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OFFICE OF MANAGEMENT AND BUDGET

CIRCULAR NO.

A-95

WHAT IT IS-

HOW IT WORKS

A Handbook

PREPARED BY

INTERGOVERNMENTAL RELATIONS AND

REGIONAL OPERATIONS DIVISION

OFFICE OF MANAGEMENT AND BUDGET

A-95: WHAT IT IS -- HOW IT WORKS

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OMB CIRCULAR NO. A-95

WHAT IT IS -- HOW IT WORKS

Office of Management and Budget Circular No. A-95 is a regulation designed to promote maximum coordination of Federal and federally assisted programs and projects with each other and with State, areawide, and local plans and programs.

STRUCTURE OF THE CIRCULAR

OMB Circular No. A-95 comprises two components: the Circular itself, which is very brief, and five attachments. The Circular identifies the statutory authorities on which it is based, its primary objectives, and general provisions that apply to its several operative Parts.

Attachment A contains the operative requirements of the Circular and definitions of key terms used therein. Most of the definitions are statutory.

Attachment B contains the laws on which the Circular is based: Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and Title IV of the Intergovernmental Cooperation Act of 1968.

Attachment C contains the language of Section 102(2)(C) of the National Environmental Policy Act of 1969. The clearinghouse review system established under Part I of Attachment A is used in partial fulfillment of the Act. (NOTE: A-95 is often cited as being based, in part, on the National Environmental Policy Act. It is not, nor is it an extension of NEPA, but is a means to secure State and local inputs to Environmental Impact Statements as required by Section 102(2)(C) of the Act.)

Attachment D identifies the Federal domestic assistance programs covered by the Project Notification and Review System.

Attachment E is Standard Form 424 which is used to inform clearinghouses of actions taken on projects they have reviewed. SF 424 may also be used, at the election of any clearinghouse, as the Notification of Intent.

The Circular has four major parts under Attachment A:

- Part I, the "Project Notification and Review System" (PNRS), deals with State and local review of applications for Federal assistance.
- Part II, "Direct Federal Development," provides for consultation by Federal agencies with State and local government on direct Federal development projects.
- Part III, "State Plans," provides for gubernatorial review of State plans required under certain Federal formula grant programs.
- Part IV, "Coordination of Planning in Multijurisdictional Areas," promotes coordination of federally assisted planning at the substate regional level.

STATUTORY BASE

Circular No. A-95 was first issued July 24, 1969, in partial implementation of Title IV of the Intergovernmental Cooperation Act of 1968. A-95 also rescinded and incorporated the provisions of an earlier OMB directive, Circular No. A-82, which was issued to implement Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

Major revisions to the Circular were promulgated on February 9, 1971, November 13, 1973, and January 2, 1976 (published in the Federal Register, January 13, 1976). The revisions were occasioned by the need for clarification of some of the requirements and by demands for strengthening various of its provisions and for broadening the scope of the Federal programs and activities covered under its provisions.

The "Project Notification and Review System" is based in large measure on Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966. Section 204 requires that applications for Federal assistance to a wide variety of public facility type projects (highways, hospitals, etc.) in metropolitan areas must be accompanied by the comments of an areawide comprehensive planning agency as to the relationship of the proposed project to the planned development of the area.

However, Title IV of the Intergovernmental Cooperation Act is the broad policy base on which A-95 rests. It is fundamentally a statement of national policy which asserts the cooperative,

intergovernmental nature of Federalism and directs the close coordination of Federal and federally assisted plans and programs for the development of the nation's physical, natural, economic, and human resources with State, areawide, and local plans and programs.

Title IV directs the President to "establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development." The basic objectives of this mandate center about the importance of sound and orderly development of urban and rural areas for the economic and social development of the nation. Section 401(b) of the Act requires that "all viewpoints -- national, State, regional, and local -- shall, to the extent possible, be taken into account in planning Federal or federally assisted development programs and projects." Section 401(c) states, moreover, that "to the maximum extent possible, consistent with national objectives, all Federal aid for development purposes shall be consistent with and further the objectives of State, regional and local comprehensive planning."

The following paragraphs are aimed at further elaborating the regulations promulgated by Circular No. A-95.

