

Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP)
Summary of Comments and Responses

The Department of Health and Human Services held a public hearing on August 18, 2010 to obtain comments on a complete repeal and replace of MAAP regulations. This document summarizes all comments received during the public comment period ending August 28, 2010.

Comments Not Specific to Sections of the Proposed Rule:

1. Some commenters stated that the proposed rules should be withdrawn. (3)(4)(6)
One commenter stated that the MAAP Advisory Committee was not utilized in the manner the legislation intended. The commenter does not believe that the Department took full advantage of the Advisory Committee and that its expertise went unused. The commenter recommended that a process for MAAP review be established that is inclusive in nature with the goal of having new MAAP rules adopted and then implemented in July of 2011. (3)
One commenter stated that the legislative intent is to have all parties on the MAAP Advisory Committee actively participate in the drafting of the MAAP rule and that the Advisory Committee as a whole advise the Commissioner. The commenter stated that the last meeting of the Advisory Committee was in May 2009 and the committee was not afforded another opportunity to interact and respond to the draft rule prior to its being published for comment. The commenter understood that the proposed rule was significantly different from what had been discussed by the Advisory Committee through May, 2009. The commenter stated that, because the legislative intent has not been carried out, the proposed rule should be withdrawn until such time as the Advisory Committee is allowed to meet its statutory responsibilities. (4)
One commenter stated that the statute is clear in its requirement that an Advisory Committee be created, including directions on its composition and nature. The commenter states that the Department did not follow this process. The commenter concurs with the other two commenters and urges the withdrawal of the proposed rule. (6)

Response – The Department will not be withdrawing the MAAP rules. The Department appreciates all the work done by the Advisory Committee. However, there is no statute requiring an Advisory Committee to write rules for the Department. Specifically, MRS Title 5, Chapter 148-C, §1660-H Rulemaking gives the Commissioner of the DHHS the authority to adopt rules establishing uniform standards for community agencies. In addition, MRS Title 5, Chapter 148-C, §1660-I, 2. states that the Department shall adopt rules establishing accounting and auditing practices for community agencies. The Department thanks the commenters for the comments.

2. Some commenters stated that State rules should not be more restrictive than Federal rules. (3) (19) (23)

One commenter stated that the State should not require approval for out-of-state travel, and that State travel rates should not be more restrictive than the Federal travel rate. (3)

One commenter stated that OMB Circular A-133 provides guidelines for the audit of community agencies nationwide. The commenter stated that the State has not indicated why additional rules and expense for community agencies will benefit the State. The commenter stated that the State has a duty to limit administrative burdens to community agencies and that the rules as proposed will increase audit costs and record keeping by the community agencies without significant benefit to the State. (19)

One commenter stated that the State should not add additional restrictions beyond the Federal Office of Management and Budget Circulars. (23)

Response – The Maine Department of Health and Human Services has a substantial amount of State dollars in its agreements. Although the Department makes an effort to mirror the Federal requirements, the Department believes it good policy from time to time to be more restrictive than the Federal rules. As many States do, the State of Maine has its version of the Single Audit Act in its MAAP rules. Audits performed under MAAP ensure that State dollars are audited in addition to Federal dollars. The Department thanks the commenters for the comments.

3. The commenters stated that the MAAP Advisory Committee was not utilized to the extent that it should have been. (3) (4) (6) (15)

One commenter stated that while Department staff have provided time and hard work in producing the rule, the absence of participation by the Advisory Committee diminishes that effort and leads to rules being adopted that do not fully consider the interests of private auditors and the community agencies engaged in work with the Department. The commenter stated that a process without the inclusion of the Advisory Committee is not the process envisioned by the original creators of the MAAP law. (3)

One commenter stated that process was important. The commenter stated that it has been the legislative intent to have all parties on the MAAP Advisory Committee actively participate in the drafting of the MAAP rule and that the Advisory Committee as a whole advise the Commissioner. The commenter also stated that it was his understanding that the proposed rule is significantly different from what was discussed by the Advisory Committee since the last meeting in May, 2009. (4)

One commenter stated that she had been told by members representing the community agencies that there was an inadequate opportunity for input as the rule was being drafted. The commenter stated that the statute is clear in its requirement that an Advisory Committee by failing to follow the process calls into question the validity of the rule. (6)

One commenter stated that as a member of the Advisory Committee, she does not believe members were provided the opportunity to acknowledge and confirm the final draft of the regulations. The commenter stated that the Advisory Committee

has the responsibility to approve the absolute final draft of the regulations prior to implementation. (15)

Response – The Department appreciates all the work done by the Advisory Committee. However, there is no statute requiring an Advisory Committee to write rules for the Department. Specifically, MRS Title 5, Chapter 148-C, §1660-H Rulemaking gives the Commissioner of the DHHS the authority to adopt rules establishing uniform standards for community agencies. The advisory committee met six times. In addition, prior to submitting the proposed rule to the Secretary of State, the advisory committee was sent the proposed rule. One member of the advisory committee responded with proposed changes, most of which were incorporated into the rule. MRS Title 5, Chapter 148-C, §1660-I, 2. states that the Department shall adopt rules establishing accounting and auditing practices for community agencies. The Department thanks the commenters for the comments.

4. The commenter stated that the Federal requirements of OMB Circular A-133 provide appropriate guidelines for audits of community agencies on a consistent basis throughout the country. The commenter stated that different standards are not necessary in Maine and offer no significant benefit to the State, and that agencies that are subject to the Federal requirements would, under the proposed MAAP rules, incur increased audit costs and record-keeping burdens due to differences in the Federal and State standards. The commenter stated that with no discernable benefit conferred by differences in the Federal and State rules, the MAAP rules should not apply to agencies that are subject to OMB Circular A-133. (18)

Response - The Department disagrees. A substantial amount of State funding is awarded to community agencies in addition to the pass-through Federal dollars awarded. By exempting community agencies who have audits under OMB Circular A-133 from the MAAP rules, State funds awarded to these agencies would not be audited for compliance with State program rules and regulations. In addition, the MAAP rules are more than audit rules. The rules cover accounting, administrative requirements such as the overall contractual process, budget revisions, cost sharing settlements, liquidation requirements and the overall examination process. The Department thanks the commenter for the comment.

5. The commenter stated that training should be made available to both agreement administrators and community agencies to ensure that both sides know what is expected during the Division of Audit examination process. In addition, the commenter stated that a hotline or FAQ's should be developed by the Department to aid community agencies when Division of Audit staff are not available on a timely basis. (11)

Response – The Division of Audit will be conducting training for both State and community agency personnel on the MAAP rules as soon as they become final.

This training will be offered in multiple locations throughout the State. The Division of Audit recently remodeled its web site and will be adding FAQ's to the website once the rules are final. While the Division of Audit does not have plans to open a hotline, the phone numbers of all social services audit staff are listed on the website. The Division of Audit makes every attempt to return phone calls and emails from community agencies within 24 hours. The Department thanks the commenter for her comment.

6. The commenter stated that it is bad public policy for an out-going administration to make such basic and sweeping rule changes at the end of its term. (21)

Response – The Department has been working on the proposed rule changes since 2007. As major rule changes take time, the Department does not believe it is bad policy to finalize this rule prior to the end of the current administration. The Department thanks the commenter for his comment.

7. The commenter stated that in earlier versions of MAAP, State funds were treated differently from Federal funds but that over the years, the differences between State and Federal funds have disappeared. The commenter stated that the proposed version of MAAP had adopted all the Federal Circulars verbatim except where the State wishes to be even more restrictive. The commenter stated that he does not think State funds should be treated the same as Federal funds. The commenter stated that because of this approach, the State does not fairly share in the costs of programs, but rather reclaims an inordinately large portion of surplus (if any exists) from all possible sources, including Federal Medicaid. (21)

Response – The Department has adopted the Federal OMB Circulars into the proposed rules. This was done for consistency as many of the State dollars are intertwined with Federal funds in the contracts the State administers. In these instances, Federal rules and regulations would prevent the State from treating one source of funds in a different manner than Federal funds. The Department thanks the commenter for his comment.

8. The commenter stated the proposed rules would put community social services agencies out of business. The commenter noted that costs are going up such as health insurance as well as the costs of complying with government mandates such as the HIPAA and other rules. The commenter stated that the proposed rule was just one more item that would increase costs for agencies while rates paid by the State have been going down. (21)

Response – The Department disagrees. The Department believes the rules will go a long way in easing the administrative burdens on community agencies. For example, in the past, all programs with agreement expenses exceeding \$100,000 had to be audited each year. The new rules state that only 50% of agreement dollars must be audited. The new rules also provide for a one-page Schedule of Expenditures of Department Agreements (SEDA) very similar to the Federal

Schedule of Expenditures of Federal Awards (SEFA). The old rule required a Schedule of Agreement Operations and an Agreement Settlement Form for each agreement the agency had with the Department. The Department thanks the commenter for his comment.

Comments Specific to Proposed Rule

§ .01 A. Effective Date

9. The commenter stated that the rules should not be retroactive to July 1, 2010. (4) (6) (7) (8) (10) (12) (19) (20) (22) (24)

Response – the Department agrees. The rules will be effective for agreements beginning on or after January 1, 2011.

§ .01 B Definitions

10. The commenter stated that there was no definition of advisory council in the definitions of the proposed rule. The commenter stated that the definition needs to be clarified. (14)

Response – The Department agrees. A definition of advisory council has been added to the rule as follows: Advisory Council means a group of volunteers that meet regularly on a long-term basis to provide advice and/or support to an agency or an agency program.

