary of the Interior (or by the Governor of a State in the case of a State affiliated tribe) that an Indian tribe or an Alaskan native village has a recognized governing body and performs substantial governmental functions, shall constitute prima facie evidence of that fact.

(j) "Recipient government" means a State government or unit of local government as defined in this section.

(k) "Secretary" means the Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

(l) "State government" means the government of any of the 50 States or the District of Columbia.

(m) "Unit of local government" means the government of a county, municipality, township, or other unit of government below the State which is a unit of general government and which shall be determined on the basis of the same principles as used by the Bureau of the Census for general statistical purposes. The term "unit of local government" shall also include the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions. The District of Columbia, in addition to being treated as a State, shall also be treated as a county area which has no units of local government (other than itself) within its geographic area.

§ 51.3 Procedure for effecting compliance.

(a) *In general.* If the Secretary determines that a recipient government has failed to comply substantially with any provision of this part, and after giving reasonable notice and opportunity for a hearing to the Governor of the State or the chief executive officer of the unit of local government pursuant to Subpart G of this part, the Secretary shall notify the recipient government that if it fails to take corrective action within 60 days from the date of receipt of such notification further payments to it will be withheld for the remainder of the entitlement period and for any subsequent entitlement period until such time as the Secretary is satisfied that appropriate corrective action has been taken and that there will no longer be any failure to comply. Until he is satisfied, the Secretary shall make no further payments of such amounts.

(b) *Determination to delay payment.* Whenever the Secretary determines that a recipient government has failed to comply with the communication requirements of Subpart B, he may delay payment of entitlement funds to such recipient. A determination to delay payment of entitlement funds shall not be subject to the procedure set forth in paragraph (a) of this section and shall be in effect only for such time as is necessary to effect compliance.

§ 51.4 Extension of time.

When by these regulations (other than those specified in Subpart F of this part) an act is required within a specified time, the Secretary may grant a request for an extension of time if in his judgment it is necessary and appropriate. Requests for extensions of time shall set forth the facts and circumstances supporting the need for more time and the amount of additional time requested.

§ 51.5 Transfer of funds to secondary recipients.

Those prohibitions and restrictions set forth in Subparts D and E of this part which are applicable to a recipient government's entitlement funds continue to be applicable to such funds if they are transferred to another governmental unit or private organization. A violation of Subparts D and E of this part by a secondary recipient shall constitute a violation by the recipient government and the applicable penalty shall be imposed on the recipient government.

Subpart B—Reports and Written Communications

§ 51.10 Reports to the Secretary; assurances.

(a) *Reports for review and evaluation.* The Secretary may require each recipient government receiving entitlement funds to submit such annual and interim reports (other than those required by § 51.11) as may be necessary to provide a basis for evaluation and review of compliance with and effectiveness of the provisions of the Act and regulations of this part.

(b) *Requisite assurances for receipt of entitlement funds.* Each Governor of a State or chief executive officer of a unit of local government, in order to qualify for entitlement funds, must file a statement of assurances when requested by the Secretary, on a form to be provided, that such government will abide by certain specific requirements of the Act and the prohibitions and restrictions of Subparts D, E, and F of this part,

with respect to the use of entitlement funds. The Secretary will afford each Governor the opportunity for review and comment to the Secretary on the adequacy of the assurances by units of local government in his State.

§ 51.11 Report on planned use and actual use of funds.

(a) *Planned use report.* Each recipient government which expects to receive funds under the Act shall submit to the Secretary a report, on a form to be provided, of the specific amounts and purposes for which it plans to spend the funds which it expects to receive for an entitlement period. The planned use reports for the third and fourth entitlement periods (the 6-month period beginning January 1, 1973 and ending June 30, 1973, and the fiscal year beginning July 1, 1973 and ending June 30, 1974) shall be filed with the Secretary on a date he shall determine. Thereafter, each planned use report shall be filed prior to the beginning of an entitlement period as defined in § 51.2(f).

(b) *Actual use report; status of trust fund.* Each recipient government which receives funds pursuant to the Act shall submit to the Secretary an annual report, on a form to be provided, of the amounts and purposes for which such funds have been spent or otherwise transferred from the trust fund (as defined in § 51.70(a)) during the reporting period. Such report also shall state any interest earned on entitlement funds during the period. Such reports shall show the status of the trust fund including its balance as of June 30 and shall be filed with the Secretary on or before September 1 of each calendar year. All such funds must be used, obligated, or appropriated within the time period specified in § 51.70(b).

§ 51.12 Certifications.

The Secretary shall require a certification by the Governor, or the chief executive officer of the unit of local government, that no entitlement funds have been used in violation of the prohibition contained in § 51.40 against the use of entitlement funds for the purpose of obtaining matching Federal funds. In the case of a unit of local government the Secretary shall require a certification by the chief executive officer that entitlement funds received by it have been used only for priority expenditures as prescribed by § 51.41. The certifications required by this section shall be in such form as the Secretary may prescribe.

§ 51.13 Publication and publicity of reports; public inspection.

(a) *Publication of required reports.* Each recipient government must publish in a newspaper a copy of each report required to be filed under § 51.11 (a) and (b) prior to the time such report is filed with the Secretary. Such publication shall be made in one or more newspapers which are published within the State and have general circulation within the geographic area of the recipient government involved. In the case of a recipient government located in a metropolitan area which adjoins and extends beyond the boundary of the State, the recipient government may satisfy the requirement of this section by publishing its reports in a metropolitan newspaper of general circulation even though such newspaper may be located in the adjoining State from the recipient government.

(b) *Publicity.* Each recipient government, at the same time as required for publication of reports under paragraph (a) of this section, shall advise the news media, including minority and bilingual news media, within its geographic area of the publication of its reports made pursuant to paragraph (a) of this section, and shall provide copies of such reports to the news media on request.

(c) *Public inspection.* Each recipient government shall make available for public inspection a copy of each of the reports required under § 51.11(a) and (b) and information as necessary to support the information and data submitted on each of those reports. Such detailed information shall be available for public inspection at a specified location during normal business hours. The Secretary may prescribe additional guidelines concerning the form and content of such information.

§ 51.14 Reports to the Bureau of the Census.

It shall be the obligation of each recipient government to comply promptly with requests by the Bureau of the Census (or by the Secretary) for data and information relevant to the determination of entitlement allocations. Failure of any recipient government to so comply may place in jeopardy the prompt receipt by it of entitlement funds.

Subpart C—Computation and Adjustment of Entitlement

§ 51.20 Data.

(a) *In general.* The data used in determination of allocations and adjustments thereto payable under this part

will be the latest and most complete data supplied by the Bureau of the Census or such other sources of data as in the judgment of the Secretary will provide for equitable allocations.

(b) *Computation and payment of entitlements.* (1) Allocations will not be made to any unit of local government if the available data is so inadequate as to frustrate the purpose of the Act. Such units of local government will receive an entitlement and payment when current and sufficient data become available as necessary to permit an equitable allocation.

(2) Payment to units of local government for which the Secretary has not received an address confirmation will be delayed until proper information is available to the Secretary.

(3) Where the Secretary determines that the data provided by the Bureau of the Census or the Department of Commerce are not current enough, or are not comprehensive enough, or are otherwise inadequate to provide for equitable allocations he may use other data, including estimates. The Secretary's determination shall be final and such other additional data and estimates as are used, including the sources, shall be publicized by notice in the FEDERAL REGISTER.

(c) *Special rule for 6 month entitlement periods.* For entitlement periods which encompass only one-half of a year, the adjusted taxes and intergovernmental transfers of any unit of local government for that half-year will be estimated to be one-half of the annual amounts.

(d) *Units of local government located in more than one county area.* In cases where a unit of local government is located in more than one county, each part of such unit is treated for allocation purposes as a separate unit of government, and the adjusted taxes, and intergovernmental transfers of such parts are estimated on the basis of the ratio which the population of such part bears to the population of the entirety of such unit.

§ 51.21 Data affected by major disaster.

(a) *In general.* Any change in data otherwise eligible for use in determining the entitlement of a recipient government after April 1, 1974, shall be disregarded for a period of 60 months if that change:

(1) Resulted from a major disaster determined by the President under § 301 of the Disaster Relief Act of 1974 (Pub. L. 93-288) and

(2) Results in a data factor which is less beneficial than the previous data

factor for purposes of the revenue sharing allocation process.

(b) *Eligibility requirements.* In order for a recipient government to be eligible for the data stabilization benefit of paragraph (a) of this section, it shall:

(1) Be located within a State designated by the President as a major disaster area, and

(2) Be located within a geographical subdivision of the State as certified to the Office of Revenue Sharing as a major disaster area by the Administrator of the Disaster Assistance Administration of the Department of Housing and Urban Development.

Further, each recipient government within the specific geographic area so designated will be notified pursuant to the data improvement program, provided for in § 51.29 of each of its data factors developed subsequent to the major disaster designation and shall be required to verify through its chief executive officer, that the data was adversely affected by the major disaster. In addition, the Secretary may require that such verifications be accompanied by substantiating documentation evidencing a causal relationship between the major disaster and the less favorable revenue sharing allocation value of the subject data factor. The Secretary, upon being satisfied that all of the requirements of this section have been met with respect to any post-disaster data factor, shall refrain from using the post-disaster data factor in the allocation process, and shall continue to use the pre-disaster data factor, until whichever of the following occurs first: (i) A data factor more beneficial than the pre-disaster data factor currently being used is developed, or (ii) 60 months have expired from the designation by the President of the specific major disaster area.

§ 51.22 Adjusted taxes.

(a) *In general.* Tax revenues are compulsory contributions to a unit of local government exacted for public purposes, as such contributions are determined by the Bureau of the Census for general statistical purposes. The term "adjusted taxes" means the tax revenues adjusted by excluding an amount equal to that portion of such compulsory contributions which is properly allocable to school operations, debt service on school indebtedness, school capital outlays, and other educational purposes.

(b) *Procedure for exclusion of tax revenues for education.* The tax revenues exacted by a unit of local government shall be adjusted to exclude any such tax

revenues used for financing education in a manner consistent with the following provisions:

(1) Where a unit of local government finances education from a specific fund and lists tax revenues to the fund or levies a separate tax for purposes of education, such amounts as determined will constitute the tax revenues for education.

(2) If tax revenues for purposes of education are not separately identifiable because education is financed by expenditure or transferring of moneys from a general fund (or similarly named fund) to a school fund or funds, then the ratio of tax revenues (as defined in paragraph (a) of this section) to the total revenues in such fund shall be calculated, and that ratio multiplied by the expenditure or transfer of moneys from such fund to the school fund shall be equated with the tax revenues properly allocable to expenses for education. The phrase "total revenues in such fund" means cash and securities on hand in the general fund (or similarly named fund) at the beginning of the fiscal year, plus all revenues to the fund (other than trust or agency revenues) less cash and securities on hand at the end of the fiscal year. Trust and agency funds are those held specifically for individuals or governments for which no discretion can be exercised as to the amounts to be paid to the recipient.

(3) If any instance where neither paragraph (b) (1) nor (2) of this section permits determination of school taxes, then any procedure deemed equitable by the Secretary shall be utilized to ascertain adjusted taxes.

(c) *Validity of adjusted tax data.* Allocation of funds under the Act will be based on data reported by States and units of local governments to the Bureau of the Census and shall be in accordance with definitions established by the Bureau. No unit of government shall report to the Department of the Treasury or the Bureau of the Census in a manner which attempts to circumvent or frustrate the intent of this section.

§ 51.23 Date for determination of allocation.

(a) *In general.* Pursuant to the provisions of § 51.20 (a) and (b) (3), the determination of the data definitions upon which the allocations and entitlements for an entitlement period are to be calculated shall be made not later than the day immediately preceding the beginning of the entitlement period. Any change in the computation of local tax effort to credit certain county sales taxes to units

of local government pursuant to section 109(e) (2) (B) of the Act (the "Memphis Rule") will be considered to be a change in a data definition and will not be given effect for any entitlement periods for which there are final data definitions. The final date upon which determinations of allocations and entitlements, including adjustments thereto, may be made for an entitlement period shall be determined by the Secretary as soon as practicable and shall be publicized by notice in the FEDERAL REGISTER.

(b) *Time limitation and minimum adjustment.* If prior to the date determined by the Secretary pursuant to paragraph (a) of this section, it is established to the satisfaction of the Secretary by factual evidence and documentation that the data used in the computation of an allocation is erroneous an adjustment will be made. No adjustment of any kind which is less than \$200 shall be made to an entitlement if in the judgment of the Secretary such adjustment will be burdensome, expensive, or otherwise impracticable.

(c) *Adjusted taxes and intergovernmental transfers.* The dates for determining the amount of adjusted taxes and intergovernmental transfers of a unit of local government will be the fiscal year of such unit ending during the 12 months prior to July 1, 1971. If a more recent period is used, it shall be such fiscal year that can be uniformly assembled for all units of government prior to the beginning of the affected entitlement period.

§ 51.24 Boundary changes, governmental reorganization, etc.

(a) *In general.* Boundary changes, governmental reorganizations, or changes in State statutes or constitutions occurring prior to or during an entitlement period which were not taken into account during the initial allocation shall, if not within the scope of paragraph (d) of this section, affect such allocation or payments in a manner consistent with the following provisions:

(1) A boundary change, governmental reorganization, or change in State statutes or constitution relevant to the computation of an entitlement of a unit of local government under the Act, occurring prior to the beginning of an entitlement period shall result in an alteration to the entitlement of that unit if brought to the attention of the Bureau of the Census within 60 days (or by June 30, 1973, in case of the third entitlement period) after the beginning of such entitlement period.

(2) A boundary change, governmental

reorganization, or change in State statutes or constitution relevant to the computation of entitlement of a unit of local government under the Act, occurring during an entitlement period shall not result in a change to the entitlement of that unit until the next entitlement period. However, payment tendered to such unit for the entitlement period may be redistributed pursuant to the provisions of paragraphs (b) and (c) of this section.

(b) *New units of local government.* A unit of local government which came into existence during an entitlement period shall first be eligible for an entitlement allocation for the next entitlement period. However, if such unit is a successor government, it shall be eligible to receive the entitlement payment of the unit or units of local government to which it succeeded in accordance with the conditions of the succession.

(c) *Dissolution of units of local government.* A unit of local government which dissolved, was absorbed or ceased to exist as such during an entitlement period is eligible to receive an entitlement payment for that entitlement period: *Provided*, That such unit of local government is in the process of winding up its governmental affairs or a successor unit of local government has legal capacity to accept and use such entitlement funds. Entitlement payments which are returned to the Secretary because of the cessation of existence of a unit of local government shall be placed in the State and Local Government Fiscal Assistance Trust Fund until such times as they can be redistributed according to the conditions under which the unit of local government ceased to exist.

(d) *Limitations on adjustment for annexations.* (1) Annexations by units of local government having a population of less than 5,000 on April 1, 1970, shall not affect the entitlement of any unit of local government for an entitlement period unless the Secretary determines that adjustments pursuant to such annexations would be equitable and would not be unnecessarily burdensome, expensive, or otherwise impracticable.

(2) Annexations of areas with a population of less than 250, or less than 5 percent of the population of the gaining government, shall not affect the entitlement of any unit of local government.

(e) *Certification.* Units of local government affected by a boundary change, governmental reorganization, or change in State statutes or constitution shall,

before receiving an entitlement adjustment or payment redistribution pursuant to this section, obtain State certification that such change was accomplished in accordance with State law. The certifying official shall be designated by the Governor, and such certification shall be submitted to the Bureau of the Census.

§ 51.25 Waiver of entitlement; non-delivery of checks; insufficient data.