THE APPROACH

1. Philosophy

The "philosophy" that lies behind A-95 is based on the following views.

The statutes themselves represent a response to the need for coordination of planning and development activities within and among Federal, State, and local levels of government, at each of which there may be structural obstacles of such coordination.

- At the Federal level, there is a myriad of programs of assistance to State and local government that were developed piecemeal and, taken as a whole, are not coherent as to policy and administration. They are often duplicative and sometimes even in conflict with each other;

- At the State level, Governors' abilities to manage are not only often circumscribed by State Constitutions but administratively frustrated, with respect to Federal programs, by functional bureaucracies;

- Local government is heavily fragmented both within and among jurisdictions; and

- Within individual jurisdictions many federally assisted programs and projects cannot be planned without reference to programs and projects within other functional or jurisdictional areas.

A-95 is an instrument for facilitating the needed coordination without encroaching on the constitutional domain of the States or the statutory responsibilities of Federal program administrators.

2. Basic Premises

A-95 is based on the following premises:

- Fundamental to coordination is communication; therefore,

- If people who should be talking to each other are put in a position of having to talk to each other, then

- They may come to identify and understand their communities of interest and areas of conflict; and, if they do, then

- They may cooperate in pursuit of their common interests and try to negotiate their differences;

- To the extent that they do, federally assisted programs and projects are more likely to be better coordinated, resulting in dollar savings, better projects and more value for public investment.

In short, A-95 cannot assure coordination, but it is designed to create a climate for intergovernmental cooperation in which coordination is more likely to come about.

3. Basic Objectives

It is the aim of OMB to be very clear about the objectives of A-95, but to refrain, to the greatest practicable degree, from being prescriptive about the means by which those objectives are to be achieved. The requirements of A-95 apply almost entirely to Federal agencies (and under their rules to applicants for Federal assistance). That is, A-95 sets forth procedures under which Federal agencies and applicants for Federal assistance must give State and local governments, through State and areawide clearinghouses, an opportunity to assess the relationship of their

proposals to State, areawide, and local plans and programs. Federal agencies are to consider these assessments in the light of the mandates of Title IV in deciding whether or not to proceed with the proposed project.

However, recognizing the wide diversity among States, regions, and localities in the manner in which the public business is conducted, A-95 puts few constraints on clearinghouses in the way they manage the review process. They are limited as to the time allowed for reviews, and they are obligated to identify jurisdictions and agencies whose plans or programs might be affected by a proposed project and give them a chance to participate in the review process. However, A-95 does not prescribe:

- The existence of clearinghouses as such;
- The organization of clearinghouses;
- The procedures or techniques by which clearinghouses manage the review process; or
- Whether or not clearinghouses even carry out reviews for particular projects or types of projects under programs covered by the Circular.

In short, A-95 is designed to provide an opportunity for Governors, mayors, county elected officials, and other State and local officials, through clearinghouses, to influence Federal decisions on proposed projects that may affect their own plans and programs.

It should be stressed, however, that clearinghouse recommendations on Federal or federally assisted development proposals are advisory only. An endorsement of a proposal will not assure positive action by the Federal agency, nor will negative recommendations constitute a veto over a proposal.

THE 1976 AMENDMENTS TO OMB CIRCULAR NO. A-95

During 1974, the General Accounting Office undertook a review of Parts I and II of the Circular to ascertain how it was working and how it might be improved. While the GAO report proceeded from the assumption that A-95 is a valuable and productive instrument for improving the management of Federal domestic programs, it concluded that achievement of its full potential depended upon:

- Broadening of program coverage under Part I;
- Clarification of various elements of requirements under Part I;
- Greater guidance to Federal agencies under Part II;
- More rigorous implementation on the part of OMB and the Federal agencies.

Most of the changes in the 1976 revision were made in Parts I and II, and in substantial measure they reflect GAO recommendations.

1. Program Coverage

Originally, GAO had recommended that Part I cover all Federal domestic assistance programs, but OMB pointed out that many appeared to fall outside the scope and objectives of the laws on which A-95 is based: direct assistance to individuals, scientific end technological research, etc. Therefore, GAO modified its recommendation to suggest coverage of all programs having an impact on area or community development. The 1976 revision expands coverage to comprise virtually all programs having an identifiable impact on area or community development.

