

**§ 1301.54 Request for hearing or appearance; waiver.**

(a) Any person entitled to a hearing pursuant to §§ 1301.42, 1301.44, or 1301.45 and desiring a hearing shall, within 30 days after the date of receipt of the order to show cause, file with the Administrator a written request for a hearing in the form prescribed in § 1316.47 of this chapter.

(b) Any person entitled to participate in a hearing pursuant to § 1301.44(b) and desiring to do so shall, within 30 days of the date of publication of notice of the request for a hearing in the **Federal Register**, file with the Administrator a written notice of intent to participate in such hearing in the form prescribed in § 1316.48 of this chapter. Any person filing a request for a hearing need not also file a notice of appearance.

(c) Any person entitled to a hearing or to participate in a hearing pursuant to §§ 1301.42, 1301.44, or 1301.45 may, within the period permitted for filing a request for a hearing or a notice of appearance, file with the Administrator a waiver of an opportunity for a hearing or to participate in a hearing, together with a written statement regarding such person's position on the matters of fact and law involved in such hearing. Such statement, if admissible, shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.

(d) If any person entitled to a hearing or to participate in a hearing pursuant to §§ 1301.42, 1301.44, or 1301.45 fails to file a request for a hearing or a notice of appearance, or if such person so files and fails to appear at the hearing, such person shall be deemed to have waived the opportunity for a hearing or to participate in the hearing, unless such person shows good cause for such failure.

\* \* \* \* \*

6. Section 1301.55, paragraph (a) is revised to read as follows:

**§ 1301.55 Burden of proof.**

(a) At any hearing on an application to manufacture any controlled substance listed in Schedule I or II, the applicant shall have the burden of proving that the requirements for such registration pursuant to section 303(a) of the Act (21 U.S.C. 823(a)) are satisfied. Any other person participating in the hearing pursuant to § 1301.44(b) shall have the burden of proving any propositions of fact or law asserted by such person in the hearing.

\* \* \* \* \*

Dated: June 14, 1995.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Secretary**

**24 CFR Part 84**

[Docket No. R-95-1736; FR-3639-F-02]

RIN 2501-AB97

**Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations—OMB Circular A-110 (Revised)**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** Office of Management and Budget (OMB) Circular A-110 provides standards for obtaining consistency and uniformity among Federal agencies in the administration of grants and agreements with institutions of higher education, hospitals, and other non-profit organizations. On September 13, 1994, the Department published a final rule which adopted the revised circular as it pertains to HUD. However, the September 13, 1994 rule contained, in subpart E, special provisions relating to the use of lump sum grants. Therefore, subpart E was treated as an interim rule, and the public was invited to submit comments on subpart E. This final rule addresses the public comments received on subpart E and makes final the provisions of subpart E.

**EFFECTIVE DATE:** July 20, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Aliceann B. Muller, Policy and Evaluation Division, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 5262, Washington, DC 20410. Telephone: (202) 708-0294; TDD: (202) 708-1112. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** Office of Management and Budget (OMB) Circular A-110 provides standards for obtaining consistency and uniformity among Federal agencies in the administration of grants and agreements with institutions of higher education, hospitals, and other non-profit organizations.

OMB Circular A-110 was issued under the authority of 31 U.S.C. 503 (the Chief Financial Officers Act), 31 U.S.C. 1111, 41 U.S.C. 405 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and E.O. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").

OMB issued Circular A-110 in 1976 and made a minor revision in February 1987. To update the circular, OMB established an interagency task force to review the circular. The task force solicited suggestions for changes to the circular from university groups, non-profit organizations and other interested parties and compared, for consistency, the provisions of similar provisions applied to State and local governments. On August 27, 1992, OMB published a notice in the **Federal Register**, at 57 FR 39018, requesting comments on proposed revisions to OMB Circular A-110. Interested parties were invited to submit comments. OMB received over 200 comments from Federal agencies, non-profit organizations, professional organizations and others. All comments were considered in developing the final revision. On November 29, 1993, at 58 FR 62992, OMB issued a revised circular which reflects the results of these efforts.

On September 13, 1994, the Department published a final rule which adopted the revised circular as it pertains to HUD. However, the September 13, 1994 rule contained, in subpart E, special provisions relating to the use of lump sum grants. Therefore, subpart E was treated as an interim rule, and the public was invited to submit comments on subpart E. This final rule addresses the public comments received on subpart E and makes final the provisions of subpart E.

**Public Comments**

The final rule published on September 13, 1994, at 59 FR 47010, invited public comments on Subpart E regarding lump sum grants. One (1) commenter, a national association, responded with a series of technical questions. Below is a listing of the questions presented and the Department's response to each question. The Department's responses set forth additional clarifications needed to aid in the commenter's understanding of the rule. No changes to the rule are necessary, and none are made by this final rule.

*Question:* Do these lump sum awards go through the same audit process as regular awards?