(a) *Waiver.* Any unit of local government may waive its entitlement for any entitlement period: *Provided*, The chief executive officer with the consent of the governing body of such unit notifies the Secretary that the entitlement payments for a past, current, or next beginning entitlement period, or any combination thereof, are being waived. A waiver of entitlement for the next beginning entitlement period will only be given effect if the waiver is received during the 6-month period immediately preceding that entitlement period. In the event that an entitlement payment is returned or a notice of waiver is executed which is not in accordance with this procedure, the chief executive officer will be so notified by the Secretary and, unless the attempted waiver is rescinded within 30 days of such notice, it shall be given effect. However, in no event will a notice of waiver be given effect for an entitlement period which is subsequent to the next beginning entitlement period. The entitlement waived and adjustments thereto, if any, resulting from recalculation of earlier entitlements, shall be added to and shall become a part of the entitlement of the next highest unit of government eligible to receive entitlement funds in that State in which the unit of government waiving entitlement is located. However, if the governing body of an Indian tribe or Alaskan native village waives its entitlement for any period, the rules relating to distributions within county areas (pursuant to section 108(b) (4) of the Act) are to apply to the distribution within a county area as if such tribe or village were not in existence for that period. A waiver of entitlement by a unit of local government or Indian tribe or Alaskan native village shall be deemed irrevocable 30 days prior to the first payment for the entitlement period to which it relates.

(b) *Constructive waiver.* Any recipient government which has not waived and is otherwise eligible to receive entitlement payments and which has failed to provide required reports, assurances or certifications pursuant to Subpart B is

subject to a determination of having constructively waived its entitlement funds for the affected entitlement period through inaction. The Secretary, prior to such a determination, shall notify nonresponsive recipient governments of their noncompliance and that their entitlement funds are being temporarily withheld pursuant to § 51.3(b). If compliance is not achieved within a reasonable period of time, which shall not be less than 30 days, the Secretary shall notify the affected recipient governments that if compliance is not achieved within a period of 30 days after mailing such notice, a constructive waiver of entitlement funds will be determined to have occurred. Entitlement funds thus constructively waived will be redistributed pursuant to the provisions of paragraph (a) of this section.

(c) *Nondelivery.* Entitlement funds for any entitlement period which are returned by the U.S. Postal Service to the Department of the Treasury as being nondeliverable because of incorrect address information, or which are unclaimed for any reason, shall be placed in the State and Local Government Fiscal Assistance Trust Fund until such time as payment can be made.

(d) *Insufficient data.* Entitlement funds for any entitlement period which are withheld from payment because of insufficient data upon which to compute the entitlement, or for which payment cannot be made for any other reason, shall remain in the State and Local Government Fiscal Assistance Trust Fund until such time as payment can be made.

§ 51.26 Reservation of funds and adjustment of entitlement.

(a) *Reservation of entitlement funds.* In order to make subsequent adjustments to an entitlement payment under this part which may be necessitated because of insufficient or erroneous data, or for any other reason, the Secretary shall reserve in the State and Local Government Fiscal Assistance Trust Fund such percentage of the total entitlement funds for any entitlement period as in his judgment shall be necessary to insure that there will be sufficient funds available so that all recipient governments will receive their full entitlements. Such reserve shall be known as the Obligated Adjustment Reserve and amounts remaining in that reserve will accumulate until the liabilities of the Trust Fund are discharged or sufficiently diminished to permit an allocation to recipient governments.

(b) *Adjustment to entitlement payments.* Adjustment to an entitlement of a recipient government will ordinarily be effected through alteration to entitlement payments unless there is a downward adjustment which is so substantial as to make payment alterations impracticable or impossible. In such case the Secretary may demand that the funds received by the recipient government in excess of its entitlement be immediately repaid to the Trust Fund of the Department of the Treasury.

§ 51.27 State must maintain transfers to local governments.

(a) *General rule.* The entitlement of any State government for any entitlement period beginning on or after July 1, 1973, shall be reduced by the amount (if any) by which—

(1) The average of the aggregate amounts transferred by the State government out of its own sources during such period (or during that State's fiscal year ending on or immediately prior to the end of such period) and the preceding entitlement period (or such fiscal year) to all units of local government (as defined in § 51.2(m)) in such State, is less than,

(2) The similar aggregate amount for the 1-year period beginning July 1, 1971 (or that State's fiscal year ending on or immediately prior to the end of such period).

For purposes of paragraph (a)(1) of this section, the amount of any reduction in the entitlement of a State government under this section for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State government out of its own sources during such period to units of local government in such State. The phrase "own sources" means all sources of State revenue (including debt proceeds and the State's revenue sharing entitlement funds) but excluding intergovernmental revenues received from the Federal government.

(b) *Measurement of maintenance of effort.* In those States that do not have an accounting system providing an audit trail for all funds concerned (from own source to final application) in intergovernmental transfer to units of local government (such as those States in which intergovernmental transfers to units of local government are made from a commingled fund with no identification as to specific revenue source), the following formula may be applied by the Secretary to establish the base year intergovernmental transfers to units of local govern-

ment from own sources and to generally monitor level of accordance with the maintenance provision of paragraph (a) of this section during future entitlement periods:

(1) It shall be assumed that the ratio of a State's own source intergovernmental transfers to units of local government to that State's total intergovernmental transfers to units of local government is equal to the ratio of that State's own source revenues to its total revenues. Thus, for a State in which such formula may be applied, its base year own source intergovernmental transfers to units of local government shall be assumed to equal its total intergovernmental transfers to units of local government in the base year multiplied by its own source revenue in the base year divided by its total revenues in the base year.

(2) In a State in which the formula is applied, the State's own source intergovernmental transfers to units of local government in a future entitlement period shall be assumed to equal the average of—

(i) The State's total intergovernmental transfers to units of local government during that period (or that State's fiscal year ending on or immediately prior to the end of such period) multiplied by its own source revenue in that period (or such fiscal year) divided by its total revenues in that period (or such fiscal year) and

(ii) The State's total intergovernmental transfers to units of local government during the preceding entitlement period (or that State's fiscal year ending on or immediately prior to the end of such period) multiplied by its own source revenue in that period (or such fiscal year) divided by its total revenues in that period (or such fiscal year).

(3) Therefore, in a State in which the formula is applied, maintenance (for a given entitlement period) of intergovernmental transfer effort to units of local government will be measured by the difference between that State's average aggregate intergovernmental transfers to units of local government (over the appropriate periods) as calculated by employing the method described in paragraph (b)(2) of this section and that State's own source intergovernmental transfers to units of local government in the base period as calculated by employing the method described in paragraph (b)(1) of this section.

(4) Should the application of this formula during any entitlement period indicate nonmaintenance, for example,

should a State's calculated own source average aggregate intergovernmental transfers to units of local government (over the appropriate periods) be less than such transfers as calculated for the base period, the difference (as defined in paragraph (b)(3) of this section) shall constitute the future indicated reduction in that State's entitlement unless such State can document to the Secretary that the fact or amount of nonmaintenance as determined by application of the formula is inaccurate.

(c) *Alternative procedure.* If the Secretary shall determine that application of the formula set forth in paragraph (b) of this section in a particular case provides an inaccurate or unfair measure of transfer effort, then any formula, procedure, or method deemed equitable by the Secretary, may be utilized to measure such transfer effort for the purpose of implementing the maintenance provision.

(d) *Adjustment where State assumes responsibility for category of expenditures.* If the State government establishes to the satisfaction of the Secretary that since June 30, 1972, it has assumed responsibility for a category of expenditures which (before July 1, 1972) was the responsibility of local governments located in such State, then, the aggregate amount taken into account under paragraph (a)(2) of this section shall be reduced to the extent that increased State government spending (out of its own sources) for such category has replaced corresponding amounts which for the 1-year period beginning July 1, 1971 (or that State's fiscal year ending on or immediately prior to the end of such period) it transferred to units of local government.

(e) *Adjustment where new taxing powers are conferred upon local governments.* If a State establishes to the satisfaction of the Secretary that since June 30, 1972, one or more units of local government within such State have had conferred upon them new taxing authority, then, the aggregate amount taken into account under paragraph (a)(2) of this section shall be reduced to the extent of the larger of—

(1) An amount equal to the amount of the taxes collected by reason of the exercise of such new taxing authority by such local governments, or

(2) An amount equal to the amount of the loss of revenue to the State by reason of such new taxing authority being conferred on such local governments.

No amount shall be taken into consider-

ation under paragraph (e) (1) of this section if such new taxing authority is an increase in the authorized rate of tax under a previously authorized kind of tax, unless the State is determined by the Secretary to have decreased a related State tax.

(f) *Special rule for period beginning July 1, 1973.* In the case of the entitlement period beginning July 1, 1973, the preceding entitlement period for purposes of paragraph (a) (1) of this section shall be treated as being the 1-year period beginning July 1, 1972, or that State's fiscal year which ends prior to June 30, 1973.

(g) *Special rule for period beginning July 1, 1976.* In the case of the entitlement period beginning July 1, 1976, and ending December 31, 1976, the aggregate amount taken into account under paragraph (a) (1) of this section for the preceding entitlement period and the aggregate amount taken into account under paragraph (a) (2) of this section shall be one-half of the amounts which (but for this paragraph (g)) would be taken into account.

(h) *Report by Governor.* Pursuant to the authority of § 51.10 and in order to effect compliance with this section, the Governor of each State shall submit to the Secretary after the end of the State's fiscal year, on a form to be provided, the aggregate amounts transferred out of its own sources to units of local government for those entitlement periods or that State's fiscal years specified on the report:

- (1) The State's own source funds.
- (2) The State's total funds.
- (3) The State's own source transfers to units of local government.
- (4) The State's total transfers to units of local government.

(i) *Reduction in entitlement.* If the Secretary has reason to believe that paragraph (a) of this section requires a reduction in the entitlement of any State government for any entitlement period, he shall give reasonable notice and opportunity for hearing to the State. If, thereafter, he determines that paragraph (a) of this section requires the reduction of such entitlement, he shall also determine the amount of such reduction and shall notify the Governor of such State of such determinations and shall withhold from subsequent payments to such State government under this subtitle an amount equal to such reduction.

(j) *Transfer to general fund.* An amount equal to the reduction in the entitlement of any State government which results from the application of this sec-

tion (after any judicial review) shall be transferred from the Secretary's Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

§ 51.28 Optional formula.

(a) *In general.* A State government may by law provide for the allocation of entitlement funds among county areas, or among units of local government (other than county governments Indian tribes, and Alaskan native villages): (1) On the basis of the population multiplied by the general tax effort factors of such areas or units of local governments; or, (2) on the basis of the population multiplied by the relative income factors of such areas or units of local government; or, (3) on the basis of a combination of those two factors. Any State which provides by law for such a variation in the allocation formula provided by subsections 108(a) or 108(b) (2) and (3) of the Act, shall notify the Secretary of such law not later than 90 days before the beginning of the first entitlement period to which such law is to apply. Any such law shall:

- (1) Provide for allocating 100 percent of the aggregate amount to be allocated under subsections 108(a) or 108(b) (2) and (3) of the Act;
- (2) Apply uniformly throughout the State; and
- (3) Apply during the period beginning on the first day of the first entitlement period to which it applies and ending on December 31, 1976.

(b) *Single legislation required.* If a State government alters its county area allocation formula or its local government allocation formula, or both, such alteration may be made only once and must be made in the same legislative enactment.

(c) *Certification required.* Paragraph (a) of this section shall apply within a State only if the Secretary certifies that the State law complies with the requirements of such paragraph. The Secretary shall not certify any such law with respect to which he receives notification later than 30 days prior to the first entitlement period during which it is to apply.

§ 51.29 Adjustment of data factors.

The data factors and data definitions used in computing entitlements under the Act for any entitlement period will be made available to each State government and unit of local government as soon as practicable. Each such government will be given a reasonable opportunity to

question those data factors by providing the Department with factual documentation demonstrating evidence of error. If the Secretary determines that any data factors used were erroneous, necessary adjustments will be made. Data factors which are used for more than one entitlement period will be subject to challenge and adjustment only for the first entitlement period in which they were used.

§ 51.30 Adjustment of maximum and minimum per capita entitlement; 100 percent criterion.

(a) *County area maximum and minimum per capita entitlement—*(1) *In general.* Pursuant to section 108(b) (6) of the Act, the per capita amount allocated to any county area shall be not less than 20 percent, nor more than 145 percent, of two-thirds of the amount allocated to the State under section 106 of the Act, divided by the population of that State.

(2) *One hundred forty-five-percent rule.* If a county area allocation is greater than the 145-percent limit, its allocation shall be reduced to the 145-percent level and the resulting surplus shall be shared proportionately by all remaining unconstrained county areas.

(3) *Twenty-percent rule.* If, after the application of paragraph (a) (2) of this section, a county area allocation is less than the 20-percent limit, its allocation shall be increased to the 20-percent level and the resulting deficit shall be shared proportionately by all remaining unconstrained county areas.

(b) *Local government (other than a county government)—*(1) *In general.* Except as provided below, the per-capita amount allocated to any unit of local government (other than a county government) shall be not less than 20-percent, nor more than 145-percent, of two-thirds of the amount allocated to the State under section 106 of the Act, divided by the population of that State.

(2) *One hundred forty-five-percent rule.* If a unit of local government is allocated an amount greater than the 145-percent limit, its allocation shall be reduced to that level.

(3) *Twenty-percent rule.* If a unit of local government is allocated an amount less than the 20-percent limit, its allocation shall be increased to the lower of the 20-percent limit or 50 percent of the sum of that unit's adjusted taxes and transfers.

(c) *One hundred-percent criterion.* If the amounts allocated to recipient gov-

ernments of a State do not total 100 percent of the amount allocated to that State, the amount to be allocated to county areas shall be adjusted appropriately, and the allocation process shall be repeated until the amounts allocated to recipient governments of a State total 100 percent of the amount allocated to that State.

Subpart D—Prohibition and Restrictions on Use of Funds

§ 51.40 Matching funds.

(a) *In general.* Entitlement funds may not be used, directly or indirectly, as a contribution in order to obtain any Federal funds under any Federal program. The indirect use of entitlement funds to match Federal funds is defined to mean the allocation of entitlement funds to a nonmatching expenditure and thereby releasing or displacing local funds which are used for the purpose of matching Federal funds. This prohibition on use of entitlement funds as matching funds applies to Federal programs where Federal funds are required to be matched by non-Federal funds and to Federal programs which allow matching from either Federal or non-Federal funds.

(b) *Secondary recipients.* The prohibition of paragraph (a) of this section applies to a recipient government's entitlement funds which are transferred by it to another governmental unit or private organization. A violation of this section by a secondary recipient shall constitute a violation by the recipient government and the penalty provided by paragraph (f) of this section shall be imposed on the recipient government.

(c) *Certification required.* Pursuant to § 51.12, the chief executive officer of each recipient government must certify to the Secretary that entitlement funds received by it have not been used in violation of this section.

(d) *Increased State or local government revenues.* No recipient government shall be determined to have used funds in violation of paragraph (a) of this section with respect to any funds received for any entitlement period (or during its fiscal year) to the extent that net revenues received by it from its own sources during such period exceed the net revenues received by it from its own sources during the 1-year period beginning July 1, 1971 (or its fiscal year ending during the same period). In the case of the entitlement periods of 6 months, one-half of such net revenues shall be measured.

(e) *Presumptions of compliance.* No recipient government shall be determined

to have used entitlement funds in violation of the indirect prohibition of paragraph (a) of this section to the extent that:

(1) The expenditure of entitlement funds was accompanied by an aggregate increase in nonmatching funds expenditures.

(2) The receipt of entitlement funds permitted that government to reduce taxes: *Provided*, Nonentitlement revenue is sufficient to cover all matching funds contributions.

(3) The matching funds contribution in question is accounted for by an in-kind contribution which was not financed directly or indirectly with entitlement funds.