However, because of apparent widespread confusion over criteria for including or excluding programs under Part I, a new paragraph 8 was added to Part I in an attempt to mitigate this confusion. Paragraph 8.a. sets forth the primary concerns and objectives of A-95 and the laws on which it is based. These center on federally assisted development having an impact on State, areawide, and local development. A-95 is concerned with achieving the most effective and efficient utilization of Federal assistance resources through coordination and the elimination of conflict and duplication.

Paragraph 8.b. sets forth eight types of programs that are not considered appropriate for coverage under A-95. They are considered inappropriate, because project impacts on State, areawide, or local development are only discernible in the aggregate (e.g., grants or loans to individuals for personal or family betterment), indirectly (e.g., technological research leading to the discovery of a new chemical compound to drive automobile engines), or after the fact (e.g., grants to a school district to improve student reading capability). In sum, they are the types of programs where the evaluative capability of clearinghouses and their associated agencies could not, generally, be effectively used.

Paragraph 8.c. sets forth criteria upon which exceptions from review requirements might be made for certain categories of projects under programs that are covered. They are, for the most part, based on the excluded program types identified in paragraph 8.b.

Paragraph 8.d. provides for procedural variations that are needed in certain situations where it would be difficult to follow the normal requirements, particularly the time allowed for review. This most frequently arises in the case of a new program where statutory mandates set deadlines for start-up. The administering agency will require time to develop procedures for applicants to follow, as well as for internal agency program management. Thus, little time remains for the normal A-95 review (see Exhibits 1 and 2). The variation granted in such cases is either a shortening of the review time or simultaneous submission of the application to the funding agency and to the clearinghouses. Clearinghouse comments are then sent directly to the funding agency.

In the past, some agencies have requested procedural variations when Congress has delayed appropriations for a program. This is not normally considered a valid reason for a variation. Applicants will, generally, have been preparing applications so that they will be ready for submittal to the Federal agency when funds are made available. Thus, there is no reason that the prospective applicants cannot be consulting clearinghouses during this waiting period.

2. Clarifications

In the 1976 revision, OMB has attempted to elaborate on such of the procedures -- particularly the timing of reviews under Part I -- about which there has been some confusion. A number of things that were more or less implicit in the previous Circular were made explicit. For instance, it had always been the obligation of a clearinghouse to give a mayor opportunity to make an independent review of all proposed projects in his jurisdiction, should he so request. A new provision of paragraph 3.b. makes this clear.

Further clarifications are achieved by incorporating this handbook, "A-95: What It Is -- How It Works," by reference in the main body of the Circular (paragraph 4). Similarly, "A-95 Administrative Notes" are incorporated in paragraph 5. The administrative notes are a device for advising clearinghouses and others of OMB interpretations or answers to new questions that have arisen about the Circular or of temporary exceptions or procedural variations that have been granted.

3. Improved Implementation

During 1974, OMB took a most significant action to improve the administration of A-95 requirements by delegating responsibility for day-to-day operational oversight of the Circular to the Federal Regional Councils. OMB retained responsibility for policy oversight and development.

The delegation provided that the FRCs would provide implementation oversight at least at the level that had been provided by OMB. This involved, in very substantial measure, responding to formal complaints and inquiries for information on the Circular. However, OMB encouraged the FRCs, insofar as their own priorities and resources permitted, to go beyond this. Training of Federal field personnel in A-95 requirements, development of informational materials, establishment of liaison arrangements with clearinghouses, studies of A-95 implementation among the agencies and at the clearinghouse level were encouraged. Moreover, although OMB retained policy control, it was made very clear to the FRCs that OMB expected them to be a primary source of policy input, both in terms of recommendations for policy initiatives and as consultants to OMB on policy development.

The FRCs have all gone beyond the basic charge to be responsive to complaints and inquiries. Most have undertaken studies of individual agency compliance and clearinghouse operations, have conducted training seminars or similar efforts to increase Federal field personnel understanding of the requirements, and have established liaison with State and areawide clearinghouses.

Feedback from clearinghouses in most parts of the country indicates a higher level of Federal responsiveness to A-95 requirements.