§ .01 B Definitions 3. Agreement expenditures

11. The commenter stated that agreement expenditures are defined as amount billed rather than expenditures incurred under the accrual method of accounting. The commenter asked if the Department does not want expenditures included when the associated revenue has been accrued but has not yet been billed. The commenter also asked what the process will be if a billed claim is rejected for some reason. (17)

Response – The Department assumes that all expenditures that have been accrued will also be billed to the Department within the timeframe allotted to the agency (usually 60 days after the agreement end date, but not more than 90 days if the contract is not specific). Billing discrepancies are beyond the scope of these rules. The Department did not make any changes as a result of this comment.

§ .01 B Definitions 21. Financial/service claims

12. The commenter inquired whether the definition of financial/service claim was intended to replace the current cash request invoice process. (11)

Response – The definition of financial/service claim is not meant to indicate a process whereby the current invoice system will be replaced. Rather, the definition is meant to be a generic term describing whatever billing mechanism is contained in the agreement to bill for services and/or goods delivered. Department agreements have various forms by which agencies bill the Department depending on the service and/or goods being provided. The Department did not make any changes as a result of this comment.

§ .01 B Definitions 28. Likely questioned costs

13. The commenter was concerned about having an established methodology for making an estimate of total costs questioned. The commenter stated that the general idea was fine, but without more definition or direction, the commenter questioned if the estimate will produce useful information or just a figure to be debated and contested. (4)

Response – Likely questioned costs must be considered by the auditor under OMB Circular A-133, § __.510(a)(3) ...*the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs)*. The Department did not make any changes to the final rule as a result of this comment.

§ .01 B Definitions 29. Major agreement

14. The commenter suggests changing the wording of the definition of major agreement from *expenditures equal or exceed \$100,000 during the fiscal year of the agency* to *expenditures equal to or exceeding \$100,000 during the fiscal year of the agency*. (14)

Response – The Department agrees and the definition now reads as follows: Major agreement is an agreement or combination of agreements (continuation agreements) which purchase the same service with expenditures equal to or exceeding \$100,000 during the fiscal year of the agency.

15. One commenter suggested that the definition of a major agreement of \$100,000 should be changed to reflect the materiality of agreements at a community agency. The commenter gave as an example the definition of a major program in Federal Circular OMB A-133 as the larger of \$300,000 or 3% of total Federal funding. The commenter stated that an appropriate formula might be to define a major agreement as the larger of \$100,000 or 3% of an agency's total DHHS contractual funding. If this proportional formula is not adopted, the commenter suggests that the fixed amount be raised to \$500,000 to reflect current economic values and environment. (18)

Two commenters suggested changing the definition of a major agreement to match the definition of a major program in Federal Circular OMB A-133 of the larger of \$300,000 or 3% of total Department funding. (1) (12)

One commenter asked for more clarification on agreements which contain multiple services. The commenter asked whether the \$100,000 threshold would be for each service in an agreement. (11)

One commenter stated that the definition lacks proportionality. The commenter stated that a community agency may have a \$500,000 budget or a \$50,000,000 budget. (20) (25)

Response – Maine is a much smaller entity than the Federal Government. As such, the threshold for major agreement status appropriately is lower than it is under OMB Circular A-133. The \$100,000 threshold for major agreement status is by agreement and continuation agreement, if applicable. The Department did not make any changes as a result of these comments.

§.01 B Definitions 29. Material finding

16. One commenter recommends that to further align State MAAP regulations with Federal regulations, the rules should adopt the Federal threshold of \$10,000 for a questioned cost related to a specific type of compliance. (1)

One commenter stated that the definition of material finding of \$1,000 is significantly lower than the OMB A-133 definition. The commenter requested that the definition be changed to more closely mirror the Federal circulars which define when audit findings are reported and set the questioned costs that are required to be reported at “greater than \$10,000” (OMB Circular A-133, Subpart E, Sec. __.510(a)(3). The commenter stated that the proposed \$1,000 limit is too low. The commenter stated that agencies will face increased audit costs to investigate expenditures at this low level and in addition, agencies will be required to increase their own administrative costs to gather this information for its auditors. The commenter stated that its audit firm estimated that audit fees would increase by ten to twenty percent due to this low level of materiality. The commenter said she would like the definition of material finding to be raised to \$10,000, which mirrors the Federal rule. (12)

One commenter stated that the definition of a material finding of \$1,000 ignored the scope of business of individual agencies. (25)

Response – The Department has used \$1,000 of questioned or likely questioned costs as the basis for a material finding because the materiality level of the State of Maine is much less than it is for the Federal government. The entire budget for the State of Maine Department of Health and Human Services is less than one percent of the budget of the U.S. DHHS. Further, the Department does not believe the definition of material finding of \$1,000 will increase audit costs for an agency in the same manner as the Federal definition of questioned cost of \$10,000 does not impact materiality as set by the auditor under generally accepted auditing standards (GAAS) and generally accepted government auditing standards

(GAGAS). The Department did not make any changes as a result of these comments.

17. The commenter stated that the language contained in the definition of material finding, *the IPA should determine whether the degree of non-compliance is more than inconsequential*, is old audit language that needs to be updated. (17)

Response – The Department agrees with the commenter. The definition reads as follows: Material finding is non-compliance with agreement conditions where the known questioned costs or likely questioned costs are \$1,000 of expenditures identified on the SEDA for that agreement or continuation agreement for specific compliance areas (see Section .03C). For non-compliance with no direct dollar impact, the IPA should determine the degree of non-compliance. In addition, §__.03 C. 3. now reads as follows: For non-compliance that does not have a direct financial impact (i.e. reporting), the IPA should determine the degree of non-compliance.

§.01 B Definitions 34. Program income

18. The commenter stated that he had been told by MAAP Advisory Committee members that this definition of program income has been added in order to clarify the cost sharing/settlement where multiple funding sources share in the expense of a funded service. The commenter stated that that this clarification needs to be part of the definition. The commenter proposes the following language: *Program income, for the purpose of cost sharing agreement/settlement where multiple funding sources share in the expense of a funded service, means gross income earned by.....* (4)

Response – The definition of program income in the proposed rule mirrors the Federal definition of program income contained in OMB Circular A-110, Subpart A, §__.2(x). The Department did not make any changes as a result of this comment.

§.01 B Definitions 39. Social service

19. The commenter noted that in the definition of social services, it states that MaineCare funding is excluded. The commenter stated that it is not stated from what MaineCare funding is excluded. (4)

Response – MaineCare is excluded from the definition of social service. MaineCare funding is considered program income when supported by a social service grant. The Department did not make any changes as a result of this comment.

§__.02 B 3(b) *The audited financial statements must be accompanied by the audited SEDA.*

§__.02 C 1(b) *The agency's IPA must issue an audit report on the SEDA.*
§__.03 A 2(a) *The IPA shall also determine whether the SEDA is presented fairly in all material respects in relation to the community agency's financial statement taken as a whole.*

20. The commenter noted the three SEDA requirements in the above sections of the rule will increase audit costs for community agencies. The commenter stated that if the standard for materiality is \$1,000, those requirements will certainly create cost increases of material significance. The commenter suggested that, in this time of scarce resources, perhaps something other than an “audited” SEDA might suffice. (4)

Response – The Department has reduced the audit burden on agencies with the proposed rule. For example, in the past, all programs with agreement expenses exceeding \$100,000 had to be audited each year. The proposed rules state that only 50% of agreement expenses must be audited. The new rules also provide for a SEDA which is very similar to the SEFA required by OMB Circular A-133. The one page SEDA replaces the Schedule of Agreement Operations and the Agreement Settlement Form that was required for every agreement the agency had with the Department. In addition, the rule does not state that materiality for compliance should be set at \$1,000. Rather, a material finding is a known or likely questioned cost that is \$1,000 or more. The Department did not make any changes as a result of this comment.

§__.02 C 2(a) Required Format

21. The commenter stated that the required format samples provided in the appendices of the proposed rule do not indicate the designation of a “service area” as noted in this section. The commenter stated that there also is no definition of a “service area”. The commenter would like clarification on what information is required and how it should be reported. (17)

Response – The Department agrees and has put a definition of service area in the rule. The definition is as follows: Service area means the name of the program or the type of service being funded through a Department agreement.

§__.02 C 2(c) Required Format

22. One commenter stated that ending the paragraph with *as applicable* instead of *if applicable* would clarify this requirement. (17)
One commenter stated that this section refers to instances *if applicable* and asked when an agency would know when the section applies to it? (19)

Response – The Department requires that the SEDA present both final and interim agreements. If an agency does not have interim agreements, it would only report agreements that have been finalized. Should an agency have no agreements that

became final during the year, it would only report interim agreements. Otherwise, an agency would report both final and interim agreements. The Department did not make any changes as a result of these comments.

§___.02 C 2(e) Required Format

23. One commenter stated that the language on how to calculate interim *expenditures* for reporting on the SEDA is confusing. The commenter stated that it seems to indicate a combination of actual and budgeted information should be used for the calculations and stated that this could result in a situation where there is an overstatement of Department expenses, triggering “major agreement” status, when in fact an equitable cost-sharing calculation would not. (17)
One commenter stated that the paragraph required the cost-sharing agreements in interim status to use the budgeted department cost-sharing percentages. The commenter stated that this means the SEDA will not match the general ledger of the agency as is required in Section .02 C 3. (8)

Response – Actual cost-sharing percentages are used in the final settlement to the Department to allocate expenditures of cost-sharing agreements. The Department uses budgeted cost-sharing percentages to allocate the actual expenditures of the interim agreement for simplicity. The Department did not make any changes as a result of these comments.

§___.02 F 4 Electronic submission

24. The commenter wanted clarification of the electronic submission process and asked whether a PDF of the financial statement package emailed to the noted address will be sufficient. (17)

Response – Yes, a PDF file mailed to the email address noted in the rule will be sufficient. The Department did not make any changes as a result of this comment.

§___.03 A. 3.