(f) *Determination by Secretary of the Treasury.* If the Secretary has reason to believe that a recipient government has used entitlement funds to match Federal funds in violation of the Act, the Secretary shall give such government notice and opportunity for hearing. If the Secretary determines that such government has, in fact, used funds in violation of this section, he shall notify such government of his determination and shall request repayment to the United States of an amount equal to the funds so used. To the extent that such government fails to repay such amount, the Secretary shall withhold from subsequent entitlement payments to that government an amount of entitlement funds equal to the funds used in violation of this section or, if this method is impracticable, the Secretary may refer the matter to the Attorney General for appropriate civil action.

(g) *Use of entitlement funds to supplement Federal grant funds.* The prohibition on use of entitlement funds contained in paragraph (a) of this section does not prevent the use of entitlement funds to supplement other Federal grant funds. For example, if expenditures for a project exceed the amount available from non-Federal funds plus matched Federal funds, the recipient government may use entitlement funds to defray the excess costs: *Provided, however*, That the entitlement funds are not used to match other Federal funds: *And Provided further*, That in the case of a unit of local government, the use of entitlement funds to supplement Federal grants is restricted to the category of expenditures as set forth in § 51.41.

§ 51.41 Permissible expenditures for local governments.

(a) *In general.* Entitlement funds re-

ceived by units of local government may be used only for priority expenditures. As used in this part, the term "priority expenditures" means:

(1) Ordinary and necessary maintenance and operating expenses for—

(i) Public safety (including law enforcement, fire protection, and building code enforcement);

(ii) Environmental protection (including sewage disposal, sanitation, and pollution abatement);

(iii) Public transportation (including transit systems and streets and roads);

(iv) Health;

(v) Recreation;

(vi) Libraries;

(vii) Social services for the poor or aged; and

(viii) Financial administration, and

(2) Ordinary and necessary capital expenditures authorized by law. No unit of local government may use entitlement funds for nonpriority expenditures which are defined as any expenditures other than those included in paragraph (a) (1) and (2) of this section. Pursuant to § 51.12, the chief executive officer of each unit of local government must certify to the Secretary that entitlement funds received by it have been used only for priority expenditures as required by the Act.

(b) *Use of entitlement funds for debt retirement.* The use of entitlement funds for the repayment of debt is a permissible expenditure provided that:

(1) Entitlement funds are not used to pay any interest incurred because of the debt,

(2) The debt was originally incurred for a priority expenditure purpose as defined in this section,

(3) The actual expenditure from the proceeds of the indebtedness (i.e., for materials, contractors, etc.) was made on or after January 1, 1972 (the beginning of the first entitlement period),

(4) The actual expenditures from the proceeds of the indebtedness were not in violation of any restrictions enumerated in this subpart.

(c) *Effect of noncompliance.* In the case of a unit of local government which uses an amount of entitlement funds for other than priority expenditures as defined in paragraph (a) of this section, it will pay over to the Secretary (for deposit in the general fund of the Treasury) an amount equal to 10 percent of any amount expended in violation of paragraph (a) of this section, unless such amount of entitlement funds is promptly repaid to the trust fund of the local government after notice by the Secretary

and opportunity for corrective action.

§ 51.42 Wage rates and labor standards.

(a) *Construction laborers and mechanics.* A recipient government which receives entitlement funds under the Act shall require that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction project costing in excess of \$2,000.00 and of which 25 percent or more of the cost is paid out of its entitlement funds: (1) Will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act as amended (40 U.S.C. 276a-276a-5); and (2) will be covered by labor standards specified by the Secretary of Labor pursuant to 29 CFR Parts 1, 3, 5, and 7.

(b) *Request for wage determination.* In situations where the Davis-Bacon standards are applicable, the recipient government must ascertain the U.S. Department of Labor wage rate determination for each intended project and insure that the wage rates and the contract clauses required by 29 CFR 5.5 and 29 CFR 5a.3 are incorporated in the contract specifications. The recipient government must also satisfy itself that the bidder is made aware of his labor standards responsibilities under the Davis-Bacon Act. Wage rate determinations may be obtained by filing a Standard Form 308 with the Employment Standards Administration of the applicable regional office of the U.S. Department of Labor at least 30 days before the invitation for bids or, in case of construction covered by general wage rate determinations, the appropriate rate may be obtained from the FEDERAL REGISTER.

(c) *Government employees.* A recipient government which employs individuals whose wages are paid in whole or in part from entitlement funds must pay wages which are not lower than the prevailing rates of pay for persons employed in similar public occupations by the same employer. However, this subsection shall apply with respect to employees in any category only if 25 percent or more of the wages of all employees of the recipient government in such category are paid from the trust fund established by it under § 51.70(a).

§ 51.43 Restriction on expenditures by Indian tribes and Alaskan native villages.

Indian tribes and Alaskan native villages as defined in § 51.2 are required to

expend entitlement funds only for the benefit of members of the tribe or village residing in the county area from which the allocation of entitlement funds was originally made. Expenditures which are so restricted will not constitute a failure to comply with the requirement of Subpart E of this part.

Subpart E—Nondiscrimination in Programs Funded With Entitlement Funds

§ 51.50 Purpose.

The purpose of this subpart is to effectuate section 122 of the Act to the end that no person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with entitlement funds made available pursuant to subtitle A of title I of the Act.

§ 51.51 Definitions.

Unless the context requires otherwise, as used in this subpart, the term:

(a) "Facility" includes all or any part of structures, equipment, or other real or personal property or interests therein.

(b) "Funded" means that entitlement funds have been made available for expenditure in a designated program or activity through legislative action.

(c) "Program or activity" means any function conducted by an identifiable administrative unit of the recipient government, or by any other unit of government or private contractor receiving entitlement funds from the recipient government.

§ 51.52 Discrimination prohibited.

(a) *General.* No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with entitlement funds made available pursuant to subtitle A of title I of the Act.

(b) *Specific discriminatory actions prohibited.* (1) A recipient government shall not, under any program or activity to which the regulations of this subpart apply, directly or through contractual or other arrangements, on the ground of race, color, national origin, or sex:

(i) Deny any service or other benefit provided.

(ii) Provide any service or other benefit which is different, or is provided in a different form from that provided to others.

(iii) Subject any person to segregated or separate treatment in any facility or in any matter or process related to receipt of any service or benefit.

(iv) Restrict in any way the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.

(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or other benefit.

(vi) Deny any person an opportunity to participate in a program or activity as an employee.

(vii) Deny any person an equal opportunity to participate as appointed members of planning or advisory bodies in connection with the disposition of entitlement funds.

(2) A recipient government may not utilize criteria or methods of administration which have the effect of:

(i) Subjecting individuals to discrimination on the basis of race, color, national origin, or sex.

(ii) Perpetuating the results of past discriminatory practices.

(iii) Defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.

(3) A recipient government may not, with respect to any program or activity to which this subpart applies, make selections of site or location of facilities which have the effect of:

(i) Excluding individuals from such facilities.

(ii) Denying the individuals the benefits of such facilities.

(iii) Subjecting individuals using the facilities to discrimination on the ground of race, color, national origin, or sex.

(4) Recipient governments are encouraged to take action with entitlement funds to ameliorate an imbalance in services or facilities provided to any geographic area or specific group in order to overcome the effects of prior discriminatory practice or usage. If entitlement funds are allocated to a program or activity which currently provides an imbalance of services or facilities to persons protected by this subpart, then such imbalance must be ameliorated.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

§ 51.53 Employment.

(a) *Employment practices.* In any program or activity funded in whole or in part with entitlement funds, a recipient government may not (directly or indirectly through contractual or other arrangements) subject any individual to discrimination on the ground of race, color, national origin, or sex in its employment practices. These practices include recruitment, recruitment advertising, hiring, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation, use of facilities, and other terms and conditions of employment.

(b) *Employee selection procedures.* The Equal Employment Opportunity Commission, in carrying out its responsibilities in ensuring compliance with title VII of the Civil Rights Act of 1964, has published Guidelines on Employee Selection Procedures (29 CFR Part 1607) to assist in establishing and maintaining equal employment opportunities. Among other things, these Guidelines forbid the use of employee selection practices, procedures, and devices (such as tests, minimum educational levels, and the like) which disqualify a disproportionate number of minority individuals or women for employment and which are not related to job performance. Recipient governments using selection procedures which are not in conformity with the EEOC Guidelines shall, upon request of the Secretary, set forth the reasons for any such nonconformity, and, if necessary, the actions the recipient government is taking or will take to assure that its selection procedures are job related.

(c) *Self-evaluation.* Recipient governments are expected to conduct a continuing program of self-evaluation to ascertain whether any of their recruitment, employee selection, or promotional policies (or lack thereof) directly or indirectly have the effect of denying equal employment opportunities to minority individuals or women.

(d) *Employment compliance reviews.* Compliance reviews of recipient governments will be scheduled by the Office of Revenue Sharing, giving priority to any recipient government programs funded with entitlement funds which show a significant disparity between the percentage of minority persons or women in the work force and the percentage of minority or women employees in the applicable programs.

§ 51.54 Sex discrimination.

(a) *General.* No person shall, on the

basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in recruitment, hiring, or employment, whether full-time or part-time, under any program or activity funded in whole or in part with entitlement funds.

(b) *Recruitment and advertisement.*

(1) Recipient governments engaged in recruiting activity must recruit employees of both sexes for all jobs.

(2) Advertisement in newspapers and other media for employment must not express a sex preference. The placement of an advertisement in columns headed "Male" or "Female" will be considered to be a discriminatory limitation.

(3) A recipient government shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such recruitment has the effect of discriminating on the basis of sex.

(c) *Job policies and practices.* (1) Employees of both sexes shall have an equal opportunity to any available job that he or she is qualified to perform.

(2) Recipient governments must not make any distinction based upon sex in employment opportunities, wages, hours or other conditions of employment. It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex. It shall be an unlawful employment practice for an employer to provide for both unequal benefits and unequal contributions in the areas of insurance, pension or retirement plans, welfare or other fringe benefits programs. Further, it shall be an unlawful employment practice for an employer to provide for either unequal benefits or unequal contributions in such areas unless such unequal benefits or unequal contributions are directly related to actuarial differences. Proof of such actuarial differences shall be provided by the recipient government upon the request of the Secretary. In the areas of insurance, pensions, welfare programs and other fringe benefits, it shall be an unlawful employment practice for a recipient government to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees, which are not made available for male employees.

(3) Any distinction between married males and married females and any distinction between unmarried males and unmarried females will be considered to be a distinction made on the basis of sex. Similarly, a recipient government must not deny employment to women with young children unless it has the same exclusionary policies for men; or terminate an employee of one sex in a particular job classification upon reaching a certain age unless the same rule is applicable to persons of the opposite sex.

(4) A recipient government may not refuse to hire men or women, or deny men or women a particular job because there are no separate restrooms or other separate facilities. The recipient government's policies and practices must assure that appropriate facilities are available for use by both sexes.

(5) Recipient governments may not deny any employee the right to any job, which the employee is qualified to perform, in reliance upon a State "protective" law that does not apply equally to both sexes.

(6) A recipient government shall not:

(i) Classify a job as being for males or for females.

(ii) Maintain or establish separate lines of progression, seniority lists, career ladders, tenure, systems, position descriptions or job requirements which are based on sex or which classify persons on the basis of sex.

(d) *Marital or parental status.* In any program or activity funded in whole or in part with entitlement funds:

(1) *Family status.* A recipient government shall not treat an employee or applicant for employment differently on the basis of sex in any employment action or policy because of the employee's or applicant's marital status or status as a parent. Such action may also not be taken with respect to pregnancy unless the recipient government can demonstrate that the pregnancy of the individual concerned prevents adequate job performance by that individual. In no event may a recipient government have a policy or take an action which benefits a person because of his or her status as head of household or principal family wage earner.

(2) *Pregnancy as a temporary disability.* A recipient government shall treat any temporary disability arising from pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom in the same manner as it treats any other temporary disability for all job related purposes. The term "job related purposes" includes commence-

ment, duration and extensions of leave, payment of disability income, reinstatement or termination of employment, reinstatement pay rate and position, fringe benefits, accrual of seniority or other benefit of service, and promotion.

(e) *Sex as a bona fide occupational qualification.* Nothing in these regulations shall prohibit the hiring of employees of one sex if sex is a bona fide occupational qualification. A bona fide occupational qualification is only allowed where there is a reasonable factual basis to believe that all, or substantially all, of one sex are unable to perform the job in question. Further, the burden of demonstrating that sex is a bona fide occupational qualification for a given job rests on the recipient government.

§ 51.55 Assurances required.

(a) *General.* In order to qualify for any payment for any entitlement period, each Governor of a State or each chief executive officer of a unit of local government shall, prior to the beginning of each entitlement period, execute to the satisfaction of the Secretary an assurance that all programs to be funded in whole or in part with entitlement funds will be conducted in compliance with the requirements of this subpart. Assurances required under this paragraph shall be submitted pursuant to § 51.10(b) and shall be in such form and detail as prescribed by the Secretary.

(b) *Failure to comply.* Any recipient government which fails to comply with paragraph (a) of this section shall have its entitlement payments withheld for the applicable entitlement period. Any recipient government to which a determination of noncompliance with paragraph (a) of this section has been made shall be entitled to notice and opportunity for hearing. However, notwithstanding § 51.59, no payments shall be made for the applicable entitlement period pending the outcome of such hearing.

§ 51.56 Compliance information and reports.

(a) *Access to sources of information.* Each recipient government shall permit access by authorized representatives of the Office of Revenue Sharing and Department of Justice during normal business hours to such of its facilities, books, records, accounts, personnel, and other sources of information as may be relevant to a determination of whether the recipient government is complying with this subpart. Where any information required of a recipient government is in

the exclusive possession of any other agency, institution, or person, and such agency, institution, or person fails or refuses to furnish this information, the recipient government shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(b) *Compliance reports.* Each recipient government shall keep such records and submit on request of the Secretary timely, complete and accurate compliance reports at such times, in such form, and containing such information, as the Secretary may determine to be necessary or useful to enable the Office of Revenue Sharing to ascertain whether the recipient government has complied or is complying with this subpart. Recipient governments shall make available on request of Office of Revenue Sharing officials, racial, ethnic, male/female, and national origin data showing the extent to which minorities and females are or will be beneficiaries of entitlement funds. In the case of any program under which a primary recipient government extends or will extend entitlement funds to any other secondary recipient, such secondary recipient shall submit such compliance reports to the primary recipient as may be necessary or useful to enable the primary recipient to carry out its obligations as a recipient government under this subpart. Each recipient government shall identify, on request of the Office of Revenue Sharing, any State or local agency which has been legally authorized to monitor its civil rights compliance activities.

§ 51.57 Complaints and investigations.

(a) *Complaints.* Any person who believes anyone has been subjected to discrimination prohibited by this subpart, may personally or by a representative file with the Secretary a written statement setting forth the nature of the discrimination alleged and the facts upon which the allegation is based. No representative of a recipient government nor any of its agencies shall intimidate, threaten, coerce, or discriminate against any person or class of persons because of testimony, assistance, or participation in an investigation, proceeding, or hearing under this subpart.

(b) *Investigations.* The Secretary shall advise the chief executive officer of the recipient government of any complaint received pursuant to paragraph (a). If the Secretary has reason to believe that the complaint shows that a recipient government has failed to comply with

the provisions of this subpart, he will cause a prompt investigation to be made by the Office of Revenue Sharing, or other appropriate Federal or State agency, of the program or activity concerned. Such investigation may be made, if necessary, with the assistance of complainants or of the recipient government.

§ 51.58 Compliance reviews and affirmative action.

(a) *Compliance reviews.* The Secretary shall monitor and determine compliance of recipient governments with the requirements of this subpart and of the Act. Compliance reviews will be undertaken from time to time, as appropriate, at the discretion of the Secretary.

(b) *Affirmative action.* Any recipient government which has been determined to be in violation of this subpart must take reasonable steps to remove or overcome the consequences of such discrimination where a practice or usage has in purpose or effect tended to exclude individuals from participation in, deny them the benefits of, or subject them to discrimination under any program or activity to which this subpart applies, on the ground of race, color, national origin, or sex. The Secretary will, upon a finding of noncompliance, determine the steps necessary to remove the noncompliance and will determine a timetable for implementing those steps.