Another action designed to improve implementation of the A-95 requirements is the amendment to the Circular requiring that all Federal agencies having programs affected by the requirements publish their implementing regulations and procedures in the Federal Register. Publication is intended to secure a greater consistency among such regulations and to increase awareness and understanding of the requirements by Federal personnel administering the programs affected by A-95, by potential applicants, and by the clearinghouses.

Other amendments to the Circular will be touched on at appropriate places in the following discussion of the various requirements under the several Parts of Attachment A.

PART I: PROJECT NOTIFICATION AND REVIEW SYSTEM

1. The Process in Brief

The Project Notification and Review System (PNRS) may be thought of as an "early warning system" to facilitate coordination of federally assisted projects with State, regional, area and local

plans and programs. Coordination is sought through review by State and local governments of applications for Federal assistance. The medium through which State and local governments and agencies are provided with opportunity to make such reviews are State and areawide "clearinghouses" which are generally comprehensive planning agencies.

The PNRS is referred to as an "early warning system" as it is a two-step process, the first of which signals clearinghouses that an application is in preparation. When an applicant-to-be decides to seek Federal assistance for a project, he sends a "notification of intent" (NOI) to the State and the areawide clearinghouses, which provides them with a summary description of the proposed project. More detailed NOI procedures are often prescribed by the clearinghouses within limits set by the Circular.

The idea at this stage is to identify potential issues or problems so that the applicant will be saved the trouble and expense of completing an application for a project having serious problems. Their early disclosure may permit changes which will win clearinghouse endorsement of the completed application.

The clearinghouse, then, will examine the NOI to determine if there are actual or potential problems with the project in relation to State or areawide plans or programs. It will also try to identify any individual agencies or jurisdictions having plans or programs that might be affected by the proposed project. The clearinghouse will assure that they receive a copy of the NOI or otherwise have an opportunity to evaluate the proposal.

Within 30 days of receiving the NOI, the clearinghouse must indicate to the applicant whether or not there are any issues raised by the proposal. If there are, arrangements are made for negotiating their resolution. If there are none, the clearinghouse may "sign off." If that is the case (with respect to both State and areawide clearinghouses), the applicant has fulfilled his obligations and is free to submit his application to the funding agency at such time as he has completed it. If a clearinghouse requests it, an information copy is sent to the clearinghouse.

Where an applicant has received no word, acknowledgment, or response to an NOI from a clearinghouse within 30 days, it may assume that the clearinghouse will have no comments and may proceed accordingly. Therefore, clearinghouses are advised to acknowledge the NOI and indicate potential interest.

The second stage of the review process involves a review of the completed application, if issues and problems identified by the clearinghouse have not been resolved. Clearinghouses may have 30 days to review the completed application and supply any comments they may have to the applicant. All comments submitted by clearinghouses become part of the application and must accompany it when it is sent to the funding agency. The funding agency will utilize such comments in evaluating the application.

In many cases, preparation of an application is very simple and can be accomplished in little time. In such cases, preparation of an NOI may be superfluous, and it will be simpler to submit the completed application to the clearinghouses. In such cases, or in any case where no NOI has been submitted, clearinghouses may have 60 days to review the application. However, in most cases, particularly where physical development projects are involved, application preparation may take several months or more (and will generally involve substantial expense). In such cases, submission of an NOI will serve to expose any problems which can be resolved during the application preparation process, so that when it is completed, its submission need not be delayed an extra 30 days. Even where issues have not been resolved, delay is minimized, because the position of the clearinghouse is established, and comments can be prepared and transmitted to the applicant expeditiously.

The whole idea of the two-stage review process is to avoid red tape and delay. It should be viewed by clearinghouses (and by applicants) as a service to clientele governments and other applicants to enable them to develop the best possible project to meet their needs without doing damage to the plans and programs of others. Many clearinghouses have developed quick screening procedures so they can use their review resources on projects most likely to have major community or intergovernmental impact. Most reviews are concluded during the early warning stage.

