

The original documents are located in Box 19, folder “Revenue Sharing Information, 1972-1973” of the Stanley Scott Papers at the Gerald R. Ford Presidential Library.

Copyright Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Bettye L. Scott donated to the United States of America her copyrights in all of her husband’s unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.



OFFICE OF THE SECRETARY OF THE TREASURY
WASHINGTON, D.C. 20220

March 6, 1973

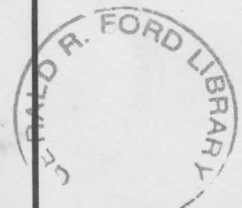
To All Revenue Sharing Recipients

This letter contains definitions of the data elements, compiled by the Bureau of the Census, which are used in calculating your revenue sharing allocation.

There are certain cases in which the Office of Revenue Sharing has found that it is necessary to use estimates. The per capita income for cities and towns under 500 in population is subject to substantial statistical error; therefore, the estimate of per capita income of such unit of government is the per capita income of the county area in which that unit of government is located. In instances where a government did not respond to the Census Survey to obtain FY 1970-71 revenue data, the Bureau of the Census has prepared estimates at our request.

Sincerely yours,

Graham W. Watt
Director
Office of Revenue Sharing



March 6, 1973

Detailed Data Definitions for Intrastate Allocations to Local Governments

Population

Population means the total resident population for an area as determined by the Bureau of the Census in the 1970 Census of Population. The census was conducted primarily through self-enumeration. Each person enumerated in the 1970 Census was counted as an inhabitant of his usual place of residence. This means the place where he lives and sleeps most of the time, not necessarily his legal residence or voting residence. Members of the Armed Forces living on military installations were counted as residents of the area in which the installation was located. Members of the Armed Forces not living on a military installation were counted as residents of the area in which they were living. Crews of U.S. Navy vessels were counted as residents of the home port to which the particular vessel was assigned. College students were counted as residents of the area in which they were living while attending college. Inmates of institutions, who ordinarily live there for considerable periods of time, were counted as residents of the area where the institution was located. Persons without a usual place of residence were counted where they were enumerated. The population data collected and used for all entitlements is as of April 1, 1970. That population is related to boundaries of geographic areas existing as of December 31, 1971 (includes new incorporations and qualifying annexations, i.e., annexations made by places with a 1970 population of at least 5,000 and for which the annexed areas include population equal to 5% or more of the annexing governments).

Per Capita Income

Per capita income of any unit of government, as defined by the Bureau of the Census in the 1970 Census of Population and Housing, is the mean, or "average" income of all persons in that unit of government. Per capita income was computed from calendar year 1969 money income data which was collected from a 20% sample in the 1970 Census. It is derived by dividing the total money income received by the sample population by the total sample population for that unit of government.

Aggregate Income

Aggregate income means total money income as defined by the Bureau of the Census in the 1970 Census of Population and Housing. Information on money income was collected in a 20% sample as part of the 1970 Census.

Total money income is the sum of:

1. Wage or salary income,
2. Net nonfarm self-employment income,
3. Net farm self-employment income,
4. Social Security or railroad retirement income,
5. Public assistance income,
6. All other income such as interest, dividends, veteran's payments, pensions, unemployment insurance, alimony, etc.

The total represents the amount of income received before deductions for personal income taxes, Social Security, bond purchases, union dues, medicare deductions, etc.

Receipts from the following sources were not included as income: Money received from the sale of personal property; capital gains; the value of income "in kind" such as food produced and consumed in the home or free living quarters; withdrawal of bank deposits; money borrowed; tax refunds; exchange of money between relatives living in the same household; gifts and lump sum inheritances, insurance payments, and other types of lump sum receipts.

For allocation use, the amount shown as aggregate income is the product of the population times the per capita income.

Adjusted Taxes

The adjusted taxes for a unit of local government, as derived from the Special Revenue Sharing Survey conducted by the Bureau of the Census in 1972, are the total taxes exacted by the unit of government in Fiscal Year 1970-71 (that government's 12-month accounting period that ended between July 1, 1970 and June 30, 1971) excluding taxes for schools and other education purposes. Total general purpose taxes include:

1. *Property taxes* - county, municipal or township taxes levied on the value of real or personal property.
2. *Sales taxes* - county, municipal or township taxes, either general or specific, on goods and services, measured as a per cent of sales or receipts, or as an amount per unit sold:

General sales tax
Gasoline tax
Liquor tax
Cigarette and tobacco tax
Public utilities tax

3. *License, permits and other taxes* - county, municipal or township taxes not included in items 1 and 2 above (e.g.: capitation taxes,



license and inspection charges on occupations and businesses, animals, vehicles, etc):

- Income payroll or earnings tax
- Motor vehicle licenses
- Fees retained from tax collections by officials of the unit of government

General purpose taxes do not include receipts from service charges, special assessments, interest earnings or fines.

A tax which is jointly imposed by a State government and units of local government is apportioned in order to determine local tax effort. An example of a jointly imposed tax would be a five percent sales tax of which four percent was imposed by the State government and one percent was imposed by local governments. In such case the amount of revenue realized by virtue of the one percent locally imposed portion will be credited to local tax effort. It is important to distinguish a "jointly imposed tax" from a wholly State imposed tax where part of the tax revenue is shared with local governments. An example of a shared State tax would be a five percent sales tax wholly imposed by the State, but which provides a 20 percent revenue share to units of local government. A local government's share of a "wholly State imposed tax" is classified as an intergovernmental transfer and not as local tax effort. Thus, in determining local tax effort the point of reference is the government which imposed the tax rather than the government which expended the resulting tax revenue.

Amounts in lieu of taxes received by a government from a utility it operates are treated as internal transfers and excluded from taxes. Amounts in lieu of taxes received from utilities operated by other governments are reported as intergovernmental transfers.

School taxes are tax revenues of the unit of government which are allocated for school purposes. They include taxes for current capital and debt service as well as amounts collected for the governmental unit by the county or state acting as collecting agent.

If tax revenues for purposes of education are not separately identifiable because education is financed by expenditure or transfer of monies from a general fund to a school fund, then the ratio of tax revenues to total revenues in such general fund multiplied by the expenditure or transfer of monies from the general fund (or similarly named fund) shall be equated with tax revenues allocable to expenses for education.

Intergovernmental Transfers of Revenue

Intergovernmental transfers of revenue are amounts received by a unit of government from other governments in Fiscal Year 1970-71 (the government's 12-month accounting period that ended between July 1, 1970 and June 30, 1971) for use in performing specific functions or for general financial support. This amount is derived from the Special Revenue Sharing Survey conducted by the Bureau of Census in 1972. The figure includes grants, shared taxes, contingent loans and reimbursements for tuition costs, hospital care, construction costs, etc. Intergovernmental revenue does not include amounts received from sale of property or commodity or utility services to other governments or Federal revenue sharing entitlement funds.

federal register

TUESDAY, APRIL 10, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 68

PART II



DEPARTMENT OF THE TREASURY

Monetary Offices

■

FISCAL ASSISTANCE TO
STATE AND LOCAL
GOVERNMENTS

ENTITLEMENT PAYMENTS

Rules and Regulations



Title 31—Money and Finance: Treasury
CHAPTER I—MONETARY OFFICES,
DEPARTMENT OF THE TREASURY

PART 51—FISCAL ASSISTANCE TO STATE
AND LOCAL GOVERNMENTS

By notice of proposed rulemaking appearing in the *FEDERAL REGISTER* for Thursday, February 22, 1973 (38 FR 4918), regulations were proposed in order to disburse entitlement payments to States and unit of local government under the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512) for the entitlement period beginning January 1, 1973, and for entitlement periods subsequent thereto. A public hearing with respect to such proposed regulations was held on March 26, 1973. After consideration of all such relevant matter as was presented by interested persons regarding the proposed regulations, certain changes were made, and the proposed regulations are adopted by this document, subject to the changes indicated below:

Section 51.2(i).—The second sentence of § 51.2(i) of the proposed regulations is changed to read as set forth below.

Section 51.3.—Section 51.3 of the proposed regulations is changed by deleting the final sentence.

Section 51.4.—A new § 51.4 is inserted to read as set forth below.

Section 51.5.—A new § 51.5 is inserted to read as set forth below.

Section 51.11.—The second sentence of paragraph (a) of § 51.11 of the proposed regulations is changed to read as set forth below.

The third sentence of paragraph (b) of § 51.11 is changed to read as set forth below.

Section 51.13.—The second sentence of paragraph (a) of § 51.13 of the proposed regulations is changed to read as set forth below.

Paragraph (b) of § 51.13 of the proposed regulations is changed to read as set forth below.

Paragraph (c) of § 51.13 of the proposed regulations is changed to read as set forth below.

Section 51.20.—Section 51.20(d) of the proposed regulations is changed by deleting the word "population" as it appears immediately prior to the phrase "adjusted taxes", as set forth below.

Section 51.24.—Paragraph (a) of § 51.24 of the proposed regulations is changed to read as set forth below.

Section 51.26.—Paragraph (d) of § 51.26 of the proposed regulations is changed by inserting a new clause after the phrase "beginning July 1, 1971" as set forth below.

Paragraph (f) of § 51.26 is changed by deleting the period at the end of the paragraph, inserting a comma and adding a new clause as set forth below.

Paragraph (h) of § 51.26 is deleted and a new paragraph (h) is inserted to read as set forth below.

Paragraph (j) of § 51.26 is changed by inserting the word "Secretary's" prior to the phrase "Trust Fund", as set forth below.

Section 51.28.—The first sentence of § 51.28 of the proposed regulations is changed by inserting a period after the word "practicable" and by deleting the phrase "after the beginning of an applicable entitlement period", as set forth below.

Section 51.30.—The first sentence of paragraph (a) of § 51.30 of the proposed regulations is changed to read as set forth below.

A new paragraph (b) of § 51.30 is inserted to read as set forth below.

Paragraph (b) of the proposed regulations is redesignated as paragraph (c).

Paragraph (c) of the proposed regulations is redesignated as paragraph (d) and is changed to read as set forth below.

Paragraph (d) of § 51.30 is redesignated as paragraph (e) and is changed to read as set forth below.

Paragraphs (e) and (f) of the proposed regulations are redesignated as paragraphs (f) and (g) respectively.

Section 51.31.—A new paragraph (b) is added to § 51.31 of the proposed regulations, to read as set forth below.

Paragraph (b) of § 51.31 is redesignated as paragraph (c).