§ 51.59 Procedure for effecting compliance.

(a) *General.* Whenever the Secretary determines that a recipient government has failed to comply with this subpart, he shall notify the chief executive officer of the recipient government and the Governor of the State in which the government is located of the noncompliance and shall request the Governor to secure compliance. If, within a reasonable period of time not to exceed 60 days, the Governor fails or refuses to secure compliance, the Secretary is authorized:

(1) To refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted;

(2) To initiate an administrative hearing pursuant to the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or

(3) To take such other action as may be provided by law.

(b) *Administrative hearing.* An order of an administrative law judge to withhold temporarily, to repay, or to forfeit entitlement funds will not become effective until:

(1) There has been an express finding on the record, after notice and opportunity for hearing, of a failure to comply with a requirement of this subpart.

(2) At least 10 days have elapsed from the date of the order of the administrative law judge. During this period additional efforts will be made to assist the recipient government to comply with this subpart and to take appropriate corrective action.

(3) Thirty days have elapsed after the Secretary has filed with the Committee on Government Operations of the House of Representatives and the Committee on Finance of the Senate a full written report of the circumstances and the grounds for such action. The time limitation of subparagraphs (2) and (3) can run concurrently.

(4) The Secretary has notified the recipient government that, in addition to whatever sanctions have been imposed by the administrative law judge, the Office of Revenue Sharing shall withhold payment of all entitlement funds until such time as the recipient government complies with the order of the administrative law judge. Further, the amount of the forfeiture or repayment of entitlement funds, if any, will be limited to the program or activity in which the noncompliance has been found. Such funds shall be collected by a downward adjustment to future entitlement payments and will be deposited in the general fund of the Treasury. If the Secretary determines that adjustment to future entitlement payments is impracticable, he may refer the matter to the Attorney General for appropriate civil action to require payment of such amount to the United States.

(c) *Withholding pursuant to court action.* The Secretary may immediately withhold the payment of entitlement funds to a recipient government pending the entry of an affirmative action order by a Federal court if:

(1) A violation of the nondiscrimination provision of this subpart or the Act (Sec. 122) was alleged in the complaint before the court;

(2) The court finds that the recipient government has violated the nondiscrimination provision of this subpart or the Act; and

(3) The question of withholding has not been resolved by the court.

(d) *Action by Attorney General.* Nothing in these regulations is intended to preclude the United States, in a civil action initiated by the Attorney General of the United States pursuant to § 122

(c) of the Act, from seeking, or a court from granting; an order to require the repayment of funds previously paid under the Act, or an order that the payment of funds under the Act be terminated or withheld. In addition, the Secretary may initiate the procedure provided for in paragraph (a)(2) of this section against a recipient government which has been named as a defendant in such civil action if it is the Secretary's judgment, after consultation with the Attorney General, that an administrative withholding of entitlement funds is an appropriate measure to ensure compliance with this subpart.

§ 51.60 Hearing procedures.

Whenever a procedure which requires notice and opportunity for a hearing is invoked by the Secretary to effect compliance under this subpart, the procedural regulations promulgated in subpart G of this part shall govern.

§ 51.61 Jurisdiction over property.

The Office of Revenue Sharing shall have jurisdiction over any program or activity for purposes of this subpart for as long as a recipient government retains ownership or possession of any real or personal property or any interest therein, which was purchased in whole or in part with entitlement funds for the applicable program or activity. Further, if such property is transferred to another party, the Office of Revenue Sharing will retain jurisdiction over the recipient government for purposes of this subpart for as long as the property is used to provide benefits similar to those which were provided by the property before the transfer.

§ 51.62 Delegation.

The Secretary may assign to officials of the Department, officials of other departments or agencies of the Federal government, or officials of State agencies, responsibilities and authority to effectuate the purposes of this section including the achievement of effective coordination within the executive branch in the implementation of Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 2000e). Such delegation shall be made only with the consent of the affected departments and agencies, and in no event will the Secretary delegate authority to review the initial decision of an administrative law judge to officials outside the Department.

Subpart F—Fiscal Procedures and Auditing

§ 51.70 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 check is applicable. 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, must be obtained by application to the Secretary. Such application will set forth the facts and circumstances supporting the need for more time and the amount of additional time requested. The Secretary 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 Secretary to be prepared therefrom,

(2) Document compliance with the matching funds certification, and

(3) 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.

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 Secretary 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 Secretary 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 re-

viewing compliance and operations under the Act.

§ 51.71 Auditing and evaluation; scope of audits.

(a) *In general.* The Secretary shall provide for such auditing and evaluation as may be necessary to insure that expenditures of entitlement funds by recipient governments comply with the requirements of the Act and regulations of this part. Detail audits, reviews and evaluations may be made on a sample basis through inspection of records, and of reports required under subpart B of this part, and through on-site examinations, to determine whether the recipient governments have properly discharged their financial responsibilities and to evaluate compliance with the Act and the regulations of this part.

(b) *Scope of audits.* The scope of such audits may include a review of entitlement fund transactions, accounts and reports. In addition, the scope of such audits may include an examination of the following areas:

(1) Compliance with assurances made under § 51.10.

(2) Compliance with the requirement that States must maintain transfers to local governments as required by section 107(b) of the Act.

(3) Compliance with the reporting requirements and accuracy of the reports submitted to the Secretary as set forth in Subpart B of this part.

(4) Accuracy of fiscal data reported to the Bureau of the Census.

(5) Accuracy of the public records required under § 51.13(c).

(c) *Reliance on State auditors and independent public accountants.* It is the intention of the Secretary to rely to the maximum extent possible on audits of recipient governments by State auditors and independent public accountants. The Secretary may accept such audits and audits by local government auditors when such acceptance is consistent with the objectives of the Act and regulations of this part, and provided:

(1) Audits are performed in accordance with generally accepted auditing standards. Recipient governments are encouraged to have such audits performed, to the extent they consider practicable, in accordance with standards for the *Audit of Governmental Organizations, Programs, Activities and Functions* issued by the Comptroller General in June 1972.

(2) Audits include coverage as set forth in paragraph (b) of this section.

(3) Audit workpapers and related

audit reports are retained for 3 years after the issuance of the audit report, and are available upon request to the Secretary and the Comptroller General or to their representatives; and,

(4) Audit reports shall contain a clear statement of the auditor's findings as to compliance or noncompliance with the requirements of the Act and the regulations of this part. In the event that an auditor is unable to review compliance with all of the provisions of paragraph (b), the audit report shall reflect those areas in which a compliance review was not performed. Audit reports which disclose or otherwise indicate a possible failure to comply substantially with any requirements of the Act or the regulations of this part will be submitted to the Secretary by the Governor or chief executive officer.

Subpart G—Proceedings for Reduction in Entitlement, Withholding, or Repayment of Funds

§ 51.80 Scope of subpart.

The regulations of this subpart govern the procedure and practice requirements involving adjudications where the Act requires reasonable notice and opportunity for hearing.

§ 51.81 Liberal construction.

The regulations in this subpart shall be liberally construed to secure just, expeditious, and efficient determination of the issues presented. The Rules of Civil Procedure for the District Courts of the United States, where applicable, shall be a guide in any situation not provided for or controlled by this subpart, but shall be liberally construed or relaxed when necessary.

§ 51.82 Reasonable notice and opportunity for hearing.

Whenever the Secretary has reason to believe that a recipient government has failed to comply with any section of the Act or of the provisions of this part, and that repayment, withholding, or reduction in the amount of an entitlement of a recipient government is required, he shall give reasonable notice and opportunity of hearing to such government prior to the invocation of any sanction under the Act.

§ 51.83 Opportunity for compliance.

Except in proceedings involving willfulness or those in which the public interest requires otherwise, a proceeding under this part will not be instituted until such facts or conduct which may warrant such action have been called to

the attention of the chief executive officer of the recipient government in writing and he has been accorded an opportunity to demonstrate or achieve compliance with the requirements of the Act and the regulations of this part. If the recipient government fails to meet the requirements of the Act and regulations within such reasonable time as may be specified by the Secretary, a proceeding shall be initiated. If the recipient government is a unit of local government, a copy of all written communications regarding the alleged violation shall be transmitted by the Secretary to the Governor of the State in which the unit of local government is located.

§ 51.84 Institution of proceeding.

A proceeding to require repayment of funds to the Secretary, or to withhold funds from subsequent entitlement payments, or to reduce the entitlement of a recipient government, shall be instituted by the Secretary by a complaint which names the recipient government as the respondent.

§ 51.85 Contents of complaint.

(a) *Charges.* A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against it so that it is able to prepare a defense to the charges.

(b) *Demand for answer.* Notification shall be given in the complaint as to the place and time within which the respondent shall file its answer, which time shall be not less than 30 days from the date of service of the complaint. The complaint shall also contain notice that a decision by default will be rendered against the respondent in the event it fails to file its answer as required.

§ 51.86 Service of complaint and other papers.

(a) *Complaint.* The complaint or a true copy thereof may be served upon the respondent by first-class mail or by certified mail, return receipt requested; or it may be served in any other manner which has been agreed to by the respondent. Where the service is by certified mail, the return Postal Service receipt duly signed on behalf of the respondent shall be proof of service.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon the respondent or upon its attorney of record by

first-class mail. Such mailing shall constitute complete service.

(c) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a proceeding under this part, and the place of filing is not specified in this subpart or by rule or order of the administrative law judge, the paper shall be filed with the Director, Office of Revenue Sharing, Treasury Department, Washington, D.C. 20226. All papers shall be filed in duplicate.

(d) *Motions and requests.* Motions and requests may be filed with the designated administrative law judge, except that an application to extend the time for filing an answer shall be filed with the Director, Office of Revenue Sharing, pursuant to § 51.87(a).

§ 51.87 Answer; referral to administrative law judge.

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint, unless on application the time is extended by the Secretary. The respondent's answer shall be filed in duplicate with the Director, Office of Revenue Sharing.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which it knows to be true; nor shall a respondent state that it is without sufficient information to form a belief when in fact it possesses such information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegation in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced at a hearing.

(d) *Failure to file answer.* Failure to file an answer within the time prescribed in the complaint, except as the time for answer is extended under paragraph (a) of this section, may constitute an admission of the allegations of the complaint and a waiver of hearing, and the administrative law judge may make his findings and decision by default without a hearing or further procedure.

(e) *Reply to answer.* No reply to the respondent's answer shall be required, and new matter in the answer shall be deemed to be denied, but the Secretary may file a reply in his discretion and

shall file one if the administrative law judge so requests.

(f) *Referral to administrative law judge.* Upon receipt of the answer by the Director, or upon filing a reply if one is deemed necessary, or upon failure of the respondent to file an answer within the time prescribed in the complaint or as extended under paragraph (a) of this section, the complaint (and answer, if one is filed) shall be referred to the administrative law judge who shall then proceed to set a time and place for hearing and shall serve notice thereof upon the parties at least 15 days in advance of the hearing date.

§ 51.88 Supplemental charges.

If it appears that the respondent in its answer falsely and in bad faith, denies a material allegation of fact in the complaint or states that it has no knowledge sufficient to form a belief, when in fact it does possess such information, or if it appears that the respondent has knowingly introduced false testimony during the proceedings, the Secretary may thereupon file supplemental charges against the respondent. Such supplemental charges may be tried with other charges in the case, provided the respondent is given due notice thereof and is afforded an opportunity to prepare its defense thereto.

§ 51.89 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the administrative law judge may order or authorize amendment of the pleading to conform to the evidence: *Provided*, The party that would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegation of the pleading as amended. The administrative law judge shall make findings on any issue presented by the pleadings as so amended.

§ 51.90 Representation.

A respondent or proposed respondent may appear in person through its chief executive officer or it may be represented by counsel or other duly authorized representative. The Secretary shall be represented by the General Counsel of the Treasury.

§ 51.91 Administrative law judge; powers.

(a) *Appointment.* An administrative law judge, appointed as provided by section 11 of the Administrative Procedure

Act (5 U.S.C. 3105), shall conduct proceedings upon complaints filed under this subpart.

(b) *Powers of administrative law judge.* Among other powers provided by law, the administrative law judge shall have authority, in connection with any proceeding under this subpart, to do the following things:

(1) Administer oaths and affirmations;

(2) Make ruling upon motions and requests. Prior to the close of the hearing no appeal shall lie from any such ruling except, at the discretion of the administrative law judge, in extraordinary circumstances;

(3) Determine the time and place of hearing and regulate its course and conduct. In determining the place of hearing the administrative law judge may take into consideration the requests and convenience of the respondent or its counsel;

(4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written arguments on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make initial findings and decision.

§ 51.92 Hearings.

(a) *In general.* The administrative law judge shall preside at the hearing on a complaint. Testimony of witnesses shall be given under oath or affirmation. The hearing shall be stenographically recorded and transcribed. Hearings will be conducted pursuant to section 7 of the Administrative Procedure Act (5 U.S.C. 556).

(b) *Failure to appear.* If a respondent fails to appear at the hearing, after due notice thereof has been served upon it or upon its counsel of record, it shall be deemed to have waived the right to a hearing and the administrative law judge may make his findings and decision against the respondent by default.

(c) *Waiver of hearing.* A respondent

may waive the hearing by informing the administrative law judge, in writing, on or before the date set for hearing, that it desires to waive hearing. In such event the administrative law judge may make his findings and decision based upon the pleadings before him. The decision shall plainly show that the respondent waived hearing.

§ 51.93 Stipulations.

The administrative law judge shall prior to or at the beginning of the hearing require that the parties attempt to arrive at such stipulations as will eliminate the necessity of taking evidence with respect to allegations of facts concerning which there is no substantial dispute. The administrative law judge shall take similar action, where it appears appropriate, throughout the hearing and shall call and conduct any conferences which he deems advisable with a view to the simplification, clarification, and disposition of any of the issues involved.

§ 51.94 Evidence.

(a) *In general.* Any evidence which would be admissible under the rules of evidence governing proceedings in matters not involving trial by jury in the Courts of the United States, shall be admissible and controlling as far as possible: *Provided that*, the administrative law judge may relax such rules in any hearing when in his judgment such relaxation would not impair the rights of either party and would more speedily conclude the hearing, or would better serve the ends of justice. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded by the administrative law judge.

(b) *Depositions.* The deposition of any witness may be taken pursuant to § 51.95 and the deposition may be admitted.

(c) *Proof of documents.* Official documents, records, and papers of a respondent shall be admissible as evidence without the production of the original provided that such documents, records and papers are evidenced as the original by a copy attested or identified by the chief executive officer of the respondent or the custodian of the document, and contain the seal of the respondent.

(d) *Exhibits.* If any document, record, paper, or other tangible or material thing is introduced in evidence as an exhibit, the administrative law judge may authorize the withdrawal of the exhibit subject to any conditions he deems proper. An original document, paper or record need not be introduced, and a

copy duly certified (pursuant to paragraph (b) of this section) shall be deemed sufficient.

(e) *Objections.* Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as permitted by the administrative law judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the right of either party to the proceeding.

§ 51.95 Depositions.

(a) *In general.* Depositions for use at a hearing may, with the written approval of the administrative law judge, be taken by either the Secretary or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 15 days written notice to the other party, before any officer duly authorized to administer an oath for general purposes. Such written notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 15 days written notice may be waived by the parties in writing, and depositions may then be taken from the persons and at times and places mutually agreed to by the parties.

(b) *Written interrogatories.* When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogatories shall be mailed by first class mail or delivered to the opposing party at least 10 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the administrative law judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

§ 51.96 Stenographic record; oath of reporter; transcript.

(a) *In general.* A stenographic record shall be made of the testimony and proceedings, including stipulations and admissions of fact in all proceedings, but not arguments of counsel unless otherwise ordered by the administrative law judge. A transcript of the proceedings (and evidence) at the hearing shall be made in all cases.