It should be noted that clearinghouses themselves are usually also applicants for assistance under various programs and are, therefore, subject to the requirements of Part I. In the case of State clearinghouses, other State agencies as well as areawide clearinghouses may have comments on the proposed project or activities for which assistance is being sought. Similarly, in the case of areawide clearinghouse applicants, individual local jurisdictions or the State clearinghouse may wish to comment.

2. Clearinghouses

a. Organization and Designation Criteria. There are two types of clearinghouses: State and areawide. State clearinghouses are designated by the Governor and are usually, but not

always, State comprehensive planning agencies. In some cases, they are State budget or administrative offices. Areawide clearinghouses are almost always comprehensive planning agencies, covering one or more counties. Most of them are organizations of units of general local governments comprised in the area, that is "Councils of Governments" (COGs).

The Office of Management and Budget normally designates areawide clearinghouses covering metropolitan areas, based on its authority under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966. However, it is OMB policy to seek the concurrence of the Governor before making or changing such a designation. This is because Part IV of A-95 encourages Governors to develop Statewide systems of planning districts and requires Federal agencies assisting multijurisdictional planning to conform to them, unless there is clear justification not to.

This has led to some anomolies. Within States, some Governors have designated planning districts larger than, but encompassing metropolitan clearinghouse jurisdictions. The Governors then sometimes designate the larger district planning organization, pursuant to their authority under A-95, as a clearinghouse, while requesting that the metropolitan clearinghouse retain its own designation. Thus, applicants in the metropolitan counties must submit their applications to two areawide clearinghouses (as well as to the State clearinghouse), unless the two areawide clearinghouses have worked out arrangements for a single point of entry into the review system. In many cases, however, the metropolitan clearinghouse has merged with the larger area organization or simply has expanded its jurisdiction.

A rather worse anomaly exists in the case of interstate metropolitan areas. Here, in many instances, a metropolitan area clearinghouse designated by OMB may straddle State borders and have its parts on either side encompassed in larger substate districts designated by the Governors of each State. This tends to fragment areawide planning for a variety of functions which should be planned on the basis of a whole urbanized area. This has been particularly prevalent in the fields of law enforcement and health planning.

However, OMB has taken a strong policy position respecting the designation of clearinghouses in interstate metropolitan areas. It has been the OMB position that, at a minimum, the jurisdiction of such clearinghouses should include the whole of the urbanized portion of a Standard Metropolitan Statistical Area (SMSA). Further, within States, where urbanized areas cross SMSA lines,

OMB has taken the position that the clearinghouse jurisdictions also should comprise the whole of the contiguous urbanized area. This is the reason that many clearinghouse jurisdictions will extend into or comprise two or more SMSAs. In administering the "701" comprehensive planning program, HUD also has held to this policy.

There is no doubt that overlapping planning areas, particularly in interstate areas, work a hardship on the local jurisdictions in such areas. Not only are they subject to more complications in the A-95 review process, but often they must contribute to the support of multiple planning organizations, many of them engaging in the same type of activities. Part IV of A-95 is designed to mitigate the adverse effects of these anomalies, but the diversity of Federal planning requirements, statutory and administrative, (particularly as they apply to jurisdiction and representation) and a residuum of State and local parochialism in many places militate against well coordinated planning at the areawide level.

Nevertheless, in spite of these impediments, the movement to establish substate clearinghouses and State systems of planning areas has moved steadily forward since the issuance of the Circular in 1969. Over forty States have established substate district systems, although not all are truly viable. At the same time, there are nearly 540 areawide clearinghouses with 28 States completely blanketed.

OMB has established no formal criteria for the designation of clearinghouses in metropolitan areas. However, Section 204 of the Demonstration Cities and Metropolitan Development Act indicates, in view of their functions, that areawide review agencies ("clearinghouse" is an OMB term, coined for A-95 purposes) will be comprehensive planning agencies, composed to the greatest practicable extent of elected officials of the units of general local government comprised in the area. The Act also describes them as areawide, which OMB has taken to mean that they must cover, as noted above, the whole of the urbanized area in an SMSA or extending into more than one SMSA.

OMB does not set a membership criterion. That is, it does not insist that any number of jurisdictions must belong to the clearinghouse nor that the membership comprise any minimum percentage of the population of the area. In metropolitan areas where there is no comprehensive planning agency, OMB will ask the Governor to designate the State clearinghouse on an interim basis to assure that the A-95 process is carried out until the local governments of the area organize their own comprehensive planning agency which OMB can then designate.

