

DEPARTMENT OF TREASURY'S INTERIM
REVENUE SHARING GUIDELINESTitle 31—MONEY AND
FINANCE: TREASURY

Chapter I—Monetary Offices, Department of the Treasury

PART 51—FISCAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Pursuant to the authority vested in the Secretary of the Treasury by the State and Local Fiscal Assistance Act of 1972 (Title I, Public Law 92-512), approved October 20, 1972, the Department of the Treasury hereby adopts the following interim regulations in order to disburse entitlements to the States and units of local government for the entitlement period beginning January 1, 1972, and ending June 30, 1972. A new Part 51 is hereby established under Chapter I of Subtitle B in Title 31 of the Code of Federal Regulations.

Because the purpose of these regulations is to provide immediate guidance to the States and units of local government in order that the requirements of the Act be complied with, it is hereby found impracticable to issue such regulations with notice and public procedure thereon under 5 U.S.C. 553(b), or subject to the effective date limitation of 5 U.S.C. 553(d).

These regulations shall become effective when filed with the Office of the Federal Register. However, it is expected that permanent regulations will be issued in the near future, and for this reason written comments are solicited for consideration by the Department. Such comments may be submitted within 30 days after date of publication to the Honorable Samuel R. Pierce, Jr., General Counsel, Department of the Treasury, Washington, D.C. 20220.

In accordance with 31 CFR 1.4(h), comments submitted in response to this solicitation are available to the public upon request therefor, unless confidential status of the submission has been requested and approved.

GEORGE P. SHULTZ,
Secretary of the Treasury.

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AUTHORITY: The provisions of this Part 51 are issued under the State and Local Fiscal Assistance Act of 1972 (Title I, Public Law 92-512); and 5 U.S.C. 301.

Subpart A—General Information

§ 51.1 Scope and application of regulations.

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), approved October 20, 1972, as applicable to the first entitlement period from January 1, 1972, through June 30, 1972.

§ 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 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.

(c) "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 or established by regulation under this part.

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

(e) "Entitlement period" means the calendar period beginning January 1, 1972, and ending June 30, 1972, unless another calendar period is designated.

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

(g) "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.

(h) "Indian tribes and Alaskan native villages" means those Indian tribes and Alaskan native villages which have a recognized governing body and which perform substantial governmental functions.

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

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

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

(l) "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.

If the Secretary determines that a recipient government has failed to comply substantially with any provision of this part, 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 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 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. The procedure prescribed in this section shall not be used if another procedure is specified in another section of this part.

Subpart B—Written Communications

§ 51.10 Reports to the Secretary; publication and publicity.

(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 paragraph (b) of this section) 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) *Report on use of funds.* Each recipient government which receives funds pursuant to the Act for the entitlement period beginning January 1, 1972, and ending June 30, 1972, shall submit to the Secretary a report, on a form to be provided, of the amounts and purposes for which such funds have been spent, obligated, or appropriated. Such report shall be filed with the Secretary before March 1, 1974, and shall contain a

tification by the Governor, or chief executive officer of the unit of local government, that no entitlement funds have been used in violation of the prohibition contained in § 51.30 against the use of entitlement funds for the purpose of obtaining matching Federal funds. If the report is made by a unit of local government it shall also contain a certification by the chief executive officer of the unit of local government that entitlement funds received by it have been used only for priority expenditures as prescribed by § 51.31.

(c) *Publication and publicity of reports.* Each recipient government shall before March 1, 1974, have published a copy of the report submitted by it under paragraph (b) of this section. Such publication shall be made in a newspaper which is published within the State and has general circulation within the geographic area of the recipient government involved. Each recipient government shall advise the news media of the publication of its report made pursuant to paragraph (b) of this section.

§ 51.11 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 for the entitlement period January 1, 1972, through June 30, 1972.*

(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) The factor "adjusted taxes" used in initial allocations for this entitlement period will be based on the statistical data contained in the 1967 Census of Government Reports conducted by the Bureau of the Census. The factor "adjusted taxes" shall be updated by the Special Revenue Sharing Survey conducted by the Bureau of the Census in 1972 and the entitlement for each unit of local government will be adjusted accordingly when such data becomes available to the Secretary.