25. The commenters stated that this section shifts the burden from the State Division of Audit to the independent auditors employed by agencies. The commenters stated that this is an unfunded mandate and that the Division is determining the scope of the independent audits rather than leaving the determination to experts and generally accepted auditing principles. (19) (25)

Response – The Department disagrees. This section is included in the rule to comply with MRS Title 5, Chapter 148-C, § 1660-I. 2. C. requiring the Division of Audit to perform quality control reviews of independent public accountant workpapers when necessary. The Department did not make any changes as a result of these comments.

§__.03 B. 4.(c)(iv) Known Questioned Costs

§__.03 B. 4.(c)(v) Likely Questioned Costs

26. The commenters stated that the Department has identified a materiality threshold of \$1,000 for known or likely questioned costs that seems immaterial dependent on the size of a particular contract. The commenters stated that the Department should consider increasing this threshold to align with the Federal requirements or consider establishing a materiality level that is more relevant based on agreement size. (17) (4)

Response – Please see the response to comment #16. The Department did not make any changes as a result of these comments.

§__.03 C. 1(a)

27. The commenter inquired whether it was the Department’s intent to state *internal control over compliance* rather than *internal control*. (17)

Response – The Department has changed the sentence to read as follows: *All agreements selected for testing must be tested for compliance and internal control over compliance.*

§__.03 C. 1(b)

28. The commenters stated that the rule should adopt the Federal rule of testing a minimum of 25% of total expenditures for low risk auditees as defined in OMB Circular A-133. (2) (4) (8)

Response – The Department has not adopted the Federal rule allowing for only 25% testing of agreement expenditures. The primary reason the Department did not adopt the 25% rule was due to the results of the National Single Audit Sampling Project by the President’s Council on Integrity & Efficiency. The audit sample showed that for audits of federal dollars between \$500,000 and \$50,000,000, only 48.2% of those audits were acceptable. 16.1% of audits had significant deficiencies and 35.7% of audits in this range were unacceptable. The Department did lower the threshold for testing of a major program from 100% of all agreements with Department expenditures above \$100,000 to 50% of Department expenditures. The Department has not made any changes as a result of this comment.

§__.03 C. 1(d)

29. The commenter stated that the language contained in this section is confusing. The commenter wanted clarification as to when expenditures for continuation agreements should be captured for an agency’s fiscal year when determining major programs for audit purposes. (17)

Response – All agreements must be included when determining what program is a major program for audit purposes. If an agency has a fiscal year ended June 30 and a continuing agreement (one that provides the same service) that ends on September 30, the agency should combine the three months of the older agreement (July 1 to September 30) and the nine months of the newest agreement (October 1 to June 30) to determine the expenditures for major program determination. If the total of the expenditures equals or exceeds \$100,000, the agreements will be considered major for auditing purposes. The Department did not make any changes as a result of this comment.

§__ .03 C. 2

30. One commenter stated that there is some confusion about materiality in the rule. The commenter stated that the rule as it now reads appears to remove auditor judgment about setting materiality as defined under the Federal circulars as well as CPA standards. Rather than setting materiality at \$1,000, the commenter suggested it be based on a percentage of a major program. (2)
- One commenter recommended adopting the American Institute of Certified Public Accountants (AICPA) definition of materiality which is not a specific number but is based on facts and circumstances. The commenter stated that \$1,000 is much too low. (4)
- One commenter stated that the materiality threshold should be a percentage rather than a fixed amount. (10)
- One commenter stated that the materiality threshold of \$1,000 is too low. The commenter recommended that the Department adopt the Federal threshold or make the threshold a percentage. (12)
- One commenter stated that the threshold of \$1,000 is an extreme interpretation of the intent of the standard. In addition, the commenter stated that setting the standard at a dollar amount and a percentage of budget does not adjust the standard to contract size. The commenter proposed setting the threshold at \$5,000 or 10%, whichever is greater. (13)
- One commenter stated that OMB Circular A-133 requires reporting of known questioned costs of \$10,000 or more. The commenter stated that the Department should consider increasing the threshold to align with the Federal requirements or consider establishing a materiality level that is more relevant based on agreement size. (17)
- One commenter stated that the \$1,000 threshold has been kept the same since 1996 and stated that thresholds should be increased significantly to reflect current economic realities. The commenter stated that the Federal threshold of \$10,000 for a known or likely questioned cost would better reflect what would constitute a material finding. (18)
- One commenter stated that the \$1,000 threshold does not take the size of the organization into considerations. The commenter stated that in many instances, the threshold will be set too low, causing such a variety and amount of findings to be reported that any true issues will be lost for large agencies. (19)

One commenter stated that the use of a flat \$1,000 to define materiality is inflexible and may lead to excessive testing, which in turn will drive up the cost of the audit process unnecessarily. The commenter stated that a better approach would be to specify a percentage, so the determination of materiality will be made relative to the size and scope of the agreement or program in question. The commenter suggested a 5% threshold, rather than a \$1,000 amount. (23)
One commenter stated that \$1,000 threshold for material findings is too low and the size of an organization should be taken into account. (24)

Response – It was not the Department’s intent to set the materiality level of a community agency audit. That determination is beyond the scope of these rules. Rather, it is the Department’s intention to explain what a material finding is and set a dollar threshold for a material finding similar to the Federal government defining known and likely questioned costs. Please see the response to comment #16 for the Department’s reasoning regarding the \$1,000 threshold for a material finding. The first sentence at §__.03C. 2. now reads as follows: *Materiality – Materiality for compliance is based at the agreement budget level.* In the second sentence, the quotation marks have been removed from material finding, and the sentence now reads as follows: *A material finding is non-compliance with agreement conditions where the known questioned costs or likely questioned costs are \$1,000 or more of the expenditures identified on the SEDA for that agreement or continuation agreement specific to individual compliance areas below:.* For clarity, two of the compliance findings (actual amount exceeding budget by 10% or \$1,000, whichever is greater and the restricted nature of the subcontract category) have been moved from 3. Material finding to 2. Materiality.

§__.03 C. 2

31. The commenter asked for clarification on whether the prohibition on unapproved equipment purchases is for direct purchases only or also applies to equipment purchases charged to indirect cost allocations. (17)

Response – The prohibition on equipment purchases not approved is for direct and indirect equipment purchases. This rule does not prohibit an agency from purchasing equipment in the normal course of business and depreciating that equipment over its useful life. The prohibition on unapproved equipment purchases is for equipment that is expensed in full in the year of purchase. The Department did not make any changes to the final rule as a result of this comment.

§__.03 C. 2

32. The commenter requested additional clarity on what *appropriate match* commitment means. (17)

Response – The Department intended to reference the budgeted commitment and not *the appropriate match commitment*. This sentence has been changed as follows: *Settlement not including the budgeted commitment*.

§__.03 C. 2

33. The commenter noted that since a situation of final financial reports not supported by financial records is a material finding, the commenter requested adequate time to prepare and file the reports due. The commenter stated that at the present time, individual agreement administrators can change the time period of when final financial reports are due. (8)

Response – The time period for when agencies must submit final financial reports to the Department on various agreements is beyond the scope of these rules. The Department would advise the commenter and all interested parties to direct questions to the Maine DHHS Division of Purchased Services. The Department did not make any changes to the final rule as a result of this comment.

§__.03 C. 2

34. The commenter stated that the subcontract expense line item should have the same flexibility as personnel, equipment and other purchases in that the subcontract expense should allow for a budget variance of \$1,000 or 10%, whichever is greater. (8)

Response – The Department disagrees. The Department views subcontract funds as restricted, and any excess funds must be returned to the Department if not spent. The Department did not make any changes to the final rule as a result of this comment.

§__.03 C. 6(e)

35. One commenter stated that the rules contain a requirement for agencies to have a system that monitors advance payments from the Department and to pay interest earned on those advances. The commenter stated that the cost of monitoring agreement advances is much more than any interest earned at the prevailing interest rate. Additionally, there is no reciprocal payment of interest when a community agency must borrow funds to do the work of the contract when the Department's payments do not keep pace with contract expenditures. (8) One commenter stated that the cost of compliance exponentially exceeds the dollar value of the interest earned and that this requirement should be dropped. (4)

Response – OMB Circular A-110, §__.22 (k) and (l) require recipients who receive grant advances to maintain those funds in an interest-bearing account and remit interest annually to the Department of Health and Human Services in Rockville, Maryland. There are exceptions to these rules as detailed in §__.22

(k). Interest amounts of up to \$250 may be retained by the recipient annually for administrative expenses. The Department did not make any changes as a result of these comments.

§__.03 C. 6(f)

36. One commenter stated that agencies are required to return funds within 90 days of the end of the agreement, yet there is no reciprocal rule for the Department to pay agencies within a specified time frame. (8)

One commenter stated that MAAP reports were due nine months after the end of the fiscal year, yet any obligation due to the Department is due within ninety days after termination of an agreement. The commenter noted that until cost reports and the MAAP reports are complete, no determination of obligations can be made. (21)

Response – The timing of payments to agencies is beyond the scope of these rules. OMB Circular A-110, §__.71 Closeout Procedures requires all recipients of Federal awards (and State awards as the Department has adopted OMB Circular A-110 for its grants) to liquidate all obligations incurred under the award not later than ninety days after the funding period. Moreover, OMB Circular A-110, §__.71(d) dictates that recipients will promptly refund any balances of unobligated cash. The Department did not make any changes as a result of this comment.