Section 51.32.—The second sentence of paragraph (a) of § 51.32 of the proposed regulations is changed by deleting the period at the end of the sentence, inserting a comma, and adding a clause as set forth below.

Subsection (4) of paragraph (b) of § 51.32 of the proposed regulations is changed by deleting the word "citizens" and inserting the word "persons", as set forth below.

A new paragraph (b) (5) of § 51.32 of the proposed regulations is inserted to read as set forth below.

A new sentence is inserted after the first sentence of paragraph (d) of § 51.32 to read as set forth below.

The second sentence of paragraph (d) of § 51.32 of the proposed regulations is changed by deleting the word "an" before the word "investigation" and by inserting the words "a prompt" before the word "investigation", as set forth below.

The first sentence of paragraph (f) (1) of § 51.32 of the proposed regulations is changed by adding a phrase after the word "notify" as set forth below.

Paragraph (f) (3) of § 51.32 is changed to read as set forth below.

Paragraph (f) (3) (v) of § 51.32 of the proposed regulations is changed to read as set forth below.

Section 51.40.—The first sentence of paragraph (b) of § 51.40 of the proposed regulations is changed to read as set forth below.

The second sentence of paragraph (b) of § 51.40 of the proposed regulations is changed by deleting the first two words which reads "Permission for", as set forth below.

Paragraph (d) of § 51.40 is changed to read as set forth below.

Section 51.41.—Paragraph (a) of § 51.41 of the proposed regulations is changed by deleting the word "will" in the second sentence and inserting the word "may", as set forth below.

Paragraph (b) of § 51.41 of the proposed regulations is changed by deleting the word "will" in the first sentence and inserting the word "may". The second sentence of paragraph (b) is changed by deleting the word "will" and inserting the word "may" and by deleting the phrase "at a minimum", as set forth below.

Paragraph (b) (4) is changed to read as set forth below.

Paragraph (c) of § 51.41 of the proposed regulations is changed by deleting the word "will" in the second sentence and inserting the word "may", as set forth below.

The second sentence of paragraph (c) (1) is changed by inserting the clause "they consider" prior to the word "practicable", as set forth below.

Paragraph (c) (3) of § 51.41 is changed to read as set forth below.

Paragraph (c) (4) of § 51.41 is changed by the addition of a new sentence immediately following the first sentence, which addition reads as set forth below.

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 subject to the effective date limitation of 5 U.S.C. 553(d).

The foregoing regulations are issued under the authority of the State and Local Fiscal Assistance Act of 1972 (Title I, Public Law 92-512), and Treasury Department Order No. 224, dated January 26, 1973 (38 FR 3342). These regulations shall become effective on April 5, 1973, at 3:50 p.m., and are applicable to entitlement periods beginning on or after January 1, 1973.

[SEAL] GRAHAM W. WATT,
 Director,
 Office of Revenue Sharing.

Approved April 5, 1973.

SAMUEL R. PIERCE, JR.,
 General Counsel.

Subpart A—General Information

- Sec. 51.0 Scope and application of regulations.
- 51.1 Establishment of Office of Revenue Sharing.
- 51.2 Definitions.
- 51.3 Procedure for effecting compliance.
- 51.4 Extension of time.
- 51.5 Transfer of funds to secondary recipients.

Subpart B—Reports and Written Communications

- 51.10 Reports to the Secretary; assurances.
- 51.11 Report on planned use and actual use of funds.
- 51.12 Certifications.
- 51.13 Publication and publicity of reports; public inspection.
- 51.14 Reports to the Bureau of the Census.

Subpart C—Computation and Adjustment of Entitlement

- 51.20 Data.
- 51.21 Adjusted taxes.
- 51.22 Date for determination of allocation.
- 51.23 Boundary changes, governmental reorganization, etc.

- Sec. 51.24 Waiver of entitlement; nondelivery of checks; insufficient data.
- 51.25 Reservation of funds and adjustment of entitlement.
- 51.26 State must maintain transfers to local governments.
- 51.27 Optional formula.
- 51.28 Adjustment of data factors.
- 51.29 Adjustment of maximum or minimum per capita entitlement.

Subpart D—Prohibition and Restrictions on Use of Funds

- 51.30 Matching funds.
- 51.31 Permissible expenditures.
- 51.32 Discrimination.
- 51.33 Wage rates and labor standards.
- 51.34 Restriction on expenditures by Indian tribes and Alaskan native villages.

Subpart E—Fiscal Procedures and Auditing

- 51.40 Procedures applicable to use of funds.
- 51.41 Auditing and evaluation; scope of audits.

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

- 51.50 Scope of subpart.
- 51.51 Liberal construction.
- 51.52 Reasonable notice and opportunity for hearing.
- 51.53 Opportunity for compliance.
- 51.54 Institution of proceeding.
- 51.55 Contents of complaint.
- 51.56 Service of complaint and other papers.
- 51.57 Answer; referral to administrative law judge.
- 51.58 Supplemental charge.
- 51.59 Proof; variance; amendment of pleadings.
- 51.60 Representation.
- 51.61 Administrative law judge; powers.
- 51.62 Hearings.
- 51.63 Stipulations.
- 51.64 Evidence.
- 51.65 Depositions.
- 51.66 Stenographic record; oath of reporter; transcript.
- 51.67 Proposed findings and conclusion.
- 51.68 Initial decision of the administrative law judge.
- 51.69 Certification and transmittal of record and decision.
- 51.70 What constitutes record.
- 51.71 Procedure on review of decision of administrative law judge.
- 51.72 Decision of the Secretary.
- 51.73 Effect of order of repayment or withholding of funds.
- 51.74 Publicity of proceedings.
- 51.75 Judicial review.

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

§ 51.0 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 pre-

RULES AND REGULATIONS

scribes 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 recognized 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.

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 F 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 any subsequent entitlement period until such time as the Secretary is

RULES AND REGULATIONS

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.

§ 51.14 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.

§ 51.15 Transfer of funds to secondary recipients.

The prohibition and restrictions on the use of entitlement funds set forth in subpart D of this part apply to a recipient government's entitlement funds which are transferred by it to another governmental unit or private organization. A violation of subpart D 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 and E 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 § 51.40(a)) during the reporting period. Such report also shall state any interest earned on entitlement funds during the period and the balance of the trust fund as of the date of the report's submission. Such reports shall show the status of the trust fund 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 § 51.40(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 § 51.30 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 § 51.31. 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 (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 published 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 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.

RULES AND REGULATIONS

§ 51.22 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 is to be calculated shall be made as of the day immediately preceding the beginning of the entitlement period. 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 after the close of that entitlement period 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 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.

(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.

§ 51.23 Boundary changes, governmental reorganization, etc.

(a) *In general.* Boundary changes, governmental reorganizations, or changes in State statutes or constitutions occurring prior to or during 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.

§ 51.24 Waiver of entitlement; nondelivery of check; 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 that entitlement period are being



waived within 60 days after the beginning of the affected entitlement period. The entitlement waived shall be added to and shall become a part of, the applicable 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. A waiver of entitlement by such unit of local government shall be deemed an irrevocable waiver for that entitlement period.

(b) *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.

(c) *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.

§ 51.25 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. Those reserve funds will be distributed during subsequent entitlement periods to recipient governments as promptly as possible after the close of the time for adjustments pursuant to § 51.22.

(b) *Adjustment to future entitlement payments.* Adjustment to an 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 an entitlement payment be repaid to the Secretary, and such funds shall be promptly repaid on demand.

§ 51.26 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 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 government 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 con-

ferred 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 consideration 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 within 90 days after the end of the State's fiscal year, on a form to be provided, the aggregate transfers from own source revenues 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 revenues.
- (2) The State's total revenues.
- (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

RULES AND REGULATIONS

results from the application of this section (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.

§ 51.27 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 30 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.

§ 51.28 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.

§ 51.29 Adjustment for 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 governments 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

§ 51.30 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) 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 subparagraph (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 Sec-

retary 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 § 51.31.

§ 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 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 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. For purposes of this section "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient government, or by any unit of government or private contractor receiving entitlement funds from the recipient government. "Funded in whole or in part with entitlement funds" means that entitlement funds in any amount have been transferred from the recipient government's trust fund to an identifiable administrative unit and disbursed in a program or activity.

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

(i) Deny any service or other benefit provided under the program or activity.

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

(iii) Subject to segregated or separate treatment in any facility in, or in any matter or process related to receipt of any service or benefit under the program or activity.

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

(v) Treat an individual differently from others in determining whether he 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 provided under the program or activity.

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

(2) A recipient government may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, color, national origin, or sex, or have the effect of 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 in determining the site or location of facilities may not make selections of such site or location which have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the grounds of race, color, national origin, or sex from, the benefits of an activity or program; or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act and of this section.

(4) A recipient government shall not be prohibited by this section from taking any action to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to overcome prior discriminatory practice or usage.

(5) Notwithstanding anything to the contrary in this section, nothing contained herein shall be construed to prohibit any recipient government from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

(c) *Assurances required.* Pursuant to § 51.10(b), each Governor of a State or chief executive officer of a unit of local government shall include, in the assurances to the Secretary required by that section, a statement that all programs and activities funded in whole or in part by entitlement funds will be conducted in compliance with the requirements of this section. Such assurances shall be in a form prescribed by the Secretary.

(d) *Complaints and investigations.* Any person who believes himself, or any specific class of persons who believe themselves, to be subjected to discrimination prohibited by this section, may by himself or by a representative file with the Secretary a written report setting forth the nature of the discrimination alleged and the facts upon which the allegation is based. The Secretary shall advise the chief executive officer of the recipient government of the receipt of such report. If the Secretary has reason to believe that the report shows a recipient government has failed to comply with the provisions of this part, he will cause a prompt investigation to be made with respect to the facts and circumstances alleged in the report and with respect to the program or activity concerned. Such investigation may be made, if necessary, with the assistance of complainants or of the recipient government. 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 section.

(e) *Compliance reviews.* The Secretary shall monitor and determine compliance of recipient governments with the requirements of this section and of

the Act. Compliance reviews will be undertaken from time to time, as appropriate, at the discretion of the Secretary.

(f) *Procedure for effecting compliance.* (1) Whenever the Secretary determines that a recipient government has failed to comply with this section, he shall notify the chief executive officer of such recipient government and the Governor of the State in which such government is located of the noncompliance and shall request the Governor to secure compliance. If within a reasonable time, not to exceed 60 days, 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 and the administrative remedies 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) 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.