*Response:* OMB Circular A-133 "Audits of Institutions of Higher Education and Other Nonprofit Organizations" applies to lump-sum awards. However, in responding to a comment on the proposed A-133 regarding applicability of A-133 to fixed price formula (performance-based) type grants, OMB said "Performance-funded programs are subject to the requirements of OMB Circular A-133. However, the auditor should tailor the auditing procedures to that type of program. For performance-funded programs, the auditor's examination should be directed to such matters as determining beneficiary eligibility, verifying units of service rendered, and controlling program income." Therefore, the Department's view is that the recipient of a lump sum award would be subject to all of the requirements of A-133 except that the lump-sum grant would not be audited for incurred "costs;" the auditor would tailor the review to fit the grant's terms. Internal controls, program compliance, auditing of financial statements, and all other aspects of an audit under A-133 would still apply.

*Question:* Does HUD anticipate that particular program branches of the agency will avail themselves of these types of awards? If so, which are they?

*Response:* The Department does not expect an expansion in the use of the lump-sum provisions in the future. Historically, many of HUD's grant programs have been managed on other than a cost-reimbursement basis, so it is not a matter of programs "availing" themselves of this option, but rather of making the Department's rule flexible enough to allow the continuance of historical practice. For example, the Neighborhood Development Demonstration Program (NDDP) uses a matching formula of from one Federal dollar up to six Federal dollars being given for each dollar the grantee raises from within the targeted neighborhood. The ratio of the match is determined by the level of neighborhood distress. The NDDP grantee is paid the match when the local dollar is raised—not when costs are incurred or work is done. The housing counseling grant program works on a unit price basis; the grantee is paid for performing a "counseling unit," which is defined in the grant. In many cases, the funding arrangement is part of the basic program design and the enabling legislation. However, it is highly likely that these programs will change, as HUD is currently undergoing a major reinvention and consolidation of its grant programs. The combined programs or new programs may take any form allowed by the new or revised legislation and by the administrative

procedures set forth in 24 CFR part 84 (for non-profits) and part 85 (for state and local governments).

*Question:* Is the underlying motivation to introduce these lump sum awards cost saving or streamlining of procedures in a larger context of the National Performance Review?

*Response:* Yes, in a way, but see also the second question above. HUD has been using the lump-sum arrangement for many years and is very aware of its advantages in terms of the streamlining and flexibility it offers, including reduced grantee and Federal burden.

*Question:* Does a lump sum grant resemble a fixed price contract?

*Response:* In some cases, yes. In cases where a predetermined payment amount is tied to a predetermined performance milestone, it does resemble a fixed price contract. The housing counseling program discussed above falls in this category. However, not all lump sum grants operate in this manner. Sometimes payment is tied to an external index or to an external event, such as economic distress, or a dollar raised in the NDDP program. See the second question above.

*Question:* If a lump sum grant is fixed in price and permission is needed for changes as specified in § 84.82(d), will HUD pay increased costs that might be incurred from denial of permission, especially if grant performance were made impossible as a result of such denial?

*Response:* Under a lump sum award, HUD is not paying for "costs" based on the grantee's actual cost experience in performing the work. Therefore, an increase in the grantee's costs would not in and of itself lead to an increase in the lump sum amount paid by HUD. Rather, the lump sum award represents an agreement between HUD and the grantee that a certain amount will be paid for a certain event, based on a performance milestone, external benchmark, or other pre-defined "event." (See §§ 84.80 and 84.81 for further guidance.) However, awarding a lump sum grant does not necessarily mean that the lump sum could never be increased. The idea is that the Federal contribution be sufficient to achieve the agreed-upon goal and that the grantee neither realize a financial windfall nor find it impossible to perform. In some instances, the HUD contribution might only be a small part of the overall program costs, and HUD's clearly stated intention (set forth in the grant itself and agreed to before award) is to contribute no more than the stated HUD share. For example, a grant might be for acquiring and rehabilitating a home for use by low income persons. During the

performance of the work, unknown conditions may come to light at the construction site which cause increased costs. HUD might decline to increase its lump sum amount and insist that the grantee recover these costs from other sources, or it might agree to make an additional contribution. Much of the answer depends on the program design and program rules; some programs have statutory caps on individual award amounts, while others allow for more flexibility. The key factor is that the quid pro quo be clearly set forth in the grant document and agreed to by both parties. In cases where there are statutory caps on grant amounts or other constraints which limit or preclude any adjustments in the amount, these should be made clearly known in advance of the award. For issues which could not be foreseen, and in the absence of a rule limiting the Grant Officer's authority, such matters as adjustments in the lump sum amount would be determined by the Grant Officer.