§__.04 2 State Restrictions to Cost Principles – Advisory Councils

37. One commenter stated that advisory councils are an important part of governance at his agency and a key strategy for engaging the community in the services of his organization. The commenter stated that costs associated with advisory councils are very small and the return to the organization and its programs is significant. The commenter stated that these costs should be allowed and this proposal needs to be withdrawn from the MAAP rules. (5)

One commenter stated that advisory councils are an excellent and legitimate part of a program strategy, especially if the goal is to bring about long-term change through community engagement. The commenter stated that his agency has advisory councils as part of its governance structure and that costs associated with those councils need to be recognized as allowable. The commenter suggested language which would allow the activity when included as part of a work plan and budget as *advisory council costs are unallowable unless included in the approved budget*. The commenter stated that by using this language, it is not a restriction to cost principles. (4)

One commenter stated that as a large multi-service agency, there are programs where it is helpful to have an advisory council to get direct focused assistance at the service level where a board of trustees cannot focus because of the size of the agency. The commenter stated that a small single purpose agency's board could fill the role of an advisory council. (7)

One commenter stated that the paragraph on advisory councils makes cost for such councils unallowable unless required by the agreement. (8)

One commenter stated that she did not understand the logic of the proposed rule on advisory councils. The commenter stated that the commenter's agency is required to have an advisory council by Federal rule and will not have to list those expenses and include the expense as a declared item. The commenter stated that, typically, the cost is part of the agency's indirect cost and is normally imbedded with administrative expense. The commenter stated that now the agency will have to show these costs on its grant agreement at a time when grassroots and client input has become more critical for most agencies to achieve success. (10)

One commenter stated that her agency fails to see the value in this restriction on costs. The commenter said that costs associated with volunteers attending advisory council meetings are both necessary and allowable under Federal OMB Circulars (OMB Circular A-122, Attachment B.2). The commenter said that monitoring such immaterial amounts of costs creates a hardship on the agency as well as the auditing firms engaged to monitor the contracts and requested change to this provision. (12)

One commenter stated that the rule proposes a blanket disallowance of the costs of advisory councils unless they are *required by the terms of the grant or agreement and included in the approved budget*. The commenter stated that whether this particular type of cost should or should not be explicitly excluded from the grant expenditures of a particular organization is a matter that should be left to the design of requests for proposals or standards grant agreements, rather than being specified for all programs and all times by a blanket auditing rule. The commenter stated that depending on the nature of the organization obtaining the grant and the way in which it carries out its work, advisory councils could well be an integral part of the responsible and prudent management of the entire enterprise. The commenter stated that in such a case, failure to lay out advisory council costs in a particular agreement should no more be a basis for audit disallowance than if an agency did not lay out the cost of lighting and heat because it was included in its rent budget, or did not specifically call out the cost of organizing and holding regular meetings of its Board of Directors. (23)

Response – The Department did not disallow the cost for an advisory council in the rule. Rather, the Department will allow the cost of an advisory council if required by the terms of the agreement and if said cost is included in the approved budget. The Department modified the language in the rule as a result of these comments. The rules now states: *Advisory council costs are allowable when required by the terms of the agreements and included in the approved budget.*

§__.04 2 State Restrictions to Cost Principles – Compensation

38. One commenter stated that limitations on expenditures should be imposed through the budgeting process as in the past. The commenter stated that there are too many variables in an agency structure and size to set a specific dollar amount limitation in regulation with no flexibility. (1)

One commenter stated that his agency cannot support any effort by the Department to limit executives within what would be considered a reasonable compensation when compared to other similar organizations. The commenter stated that what is appropriate for one organization of two million dollars in annual operating expenses is certainly not appropriate for an organization of fifty million dollars. (3)

One commenter stated that the proposed MAAP rule that sets a limit on community agency compensation does not bear any relation to the scale of the organization, the type and level of the work to be done, nor does it tie to any job market factors. The commenter stated that community agencies must be able to offer adequate compensation to recruit and retain qualified staff and that this restriction jeopardizes the quality and accountability of our services. The commenter stated that non-profit compensation is already adequately controlled by United States Treasury Internal Revenue Service regulation Section 53.4958, which allows compensation to be responsive to job market factors but contains a significant penalty for over-compensation. The commenter stated that where the proposed rule holds the governing board responsible for complying with the standards, the compensation restriction is contrary to the needs of the governing board which must have the authority to decide how it can best meet its responsibility with the resources given to it. (4)

One commenter stated that the proposed State Restriction to Cost Principles in Section .04, A.2. ignores significant differences in the scale and scope of different community agencies and, by fixing compensation in regulation, makes it impossible to remain competitive for the needed skills as market forces change. The commenter stated that while the governing body assumes all legal responsibility for all contract and regulatory compliance and assumes the fiscal responsibility for millions of dollars of public funds, the proposed restriction is based on the assumption that we are not qualified to manage compensation responsibly. The commenter stated that his agency, as a large complex organization, needs to hire a Chief Financial Officer with very high skills and depth of experience. The commenter stated that to comply with US Treasury Regulations, his agency just had a market survey conducted that set the fair compensation of our CFO at \$111,800, while the commenter advocated to the Commissioner that this restriction be dropped from the proposed MAAP rules and stated that the US Treasury regulation provides more than adequate oversight of non-profit executive/management compensation. (5)

One commenter stated that the restriction on compensation seems unusually arbitrary. The commenter stated that adding restrictions increases audit costs at a time that community agencies are feeling especially squeezed financially. The commenter stated that the proposed restriction exceeds the Department's rulemaking authority as set forth by the *Maine Uniform Accounting and Auditing Practices for Community Agencies*, § 1660-I(2) and Maine law, 22 MRS Title 22 § 41-B..

The commenter stated that the salary restriction does not comport with the requirements of the statute and should be stricken from the rule. (6)

One commenter stated that he is extremely concerned about the ability of his organization, which is a large social service agency in Southern Maine, to be able to attract capable senior level staff with the salary restriction placed in the proposed rule. The commenter stated that there are no provisions for annual inflation and no consideration for the size of the organization or its geographical location. The commenter also stated that the limitation on retirement or deferred compensation benefits prohibition along with the salary cap does not leave us with a level playing field when competing with for profit organizations or other non-profits not restricted by these rules to attract top executive talent. (7)

One commenter stated compensation in excess of \$100,000 whether as a direct or indirect charge to an agreement would be unallowable. The commenter stated that the rule also limits retirement benefits and deferred compensation plans to what is an established written policy for all regular full time employees. (8)

One commenter stated that the State restriction on compensation levels makes no sense and is particularly unpleasant when a group of providers is singled out for such caps. The commenter stated that there are non-doctoral level clinical practitioners working in other entities in the State making “excess” wages, including State employees. The commenter stated that the restriction on compensation could require many agencies to run two budgets; one with the correct indirect/administrative rate and one that excludes those excess wages for use with State contracts. The commenter stated that the rule contains no inflation or budget size factor (10)

One commenter stated that the \$100,000 cap on employee compensation is too low and should simply mirror the Federal limits. The commenter stated that the proposed cap will overly restrict agencies from obtaining qualified managers and executives. The commenter stated that the figure is demonstrably too low as a large number of agencies and State of Maine department-level heads have salaries that presently exceed the salary ceiling. The commenter stated that the Federal Executive Level II compensation is more appropriate. (12)

One commenter stated that the Department’s proposed threshold for allowable salary, retirement benefits, bonuses, incentive awards or deferred compensation appears arbitrary and does not recognize the need for an organization to hire well-qualified individuals to manage its operations. The commenter stated that this section of the proposed rule should be eliminated as compensation is well governed under IRS Section 4958. (13)

One commenter inquired whether the definition of compensation includes salary and benefits. The commenter stated that if compensation includes benefits, then the State is setting a level for salary that is less than \$100,000. The commenter stated that the real issue, however, is the State setting an arbitrary compensation level for executives of private non-profit corporations. The commenter stated the board of directors of community agencies has a fiduciary responsibility to set the compensation level of executive staff. The commenter stated that as MAAP rules are not updated regularly, it is unreasonable to include a salary cap in regulatory standards such as these. The commenter advocated that this section be deleted. (14)

One commenter stated that the budget of an organization is a major factor used in assessing executive pay. The commenter stated that research shows a \$100,000 executive salary is associated with an agency with ten million in revenues. The commenter stated that for agencies with budgets above ten million dollars, there is a high likelihood that the compensation restriction would cause a burden to the organization that could cause a competitive disadvantage. The commenter stated that if the organization did not have an unrestricted source of support, the agency would be forced to limit executive pay below market average and the restriction would be unfair and anti-market priced. The commenter stated that the limit percentage has to allow for the size of similar organizations in Maine. The commenter stated that an organization would want to consider what it would pay above average for an excellent employee with 40 years of experience. The commenter advocated for dropping this restriction altogether. If someone is intent on limiting executive pay, there is a way to it that makes sense. (16)

One commenter wondered what the substantiation was for the proposed threshold for allowable compensation for both direct and indirect personnel. The commenter stated that the limit appears to be an arbitrary limit and provides no recognition for the ability of an organization to hire well qualified individuals to manage its operations. The commenter stated that federal guidelines do not restrict the level of compensation an organization pays to hire qualified, competent individuals. The commenter stated that particularly with large operations that operate multiple programs, and have many employees, investing in seasoned personnel with demonstrated expertise is intended to enhance the effectiveness of an organization, and may reduce its overall administrative costs. The commenter stated that finding qualified individuals to manage these multi-faceted programs is often a challenge due to the skill set required and that compensation should not be limited by an arbitrary cap. The commenter stated that many clinicians fulfill an administrative role while also managing a case load, and under the rule's limit, agencies may be unable to use practitioners familiar with the client base in any administrative capacity. The commenter stated that if a cap is to stay in place, it certainly should not be applicable to the indirect employees whose costs are shared among many programs. The commenter stated that if a cap is imposed, there needs to be a provision for inflation. The commenter also stated that retirement provisions of ERISA approved plans often have a requirement for six months to a year of service prior to eligibility, and that such plans also often have minimum age requirements, such as 18 or 21. The commenter stated that under the standard as currently written, costs for such plans would be unallowable. The commenter stated that the standard should be rewritten to allow for variations in plan eligibility. (17)