(3) An order pursuant to Title VI of the Civil Rights Act of 1964 terminating or refusing to grant or continue entitlement payments or demanding the forfeiture, repayment or withholding of entitlement funds shall become effective only after the procedures in paragraph (f) (1) of this section have been complied with and:

(i) 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 such notice prescribed in this section, and 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) Thirty days have elapsed 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 forfeiture or repayment of entitlement funds shall be limited to the particular recipient government as to whom a finding of noncompliance is made with this section and shall be limited to the program or activity in which such noncompliance has been so

found. The amount of entitlement funds as are forfeited by the recipient government shall be reflected in a downward adjustment to future entitlement payments and shall 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 repayment of such amount to the United States. Furthermore, the Secretary shall withhold payment of all entitlement funds to a recipient government for which there has been a finding of noncompliance until such time that he is satisfied that such government will comply with the provisions of this section.

(g) *Delegation.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of this section (other than the review of initial decision of the administrative law judge) including the achievement of effective coordination within the executive branch in the implementation of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

(h) *Hearing procedure.* Whenever a procedure which requires due notice and opportunity for hearing is involved by the Secretary to effect compliance under this section, the procedural regulations promulgated in Subpart F of this part shall govern.

§ 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 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 file with the regional office of the U.S. Department of Labor, a Standard Form 308 requesting a wage determination for each intended project at least 30 days before the invitation for bids, and must ascertain that the wage determination issued 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 successful bidder is made aware of his labor standards responsibilities under the Davis-Bacon Act.

(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 § 51.40(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. Expenditures which are so restricted will not constitute a failure to comply with the requirement of § 51.32(a).

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 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 (including any interest earned thereon while in such trust fund) within 24 months from the end of the entitlement period to which the check is applicable unless approval is obtained from the Secretary for a longer period within which the funds may be utilized. 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) 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 reviewing compliance and operations under the Act.

§ 51.41 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 and local government audits.* It is the intention of the Secretary to rely to the maximum extent possible on audits of recipient governments by State and local government auditors and independent public accountants. The Secretary may accept such audits when in his judgment this may reasonably be done consistent with the provisions 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 F—Proceedings for Reduction in Entitlement, Withholding, or Repayment of Funds

§ 51.50 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.

§ 51.51 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.

§ 51.52 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.

§ 51.53 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 Gov-

ernor of the State in which the unit of local government is located.

§ 51.54 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.

§ 51.55 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.

§ 51.56 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 § 51.57(a).

§ 51.57 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, shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the administrative law judge shall 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.

§ 51.58 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.

§ 51.59 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.

§ 51.60 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.

§ 51.61 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.

§ 51.62 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.

§ 51.63 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.

§ 51.64 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 § 51.65 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.

§ 51.65 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.

§ 51.66 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)).

§ 51.67 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.

§ 51.68 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 § 51.31 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 determined 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.

§ 51.69 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.

§ 51.70 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.

§ 51.71 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

RULES AND REGULATIONS

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.

§ 51.72 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.

§ 51.73 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.

§ 51.74 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.

§ 51.75 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.

[FR Doc. 73-6878 Filed 4-5-73; 3:50 pm]



DEPARTMENT OF THE TREASURY
OFFICE OF REVENUE SHARING
1900 Pennsylvania Ave. N.W.
WASHINGTON, D.C. 20226

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

POSTAGE AND FEES PAID
DEPARTMENT OF THE TREASURY
TREAS-551



FIRST CLASS MAIL

What General Revenue Sharing Is All About

*A guide to answer many
of your questions about
the State and Local Fiscal
Assistance Act of 1972*



Department of the Treasury
Published by the Office of Revenue Sharing
Washington, D.C. 20220

BRIEF WORD . . .

As of this writing, many of the regulatory aspects of the Act, coupled with developing administrative roles and audit procedures, are in the interim stage. While much of this guide's information is up-to-date, changes are expected to occur as the machinery for the administration of this act continues to pinpoint problem areas.

Thus, this guide should not be considered a final answer to all questions or problems. But it can help you with your early questions about Revenue Sharing while providing avenues for you to seek definitive answers to specific problem areas.

A special task force has been formed to handle questions in the area of legal, auditing, administration, program development, systems and computer programing and data analysis.

You may write direct:

Department of the Treasury,
Office of Revenue Sharing,
Washington, D.C. 20220

October 25, 1972.

A BIT OF HISTORY . . .

The general concept of Revenue Sharing took shape in America as far back as 1805 when President Jefferson urged that Federal revenue be used among the States for canals, rivers, roads, arts, manufacture, education and other great objects within each State. While the concept of Revenue Sharing lay dormant for some 125 years, the fifties and sixties saw a resurgence of interest arise from both academic and political leaders.

Introducing a series of Revenue Sharing acts through the legislative process during these periods produced no concrete results but did sustain interest in both the need and desire for some form of Revenue Sharing as essential to national and local government interests.

In his address to the Nation on domestic programs on August 8, 1969, President Nixon stressed the necessity of implementing a Revenue Sharing system as soon as possible. In a series of successive moves, the Nixon Administration and legislative supporters introduced Revenue Sharing bills that, finally, saw passage in 1972 of the State and Local Fiscal Assistance Act.

This landmark legislation passed the House on June 22, 1972, and the Senate on September 12, 1972. It then went to a Joint House and Senate Conference Committee on September 13, 1972, to resolve differences in both House and Senate versions. On September 26, 1972, the Conference Committee issued their report. President Nixon signed the act into law on October 20, 1972.

THE NEED FOR REVENUE SHARING . . .

State and local governments unquestionably face financial problems of a most severe nature. Experts say this will continue to expand—unless checked—during the seventies.

The States, and especially local governments, bear the brunt of our more difficult domestic problems. There is unanimity among many of the governors and mayors throughout the land: They are unable to keep pace with the growing financial pressures thrust upon them. There is an important

reason for this; State and local revenues, based primarily on sales and property taxes, often do not keep pace with national economic growth. At the same time, costs for education, health, and welfare, items of great concern to States and localities, tend to exceed economic growth.

Between the fiscal years 1955-1970, State and local general expenditures rose almost three times in current dollar terms—from \$33.7 billion to \$131.3 billion. In fiscal year periods 1946-1970, State and local revenues, excluding Federal aid, rose at an average rate of almost 10 percent per year.

Federal aid to State and local governments rose from \$6.7 billion in fiscal year 1959 to \$36.8 billion in fiscal year 1972, and to \$38.5 billion in fiscal year 1973. But most Federal aid was categorical—dispensed for specific purposes—and often could not be used for the most pressing State and local needs.

The dramatic increase in spending at the State and local levels has come about in response to a number of developments: general population growth, increases in size of our cities and the accompanying need for more social and economic services. Coupled with these has been the effect of a rising inflation which has added greatly to costs. Since 1966, for example, prices paid by State and local governments for goods and services have risen about one third. Adding further to the States' financial problems have been the flight of middle and high income people from cities to the suburbs. This has left more cities with the pressing burden of providing services to large numbers of people with low incomes who are able to pay only a small share of the cost of government services.

Financial problems are not confined to just the cities. Small communities, including many in rural areas, are also encountering financial distress, particularly where their inhabitants are poor and the tax base limited.

This, then, is part of the backdrop that led the Nixon Administration to channel its efforts toward making Revenue Sharing a reality.

ITS POSITIVE POINTS . . .

The full impact of the State and Local Fiscal Assistance Act of 1972 will see these positive aspects:

—Immediate help:

- Relieves State and local fiscal crisis.
- Reduces pressure for increased property taxes.

—Equitable distribution:

- Puts money where the need is.

—An effective and responsive system of government:

- Moves money and power closer to the people.
- Eliminates red tape and duplicating programs.
- Recognizes communities—Individuals differ in needs.
- Combines resources and responsibilities at appropriate level of government.
- Relies on local accountability.

KEY BUILDING BLOCKS OF THE ACT . . .

1. **It is simple**—It is set up to work without the need for any major Federal agency or bureau. The act's operation is spelled out clearly and specifically in the law. The money is distributed on the basis of census data and other objective statistics.

2. **It has few controls**—State and local governments are free to exercise their own discretion over the use of the funds providing they are used for priority expenditures. These are ordinary and necessary maintenance and operating expenses.

3. **It is automatic**—State and local governments can count on revenue sharing in their own fiscal planning. The money is automatically available for each of the 5 years as stipulated by the act.

4. **It is fair**—Funds go to every State, city, and county in the Nation. All areas are included—urban and rural, large and small, rich and poor, industrialized and agricultural.

5. **It is basic to the New Federalism**—Decision-making power over the funds as well as the money itself is returned to State and local governments. Accountability for the decision-making is left with local people.

SOME SPECIFICS . . .

Auditing—A small staff of auditors within the Office of Revenue Sharing, backing up local governmental auditing procedures—will do some 300 audits a year. Since 50 States receive one third of the revenue sharing money and 50 large cities another third, a small auditing staff can look at a major portion of the total money. Auditing and accounting guidelines, evaluations and reviews to assist local governments in their audit procedures are being developed.

Legal—Interim regulations for immediate guidance to State and local governments have already been published. Those regulations are prescribed

for carrying into effect the purposes of the State and Local Fiscal Assistance Act of 1972. Permanent regulations will be issued at a subsequent date after interested parties have had an opportunity to offer comments.

Data—Basic data used for the Revenue Sharing formulas comes from the Bureau of the Census. A continuous process of updating data and its application to the allocation formulas will produce some difference in payments at some levels of government. This will be resolved and appropriate payment corrections made.

Reports—Before the beginning of each entitlement period, each State and local government must file with the Secretary of the Treasury a report which sets forth the amounts and purposes they plan to either spend or obligate Revenue Sharing funds during that period. Then at the close of each entitlement period, the same governments must also file a report on the amounts and purposes of Revenue Sharing money they have spent or obligated.

Trusts—All Revenue Sharing funds received at State and local government levels must be accounted for separately. This will assist in refining the auditing procedures of the State and local governments.

Labor—All laborers and mechanics employed by contractor or subcontractors in the performance of work or any construction project, 25 percent or more of the costs of the project being paid out of its trust fund, 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. Each governmental unit must also require that persons employed in government jobs financed in whole or in part from Revenue Sharing funds are to be paid wages not lower than the prevailing rates of pay for persons employed in similar jobs by that government.

Anti-discrimination—The act clearly stipulates that no person shall—on the grounds of race, color, national origin, or sex—be excluded from participation in, denied the benefits of, or subjected to discrimination under programs or activities funded in whole or in part with Revenue Sharing money.