(b) *Oath of reporter.* The reporter making the stenographic record shall subscribe an oath before the administrative law judge, to be filed in the record of the case, that he (or she) will truly and correctly report the oral testimony and proceedings at such hearing and accurately transcribe the same to the best of his (or her) ability.

(c) *Transcript.* In cases where the hearing is stenographically reported by a Government contract reporter copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Department of the Treasury, a copy thereof will be supplied to the respondent or its counsel at actual cost of duplication. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (31 U.S.C. 483(a)).

§ 51.97 Proposed findings and conclusions.

Except in cases where a respondent has failed to answer the complaint or has failed to appear at the hearing, or has waived the hearing, the administrative law judge, prior to making his initial decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

§ 51.98 Initial decision of the administrative law judge.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, but in no event later than 30 days after the submission of proposed findings and conclusions if they are submitted, the administrative law judge shall make his initial decision in the case. The initial decision shall include a statement of the findings of fact and the conclusions therefor, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record, and shall provide for one of the following orders:

(a) An order that the respondent pay over to the Secretary an amount equal to 110 percent of any amount determined to be improperly expended by the respondent in violation of § 51.41 relating to priority expenditures; or

(b) An order that the respondent pay over to the Secretary an amount equal to the amount of entitlement funds deter-

mined to be expended in violation of the Act and the provisions of this part; or

(c) An order that the Secretary withhold from subsequent entitlement payments to the respondent an amount equal to the amount of entitlement funds determined to be expended in violation of the Act and the provisions of this part; or

(d) An order that the entitlement of a recipient government be reduced and the amount of such reduction to be withheld from subsequent entitlement payments; or

(e) An order dismissing the proceedings.

§ 51.99 Certification and transmittal of record and decision.

After reaching his initial decision, the administrative law judge shall certify to the complete record before him and shall immediately forward the certified record, together with a certified copy of his initial decision, to the Secretary. The administrative law judge shall serve also a copy of the initial decision by certified mail to the chief executive officer of the respondent or to its attorney of record.

§ 51.100 What constitutes record.

The transcript of testimony, pleadings and exhibits, all papers and requests filed in the proceeding, together with all findings, decisions and orders, shall constitute the exclusive record in the matter.

§ 51.101 Procedure on review of decision of administrative law judge.

(a) *Appeal to the Secretary.* Within 30 days from the date of the initial decision and order of the administrative law judge, the respondent may appeal to the Secretary and file his exceptions to the initial decision and his reasons therefor. The respondent shall transmit a copy of his appeal and reasons therefor to the Director of the Office of Revenue Sharing, who may, within 30 days from receipt of the respondent's appeal, file a reply brief in opposition to the appeal. A copy of the reply brief, if one is filed, shall be transmitted to the respondent or its counsel of record. Upon the filing of an appeal and a reply brief, if any, the Secretary shall make the final agency decision on the record of the administrative law judge submitted to him.

(b) *Appeal by the Director of the Office of Revenue Sharing.* In the absence of an appeal by the respondent, the Director of the Office of Revenue Sharing may, on his own motion, within 45 days after the initial decision, serve on the respondent by certified mail a notice that he will appeal the decision to the Secretary, for review. Within 30 days from such notice,

the Director of the Office of Revenue Sharing or his counsel will file with the Secretary his exceptions to the initial decision and his supporting reasons therefor. A copy of the exceptions shall be transmitted to the respondent or its counsel of record, who, within 30 days after receipt thereof, may file a reply brief thereto with the Secretary and submit a copy to the Director of the Office of Revenue Sharing or his counsel. Upon the filing of a reply brief, if any, the Secretary will make the final agency decision on the record of the administrative law judge.

(c) *Absence of appeal.* In the absence of either exceptions by the respondent or a notice of appeal by the Director of the Office of Revenue Sharing within the time set forth in paragraphs (a) and (b) of this section, or a review initiated by the Secretary on his own motion within the time allowed to the Director of the Office of Revenue Sharing, the initial decision of the administrative law judge shall constitute the final decision of the Department.

§ 51.102 Decision of the Secretary.

On appeal from or review of the initial decision of the administrative law judge, the Secretary will make the final agency decision. In making his decision the Secretary will review the record or such portions thereof as may be cited by the parties to permit limiting of the issues. The Secretary may affirm, modify, or revoke the findings and initial decision of the administrative law judge. A copy of the Secretary's decision shall be transmitted immediately to the chief executive officer of the respondent or its counsel of record.

§ 51.103 Effect of order of repayment or withholding of funds.

In case the final order against the respondent is for repayment of funds to the United States, such amount as determined by the order shall be repaid upon request by the Secretary. To the extent that the respondent fails to do so upon request of the Secretary, the Secretary shall withhold from subsequent entitlement payments to the respondent an amount equal to the amount not repaid. In case the final order against the respondent is for the withholding of an amount of subsequent entitlement payments, such amounts as ordered shall be withheld by the Director of the Office of Revenue Sharing after notice to the chief executive officer of the recipient government that if it fails to take corrective action within 60 days after receipt of the notice, further entitlement payments

will be withheld until the Secretary is satisfied that appropriate corrective action has been taken and there is full compliance with the Act and regulations of this part. In every case in which the respondent is a unit of local government, a copy of the final order and notice shall be submitted to the Governor of the State in which the respondent is located.

§ 51.104 Publicity of proceedings.

(a) *In general.* A proceeding conducted under this subpart shall be open to the public and to elements of the news media provided that, in the judgment of the administrative law judge, the presence of the media does not detract from the decorum and dignity of the proceeding.

(b) *Availability of record.* The record established in any proceeding conducted under this subpart shall be made available to inspection by the public as provided for and in accordance with regulations of the Department of the Treasury pursuant to 31 CFR Part 1.

(c) *Decisions of the administrative law judge.* The statement of findings and the initial decision of the administrative law judge in any proceedings, whether or not on appeal or review, shall be indexed and maintained by the Director of the Office of Revenue Sharing and made available for inspection by the public at the public documents room of the Department. If practicable, the statement of findings and the decisions of the administrative law judge shall be published periodically by the Department and offered for sale through the Superintendent of Documents.

§ 51.105 Judicial review.

Actions taken under administrative proceedings pursuant to this subpart shall be subject to judicial review pursuant to section 143 of Subtitle C of the Act. If a respondent desires to appeal a decision of the administrative law judge which has become final, or a final order of the Secretary for review of appeal, to the U.S. Court of Appeals, as provided by law, the Secretary, upon prior notification of the filing of the petition for review, shall have prepared in triplicate, a complete transcript of the record of the proceeding, and shall certify to the correctness of the record. The original certificate together with the original record shall then be filed with the Court of Appeals which has jurisdiction.

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APPENDIX

PART 1607—GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

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 - 1607.14 Affirmative action.

AUTHORITY: The provisions of this Part 1607 issued under sec. 713 (a), 78 Stat. 265; 42 U.S.C. 2000e-12.

SOURCE: The provisions of this Part 1607 appear at 35 F.R. 12333, Aug. 1, 1970, unless otherwise noted.

§ 1607.1 Statement of purpose.

(a) The guidelines in this part are based on the belief that properly validated and standardized employee selection procedures can significantly contribute to the implementation of non-discriminatory personnel policies, as required by title VII. It is also recognized that professionally developed tests, when used in conjunction with other tools of personnel assessment and complemented by sound programs of job design, may significantly aid in the development and maintenance of an efficient work force and, indeed, aid in the utilization and conservation of human resources generally.

(b) An examination of charges of discrimination filed with the Commission and an evaluation of the results of the Commission's compliance activities has revealed a decided increase in total test usage and a marked increase in doubtful testing practices which, based on our experience, tend to have discriminatory effects. In many cases, persons have come to rely almost exclusively on tests as the basis for making the decision to hire, transfer, promote, grant membership, train, refer or retain, with the result that candidates are selected or rejected on the basis of a single test score. Where tests are so used, minority candidates frequently experience disproportionately high rates of rejection by failing to attain score levels that have been established as minimum standards for qualification.

It has also become clear that in many

instances persons are using tests as the basis for employment decisions without evidence that they are valid predictors of employee job performance. Where evidence in support of presumed relationships between test performance and job behavior is lacking, the possibility of discrimination in the application of test results must be recognized. A test lacking demonstrated validity (i.e., having no known significant relationship to job behavior) and yielding lower scores for classes protected by title VII may result in the rejection of many who have necessary qualifications for successful work performance.

(c) The guidelines in this part are designed to serve as a workable set of standards for employers, unions and employment agencies in determining whether their selection procedures conform with the obligations contained in title VII of the Civil Rights Act of 1964. Section 703 of title VII places an affirmative obligation upon employers, labor unions, and employment agencies, as defined in section 701 of the Act, not to discriminate because of race, color, religion, sex, or national origin. Subsection (h) of section 703 allows such persons " * * * to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin."

§ 1607.2 "Test" defined.

For the purpose of the guidelines in this part, the term "test" is defined as any paper-and-pencil or performance measure used as a basis for any employment decision. The guidelines in this part apply, for example, to ability tests which are designed to measure eligibility for hire, transfer, promotion, membership, training, referral or retention. This definition includes, but is not restricted to, measures of general intelligence, mental ability and learning ability; specific intellectual abilities; mechanical, clerical and other aptitudes; dexterity and coordination; knowledge and proficiency; occupational and other interests; and attitudes, personality or temperament. The term "test" includes all formal, scored, quantified or standardized techniques of assessing job suitability including, in addition to the above, specific qualifying or disqualifying personal history or background requirements, specific educational or work history requirements, scored interviews, biographical informa-

tion blanks, interviewers' rating scales, scored application forms, etc.

§ 1607.3 Discrimination defined.

The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by title VII constitutes discrimination unless: (a) the test has been validated and evidences a high degree of utility as hereinafter described, and (b) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are unavailable for his use.

§ 1607.4 Evidence of validity.

(a) Each person using tests to select from among candidates for a position or for membership shall have available for inspection evidence that the tests are being used in a manner which does not violate § 1607.3. Such evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates. Furthermore, where technically feasible, a test should be validated for each minority group with which it is used; that is, any differential rejection rates that may exist, based on a test, must be relevant to performance on the jobs in question.

(b) The term "technically feasible" as used in these guidelines means having or obtaining a sufficient number of minority individuals to achieve findings of statistical and practical significance, the opportunity to obtain unbiased job performance criteria, etc. It is the responsibility of the person claiming absence of technical feasibility to positively demonstrate evidence of this absence.

(c) Evidence of a test's validity should consist of empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.

(1) If job progression structures and seniority provisions are so established that new employees will probably, within a reasonable period of time and in a great majority of cases, progress to a higher level, it may be considered that candidates are being evaluated for jobs at that higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it shall be considered that candidates are being evaluated for a job at or near the entry level. This point is

made to underscore the principle that attainment of or performance at a higher level job is a relevant criterion in validating employment tests only when there is a high probability that persons employed will in fact attain that higher level job within a reasonable period of time.

(2) Where a test is to be used in different units of a multiunit organization and no significant differences exist between units, jobs, and applicant populations, evidence obtained in one unit may suffice for the others. Similarly, where the validation process requires the collection of data throughout a multiunit organization, evidence of validity specific to each unit may not be required. There may also be instances where evidence of validity is appropriately obtained from more than one company in the same industry. Both in this instance and in the use of data collected throughout a multiunit organization, evidence of validity specific to each unit may not be required: *Provided, That no significant differences exist between units, jobs, and applicant populations.*

§ 1607.5 Minimum standards for validation.

(a) For the purpose of satisfying the requirements of this part, empirical evidence in support of a test's validity must be based on studies employing generally accepted procedures for determining criterion-related validity, such as those described in "Standards for Educational and Psychological Tests and Manuals" published by American Psychological Association, 1200 17th Street NW., Washington, D.C. 20036. Evidence of content or construct validity, as defined in that publication, may also be appropriate where criterion-related validity is not feasible. However, evidence for content or construct validity should be accompanied by sufficient information from job analyses to demonstrate the relevance of the content (in the case of job knowledge or proficiency tests) or the construct (in the case of trait measures). Evidence of content validity alone may be acceptable for well-developed tests that consist of suitable samples of the essential knowledge, skills or behaviors composing the job in question. The types of knowledge, skills or behaviors contemplated here do not include those which can be acquired in a brief orientation to the job.

(b) Although any appropriate validation strategy may be used to develop such empirical evidence, the following minimum standards, as applicable, must be met in the research approach and in the presentation of results which constitute evidence of validity:

(1) Where a validity study is conducted in which tests are administered to applicants, with criterion data collected later, the sample of subjects must be representative of the normal or typical candidate group for the job or jobs in question. This further assumes that the applicant sample is representative of the minority population available for the job or jobs in question in the local labor market. Where a validity study is conducted in which tests are administered to present employees, the sample must be representative of the minority groups currently included in the applicant population. If it is not technically feasible to include minority employees in validation studies conducted on the present work force, the conduct of a validation study without minority candidates does not relieve any person of his subsequent obligation for validation when inclusion of minority candidates becomes technically feasible.

(2) Tests must be administered and scored under controlled and standardized conditions, with proper safeguards to protect the security of test scores and to insure that scores do not enter into any judgments of employee adequacy that are to be used as criterion measures. Copies of tests and test manuals, including instructions for administration, scoring, and interpretation of test results, that are privately developed and/or are not available through normal commercial channels must be included as a part of the validation evidence.

(3) The work behaviors or other criteria of employee adequacy which the test is intended to predict or identify must be fully described; and, additionally, in the case of rating techniques, the appraisal form(s) and instructions to the rater(s) must be included as a part of the validation evidence. Such criteria may include measures other than actual work proficiency, such as training time, supervisory ratings, regularity of attendance and tenure. Whatever criteria are used they must represent major or critical work behaviors as revealed by careful job analyses.

(4) In view of the possibility of bias inherent in subjective evaluations, supervisory rating techniques should be carefully developed, and the ratings should be closely examined for evidence of bias. In addition, minorities might obtain unfairly low performance criterion scores for reasons other than supervisor's prejudice, as when, as new employees, they have had less opportunity to learn job skills. The general point is that all criteria need to be examined to insure freedom from factors which would unfairly depress the scores of minority groups.

(5) Differential validity. Data must be generated and results separately reported for minority and nonminority groups wherever technically feasible. Where a minority group is sufficiently large to constitute an identifiable factor in the local labor market, but validation data have not been developed and presented separately for that group, evidence of satisfactory validity based on other groups will be regarded as only provisional compliance with these guidelines pending separate validation of the test for the minority group in question. (See § 1607.9). A test which is differentially valid may be used in groups for which it is valid but not for those in which it is not valid. In this regard, where a test is valid for two groups but one group characteristically obtains higher test scores than the other without a corresponding difference in job performance, cutoff scores must be set so as to predict the same probability of job success in both groups.

(c) In assessing the utility of a test the following considerations will be applicable:

(1) The relationship between the test and at least one relevant criterion must be statistically significant. This ordinarily means that the relationship should be sufficiently high as to have a probability of no more than 1 to 20 to have occurred by chance. However, the use of a single test as the sole selection device will be scrutinized closely when that test is valid against only one component of job performance.

(2) In addition to statistical significance, the relationship between the test and criterion should have practical significance. The magnitude of the relationship needed for practical significance or usefulness is affected by several factors, including:

(i) The larger the proportion of applicants who are hired for or placed on the job, the higher the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few job vacancies are available;

(ii) The larger the proportion of applicants who become satisfactory employees when not selected on the basis of the test, the higher the relationship needs to be between the test and a criterion of job success for the test to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few applicants turn out to be satisfactory;

(iii) The smaller the economic and human risks involved in hiring an unqualified applicant relative to the risks entailed in rejecting a qualified appli-

cant, the greater the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when the former risks are relatively high.

§ 1607.6 Presentation of validity evidence.