Also, please note that the conditions for getting approval under § 84.82(d) are extremely limited, consisting only of getting approval for (1) changes in scope or objective, (2) additional Federal funding, and (3) the subcontracting out or transfer of work not previously contemplated. The first of these is necessary to make sure that the grantee is still undertaking activities eligible under the program rule and chargeable to the appropriation, and that the activities are consistent with those for which the grantee was selected (usually competitively). The second is obvious—if the grantee needs additional funding, it cannot continue the grant without it, and the Federal agency must make the funds available or explore other avenues for resolution. BEFORE the grantee has overcommitted funds on the assumption there will be additional Federal dollars. The third is to ensure that the grantee who was evaluated as capable actually accomplishes the work and does not shift performance to some unknown party. These three situations are major and are the only ones for which permission must be sought, compared to the many situations requiring permission under cost-reimbursement grants.

#### **Other Matters**

##### *Environmental Review*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant

Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

#### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. It pertains only to the administration of grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations.

#### *Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

#### *Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being. It pertains only to the administration of grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations.

#### *Semi-Annual Agenda of Regulations*

This rule was listed as item number 1384 in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23379) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

#### **List of Subjects in 24 CFR Part 84**

Accounting, Colleges and universities, Grant programs, Loan programs, Nonprofit organizations, Reporting and recordkeeping requirements.

Accordingly, subpart E of part 84 of title 24 of the Code of Federal Regulations is adopted as final, without change, as it was published on September 13, 1994, at 59 FR 47010.

Dated: June 13, 1995.

**Henry G. Cisneros,**  
*Secretary.*

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## DEPARTMENT OF JUSTICE

### Office of Justice Programs

#### 28 CFR Part 93

[OJP No. 1014]

RIN 1121-AA26

#### Drug Courts

**AGENCY:** U.S. Department of Justice, Office of Justice Programs.

**ACTION:** Final rule.

**SUMMARY:** This notice announces the Final Rule on the Drug Court Program as authorized by Title V of the Violent Crime Control and Law Enforcement Act of 1994. The Rule gives general guidance regarding the Program and specifically delineates the prohibition on participation by violent offenders. Detailed Program Guidelines and application materials for the Fiscal Year 1995 Drug Courts Program were issued by the Drug Courts Program Office on March 23, 1995. The Final Rule does not differ from the Proposed Rule published on January 26, 1995 (60 FR 5152).

**DATES:** The Final Rule is effective June 20, 1995.

**ADDRESSES:** All inquiries, correspondence, and requests for information should be addressed to Tim Murray, Acting Director, Drug Courts Program Office, Office of Justice Programs, 633 Indiana Avenue NW., Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** The Department of Justice Response Center at 1-800-421-6770 or (202) 307-1480 or Tim Murray, Acting Director, Drug Courts Program Office, Office of Justice Programs at (202) 616-5001.

#### **SUPPLEMENTARY INFORMATION:**

##### **Overview of Title V—Drug Courts**

Federal discretionary grants are made available under the Violent Crime Control and Law Enforcement Act of 1994, Title V, Pub. L. 103-322, 108 Stat. 1796 (September 13, 1994), 42 U.S.C. 3796ii-3796ii-8 [hereinafter the "Act"] to States, units of local government, Indian tribal governments, and State and local courts for assistance with Drug Court Programs. The Act gives the Attorney General and through statutory authority contained in the Omnibus Crime Control and Safe Streets Act, 42

U.S.C. 3711 *et seq.*, an authorized designee (in this case the Assistant Attorney General for the Office of Justice Programs), the authority to make grants to the above mentioned entities for Drug Court Programs that involve continuing judicial supervision over non-violent offenders with substance abuse problems and the integrated administration of sanctions and services including: (1) Mandatory periodic testing for the use of controlled substances or other addictive substances during any period of supervised release or probation for each participant; (2) substance abuse treatment for each participant; (3) diversion, probation, or other supervised release involving the possibility of prosecution, confinement, or incarceration based on noncompliance with program requirements or failure to show satisfactory progress; and (4) programmatic, offender management, and aftercare services such as relapse prevention, health care, education, vocational training, job placement, housing placement, and child care or other family support services for each participant requiring such services.

The Fiscal Year 1995 Department of Justice Appropriations Act, Pub. L. 103-317, allocated \$29 million for the Drug Court grant programs. Eligibility of applicants to receive grants will be based on requirements of the statute and these regulations, as well as assurances and certifications specified in the detailed program guidelines and application materials published by the Drug Courts Program Office of the Office of Justice Programs on March 23, 1995 and available from that Office.

The Department issued a Proposed Rule on January 26, 1995 (60 FR 5152). The Final Rule being published herein is unchanged from the Proposed Rule and closely mirrors the authorizing statute. Application guidelines addressing the logistics of the Program and its implementation were issued on March 23, 1995. Copies of the Drug Court Program Guidelines are available directly from the DOJ Response Center or the Drug Courts Program Office.

##### **Discussion of Comments**

The Office of Justice Programs received sixteen letters commenting on the proposed regulations, primarily from State and local government (including district attorneys and criminal justice planning agencies). Comments are on file in the Drug Courts Program Office and are available for review. All comments were considered by the Drug Courts Program Office in the issuance of its Application Guidelines and in the review of this