Public Disclosures—Local governments must submit reports on how they plan to spend their money and how they, in fact, spent the money; the report must be published in general circulation newspapers within their geographic areas. The reports also have to be made available to all area news media. This way, all citizens will have access to information on how the money is being spent.

Appeals—If a State or local government feels it has not received equitable treatment, it can appeal to the Secretary of the Treasury who will establish procedures and avenues to resolve such problems.

Formulas—The act allocates trust fund moneys to States under two formulas. Three-factor formula—population of the State, multiplied by the

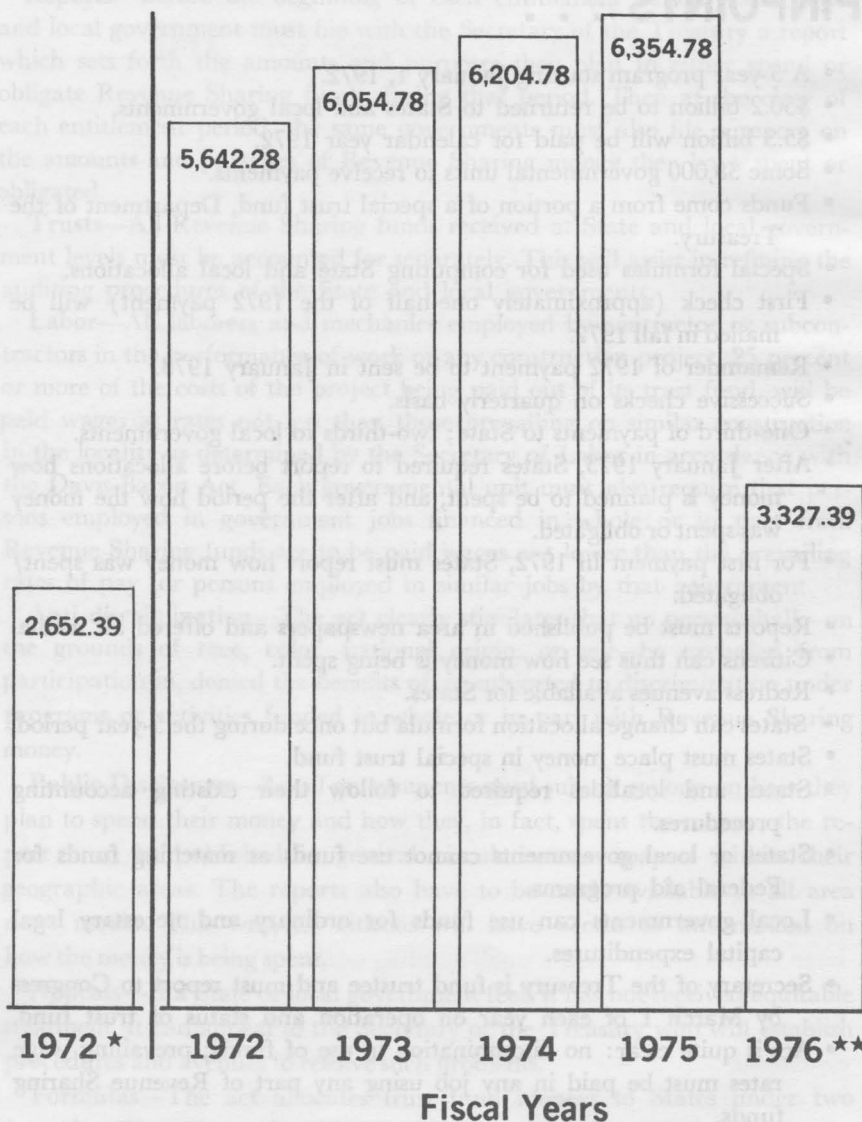
relative income factor of that State, multiplied by the general tax effort factor of the State as it bears to the sum of the products for all States on the ratio to \$5.3 billion. Five-factor formula—based on general population, urban population, per capita income, State income tax collections, and general tax effort of State.

PINPOINTS . . .

- A 5-year program starting January 1, 1972.
- \$30.2 billion to be returned to States and local governments.
- \$5.3 billion will be paid for calendar year 1972.
- Some 38,000 governmental units to receive payments.
- Funds come from a portion of a special trust fund, Department of the Treasury.
- Special formulas used for computing State and local allocations.
- First check (approximately one-half of the 1972 payment) will be mailed in fall 1972.
- Remainder of 1972 payment to be sent in January 1973.
- Successive checks on quarterly basis.
- One-third of payments to State; two-thirds to local governments.
- After January 1973, States required to report before allocations how money is planned to be spent, and after the period how the money was spent or obligated.
- For first payment in 1972, States must report how money was spent/obligated.
- Reports must be published in area newspapers and offered all media.
- Citizens can thus see how money is being spent.
- Redress avenues available for States.
- States can change allocation formula but once during the 5-year period.
- States must place money in special trust fund.
- States and localities required to follow their existing accounting procedures.
- States or local governments cannot use funds as matching funds for Federal aid programs.
- Local governments can use funds for ordinary and necessary legal capital expenditures.
- Secretary of the Treasury is fund trustee and must report to Congress by March 1 of each year on operation and status of trust fund.
- Act is quite clear: no discrimination in use of funds; prevailing wage rates must be paid in any job using any part of Revenue Sharing funds.

Five Years of Revenue Sharing

(in billions)



★ January 1, 1972 through June 30, 1972

★★ July 1, 1976, through December 31, 1976



Public Law 92-512
92nd Congress, H. R. 14370
October 20, 1972

An Act

86 STAT. 919

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 to—

(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,

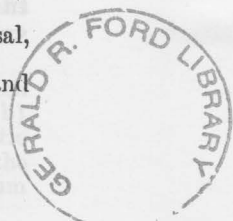
(F) libraries,

(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.

(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.**—

Report to Congress.

(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.

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

Post, p. 935.

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.

(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.

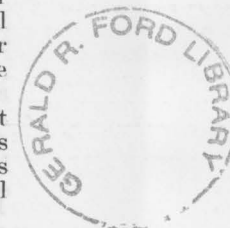
(2) **STATE AND LOCAL TAXES.**—

(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.

(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

78 Stat. 252.

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;

(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);

(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

Reports.

49 Stat. 1011.

5 USC app.

63 Stat. 108.

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.

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.

(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.

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:

"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."

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

80 Stat. 381.
5 USC 551.

72 Stat. 941;
80 Stat. 1323.

62 Stat. 928.

68A Stat. 731.
26 USC 6001.

26 USC 1.

"Sec. 6017A. Place of residence."

(b) CIVIL PENALTY.—

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

(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:

"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."

TITLE II—FEDERAL COLLECTION OF STATE INDIVIDUAL INCOME TAXES

SEC. 201. SHORT TITLE.

Citation of
title.

This title may be cited as the "Federal-State Tax Collection Act of 1972".

SEC. 202. COLLECTION PROVISIONS.

26 USC 6301.

(a) AMENDMENT OF CHAPTER 64.—Chapter 64 of the Internal Revenue Code of 1954 (relating to collection) is amended by adding at the end thereof the following new subchapter:

"Subchapter E—Collection of State Individual Income Taxes

"Sec. 6361. General rules.

"Sec. 6362. Qualified State individual income taxes.

"Sec. 6363. State agreements; other procedures.

"Sec. 6364. Regulations.

"Sec. 6365. Definitions and special rules.

"SEC. 6361. GENERAL RULES.

26 USC 8001,
3401.
26 USC 1.
18 USC 1 et
seq.

"(a) COLLECTION AND ADMINISTRATION.—In the case of any State which has in effect an agreement with the Secretary entered into under section 6363, the Secretary or his delegate shall collect and administer the qualified State individual income taxes of such State. All provisions of this subtitle, subtitle G, and chapter 24 relating to the collection and administration of the taxes imposed by chapter 1 on the incomes of individuals (and all civil and criminal sanctions provided by this subtitle or by title 18 of the United States Code with respect to such collection and administration) shall apply to the collection and administration of qualified State individual income taxes as if such taxes were imposed by chapter 1, except to the extent that their application is modified by the Secretary or his delegate by regulations necessary or appropriate to reflect the provisions of this subchapter, or to reflect differences in the taxes or differences in the situations in which liability for such taxes arises.

"(b) CIVIL PROCEEDINGS.—Any person shall have, with respect to a qualified State individual income tax (including the current collection thereof), the same right to bring or contest a civil action and obtain review thereof, in the same court or courts and subject to the

same requirements and procedures, as he would have under chapter 76, and under title 28 of the United States Code, if the tax were imposed by section 1 (or were for the current collection of the tax imposed by section 1). To the extent that the preceding sentence provides judicial procedures (including review procedures) with respect to any matter, such procedures shall replace judicial procedures under State law, except that nothing in this subchapter shall be construed in any way to affect the right or power of a State court to pass on matters involving the constitution of that State.

"(c) TRANSFERS TO STATES.—

"(1) PROMPT TRANSFERS.—Any amount collected under this subchapter which is apportioned to a qualified State individual income tax shall be promptly transferred to the State on the basis of estimates by the Secretary or his delegate. In the case of amounts collected under chapter 24, the estimated amount due the State shall be transferred to the State not later than the close of the third business day after the amount is deposited in a Federal Reserve bank. In the case of amounts collected pursuant to a return, a declaration of estimated tax, an amendment of such a declaration, or otherwise, the estimated amount due the State shall be transferred to the State not later than the close of the 30th day after the amount is received by the Secretary or his delegate.

68A Stat. 873.
26 USC 7401.
28 USC 1 et seq.

26 USC 3401.

"(2) ADJUSTMENTS.—Not less often than once each fiscal year the difference between collections (adjusted for credits and refunds) made under this subchapter during the preceding fiscal year and the transfers to the States made on account of estimates of such collections shall be determined, and such difference shall be a charge against, or an addition to, the amounts otherwise payable.

"(d) SPECIAL RULES.—

"(1) UNITED STATES TO REPRESENT STATE INTEREST.—

"(A) GENERAL RULE.—In all administrative proceedings, and in all judicial proceedings (whether civil or criminal), relating to the administration and collection of a State qualified individual income tax the interests of the State imposing such tax shall be represented by the United States in the same manner in which the interests of the United States are represented in corresponding proceedings involving the taxes imposed by chapter 1.

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply to—

"(i) proceedings in a State court involving the constitution of that State, and

"(ii) proceedings involving the relationship between the United States and the State.