The presentation of the results of a validation study must include graphical and statistical representations of the relationships between the test and the criteria, permitting judgments of the test's utility in making predictions of future work behavior. (See § 1607.5(c) concerning assessing utility of a test.) Average scores for all tests and criteria must be reported for all relevant subgroups, including minority and nonminority groups where differential validation is required. Whenever statistical adjustments are made in validity results for less than perfect reliability or for restriction of score range in the test or the criterion, or both, the supporting evidence from the validation study must be presented in detail. Furthermore, for each test that is to be established or continued as an operational employee selection instrument, as a result of the validation study, the minimum acceptable cutoff (passing) score on the test must be reported. It is expected that each operational cutoff score will be reasonable and consistent with normal expectations of proficiency within the work force or group on which the study was conducted.

§ 1607.7 Use of other validity studies.

In cases where the validity of a test cannot be determined pursuant to § 1607.4 and § 1607.5 (e.g., the number of subjects is less than that required for a technically adequate validation study, or an appropriate criterion measure cannot be developed), evidence from validity studies conducted in other organizations, such as that reported in test manuals and professional literature, may be considered acceptable when: (a) The studies pertain to jobs which are comparable (i.e., have basically the same task elements), and (b) there are no major differences in contextual variables or sample composition which are likely to significantly affect validity. Any person citing evidence from other validity studies as evidence of test validity for his own jobs must substantiate in detail job comparability and must demonstrate the absence of contextual or sample differences cited in paragraphs (a) and (b) of this section.

§ 1607.8 Assumption of validity.

(a) Under no circumstances will the general reputation of a test, its author

or its publisher, or casual reports of test utility be accepted in lieu of evidence of validity. Specifically ruled out are: assumptions of validity based on test names or descriptive labels; all forms of promotional literature; data bearing on the frequency of a test's usage; testimonial statements of sellers, users, or consultants; and other nonempirical or anecdotal accounts of testing practices or testing outcomes.

(b) Although professional supervision of testing activities may help greatly to insure technically sound and nondiscriminatory test usage, such involvement alone shall not be regarded as constituting satisfactory evidence of test validity.

§ 1607.9 Continued use of tests.

Under certain conditions, a person may be permitted to continue the use of a test which is not at the moment fully supported by the required evidence of validity. If, for example, determination of criterion-related validity in a specific setting is practicable and required but not yet obtained, the use of the test may continue: *Provided:* (a) The person can cite substantial evidence of validity as described in § 1607.7 (a) and (b); and (b) he has in progress validation procedures which are designed to produce, within a reasonable time, the additional data required. It is expected also that the person may have to alter or suspend test cutoff scores so that score ranges broad enough to permit the identification of criterion-related validity will be obtained.

§ 1607.10 Employment agencies and employment services.

(a) An employment service, including private employment agencies, State employment agencies, and the U.S. Training and Employment Service, as defined in section 701(c), shall not make applicant or employee appraisals or referrals based on the results obtained from any psychological test or other selection standard not validated in accordance with these guidelines.

(b) An employment agency or service which is requested by an employer or union to devise a testing program is required to follow the standards for test validation as set forth in these guidelines. An employment service is not relieved of its obligation herein because the test user did not request such validation or has requested the use of some lesser standard than is provided in these guidelines.

(c) Where an employment agency or service is requested only to administer a testing program which has been elsewhere devised, the employment agency or service shall request evidence of vali-

dation, as described in the guidelines in this part, before it administers the testing program and/or makes referral pursuant to the test results. The employment agency must furnish on request such evidence of validation. An employment agency or service will be expected to refuse to administer a test where the employer or union does not supply satisfactory evidence of validation. Reliance by the test user on the reputation of the test, its author, or the name of the test shall not be deemed sufficient evidence of validity (see § 1607.8(a)). An employment agency or service may administer a testing program where the evidence of validity comports with the standards provided in § 1607.7.

§ 1607.11 Disparate treatment.

The principle of disparate or unequal treatment must be distinguished from the concepts of test validation. A test or other employee selection standard—even though validated against job performance in accordance with the guidelines in this part—cannot be imposed upon any individual or class protected by title VII where other employees, applicants or members have not been subjected to that standard. Disparate treatment, for example, occurs where members of a minority or sex group have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, no new test or other employee selection standard can be imposed upon a class of individuals protected by title VII who, but for prior discrimination, would have been granted the opportunity to qualify under less stringent selection standards previously in force.

§ 1607.12 Retesting.

Employers, unions, and employment agencies should provide an opportunity for retesting and reconsideration to

earlier "failure" candidates who have availed themselves of more training or experience. In particular, if any applicant or employee during the course of an interview or other employment procedure claims more education or experience, that individual should be retested.

§ 1607.13 Other selection techniques.

Selection techniques other than tests, as defined in § 1607.2, may be improperly used so as to have the effect of discriminating against minority groups. Such techniques include, but are not restricted to, unscored or casual interviews and unscored application forms. Where there are data suggesting employment discrimination, the person may be called upon to present evidence concerning the validity of his unscored procedures as well as of any tests which may be used, the evidence of validity being of the same types referred to in §§ 1607.4 and 1607.5. Data suggesting the possibility of discrimination exist, for example, when there are differential rates of applicant rejection from various minority and nonminority or sex groups for the same job or group of jobs or when there are disproportionate representations of minority and nonminority or sex groups among present employees in different types of jobs. If the person is unable or unwilling to perform such validation studies, he has the option of adjusting employment procedures so as to eliminate the conditions suggestive of employment discrimination.

§ 1607.14 Affirmative action.

Nothing in these guidelines shall be interpreted as diminishing a person's obligation under both title VII and Executive Order 11246 as amended by Executive Order 11375 to undertake affirmative action to ensure that applicants or employees are treated without regard to race, color, religion, sex, or national origin. Specifically, the use of tests which have been validated pursuant to these guidelines does not relieve employers, unions or employment agencies of their obligations to take positive action in affording employment and training to members of classes protected by title VII.

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Department of the Treasury
Office of Revenue Sharing
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An Act

To provide fiscal assistance to State and local governments, to authorize Federal collection of State individual income taxes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Federal-
State revenue
sharing.

TITLE I—FISCAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Subtitle A—Allocation and Payment of Funds

SEC. 101. SHORT TITLE.

This title may be cited as the "State and Local Fiscal Assistance Act of 1972".

Citation of
title.

SEC. 102. PAYMENTS TO STATE AND LOCAL GOVERNMENTS.

Except as otherwise provided in this title, the Secretary shall, for each entitlement period, pay out of the Trust Fund—

- (1) each State government a total amount equal to the entitlement of such State government determined under section 107 for such period, and
- (2) each unit of local government a total amount equal to the entitlement of such unit determined under section 108 for such period.

In the case of entitlement periods ending after the date of the enactment of this Act, such payments shall be made in installments, but not less often than once for each quarter, and, in the case of quarters ending after September 30, 1972, shall be paid not later than 5 days after the close of each quarter. Such payments for any entitlement period may be initially made on the basis of estimates. Proper adjustment shall be made in the amount of any payment to a State government or a unit of local government to the extent that the payments previously made to such government under this subtitle were in excess of or less than the amounts required to be paid.

SEC. 103. USE OF FUNDS BY LOCAL GOVERNMENTS FOR PRIORITY EXPENDITURES.

(a) **IN GENERAL.**—Funds received by units of local government under this subtitle may be used only for priority expenditures. For purposes of this title, the term "priority expenditures" means only—

"Priority
expenditures."

- (1) ordinary and necessary maintenance and operating expenses for—
 - (A) public safety (including law enforcement, fire protection, and building code enforcement),
 - (B) environmental protection (including sewage disposal, sanitation, and pollution abatement),
 - (C) public transportation (including transit systems and streets and roads),
 - (D) health,
 - (E) recreation,
 - (F) libraries,
 - (G) social services for the poor or aged, and
 - (H) financial administration; and
- (2) ordinary and necessary capital expenditures authorized by law.

(b) **CERTIFICATES BY LOCAL GOVERNMENTS.**—The Secretary is authorized to accept a certification by the chief executive officer of a unit of local government that the unit of local government has used



the funds received by it under this subtitle for an entitlement period only for priority expenditures, unless he determines that such certification is not sufficiently reliable to enable him to carry out his duties under this title.

SEC. 104. PROHIBITION ON USE AS MATCHING FUNDS BY STATE OR LOCAL GOVERNMENTS.

(a) **IN GENERAL.**—No State government or unit of local government may use, directly or indirectly, any part of the funds it receives under this subtitle as a contribution for the purpose of obtaining Federal funds under any law of the United States which requires such government to make a contribution in order to receive Federal funds.

(b) **DETERMINATIONS BY SECRETARY OF THE TREASURY.**—If the Secretary has reason to believe that a State government or unit of local government has used funds received under this subtitle in violation of subsection (a), he shall give reasonable notice and opportunity for hearing to such government. If, thereafter, the Secretary of the Treasury determines that such government has used funds in violation of subsection (a), he shall notify such government of his determination and shall request repayment to the United States of an amount equal to the funds so used. To the extent that such government fails to repay such amount, the Secretary shall withhold from subsequent payments to such government under this subtitle an amount equal to the funds so used.

(c) **INCREASED STATE OR LOCAL GOVERNMENT REVENUES.**—No State government or unit of local government shall be determined to have used funds in violation of subsection (a) with respect to any funds received for any entitlement period to the extent that the net revenues received by it from its own sources during such period exceed the net revenues received by it from its own sources during the one-year period beginning July 1, 1971 (or one-half of such net revenues, in the case of an entitlement period of 6 months).

(d) **DEPOSITS AND TRANSFERS TO GENERAL FUND.**—Any amount repaid by a State government or unit of local government under subsection (b) shall be deposited in the general fund of the Treasury. An amount equal to the reduction in payments to any State government or unit of local government which results from the application of this section (after any judicial review under section 143) shall be transferred from the Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

(e) **CERTIFICATES BY STATE AND LOCAL GOVERNMENTS.**—The Secretary is authorized to accept a certification by the Governor of a State or the chief executive officer of a unit of local government that the State government or unit of local government has not used any funds received by it under this subtitle for an entitlement period in violation of subsection (a); unless he determines that such certification is not sufficiently reliable to enable him to carry out his duties under this title.

SEC. 105. CREATION OF TRUST FUND; APPROPRIATIONS.

(a) **TRUST FUND.**—

(1) **IN GENERAL.**—There is hereby established on the books of the Treasury of the United States a trust fund to be known as the "State and Local Government Fiscal Assistance Trust Fund" (referred to in this subtitle as the "Trust Fund"). The Trust Fund shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it and deposited in it as provided in subsection (b). Except as provided in this title,

amounts in the Trust Fund may be used only for the payments to State and local governments provided by this subtitle.

(2) **TRUSTEE.**—The Secretary of the Treasury shall be the trustee of the Trust Fund and shall report to the Congress not later than March 1 of each year on the operation and status of the Trust Fund during the preceding fiscal year.

Report to
Congress.

(b) **APPROPRIATIONS.**—

(1) **IN GENERAL.**—There is appropriated to the Trust Fund, out of amounts in the general fund of the Treasury attributable to the collections of the Federal individual income taxes not otherwise appropriated—

(A) for the period beginning January 1, 1972, and ending June 30, 1972, \$2,650,000,000;

(B) for the period beginning July 1, 1972, and ending December 31, 1972, \$2,650,000,000;

(C) for the period beginning January 1, 1973, and ending June 30, 1973, \$2,987,500,000;

(D) for the fiscal year beginning July 1, 1973, \$6,050,000,000;

(E) for the fiscal year beginning July 1, 1974, \$6,200,000,000;

(F) for the fiscal year beginning July 1, 1975, \$6,350,000,000; and

(G) for the period beginning July 1, 1976, and ending December 31, 1976, \$3,325,000,000.

(2) **NONCONTIGUOUS STATES ADJUSTMENT AMOUNTS.**—There is appropriated to the Trust Fund, out of amounts in the general fund of the Treasury attributable to the collections of the Federal individual income taxes not otherwise appropriated—

(A) for the period beginning January 1, 1972, and ending June 30, 1972, \$2,390,000;

(B) for the period beginning July 1, 1972, and ending December 31, 1972, \$2,390,000;

(C) for the period beginning January 1, 1973, and ending June 30, 1973, \$2,390,000;

(D) for each of the fiscal years beginning July 1, 1973, July 1, 1974, and July 1, 1975, \$4,780,000; and

(E) for the period beginning July 1, 1976, and ending December 31, 1976, \$2,390,000.

(3) **DEPOSITS.**—Amounts appropriated by paragraph (1) or (2) for any fiscal year or other period shall be deposited in the Trust Fund on the later of (A) the first day of such year or period, or

(B) the day after the date of enactment of this Act.

(c) **TRANSFERS FROM TRUST FUND TO GENERAL FUND.**—The Secretary shall from time to time transfer from the Trust Fund to the general fund of the Treasury any moneys in the Trust Fund which he determines will not be needed to make payments to State governments and units of local government under this subtitle.

SEC. 106. ALLOCATION AMONG STATES.

(a) **IN GENERAL.**—There shall be allocated to each State for each entitlement period, out of amounts appropriated under section 105 (b)

(1) for that entitlement period, an amount which bears the same ratio to the amount appropriated under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b).

(b) **DETERMINATION OF ALLOCABLE AMOUNT.**—

(1) **IN GENERAL.**—For purposes of subsection (a), the amount allocable to a State under this subsection for any entitlement period shall be determined under paragraph (2), except that such amount shall be determined under paragraph (3) if the amount allocable to it under paragraph (3) is greater than the sum of the amounts allocable to it under paragraph (2) and subsection (c).

(2) **THREE FACTOR FORMULA.**—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount which bears the same ratio to \$5,300,000,000 as—

(A) the population of that State, multiplied by the general tax effort factor of that State, multiplied by the relative income factor of that State, bears to

(B) the sum of the products determined under subparagraph (A) for all States.

(3) **FIVE FACTOR FORMULA.**—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount to which that State would be entitled if—

(A) $\frac{1}{3}$ of \$3,500,000,000 were allocated among the States on the basis of population.

(B) $\frac{1}{3}$ of \$3,500,000,000 were allocated among the States on the basis of urbanized population.

(C) $\frac{1}{3}$ of \$3,500,000,000 were allocated among the States on the basis of population inversely weighted for per capita income,

(D) $\frac{1}{2}$ of \$1,800,000,000 were allocated among the States on the basis of income tax collections, and

(E) $\frac{1}{2}$ of \$1,800,000,000 were allocated among the States on the basis of general tax effort.

(c) **NONCONTIGUOUS STATES ADJUSTMENT.**—

(1) **IN GENERAL.**—In addition to amounts allocated among the States under subsection (a), there shall be allocated for each entitlement period, out of amounts appropriated under section 105(b)(2), an additional amount to any State (A) whose allocation under subsection (b) is determined by the formula set forth in paragraph (2) of that subsection and (B) in which civilian employees of the United States Government receive an allowance under section 5941 of title 5, United States Code.

(2) **DETERMINATION OF AMOUNT.**—The additional amount allocable to any State under this subsection for any entitlement period is an amount equal to a percentage of the amount allocable to that State under subsection (b)(2) for that period which is the same as the percentage of basic pay received by such employees stationed in that State as an allowance under such section 5941. If the total amount appropriated under section 105(b)(2) for any entitlement period is not sufficient to pay in full the additional amounts allocable under this subsection for that period, the Secretary shall reduce proportionately the amounts so allocable.

SEC. 107. ENTITLEMENTS OF STATE GOVERNMENTS.

(a) **DIVISION BETWEEN STATE AND LOCAL GOVERNMENTS.**—The State government shall be entitled to receive one-third of the amount allocated to that State for each entitlement period. The remaining portion of each State's allocation shall be allocated among the units of local government of that State as provided in section 108.

