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

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

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

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

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

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

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

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

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

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

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

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

Other Matters

Environmental Review

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