"(2) ALLOCATION OF OVERPAYMENTS AND UNDERPAYMENTS.—If the combined amount collected in respect of a qualified State individual income tax for any period and the taxes imposed by chapter 1 for such period with respect to the income of any individual is greater or less than the combined amount required to be paid for such period, the collected amount shall be divided between the accounts for such taxes on the basis of the respective amounts required to be paid.

"(3) FINALITY OF ADMINISTRATIVE DETERMINATIONS.—Administrative determinations of the Secretary or his delegate as to tax liabilities of, or refunds owing to, individuals with respect to qualified State individual income taxes shall not be reviewed by or enforced by any officer or employee of any State or political subdivision of a State.

"SEC. 6362. QUALIFIED STATE INDIVIDUAL INCOME TAXES.

"(a) QUALIFIED STATE INDIVIDUAL INCOME TAXES DEFINED.—For purposes of this subchapter—

"(1) IN GENERAL.—The term 'qualified State individual income tax' means—

"(A) a qualified resident tax, and

"(B) a qualified nonresident tax.

"(2) QUALIFIED RESIDENT TAX.—The term 'qualified resident tax' means a tax imposed by a State on the income of individuals who are residents of such State which is either—

"(A) a tax based on taxable income which meets the requirements of subsection (b), or

"(B) a tax which is a percentage of the Federal tax which meets the requirements of subsection (c),

and which, in addition, meets the requirements of subsections (e) and (f).

"(3) QUALIFIED NONRESIDENT TAX.—The term 'qualified nonresident tax' means a tax which is imposed by a State on the wage and other business income of individuals who are not residents of such State and which meets the requirements of subsections (d), (e), and (f).

"(b) QUALIFIED RESIDENT TAX BASED ON TAXABLE INCOME.—

"(1) IN GENERAL.—A tax meets the requirements of this subsection only if it is imposed on an amount equal to the individual's taxable income (as defined in section 63) for the taxable year, adjusted—

"(A) by subtracting an amount equal to the amount of his interest on obligations of the United States which was included in his gross income for the year,

"(B) by adding an amount equal to his net State income tax deduction for the year, and

"(C) by adding an amount equal to his net tax-exempt income for the year.

"(2) PERMITTED ADJUSTMENTS.—A tax which otherwise meets the requirements of paragraph (1) shall not be deemed to fail to meet such requirements solely because it provides for one or more of the following adjustments:

"(A) There is imposed a tax on the amount taxed under section 56 (relating to the minimum tax for tax preferences).

"(B) A credit determined under rules prescribed by the Secretary or his delegate is allowed against such tax for income tax paid to another State or a political subdivision thereof.

"(3) NET STATE INCOME TAX DEDUCTION.—For purposes of this subsection and subsection (c), the term 'net State income tax deduction' means the excess (if any) of (A) the amount deducted from income under section 164(a) (3) as taxes paid to a State or a political subdivision thereof, over (B) amounts included in income as recoveries of prior income taxes paid to a State or a political subdivision thereof which had been deducted under section 164(a) (3).

"(4) NET TAX-EXEMPT INCOME.—For purposes of this subsection and subsection (c), the term 'net tax-exempt income' means the excess (if any) of—

"(A) the interest on obligations described in section 103 (a) (1) other than obligations of the State and its political subdivisions, and

"(B) the interest on obligations described in such section of the State and its political subdivision which under the law of the State is subject to the individual income tax imposed by the State, over

the sum of the amount of deductions allocable to such interest which is disallowed by application of section 265, and the amount of the proper adjustment to basis allocable to such obligations which is required to be made for the taxable year under section 1016(a) (5) or (6).

"(c) QUALIFIED RESIDENT TAX WHICH IS A PERCENTAGE OF THE FEDERAL TAX.—

"(1) IN GENERAL.—A tax meets the requirements of this subsection only if it is imposed as a specified percentage of the excess of the taxes imposed by chapter 1 over the sum of the credits allowable under part IV of subchapter A of chapter 1 (other than the credits allowable by sections 31 and 39).

"(2) REQUIRED ADJUSTMENT.—A tax meets the requirements of this subsection only if the liability for tax is decreased by the decrease in such liability which would result from excluding from gross income an amount equal to the interest on obligations of the United States which was included in gross income for such year.

"(3) PERMITTED ADJUSTMENTS.—A tax which otherwise meets the requirements of paragraphs (1) and (2) shall not be deemed to fail to meet such requirements solely because it provides for both of the following adjustments:

"(A) the liability for tax is increased by the increase in such liability which would result from including as an item of gross income an amount equal to the net tax-exempt income for the year, and

"(B) the liability for tax is increased by the increase in such liability which would result from including as an item of gross income an amount equal to the net State income tax deduction for the year.

"(4) FURTHER PERMITTED ADJUSTMENT.—A tax which otherwise meets the requirements of paragraphs (1) and (2) shall not be deemed to fail to meet such requirements solely because a credit determined under rules prescribed by the Secretary or his delegate is allowed against such tax for income tax paid to another State or a political subdivision thereof.

"(d) QUALIFIED NONRESIDENT TAX.—

"(1) IN GENERAL.—A tax imposed by a State meets the requirements of this subsection only if it has the following characteristics—

"(A) such tax is imposed by the State on the wage and other business income of individuals who are not residents of such State,

"(B) such tax applies only with respect to wage and other business income derived from sources within such State,

"(C) such tax applies only if 25 percent or more of the individual's wage and other business income for the taxable year is derived from sources within such State,

"(D) the amount of such tax imposed with respect to any individual who is not a resident does not exceed the amount of tax for which he would be liable under such State's qualified resident tax if he were a resident of such State and if his taxable income were an amount equal to the excess of—

"(i) the amount of his wage and other business income derived from sources within such State, over

68A Stat. 78;
78 Stat. 56,
26 USC 256.

26 USC 1.
26 USC 31.

68A Stat. 18.
26 USC 63.

83 Stat. 580;
85 Stat. 558.

78 Stat. 40.

"(ii) that portion of the nonbusiness deductions taken into account for purposes of the State's qualified resident tax which bears the same ratio to the amount of such deductions as the income referred to in clause (i) bears to his adjusted gross income, and

"(E) the State has in effect for the same period a qualified resident tax.

"(2) WAGE AND OTHER BUSINESS INCOME.—The term 'wage and other business income' means—

"(A) wages, as defined in section 3401(a),

"(B) net earnings from self-employment (within the meaning of section 1402(a)), and

"(C) the distributive share of income of any trade or business carried on by a trust, estate, or electing small business corporation (within the meaning of section 1371(a)) to the extent such share (i) is includible in the gross income of the individual for the taxable year, and (ii) would constitute net earnings from self-employment (within the meaning of section 1402(a)) if such trade or business were carried on by a partnership.

"(e) REQUIREMENTS RELATING TO RESIDENCE.—A tax imposed by a State meets the requirements of this subsection only if for purposes of such tax—

"(1) RESIDENT INDIVIDUAL.—An individual (other than a trust or estate) is treated as a resident of such State with respect to a taxable year only if—

"(A) his principal place of residence has been within such State for a period of at least 135 consecutive days and at least 30 days of such period are in such taxable year, or

"(B) in the case of a citizen or resident of the United States who is not a resident (determined in the manner provided in subparagraph (A)) of any State with respect to such taxable year, such individual is domiciled in such State for at least 30 days during such taxable year.

Nothing in this subchapter shall be construed to require or authorize the treatment of a Senator, Representative, Delegate, or Resident Commissioner as a resident of a State other than the State which he represents in Congress.

"(2) ESTATE.—An estate of an individual is treated as a resident of the last State of which such individual was a resident (within the meaning of paragraph (1)) before his death.

"(3) TRUSTS.—

"(A) TESTAMENTARY TRUST.—A trust with respect to which a deceased individual is the principal contributor by reason of property passing on his death is treated as a resident of the last State of which such individual was a resident (within the meaning of paragraph (1)) before his death.

"(B) NONTESTAMENTARY TRUST.—A trust (other than a trust described in subparagraph (A)) is treated as a resident of such State with respect to a taxable year only if the principal contributor to the trust, during the 3-year period ending on the date of the creation of the trust, resided in the State for an aggregate number of days longer than the aggregate number of days he resided in any other State.

"(C) SPECIAL RULES.—For purposes of this paragraph—

"(i) If on any day before the close of the taxable year an existing trust received assets having a value greater

than the aggregate value of all assets theretofore contributed to the trust, such trust shall be treated as created on such day. For purposes of this subparagraph, the value of any asset taken into account shall be its fair market value on the day it is contributed to the trust.

"(ii) The principal contributor to the trust is the individual who contributed more (in value) of the assets contributed on the date of the creation of the trust (determined after applying clause (i)) than any other individual.

"(iii) If the foregoing rules would create more than one State of residence (or no State of residence) for a trust, such trust shall be treated as a resident of the State determined under similar principles prescribed by the Secretary or his delegate by regulations.

"(4) LIABILITY FOR TAX ON CHANGE OF RESIDENCE.—With respect to a taxable year, in the case of an individual (other than an individual who comes into being or ceases to exist) who becomes a resident, or ceases to be a resident, of the State, his liability to such State for the resident tax is determined by multiplying the amount which would be his liability for tax (after the nonrefundable credits allowed against such tax) if he had been a resident of such State for the entire taxable year by a fraction the numerator of which is the number of days he was a resident of such State and the denominator of which is the total number of days in the taxable year. In the case of an individual who is treated as a resident of a State with respect to a taxable year by reason of paragraph (1)(B), the preceding sentence shall be applied by substituting days of domicile for days of residence.

"(5) CURRENT COLLECTION OF TAX.—In applying chapter 24 (relating to withholding) and section 6015 and other provisions relating to declarations of estimated income (and amendments thereto)—

"(A) in the case of a resident tax, an individual is treated as subject to the tax if he reasonably expects to reside in the State for 30 days or more or if such individual is a resident of the State (within the meaning of paragraph (1), (2), or (3)), and

"(B) in the case of a nonresident tax, an individual is treated as subject to the tax if he reasonably expects to receive wage and other business income (within the meaning of subsection (d)(2)) for 30 days or more during the taxable year.

"(f) ADDITIONAL REQUIREMENTS.—A tax imposed by a State shall meet the requirements of this subsection only if—

"(1) STATE AGREEMENT MUST BE IN EFFECT FOR PERIOD CONCERNED.—A State agreement entered into under section 6363 is in effect with respect to such tax for the taxable period in question.