(4) 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 for the first entitlement period he may use other data, including estimates, in addition to those listed in subparagraph (3) of this paragraph. 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.

§ 51.21 Adjusted taxes.

The "adjusted taxes," derived from the Special Revenue Sharing Survey conducted by the Bureau of the Census in 1972, for any unit of local government are the compulsory contributions exacted by such unit of 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, adjusted by excluding an amount equal to that portion of such compulsory contributions which is properly allocable to school facilities, debt service on school debt and other educational purposes.

§ 51.22 Date for determination of allocation.

(a) *In general.* Except as provided for in § 51.23, and subject to the provisions of § 51.20 (a) and (b) (3) and (4), the determination of the allocation and entitlement for the entitlement period shall be made as of December 31, 1971. The final date upon which determinations of allocations and entitlements, including adjustments thereto, may be made for the entitlement period shall be determined by the Secretary as soon as practicable after December 31, 1973, 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 subsection (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 and, if corrected, would result in an increase or decrease of an entitlement of \$200 or more of entitlement funds, an adjustment will be made.

§ 51.23 Boundary changes, governmental reorganization, etc.

(a) *In general.* Boundary changes, governmental reorganizations, or changes in State statutes or constitutions occurring prior to or during the first entitlement period January 1, 1972, through June 30, 1972, 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 entitlement of a unit of local government under the Act, occurring prior to January 1, 1972, shall, if brought to the attention of the Bureau of the Census before June 30, 1973, result in an alteration to the entitlement

(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 the entitlement period January 1, 1972, through June 30, 1972, shall not result in a change to the entitlement of that unit until the next entitlement period beginning July 1, 1972. 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 the entitlement period shall first be eligible for an entitlement allocation for the entitlement period beginning July 1, 1972. 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 the first entitlement period is eligible to receive an entitlement payment prorated over the number of days in the first entitlement period for which it was in existence and eligible to receive such payment: *Provided,* That such unit is in the process of winding up its governmental affairs or otherwise has legal capacity to accept and use entitlement funds. Entitlement payments or portions thereof 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 time 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 prior to such annexation shall not affect the entitlement of any unit of local government for this 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 for this entitlement period.

(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.

§ 51.24 Waiver of entitlement; nondelivery of check, insufficient data.

(a) Waiver. Any unit of local government below the level of county government may waive its entitlement for the first entitlement period: Provided, The chief executive officer of such unit notifies the Secretary that the entitlement payment is being waived, and returns the entitlement payment to the Secretary prior to January 1, 1973. The amount of entitlement waived shall be added to, and shall become a part of the entitlement for the first entitlement period of the county government of the county area in which the unit waiving entitlement is located. A waiver of entitlement by such unit of local government shall be deemed an irrevocable waiver for the first entitlement period.

(b) Nondelivery. Entitlement funds for the first 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.

(c) Insufficient data. Entitlement funds for the first 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.

§ 51.25 Reservation of funds and adjustment.

(a) Reservation of entitlement funds. In order to make subsequent adjustments to the initial 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 the first 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. Those reserve funds will be distributed during subsequent entitlement periods to recipient governments with the final distribution occurring as promptly as possible after the close of the time for adjustments pursuant to § 51.22.

(b) Adjustment to future entitlement payments. Adjustment to the initial entitlement of a recipient government will ordinarily be effected through alteration to entitlement payments for future entitlement periods unless there is a downward adjustment which is so substantial as to make future payment alterations impracticable or impossible. In such case the Secretary may demand that the funds in excess of the initial entitlement included in the initial entitlement payment be repaid to the Secretary, and such funds shall be promptly repaid on demand.

Subpart D—Prohibition and Restrictions on Use of Funds

§ 51.30 Matching funds.

(a) In general. No recipient government may use any part of its entitlement funds as a contribution in order to obtain any matching Federal funds under any Federal program. 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 allows matching from either Federal or non-Federal funds.

(b) 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 the Act, 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 amount of funds that were disbursed in violation of the prohibition against the use of matching funds.

(c) Increased State or local government revenues. No recipient government shall be determined to have used entitlement funds in violation of paragraph (a) of this section with respect to any funds received for the first entitlement period January 1, 1972, through June 30, 1972, to the extent that the net revenues received by it from its own resources during such period exceed one-half the net revenues received by it from its sources during the 1-year period beginning July 1, 1971.