One commenter stated that investing in seasoned, expert personnel can reduce the overall administrative costs of the agency and improve its quality of performance, and consideration should be given to the size and complexity of the agency concerned in setting any limit on maximum compensation allowed. The commenter also suggested that the rule be clarified that this limit applies only to the portion of an individual's compensation that is actually and directly allocated to the agreement concerned. The commenter also stated that the 100% clinical

practice requirement should be eliminated because many doctoral level practitioners provide some amount of time to supervision, administrative guidance or oversight activities. The commenter stated that the 100% requirement would restrict agencies from accessing the expertise of some of their most experienced practitioners for these important agency tasks. The commenter also stated that retirement plans may, in compliance with ERISA, have minimum age or service eligibility requirements for participation or vesting. The commenter advocated that the disallowance should be clarified not to apply to participation or vesting requirements permitted by ERISA. The commenter further stated that it is believed that the intent of the benefit limitation is to disallow bonuses or incentives extended only to managerial or highly compensated employees. The commenter said bonuses or incentive payments have, however, also been extended to direct care staff, and these bonuses or awards may be limited to employees in certain programs or job classification, but they are generally available within those programs and classifications and provide compensation to staff who directly perform services required for State contracts. (18)

One commenter stated that the level of compensation listed in the rules is arbitrary. The commenter stated that the Department has not considered the size of the entity when setting maximum reimbursement. The commenter stated that many physicians also provide administrative guidance while also carrying a case load. The commenter stated that the rule also does not clarify if the amount in excess of \$100,000 is unallowable or the entire compensation. (19)

One commenter stated that these restrictions to cost principles are unnecessary interferences with the appropriate business of community agencies. The commenter stated that while there are few managers or executives who receive over \$100,000, there should not be an arbitrary limit on what an agency may pay in order to have high quality management and leadership. (20)

One commenter stated that the agency he represents strongly objects to paragraph .04 A. 2. of the proposed rule, and in particular the limit on compensation. The commenter stated that the limit is arbitrary, unworkable, and unsupported by any study or body of statistical information. The commenter stated that under the applicable OMB circulars, it is entirely appropriate for auditing to include an examination of the reasonableness of expenditures, against such benchmarks as practice in the industry, fair market value and the like.

The commenter also stated that the use of arbitrary limits in an after-the-fact audit could, in instances where grants are competitively awarded to obtain particular services, run directly counter to the explicit legislative standard of preference for the best-value bidder set forth in statute. The commenter stated that to base audits on arbitrary limits on selected costs is potentially to distort the significance of those components of total cost, at the expense of broader and fairer measures of whether funds are being expended in an accountable and reasonable manner, whereas the fair and appropriate way to address this issue in an auditing context is the approach used in the existing MAAP rules. The commenter also stated that restrictions regarding benefits should be completely eliminated from the MAAP rule, lest they result in conflicting and perhaps paralyzing restrictions on management discretion to compensate employees so as to provide incentives for

efficiency and to attract and retain competent personnel. The commenter stated that many employee benefits are governed by Federal regulatory schemes, such as ERISA, under which conflicting State laws are preempted. The commenter also stated that the granting of bonuses or other compensation based on the availability of funds at the end of the year can be reasonable. (23)

One commenter stated that it will be difficult to employ qualified managers and executives if an agency cannot charge salaries in excess of \$100,000 per year directly or indirectly to an agreement. The commenter stated that this restriction also will eliminate the use of indirect funds, which is the only source many organizations have to pay these individuals. The commenter also stated that it will be difficult to employ qualified managers and executives if agencies cannot offer additional benefits that are not offered to all employees (24)

One commenter stated that the \$100,000 limit on compensation inappropriately interferes with the organization's ability to independently operate a business. The commenter stated that the compensation cap is an arbitrary limit which is not tied to compensation studies, inflation or the size or complexity of the organization. The commenter stated that the compensation is not correlated to the amount charged to an agreement or Maine government sources. The commenter stated that the compensation cap could be interpreted to reach across business activities that are outside the scope of an agreement.

The commenter also stated that the compensation cap unfairly favors small to medium size agencies who could offer a more attractive compensation package based on the scope of responsibility than that of a larger organization.

The compensation cap is not adjusted for inflation. (25)

Response: The Department has attempted to set a standard for reasonableness in limiting compensation. In doing so, the Department had originally selected \$100,000 as a reasonable cap on compensation. Due to the comments received, the Department recognizes that a single limit on compensation is not reasonable. Therefore, the Department introduced data maintained by the Maine Department of Labor. Compensation higher than \$100,000 will be allowed up to the 90th percentile of Occupational Employment and Wage Estimates for Maine, Social Assistance, Chief Executive, reported annually by the Maine Department of Labor if that wage can be demonstrated by the community agency to be reasonable. The Department recognizes that for agencies with over ten million dollars in revenue, compensation above \$100,000 may well be reasonable. The Maine Department of Labor updates its compensation survey annually. Each year, the Division of Audit will post on its website a custom report from the Department of Labor detailing the 90th percentile Chief Executive compensation for social assistance. This information is expected to be updated in late spring of each year. In addition, the limit on compensation only applies to agreement dollars. So, if the Department agreement dollars were 10% of the agreement (agreement dollars do not include MaineCare), the Department would pro rate any excess compensation to 10% in this instance. Further, the limit on compensation would apply to the annual salary of the employee and not a limit on each contract as asked by one commenter. In addition, the Department recognizes that doctoral level clinical

practitioners do not spend 100% of their time as clinical practitioners. Therefore, the Department has modified the language to state that any doctoral level clinical practitioner who is employed for at least 50% of his or her time as a clinical practitioner is exempt from the compensation cap. The Department also believes that benefits should not be given to any employee if those benefits are not available to all employees. However, the language in the proposed rule did not take into account those who are not legally entitled to benefits (for example, a full time employee who is not 21 years old may not be eligible for retirement benefits) would prevent all employees from getting any benefits. The Department made changes to the rule to prevent this scenario. The new rule reads as follows: *Compensation in salaries and wages for any individual, including managers and executives, must be reasonable and allowable. Such individual compensation charged directly or indirectly to an agreement is not allowed in excess of \$100,000 per year unless (1) higher compensation up to the 90th percentile of Occupational Employment and Wage Estimates for Maine, Social Assistance, Chief Executives, reported annually by the Maine Department of Labor (See Appendix I) is demonstrated by the community agency to be reasonable, or (2) the individual is a doctoral level clinical practitioner who is employed for at least 50% of his or her time as a clinical practitioner. Costs for any retirement benefits, bonuses, incentive awards, or deferred compensation contributions provided to individual employee that are not available to all regular, full-time employees (legally eligible for such) are unallowable. Such costs must be part of an established written policy and not dependent upon end-of-year availability of funds.*

§__04 2 Travel

39. One commenter stated that it was his understanding that Maine State reimbursement rates are part of collective bargaining and therefore they have no “stand alone” legitimacy as a measure of fair reimbursement. The commenter stated that Federal travel reimbursement rates are more appropriate and they should be followed. The commenter stated that community agency out of state travel should be allowed if it is included in the approved budget. The commenter stated that this restriction is also predicated on the erroneous assumption that the Department’s agreement administrator’s judgment would be more knowledgeable or superior to that of community agency management. The commenter stated that if the restriction stands, there needs to be language outlining the criteria the State will use in giving it prior approval. (4)
- One commenter stated that having the agreement administrator give prior written approval to travel funded through a budget the agreement administrator has already approved is a redundant exercise. (4)
- One commenter stated that the IRS rates and rules are a better universal code to follow than State employee rates and rules. The commenter also stated that the prohibition on travel outside the State of Maine is too restrictive when it comes to

being able to attend good training and, in the case of administrative staff, peer group meetings. (7)

One commenter stated that Section .04 A. 2. 4th paragraph simply limits mileage to the level paid to State of Maine employees and disallows out of state travel. (8).

One commenter stated that she would like to see the out of state travel approval struck because it is out of date. (11)

One commenter stated that her agency opposes the rule disallowing travel out of state because for her agency in Presque Isle the costs of traveling out of state in many cases are equal to or less than traveling to southern Maine to attend similar trainings. The commenter stated that mandating prior approval, in writing, of all out of State travel puts an undue burden upon the agency and staff at this agency. (12)

One commenter stated that requiring community agencies to use the State's reimbursement policy limits is unnecessary micro-management. The commenter stated that the requirement to obtain prior approval for out of state travel is unnecessary and could be difficult to implement because staff at the agency the commenter represents are paid out of multiple agreements or are paid from the indirect cost pool. (14)

One commenter stated that this section indicates costs in excess of the Maine State reimbursement amount for travel, lodging and meals are unallowable. The commenter requested the reference as to where the State reimbursement amounts can be found and referenced by providers. The commenter asked what provisions or exceptions to the restriction on out-of-state travel are provided for those agencies that are located in multiple states and provide shared training or out of state training as necessary due to location. The commenter asked what provisions or exceptions are provided for indirect allocated costs that are necessary for the organization to run efficiently. The commenter also asked whether, in instance in which out-of-state travel is approved, agencies would be subjected to Maine limits even though the costs of attending in other areas may be significantly higher. The commenter asked whether there will be an expeditious process for approving out-of-state travel when Federal and State regulators require specific training to provide services to clients, comply with privacy acts and to operate a business in general that cannot be found within the State of Maine. (17)

One commenter stated that there are Federal standards on allowable travel expenses and that these national standards should be used. The commenter stated that there are programs for which the State requires evidence-based practice and the State looks to providers to explore new trends for services introduced in other states, which expertise is not found within the confines of Maine. The commenter stated that if the travel is necessary to comply with a State mandate or to bring new knowledge into the state, then the expense should not be restricted. The commenter also stated that it should be clarified as to whether this limit applies only to out-of-state travel costs that are actually and directly allocated to the agreement concerned. (18)