"(2) STATE LAWS MUST CONTAIN CERTAIN PROVISIONS.—Under the laws of such State—

"(A) the provisions of this subchapter (and of the regulations prescribed thereunder) as in effect from time to time are made applicable for the period for which the State agreement is in effect, and

"(B) any change made by the State in the tax imposed by the State will not apply to taxable years beginning in any calendar year for which the State agreement is in effect unless such change is enacted before November 1 of such calendar year.

69 Stat. 616.
26 USC 3401.
68A Stat. 353.

72 Stat. 1650.

69 Stat. 616.
26 USC 3401.
68A Stat. 737;
85 Stat. 517.

Post, p. 942.

"(3) STATE LAWS TAXING INCOME OF INDIVIDUALS CAN ONLY BE OF CERTAIN KINDS.—The State does not impose any tax on the income of individuals other than—

"(A) a qualified resident tax,

"(B) a qualified nonresident tax, and

"(C) a separate tax on income which is not wage and other business income and which is received or accrued by individuals who are domiciled in the State but who are not residents of the State within the meaning of subsection (e) (1).

"(4) TAXABLE YEARS MUST COINCIDE.—The taxable years of individuals under such tax coincide with taxable years for purposes of the taxes imposed by chapter 1.

"(5) MARRIED INDIVIDUALS.—A married individual (within the meaning of section 143)—

"(A) who files a joint return for purposes of the taxes imposed by chapter 1 shall not file a separate return for purposes of such State tax, and

"(B) who files a separate return for purposes of the taxes imposed by chapter 1, shall not file a joint return for purposes of such State tax.

"(6) NO DOUBLE JEOPARDY UNDER STATE LAW.—The laws of such State do not provide criminal or civil sanctions for an act (or omission to act) with respect to a qualified resident tax or qualified nonresident tax other than the criminal or civil sanctions to which an individual is subjected by reason of section 6361.

"(7) PARTNERSHIPS, TRUSTS, SUBCHAPTER S CORPORATIONS, AND OTHER CONDUIT ENTITIES.—Under the State law the tax treatment of—

"(A) partnerships and partners,

"(B) trusts and their beneficiaries,

"(C) estates and their beneficiaries,

"(D) electing small business corporations (within the meaning of section 1371(a)) and their shareholders, and

"(E) any other entity and the individuals having beneficial interests therein, to the extent that such entity is treated as a conduit for purposes of the taxes imposed by chapter 1, shall correspond to the tax treatment provided therefor in the case of the taxes imposed by chapter 1.

"(8) MEMBERS OF ARMED FORCES.—The relief provided to any member of the Armed Forces of the United States by section 514 of the Soldiers' and Sailors' Civil Relief Act (50 U.S.C. App. sec. 574) is in no way diminished.

"(9) WITHHOLDING ON COMPENSATION OF EMPLOYEES OF RAILROADS, MOTOR CARRIERS, AIRLINES, AND WATER CARRIERS.—There is no contravention of the provisions of section 26, 226A, or 324 of the Interstate Commerce Act or of section 1112 of the Federal Aviation Act of 1958 with respect to the withholding of compensation to which such sections apply for purposes of the nonresident tax.

"SEC. 6363. STATE AGREEMENTS; OTHER PROCEDURES.

"(a) STATE AGREEMENT.—If a State elects to enter into an agreement with the United States to have its individual income taxes collected and administered as provided in this subchapter, it shall file notice of such election in such manner and with such supporting information as the Secretary or his delegate may prescribe by regulations. The Secretary shall enter into an agreement with such State unless the Secretary notifies the Governor of the State within 90 days

68A Stat. 3.

26 USC 1.

83 Stat. 677.

26 USC 143.

Ante, p. 936.

72 Stat. 1650.

58 Stat. 722;

76 Stat. 768.

49 USC 27,

325a, 923.

49 USC 1512.

after the date of the filing of the notice of the election that the State does not have a qualified State individual income tax (determined without regard to section 6362(f)(1)). The provisions of this subchapter shall apply on and after the date (not earlier than the first January 1 which is more than 6 months after the date of the notice) specified for this purpose in the agreement.

"(b) WITHDRAWAL.—

"(1) BY NOTIFICATION.—If a State wishes to withdraw from the agreement, it shall notify the Secretary or his delegate of its intention to withdraw in such manner as the Secretary or his delegate may prescribe by regulations. The provisions of this subchapter (other than this section) shall not apply on or after the date specified for this purpose in the notification. Except as provided in regulations, the date so specified shall not be earlier than the first January 1 which is more than 6 months after the date on which the Secretary or his delegate is so notified.

"(2) BY CHANGE IN STATE LAW.—Any change in State law which would (but for this subchapter) have the effect of causing a tax to cease to be a qualified State individual income tax shall be treated as an intention to withdraw from the agreement. Notification by the Secretary to the Governor of such State that the change in State law will be treated as an intention to withdraw shall be made by the Secretary in such manner as the Secretary or his delegate shall by regulations prescribe. Such notification shall have the same effect as a notice under paragraph (1) of an intention to withdraw from the agreement received on the effective date of the change in State law.

"(c) TRANSITION YEARS.—

"(1) SUBCHAPTER CEASES TO APPLY DURING TAXPAYER'S YEAR.—If the provisions of this subchapter cease to apply on a day other than the last day of the taxpayer's taxable year, then amounts previously paid to the United States on account of the State's qualified individual income tax for that taxable year (whether paid by withholding, estimated tax, credit in lieu of refund, or otherwise) shall be treated as having been paid on account of the State's individual income tax law for that taxable year. Such amounts shall be transferred to the State as though the State had not withdrawn from the agreement. Returns, applications, elections, and other forms previously filed with the Secretary or his delegate for that taxable year, which are thereafter required to be filed with the appropriate State official shall be treated as having been filed with the appropriate State official.

"(2) PREVENTION OF UNINTENDED HARDSHIPS OR BENEFITS.—The State may by law provide for the transition to a qualified State individual income tax or from such a tax to the extent necessary to prevent double taxation or other unintended hardships, or to prevent unintended benefits, under State law.

"(3) ADMINISTRATION OF SUBSECTION.—The provisions of this subsection shall be administered by the Secretary or his delegate, by the State, or jointly, to the extent provided in regulations prescribed by the Secretary or his delegate.

"(d) JUDICIAL REVIEW.—

"(1) IN GENERAL.—Whenever under this section the Secretary or his delegate determines that a State does not have a qualified State individual income tax, such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located, or with the United States Court of Appeals for the District of Columbia, a petition for review of such action.

Ante, p. 938.

72 Stat. 941;
80 Stat. 1323.

62 Stat. 928.

A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or his delegate. The Secretary or his delegate thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28, United States Code.

"(2) JURISDICTION OF COURT; REVIEW.—The court shall have jurisdiction to affirm the action of the Secretary or his delegate or to set it aside in whole or in part and to issue such other orders as may be appropriate with regard to taxable years which include any part of the period of litigation. 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.

"(3) STAY OF DECISION.—

"(A) If judgment on a petition to review a determination under subsection (a) includes a determination that the State has a qualified State individual income tax, then the provisions of this subchapter shall apply on and after the first January 1 which is more than 6 months after the date of the judgment.

"(B) If judgment on a petition to review a determination by the Secretary under subsection (b) (2) includes a determination that the State does not have a qualified State individual income tax, then the provisions of this subchapter (other than this section) shall not apply on and after the first January 1 which is more than 6 months after the date of the judgment.

"(4) PREFERENCE.—Any judicial proceedings under this section shall be entitled to, and, upon request of the Secretary or the State, shall receive a preference and shall be heard and determined as expeditiously as possible.

"SEC. 6364. REGULATIONS.

"The Secretary or his delegate shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subchapter.

"SEC. 6365. DEFINITIONS AND SPECIAL RULES.

"(a) STATE.—For purposes of this subchapter, the term 'State' includes the District of Columbia.

"(b) GOVERNOR.—For purposes of this subchapter, the term 'Governor' includes the Commissioner of the District of Columbia.

"(c) APPLICATION OF SUBCHAPTER.—Whenever this subchapter begins to apply, or ceases to apply, to any State tax on any January 1—

"(1) except as provided in paragraph (2), such change shall apply to taxable years beginning on or after such date, and

"(2) for purposes of chapter 24, such change shall apply to wages paid on or after such date."

"(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 64 of such Code is amended by adding at the end thereof the following:

"SUBCHAPTER E. Collection of State individual income taxes."

SEC. 203. CONFORMING AMENDMENTS.

(a) LARGE REFUNDS.—Section 6405 of the Internal Revenue Code of 1954 (relating to reports of refunds and credits) is amended by adding at the end thereof the following new subsection:

"(e) QUALIFIED STATE INDIVIDUAL INCOME TAXES.—For purposes of this section, a refund or credit made under subchapter E of chapter 64 (relating to Federal collection of qualified State individual income

69 Stat. 616.
26 USC 3401.

68A Stat. 792.

Ante, p. 936.

taxes) for a taxable year shall be treated as a portion of a refund or credit of the income tax for that taxable year."

(b) TAX COURT SMALL CLAIMS.—

(1) Section 7463 of such code (relating to disputes involving \$1,000 or less) is amended by adding at the end thereof the following new subsection:

"(f) QUALIFIED STATE INDIVIDUAL INCOME TAXES.—For purposes of this section, a deficiency placed in dispute or claimed overpayment with regard to a qualified State individual income tax to which subchapter E of chapter 64 applies, for a taxable year, shall be treated as a portion of a deficiency placed in dispute or claimed overpayment of the income tax for that taxable year."

(2) Section 7463 of such Code is amended by striking out "\$1,000" in the heading and each place it appears in subsection (a) thereof and inserting in lieu thereof "\$1,500".

(3) The table of sections for part II of subchapter C of chapter 76 of such Code is amended by striking out "\$1,000" in the item relating to section 7463 and inserting in lieu thereof "\$1,500".

SEC. 204. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsections (b) and (c), the provisions of this title (and the amendments made thereby) shall take effect on the date of the enactment of this Act.

(b) COLLECTION AND ADMINISTRATION OF STATE TAXES BY THE UNITED STATES MAY NOT BEGIN BEFORE JANUARY 1, 1974.—Section 6361 of the Internal Revenue Code of 1954 (as added by section 202 (a) of this Act) shall take effect on whichever of the following is the later:

(1) January 1, 1974, or

(2) the first January 1 which is more than one year after the first date on which at least 2 States having residents who in the aggregate filed 5 percent or more of the Federal individual income tax returns filed during 1972 have notified the Secretary of the Treasury or his delegate of an election to enter into an agreement under section 6363 of such Code.