(b) **STATE MUST MAINTAIN TRANSFERS TO LOCAL GOVERNMENTS.**—

(1) GENERAL RULE.—The entitlement of any State government for any entitlement period beginning on or after July 1, 1973, shall be reduced by the amount (if any) by which—

(A) the average of the aggregate amounts transferred by the State government (out of its own sources) during such period and the preceding entitlement period to all units of local government in such State, is less than,

(B) the similar aggregate amount for the one-year period beginning July 1, 1971.

For purposes of subparagraph (A), the amount of any reduction in the entitlement of a State government under this subsection for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State government (out of its own sources) during such period to units of local government in such State.

(2) ADJUSTMENT WHERE STATE ASSUMES RESPONSIBILITY FOR CATEGORY OF EXPENDITURES.—If the State government establishes to the satisfaction of the Secretary that since June 30, 1972, it has assumed responsibility for a category of expenditures which (before July 1, 1972) was the responsibility of local governments located in such State, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1) (B) shall be reduced to the extent that increased State government spending (out of its own sources) for such category has replaced corresponding amounts which for the one-year period beginning July 1, 1971, it transferred to units of local government.

(3) ADJUSTMENT WHERE NEW TAXING POWERS ARE CONFERRED UPON LOCAL GOVERNMENTS.—If a State establishes to the satisfaction of the Secretary that since June 30, 1972, one or more units of local government within such State have had conferred upon them new taxing authority, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1) (B) shall be reduced to the extent of the larger of—

(A) an amount equal to the amount of the taxes collected by reason of the exercise of such new taxing authority by such local governments, or

(B) an amount equal to the amount of the loss of revenue to the State by reason of such new taxing authority being conferred on such local governments.

No amount shall be taken into consideration under subparagraph (A) if such new taxing authority is an increase in the authorized rate of tax under a previously authorized kind of tax, unless the State is determined by the Secretary to have decreased a related State tax.

(4) SPECIAL RULE FOR PERIOD BEGINNING JULY 1, 1973.—In the case of the entitlement period beginning July 1, 1973, the preceding entitlement period for purposes of paragraph (1) (A) shall be treated as being the one-year period beginning July 1, 1972.

(5) SPECIAL RULE FOR PERIOD BEGINNING JULY 1, 1976.—In the case of the entitlement period beginning July 1, 1976, and ending December 31, 1976, the aggregate amount taken into account under paragraph (1) (A) for the preceding entitlement period and the aggregate amount taken into account under paragraph (1) (B) shall be one-half of the amounts which (but for this paragraph) would be taken into account.

(6) **REDUCTION IN ENTITLEMENT.**—If the Secretary has reason to believe that paragraph (1) requires a reduction in the entitlement of any State government for any entitlement period, he shall give reasonable notice and opportunity for hearing to the State. If, thereafter, he determines that paragraph (1) requires the reduction of such entitlement, he shall also determine the amount of such reduction and shall notify the Governor of such State of such determinations and shall withhold from subsequent payments to such State government under this subtitle an amount equal to such reduction.

(7) **TRANSFER TO GENERAL FUND.**—An amount equal to the reduction in the entitlement of any State government which results from the application of this subsection (after any judicial review under section 143) shall be transferred from the Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

Post, p. 935.

SEC. 108. ENTITLEMENTS OF LOCAL GOVERNMENTS.

(a) **ALLOCATION AMONG COUNTY AREAS.**—The amount to be allocated to the units of local government within a State for any entitlement period shall be allocated among the county areas located in that State so that each county area will receive an amount which bears the same ratio to the total amount to be allocated to the units of local government within that State as—

(1) the population of that county area, multiplied by the general tax effort factor of that county area, multiplied by the relative income factor of that county area, bears to

(2) the sum of the products determined under paragraph (1) for all county areas within that State.

(b) **ALLOCATION TO COUNTY GOVERNMENTS, MUNICIPALITIES, TOWNSHIPS, ETC.**—

(1) **COUNTY GOVERNMENTS.**—The county government shall be allocated that portion of the amount allocated to the county area for the entitlement period under subsection (a) which bears the same ratio to such amount as the adjusted taxes of the county government bear to the adjusted taxes of the county government and all other units of local government located in the county area.

(2) **OTHER UNITS OF LOCAL GOVERNMENT.**—The amount remaining for allocation within a county area after the application of paragraph (1) shall be allocated among the units of local government (other than the county government and other than township governments) located in that county area so that each unit of local government will receive an amount which bears the same ratio to the total amount to be allocated to all such units as—

(A) the population of that local government, multiplied by the general tax effort factor of that local government, multiplied by the relative income factor of that local government, bears to

(B) the sum of the products determined under subparagraph (A) for all such units.

(3) **TOWNSHIP GOVERNMENTS.**—If the county area includes one or more township governments, then before applying paragraph (2)—

(A) there shall be set aside for allocation under subparagraph (B) to such township governments that portion of the amount allocated to the county area for the entitlement period which bears the same ratio to such amount as the sum

of the adjusted taxes of all such township governments bears to the aggregate adjusted taxes of the county government, such township governments, and all other units of local government located in the county area, and

(B) that portion of each amount set aside under subparagraph (A) shall be allocated to each township government on the same basis as amounts are allocated to units of local government under paragraph (2).

If this paragraph applies with respect to any county area for any entitlement period, the remaining portion allocated under paragraph (2) to the units of local government located in the county area (other than the county government and the township governments) shall be appropriately reduced to reflect the amounts set aside under subparagraph (A).

(4) **INDIAN TRIBES AND ALASKAN NATIVE VILLAGES.**—If within a county area there is an Indian tribe or Alaskan native village which has a recognized governing body which performs substantial governmental functions, then before applying paragraph (1) there shall be allocated to such tribe or village a portion of the amount allocated to the county area for the entitlement period which bears the same ratio to such amount as the population of that tribe or village within that county area bears to the population of that county area. If this paragraph applies with respect to any county area for any entitlement period, the amount to be allocated under paragraph (1) shall be appropriately reduced to reflect the amount allocated under the preceding sentence. If the entitlement of any such tribe or village is waived for any entitlement period by the governing body of that tribe or village, then the provisions of this paragraph shall not apply with respect to the amount of such entitlement for such period.

(5) **RULE FOR SMALL UNITS OF GOVERNMENT.**—If the Secretary determines that in any county area the data available for any entitlement period are not adequate for the application of the formulas set forth in paragraphs (2) and (3) (B) with respect to units of local government (other than a county government) with a population below a number (not more than 500) prescribed for that county area by the Secretary, he may apply paragraph (2) or (3) (B) by allocating for such entitlement period to each such unit located in that county area an amount which bears the same ratio to the total amount to be allocated under paragraph (2) or (3) (B) for such entitlement period as the population of such unit bears to the population of all units of local government in that county area to which allocations are made under such paragraph. If the preceding sentence applies with respect to any county area, the total amount to be allocated under paragraph (2) or (3) (B) to other units of local government in that county area for the entitlement period shall be appropriately reduced to reflect the amounts allocated under the preceding sentence.

(6) **ENTITLEMENT.**—

(A) **IN GENERAL.**—Except as otherwise provided in this paragraph, the entitlement of any unit of local government for any entitlement period shall be the amount allocated to such unit under this subsection (after taking into account any applicable modification under subsection (c)).

(B) **MAXIMUM AND MINIMUM PER CAPITA ENTITLEMENT.**—Subject to the provisions of subparagraphs (C) and (D), the per capita amount allocated to any county area or any unit of local government (other than a county government) within a

State under this section for any entitlement period shall not be less than 20 percent, nor more than 145 percent, of two-thirds of the amount allocated to the State under section 106, divided by the population of that State.

(C) **LIMITATION.**—The amount allocated to any unit of local government under this section for any entitlement period shall not exceed 50 percent of the sum of (i) such government's adjusted taxes, and (ii) the intergovernmental transfers of revenue to such government (other than transfers to such government under this subtitle).

(D) **ENTITLEMENT LESS THAN \$200, OR GOVERNING BODY WAIVES ENTITLEMENT.**—If (but for this subparagraph) the entitlement of any unit of local government below the level of the county government—

(i) would be less than \$200 for any entitlement period (\$100 for an entitlement period of 6 months), or

(ii) is waived for any entitlement period by the governing body of such unit,

then the amount of such entitlement for such period shall (in lieu of being paid to such unit) be added to, and shall become a part of, the entitlement for such period of the county government of the county area in which such unit is located.

(7) **ADJUSTMENT OF ENTITLEMENT.**—

(A) **IN GENERAL.**—In adjusting the allocation of any county area or unit of local government, the Secretary shall make any adjustment required under paragraph (6) (B) first, any adjustment required under paragraph (6) (C) next, and any adjustment required under paragraph (6) (D) last.

(B) **ADJUSTMENT FOR APPLICATION OF MAXIMUM OR MINIMUM PER CAPITA ENTITLEMENT.**—The Secretary shall adjust the allocations made under this section to county areas or to units of local governments in any State in order to bring those allocations into compliance with the provisions of paragraph (6) (B). In making such adjustments he shall make any necessary adjustments with respect to county areas before making any necessary adjustments with respect to units of local government.

(C) **ADJUSTMENT FOR APPLICATION OF LIMITATION.**—In any case in which the amount allocated to a unit of local government is reduced under paragraph (6) (C) by the Secretary, the amount of that reduction—

(i) in the case of a unit of local government (other than a county government), shall be added to and increase the allocation of the county government of the county area in which it is located, unless (on account of the application of paragraph (6)) that county government may not receive it, in which case the amount of the reduction shall be added to and increase the entitlement of the State government of the State in which that unit of local government is located; and

(ii) in the case of a county government, shall be added to and increase the entitlement of the State government of the State in which it is located.

(c) **SPECIAL ALLOCATION RULES.**—

(1) **OPTIONAL FORMULA.**—A State may by law provide for the allocation of funds among county areas, or among units of local government (other than county governments), on the basis of the population multiplied by the general tax effort factors of such areas or units of local government, on the basis of the population

multiplied by the relative income factors of such areas or units of local government, or on the basis of a combination of those two factors. Any State which provides by law for such a variation in the allocation formula provided by subsection (a), or by paragraphs (2) and (3) of subsection (b), shall notify the Secretary of such law not later than 30 days before the beginning of the first entitlement period to which such law is to apply. Any such law shall—

(A) provide for allocating 100 percent of the aggregate amount to be allocated under subsection (a), or under paragraphs (2) and (3) of subsection (b);

(B) apply uniformly throughout the State; and

(C) apply during the period beginning on the first day of the first entitlement period to which it applies and ending on December 31, 1976.

(2) CERTIFICATION.—Paragraph (1) shall apply within a State only if the Secretary certifies that the State law complies with the requirements of such paragraph. The Secretary shall not certify any such law with respect to which he receives notification later than 30 days prior to the first entitlement period during which it is to apply.

(d) GOVERNMENTAL DEFINITIONS AND RELATED RULES.—For purposes of this title—

(1) UNITS OF LOCAL GOVERNMENT.—The term “unit of local government” means the government of a county, municipality, township, or other unit of government below the State which is a unit of general government (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes). Such term also means, except for purposes of paragraphs (1), (2), (3), (5), (6)(C), and (6)(D) of subsection (b), and, except for purposes of subsection (c), the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions.

(2) CERTAIN AREAS TREATED AS COUNTIES.—In any State in which any unit of local government (other than a county government) constitutes the next level of government below the State government level, then, except as provided in the next sentence, the geographic area of such unit of government shall be treated as a county area (and such unit of government shall be treated as a county government) with respect to that portion of the State’s geographic area. In any State in which any county area is not governed by a county government but contains two or more units of local government, such units shall not be treated as county governments and the geographic areas of such units shall not be treated as county areas.

(3) TOWNSHIPS.—The term “township” includes equivalent subdivisions of government having different designations (such as “towns”), and shall be determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes.

(4) UNITS OF LOCAL GOVERNMENT LOCATED IN LARGER ENTITY.—A unit of local government shall be treated as located in a larger entity if part or all of its geographic area is located in the larger entity.

(5) ONLY PART OF UNIT LOCATED IN LARGER ENTITY.—If only part of a unit of local government is located in a larger entity, such part shall be treated for allocation purposes as a separate unit of

local government, and all computations shall, except as otherwise provided in regulations, be made on the basis of the ratio which the estimated population of such part bears to the population of the entirety of such unit.

(6) **BOUNDARY CHANGES, GOVERNMENTAL REORGANIZATION, ETC.**—If, by reason of boundary line changes, by reason of State statutory or constitutional changes, by reason of annexations or other governmental reorganizations, or by reason of other circumstances, the application of any provision of this section to units of local government does not carry out the purposes of this subtitle, the application of such provision shall be made, under regulations prescribed by the Secretary, in a manner which is consistent with such purposes.

SEC. 109. DEFINITIONS AND SPECIAL RULES FOR APPLICATION OF ALLOCATION FORMULAS.

(a) **IN GENERAL.**—For purposes of this subtitle—

(1) **POPULATION.**—Population shall be determined on the same basis as resident population is determined by the Bureau of the Census for general statistical purposes.

(2) **URBANIZED POPULATION.**—Urbanized population means the population of any area consisting of a central city or cities of 50,000 or more inhabitants (and of the surrounding closely settled territory for such city or cities) which is treated as an urbanized area by the Bureau of the Census for general statistical purposes.

(3) **INCOME.**—Income means total money income received from all sources, as determined by the Bureau of the Census for general statistical purposes.

(4) **PERSONAL INCOME.**—Personal income means the income of individuals, as determined by the Department of Commerce for national income accounts purposes.

(5) **DATES FOR DETERMINING ALLOCATIONS AND ENTITLEMENTS.**—Except as provided in regulations, the determination of allocations and entitlements for any entitlement period shall be made as of the first day of the third month immediately preceding the beginning of such period.

(6) **INTERGOVERNMENTAL TRANSFERS.**—The intergovernmental transfers of revenue to any government are the amounts of revenue received by that government from other governments as a share in financing (or as reimbursement for) the performance of governmental functions, as determined by the Bureau of the Census for general statistical purposes.

(7) **DATA USED; UNIFORMITY OF DATA.**—

(A) **GENERAL RULE.**—Except as provided in subparagraph (B), the data used shall be the most recently available data provided by the Bureau of the Census or the Department of Commerce, as the case may be.

(B) **USE OF ESTIMATES, ETC.**—Where the Secretary determines that the data referred to in subparagraph (A) are not current enough or are not comprehensive enough to provide for equitable allocations, he may use such additional data (including data based on estimates) as may be provided for in regulations.

(b) **INCOME TAX AMOUNT OF STATES.**—For purposes of this subtitle—

(1) **IN GENERAL.**—The income tax amount of any State for any entitlement period is the income tax amount of such State as determined under paragraphs (2) and (3).

(2) **INCOME TAX AMOUNT.**—The income tax amount of any State for any entitlement period is 15 percent of the net amount collected from the State individual income tax of such State during 1972 or (if later) during the last calendar year ending before the beginning of such entitlement period.

(3) **CEILING AND FLOOR.**—The income tax amount of any State for any entitlement period—

(A) shall not exceed 6 percent, and

(B) shall not be less than 1 percent,

of the Federal individual income tax liabilities attributed to such State for taxable years ending during 1971 or (if later) during the last calendar year ending before the beginning of such entitlement period.

(4) **STATE INDIVIDUAL INCOME TAX.**—The individual income tax of any State is the tax imposed upon the income of individuals by such State and described as a State income tax under section 164(a)(3) of the Internal Revenue Code of 1954.

(5) **FEDERAL INDIVIDUAL INCOME TAX LIABILITIES.**—Federal individual income tax liabilities attributed to any State for any period shall be determined on the same basis as such liabilities are determined for such period by the Internal Revenue Service for general statistical purposes.