One commenter stated that where the Federal Government has set standards for travel costs, there is no reason not to use standards that are consistent across the country. The commenter also stated that when it comes to compliance with new State and Federal mandates, it often costs more to import the expertise to train agency staff than to send a representative out of state for training to a vendor's site. The commenter stated that if the travel is to comply with the State's mandate or to bring new knowledge into the State then the expense should not have to be scrutinized. The commenter stated that this proposed requirement is out of line with the State's stated desire for implementation of evidence based systems of care, quality outcome measures and integrated client health records because the necessary expertise for all of those systems will be found outside the borders of Maine. The commenter stated that, similarly, the State's intended move to a managed Medicaid healthcare delivery system does not fit or make sense with a travel expense prior approval system. The commenter stated that determinations about the need for out of state travel will likely fall into the shared risk category between managed care organizations chosen by DHHS and the provider agencies and that the State should not play a role in such determinations. (19)

One commenter stated that the State restrictions to cost principles restrictions on travel were overreaching and include the limits on reimbursable travel and on the amount that may be reimbursed. The commenter stated that this is an example of an unacceptable interference with the business of running community agencies. (20)

One commenter stated that the first sentence in the fourth paragraph, "Travel costs..." contained in § .04 A. 2. is not a complete sentence and is therefore unintelligible. The commenter also stated that some Federal grants require travel to various places and asked if State approval required for mandatory Federal travel when the grant is part of a Department program. (21)

One commenter stated that the proposed rule on travel costs goes beyond the limitations in OMB Circulars to provide that travel costs are unallowable if they exceed Maine State reimbursement amounts. The commenter stated that the prior approval restriction on reaches beyond the appropriate scope of an auditing and accounting practice document and in essence amends every State contract subject to these audits to include particular restrictions on travel cost. The commenter stated that the Department can certainly choose to provide limitations on travel costs in its grants, and historically has done so, but there is no reason to do so in a blanket fashion, rather than addressing this question, along with a host of other issues of cost, reimbursement, and feasibility of a given program, in the context of writing particular requests for proposals or particular grant agreements. (23)

One commenter stated that the restrictions on travel and the rates of reimbursement are unduly restrictive and expensive to maintain. The commenter stated that universal application of the Federal standards simplifies the implementation and management of travel policies by having a universal national standard that is well understood and supported by examples. The commenter stated that it would be a better use of both the Department's and agency resources to follow the Federal standard and not re-create an alternative process which will

then be subject to the same vetting and administrative interpretation which the Federal guidelines have already benefited from. (25)

Response – It has been the long-standing policy of the Department to use the State reimbursement rates as stated in Chapter 10 of the State Administrative & Accounting Manual issued by the Office of the State Controller. Currently, travel reimbursement is set at the federal level for all travel costs except mileage. The current mileage rate is \$.44 per mile while the IRS rate is \$.50 per mile. Out-of-state travel is allowed with prior approval. Out-of-state travel approved in an agency agreement budget is considered prior approval. Therefore, only out of state travel that was not included in the original agency agreement needs specific written approval from an agreement administrator. The Department has not made any changes as a result of this comment.

§ .04 B. 1. (a)

40. Will the bonding limits, if applicable, be defined within the individual contracts? (17)

Response: The bonding limits, if applicable, will be defined within the individual contract. The Department has not made any changes as a result of this comment.

§ .04 C. 1. (d) (e)

41. One commenter stated that there is a problem with giving the Department agreement administrator all the negotiating authority before and during the agreement period, but then revoking those decisions that the Division of Audit finds unallowable after the agreement period. The commenter stated that the Department agreement administrator needs to be held accountable for his/her errors and the Department needs to be held accountable for its failure to properly train the Department agreement administrator. The commenter stated that under the rule as proposed, the only truly responsible party is the community agency which is being held to the unrealistic requirement of having to negotiate both sides of a contract. The commenter stated that any adverse determinations by the Division of Audit that are a result of the failure of the Department, through its agreement administrator, to negotiate a contract that complies in all instances with the MAAP Rule need to be borne by the Department. (4)
One commenter stated that this section along with .04 C. 1. (e) and .04 C. 2 (c) says that the Department Agreement Administrator does not need to know or understand MAAP rules but community agencies do. (8)
One commenter stated that § .04 C (e) adds a layer of complexity to the community agency in situations where the expertise of the Department agreement administrator is not top notch. The commenter stated that the rule begs the question about what training will be provided to all community agencies by the Division of Audit to assure that the agencies know what is expected at audit, where training in the past has been woefully lacking. (11)

One commenter stated that this section is of concern because it requires the agreement administrator to be responsible for all aspects of the community agency's agreement and with the Department, but holds the agreement administrator harmless and holds the community agency responsible for the Department's oversight of the agreement under MAAP and Federal regulations. The commenter asked that Section e. be deleted. (14)

One commenter stated that this section appears to purport to absolve the Department of any responsibility if there is a lack of understanding or communication between the agreement administrators and the Division of Audit. The commenter stated that providers frequently rely on Department personnel when they are developing their budgets and determining program objectives. The commenter stated that there have been many instances in the past where agreement administrators that are concerned with the delivery of services assure the provider that payment will be made for certain items because there is a need for the service, only to find later that the Division of Audit is disallowing those expenditures. The commenter advocated for an educational process put in place for agreement administrators. The commenter stated that rather than placing the burden on the provider to interpret the rules, the Division of Audit should approve and work out the details of reimbursement as part of the budget approval process prior to the provision of services. (17)

One commenter stated that internal conflicts can occur in the terms of a given agreement and its related riders, some terms may be ambiguous, and there may be uncertainty about the application of both contract requirements and MAAP / audit standards to a given situation. The commenter stated that conflicting guidance has sometimes been given by agreement administrators and, after the fact, by the Division of Audit, and community agencies ought not to be caught between conflicting DHHS directions. (18)

One commenter stated that MAAP defines an agreement as legally binding. The commenter stated that the State's boiler plate language says that State Agreements must be approved the State Purchase Review Committee and the Controllers Office before they can be considered valid, enforceable documents. The commenter stated that therefore changes in the documents that do not follow such an approval process are neither valid nor enforceable, and are therefore not auditable agreements. (21)

One commenter stated that the Department agreement administrators will need to receive training, because many are unaware of required forms and procedures. (24)

One commenter stated that the clause that states the Department agreement administrator does not have authority to approve budgets or revisions that are contrary to the MAAP rules, including any Federal regulations incorporated therein, as later determined by the Division of Audit, unfairly shifts the burden of responsibility for legal authority to the agency. The commenter stated that this is an unfunded mandate because the agency must acquire the services of a subject matter expert greater than that of the Department agreement administrator who represents the State of Maine or risk non-compliance after the agreement services have been delivered and the funds expended. (25)

Response – The Department has changed the wording at § .04 C. 1.(e) to state “Review and approval of community agency submissions by the Department does not relieve the community agency from being audited according to MAAP and federal regulations in cases where this approval may be counter to MAAP and federal regulations”. It is the contention of the Department that no employee of the State or a community agency may override rules established by the State or Federal government. The Department has made many improvements to its systems to ensure that all applicable State and Federal rules are followed. The Division of Audit is now partnering with the Division of Purchased Services in reviewing contracts prior to final approval. In addition, the Division of Audit has assigned members of its staff to provide technical advice to agreement administrators as needed. The Division of Audit is also providing regular training to agreement and program administrators on grants administrations, OMB Circulars, indirect cost rates and other programs. The Division of Audit will also be providing regular training on the administration of these rules. Concerned about this change in language. We can discuss.

§ .04 C. 2. Pro Forma

42. The commenter inquired whether the language contained in the section meant that the Department would be responsible for preparing the sample pro forma. (11)

Response – The sample pro forma will be prepared in the same manner as it has been in the past. The Department did not make any changes as a result of this comment.

§ .04 C. 2. (c) Pro Forma

43. The commenter proposed keeping the current MAAP language, rather than modifying this section. The commenter stated that agencies have historically been able to offset bad debts against unrestricted revenues which was a fair approach rather than eliminating these as unallowable costs. The commenter stated that the agency whom the commenter represents works very hard to ensure all accounts are collectible but there are circumstances in which the provider, APS or the Department move forward with rapid changes that cause provider write-offs. The commenter stated that seems unreasonable in these circumstances that under the proposed wording these would be considered unallowable expenses and carved completely out of the settlement process rather than offsetting against unrestricted revenues. (13)

One commenter stated that, historically, agencies were allowed to offset bad debts against unrestricted revenues, which seems a fair approach, rather than eliminated as an unallowable expense. (17)

One commenter stated that the substantive standard is that Federal circulars, program regulations and MAAP restrictions are to be followed. The commenter

stated that consistent with these standards, community agencies have in the past been allowed to offset bad debt against unrestricted revenues, which is a fair approach which ought to be retained. The commenter stated that this approach is consistent with the cited standards and should be disallowed by way of example rather than through a substantive rule. (18)

Response – Federal Circular OMB A-122, Attachment B, 5. Bad debts, state that “*bad debts, including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs, are unallowable*”. The Department has changed its past practice of allowing bad debt to be offset with non-federal revenue to be consistent with federal regulations. The Department did not make any changes as a result of this comment.