From time to time, one or more local jurisdictions will withdraw from a clearinghouse and request OMB to designate them as a clearinghouse or withdraw designation from the existing clearinghouse organization. The first alternative has always been found unacceptable to OMB for one or more of several reasons:

- The withdrawing jurisdiction(s) did not comprise the whole of the urbanized area;
- It (or they) was not organized to carry out comprehensive planning;
- In the case of county withdrawals, the municipalities were not in accord.

In the case of the latter alternative, de-designation of the existing clearinghouse, it has been OMB's position that one or more of the larger jurisdictions should not be able to hold clearinghouse status hostage to their own individual satisfaction. Of course, if most of the members of a clearinghouse organization were to defect, it would no longer be viable as a comprehensive, areawide planning body and might, indeed, become defunct. In such case, OMB would ask the Governor's assistance, as though there were no designatable clearinghouse.

All non-metropolitan clearinghouse jurisdictions, of course, are designated by the Governor. Such designation will depend on criteria he has established. In most cases, a primary criterion is comprehensive planning capability or demonstrable effort to establish such capability.

b. The Notification of Intent (NOI). Timing is of the essence for the NOI. It is the heart of the "early warning" feature of PNRS that can set the stage for issue identification, negotiation, and resolution. Properly followed, it will serve to prevent delay in submitting the application once it is prepared. Therefore, it is critical that the NOI be sent to the clearinghouses at the very earliest time after the applicant has made the decision to seek Federal assistance and can provide summary descriptive information about the project that will permit the clearinghouse to inaugurate the review process.

It may well be that the full level of project detail necessary for clearinghouses to complete an evaluation may not be available at the time the NOI is submitted. However, to the extent that the clearinghouses need more information, it should be supplied as the application is developed. In this connection, however, a cautionary word is in order. The applicant is not required to

provide more information than is requested of him in his application by the funding agency. Of course, if such additional information is readily at hand, the applicant is urged to supply it to the clearinghouse desiring it. However, it would be unreasonable to expect the applicant to spend resources in developing information that is not required of him by the agency from which he is seeking assistance.

The Federal Government prescribes no specific format for the NOI. However, many clearinghouses have developed their own NOI forms, and the applicant is well advised to ascertain whether the clearinghouses to which he must provide an NOI have developed such forms. In late 1975, the Federal Government issued a standard application facesheet, Standard Form 424, that must accompany applications for grants-in-aid from State and local government.

SF 424 supplies summary information about the project, assurances that the appropriate clearinghouses have been given a chance to comment, and information from the Federal agency about action taken on the application. These several parts of the form are filled out successively by the applicant and the Federal agency. Copies are then sent to clearinghouses by funding agencies, when they have taken action on the application and completed the form. SF 424 may also be used, at the option of clearinghouses, as the NOI. There is indication that many will exercise that option. Its use as an NOI may facilitate attempts by clearinghouses to track action on an application from the time they receive the NOI through final action on the application.

Several variations on the NOI are identified in paragraph 2 of Part I:

- NOIs for projects which may have Statewide impact, but for which specific local effects are not clear, need be sent only to the State clearinghouse. An example might be an application from an academic institution to develop criteria for selecting historic landmarks within the State. If the State clearinghouse identifies the need to involve areawide clearinghouses in the review, it may do so.

- NOIs for projects affecting land and water use and development or construction in the National Capital Region (the District of Columbia, Prince Georges and Montgomery Counties, Maryland; and Arlington, Fairfax, Prince William, and Loudon Counties and the City of Alexandria, Virginia) must send their NOIs not only to the appropriate State and areawide clearinghouses, but to the National Capital Planning

Commission (NCPC). NCPC is the Federal agency responsible for developing plans for the Federal establishment in the region. State and local development plans in the region can have substantial impact on the functioning of the Federal Government in the area. Of course, Federal agencies undertaking development in the National Capital Region are required to consult with clearinghouses on their proposed projects, pursuant to Part II.

