Questions and Answers related to ACF-OA-PI-13-01, *Waiver Process for the Use of Federal Funding for Commercial Off-the-Shelf (COTS) Software Products*

1. *In Part 11, Section 11276.3, of the CMS State Medicaid Manual, CMS funding is authorized for the license costs of certain proprietary software. Does this Program Instruction change that provision?*

   No, CMS, OCSE and CB currently fund the cost to license certain proprietary software allowed by 45 CFR 95.617, and this Program Instruction does not change the ability of a state or tribe to claim those costs.

2. *May we use proprietary software approved by one DHHS operational division in a different project?*

   There is no prohibition against a state or tribe requesting a waiver for software prohibited by 45 CFR 95.617. Furthermore, if the COTS software is allowed under 45 CFR 95.617, it may be used by any of the DHHS programs following the Advance Planning Document rules at 45 CFR Part 95 Subpart F; note that FFP rates may differ, and the Office of Management and Budget's Circular A-87 cost allocation principles may apply to the different benefitting programs.

3. *My total project costs are unknown. For Phase 1, costs are under threshold, but the total project costs may eventually exceed threshold limits. May I submit a waiver request in a letter format?*

   Yes. However, states or tribes should be able to estimate the total cost of their projects.

4. *What should be in a waiver letter?*

   As noted in the Program Instruction, the letter should include the information listed in this guidance, including the findings of an alternatives analysis and an explanation of how the waiver will assist the agency in meeting program requirements. Plans for transition from the COTS product if it is no longer available to the agency, and to encourage competition in its procurement should also be summarized. Plans to mitigate risks associated with the use of propriety products must also be included.

   For cross-agency projects funded by DHHS and incorporating more than one of the Medicaid, Child Support and Child Welfare programs, agencies should submit waiver requests to the applicable program offices and the use established multi-operational division processes.

5. *Will FNS support the use of proprietary software prohibited by their APD rules?*

   The Food and Nutrition Service's State Systems Office participated in the development of this guidance and is supportive of waiver requests for otherwise prohibited COTS software. However, due to differences in regulatory language, waivers may not be necessary in some situations involving FNS programs. As you consider system options, check with FNS to determine the applicability of FNS waiver requirements.

6. *My agency has a waiver for a proprietary software product granted under the provisions of the Program Instruction ACYF-CB-PI-11-08, granted prior to the effective date of this new PI. Must we re-apply for waiver approval for that product under the provisions of this PI?*

   No.