§ .04 C. 3 (a) Revisions of Budgets and Program Plans

44. One commenter stated that the category of subcontract expenses is treated differently than that other three expense categories. The commenter stated that all categories should be treated the same. (8)

One commenter proposed that this line should read \$5,000 and 10% rather than \$1,000 or 10%, whichever is greater. (13)

One commenter stated that since the last major revision to MAAP was in 1996, it would seem appropriate to increase these budget revision thresholds for inflation. (17)

Another commenter stated that the \$1,000 thresholds have been kept the same as set in 1996 and stated that the thresholds need to be significantly increased in order to reflect current economic realities. The commenter stated that the Federal materiality threshold in Circular A-133 for known and likely questioned costs is \$10,000. The commenter stated that this higher threshold would better reflect what would constitute material changes that warrant requests for budget revisions approvals and so should be adopted here. (18)

Response – The Department disagrees. The Department treats subcontract funds as restricted funds and any variation from the budgeted amount requires a budget revision. In addition, the Department’s position is that the ten percent or \$1,000 threshold, whichever is greater, that require a budget revision is the correct amount for the State of Maine. Maine has a much smaller budget than the Federal Government and should have a smaller dollar threshold. The Department did not make any changes as a result of this comment.

§ .04 C. 3 (b). Revisions of Budgets and Program Plans

45. The commenter stated that the section, as proposed, should be amended to read: *The total expenses in the subcontract amount vary from the budgeted amount by at least ten percent or \$1,000, whichever is greater.* (4)

Response – The Department disagrees. The Department treats subcontract funds as restricted funds and any variation from the budgeted amount requires a budget revision. The Department did not make any changes as a result of this comment.

§ .04 C. 3 (c). Revisions of Budgets and Program Plans

46. The commenter proposed that the amount needed for a budget revision for total income should read \$5,000 and 10% rather than \$5,000 or 10% whichever is greater. (13)

Response – The Department disagrees. The Department did not make any changes as a result of this comment.

§ .04 C. 3 (d). Revisions of Budgets and Program Plans

47. One commenter stated this line should be amended from *The total agency commitment differs from the budgeted amount* to read: *The total agency commitment differs from the budgeted amount by at least 10 percent or \$1,000, whichever is greater.* (4)

One commenter stated that she would like more explanation as to why the agency commitment is not allowed some degree of variance, particularly if the budget is less and the actual is more. (11)

One commenter inquired whether this sentence in the proposed rule means an agency is committed to the total amount of the agency commitment in the original budget (i.e., whether the agency is held to a higher percentage of cost sharing). The commenter stated that often this creates an artificial surplus that has to be returned. The commenter stated that because the purpose of a budgeted agency match is to simply balance the budget, it would be more appropriate to require an agency to commit the actual resources for a program to “break even”. (17)

One commenter asked for clarification whether there are conditions for which the total agency commitment could be reduced without needing approval of a budget revision. The commenter stated that the issue is that if a program does not operate at the originally expected volume or if a program is successful in cutting its costs or running more efficiently, it would seem reasonable and fair for the agency’s commitment to vary with the reduced size or the decreased costs. The commenter stated that otherwise, there would be a clear disincentive for programs to engage in cost cutting or efficiency strategies. (18)

One commenter stated that this section, by requiring there be no deviation between the agency’s budgeted commitment and the actual commitment, inequitably shifts the benefit of efficiencies to the State of Maine and serves as a disincentive to agencies looking for efficiencies. (25)

Response – The Department disagrees. An agency commitment, similar to the Department agreement amount, is a set amount of dollars that the agency and the Department have agreed to put into a particular program. Under cost-sharing principles, more than one source of funding shares in the costs of a program. The

funding a community agency commits to the program is considered a commitment and not just a figure to balance its budget. If an agency wishes to change its commitment, for whatever reason, a budget revision should be requested. The Department has not made any changes as a result of this comment.

§ .04 C. 3 (e) Revisions of Budgets and Program Plans

48. The commenter stated that the non-budgeted line item rule is too restrictive and once more fails to follow the Federal rule. The commenter suggested that the sentence should be replaced by *There are non budgeted line items in excess of ten percent or \$1,000, whichever is greater.* The commenter stated that this language would be consistent with item (a) in the same section and would reduce paperwork and costs for the agency and the Department. (12)

Response – The Department disagrees. Ideally, an agency will not have any unbudgeted line items. However, if the agency does have an unbudgeted line item in excess of \$1,000, the Department expects the agency to have approval for that line item when the cost exceeds \$1,000. The Department has not made any changes as a result of this comment.

§ .04 C. 3 Revisions of Budgets and Program Plans

49. One commenter stated that the rule regarding a request for a budget revision places all the responsibility for failed Department performance on the community agency. The commenter stated that there should be consequences for the Department's failure to perform. The commenter stated that if the State fails to respond in a timely fashion, the revision request should be treated as approved. (4)

One commenter stated the agency the commenter represents runs its books on an accrual basis wherein at 30 days prior to the end of the contract, the agency uses a full 60 days to complete the books for the year. The commenter stated that it will be very difficult to revise a contract budget 30 days prior to the end of the agreement. The commenter recommended that the last date for a budget revision should be 30 days after the agreement end date. (9)

One commenter inquired as to the reason why the re-budget requirement has been moved up 30 days. The commenter stated that with accrual accounting and some Federal monies being received in the last few days of the commenter's agency fiscal year, the agency is often unable to ascertain its exact position on the last day of the fiscal year, much less a month early. The commenter stated that the Department usually causes the agency to re-budget, yet the new MAAP rule will hold the community agency responsible. The commenter asked how the Department will treat last-month budget re-writes or even post-contract re-writes based on the request coming from the Department. The commenter also stated that final Federal monies also affect the subcontract line at the commenter's agency in the last month of the fiscal year, and 10% of that total for the year must

be sent to the subcontractor by Federal rule. The commenter stated that consequently the agency's subcontract line always differs from the budget in the last month of the fiscal year. (10)

One commenter stated that because the thresholds for an budget revision continue to be very low and any variance from these thresholds could be considered a questioned cost, the last paragraph should read: *the community agency could request a revision to budget during any time prior to the agreement termination date rather than 30 days prior to the agreement termination date.* (13)

One commenter stated that the second sentence of this paragraph should read*all costs that exceed the budget thresholds by at least 10% or \$1,000, whichever is greater shall be deemed questioned costs.* The commenter also stated that Federal regulations stipulate that if approval of a budget revision request is not approved by the end of the contract, the agency will be notified when a decision can be expected. The commenter stated that this section stipulates a deadline by which budget revisions must be submitted for consideration but does not provide a corresponding deadline for the agreement administrator to provide either approval or denial of the request. The commenter stated that there should be a timeframe when a budget revision must be reviewed and either approved or denied by the agreement administrator. (14)

One commenter asked if there will be a process that requires the Department to expeditiously work with the agency once a request is submitted to meet these timelines by identifying a similar time constraint for the Department's response to such a request. The commenter stated that this would ensure the provider has adequate time to plan for the funding of necessary costs that were not included in the original budget. (17)

One commenter stated that DHHS should on its part commit to a timely response to a budget revision request. The commenter stated that the rule should specify a timely response by DHHS not more than 30 days after receipt of the budget revision request. (18)

One commenter stated that it will be difficult to submit a budget revision request at least 30 days prior to the agreement termination date if the subcontracts do not have any flexibility and do not fall in the 10% rule. (24)

One commenter stated that the provision that budget revisions must be submitted 30 days prior to the term of the agreement requires an agency to have perfect vision. The commenter stated that the delivery of services could also be impaired as a small amount of money could be available for the subcontractor to deliver additional service in the final stages but would be unable to do so because funds were not available in the correct line item. The commenter stated that the provision also it limits the contracting agency's ability to utilize standard provisions available under the Uniform Business Code regarding payment and delivery of services in the final stages of a grant. (25)

Response - OMB Circular A-110, §____.24(b) states that recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions. Budget revision requests that are submitted at the end of an agreement or later would not have prior approval. The timeline for

the Department to act on a budget revision request is beyond the scope of these rules, but is included in the policies and procedures of the Division of Purchased Services. The Department did not make any changes as a result of this comment.

§ .04 C. 4.

50. The commenter stated that the second sentence of the first paragraph should read: *Below are Department cost sharing principles to be followed in the budget and settlement process for the funds committed to programs with multiple funding sources.* (4)

Response – The Department disagrees. Although most of the requirements listed in this section involve agreements with multiple funding sources, some requirements, such as C. 4. (g) requiring subcontracts to be subtracted prior to cost sharing would apply to agreements which may or may not have multiple funding sources. The Department made no made any changes as a result of this comment.

§ .04 C. 4. (a)

51. One commenter stated that the third sentence should read the agency’s *ratable* commitment to the program rather than *stated*. (17)

One commenter stated that the last sentence should appropriately say that the agency’s *ratable* commitment to the program is to be included in the final settlement. (18)

One commenter stated that the third sentence of this section is a striking example of the fallacy of calling the settlement process “cost sharing”. The commenter stated that the process developed in MAAP for settlement is a process of revenue sharing, not cost sharing, and its purpose is to bring to bear principles that will allow the State to share in every possible source of funding. (21)

Response – The Department disagrees. The Department will not pro rate an agency’s commitment to the program based on the agency not needing all the funds in that program. The Department did not make any changes as a result of this comment.