- Federally recognized Indian tribes are not required to send NOIs or applications to clearinghouses for review. This is because of certain treaty rights which give the tribes a unique status vis-a-vis the Federal Government in most of their dealings with it, not requiring them to "go through" State and local governments. However, Federal agencies are required to inform State and area-wide clearinghouses of any applications received from tribes. Thus, if any problems of adverse impact are discerned, the clearinghouse can take it up with the tribe or register its concern with the Federal agency. Tribes are urged to participate in the review process voluntarily as there are substantial benefits to be derived therefrom. These might include technical assistance in planning better or more economical tribal projects. Participation would also involve receiving timely information about non-tribal projects that might affect tribal interests or holdings.

Some of the tribes have extensive holdings and a variety of organizations or entities which might qualify for Federal assistance. Consequently, such a tribe may have internal problems of coordination. In some cases, a tribe may establish a formal coordinating mechanism, and on request to the Office of Management and Budget, may have that mechanism treated as though it were a clearinghouse. That is, applications from tribal entities or organizations would have to be submitted to the tribal coordinating mechanism for review and comment.

Where a tribal unit has incorporated under the laws of a State to carry out some function (e.g., housing development), applications for Federal assistance from such corporation are subject to the requirements of A-95. Similarly, applications from tribes for development of non-reservation lands are subject to those requirements. The reasoning is that by incorporating under State law or by operating off of tribal lands, a tribe is subject to State and/or local law governing those activities, and therefore also subject to A-95 requirements.

3. Clearinghouse Functions

a. General Role. The term, "clearinghouse," was chosen deliberately to reflect in full the functions of the A-95 review agencies.

Of course, the primary function of the clearinghouse is to examine the proposed project for its Statewide or areawide impacts and its relationship to State or areawide comprehensive plans or policies.

The clearinghouse function comes into play as the review agencies provide an opportunity for State agencies or individual local jurisdictions or agencies to examine the proposed project against the finer grain of their own plans and programs. That is, the clearinghouses will send copies of NOIs to State agencies or to individual local jurisdictions and agencies which might be affected so that they might make individual assessments of the project. In this connection, as noted earlier, the Circular provides that local chief executives may request areawide clearinghouses to send copies of all NOIs for projects that may be proposed within their jurisdictions so that they may coordinate internal reviews by municipal or county agencies.

State clearinghouses tend to serve primarily as clearinghouses rather than to perform their own reviews. This may be because some are not planning agencies at all, and in various States, the art and practice of State comprehensive planning may not be well developed. Areawide clearinghouses, on the other hand, give a much more pronounced emphasis to performing their own substantive reviews, as well as serving as clearinghouses to solicit the views of others. There are, of course, exceptions to this general observation.

b. Obligatory Referrals. Clearinghouses have three obligatory referrals (in addition to local chief executives who request them). These are:

- To State and local environmental agencies for projects which may require an environmental impact statement (EIS). This is primarily so that such agencies may point out to the applicant potential environmental considerations that will have to be dealt with in the development of the EIS. They may also provide substantive information that will be useful in EIS development. Of course, these environmental agencies may also play a useful role in reviewing the adequacy of the EIS after it is drafted.

- To State and local civil rights agencies. Such agencies include not only those charged with enforcement of State and local civil rights laws, but advisory agencies such as human relations commissions which have an interest in the promotion of civil rights and anti-discrimination.

- Coastal zone management agencies. These are State designated agencies which develop coastal zone management plans under the Coastal Zone Management Act of 1972. Under the Act, when such plans are approved by the Secretary of Commerce, they provide a regulatory constraint on Federal or federally assisted activities affecting the coastal zone.

c. Involvement of Nongovernmental Entities. While the PNRS requires that clearinghouses involve only State and local governmental agencies in the review process, OMB encourages them to invite the participation of nongovernmental organizations as well. The limitation on obligatory involvement of nongovernmental entities is due to the intergovernmental objectives of Title IV of the Intergovernmental Cooperation Act. Also, from a practical standpoint, clearinghouses cannot be expected to be aware of all the myriad citizen groups in an area or a State which might have an interest in the project.