(c) JURISDICTION OF TAX COURT IN DISPUTES INVOLVING \$1,500 OR LESS.—The amendments made by paragraphs (2) and (3) of section 203 (b) of this Act shall take effect on January 1, 1974.

TITLE III—LIMITATION ON GRANTS FOR SOCIAL SERVICES UNDER PUBLIC ASSISTANCE PROGRAMS

SEC. 301. (a) Title XI of the Social Security Act is amended by adding at the end thereof the following new section:

"LIMITATION ON FUNDS FOR CERTAIN SOCIAL SERVICES

"SEC. 1130. (a) Notwithstanding the provisions of section 3(a) (4) and (5), 403(a) (3), 1003(a) (3) and (4), 1403(a) (3) and (4), or 1603 (a) (4) and (5), amounts payable for any fiscal year (commencing with the fiscal year beginning July 1, 1972) under such section (as determined without regard to this section) to any State with respect to expenditures made after June 30, 1972, for services referred to in such section (other than the services provided pursuant to section 402(a) (19) (G)), shall be reduced by such amounts as may be necessary to assure that—

"(1) the total amount paid to such State (under all of such sections) for such fiscal year for such services does not exceed the allotment of such State (as determined under subsection (b)); and

83 Stat. 733.
26 USC 7463.

Ante, p. 936.

Ante, p. 942.

49 Stat. 647;
81 Stat. 920.
42 USC 1301.

42 USC 303,
603, 1203,
1353, 1383.

42 USC 602.

"(2) of the amounts paid (under all of such sections) to such State for such fiscal year with respect to such expenditures, other than expenditures for—

"(A) services provided to meet the needs of a child for personal care, protection, and supervision, but only in the case of a child where the provision of such services is needed (i) in order to enable a member of such child's family to accept or continue in employment or to participate in training to prepare such member for employment, or (ii) because of the death, continued absence from the home, or incapacity of the child's mother and the inability of any member of such child's family to provide adequate care and supervision for such child;

"(B) family planning services;

"(C) services provided to a mentally retarded individual (whether a child or an adult), but only if such services are needed (as determined in accordance with criteria prescribed by the Secretary) by such individual by reason of his condition of being mentally retarded;

"(D) services provided to an individual who is a drug addict or an alcoholic, but only if such services are needed (as determined in accordance with criteria prescribed by the Secretary) by such individual as part of a program of active treatment of his condition as a drug addict or an alcoholic; and

"(E) services provided to a child who is under foster care in a foster family home (as defined in section 408) or in a child-care institution (as defined in such section), or while awaiting placement in such a home or institution, but only if such services are needed (as determined in accordance with criteria prescribed by the Secretary) by such child because he is under foster care,

not more than 10 per centum thereof are paid with respect to expenditures incurred in providing services to individuals who are not recipients of aid or assistance (under State plans approved under titles I, X, XIV, XVI, or part A of title IV), or applicants (as defined under regulations of the Secretary) for such aid or assistance.

"(b)(1) For each fiscal year (commencing with the fiscal year beginning July 1, 1972) the Secretary shall allot to each State an amount which bears the same ratio to \$2,500,000,000 as the population of such State bears to the population of all the States.

"(2) The allotment for each State shall be promulgated for each fiscal year by the Secretary between July 1 and August 31 of the calendar year immediately preceding such fiscal year on the basis of the population of each State and of all of the States as determined from the most recent satisfactory data available from the Department of Commerce at such time; except that the allotment for each State for the fiscal year beginning July 1, 1972, and the following fiscal year shall be promulgated at the earliest practicable date after the enactment of this section but not later than January 1, 1973.

"(c) For purposes of this section, the term 'State' means any one of the fifty States or the District of Columbia."

(b) Sections 3(a)(4)(E), 403(a)(3)(D), 1003(a)(3)(E), 1403(a)(3)(E), and 1603(a)(4)(E) of such Act are amended by striking out "subject to limitations" and inserting in lieu thereof "under conditions which shall be".

75 Stat. 76.
42 USC 608.

42 USC 301,
1201, 1351,
1381, 601.

State
allotment.

"State."

42 USC 303,
603, 1203,
1353, 1383.

(c) Section 403(a)(5) of such Act is amended to read as follows:

"(5) in the case of any State, an amount equal to 50 per centum of the total amount expended under the State plan during such quarter as emergency assistance to needy families with children."

(d) Sections 3(a), 403(a), 1003(a), 1403(a), and 1603(a), of such Act are amended, in the matter preceding paragraph (1) of each such section, by striking out "shall pay" and inserting in lieu thereof "shall (subject to section 1130) pay".

(e) The amendments made by this section (other than by subsection (b)) shall be effective July 1, 1972, and the amendments made by subsection (b) shall be effective January 1, 1973.

Approved October 20, 1972.

81 Stat. 893;
42 USC 603.

42 USC 303,
1203, 1353,
1383.

Ante, p. 945.
Effective
date.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 92-1018 (Comm. on Ways and Means) and No. 92-1450 (Comm. of Conference).

SENATE REPORTS: No. 92-1050 (Comm. on Finance) and No. 92-1229 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 118 (1972):

June 21, 22, considered and passed House.

Aug. 18, Sept. 5-8, 11, 12, considered and passed Senate; amended.

Oct. 12, House agreed to conference report; receded and concurred in Senate amendment, with an amendment.

Oct. 13, Senate agreed to conference report; concurred in House amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 8, No. 43:

Oct. 20, Presidential statement.

department of the treasury

vol. 1 / no. 1 / may 1973

revenueNews

an office of revenue sharing newsletter

Information Sharing . . .

This is the first in a series of newsletters which will be published by the Intergovernmental Relations staff of the Office of Revenue Sharing, in an effort to keep your office informed of the latest updates and interpretations, along with any additional information which may be helpful in administering and understanding the general revenue sharing program. This letter is being sent, free of charge, to regional associations, public interest

groups, congressional offices and other associations which interact with units of local government.

As you are no doubt aware, the Office of Revenue Sharing will remain Washington-based with no regional offices. We recognize the fact that organizations and offices such as yours have played a vital role in identifying problems and explaining or otherwise clarifying various requirements of the legislation for local officials. We hope that this service will continue, and thus the purpose of this publication.

Feel free to reprint part or all of this letter for distribution to your constituents. We would be happy to hear any suggestions on how to improve this service. Furthermore, if you have specific regional problems, please contact the appropriate state coordinator, listed in this newsletter.

*Marilynne R. Rudick
Gregory C. Golembe
Jeffrey H. Schiff*

Department of the Treasury
Office of Revenue Sharing
1900 Pennsylvania Ave. N.W.
Washington, D.C. 20226

Official Business
Penalty for Private Use \$300

Postage and Fees Paid
Department of the Treasury

TREAS-551

Third Class



Court Case Examines "Revenue Shifting"

A recent case in the Federal District Court for the Northern District of Georgia examined the legality of revenue-shifting, whereby revenue sharing entitlement funds are spent in a priority expenditure category thus releasing funds to be shifted into another area of expenditure.

In this instance, the City of Atlanta, after having allocated a portion of its revenue sharing funds to its firemen's salaries account, attempted to shift the "freed-up" funds from its firemen's salaries account into the water department fund. The purpose of the shift was to effect Atlanta's proposed plan to distribute a water and sewer charge rebate (or credit) to those citizens with water and sewer accounts. The Court held that a water and sewer rebate was not a priority expenditure permitted by Section 103 of the Act.

Judge Freeman clearly stated in his decision that the revenue sharing legislation does not prohibit the use of revenue sharing funds to effect tax relief. In Judge Freeman's words, "The Act seems clearly to have contemplated that the infusion of revenue sharing funds into state and local governments would permit future tax relief to hard-pressed taxpayers of those governments."

In short, the decision constitutes a warning that general revenue sharing funds may not be channeled indirectly into non-priority categories.

This decision does not restrict a local government from decreasing its tax revenues as a result of expending general revenue sharing funds for a permitted use.

PUR Forms Mailed In April

Planned Use Reports (Form 3229) required by Section 121 (b) of the Act for the Third Entitlement Period were mailed to all recipient governments on April 13th. This report asks recipients to indicate the amounts and purposes for which the unit of government plans to use or obligate Third Entitlement Period funds only. The regulations do not require reporting of planned uses for the First and Second Period allocations. An estimate of what each government will receive for the Third Entitlement Period (January 1-June 30, 1973) was printed at the top of the Planned Use Report, and

is the amount which should be accounted for in completing the form. If a unit of government has not at this time planned for the expenditure of any or all of its Third Entitlement Period payments, the Chief Executive Officer of that government should submit an executive proposal for use of these funds, and indicate this by checking box K on the form. Such an executive proposal is useful in that it allows citizens to react to the proposed use before the plan is finalized. Should the actual use differ from the planned use as set forth on this form, it is not necessary to send an amended version of the Planned Use Report to ORS.

State and local governments should return the completed report to the Office of Revenue Sharing by June 20, 1973. In accordance with the Act and Regulations, this report must be published in its entirety by the recipient government in a newspaper of general circulation and the information contained in it must be made available to other media in the area including minority and bilingual media.

The Planned Use Report should not be confused with the Status of Trust Fund Report. The latter, required annually, is a statement of how entitlement funds are actually used, appropriated, or obligated. The next issue of *reNews* will highlight the requirements of the Status of Trust Fund Report.

1000 Governments Still Not "Assured"

Approximately 1000 governments still have not returned their Assurance Form (Form 3227) to the Office of Revenue Sharing, and as a result have had their April revenue sharing payments withheld.

Section 123 (a) of the Act requires that each government assure the Secretary of the Treasury of compliance with the requirements of the legislation in order to receive funds after January 1, 1973. Such assurance forms must be completed by the Chief Executive Officer of the unit of government.

Jurisdictions which have returned their assurance forms since April 1st will receive their checks in a supplemental payment in May. Governments which submitted a letter in lieu of Form 3227, should return this form (a duplicate of which has already been sent to them) in order to receive

their July check on schedule.

ORS will be soliciting the cooperation of State House Coordinators in an attempt to remind governments whose assurance forms have not been received.

Taxes Reviewed for "Dependent" Schools

Four hundred and fifty jurisdictions with dependent school systems in the States of Alabama, Alaska, Connecticut, Tennessee, Virginia, Maryland, as well as N.Y. City had their "adjusted taxes" recomputed by ORS in cooperation with the Bureau of the Census.