§ .04 C. 4. (d)

52. The commenter stated that the first reference to client fees should be *client fees – program*. (17)

Response – The Department agrees. The first sentence of § .04 C. 4. (d) now reads: *Program income such as client fees – program must be eliminated against program expense dollar for dollar prior to cost sharing.*

§ .04 C. 4. (e)

53. One commenter stated that this standard assumes all MaineCare revenue is cost-settled, when that is not the case. The commenter stated that by offsetting non-cost settled MaineCare revenue dollar for dollar against expenses, the Department recaptures any surplus created by those revenue sources. The commenter stated that this creates efficiency and cost-cutting disincentives for agencies heavily funded by non-cost settled MaineCare contracts, and the commenter asked the Department to clarify that all cost-settled MaineCare revenue be offset dollar for dollar. (17)

One commenter stated that for MaineCare revenue that is not cost settled, this dollar-for-dollar elimination effectively results in recapture of any surplus that may have been generated by any cost-cutting efficiencies or similar initiatives that may have been undertaken by the community agency. The commenter stated that this will create a distinct disincentive for any such initiatives to be implemented. The commenter stated that this dollar-for-dollar elimination should apply only to cost settled MaineCare revenue. (18)

One commenter stated that the Federal and State requirement that Medicaid is the funding source of last resort is inconsistent with elimination of MaineCare dollars prior to settlement. The commenter stated that dollar-for-dollar removal – removing expense equal to the amount of revenue – is, by its very nature, arbitrary and capricious. The commenter stated that because very few revenues so treated actually are cost settled, it is purely coincidental if the revenue and expense are equal. (21)

Response – The Department disagrees. OMB Circular A-110, Subpart A, § ____.2(x) states that program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use of rental or real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Further, OMB Circular A-110, Subpart C, § ____.24 (b)(3) states that program income will be deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based. The Department considers MaineCare along with any other income generated as a result of an agreement to be program income. The Department has not made any changes as a result of these comments.

§ .04 C. 4. (f)

54. The commenter stated that this section’s definition of in-kind revenue and expense *as third-party non-cash transactions that add benefits to a program.* has been interpreted by the agreement administrator for the Department as meaning that in-kind donations must come from a source other than the contracting agency. The commenter stated that this interpretation has significant impact on the commenter’s agency as many of the in-kind donations are goods, services,

facilities and resources from the agency. The commenter stated that this is the first time such donations have been brought into question, and that the commenter's agency has written documentation from a Federal official supporting the agency's practice. (22)

Response – The Department disagrees. OMB Circular A-110, Subpart A, §___.2(kk) defines third-party in-kind contributions as the value of non-cash contributions provided by non-Federal third parties. Third party contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of good and services directly benefiting and specifically identifiable to the project or program. The Department contacted its Federal audit cognizant, the DHHS OIG, Office of Audit Services, for a clearer definition of third party. The audit cognizant stated that third party means an outside party distinct and separate from the recipient of the Federal award. The Department has not made any changes as a result of this comment.

§ .04 C. 4. (g)

55. The commenter stated that subcontract expenses should not be treated differently from other expenses and should not be eliminating prior to cost sharing. (8)

Response – The Department disagrees. The Department considers subcontract expenses to be restricted and subject to dollar-for-dollar elimination prior to cost sharing. The Department has not made any changes as a result of this comment.

§ .04 C. 4. (i)

56. The commenter stated that Section .04 C. 4.(g) conflicts with this section. (8)

Response – The Department agrees. § .04 C. 4. (i) now states: *The final financial report (agreement closeout report) must include the total agreement amount less any subcontract amount as available revenue for settlement purposes.*

§ .04 C. 5.

57. One commenter stated that this section requires the community agency to liquidate balances owed to them within ninety days, but allows administrators to require them sooner. The commenter stated that this section also indicates that when a payment is not made, timely interest may be charged but does not impose a penalty upon the State for not paying its obligations under agreements when they are supposed to be paid. (8)

One commenter stated that the Cash Management Improvement Act (CMIA) governs the transfers of funds between States and Federal entities. The commenter stated that rule-making cannot create a statutory obligation on those covered by rule-making but that the statute must exist and authorize the rule-

making first. The commenter also questioned the authority of the Maine DHHS to charge interest. The commenter stated that clearly there would be more justification for this reference if its intent is only to cover Federal funds. (21)

Response – The due dates of reports from community agencies are the purview of the Division of Purchased Services. Payments to a community agency are beyond the scope of these rules. The Department is using the CMIA rate to charge interest on unpaid balances due to the Department. The Department through its rulemaking has adopted OMB Circular A-110 for all funds, not just Federal funds. OMB Circular A-110, Subpart D, §___73(b) states that that except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, “Federal Claims Collections Standards”. The Department has not made any changes as a result of this comment.

§ .04 C. 5.

58. One commenter stated that this section requires a community agency to respond to a Department Examination Report within 60 days of it being issued by the Division of Audit but that there is no time requirement within which the Division of Audit must complete and send to the community agency the examination report. The commenter stated that the delay in receiving these reports compounds errors made in subsequent years. The commenter requests a reasonable time frame be included in the rules that failure to meet would be acceptance of the agency’s audit reports as submitted. (7)

Another commenter stated that this section requires a community agency to respond to a Department examination report within sixty days of it being issued by the Division of Audit whereas there is no time requirement within which the Division of Audit must complete and send to the community agency the examination report. (8)

Response – The Department is making every effort to be current in its examinations by June of 2011. Ultimately, the Department will be issuing examinations within one year of receipt of Tier 2 audits. However, the Department did not put a deadline for the completion of examinations. The Department has not made any changes as a result of these comments.

§ .04 D. 1. Appeals Procedures

59. The commenter stated a concern that the informal appeal stage has been changed. The commenter stated that this informal appeal stage is important, because thorough consideration of the issues at this stage may make it unnecessary for either the community agency or Department staff to engage in the more cumbersome and time-consuming formal appeal process in Step b. The commenter stated that the practice of granting informal review meetings can often result in a sufficiently common understanding to make a more formal appeal

hearing unnecessary. The commenter urged the Department to retain the requirements of a meeting except when it is clear absent that meeting that the decision will be in favor of the community agency. The commenter stated that this change would be consistent with the current, actual practice of the Division of Audit. (23)

Response – The Department disagrees. Unless new information is presented at an informal review meeting, it creates an unnecessary burden on the resources of the Division of Audit and often times results in unnecessarily extending the appeal process. The Department has not made any changes as a result of this comment.

§ .05 A. 2.

60. The commenter stated that there should be consequences if the Department fails as required by the rule *to negotiate agreements with community agencies that contain all applicable accounting and administrative requirements contained in these rules*. The commenter also stated that adverse determinations by the Division of Audit that are a result of the failure of the Department, through its agreement administrator, to negotiate a contract that complies in all instances with the MAAP rules, need to be borne by the Department. (4)

Response – The Department disagrees. The Department has taken multiple steps to ensure that all agreements are in compliance with applicable accounting and administrative rules. These steps include training program and agreement administrators in federal and state regulations. The Division of Audit is also actively promoting communications between the Division and program staff. The Division of Audit will also be reviewing all contracts with the Department starting in the Spring of 2011 to ensure compliance with applicable regulations. The Department has not made any changes as a result of this comment.

§ .05 A. 2.

61. The commenter suggested that a bullet point should be added to this section to read: *To resolve of any language discovered to be conflicting in agreements and their related riders*. (19)

Response – The Department believes that § .05 B 10. covers this concern when it states that the Division of Audit has been charged with providing technical advice and act as a liaison between all interested parties. The Department has not made any changes as a result of this comment.

§ .05 B. 6.

62. The commenter stated that there is no time requirement within which the Division of Audit must complete and send to the community agency the examination report. (8)

Response – The Department agrees. The Division of Audit is currently working to perform all Tier 2 examinations within one year of receiving the Tier 2 audit report. The Department hopes to be current in all of its examinations by June of 2011. However, the Department did not include a deadline for completion in these rules. The Department has not made any changes as a result of this comment.

§ .05 B. 9.

63. The commenter stated any adverse determinations by the Division of Audit that are a result of the failure of the Division of Audit to successfully train the Department’s agreement administrators to negotiate a contract that complies in all instances with the MAAP Act and Rule need to be borne by the Department. (4)

Response - The Department disagrees. The responsibility for agreements that comply with the MAAP rules is the responsibility of community agencies as well as the Department. The Division of Audit has embarked on a training schedule for Department personnel for compliance with federal regulations and the MAAP rule. In addition, beginning in the Spring of 2011, the Division of Audit will review all agreements with the Department for compliance with applicable regulations. The Department has not made any changes as a result of this comment.

Appendix C

64. The commenter stated that Appendix C contains outdated language.

Response – The Department agrees. Appendix C has been updated with the latest audit report language available from the American Institute of Certified Public Accountants. The Department will be updating this appendix on its website as necessary.

The Department has made minor grammatical and word changes in the rule for purposes of clarity.

Commenters:

1. Peter Montano CPA, Maine Association of Nonprofits
2. Steven LeClair, CPA, Gibson LeClair, CPA’s

3. Matthew Smith, Maine Community Action Association
4. Charles Newton, Penquis
5. Bill Collins, Penquis
6. Barbara L. Crider, York County Community Action Corporation
7. Marc Doyon, People's Regional Opportunity Program
8. Paul L. Morgan CMA, People's Regional Opportunity Program
9. Lee-Ann Horowitz, Eastern Area Agency on Aging
10. Noelle Merrill, Eastern Area Agency on Aging
11. Debra Parry, SeniorsPlus
12. Ellen Bemis CPA, Aroostook County Action Program
13. Michael R. Abbatiello MPPM, CPA, Counseling Services, Inc.
14. Sam Morris, Midcoast Maine Community Action
15. Monique Morin, Southern Kennebec Child Development Corporation
16. Ron Langworthy, Community Living Association
17. Berry, Dunn, McNeil & Parker, Berry Dunn, McNeil & Parker, CPA's
18. Robert Jay White, Esq., Sweetser
19. Nancy G. Irving, CPA, Spurwink Services
20. Mary Lou Dyer, Maine Association for Community Service Providers
21. Richard Israel, Community Health and Counseling Services
22. Bill Shine, Tri-County Mental Health Services
23. Charles F. Dingman, Esq., Catholic Charities
24. Kim Bustamante, HealthInfoNet
25. Kathy Finnell, Goodwill Industries of Northern New England