At the same time, private sector involvement in the review process can be very beneficial. Relationships established with State and local agencies as well as with citizen groups and other interest groups through conscientious application of the "clearinghouse" aspect of the PNRS can enhance the status of the clearinghouse as a focal point for planning coordination and can lend popular and private sector support to clearinghouse activities. In addition, the expertise that can be provided by these agencies and organizations represents a useful supplement to the clearinghouses' own review resources and capabilities.

A special note should be made here of what are often termed "paragovernmental organizations." These are generally not-for-profit organizations which carry out governmental functions. Examples are Community Action Agencies, Councils of Government, Economic Development District organizations, etc. In many cases, of course, these agencies are governmental units established under State law. In either event, it is OMB policy to consider them as governmental units, even when they are paragovernmental. Therefore, clearinghouses (some of which are themselves paragovernmental organizations) should refer NOIs to them for comment, where appropriate.

d. Preference for General Purpose Units of Local Government. Both section 204 of the Demonstration Cities and Metropolitan Development Act and Title IV of the Intergovernmental Cooperation Act state a strong preference for the award of Federal assistance to units of general purpose government over special purpose units when both are competing for assistance to perform the same function. This preference is based on the perception that special purpose units are usually governed by citizens appointed by the State or by local government, who once appointed are often not directly accountable either to those who appointed them or to the electorate for their performance in office. Also, special purpose units contribute heavily to the fragmentation of local government and serve to complicate local fiscal structures. While many special purpose units are well adapted to carry out their functions and, indeed, carry them out quite effectively, they do constitute another layer of government that is not always amenable to electoral control.

This statutory preference for general purpose units accounts for the provision that clearinghouses assure that such units have an opportunity to comment on any application for assistance by a special purpose unit in their jurisdiction.

e. Coordination Among Adjacent Clearinghouses. There are nearly 540 areawide clearinghouses, covering over three-quarters of the land area of the "South 48." They include well over 90 percent of the total population. Twenty-eight States are completely blanketed by areawide clearinghouses. While the areawides may serve to diminish the spillover impacts among local government activities in their jurisdictions, there will still be spillover effects from one clearinghouse jurisdiction to another. Therefore, it is important that arrangements be developed between contiguous clearinghouses for coordinating reviews of projects the impact of which may extend beyond clearinghouse boundaries.

Such coordination agreements are even more critical in those instances, described earlier, where clearinghouse jurisdictions overlap, particularly in interstate metropolitan areas.

4. Consultation and Review

a. Timing. Paragraph 4 of Part I sets forth the timing of the review process as described earlier in this booklet and in Exhibits 1 and 2. Many people find the two-stage review concept difficult to grasp. One way to look at it is as a 60-day process, composed of two 30-day periods which may be separated in time. Whether or not the two 30-day periods are separated depends on how long it takes to complete the application. Obviously, if it takes 90 days

to complete an application, and an NOI has been filed at the beginning of application preparation, and the clearinghouse requires a full 30 days to review the completed application, then the full process would take 120 days:

- Thirty-day NOI period, during which the clearinghouse may identify any issues and bring them to the attention of the applicant. During this period the applicant may have commenced the development of his application;

- Sixty additional days the applicant need to complete his application (during which he is trying to negotiate out any identified issues); and

- Thirty days after the clearinghouse receives the completed application, analyzes it, and prepares comments for submission to the applicant.

On the other hand, as noted above, if the applicant requires only a day or two to complete an application after he has decided to apply, an NOI is superfluous. He can submit the completed application to the clearinghouse which will then have 60 days to complete its review.

Of particular additional note in paragraph 4 of Part I are the following provisions.

b. Inclusion of Other Comments. In addition to their own comments, areawide clearinghouses are required to transmit to applicants any written comments submitted to them by individual jurisdictions, agencies, or nongovernmental organizations, which are at variance with the comments of the clearinghouse. "At variance" is meant to include views that are opposed to the official clearinghouse views, in whole or in part; or views that, while not necessarily opposed to clearinghouse views, are different, proceeding from other perspectives or based on other information.

The reason for including variant views is twofold:

- To assure that the funding agency gets the full range of local views on any project; and

- To encourage serious participation of local jurisdictions and organizations in the review process by assuring them that their views will receive the consideration of the funding agency in its evaluation of the proposal.