78 Stat., 40,
26 USC 164.

(c) **GENERAL TAX EFFORT OF STATES.**—

(1) **IN GENERAL.**—For purposes of this subtitle—

(A) **GENERAL TAX EFFORT FACTOR.**—The general tax effort factor of any State for any entitlement period is (i) the net amount collected from the State and local taxes of such State during the most recent reporting year, divided by (ii) the aggregate personal income (as defined in paragraph (4) of subsection (a)) attributed to such State for the same period.

(B) **GENERAL TAX EFFORT AMOUNT.**—The general tax effort amount of any State for any entitlement period is the amount determined by multiplying—

(i) the net amount collected from the State and local taxes of such State during the most recent reporting year by

(ii) the general tax effort factor of that State.

(2) **STATE AND LOCAL TAXES.**—

(A) **TAXES TAKEN INTO ACCOUNT.**—The State and local taxes taken into account under paragraph (1) are the compulsory contributions exacted by the State (or by any unit of local government or other political subdivision of the State) for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems, and other than special assessments for capital outlay), as such contributions are determined by the Bureau of the Census for general statistical purposes.

(B) **MOST RECENT REPORTING YEAR.**—The most recent reporting year with respect to any entitlement period consists of the years taken into account by the Bureau of the Census in its most recent general determination of State and local taxes made before the close of such period.

(d) **GENERAL TAX EFFORT FACTOR OF COUNTY AREA.**—For purposes of this subtitle, the general tax effort factor of any county area for any entitlement period is—

(1) the adjusted taxes of the county government plus the ad-

justed taxes of each other unit of local government within that county area, divided by

(2) the aggregate income (as defined in paragraph (3) of subsection (a)) attributed to that county area.

(e) GENERAL TAX EFFORT FACTOR OF UNIT OF LOCAL GOVERNMENT.—For purposes of this subtitle—

(1) IN GENERAL.—The general tax effort factor of any unit of local government for any entitlement period is—

(A) the adjusted taxes of that unit of local government, divided by

(B) the aggregate income (as defined in paragraph (3) of subsection (a)) attributed to that unit of local government.

(2) ADJUSTED TAXES.—

(A) IN GENERAL.—The adjusted taxes of any unit of local government are—

(i) the compulsory contributions exacted by such government for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems, and other than special assessments for capital outlay), as such contributions are determined by the Bureau of the Census for general statistical purposes,

(ii) adjusted (under regulations prescribed by the Secretary) by excluding an amount equal to that portion of such compulsory contributions which is properly allocable to expenses for education.

(B) CERTAIN SALES TAXES COLLECTED BY COUNTIES.—In any case where—

(i) a county government exacts sales taxes within the geographic area of a unit of local government and transfers part or all of such taxes to such unit without specifying the purposes for which such unit may spend the revenues, and

(ii) the Governor of the State notifies the Secretary that the requirements of this subparagraph have been met with respect to such taxes,

then the taxes so transferred shall be treated as the taxes of the unit of local government (and not the taxes of the county government).

(f) RELATIVE INCOME FACTOR.—For purposes of this subtitle, the relative income factor is a fraction—

(1) in the case of a State, the numerator of which is the per capita income of the United States and the denominator of which is the per capita income of that State;

(2) in the case of a county area, the numerator of which is the per capita income of the State in which it is located and the denominator of which is the per capita income of that county area; and

(3) in the case of a unit of local government, the numerator of which is the per capita income of the county area in which it is located and the denominator of which is the per capita income of the geographic area of that unit of local government.

For purposes of this subsection, per capita income shall be determined on the basis of income as defined in paragraph (3) of subsection (a).

(g) ALLOCATION RULES FOR FIVE FACTOR FORMULA.—For purposes of section 106(b)(3)—

(1) ALLOCATION ON BASIS OF POPULATION.—Any allocation among the States on the basis of population shall be made by

allocating to each State an amount which bears the same ratio to the total amount to be allocated as the population of such State bears to the population of all the States.

(2) **ALLOCATION ON BASIS OF URBANIZED POPULATION.**—Any allocation among the States on the basis of urbanized population shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the urbanized population of such State bears to the urbanized population of all the States.

(3) **ALLOCATION ON BASIS OF POPULATION INVERSELY WEIGHTED FOR PER CAPITA INCOME.**—Any allocation among the States on the basis of population inversely weighted for per capita income shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as—

(A) the population of such State, multiplied by a fraction the numerator of which is the per capita income of all the States and the denominator of which is the per capita income of such State, bears to

(B) the sum of the products determined under subparagraph (A) for all the States.

(4) **ALLOCATION ON BASIS OF INCOME TAX COLLECTIONS.**—Any allocation among the States on the basis of income tax collections shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the income tax amount of such State bears to the sum of the income tax amounts of all the States.

(5) **ALLOCATION ON BASIS OF GENERAL TAX EFFORT.**—Any allocation among the States on the basis of general tax effort shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the general tax effort amount of such State bears to the sum of the general tax effort amounts of all the States.

Subtitle B—Administrative Provisions

SEC. 121. REPORTS ON USE OF FUNDS; PUBLICATION.

(a) **REPORTS ON USE OF FUNDS.**—Each State government and unit of local government which receives funds under subtitle A shall, after the close of each entitlement period, submit a report to the Secretary setting forth the amounts and purposes for which funds received during such period have been spent or obligated. Such reports shall be in such form and detail and shall be submitted at such time as the Secretary may prescribe.

(b) **REPORTS ON PLANNED USE OF FUNDS.**—Each State government and unit of local government which expects to receive funds under subtitle A for any entitlement period beginning on or after January 1, 1973, shall submit a report to the Secretary setting forth the amounts and purposes for which it plans to spend or obligate the funds which it expects to receive during such period. Such reports shall be in such form and detail as the Secretary may prescribe and shall be submitted at such time before the beginning of the entitlement period as the Secretary may prescribe.

(c) **PUBLICATION AND PUBLICITY OF REPORTS.**—Each State government and unit of local government shall have a copy of each report submitted by it under subsection (a) or (b) published in a newspaper which is published within the State and has general circulation within the geographic area of that government. Each State government and unit of local government shall advise the news media of the publication of its reports pursuant to this subsection.

SEC. 122. NONDISCRIMINATION PROVISION.

(a) **IN GENERAL.**—No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under subtitle A.

(b) **AUTHORITY OF SECRETARY.**—Whenever the Secretary determines that a State government or unit of local government has failed to comply with subsection (a) or an applicable regulation, he shall notify the Governor of the State (or, in the case of a unit of local government, the Governor of the State in which such unit is located) of the non-compliance and shall request the Governor to secure compliance. If within a reasonable period of time the Governor fails or refuses to secure compliance, the Secretary is authorized (1)* to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) to exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or (3) to take such other action as may be provided by law.

78 Stat. 252.

(c) **AUTHORITY OF ATTORNEY GENERAL.**—When a matter is referred to the Attorney General pursuant to subsection (b), or whenever he has reason to believe that a State government or unit of local government is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

SEC. 123. MISCELLANEOUS PROVISIONS.

(a) **ASSURANCES TO THE SECRETARY.**—In order to qualify for any payment under subtitle A for any entitlement period beginning on or after January 1, 1973, a State government or unit of local government must establish (in accordance with regulations prescribed by the Secretary, and, with respect to a unit of local government, after an opportunity for review and comment by the Governor of the State in which such unit is located) to the satisfaction of the Secretary that—

(1) it will establish a trust fund in which it will deposit all payments it receives under subtitle A;

(2) it will use amounts in such trust fund (including any interest earned thereon while in such trust fund) during such reasonable period or periods as may be provided in such regulations;

(3) in the case of a unit of local government, it will use amounts in such trust fund (including any interest earned thereon while in such trust fund) only for priority expenditures (as defined in section 103(a)), and will pay over to the Secretary (for deposit in the general fund of the Treasury) an amount equal to 110 percent of any amount expended out of such trust fund in violation of this paragraph, unless such amount is promptly repaid to such trust fund (or the violation is otherwise corrected) after notice and opportunity for corrective action;

(4) it will provide for the expenditure of amounts received under subtitle A only in accordance with the laws and procedures applicable to the expenditure of its own revenues;

(5) it will—

(A) use fiscal, accounting, and audit procedures which conform to guidelines established therefor by the Secretary (after consultation with the Comptroller General of the United States),

(B) provide to the Secretary (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 Secretary may reasonably require for purposes of reviewing compliance with this title (or, in the case of the Comptroller General, as the Comptroller General may reasonably require for purposes of reviewing compliance and operations under subsection (c) (2)), and

(C) make such annual and interim reports (other than reports required by section 121) to the Secretary as he may reasonably require;

Reports.

(6) all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction project, 25 percent or more of the costs of which project are paid out of its trust fund established under paragraph (1), will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), and that with respect to the labor standards specified in this paragraph the Secretary of Labor shall act in accordance with Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c);

49 Stat. 1011.

5 USC app.

63 Stat. 108.

(7) individuals employed by it whose wages are paid in whole or in part out of its trust fund established under paragraph (1) will be paid wages which are not lower than the prevailing rates of pay for persons employed in similar public occupations by the same employer; and

(8) in the case of a unit of local government as defined in the second sentence of section 108(d)(1) (relating to governments of Indian tribes and Alaskan native villages), it will expend funds received by it under subtitle A for the benefit of members of the tribe or village residing in the county area from the allocation of which funds are allocated to it under section 108(b)(4).

Paragraph (7) shall apply with respect to employees in any category only if 25 percent or more of the wages of all employees of the State government or unit of local government in such category are paid from the trust fund established by it under paragraph (1).

(b) WITHHOLDING OF PAYMENTS.—If the Secretary determines that a State government or unit of local government has failed to comply substantially with any provision of subsection (a) or any regulations prescribed thereunder, after giving reasonable notice and opportunity for a hearing to the Governor of the State or the chief executive officer of the unit of local government, he shall notify the State government or unit of local government that if it fails to take corrective action within 60 days from the date of receipt of such notification further payments to it will be withheld for the remainder of the entitlement period and for any subsequent entitlement period until such time as the Secretary is satisfied that appropriate corrective action has been taken and that there will no longer be any failure to comply. Until he is satisfied, the Secretary shall make no further payments of such amounts.

(c) ACCOUNTING, AUDITING, AND EVALUATION.—

(1) IN GENERAL.—The Secretary shall provide for such accounting and auditing procedures, evaluations, and reviews as may be necessary to insure that the expenditures of funds received under subtitle A by State governments and units of local government comply fully with the requirements of this title. The Secretary is authorized to accept an audit by a State of such expenditures of a

State government or unit of local government if he determines that such audit and the audit procedures of that State are sufficiently reliable to enable him to carry out his duties under this title.

(2) **COMPTROLLER GENERAL SHALL REVIEW COMPLIANCE.**—The Comptroller General of the United States shall make such reviews of the work as done by the Secretary, the State governments, and the units of local government as may be necessary for the Congress to evaluate compliance and operations under this title.

Subtitle C—General Provisions

SEC. 141. DEFINITIONS AND SPECIAL RULES.

(a) **SECRETARY.**—For purposes of this title, the term “Secretary” means the Secretary of the Treasury or his delegate. The term “Secretary of the Treasury” means the Secretary of the Treasury personally, not including any delegate.

(b) **ENTITLEMENT PERIOD.**—For purposes of this title, the term “entitlement period” means—

(1) The period beginning January 1, 1972, and ending June 30, 1972.

(2) The period beginning July 1, 1972, and ending December 31, 1972.

(3) The period beginning January 1, 1973, and ending June 30, 1973.

(4) The one-year periods beginning on July 1 of 1973, 1974, and 1975.

(5) The period beginning July 1, 1976, and ending December 31, 1976.

(c) **DISTRICT OF COLUMBIA.**—

(1) **TREATMENT AS STATE AND LOCAL GOVERNMENT.**—For purposes of this title, the District of Columbia shall be treated both—

(A) as a State (and any reference to the Governor of a State shall, in the case of the District of Columbia, be treated as a reference to the Commissioner of the District of Columbia), and

(B) as a county area which has no units of local government (other than itself) within its geographic area.

(2) **REDUCTION IN CASE OF INCOME TAX ON NONRESIDENT INDIVIDUALS.**—If there is hereafter enacted a law imposing a tax on income earned in the District of Columbia by individuals who are not residents of the District of Columbia, then the entitlement of the District of Columbia under subtitle A for any entitlement period shall be reduced by an amount equal to the net collections from such tax during such entitlement period attributable to individuals who are not residents of the District of Columbia. The preceding sentence shall not apply if—

(A) the District of Columbia and Maryland enter into an agreement under which each State agrees to impose a tax on income earned in that State by individuals who are residents of the other State, and the District of Columbia and Virginia enter into an agreement under which each State agrees to impose a tax on income earned in that State by individuals who are residents of the other State, or

(B) the Congress enacts a law directly imposing a tax on income earned in the District of Columbia by individuals who are not residents of the District of Columbia.

SEC. 142. REGULATIONS.

(a) **GENERAL RULE.**—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this title.

(b) **ADMINISTRATIVE PROCEDURE ACT TO APPLY.**—The rulemaking provisions of subchapter II of chapter 5 of title 5 of the United States Code shall apply to the regulations prescribed under this title for entitlement periods beginning on or after January 1, 1973.

80 Stat. 381.
5 USC 551.

SEC. 143. JUDICIAL REVIEW.

(a) **PETITIONS FOR REVIEW.**—Any State which receives a notice of reduction in entitlement under section 107(b), and any State or unit of local government which receives a notice of withholding of payments under section 104(b) or 123(b), may, within 60 days after receiving such notice, file with the United States court of appeals for the circuit in which such State or unit of local government is located a petition for review of the action of the Secretary. A copy of the petition shall forthwith be transmitted to the Secretary; a copy shall also forthwith be transmitted to the Attorney General.

(b) **RECORD.**—The Secretary shall file in the court the record of the proceeding on which he based his action, as provided in section 2112 of title 28, United States Code. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

72 Stat. 941;
80 Stat. 1323.

(c) **JURISDICTION OF COURT.**—The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence contained in the record, shall be conclusive. However, if any finding is not supported by substantial evidence contained in the record, the court may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous actions. He shall certify to the court the record of any further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence contained in the record.

(d) **REVIEW BY SUPREME COURT.**—The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

62 Stat. 928.

SEC. 144. AUTHORITY TO REQUIRE INFORMATION ON INCOME TAX RETURNS.

(a) **GENERAL RULE.**—

(1) **INFORMATION WITH RESPECT TO PLACE OF RESIDENCE.**—Subpart B of part II of subchapter A of chapter 61 of the Internal Revenue Code of 1954 (relating to income tax returns) is amended by adding at the end thereof the following new section:

68A Stat. 731.
26 USC 6001.

“SEC. 6017A. PLACE OF RESIDENCE.

“In the case of an individual, the information required on any return with respect to the taxes imposed by chapter 1 for any period shall include information as to the State, county, municipality, and any other unit of local government in which the taxpayer (and any other individual with respect to whom an exemption is claimed on such return) resided on one or more dates (determined in the manner provided by regulations prescribed by the Secretary or his delegate) during such period.”

26 USC 1.

(2) **CLERICAL AMENDMENT.**—The table of sections for such subpart B is amended by adding at the end thereof the following:

“Sec. 6017A. Place of residence.”

(b) CIVIL PENALTY.—

(1) IN GENERAL.—Subchapter B of chapter 68 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new section:

68A Stat. 821;
85 Stat. 551.
26 USC 6651.

“SEC. 6687. FAILURE TO SUPPLY INFORMATION WITH RESPECT TO PLACE OF RESIDENCE.

“(a) CIVIL PENALTY.—If any person fails to include on his return any information required under section 6017A with respect to his place of residence, he shall pay a penalty of \$5 for each such failure, unless it is shown that such failure is due to reasonable cause.

26 USC 6211.
26 USC 4940.

“(b) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and chapter 42 taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).”

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter B is amended by adding at the end thereof the following:

“Sec. 6687. Failure to supply information with respect to place of residence.”

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