

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 84**

[Docket No. FR-4573-I-01]

RIN 2501-AC68

Adoption of Revisions to OMB Circular A-110; Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

AGENCY: Office of the Secretary, HUD.
ACTION: Interim rule.

SUMMARY: This interim rule revises HUD's regulations that implement the requirements of the Office of Management and Budget (OMB) Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." OMB issued a final revision to Circular A-110 on September 30, 1999, which was published on October 8, 1999. This interim rule will provide uniform administrative requirements for all grants and cooperative agreements to institutions of higher education, hospitals, and other non-profit organizations.

DATES: Effective Date: June 12, 2000.
Comment Due Date: July 10, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410-0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: For general issues regarding this interim rule, please contact Charles Gale, Director, Office of Grants Management, Department of Health and Human Services at (202) 690-6377. For agency-specific issues, please contact William E. Dobrzykowski, Assistant Chief Financial Officer, (202) 708-1946. (This is not a toll-free number.) Hearing-impaired or speech-impaired individuals may access the voice telephone number listed above by calling the Federal Information Relay Service during working hours at 1-800-

877-8339. The full text of OMB Circular A-110, the text of the September 30th notice of final revision, and a chart showing where each agency has codified the Circular into regulation may be obtained by accessing OMB's home page (<http://www.whitehouse.gov/omb>), under the heading "Grants Management."

SUPPLEMENTARY INFORMATION:**Background**

In the Fiscal Year 1999 appropriations for the Office of Management and Budget (Public Law 105-277) the Congress directed OMB to amend Circular A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) "to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act." The directed amendment also provides for a reasonable fee to cover the costs incurred in responding to a request.

In directing OMB to revise Circular A-110, Congress entrusted OMB with the authority to resolve statutory ambiguities, the obligation to address implementation issues the statute did not address, and the discretion to balance the need for public access to research data with protections of the research process. In developing the revision, OMB sought to implement the statutory language fairly, in the context of its legislative history. This required a balanced approach that (1) furthered the interest of the public in obtaining the information needed to validate Federally-funded research findings, (2) ensured that research can continue to be conducted in accordance with the traditional scientific process, and (3) implemented a public access process that will be workable in practice.

OMB finalized the revision on September 30, 1999 (64 FR 54926, October 8, 1999). Before publication of this final revision, OMB published a Notice of Proposed Revision on February 4, 1999 (64 FR 5684), and a request for comments on clarifying changes to the proposed revision on August 11, 1999 (64 FR 43786). OMB received over 9,000 comments on the proposed revision and over 3,000 comments on the clarifying changes.

This interim rule amends HUD's regulations that codify the requirements of Circular A-110 to reflect OMB's final revision to OMB Circular A-110.

Findings and Certifications*Environmental Impact*

This amendment is categorically excluded from review under the National Environmental Policy Act (42 U.S.C. 4321). In keeping with the exclusion provided for in 24 CFR 50.19(c)(1), this amendment does not direct, provide for assistance and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c), this amendment is categorically excluded because it amends an existing document where the existing document as a whole would not fall within the exclusion in 24 CFR 50.19(c)(1), but the amendment by itself would do so.

Regulatory Planning and Review

The Office of Management and Budget has reviewed this rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. This rule concerns the information pertaining to the award of Federal funds that must be provided in response to Freedom of Information Act requests.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless

the relevant requirements of section 6 of the Executive Order are met. This interim rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This interim rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 84

Accounting, Audit requirements, Colleges and universities, Grant programs—housing and community development, Loan programs—housing and community development, Non-profit organizations, Reporting and recordkeeping requirements.

Accordingly, part 84 of title 24 of the Code of Federal Regulations is amended as follows:

PART 84—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

1. The part heading for part 84 is revised to read as set forth above.

2. The authority citation for part 84 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

3. In § 84.36, paragraph (c) is revised, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added to read as follows:

§ 84.36 Intangible property.

* * * * *

(c) HUD has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for HUD purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by HUD in developing an agency action that has the force and effect of law, HUD shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If HUD obtains the research data solely in response to a FOIA request, HUD may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by HUD, the recipient, and applicable subrecipients. This fee is in addition to any fees HUD may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as

necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (e.g., laboratory samples). *Research data* also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) HUD publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by HUD in developing an agency action that has the force and effect of law* is defined as when HUD publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

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Dated: April 18, 2000.

Andrew Cuomo,
Secretary.

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