(d) 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 priority expenditures as set forth in § 51.31.

§ 51.31 Permissible expenditures.

(a) In general. Entitlement funds received 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 subparagraphs (1) and (2) of this paragraph. Pursuant to § 51.10(b), 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) 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 110 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.

§ 51.32 Discrimination.

(a) Discrimination prohibited. 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) Procedure for effecting compliance. (1) Whenever the Secretary determines that a recipient government has failed to comply with this section, 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 noncompliance and shall request the Governor to secure compliance. If within a reasonable time the Governor fails, or refuses to secure compliance, the Secretary is authorized (i) to refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; (ii) to exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or (iii) to take such other action as may be authorized by law.

(2) An order pursuant to Title VI of the Civil Rights Act of 1964 terminating or refusing to grant or continue entitlement payments shall become effective only after the procedures in subparagraph (1) of this paragraph have been complied with and:

(1) The Secretary has advised the recipient government of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(ii) There has been an express finding on the record, after opportunity for hearing, of a failure by the recipient government to comply with a requirement imposed by or under this part;

(iii) The action has been approved by the Secretary; and

(iv) The expiration of 30 days after the Secretary has filed with the Committee on Ways and Means 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; and

(v) The termination or refusal to grant or continue the payment of entitlement funds shall be limited to the particular recipient government as to whom a finding of noncompliance with this section has been made and shall be limited in its effect to the particular program or part thereof in which such non-compliance has been so found.

(3) No action to effect compliance with this section by any other means authorized by law shall be taken by the Department until:

(i) The Secretary has determined that compliance cannot be secured by voluntary means, and the recipient government has been notified of such determination; and

(ii) The expiration of at least 10 days from the mailing of such notice to the recipient government. During this period of at least 10 days, additional efforts may be made to persuade the recipient government to comply with this regulation and to take such corrective action as may be appropriate.

§ 51.33 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, 25 percent or more of the costs of which project are 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-7); and, (2) will be covered by labor standards specified by the Secretary of Labor pursuant to 29 Code of Federal Regulations Subtitle A, Parts 1, 3, 5, and 7.

(b) *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 § 51.4C(a).

§ 51.34 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.

Subpart E—Fiscal Procedures and Auditing

§ 51.40 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 in that trust fund. The trust fund may be established on the books and records as a separate set of accounts and shall be accounted for in a manner customarily followed in accounting for trust or other segregated funds, or a separate bank account may be established.

(b) Use or appropriate such funds (including any interest earned thereon while in such trust fund) within 24 months from date of the check, unless permission is obtained from the Secretary for a longer period within which the funds may be utilized. Permission for an extension of time in which to utilize the funds 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) Use the fiscal, accounting, and reporting procedures relative to entitlement funds as are used with respect to expenditures made from revenues derived from its own sources. The fiscal accounts shall be maintained in such manner as to permit the reports required by the Secretary to be prepared therefrom.

(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 reviewing compliance and operations under the Act.

§ 51.41 Auditing and evaluation.

(a) *Scope of audit.* The Secretary shall provide for such auditing, examination, evaluation, and review as may be necessary to insure that expenditures of entitlement funds by units of government comply with the requirements of the Act and regulations of this part. The scope of such review or examination shall include a review of the recipient government's accounting for entitlement funds

with appropriate attention paid to verifying compliance with the requirements of the Act and regulations of this part.

(b) *Reliance on State, county, or municipal auditors.* The Secretary may rely on audits of entitlement funds by State, county, and municipal auditors and examiners, and independent public accountants when in his judgment this may reasonably be done consistent with the provisions of the Act and regulations of this part. Such audits shall be performed in accordance with generally accepted auditing standards. Audit workpapers will be retained for 3 years after the close of the first entitlement period unless released earlier by the Secretary. Audit workpapers will be made available to the Secretary and to the Comptroller General or to their representatives. Audit reports will be submitted to the Secretary by the Governor or chief executive officer when an audit report indicates a possible failure to comply substantially with any requirements of the Act or regulations of this part.

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Revenue Sharing Guidelines.

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