In these areas, educational services are a function of the general government, county or city, rather than a special and autonomous school district. It was therefore difficult to determine which monies should be considered school taxes, and thus subtracted from local taxes to arrive at the "adjusted tax" figure used to compute revenue sharing allocations for local governments.

In the case of these governmental units with dependent school systems, it was determined that for revenue sharing purposes, the ratio established of taxes to total revenues will be applied to school expenditures to determine what percentage of school expenditures should be considered school taxes. This new method of computing "adjusted taxes" is set forth in Section 51.2 (b) (2) of the Final Regulations published in the *Federal Register* on April 10, 1973.

The governments involved were initially informed of this new procedure by mailgram, and received a second mailgram in April advising them of the outcome of the recomputation. In addition, all counties and cities involved received a RS 11 worksheet from the Bureau of the Census which contained the figures used in the readjustment. Each government now has 60 days from the receipt of this form to verify the data used. As a consequence of the relative nature of the allocation process, other towns or cities within a county which have had their adjusted tax data recomputed may find that their allocation has been affected as well.

Quarterly Payments

Beginning with the April 6th check, (Entitlement Period III), all revenue sharing payments will be mailed at

the end of each calendar quarter. (April, July, October, and January.) The April 6th payment contained 50% of the Third Entitlement allocation. Unlike the first two payments, no reserve amount was withheld from these checks. The Secretary of the Treasury, however, reserves the right to withhold funds from future payments under certain circumstances if he deems it necessary.

ORS Adopts Final Regulations

The following is a summary of important provisions and changes in the Final Regulations as adopted by the Office of Revenue Sharing. These regulations will apply to all entitlement periods beginning on or after January 1, 1973.

51.2 (b) Chief Executive Officer

"Chief Executive Officer", as redefined means the elected officer or legally designated official (not necessarily elected), who has the primary responsibility for governmental affairs, i.e., Mayor, Chairman of the Board (non-elected), Chief or President of a Tribe.

51.11 Actual Use of Funds

Each recipient government will submit an annual report within 60 days of June 30th providing the status of the trust fund as of that date, including amounts and purposes for which the funds (plus any interest accrued) were expended, obligated, or otherwise transferred. The reporting form will be provided by the Office of Revenue Sharing.

51.13 Publication and Publicity

In addition to publishing the required reports on the planned and actual use of revenue sharing funds in a local newspaper with area wide circulation, recipient governments must inform the local news media including minority and bilingual media of such publication. They must also make available to the public information necessary to support the data submitted on these reports.

51.23 (b) Newly Incorporated Units of Government

A unit of government which incorporates or otherwise comes into existence during an entitlement period will become eligible for participation in the program at the beginning of the next entitlement period. (Entitlements

cannot be computed until the relevant data information has been developed by the Bureau of the Census.) An official designated by the Governor must submit certification of this change to the Bureau of the Census.

51.30 Matching Funds

No recipient government may use entitlement funds, either directly or indirectly, to obtain Federal matching dollars. This prohibition does not exclude the possibility of revenue sharing funds being used to supplement monies already obtained through a Federal matching program as long as the supplement is "added on" to the matched funds and is not used to obtain more Federal matching dollars.

A simple example might be a project whose total cost is \$130,000. The government in question has only \$25,000 of its own sources funds (not including revenue sharing) to spend on the project. There is a Federal matching program available which provides \$3 for every \$1 of local funds. Thus the government could raise \$100,000; but it needs \$130,000. It could then supplement the project with \$30,000 of its revenue sharing funds since the \$30,000 was not used to get more matching dollars; thus the total collected would be \$130,000—the cost of the project.

With regard to the question "How will the ORS know if my government has matched with revenue sharing funds?", there are several tests included in the new regulations. If the government can establish by its accounting procedures that any of the following apply, then that recipient will be presumed to be in compliance with this non-matching provision with regard to any increased matching it might undertake in a given year:

1. it can show an increase in its own revenues (exclusive of revenue sharing) to cover any increased matching.
2. it can show an aggregate increase in its non-matching expenditures which equals its revenue sharing payments.
3. it can show a decrease in its own revenues (tax reduction) and that revenue sharing took up the slack in non-matching areas which had previously been funded by local taxes.
4. it can show that its increased matching is linked to an "in-kind" contribution (land, etc.) to a matching program which was not bought, directly or indirectly, with entitlement funds.

51.31 (b) Debt retirement

The Administrative Ruling (73-1) on debt retirement by units of local governments has been incorporated into the regulations. Please check this section of the regulations for important limitations on the retirement of debt.

51.32 Discrimination:

Under this provision, the scope of the programs and activities funded with revenue sharing money has been expanded to include programs undertaken by units of government and contractors to which entitlement funds have been transferred by recipient governments.

In instances of non-compliance with the discrimination provisions by a recipient government, the Secretary of the Treasury, in addition to requiring repayment (or forfeiture) of any money spent in a discriminatory activity, is now empowered to withhold all entitlement payments from a government found in violation until compliance has been achieved.

51.40 Auditing and evaluation

The section of the regulations relating to accounting requirements has been clarified. The regulations now state that the system which recipient governments use to account for the distribution of entitlement funds must be detailed to a level which adequately indicates that a recipient government has not violated the restrictions and prohibitions of the Act.

4000 Governments Challenge Data

Data challenges were received by the Office of Revenue Sharing from approximately 4000 units of governments. These challenges were in response to a data verification procedure through which the program's 39,000 recipients were asked to check the figures which were used to compute their first and second revenue sharing payments. The Office of Revenue Sharing is working in cooperation with the Bureau of the Census to individually evaluate each data inquiry. All challenges which were resolved by April 6th were reflected in the April payment. Adjustments which might be necessitated by correction of data will be computed and paid as soon as possible. Such adjustments to previous payments were not reflected in

the checks which were mailed in early April.

The determinations of the outcome of such data challenges have been sent to the recipient governments which initiated them. They may appeal this decision within sixty days of notification of the first determination, if they feel that they can present additional information to document their claims. However, *all valid data challenges must be based on the data definitions* which were previously distributed to all recipients. It is important to remember that all inquiries regarding tax data *must* be based on information from Federal Fiscal Year 1971 or the Local Fiscal Year which ended during the twelve months prior to June 30, 1971.

Some governments have received a change in their allocation even though they did not initiate a data challenge. This is a result of the relative nature of the allocation process. A change in any community within a county, could affect the amount of the payment going to other governments within the county area since each government receives its allocation based on how its population, tax effort, and per capita income compare with these same factors for other places in the county. Thus, an increased payment to one government could result in a downward adjustment to the allocation of other governments.

Davis-Bacon Wages Prevail for R.S. Projects

Under the provisions of the revenue sharing legislation all laborers and mechanics employed by contractors or subcontractors on any construction project, 25 percent or more of the cost of which is paid with revenue sharing funds, must be paid wages consistent with those specified for that locality in accordance with the Davis-Bacon Act. [Sec. 123 (b)].

To comply with the Davis-Bacon provision, recipient governments must file, with the local Department of Labor office, a SF-308 form requesting a wage determination for each intended project at least 30 days before the contract is awarded, and must make sure that the wage determination issued is incorporated in the contract specifications. Regulations 29CFR, Part 1, issued by the Department of Labor,

spell out fully the use and effectiveness of wage determinations, and provide the review procedures to be followed with regard to wage determination questions.

The Davis-Bacon Act applies only to contract labor, and does not affect projects constructed by the government's own employees.

Specific inquiries by recipient governments or by contractors should be addressed to the nearest U.S. Department of Labor regional office.

New State Data Introduced

New data was introduced to compute the *total state area* revenue sharing *allocation* for Entitlement Period III, (January-June, 1973). However, there was no change in the data definitions used to compute allocations to local governments within the state. New state population estimates for July 1972, were developed by the Bureau of the Census. In addition, *actual* state income tax collections for Calendar Year 1972 and *actual* Federal income tax liabilities for Calendar Year 1971 were entered into the data bank to replace estimated data that was previously used. *Intrastate allocations to local governments were still based on population data for April, 1970, and tax data for Fiscal Year 1971.*

Please use
Revenue
Sharing
Account
Number when
contacting
our office

IGR Area Coordinators

For additional information and answers to specific problems and questions on revenue sharing, please contact the appropriate area coordinator, listed below:

		(Area Code 202)
Ala.	Hugh Allen	634-5191
Alaska	Ron Gyure	634-5192
Ariz.	Gregory Golembe	634-5193
Ark.	Hugh Allen	634-5191
Calif.	Marilynne Rudick	634-5196
Colo.	Gregory Golembe	634-5193
Conn.	Laura Garcia	634-5196
Del.	Hugh Allen	634-5191
D.C.	Mary Sexton	634-5197
Fla.	Hugh Allen	634-5191
Ga.	Hugh Allen	634-5191
Ha.	Marilynne Rudick	634-5196
Id.	Ron Gyure	634-5192
Ill.	Mary Sexton	634-5197
Ind.	Mary Sexton	634-5197
Iowa	Ron Gyure	634-5192
Kan.	Ron Gyure	634-5192
Ky.	Karen Spaight	634-5195
La.	Gregory Golembe	634-5193
Me.	Laura Garcia	634-5196
Md.	Marilynne Rudick	634-5196
Mass.	Laura Garcia	634-5196
Mich.	Mary Sexton	634-5197
Minn.	Karen Spaight	634-5195
Miss.	Hugh Allen	634-5191
Mo.	Ron Gyure	634-5191
Mont.	Gregory Golembe	634-5193
Neb.	Ron Gyure	634-5191
Nev.	Marilynne Rudick	634-5196
N.H.	Laura Garcia	634-5196
N.J.	Laura Garcia	634-5196
N.M.	Gregory Golembe	634-5193
N.Y.	Laura Garcia	634-5196
N.C.	Karen Spaight	634-5195
N.D.	Karen Spaight	634-5195
Ohio	Mary Sexton	634-5197
Okla.	Gregory Golembe	634-5193
Ore.	Ron Gyure	634-5192
Pa.	Marilynne Rudick	634-5196
R.I.	Laura Garcia	634-5196
S.C.	Karen Spaight	634-5195
S.D.	Karen Spaight	634-5195
Tenn.	Karen Spaight	634-5195
Tex.	Gregory Golembe	634-5193
Utah	Gregory Golembe	634-5193
Va.	Marilynne Rudick	634-5196
Vt.	Laura Garcia	634-5196
Wash.	Ron Gyure	634-5192
W.Va.	Marilynne Rudick	634-5196
Wisc.	Karen Spaight	634-5195
Wyo.	Gregory Golembe	634-5193